

Comparison of the AML Customer Identification Rule and the SEC’s Books & Records Customer Account Records Rule

Two important regulatory developments relate to obtaining customer information: the Anti-Money Laundering Customer Identification Rule and the SEC’s Books and Records Customer Account Records Rule. These rules require that important customer identification be obtained. However, these rules have critical differences including their purposes, their definitions, and their timing requirements. We created this document to assist our member firms. It contains brief summaries of the rules’ relevant provisions. Please check the rules and related NASD guidance for more information.

Anti-Money Laundering:

Customer Identification Final Rule Implementing Section 326 of the PATRIOT Act

PURPOSE:

To establish that a firm knows its customers’ identities to the extent reasonable and practicable.

Required Information: (Minimum)

- Name;
- Date of Birth, for an individual;
- An address
 - 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 a next of kin or another contact individual; or
 - for persons other than individuals, a principal place of business, local office, or other physical location;
- An identification number.²

SEC Books and Records Amendments:

Customer Account Record Information – SEC Rule 17a-3(a)(17)

PURPOSE:

To provide regulators with access to books and records, which enables them to review for compliance with suitability rules.¹ Also, this information can assist firms and customers by ensuring that the firm has the correct information about customers in order to fulfill suitable obligations.

Required Information:

- Name;
- Date of Birth, for an individual;
- An address;
- Tax identification number;
- Telephone number;
- Employment status (including occupation and whether the customer is an associated person of a broker/dealer);
- Annual income;
- Net worth (excluding value of a primary residence);
- The account’s investment objectives; and
- An indication of whether the record has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the firm; and if the account is a discretionary account, the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

Anti-Money Laundering:

When does the information have to be obtained?

Prior to opening an account.³

What happens if the firm is unable to get the required information?

The firm cannot open the account.

How is "customer" defined?

The "acountholder":

- the person that opens a new account and
- an individual who opens a new account for an individual who lacks legal capacity or for an entity that is not a legal person.

Trust Accounts:

A broker/dealer is not required to look through a trust or similar account to its beneficiaries, and is required only to verify the identity of the named accountholder.

Retirement Accounts:

The final rule excludes from the definition of "account" an account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974 ("ERISA").

Record Retention

For records of all of the identification information obtained from the customer: *Five years after the account is closed.*

For records of information that verify a customer's identity: *Five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of SEC Rule 17a-4.*

SEC Books and Records Amendments:

When does the information have to be obtained?

At the account opening stage.

What happens if the firm is unable to get the required information?

The broker/dealer is excused from obtaining the required information if a customer refuses, neglects or is unable to provide or update any account record information required.

The rule does not require that the broker/dealer include an explanation of the customer's neglect, refusal or inability to provide the information; however, the broker/dealer is required to make a good faith effort to collect the information and would bear the burden of explaining why the information is not available.

Note: This is limited to Rule 17a-3(a)(17). It does not apply to other federal or SRO rules regarding the collection of information (e.g., Rule 17a-3(a)(9)).

How is "customer" defined?

The "acountholder" is a "natural person."

Trust Accounts:

The account record requirement does not apply to an account where the account is owned by the trustees of the trust or a trust that is a legal entity separate from the holders of its beneficial interests (which may be natural persons).

The requirement does not apply to a bank trust account where the bank has established an omnibus account at the broker/dealer holding the co-mingled assets of the bank's customers and the bank's customers are not aware that their assets are held by the broker/dealer.

Retirement Accounts:

Rule 17a-3(a)(17) does not apply to a 401k account where the employer has established an omnibus account at the broker/dealer holding the assets of all its employees.

The term "owner" in Rule 17a-3(a)(17) generally applies to an IRA account and a 401k account where the beneficiary of the account is a natural person.

Record Retention

Six years after the closing of the account or on which the information was replaced or updated, whichever is earlier.

Endnotes

- 1 The rule states that the account record and furnishing requirements will only apply to accounts for which a firm is, or has within the past 36 months (of the effective date) been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. See NASD Rules 2310 and 2860(b)(16)(B), NYSE Rule 723, Chicago Board Options Exchange Rule 9.9 and the MSRB Rule G-19.
- 2 An identification number includes, for a U.S. person, a taxpayer identification number; or for a non-U.S. person, one or more of the following: a taxpayer identification number; a passport number and country of issuance; an alien identification card number; or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Please note that there is an exception in the final rule for natural persons who have applied for, but not received, a taxpayer identification number. Therefore, instead of obtaining a taxpayer identification number from a customer (either natural or non-natural) prior to opening an account, a CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period time after the account is opened. See *NASD Notice to Members 03-34*. For more information about the Final Rule please see *NASD Notice to Members 03-34* and NASD's AML Web Page at www.nasdr.com/money.asp.
- 3 Please note that while the identification information must be obtained prior to opening an account, verification must occur within a reasonable time before or after the account is opened.