

opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a broker-dealer must identify customers that pose a heightened risk of not being properly identified and that a broker-dealer's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures. This provision requires that the CIP address circumstances in which, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the account, in order to verify the customer's true identity.<sup>100</sup> This additional verification method applies only when the broker-dealer cannot adequately verify the customer's true identity using documentary and non-documentary verification methods.<sup>101</sup>

#### *Section 103.122(b)(2)(iii) Lack of Verification*

We proposed to require that a broker-dealer's CIP include procedures for responding to circumstances in which the firm cannot form a reasonable belief that it knows the true identity of the customer.<sup>102</sup> We explained in the NPRM that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.<sup>103</sup> We also explained that there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.<sup>104</sup>

We did not receive any comments on this aspect of the proposed rule and the

final rule adopts the provision substantially as proposed.<sup>105</sup> However, it adds a description of recommended features of these procedures, based on the features described in the NPRM. Thus, the final rule states that the procedures should describe: (1) When the broker-dealer should not open an account; (2) the terms under which a customer may use an account while the broker-dealer attempts to verify the customer's identity; (3) when the broker-dealer should file a Suspicious Activity Report (SAR) in accordance with applicable law; and (4) when the broker-dealer should close an account, after attempts to verify a customer's identity have failed.<sup>106</sup>

#### *Section 103.122(b)(3) Recordkeeping*

##### *Section 103.122(b)(3)(i) Required Records*

We proposed to require broker-dealer CIPs to include certain recordkeeping procedures.<sup>107</sup> First, the proposed rule would have required that a broker-dealer maintain a record of the identifying information provided by customers. Second, if a broker-dealer relies on a document to verify a customer's identity, the proposed rule would have required the firm to maintain a copy of the document. Third, the proposed rule would have required broker-dealers to record the methods and results of any additional measures undertaken to verify the identity of customers. Finally, the proposed rule would have required broker-dealers to record the resolution of any discrepancy in the identifying information obtained.

Twelve commenters submitted comments on this aspect of the rule. Generally they objected to the requirement to maintain copies of verification documents or reports of non-documentary methods. They argued that this requirement was overly burdensome. Two commenters requested that the language in the proposed rule requiring broker-dealers to make copies that "accurately depict" the documentary records be harmonized with the CIP rules issued by the other Federal functional regulators.

We have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a broker-dealer's CIP must include procedures for making and maintaining records related to verifying customers. However, the final rule is significantly more flexible than the proposed rule. Under the final rule, a broker-dealer must still make a record of the

identifying information obtained about each customer.<sup>108</sup> However, rather than requiring copies of verification documents, the final rule requires that a broker-dealer's records include a *description* of any document that the broker-dealer relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.<sup>109</sup> With respect to non-documentary verification, the final rule now requires the records to include "a description" of the methods and results of any measures undertaken to verify the identity of the customer.<sup>110</sup> The final rule also requires a record of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.<sup>111</sup>

As we stated in the NPRM, nothing in the rule modifies, limits, or supersedes Section 101 of the Electronic Signatures in Global and National Commerce Act.<sup>112</sup> A broker-dealer may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.<sup>113</sup>

##### *Section 103.122(b)(3)(ii) Record Retention*

We proposed to require that a broker-dealer retain all required records for five years after the account is closed. Three commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping period be shortened.

We believe that, by eliminating the requirement that a broker-dealer retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, while the identifying information provided by customers should be retained as proposed, there is little value in requiring broker-dealers to retain the remaining records for five years after an account is closed, because this information is likely to grow stale. Therefore, the final rule prescribes a

<sup>108</sup> See final rule, paragraph (b)(3)(i)(A).

<sup>109</sup> Final rule, paragraph (b)(3)(i)(B).

<sup>110</sup> Final rule, paragraph (b)(3)(i)(C).

<sup>111</sup> Final rule, paragraph (b)(3)(i)(D). In response to one of the commenters, we limited this requirement to "substantive" discrepancies to make clear that records would not have to be made in the case of minor discrepancies, such as those that might be caused by typographical mistakes.

<sup>112</sup> Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).

<sup>113</sup> See Commission Guidance to Broker-dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

<sup>100</sup> *Id.*

<sup>101</sup> A broker-dealer need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity after using standard documentary and non-documentary verification methods.

<sup>102</sup> See NPRM, 67 FR at 48317.

<sup>103</sup> See NPRM, Section II.G, 67 FR at 48310.

<sup>104</sup> *Id.*

<sup>105</sup> Final rule, paragraph (b)(2)(iii).

<sup>106</sup> *Id.*

<sup>107</sup> See NPRM, 67 FR at 48317.