

the proposed rule.¹⁷ The final rule codifies and clarifies this “transfer exception,” by excluding from the definition of “account” any account that a mutual fund acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party. Because these transfers are not initiated by customers, the accounts do not fall within the scope of section 326.¹⁸ Finally, the rule excludes from the definition of “account” accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.¹⁹ Two commenters recommended that these accounts be excluded from the rule. We believe that these accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations that impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements. Therefore, we have decided to exclude them from the definition of “account” in the final rule.

Section 103.131(a)(2) Customer. We proposed to define “customer” to mean any mutual fund shareholder of record who opens a new account with a mutual fund, and any person authorized to effect transactions in the shareholder of record’s account.²⁰ The proposed rule described various relationships that would be included in, or excluded from, the definition of “customer.”²¹ Seven commenters expressed concern about the proposed definition. Three commenters recommended that the final rule provide that persons who do not actually establish an account or receive services from a mutual fund are not “customers.” One commenter

recommended that the rule define “customer” as a person who opens a new account, and explicitly exclude existing customers. Two commenters suggested that a person who exchanges fund shares within a fund family be excluded, whether or not the exchange occurred in a single account.

We have revised the definition of “customer” to address these and other issues. The final rule defines “customer” as “a person that opens a new account.”²² For example, in the case of a trust account, the “customer” would be the trust. For purposes of this rule, a mutual fund is not required to look through a trust, or similar account to verify the identities of beneficiaries, and instead is required only to verify the identity of the named accountholder.²³ Similarly, with respect to an omnibus account established by an intermediary, a mutual fund generally is not required to look through the intermediary to the underlying beneficial owners.²⁴

The final rule clarifies the treatment of a minor child or an informal group with a common interest (e.g., a civic club), where there is no legal entity. In those circumstances, “customer” includes “an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club.”²⁵

In order to make the rule less burdensome, the final rule excludes from the definition of “customer” certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) governmental agencies and instrumentalities and companies that are publicly traded (i.e., the entities described in § 103.22(d)(2)(ii)–(iv)).²⁶ Finally, the

definition of “customer” excludes a person that has an existing account with a mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.²⁷

Five commenters objected to the proposal to define “customer” to include all persons with authority to effect transactions in the account of a shareholder of record.²⁸ While acknowledging that there are circumstances in which it would be appropriate to verify the identity of all such persons (e.g., accountholders that are small or closely held corporations), they asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute. In light of these comments, we have revisited the issue and have determined that requiring a mutual fund to verify the identity of all such parties could interfere with the mutual fund’s ability to focus on identifying customers that present a significant risk of not being properly identified. Accordingly, the final rule does *not* define “customer” to include persons authorized to effect transactions in the account of a shareholder of record. Rather, a mutual fund’s CIP must address situations in which the mutual fund will take additional steps to verify the identity of a customer that is not an individual (such as a corporation or partnership) by seeking information about individuals with authority or control over the account, including persons with authority to effect transactions in the account.²⁹

Section 103.131(a)(3) Federal functional regulator. The proposed rule did not define “federal functional regulator.” The final rule uses the term in several provisions, including the provisions concerning government lists and reliance on other financial institutions. The final rule defines the term by reference to § 103.120(a)(2), meaning each of the banking agencies, the SEC, and the CFTC.

Section 103.131(a)(4) Financial institution. The proposed rule did not define “financial institution.” The final rule uses the term in several provisions,

foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

²⁷ Section 103.131(a)(2)(ii)(C). Although a customer of one mutual fund would not necessarily be considered an existing customer of other funds in the same fund complex, one fund may rely on another fund’s performance of any elements of its CIP. See discussion at notes 115–122 and accompanying text, *infra* describing circumstances in which a fund may rely on the performance of all or part of its CIP by another financial institution, including another fund in the fund complex.

²⁸ Proposed § 103.131(a)(3)(ii).

²⁹ Section 103.131(b)(2)(ii)(C). See discussion at notes 82–84 and accompanying text, *infra*.

¹⁷ See proposed rule, *supra* note 1, Section I.A.

¹⁸ Section 326 of the Act provides that the regulations thereunder shall require financial institutions to implement reasonable procedures for “verifying the identity of any person seeking to open an account.” (emphasis added) If a financial institution acquires a pre-existing account, the customer is not opening an account with the financial institution. Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a mutual fund to verify the identity of customers associated with the accounts that it acquires from another financial institution. We expect financial institutions to implement reasonable procedures to detect money laundering in any accounts, however acquired. A mutual fund may, as part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

¹⁹ Section 103.131(a)(1)(ii)(B).

²⁰ Proposed § 103.131(a)(3).

²¹ See proposed rule, *supra* note 1, Section II.A.

²² Section 103.131(a)(2)(i). Each person named on a joint account is a “customer” under this final rule unless otherwise provided.

²³ However, based on its risk assessment of a new account opened by a customer that is not an individual, a mutual fund may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C). See notes 82–84 *infra* and accompanying text, discussing procedures for additional verification for certain customers. A mutual fund may, as a part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

²⁴ See also note 47 *infra* and accompanying text, discussing omnibus accounts.

²⁵ Section 103.131(a)(2)(i)(B).

²⁶ Section 103.131(a)(2)(ii)(A)–(B). Section 103.22(d)(2)(ii)–(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a mutual fund’s CIP will apply to any