

were a registered futures association and two futures industry trade associations. Commenters generally supported the proposal but suggested a few revisions.

One commenter addressed the rule's definition of "customer," specifically the definition's inclusion of persons with authority to effect transactions in the account. This commenter argued that the definition was overly broad and suggested that a risk-based approach be adopted instead.

Two commenters addressed the proposed rule's identity verification requirement. One commenter supported the proposed rule's framework for when verification would be required of existing customers that open new accounts. The other commenter requested clarification as to what would be considered a "new account" for which verification would be necessary. Both commenters suggested that the final rule text include the exception discussed in the NPRM for certain non-customer initiated transfers of accounts between FCMs.⁷

Two commenters addressed the issue of permissible reliance between FCMs and IBs that share an account relationship with respect to the performance of customer identification and verification functions. The commenters requested clarification regarding the requirement that the relied-upon firm provide a certification to the relying firm. They suggested that the relied-upon firm be allowed to provide one certification that would suffice for all customers for which the two financial institutions share an account relationship. The commenters also suggested that reliance upon non-U.S. financial institutions, particularly affiliates, be permitted as well.

One commenter addressed the proposed rule's customer notice requirement. This commenter suggested that notice should not be required of FCMs and IBs, and that if it is required, posting a notice on the firm's Internet website should be deemed sufficient for all customers.

Treasury and the CFTC have modified the proposed rule in light of these comments. It is the intent of Treasury, the CFTC, the SEC and the banking agencies that all the final rules implementing 31 U.S.C. 5318(l) be substantively identical, which approach was supported by commenters from all affected sectors of the financial services

industry. Accordingly, Treasury and the CFTC also have modified the proposed rule for FCMs and IBs to maintain consistency and parallel treatment with the final rules imposing customer identification and verification requirements upon other financial institutions.⁸ The section-by-section analysis that follows discusses the comments and the modifications that Treasury and the CFTC have made to the proposed rule.

C. Codification of the Joint Final Rule

The joint final rule applies to any person that is registered or required to be registered with the CFTC under the Commodity Exchange Act (CEA)⁹ as either an FCM or IB, except persons who register as an FCM or IB solely for the purpose of effecting any transactions in a security futures product (SFP).¹⁰ The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.¹¹

As proposed, the CFTC is adding a rule in its own regulations that will cross-reference the joint rule in 31 CFR Part 103. Specifically, the CFTC is concurrently amending Chapter I of 17 CFR to add a new Part 42 and adopting a new rule in this Part, Rule 42.2 (Compliance with Bank Secrecy Act).¹² CFTC Rule 42.2 will require each FCM and IB to comply with the applicable provisions of the BSA and the implementing regulations, including 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by Treasury and the CFTC at 31 CFR 103.23, requiring customer identification and verification procedures as part of the FCM's or IB's anti-money laundering (AML) compliance program.

Final rules governing the applicability of section 326 of the Act to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and securities broker-dealers, are being issued separately. Treasury, the CFTC, the SEC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These agencies intend the effect of the

final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 of the Act for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

D. Compliance Date

Many commenters on the other proposed rules¹³ requested that financial institutions be given adequate time to develop and implement the requirements of any final rule adopted under section 326 of the Act. The transition periods suggested by these commenters ranged from 60 days to two years after the publication of a final rule.

The final rule for FCMs and IBs modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the CFTC recognize that some FCMs and IBs will need time to develop and implement the customer identification program (CIP) required by the rule, because doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, FCMs and IBs will have a transition period to implement the rule. FCMs and IBs must fully implement their CIPs under the final rule by October 1, 2003.¹⁴

II. The Joint Final Rule Implementing Sections 326 of the Act

A. Section-by-Section Analysis

Section 103.123(a) Definitions

Section 103.123(a)(1) Account. The proposed rule defined "account" as any formal business relationship with an FCM, including, but not limited to, any relationship established to effect transactions in contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity.¹⁵

The final rule includes certain changes to this definition. First, the reference to a "business relationship" has been removed from the definition of "account." This change has been made to clarify that the rule applies to the FCM's provision of financial services,¹⁶

⁸ See *supra* notes 4 and 5. Treasury and the CFTC believe that these changes either clarify or liberalize the scope of the proposed rule with respect to FCMs and IBs.

⁹ 7 U.S.C. 1, *et seq.*

¹⁰ FCMs and IBs that limit their futures business to effecting transactions in SFPs may register with the CFTC pursuant to 7 U.S.C. 6(f)(2). These persons will be subject to the customer identification rule being issued by the SEC with respect to securities brokers or dealers.

¹¹ The rule will be codified at 31 CFR 103.123.

¹² 17 CFR 42.2.

¹³ See *supra* note 5.

¹⁴ The final CIP rules issued by Treasury and the other Federal functional regulators also require full implementation by October 1, 2003.

¹⁵ See NPRM, 67 FR at 48337.

¹⁶ This term is intended to operate broadly to include all financial services provided by an FCM. It would include, for example, the provision of any

Room, located in Room 4072 at the CFTC's principal office at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The telephone number is (202) 418-5025. Comment letters are also available on the CFTC's Internet website at http://www.cftc.gov/foia/comment02/foi02-009_1.htm.

⁷ See NPRM, 67 FR at 48330.