

of the Treasury (the Secretary or Treasury) to jointly prescribe with the Securities and Exchange Commission (the Commission or SEC) a regulation that, at a minimum, requires investment companies to implement procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. This final regulation applies to investment companies that are mutual funds.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each mutual fund must comply with this final rule by October 1, 2003. Section I.D. of the **SUPPLEMENTARY INFORMATION** contains additional information concerning the compliance date for the final rule.

FOR FURTHER INFORMATION CONTACT:

Securities and Exchange Commission: Division of Investment Management, Office of Regulatory Policy at (202) 942-0690.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905-3590; Office of the General Counsel (Treasury) at (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622-0480.

SUPPLEMENTARY INFORMATION: Treasury and the Commission are jointly adopting (1) a new final rule, 31 CFR 103.131, proposed in July 2002,¹ to implement section 326 of the USA PATRIOT Act² and (2) a new rule 0-11 [17 CFR 270.0-11] under the Investment Company Act of 1940³ (the "1940 Act") that cross-references this new final rule.

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA).⁴ These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318

of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.⁵ Although "investment companies" are "financial institutions" for purposes of the BSA,⁶ the BSA does not define "investment company."⁷ The 1940 Act defines the term broadly and subjects investment companies to comprehensive regulation by the SEC.⁸

⁵ See 31 U.S.C. 5312(a)(2) and (c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the SEC, and the Commodity Futures Trading Commission (CFTC).

⁶ See 31 U.S.C. 5312(a)(2)(I).

⁷ Treasury has not yet adopted rules defining "investment company" for purposes of the BSA. By interim rule published on April 29, 2002, Treasury required that certain "open-end companies," as that term is defined in the 1940 Act (mutual funds) adopt anti-money laundering programs pursuant to section 352 of the Act. 67 FR 21117 (Apr. 29, 2002). Treasury temporarily exempted investment companies other than mutual funds from the requirement that they establish anti-money laundering programs and temporarily deferred determining the definition of "investment company" for purposes of the BSA. *Id.* On September 26, 2002, Treasury issued a rule proposal that, if adopted, would require certain "unregistered investment companies" to adopt and implement anti-money laundering programs. 67 FR 60617 (Sept. 26, 2002). Treasury has also submitted, jointly with the SEC and the Board of Governors of the Federal Reserve System, a report to Congress recommending that customer identification requirements be applied to unregistered investment companies. See A Report to Congress in Accordance with § 356(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (December 31, 2002) at 38 (available at www.treasury.gov/press/releases/reports/356report.pdf). We anticipate that this recommendation will be addressed by separate rulemaking.

⁸ Section 3(a)(1) of the 1940 Act defines "investment company" as any issuer that (A) is or holds itself out as being engaged primarily, or

This final rule applies only to those investment companies that are "open-end companies" required to register with the SEC under section 8 of the 1940 Act.⁹ These entities are commonly referred to as "mutual funds."

The regulations implementing section 326 must require, at a minimum, financial institutions, including investment companies, to 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. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

Final rules governing the applicability of section 326 to other financial institutions, including broker-dealers, banks, thrifts, credit unions, and futures commission merchants, are being issued separately.¹⁰ Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry.

proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

⁹ See § 103.131(a)(8). Section 5(a)(1) of the 1940 Act defines "open-end company." Other types of investment companies regulated by the SEC include closed-end companies and unit investment trusts. The Secretary and the SEC will continue to consider whether a CIP requirement would be appropriate for the issuers of these products, or whether they are effectively covered by the CIP requirements of other financial institutions involved in their distribution (e.g., broker-dealers).

¹⁰ Treasury intends to issue separate rules under section 326 for non-bank financial institutions that are not regulated by the federal functional regulators.

¹ Customer Identification Programs for Mutual Funds, 67 FR 48318 (July 23, 2002) (proposed rule).

² Pub. L. 107-56.

³ 15 U.S.C. 80a-1.

⁴ 31 U.S.C. 5311 *et seq.*