

certain other “financial institutions.” The definition of “financial institution” cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of “financial institution” than that in section 103.11 of the BSA regulations, and includes entities such as commodities firms.

*Section 103.122(a)(7) Taxpayer identification number.* The proposed rule contained a definition of “taxpayer identification number” because that term is used later in the rule with respect to the types of information broker-dealers must collect from customers.<sup>39</sup> The term was defined by referencing the provisions of section 6109 of the Internal Revenue Code of 1986 and the regulations of the Internal Revenue Service (IRS) promulgated under that act. There were no comments on this approach and, therefore, we have adopted it as proposed.<sup>40</sup>

*Section 103.122(a)(8) U.S. Person and § 103.131(a)(9) Non-U.S. Person*

The proposed rule defined “U.S. person” as an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States.<sup>41</sup> A “non-U.S. person” was defined as a person who did not satisfy either of these criteria.<sup>42</sup> One commenter suggested that the definitions of “U.S. person” and “non-U.S. person” should comport with the definitions in certain IRS forms.

We believe that the proposed definitions of “U.S. person” and “Non-U.S. person” are better standards for purposes of this final rule than the IRS definitions. Adoption of the IRS definition of “U.S. person” would require broker-dealers to distinguish among various tax and immigration categories in connection with any type

of account that is opened. Under the proposed definition, a broker-dealer will not necessarily need to establish whether a potential customer is a U.S. citizen. The broker-dealer will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the broker-dealer may then accept alternative forms of identification. Therefore, the definitions are adopted as proposed.<sup>43</sup>

*Section 103.122(b) Customer Identification Program: Minimum Requirements*

*Section 103.122(b)(1) In General*

We proposed to require that each broker-dealer establish, document, and maintain a written CIP as part of its required anti-money laundering (AML) program,<sup>44</sup> and that the procedures of the CIP enable the broker-dealer to form a reasonable belief that it knows the true identity of a customer.<sup>45</sup> The CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including the broker-dealer’s size; location and methods of opening accounts, the types of accounts maintained for customers and types of transactions executed for customers, and the broker-dealer’s reliance on another broker-dealer.<sup>46</sup>

The NPRM discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, broker-dealers should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.<sup>47</sup> Commenters generally supported the approach of the proposed general CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that a broker-dealer must establish, document, and maintain a written CIP as part of its required AML program. It now provides that the CIP should be appropriate for the broker-dealer’s size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5) (which are discussed below). The final rule was re-organized in order to be structurally

consistent with the rules being issued by the banking agencies. Thus, requirements that had been set forth in paragraphs (c), (d), (e), (f), (g) and (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted.<sup>48</sup> The rule’s structure was changed in order to avoid causing confusion by having different looking rules and to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires broker-dealers to establish identity verification procedures. This change was made to highlight that the risk factors should be considered specifically when developing identification verification procedures.<sup>49</sup>

*Section 103.122(b)(2) Identity Verification Procedures*

We proposed to require that a broker-dealer’s CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer’s account is opened or the customer is granted authority to effect transactions with respect to an account.<sup>50</sup> Commenters supported these general requirements, although several commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed.<sup>51</sup> Under the final rule, a broker-dealer’s CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.<sup>52</sup> Such procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer.<sup>53</sup> The procedures must be based on the broker-dealer’s assessment of the relevant risks, including those presented by the

<sup>39</sup> See NPRM, 67 FR at 48317.

<sup>40</sup> See final rule, paragraph (a)(7).

<sup>41</sup> The proposed rule contained a definition of “person” that cross-referenced the definition in section 103.11(z) of the BSA regulations. Since the final rule is being codified in 31 CFR Part 103, it will incorporate the definition in section 103.11(z) without the need for a specific citation. Therefore, the citation has been removed from the final rule. The definition of “person” in section 103.11(z) applicable to the final rule is: “an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.”

<sup>42</sup> As described in greater detail below, a broker-dealer is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the broker-dealer may obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

<sup>43</sup> See final rule, paragraphs (a)(8) and (a)(9).

<sup>44</sup> NASD Rule 3011 and NYSE Rule 445 set forth minimum requirements for these programs.

<sup>45</sup> See NPRM, 67 FR at 48317.

<sup>46</sup> *Id.*

<sup>47</sup> See NPRM, Section II.B, 67 FR at 48307–48308.

<sup>48</sup> Paragraph (b)(6) of the final rule is not specified as a minimum CIP requirement because it contains the provisions permitting broker-dealers to rely on another financial institution. Reliance under this paragraph is optional.

<sup>49</sup> The other requirements of the final rule—such as providing notice to customers, checking government lists, and recordkeeping—are standard requirements that may not vary depending on risk factors.

<sup>50</sup> See NPRM, 67 FR at 48317.

<sup>51</sup> See final rule, paragraph (b)(2).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*