

verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

In concurrence:

By the Securities and Exchange Commission.

Dated: April 29, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 42

RIN 3038-AB90

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA34

## Customer Identification Programs For Futures Commission Merchants and Introducing Brokers

**AGENCIES:** Financial Crimes Enforcement Network, Treasury; Commodity Futures Trading Commission.

**ACTION:** Joint final rule.

**SUMMARY:** The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Commodity Futures Trading Commission (CFTC) are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Section 326 requires the Secretary of the Treasury to jointly prescribe with the CFTC a rule that, at a minimum, requires futures commission merchants and introducing brokers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to futures commission merchants or introducing brokers by any government agency. This final rule applies to all futures commission merchants and introducing brokers that

register with the CFTC solely because they effect transactions in security futures products.

**DATES:** *Effective Date:* This rule is effective June 9, 2003.

*Compliance Date:* Futures commission merchants and introducing brokers subject to this final rule must comply with it by October 1, 2003.

### FOR FURTHER INFORMATION CONTACT:

*Commodity Futures Trading Commission:* Office of the General Counsel, (202) 418-5120, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; or [AMLstaff@cftc.gov](mailto:AMLstaff@cftc.gov).

*Treasury:* Office of the Chief Counsel (FinCEN), (703) 905-3590; Office of the General Counsel (Treasury), (202) 622-1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480.

### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Act).<sup>1</sup> Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," added several new provisions to the Bank Secrecy Act (BSA).<sup>2</sup> These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act added a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary or Treasury) to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 of the Act applies to all "financial institutions." This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, brokers and dealers in securities, investment companies, futures commission merchants (FCMs), introducing brokers (IBs),<sup>3</sup> insurance companies, travel

agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.<sup>4</sup>

The regulations implementing section 326 of the Act must require, at a minimum, financial institutions to implement reasonable customer identification procedures for: (1) Verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

##### B. Overview of Comments Received

On July 23, 2002, Treasury and the CFTC jointly proposed a rule to implement section 326 of the Act with respect to FCMs and IBs.<sup>5</sup> Treasury and the CFTC received three comments directed to this proposal.<sup>6</sup> Commenters

U.S.C. 5312(a)(2)(H), includes IBs within the definition of "financial institution." 67 FR 48328, 48329 n.2 (July 23, 2002); see also 67 FR 21110, 21111 n.5 (April 29, 2002).

<sup>4</sup> See 31 U.S.C. 5312(a)(2), 5312(c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 of the Act jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the CFTC, and the Securities and Exchange Commission (SEC).

<sup>5</sup> Customer Identification Programs for FCMs and IBs, 67 FR 48328 (July 23, 2002) (NPRM). Treasury simultaneously published: (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks (67 FR 48290 (July 23, 2002)); (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a Federal functional regulator (67 FR 48299 (July 23, 2002)); (3) jointly with the SEC, a proposed rule applicable to broker-dealers (67 FR 48306 (July 23, 2002)); and (4) jointly with the SEC, a proposed rule applicable to mutual funds (67 FR 48318 (July 23, 2002)). Treasury, the CFTC, the SEC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised similar issues applicable to all the affected sectors of the financial services industry.

<sup>6</sup> The comment letters are available for public inspection and copying in the CFTC's Reading

Continued

<sup>1</sup> Pub. L. 107-56.

<sup>2</sup> 31 U.S.C. 5311 *et seq.*

<sup>3</sup> Treasury has clarified that the term "a broker or dealer in securities or commodities" in the BSA, 31