

there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.⁸⁸

The final rule adopts this provision substantially as proposed, and adds a description of recommended features of these procedures, based on the features described in the proposed rule.⁸⁹ The final rule states that the procedures should describe: (1) When the mutual fund should not open an account; (2) the terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity; (3) when the mutual fund should file a Suspicious Activity Report (SAR) in accordance with applicable law;⁹⁰ and (4) when the mutual fund should close an account, after attempts to verify a customer's identity have failed.⁹¹

Section 103.131(b)(3) Recordkeeping

Section 103.131(b)(3)(i) Required Records. We proposed to require mutual fund CIPs to include certain recordkeeping procedures.⁹² First, the proposed rule would have required that a mutual fund maintain a record of the identifying information provided by customers.⁹³ Second, if a mutual fund relies on a document to verify a customer's identity, the proposed rule would have required the mutual fund to maintain a copy of the document.⁹⁴ Third, the proposed rule would have required mutual funds to record the methods and results of any additional measures undertaken to verify the identity of customers.⁹⁵ Finally, the proposed rule would have required mutual funds to record the resolution of any discrepancy in the identifying information obtained.⁹⁶

Six commenters expressed concern that the recordkeeping requirements as proposed were unduly burdensome. Two commenters recommended that the rule be modified to incorporate a materiality standard so that a fund need retain only those records that reflect the

resolution of material discrepancies. Three commenters recommended that we eliminate the requirement that mutual funds retain copies of documents used to verify customer identities. One commenter requested clarification on the types of records that will suffice to memorialize non-documentary customer verification methods and their results.

In light of these comments, we have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a mutual fund's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a mutual fund develop and implement a CIP.⁹⁷ However, the final rule is significantly more flexible than the proposed rule. Under the final rule, in addition to required identifying information about a customer, a mutual fund's records must include a description, rather than a copy, of any document that the mutual fund relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.⁹⁸ The record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.⁹⁹

As we stated in the proposed rule, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act.¹⁰⁰ A mutual fund may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.¹⁰¹

Section 103.131(b)(3)(ii) Record Retention

We proposed to require that a mutual fund retain all required records for five years after the account is closed.¹⁰² Six commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping

period be shortened, or that mutual funds be required to retain records only for five years after verification of the customer's identity.

We believe that, by eliminating the requirement that a mutual fund retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, we believe that, while the identifying information provided by customers should be retained, there is little value in requiring mutual funds to retain the remaining records for five years after an account is closed, because this information is likely to be stale. Therefore, the final rule prescribes a bifurcated record retention schedule that is consistent with a general five-year retention requirement. Under the final rule, the mutual fund must retain the information referenced in paragraph (b)(3)(i)(A) (*i.e.*, information obtained about a customer) for five years after the date the account is closed.¹⁰³ The mutual fund need only retain a record that it must make and maintain under the other recordkeeping provisions, paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) for five years after the record is made.¹⁰⁴

Section 103.131(b)(4) Comparison With Government Lists

We proposed to require that a mutual fund's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the fund.¹⁰⁵ In addition, the proposed rule stated that mutual funds must follow all federal directives issued in connection with such lists.¹⁰⁶

Six commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to mutual funds. These commenters also suggested that all such lists be consolidated, and that mutual funds not be required to check such lists until an account is established or a customer receives services from the fund.

The final rule states that a mutual fund's CIP must include procedures for

⁸⁸ *Id.*

⁸⁹ § 103.131(b)(2)(iii).

⁹⁰ Although mutual funds are not currently required to file SARs, they are encouraged to do so voluntarily. On January 21, 2003, Treasury proposed new rule 31 CFR 103.15 which, if adopted, will require mutual funds to file SARs in certain circumstances. 68 FR 2716 (Jan. 21, 2003).

⁹¹ Section 103.131(b)(2)(iii)(A)–(D).

⁹² Proposed § 103.131(h).

⁹³ Proposed § 103.131(h)(1).

⁹⁴ *Id.*

⁹⁵ Proposed § 103.131(h)(2).

⁹⁶ Proposed § 103.131(h)(3).

⁹⁷ Section 103.131(b)(3).

⁹⁸ Section 103.131(b)(3)(i)(A)–(B).

⁹⁹ Section 103.131(b)(3)(i)(C)–(D).

¹⁰⁰ Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).

¹⁰¹ See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Company Act Release No. 24991 (May 24, 2001)[66 FR 29224 (May 30, 2001)].

¹⁰² Proposed § 103.131(h).

¹⁰³ Section 103.131(b)(3)(ii). The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

¹⁰⁴ *Id.*

¹⁰⁵ Proposed § 103.131(e).

¹⁰⁶ *Id.*