

the customer's identity after verifying only certain of the information.⁷⁵ The NPRM also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner.⁷⁶ It noted that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account in person, and the type of identifying information available.⁷⁷

Five commenters suggested that the rule should not require existing customers to be verified. Two of these commenters also pointed out that a second account is not created when a customer changes a cash account into a margin account. Accordingly, they argued that the changing of a cash account into a margin account should not be considered the opening of a new account. As discussed above, the definition of "customer" in the final rule has been changed to exclude persons who have an existing account at the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. Accordingly, broker-dealers will not be required to verify the identities of such persons. One commenter also suggested that the rule should not require broker-dealers to verify the identities of personal acquaintances.

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of "customer," described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time before or after the account is opened.⁷⁸ The final rule does not require the identity of a person granted authority to effect transactions in an account to be verified.

As stated in the NPRM, broker-dealers must reasonably exercise the flexibility to undertake verification before or after an account is opened. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account

in-person, and the type of identifying information that is available.⁷⁹

The final rule also requires that a broker-dealer's CIP include procedures that describe when the firm will use documents, non-documentary methods, or a combination of both to verify customer identities.⁸⁰ Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the broker-dealer's assessment of the relevant risk factors.

Finally, with respect to the comment on personal acquaintances, we believe it would be inappropriate to provide special treatment for such customers. The rule is sufficiently flexible to make their verification as unobtrusive as possible.

Section 103.122(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a broker-dealer's CIP describe documents that the firm will use to verify customers' identities.⁸¹ Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Three commenters submitted comments on this aspect of the rule. Two commenters sought clarification that broker-dealers will not be responsible for ensuring the validity of verifying documents. One commenter suggested that certificates of trust and legal opinions should be suitable documents for verification.

The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a

broker-dealer's CIP to contain procedures that set forth the documents that the firm will use for verification.⁸² Each broker-dealer will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify the true identities of customers.

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable.⁸³ However, we encourage broker-dealers to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage broker-dealers to use a variety of methods to verify the identity of a customer, especially when the broker-dealer does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.⁸⁴ A broker-dealer may use other documents, provided they allow the firm to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the broker-dealer should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the broker-dealer knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Finally, with respect to the comments on ensuring the validity of documents, once a broker-dealer obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the firm is not required to take steps to determine whether the document has been validly issued. A broker-dealer generally may rely on

⁷⁵ NPRM, Section II.D, 67 FR at 48309.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Final rule, paragraph (b)(2)(ii).

⁷⁹ It is possible, however, that a broker-dealer would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. See, e.g., 31 CFR Part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

⁸⁰ Final rule, paragraph (b)(2)(ii).

⁸¹ See NPRM, 67 FR at 48317.

⁸² Final rule, paragraph (b)(ii)(A).

⁸³ *Id.* Other documents, such as the trust certificates and legal opinions suggested by one commenter, also may be appropriate for verification. The list in the rule is meant to be illustrative.

⁸⁴ For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. Final rule, paragraph (b)(2)(ii)(A)(1). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument. Final rule, paragraph (b)(2)(ii)(A)(2).