

institution to perform its CIP and that the institution has in fact agreed to perform these requirements.¹²¹ If it is not clear from these documents, a mutual fund must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer. The mutual fund will not be held responsible for the failure of the other financial institution to fulfill adequately the mutual fund's CIP responsibilities, provided that the mutual fund can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the mutual fund and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the mutual fund remains solely responsible for applying its own CIP to each customer in accordance with this rule.¹²²

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to cooperate and share information to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this rule.

Section 103.131(c) Exemptions

The proposed rule provided that the SEC, with the concurrence of Treasury, may by order or regulation exempt any mutual fund or type of account from the requirements of the rule.¹²³ Under the proposal, in issuing such exemptions, the SEC and Treasury were to consider whether the exemption is consistent with the purposes of the BSA, and in the public interest.¹²⁴ The proposal stated that the SEC and Treasury could also consider other necessary and appropriate factors.¹²⁵

Six commenters recommended that various types of accounts and customers be exempted from the final rule (*e.g.*, participants in qualified retirement plans, court-appointed executors and

guardians, and individuals granted authority to effect transactions in an account upon the death of a shareholder). We have incorporated any suggested exemptions that we have determined to be appropriate into the definitions of "account" and "customer," for the reasons described above.¹²⁶ We are adopting this provision of the rule as proposed.

Section 103.131(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in the rules that require other financial institutions to adopt and implement CIPs,¹²⁷ to the effect that nothing in § 103.131 shall be construed to relieve a mutual fund of its obligations to obtain, verify, or maintain information that is required by another regulation in part 103. This provision will resolve any ambiguity if mutual funds in the future become obligated to obtain, verify, or maintain information under such regulations.

III. The Commission's Analysis of the Costs and Benefits Associated With the Final Rule

Treasury and the Commission are sensitive to the costs and benefits imposed by their rules. Nevertheless, we believe that the rule imposes no costs in addition to those that would result from compliance with the USA PATRIOT Act by mutual funds. While the Commission believes the costs of the rule are attributable to the statute, the Commission has nonetheless undertaken an analysis of these requirements.

Section 326 requires Treasury and the Commission to prescribe regulations setting forth minimum standards for mutual funds regarding verification of the identities of customers.¹²⁸ The rule requires mutual funds to implement a written CIP as part of the anti-money laundering programs required by 31 U.S.C. 5318(h). The CIP must include risk-based procedures for verifying the

identity of each customer, to the extent reasonable and practicable. As required by section 326, these procedures must (1) specify the identifying information that the mutual fund will obtain with respect to each customer, (2) contain procedures for verifying the identity of the customer, within a reasonable time after the account is opened, using documents, non-documentary methods, or a combination of both, and (3) include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of the customer. The CIP also must include procedures for (1) maintaining a record of all information obtained (for either five years after the date the account is closed or five years after the record is made, depending on the type of information), (2) determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators, and (3) providing customers with adequate notice that the mutual fund is requesting information to verify their identities.

As discussed in more detail below, the Commission estimates that approximately 890 registered mutual funds and fund "families" are required to comply with section 326.¹²⁹ The requirements of section 326 as implemented by today's rule will impose initial, one-time costs and ongoing costs on mutual funds and fund families. The costs associated with establishment of CIPs and modification of computer systems and account applications (both paper and web-based applications) to conform to the information and notice requirements of the CIP will represent initial, one-time costs. Ongoing costs for mutual funds

¹²⁹ Currently there are an estimated 3,060 mutual funds registered with the SEC. The 3,060 registered mutual funds are advised by approximately 890 different primary investment advisers. We assume, for purposes of this analysis, that mutual funds that share a common primary investment adviser are part of the same fund family. Therefore, we assume that 890 fund families will be required by today's rule to develop and implement a CIP. For purposes of estimating the total costs associated with section 326 requirements in the Proposed rule, we assumed that each mutual fund would be responsible for establishing a CIP. *See* proposed rule, *supra* note 11 at Section V.B.1. Consequently, the initial cost for the 3,060 mutual funds was estimated to be approximately \$19,125,000. In the proposed rule, we acknowledged that using the number of mutual funds to estimate the costs may result in a high estimate of those costs, and said that we assumed that, in many instances, a single CIP will be developed by a mutual fund family and used by all of the funds in that family. *See* proposed rule, *supra* note 11, at n.20.

¹²¹ A mutual fund must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the fund's CIP, regardless of whether the other financial institution is an affiliated person of the fund. Accordingly, the contract and certification requirement in the final rule applies equally to affiliated person or unaffiliated person reliance.

¹²² This provision of the rule does *not* affect the ability of a mutual fund to contractually delegate the implementation and operation of its CIP to another service provider. 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.

¹²³ Proposed § 103.131(j).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See* notes 15–19, 20–30 and accompanying text *supra*.

¹²⁷ As to the rules that require other financial institutions to adopt and implement CIPs, *see supra* Section I.A.

¹²⁸ As discussed above, section 326 provides that such regulations, at a minimum, must require financial institutions to implement, and customers to comply with, reasonable procedures for—(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list. *See* Section I.A. *supra*.