

government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the broker-dealer must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.122(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

We proposed to require a broker-dealer's CIP to describe the non-documentary methods the broker-dealer would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.⁸⁵ We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.⁸⁶ We also noted that, even if the customer presents identification documents, it might be appropriate to use non-documentary methods as well.⁸⁷

The proposed rule provided examples of non-documentary verification methods that a broker-dealer may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions. In the NPRM, we observed that broker-dealers may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.⁸⁸

We proposed to require broker-dealers to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is presented with unfamiliar documents to verify the identity of a customer; or (3) the broker-dealer does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the broker-dealer will be unable to verify the true identity of a customer through documents.⁸⁹ In the NPRM, we explained that we recognize that

identification documents may be obtained illegally and may be fraudulent.

In light of the recent increase in identity theft, we encouraged broker-dealers to use non-documentary methods even when the customer has provided identification documents.⁹⁰

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the broker-dealer's non-documentary verification methods.⁹¹ One commenter sought clarification that a broker-dealer is not prohibited from using both documentary methods in conjunction with non-documentary methods.⁹² One commenter suggested that public databases, such as the SEC's EDGAR system, should be considered a suitable source of non-documentary verification. One commenter expressed concern about the applicability of the Fair Credit Reporting Act (FCRA) when using non-documentary methods, such as credit reports.⁹³

We recognize that there are many scenarios and combinations of risk factors that broker-dealers may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, a broker-dealer relying on non-documentary verification methods must describe them in its CIP.⁹⁴ The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,⁹⁵ or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.⁹⁶ We continue to

recommend that broker-dealers analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposed rule, of circumstances that may require the use of non-documentary procedures.⁹⁷ Specifically, non-documentary procedures must address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.⁹⁸

As we stated in the NPRM, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage broker-dealers to use non-documentary methods even when the customer has provided identification documents.

Section 103.122(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described earlier, we originally proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Most commenters objected to this requirement, and it does not appear in the final rule. For the reasons discussed below, however, the rule does require that a broker-dealer's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.⁹⁹

Treasury and the SEC believe that, while broker-dealers may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the broker-dealer will not know the customer's true identity may be heightened for certain types of accounts, such as an account

⁸⁵ See NPRM, Section II.D.2, 67 FR at 48310.

⁹¹ As discussed above, non-documentary methods may be used in any circumstance.

⁹² *Id.*

⁹³ We have determined that there is no statutory basis to shield broker-dealers from FCRA requirements with respect to requirements under the final rule.

⁹⁴ Final rule, paragraph (b)(2)(ii)(B).

⁹⁵ We do not list the specific types of databases that would be suitable for verification. Thus, in response to the one comment, the SEC's EDGAR system may be an appropriate means of undertaking non-documentary verification. Ultimately, it will depend on the circumstances and the broker-dealer's assessment of the relevant risk factors.

⁹⁶ Final rule, paragraph (b)(2)(ii)(B)(1).

⁹⁷ Final rule, paragraph (b)(2)(ii)(B)(2).

⁹⁸ *Id.* The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a broker-dealer should use non-documentary verification procedures.

⁹⁹ See final rule, paragraph (b)(2)(ii)(C).

⁸⁵ See NPRM, 67 FR at 48317.

⁸⁶ See NPRM, Section II.D.2, 67 FR at 48310.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See NPRM, 67 FR at 48317.