

10 under the Exchange Act¹⁶⁶ defines a broker-dealer to be small if it (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in the rule.

The Commission estimates there are approximately 878 broker-dealers that were "small" for purposes of Rule 0-10 that would be subject to this rule because they conduct business with the general public. The Commission bases its estimate on the information provided in broker-dealer FOCUS Reports.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would require broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that broker-dealers needing to draft a CIP will spend, on average, approximately 20 hours, at a cost of approximately \$2,244 per firm, and that broker-dealers needing to make systems modifications will spend, on average, approximately 640 hours at a cost of \$39,864.44 per firm.

Although small entities will also incur annual costs, the Commission expects that they will not have a significant economic impact. For each new account, a broker-dealer will require what we estimate to be one minute for collecting customer information, 5 minutes for verifying customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately \$22 to \$26 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing

costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption for small broker-dealers from coverage of the proposed amendments or any part thereof.

The final rule provides for substantial flexibility in how each broker-dealer may meet its requirements. This flexibility is designed to account for differences between broker-dealers, including size. Nonetheless, Treasury and the Commission did consider alternatives indicated above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of broker-dealers, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

VII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the pre-ambble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

§ 103.35 [Amended]

■ 2. In § 103.35, amend the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "June 30, 1972".

■ 3. Subpart I of part 103 is amended by adding § 103.122 to read as follows:

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(ii) *Account* does not include:

(A) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4)(i) *Customer* means: (A) A person that opens a new account; and (B) an individual who opens a new account for: (1) An individual who lacks legal capacity; or (2) an entity that is not a legal person.

¹⁶⁶ 17 CFR 240.0–10(c).