

whether other information or methods are appropriate, particularly as they become available in the future.³⁷ Commenters generally supported the risk-based approach of the proposed CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that FCMs and IBs must implement a written CIP as part of their required AML programs. It provides that the CIP should be appropriate for the FCM's or IB's size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5), which are discussed below. The final rule has been re-organized to be structurally consistent with the rules being issued by Treasury and the other Federal functional regulators. Thus, requirements that had been set forth in paragraphs (c) through (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted. The rule's structure was changed in order to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires FCMs and IBs to establish identity verification procedures. This change was made to clarify that the risk factors apply only to the identity verification procedures of the CIP, and not to standard requirements, such as procedures for providing notice to customers, recordkeeping, or checking government lists, which may not vary depending upon the perceived risk.

Section 103.123(b)(2) Identity Verification Procedures

Treasury and the CFTC proposed to require that the FCMs' and IBs' CIPs include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened.³⁸ On the whole, commenters supported these general requirements, although they recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and Treasury and the CFTC are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, an

FCM's or IB's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. Such procedures must enable the FCM or IB to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the FCM's or IB's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the FCM's or IB's size, location and customer base.

Section 103.123(b)(2)(i) Customer Information Required

The proposed rule provided that an FCM's or IB's CIP must require the firm to obtain certain identifying information about its customers, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;³⁹ and (4) certain identification numbers.⁴⁰ The NPRM further stated that in certain circumstances, an FCM or IB should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.⁴¹

Treasury and the CFTC are adopting the customer information requirements substantially as proposed, with changes to accommodate individuals who may not have a physical address. Treasury and the CFTC believe that FCMs and IBs, for the most part, already collect the information required by the rule,⁴² and

³⁹ The proposed rule would have required FCMs and IBs to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing addresses (if different) for a person other than a natural person. See NPRM, 67 FR at 48337.

⁴⁰ The proposed rule would have required FCMs and IBs to obtain: (1) for a customer that is a U.S. person, a TIN, or (2) for a customer that is not a U.S. person, a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. See NPRM, 67 FR at 48337.

⁴¹ See NPRM, 67 FR at 48332.

⁴² See NPRM, 67 FR at 48335 n.17. See also CFTC Rule 1.37(a)(1), 17 CFR 1.37(a)(1), which requires FCMs and IBs to obtain, among other things, the true name and address of the person for whom such account is carried or introduced. Although an FCM or IB can utilize the customer information that is obtained and verified under the final rule to fulfill this obligation under Rule 1.37, an FCM or IB still will need to obtain the principal occupation or business of its customers as well as the name of any other person guaranteeing or exercising trading control with respect to its customers' accounts, because these are among the additional requirements under CFTC Rule 1.37. Further, FCM and IB members of NFA will still need to comply with the additional minimum requirements in NFA

that this information not only is necessary for the verification process, but also serves an important law enforcement function.

Accordingly, prior to opening an account, FCMs and IBs must obtain, at a minimum, a customer's (1) Name; (2) date of birth, for an individual; (3) address; and (4) identification number.⁴³ The address must be: (1) For an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.

Treasury and the CFTC are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a TIN (social security number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This provision provides FCMs and IBs with some flexibility to choose among a variety of identification numbers that they may accept from a non-U.S. person.⁴⁴ However, the identifying information the FCM or IB accepts must enable it to form a reasonable belief that it knows the true identity of the customer.⁴⁵

Compliance Rule 2-30(c) (requires FCM and IB members to obtain from customers that are natural persons, at least the following: "(2) The customer's current estimated annual income and net worth; (3) the customer's approximate age; and (4) an indication of the customer's previous investment and futures trading experience").

⁴³ Based on an assessment of the relevant risk factors, the FCM's or IB's CIP may require a customer to provide additional information to enable the firm to form a reasonable belief that it knows the customer's true identity.

⁴⁴ The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to an FCM or IB. See Treasury Department, "A Report to Congress in Accordance with section 326(b) of the USA PATRIOT Act," October 21, 2002.

⁴⁵ Treasury and the CFTC emphasize that the rule neither endorses nor prohibits an FCM or IB from accepting information from particular types of identification documents issued by foreign governments. The FCM or IB must determine, based upon appropriate risk factors, including those discussed above, whether the information presented

³⁷ See NPRM, 67 FR at 48331.

³⁸ See NPRM, 67 FR at 48338.