

bifurcated record retention schedule that is consistent with a general five-year retention requirement.¹¹⁴ Under the final rule, the broker-dealer must retain the information obtained about a customer pursuant to paragraph (b)(3)(i)(A) for five years after the date the account is closed.¹¹⁵ The remaining records required under paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) need only be retained for five years after the record is made. The final rule provides that these records otherwise shall be maintained in accordance with the provisions of the broker-dealer recordkeeping rule (Rule 17a-4).¹¹⁶

Section 103.122(b)(4) Comparison With Government Lists

We proposed to require that a broker-dealer's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the broker-dealer.¹¹⁷ In addition, the proposed rule stated that broker-dealers must follow all federal directives issued in connection with such lists.

Two commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to broker-dealers. These commenters also suggested that all such lists be consolidated or provided through a clearinghouse, such as FinCEN. One commenter suggested that the rule should allow for the lists to be checked after an account is opened. Another commenter sought clarification that the requirement to check these lists only applied to the broker-dealer and not its affiliates.¹¹⁸

The final rule states that a broker-dealer's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.¹¹⁹

Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that broker-dealers must check.¹²⁰ However, broker-dealers will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, they will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a broker-dealer must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the broker-dealer to determine whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.¹²¹

The final rule also requires a broker-dealer's CIP to include procedures that require the firm to follow all federal directives issued in connection with such lists.¹²² Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

Section 103.122(b)(5) Customer Notice

We proposed to require that a broker-dealer's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.¹²³ The NPRM stated that a broker-dealer could satisfy that notice requirement by generally notifying its customers about the firm's verification procedures.¹²⁴ It stated that if an account is opened electronically, such as through an Internet Web site, the broker-dealer could provide notice electronically.¹²⁵

Four commenters requested model language for the notice. Two commenters suggested that the rule allow notice to be given within a

reasonable time after the account is opened.

Section 326 of the Act provides that the regulations issued "shall at a minimum, require financial institutions to * * * [give] customers * * * adequate notice" of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a broker-dealer's CIP to include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities. The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the broker-dealer generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice before opening an account.¹²⁶ The final rule states that, depending on how an account is opened, a broker-dealer may post a notice in the lobby or on its website, or use any other form of oral or written notice, such as a statement on an account application.¹²⁷ In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a broker-dealer's customers when provided in accordance with the requirements of the final rule.¹²⁸

Section 103.122(b)(6) Reliance on Other Financial Institutions

In the proposed rule, we included as a risk factor a broker-dealer's reliance on another broker-dealer.¹²⁹ In the NPRM, we stated that this requires an assessment of whether the broker-dealer can rely on another broker-dealer, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account.¹³⁰ We stated that a shared account means an account subject to a carrying or clearing agreement governed by New York Stock Exchange (NYSE) Rule 382 or National Association of Securities Dealers, Inc. (NASD) Rule 3230 (*i.e.*, a customer account introduced by a correspondent broker-dealer to a clearing and carrying broker-dealer).¹³¹

Six commenters submitted a variety of comments on this aspect of the proposed rule and the NPRM. Generally,

¹¹⁴ See Final rule, paragraph (b)(3)(ii).

¹¹⁵ The Secretary has determined that the records required to be retained under section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

¹¹⁶ 17 CFR 240.17a-4.

¹¹⁷ See NPRM, 67 FR at 48317.

¹¹⁸ This rule only applies to "broker-dealers" as that term is defined in the rule. However, there may be cases where a broker-dealer's affiliate is subject to a CIP rule issued by Treasury and one of the other federal functional regulators.

¹¹⁹ Final rule, paragraph (b)(4).

¹²⁰ This is not to say, however, that broker-dealers do not have obligations under other laws to screen their customers against government lists. For example, broker-dealers already should have compliance programs in place to ensure they comply with Treasury's Office of Foreign Assets Control rules prohibiting transactions with certain foreign countries or their nationals. See OFAC's Foreign Assets Control Regulations for the Securities Industry, which can be viewed at the following Web site: <http://www.ustreas.gov/offices/enforcement/ofac/regulations/t11facsc.pdf>.

¹²¹ Final rule, paragraph (b)(4).

¹²² *Id.*

¹²³ See NPRM, 67 FR at 48317.

¹²⁴ NPRM, Section II.F, 67 FR at 48310.

¹²⁵ *Id.*

¹²⁶ Final rule, paragraph (b)(5)(ii).

¹²⁷ *Id.*

¹²⁸ Final rule, paragraph (b)(5)(iii).

¹²⁹ See NPRM, 67 FR at 48317.

¹³⁰ NPRM, Section II.B, 67 FR at 48307-48308.

¹³¹ *Id.*