



Department of the Treasury Financial Crimes Enforcement Network

FIN-2008-G002

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**Subject: Customer Identification Program Rule No-Action Position Respecting
Broker-Dealers Operating Under Fully Disclosed Clearing Agreements
According to Certain Functional Allocations**

In the securities brokerage industry, certain broker-dealers (“introducing firms”) enter into clearing agreements with other broker-dealers (“clearing firms”) according to the provisions of the rules of a broker-dealer self-regulatory organization, which permit the introducing firm and clearing firm to specify the respective functions and responsibilities of each firm. At a minimum, the agreements must specify the responsibility for, among other things, opening and approving customer accounts, extending credit, maintaining books and records, confirmations and statements, acceptance of orders, and execution of transactions.¹

Most frequently, the introducing firm and clearing firm will enter into a clearing agreement under which the functions of opening and approving customer accounts and directly receiving and accepting orders from the introduced customer will be allocated exclusively to the introducing firm and the functions of extending credit, safeguarding funds and securities, and issuing confirmations and statements will be allocated to the clearing firm. FinCEN is issuing this notice to clarify its position respecting the customer identification program rule (“CIP rule”) obligations of a clearing firm,² with respect to a customer that has been introduced to it by an introducing firm, when the functions of opening and approving customer accounts and directly receiving and accepting orders from the introduced customer are allocated exclusively to the introducing firm and the

¹ See e.g., NYSE Rule 382 and NASD Rule 3230 (permitting clearing and introducing firms to allocate regulatory and operational functions between them, including the responsibility for opening, approving, and monitoring accounts; extending credit; maintaining books and records; receiving and delivering funds and securities; safeguarding customer funds and securities; issuing trade confirmations and account statements; and accepting orders and executing transactions). Although these rules permit an introducing firm and a clearing firm to allocate monitoring functions in a fully disclosed clearing agreement, FinCEN has established suspicious activity reporting rules for broker-dealers that apply separately and distinctly to an introducing firm and a clearing firm. When a clearing firm is not allocated the responsibility of monitoring customer accounts according to the terms of a fully disclosed clearing agreement, it nonetheless is obligated to establish policies, procedures, and controls that are reasonably designed to detect and report suspicious activity that is attempted or conducted by, at, or through it, including activity that is introduced to it by another firm. See 31 C.F.R. § 103.19(a)(2).

² See 31 C.F.R. § 103.122(a)(2) (the CIP rule applies to broker-dealers that are registered or required to be registered with the Securities and Exchange Commission, except broker-dealers that are notice registered to sell security futures products).

functions of extending credit, safeguarding funds and securities, and issuing confirmations and statements are allocated to the clearing firm.

FinCEN has come to the view that it would be appropriate to require only the introducing firm to comply with the requirements of the CIP rule with respect to customers introduced to a clearing firm pursuant to a clearing agreement that allocates functions in the manner described above.³ Accordingly, FinCEN will take no action against a clearing firm for not complying with the CIP rule⁴ with respect to an introduced customer under these circumstances. This position promotes consistency with the application of the CIP rules to intermediated relationships in other industries.

This position also extends to piggybacking arrangements, whereby an introducing firm (the “piggybacking firm”) does not enter into a clearing agreement with a clearing firm, but rather establishes a relationship with an introducing firm that has established a clearing agreement with a clearing firm, thus “piggybacking” off the introducing firm’s clearing agreement.⁵ In cases where a piggybacking firm, pursuant to its arrangement with an introducing firm, retains the functions of opening and approving customer accounts and directly receiving and accepting orders from introduced customers, FinCEN will take no action against the introducing firm or the clearing firm for not complying with the CIP rule with respect to the customers introduced by the piggybacking firm.

Despite this position, a clearing firm’s anti-money laundering program should contain risk-based policies, procedures, and controls for assessing the money laundering risk posed by its fully disclosed clearing arrangements, for monitoring and mitigating that risk, and for detecting and reporting suspicious activity. Similarly, the introducing firm’s anti-money laundering program should contain risk-based policies, procedures, and controls respecting both its direct customers and any customers that may be introduced to it by a piggybacking firm. In the case of a foreign introducing firm or piggybacking firm, a U.S. clearing firm or introducing firm respectively also may be required to comply with the provisions of the rules implementing section 312 of the USA PATRIOT Act.⁶

Finally, nothing in this guidance precludes any broker-dealer from contracting with another financial institution for the performance of any or all of its CIP functions. An

³ This no-action position is limited to the CIP rule for broker-dealers.

⁴ This position does not extend, however, to all circumstances. When the functions of opening and approving customer accounts and directly receiving and accepting orders from introduced customers are allocated to both an introducing and a clearing firm, both the introducing firm and the clearing firm may be obligated to comply with the CIP rule with respect to an introduced customer.

⁵ See, e.g., NASD Notice to Members 05-72 at 2 (October 2005) (a broker-dealer introducing accounts through an introducing firm is referred to as a piggybacking firm).

⁶ See 31 C.F.R. § 103.176 (requiring broker-dealers to conduct due diligence on the correspondent accounts of foreign financial institutions, defined to include, *inter alia*, certain foreign banks and broker-dealers at 31 C.F.R. § 103.175(h)). See also *Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities and Futures Industries*, FIN-2006-G009 at Secs. 2 and 3 (May 10, 2006).

introducing firm may continue to enter into service agreements with a clearing firm that may or may not include CIP reliance provisions.⁷

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Financial institutions with questions about this guidance or other matters related to compliance with the Bank Secrecy Act and its implementing regulations may contact FinCEN's regulatory helpline at (800) 949-2732.

⁷ 31 C.F.R. § 103.122(b)(6).