

determining whether the name of the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.<sup>107</sup> Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that mutual funds must check. However, mutual funds will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, mutual funds will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a mutual fund must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the mutual fund to determine whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.<sup>108</sup>

The final rule also requires a mutual fund's CIP to include procedures that require the fund to follow all federal directives issued in connection with such lists. Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

#### *Section 103.131(b)(5) Customer Notice*

We proposed to require that a mutual fund's CIP include procedures for providing customers with adequate notice that the fund is requesting information to verify their identities.<sup>109</sup> The proposed rule stated that a mutual fund could satisfy that notice requirement by generally notifying its customers about the fund's verification procedures.<sup>110</sup> It stated that if an account is opened electronically, such as through an Internet website, the mutual fund could provide notice electronically.

Three commenters generally supported the proposal, but asked that we provide model language and additional guidance about the circumstances in which a mutual fund would be deemed to comply with the

requirement. One commenter stated that the proposed notice requirement was overbroad.

The Act requires that our rules "at a minimum, require financial institutions to \* \* \* [give] customers \* \* \* adequate notice" of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a mutual fund's CIP to include procedures for providing fund customers with adequate notice that the fund is requesting information to verify their identities.<sup>111</sup> The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the mutual fund generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account.<sup>112</sup> The final rule states that a mutual fund may, depending on how an account is opened, post a notice on its website, include the notice on its account applications, or use any other form of oral or written notice.<sup>113</sup> In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers when provided in accordance with the requirements of this final rule.<sup>114</sup>

#### *Section 103.131(b)(6) Reliance on Other Financial Institutions*

In the proposed rule we recognized that because mutual funds typically conduct their operations through separate entities, some elements of the CIP will best be performed by personnel of these separate entities.<sup>115</sup> As we stated, it is permissible for a mutual fund to contractually delegate the implementation and operation of its CIP to another affiliated or unaffiliated service provider, such as a transfer agent.<sup>116</sup> However, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.<sup>117</sup>

Four commenters suggested that, in certain circumstances, mutual funds be permitted to rely on customer identification and verification performed by other financial institutions (including other funds in the same fund complex). Two commenters suggested that an investor that opens an account or conducts a transaction with a mutual fund through another financial institution that is itself subject to BSA anti-money laundering and CIP requirements should be considered a customer of the other financial institution and not a customer of the mutual fund. One commenter suggested that all intermediated accounts (*i.e.*, accounts that are opened through another financial institution) be treated similarly to omnibus accounts when the intermediary has identification and verification responsibilities under the BSA.

We recognize that there may be circumstances in which a mutual fund should be able to rely on the performance by another financial institution of some or all of the elements of the fund's CIP. Therefore, the final rule provides that a mutual fund's CIP may include procedures that specify when the fund will rely on the performance by another financial institution of any procedures of the fund's CIP and thereby satisfy the mutual fund's obligations under the rule.<sup>118</sup> Reliance is permitted if a customer of the mutual fund is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.<sup>119</sup>

In order for a mutual fund to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the mutual fund requiring it to certify annually to the mutual fund that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.<sup>120</sup> The contract and certification will provide a standard means for a mutual fund to demonstrate the extent to which it is relying on another

<sup>107</sup> Section 103.131(b)(4).

<sup>108</sup> *Id.*

<sup>109</sup> Proposed § 103.131(f).

<sup>110</sup> Proposed rule, *supra* note 1, at section II.F.

<sup>111</sup> Section 103.131(b)(5)(i).

<sup>112</sup> Although a fund may include the notice in its prospectus, the prospectus would need to be provided to the investor no later than the trade date in order to satisfy the requirement that the notice be provided in a manner reasonably designed to ensure that a customer receives it before the account is opened.

<sup>113</sup> Section 103.131(b)(5)(ii).

<sup>114</sup> Section 103.131(b)(5)(iii).

<sup>115</sup> Proposed rule, *supra* note 1, section II.B.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See § 103.131(b)(6).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*