

including the definition of “customer” and the provisions on verification through non-documentary methods, notices, and reliance on other financial institutions. Therefore, the final rule defines the term by cross-reference to the BSA.³⁰

Section 103.131(a)(5) Mutual fund. We proposed to define “mutual fund” as an “investment company” that is an “open-end company” (as those terms are defined in the 1940 Act).³¹ We have revised the definition to limit it to entities that are registered or are required to register with the SEC under section 8 of the 1940 Act.³² This change clarifies that the rule does not apply to foreign mutual funds that meet the statutory definition but are not subject to the registration requirements of the 1940 Act.

Section 103.131(a)(6) Non-U.S. person. We proposed to define “non-U.S. person” as a person that is not a U.S. person.³³ There were no comments on this definition and we are adopting it as proposed.

Section 103.131(a)(7) Taxpayer identification number. We proposed to define “taxpayer identification number” by reference to section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service.³⁴ There were no comments on this approach and we are adopting it substantially as proposed, with minor technical modifications.

Section 103.131(a)(8) U.S. person. We proposed to define “U.S. person” as a U.S. citizen, or a corporation, partnership, trust, or person (other than a natural person) established or organized under the laws of a State or the United States.³⁵ There were no comments on this definition and we are adopting it substantially as proposed, with technical changes that conform the definition to that used in the final CIP rules for other financial institutions.

Section 103.131(b) Customer Identification Program: Minimum Requirements

Section 103.131(b)(1) General Rule. We proposed to require that each mutual fund establish, document, and maintain a written CIP as part of its required anti-money laundering (AML)

program, and that the procedures of the CIP enable the fund to form a reasonable belief that it knows the true identity of a customer.³⁶ The mutual fund’s CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including (1) the mutual fund’s size; (2) the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected; (3) the mutual fund’s types of accounts; and (4) the mutual fund’s customer base.³⁷ The proposed rule discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, mutual funds should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.³⁸ Commenters generally supported the approach of the proposed general CIP requirements and we are adopting them substantially as proposed, although the final rule reorganizes the provisions of the CIP requirements section.³⁹

The proposed rule would have required a mutual fund’s CIP to be approved by the fund’s board of directors or trustees.⁴⁰ Four commenters requested clarification that the provision would not require ongoing review or monitoring by the board. One commenter observed that fund AML programs must already be approved by the board, and suggested that it would be redundant to require that the CIP, which is part of the fund’s AML program, be separately approved.⁴¹ In order to eliminate any duplicative requirements we are eliminating the board approval requirement from the final rule. We note, however, that a fund with an AML program that the board has approved as required, must nonetheless obtain board approval of a new CIP. The addition of the CIP is a material change that must be approved by the board.

Section 103.131(b)(2) Identity verification procedures. We proposed to

require that a mutual fund’s CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer’s account is opened or the customer is granted authority to effect transactions with respect to an account.⁴² Commenters supported these general requirements, although five commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, a mutual fund’s CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.⁴³ Such procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer.⁴⁴ The procedures must be based on the mutual fund’s assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund’s customer base.⁴⁵ As noted in the proposed rule, a mutual fund’s CIP need not include procedures for verifying identities of persons whose transactions are conducted through an omnibus account.⁴⁶ The holder of the omnibus account (e.g., a broker-dealer) is considered to be the customer for purposes of this rule.⁴⁷

⁴² Proposed § 103.131(d).

⁴³ Section 103.131(b)(2). Other elements of the fund’s CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Proposed rule, *supra* note 1, Section II.B.

⁴⁷ See note 24 *supra* and accompanying text. This treatment of omnibus accounts is consistent with the legislative history of the Act, which includes the following: “[W]here a mutual fund sells its shares to the public through a broker-dealer and maintains a ‘street name’ or omnibus account in the broker-dealer’s name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to ‘look through’ the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund’s customers. Thus the fund would not be required to ‘look through’ the plan to identify its participants.” H.R. Rep. 107–250, pt. 1, at 62 (2001).

³⁰ Section 103.131(a)(4), referring to 31 U.S.C. 5312(a)(2) and (c)(1). This definition is more expansive than the definition of “financial institution” in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

³¹ Proposed § 103.131(a)(4).

³² Section 103.131(a)(5).

³³ Proposed § 103.131(a)(8).

³⁴ Proposed § 103.131(a)(6).

³⁵ Proposed § 103.131(a)(7).

³⁶ Proposed § 103.131(b). 31 CFR 103.130 requires mutual funds to develop and implement AML programs.

³⁷ *Id.*

³⁸ Proposed rule, *supra* note 1, Section II.B.

³⁹ In the final rule, § 103.131(b)(1) specifies the general requirement that a mutual fund adopt a written CIP appropriate for its size and type of business, and that the CIP must be a part of the mutual fund’s AML program under 31 CFR 103.130. The discussion of the factors to be considered in implementing a CIP now is in § 103.131(b)(2).

⁴⁰ Proposed § 103.131(i).

⁴¹ See 31 CFR 103.130(b) (requiring that each mutual fund’s AML program be approved in writing by its board of directors or trustees).