

reasonable belief that it knows the true identity of the customer.

In addition to the risk factors described in paragraph (b)(2), the FCM or IB should take into consideration the problems associated with authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the FCM or IB knows the true identity of the customer, and may require the use of non-documentary methods of verification in addition to documents.

Once an FCM or IB verifies the identity of a customer through a document, such as a driver's license or passport, it is not required to take steps to determine whether the document has been validly issued. An FCM or IB generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the FCM or IB must consider that in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.123(b)(2)(ii)(B) Customer Verification—Through Non-documentary Methods

Treasury and the CFTC proposed to require that an FCM's or IB's CIP describe the non-documentary methods the firm would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.⁵⁹ Treasury and the CFTC explained that the proposed rule would allow the exclusive use of non-documentary methods because some accounts are opened by telephone, by mail, or over the Internet.⁶⁰ Treasury and the CFTC also noted that, even if a customer presents identification documents, it still might be appropriate to use non-documentary verification methods as well.

The proposed rule provided examples of non-documentary verification methods that an FCM or IB may use. In the NPRM, Treasury and the CFTC observed that FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.⁶¹

Treasury and the CFTC proposed to require FCMs and IBs to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is presented with unfamiliar documents to verify the identity of a customer; or (3) the FCM or IB does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the FCM or IB will be unable to verify the true identity of a customer through documents.⁶² Treasury and the CFTC recognize that there are many scenarios and combinations of risk factors that FCMs and IBs may encounter, and they have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity.

There were no comments specifically regarding the non-documentary verification provisions of the proposed rule, and thus the final rule adopts them substantially as proposed. Under the final rule, an FCM or IB relying on non-documentary verification methods must describe them in its CIP. The final rule includes an illustrative list of non-documentary verification methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,⁶³ or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.⁶⁴ As Treasury and the CFTC stated in the NPRM, FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.⁶⁵

The final rule also includes a list, again similar to that in the proposal, of circumstances that may require the use of non-documentary verification

procedures.⁶⁶ Specifically, an FCM's or IB's non-documentary procedures must address situations in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances presented increase the risk that the FCM or IB will be unable to verify the true identity of a customer through documents.

As explained in the NPRM,⁶⁷ because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the CFTC encourage FCMs and IBs to use non-documentary methods even when the customer has provided identification documents.

Section 103.123(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, Treasury and the CFTC proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Commenters objected to this requirement, and it has been omitted from the final rule. For the reasons discussed below, however, the final rule does require that an FCM's or IB's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.

Treasury and the CFTC believe that, while FCMs and IBs may be able to verify the identity of the majority of customers through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that an FCM or IB will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. Treasury and the CFTC believe that, in order to identify customers that pose a heightened risk of not being properly identified, an FCM's or IB's CIP must prescribe additional measures that may be used to obtain

⁶² See NPRM, 67 FR at 48338.

⁶³ The specific types of databases that would be suitable for verification ultimately will depend on the circumstances and the FCM's or IB's assessment of the relevant risk factors.

⁶⁴ See final rule, 103.123(b)(ii)(B)(1).

⁶⁵ See NPRM, 67 FR at 48334.

⁶⁶ See final rule, 103.123(b)(ii)(B)(2).

⁶⁷ *Id.*

⁵⁹ See NPRM, 67 FR at 48338.

⁶⁰ See NPRM, 67 FR at 48333.

⁶¹ See NPRM, 67 FR at 48334.