

code, telephone number (if provided), date of birth, and social security number.⁷⁶

We proposed to require mutual funds to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is presented with unfamiliar documents to verify the identity of a customer; or (3) the mutual fund does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.⁷⁷ In the proposed rule we explained that we recognize that identification documents may be obtained illegally and may be fraudulent.⁷⁸ In light of the recent increase in identity theft, we encouraged mutual funds to use non-documentary methods even when the customer has provided identification documents.⁷⁹

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the mutual fund's non-documentary verification methods. Another commenter suggested that the proposed non-documentary methods of verification would be ineffective for foreign individuals, and therefore could preclude foreign individuals who are not physically present in the United States from investing in mutual funds.

We recognize that there are many scenarios and combinations of risk factors that mutual funds may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, for a mutual fund relying on non-documentary verification methods, the CIP must contain procedures that describe non-documentary methods the mutual fund will use. The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of

information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.⁸⁰ As we stated in the proposed rule, we recommend that mutual funds analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposal, of circumstances that may require the use of non-documentary procedures. The final rule requires that non-documentary procedures address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.⁸¹

As we stated in the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage mutual funds to use non-documentary methods even when the customer has provided identification documents.

Section 103.131(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, we proposed to require verification of the identity of any person authorized to effect transactions in a shareholder's account with a mutual fund. Most commenters objected to this requirement, and it does not appear in the final rule.⁸² For the reasons discussed below, however, the rule does require that a mutual fund's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the SEC believe that while mutual funds may be able to verify the majority of

customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the mutual fund will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a mutual fund must identify customers that pose a heightened risk of not being properly identified and that a mutual fund's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer, when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures.⁸³ This provision requires that the CIP address circumstances in which, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the shareholder's account, in order to verify the customer's identity.⁸⁴ This additional verification method will apply only when the mutual fund cannot adequately verify the customer's identity using the documentary and non-documentary verification methods.⁸⁵

Section 103.131(b)(2)(iii) Lack of Verification

We proposed to require that a mutual fund's CIP include procedures for responding to circumstances in which the fund cannot form a reasonable belief that it knows the true identity of the customer.⁸⁶ We explained in the proposed rule that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.⁸⁷ We also explained that

⁸³ Section 103.131(b)(2)(ii)(C).

⁸⁴ *Id.*

⁸⁵ *Id.* A mutual fund need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity using standard documentary and non-documentary verification methods.

⁸⁶ Proposed § 103.131(g).

⁸⁷ See proposed rule, *supra* note 1, at section II.G.

⁷⁶ Proposed rule, *supra* note , Section II.D.2.

⁷⁷ Proposed § 103.131(d)(2).

⁷⁸ Proposed rule, *supra* note 1, Section II.D.2.

⁷⁹ *Id.*

⁸⁰ Section 103.131(b)(2)(ii)(B)(1).

⁸¹ Section 103.131(b)(2)(ii)(B)(2). The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a mutual fund should use non-documentary verification procedures.

⁸² See *supra* notes 28–29, and accompanying text.