

they all supported expanding the reliance provision beyond the confines of a clearing/introducing broker-dealer relationship. Some suggested allowing reliance in other broker-dealer relationships, such as that between a prime broker and an executing broker. Some also suggested permitting broker-dealers to rely on other types of entities, such as other financial institutions or affiliates. Two commenters also expressed concern with the degree of liability that remained with a broker-dealer relying on another broker-dealer.

We recognize that there may be circumstances in which a broker-dealer should be able to rely on the performance by another financial institution of some or all of the elements of the firm's CIP.¹³² Therefore, the final rule provides that a broker-dealer's CIP may include procedures that specify when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the firm's CIP, and thereby satisfy the broker-dealer's obligations under the rule.¹³³ Reliance is permitted if a customer of the broker-dealer is opening, or has opened, an account or has established a similar relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a broker-dealer to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the broker-dealer requiring it to certify annually to the broker-dealer that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the broker-dealer's CIP. The contract and certification will provide a standard means for a broker-dealer to demonstrate the extent to which it is relying on another financial institution to perform its CIP, and that the other institution has, in fact, agreed

to perform those functions.¹³⁴ If it is not clear from these documents, a broker-dealer must be able to otherwise demonstrate when it is relying on another financial institution to perform its CIP with respect to a particular customer. The broker-dealer will not be held responsible for the failure of the other financial institution to fulfill adequately the broker-dealer's CIP responsibilities, provided that the broker-dealer can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the broker-dealer and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the broker-dealer remains solely responsible for applying its own CIP to each customer in accordance with this rule.

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to share information and cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the reliance provision of this rule.

Section 103.122(c) Exemptions

The proposed rule provided that the Commission, with the concurrence of the Secretary, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o and 78o-4.¹³⁵ However, it excluded from this exemptive authority broker-dealers that register pursuant to 15 U.S.C. 78o(b)(11). These are firms that register as broker-dealers solely because they deal in securities futures products. The exemptive authority with respect to these firms will be in the rule issued jointly by Treasury and the CFTC. The proposed rule provided that the Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers pursuant to 15 U.S.C. 78o-5 (*i.e.*, government securities dealers).

We received no comments on this provision in the proposed rule and are adopting it substantially as proposed.¹³⁶

Section 103.122(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in CIP rules adopted by the other Federal functional regulators, to the effect that nothing in the rule shall be construed to relieve a broker-dealer of its obligations to obtain, verify, or maintain information that is required by another regulation in Part 103.¹³⁷ In addition, broker-dealers continue to be subject to existing securities law requirements, which may have different or more rigorous requirements than those in the final rule.¹³⁸

B. Requirement for CIP Approval Removed

The proposed rule had a requirement in paragraph (i) that the CIP be approved by the broker-dealer's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the CIP.¹³⁹ The final rule requires the CIP to be a part of the overall AML programs required of broker-dealers under NASD Rule 3011 and NYSE Rule 445.¹⁴⁰ NASD Rule 3011 and NYSE Rule 445 require the AML programs to be approved in writing by a member of the broker-dealer's senior management. We removed the approval requirement in the final rule because it was unnecessary given the approval requirements in NASD Rule 3011 and NYSE Rule 445. We note, however, that a broker-dealer with an AML program that has been approved as required, must nonetheless obtain approval of a new CIP because it would be a material change to the AML program.

III. Conforming Amendments to 31 CFR 103.35

As Treasury explained in the NPRM, current section 103.35(a) sets forth customer identification requirements when certain brokerage accounts are opened. Together with the proposed rule implementing section 326 of the Act, Treasury, on its own authority, proposed deleting 31 CFR 103.35(a) for the following reasons.

Generally, sections 103.35(a)(1) and (2) require a broker-dealer, within 30

been removed since these firms are excluded from the rule's definition of broker-dealer.

¹³⁷ Final rule, paragraph (d).

¹³⁸ For example, Rule 17a-3(a)(9) requires broker-dealers to obtain the name and address of the beneficial owners of certain accounts and NASD Rule 3110, among other things, requires broker-dealers to obtain the names of persons authorized to transact business on behalf of customers that are legal entities.

¹³⁹ See NPRM, 67 FR at 48317.

¹⁴⁰ See final rule, paragraph (b)(1).

¹³² This provision of the rule does not affect the ability of a broker-dealer to contractually delegate the implementation and operation of its CIP to a service provider that would not qualify under the reliance provisions of paragraph (b)(6). However, in such a case, the broker-dealer remains solely responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.

¹³³ Final rule, paragraph (b)(6).

¹³⁴ A broker-dealer must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the broker-dealer's CIP, regardless of whether the other financial institution is an affiliate or a non-affiliate. Accordingly, the contract and certification requirement in the final rule applies equally to affiliate and non-affiliate reliance.

¹³⁵ See NPRM, 67 FR at 48317.

¹³⁶ Final rule, paragraph (c). The reference to firms that register under 15 U.S.C. 78o(b)(11) has