

that the total cost to the industry to check such lists will be \$911,896 in 2003, \$4,014,500 in 2004 and \$4,427,820 in 2005.<sup>162</sup>

#### 5. Providing Notice to Customers

A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. Depending on how accounts are opened, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. The Commission estimates the total one-time cost to the industry to implement adequate notices will be \$1,401,498.<sup>163</sup>

#### 6. Recordkeeping

The Commission estimates that many of the records required by the rule are already made and maintained by broker-dealers. As discussed above, Commission and self-regulatory

organization rules already require broker-dealers to obtain much of the minimum identifying information specified in the proposed rule. These regulations also require that records be made and kept of this information. Moreover, the final rule has modified the recordkeeping requirements to make them less burdensome. The Commission estimates that the recordkeeping requirement could result in additional costs for some broker-dealers that currently do not maintain certain of the records for the prescribed time period. The Commission estimates that the total cost to the industry to make and maintain the required records in the upcoming years will be \$3,647,583 in 2003, \$16,058,000 in 2004 and \$17,711,283 in 2005.<sup>164</sup>

#### VI. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to address concerns related to the effects of agency rules on small entities. In the NPRM, Treasury and the Commission stated that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities." <sup>165</sup> 5 U.S.C. 605(b). First, we noted that the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, we pointed out that the economic impact on broker-dealers, including small entities, is imposed by the statute itself, and not by the final rule.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, Treasury and the Commission

prepared an Initial Regulatory Flexibility Analysis (IRFA) that was published in the NPRM. Therefore, a Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with 5 U.S.C. 604.

#### A. Need for and Objectives of the Rule

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the broker-dealer. Furthermore, section 326 requires, at a minimum, that broker-dealers implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The rule seeks to achieve the goals of section 326 by specifying the information broker-dealers must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with broker-dealers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

#### B. Significant Issues Raised by Public Comment

In the NPRM, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that may be affected by the proposed rule. The agencies received no comments on the IRFA.

#### C. Small Entities Subject to the Rule

The final rule will affect broker-dealers that are small entities. Rule 0—

<sup>162</sup> The Commission believes that most of the firms that receive these lists already check their customers against them. Moreover, as indicated previously, 97% of customer accounts are held at the 70 largest firms. The Commission understands that most of these firms have automated processes for complying with many regulatory requirements. Accordingly, the Commission estimates that it will take broker-dealers on average thirty seconds to check whether a person appears on a government list. The hourly cost of the person who would check the list is \$25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year)  $\times$  (1/120 of an hour)  $\times$  (\$25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be \$3,647,583, the actual cost being allocated to the rule for 2003 is \$911,896 (or  $\frac{1}{4}$  of \$3,647,583).

<sup>163</sup> The Commission estimates that it will take each broker-dealer, on average, two hours to create and implement the appropriate notice. This estimate takes into consideration the fact that many small firms will be able to provide adequate notice by hanging signs in their premises. Larger firms will be able to provide notice by updating account opening documentation or electronic account opening systems. The Commission believes that broker-dealers will have an attorney draft the appropriate notice, and that this will take approximately one hour. The hourly cost for an in-house counsel plus 35% overhead is \$156.00 (SIA Earnings Report, Table 107, (Attorney)). The Commission believes that broker-dealers will have a compliance manager implement the notice, and that implementation will take approximately one hour. The hourly cost for a compliance manager is \$101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: (\$156.00 + \$101.25)  $\times$  (the number of broker-dealers doing a public business or 5,448) or \$1,401,498.

<sup>164</sup> The Commission estimates that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that many broker-dealers already make and maintain many of the required records and that the requirements in the final rule have been modified. The hourly cost of the person who would undertake the verification is \$25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year)  $\times$  (1/30 of an hour)  $\times$  (\$25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be \$14,590,333, the actual cost being allocated to the rule for 2003 is \$3,647,583 (or  $\frac{1}{4}$  of \$14,590,333).

<sup>165</sup> NPRM, Section VII, 67 FR at 48315.