

in person, and the type of identifying information available.⁶³

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of "customer," described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time after the account is opened.⁶⁴ The final rule does not require verification if a person is granted authority to effect transactions with respect to an account. As stated in the proposed rule, mutual funds must exercise in a reasonable manner the flexibility to undertake verification within a reasonable time. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in-person, and the type of identifying information that is available.⁶⁵

The final rule also requires that a mutual fund's CIP include procedures that describe when the fund will use documents, non-documentary methods, or a combination of both to verify customer identities.⁶⁶ Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the mutual fund's assessment of the relevant risk factors.⁶⁷

Section 103.131(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a mutual fund's CIP describe documents that the fund will use to verify customers' identities. Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing

nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.⁶⁸

Three commenters noted problems with the use of documents to verify customers' identities. Two commenters stated that it is impossible to obtain objective verification that documents are authentic, complete or current. One commenter pointed out that some states do not require documentation of certain legal entities, and that, as a result, there may be no documentary evidence of such entities. One commenter stated that documents, even government-issued identification cards, are inadequate as a sole means of verification, and recommended that the rule require a mutual fund also to obtain information about customers from unrelated sources. The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a mutual fund's CIP to contain procedures that set forth the documents that the mutual fund will use for verification.⁶⁹ Each mutual fund will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify customer identities, given the risk factors that are relevant to the mutual fund.⁷⁰

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, we encourage mutual funds to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage mutual funds to use a variety of methods to verify the identity of a customer, especially when the mutual fund does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.⁷¹ A mutual fund may use other documents, provided that they allow the fund to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the mutual fund should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the fund knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Section 103.131(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

Recognizing that some accounts are opened by telephone, by mail and over the Internet, we proposed to require a mutual fund's CIP to describe what non-documentary methods the fund would use to verify customers' identities and when the fund would use these methods in addition to, or instead of, relying on documents.⁷² We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.⁷³ We also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.⁷⁴

The proposed rule provided examples of non-documentary verification methods that a mutual fund may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions.⁷⁵ In the proposed rule we observed that mutual funds may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP

⁶³ *Id.*

⁶⁴ Section 103.131(b)(2)(ii).

⁶⁵ It is possible, however, that a mutual fund would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.,* 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

⁶⁶ *Id.* In the proposed rule, this language was in the provisions on verification through documents and non-documentary methods. Proposed § 103.131(d)(1) and (2).

⁶⁷ Section 103.131(b)(2) describes these risk factors.

⁶⁸ Proposed § 103.131(d)(1).

⁶⁹ Section 103.131(b)(2)(ii)(A).

⁷⁰ Once a mutual fund obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the fund is not required to take steps to determine whether the document has been validly issued. A fund generally may rely on government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the fund must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

⁷¹ For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. § 103.131(b)(2)(ii)(A)(1). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument. § 103.131(b)(2)(ii)(A)(2).

⁷² Proposed § 103.131(d)(2).

⁷³ Proposed rule, *supra* note 1, Section II.D.2.

⁷⁴ *Id.*

⁷⁵ Proposed § 103.131(d)(2).