

various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base.⁵⁴

Section 103.122(b)(2)(i) Customer Information Required

The proposed rule would have required a broker-dealer's CIP to require the firm to obtain certain identifying information about each customer, including, at a minimum: (1) Name; (2) date of birth, for a natural person; (3) certain addresses;⁵⁵ and (4) identification number.⁵⁶ The NPRM further stated that in certain circumstances a broker-dealer should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.⁵⁷

Three commenters submitted comments on the required information component of the proposed rule. One commenter pointed out that certain persons may not have permanent residential addresses because they are military personnel living overseas or are living on boats. This commenter suggested the rule only require that a mailing address be obtained. Another commenter suggested that the rule permit broker-dealers to open an account even if all the minimum identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. The final commenter suggested the rule be risk-based with respect to the required minimum information. This commenter also stated that the rule should require a mailing address only.

We are adopting the customer information provisions substantially as proposed with changes to accommodate individuals who may not have physical addresses.⁵⁸ We believe the minimum required information is collected by

most broker-dealers already, is necessary for the verification process and serves an important law enforcement function. Accordingly, prior to opening an account, a broker-dealer must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.⁵⁹ The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.⁶⁰

We are adopting the identification number requirement substantially as proposed.⁶¹ For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number or employer identification number).⁶² For a customer that is not a U.S. person, the identification number is one or more of the following: A taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.⁶³ This provision provides a broker-dealer with some flexibility to choose among a variety of information numbers that it may accept from a non-U.S. person.⁶⁴ However, the identifying information the broker-dealer accepts must permit the firm to form a reasonable belief that it knows the true identity of the customer.⁶⁵

⁵⁹ Based on an assessment of the relevant risk factors, the broker-dealer's CIP may require a customer to provide additional information to establish the customer's identity.

⁶⁰ Final rule, paragraph (b)(2)(i)(A)(3).

⁶¹ See NPRM, 67 FR at 48317.

⁶² Final rule, paragraph (b)(2)(i)(A)(4).

⁶³ *Id.*

⁶⁴ The final rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a broker-dealer. See Treasury Department, "A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act," October 21, 2002.

⁶⁵ We emphasize that the rule neither endorses nor prohibits a broker-dealer from accepting information from particular types of identification documents issued by foreign governments. The broker-dealer must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have an identification number. Therefore the final rule notes that when opening an account for such a customer, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account.⁶⁶ The exception would have allowed a broker-dealer to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).⁶⁷ We are adopting an expanded version of this exception in the final rule.⁶⁸ As proposed, the exception was limited to persons that are not natural persons.⁶⁹ On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.⁷⁰ We also have modified the exception to reduce the recordkeeping burden. The proposed rule would have required the broker-dealer to retain a copy of the customer's application for a taxpayer identification number.⁷¹ The final rule permits the broker-dealer to exercise discretion to determine how to confirm that a person has filed an application.⁷²

Section 103.122(b)(2)(ii) Customer Verification

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 the information obtained under the rule.⁷³ We also proposed to require such verification to 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.⁷⁴ The NPRM stated that a broker-dealer need not verify each piece of identifying information if it is able to form a reasonable belief that it knows

⁶⁶ See NPRM, 67 FR at 48317.

⁶⁷ This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting-TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. See 26 CFR 31.3406(g)-3.

⁶⁸ See final rule, paragraph (b)(2)(i)(B).

⁶⁹ In the NPRM, we explained that the exception was for new businesses that may need to open a brokerage account before they receive an EIN from the Internal Revenue Service. See NPRM, Section ILC, 67 FR at 48309.

⁷⁰ Final rule, paragraph (b)(2)(i)(B).

⁷¹ See NPRM, 67 FR at 48317.

⁷² The broker-dealer's CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

⁷³ See NPRM, 67 FR at 48317.

⁷⁴ *Id.*

⁵⁴ *Id.*

⁵⁵ We proposed to require broker-dealers to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person. See NPRM, 67 FR at 48317.

⁵⁶ We proposed to require broker-dealers to obtain: (1) For a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. See NPRM, 67 FR at 48317.

⁵⁷ See NPRM, Section ILC, 67 FR at 48308-48309.

⁵⁸ Final rule, paragraph (b)(2)(i)(A).