

Information Memo

New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

Member Firm Regulation



NYSE

Number 03-32
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ATTENTION: CHIEF EXECUTIVE OFFICER, MANAGING PARTNERS,
COMPLIANCE AND LEGAL DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: CUSTOMER IDENTIFICATION PROGRAMS FOR BROKER-
DEALERS

On April 30, 2003, the Department of the Treasury ("Treasury"), through the Financial Crimes Enforcement Network ("FinCEN") and the Securities and Exchange Commission ("SEC"), jointly adopted a final rule¹ ("Customer Identification Programs for Broker-Dealers" or the "Rule")² to implement Section 326 of the USA PATRIOT Act. The Rule became effective June 9, 2003; complete compliance is required by October 1, 2003.

The text of the Rule, along with a preamble (the "Preamble") containing background information and a section-by-section analysis, can be found in SEC Release 34-47752; File No. S7-25-02.³ Members and member organizations should review the SEC Release in its entirety and take all necessary steps to comply with the Rule's requirements. The following is provided as a selective summary of those requirements.

General Requirements

The Rule requires each broker-dealer, as part of its anti-money laundering compliance program,⁴ to establish and maintain a written customer identification program ("CIP"), primarily focusing on new customer accounts, that is appropriate for the broker-dealer's size and business. The CIP must include risk-based procedures for obtaining basic information and verifying the identity of the broker-dealer's customers to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. Records of the information used to verify such customers' identity must be maintained for specified time periods. Broker-dealers must also determine whether their customers appear on any lists of known or suspected terrorists or terrorist organizations provided to the broker-dealer by any government agency. Customers must be provided adequate notice that the broker-dealer is requesting information to verify their identities.

¹ To be codified at 31 CFR 103.122.

² The final rule does not apply to brokers or dealers that register with the Securities and Exchange Commission solely because they effect transactions in securities futures products.

³ 68 Fed. Reg. 25113 (May 9, 2003).

⁴ See NYSE Rule 445.

Customer

The term "customer" is defined as:

- A. a person who opens a new account (i.e., the person identified as the accountholder); and
- B. an individual who opens a new account for:
 - 1) another individual who lacks legal capacity; or
 - 2) an entity that is not a legal person (e.g., a civic club).

Expressly excluded from the definition of "customer" are: persons that have an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person; financial institutions⁵ regulated by a Federal functional regulator⁶ (e.g., the SEC or the Commodities Futures Trading Commission); banks regulated by a state bank regulator; government agencies and instrumentalities;⁷ and certain publicly traded companies,⁸ but only to the extent of their domestic operations. Accordingly, the CIP will apply to any foreign offices, affiliates, or subsidiaries of a publicly traded company that open new accounts.

Further, a broker-dealer is not required to look through a trust, or similar account, to its beneficiaries; it is only required to verify the identity of the named account holder. Similarly, with respect to an omnibus account established by an intermediary, a broker-dealer is not required to look through the intermediary to the underlying beneficial owners if the intermediary is identified as the accountholder.

Account

An "account" is generally defined as "...a formal relationship with a broker-dealer established to effect transactions in securities..." The Preamble notes that the formal relationship need not be "ongoing" indicating that a single transaction would be sufficient to establish an account for purposes of the Rule.

Exceptions to the general definition include:

- an account acquired through any acquisition, merger, purchase of assets, or assumption of liabilities;⁹ and

⁵ Defined at 31 U.S.C. 5312(a)(2) and (c)(1).

⁶ Defined at 31 CFR 103.120(a)(2).

⁷ See 31 CFR 103.22(d)(2)(ii) and (iii).

⁸ For example, New York Stock Exchange and American Stock Exchange listed companies or those designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (excluding "Nasdaq Small-Cap Issues"). See also 31 CFR 103.22(d)(2)(iv).

⁹ The Preamble notes that such transfers "...may, however, fall within the broader scope of the anti-money laundering program rules required under section 352 of the USA PATRIOT Act." Accordingly, members and member organizations should consider acquired accounts in the context of their general anti-money laundering program.

- an account established under the Employee Retirement Income Security Act of 1974 ("ERISA").

Required Customer Information

Broker-dealers must obtain, at a minimum, the following information prior to opening an account:

For individuals:

- name
- date of birth
- residential or business street address¹⁰
- For U.S. citizens: a taxpayer identification number (i.e., social security number)

For non-U.S. citizens, one or more of the following:

- a taxpayer identification number
- a passport number and country of issuance
- an alien identification card number
- the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard

For Persons Other than Individuals (i.e., a corporation, partnership, or trust):

- Name
- A principal place of business (local office or other physical location)
- Employer/taxpayer identification number¹¹

Customer Verification Procedures

The CIP must contain procedures for verifying the identity of each customer to the extent reasonable and practicable, within a reasonable time before or after the customer's account is opened.

¹⁰ For an individual without a residential or business street address, an Army Post Office (APO), a Fleet Post Office (FPO) box number, the residential or business street address of a next of kin, or another contact individual is acceptable.

¹¹ When opening an account for a foreign business or enterprise that does not have an identification number, alternative government-issued documentation certifying the existence of the business or enterprise must be requested.

The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base.

The procedures must describe when documentary and/or non-documentary methods will be utilized and set forth those methods accordingly.

Documentary Methods

Documentary methods for an individual may include an un-expired government-issued identification document evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport.

Documentary methods for a person other than an individual (*i.e.*, a corporation, partnership, or trust) may include documents showing the existence of the entity such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

The Preamble notes that, in light of recent increases in identity theft and the availability of fraudulent documents, broker-dealers are encouraged to obtain more than one type of documentary verification or to utilize alternative non-documentary methods of verification to ensure that it has a reasonable belief that it knows the customer's true identity.

Non-Documentary Methods

Non-documentary methods may include contacting a customer; comparing customer-provided information against information provided by consumer reporting agencies or other public databases; checking references with other financial institutions; or obtaining a financial statement.

Non-documentary procedures must address circumstances in which:

- an individual is unable to present an un-expired government-issued identification document that bears a photograph or similar safeguard;
- the broker-dealer is not familiar with the documents presented;
- the account is opened without obtaining documents;
- the customer opens the account without appearing in person; and
- under circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

Additional Verification for Certain Customers

The Rule generally exempts persons with authority or control to effect transactions in a customer's account from verification requirements. However, the CIP must address circumstances in which, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the account, in order to verify the customer's true identity. This additional verification method applies only when the customer's true identity cannot be adequately verified using documentary and non-documentary methods. The Preamble indicates that such additional verification might apply to individuals with authority over entities created, or that conduct substantial business, in a jurisdiction designated by the United States as a primary money laundering concern or designated as non-cooperative by an international body.

Lack of Verification

The CIP must include procedures to address circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

- when the broker-dealer would not open an account;
- the terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;
- when the broker-dealer should close an account after attempts to verify a customer's identity fail; and
- when the broker-dealer should file a Suspicious Activity Report.¹²

¹² See NYSE Information Memo Number 02-64 dated December 24, 2002.

Recordkeeping

The CIP must include procedures for making and maintaining records related to verifying customers including a detailed description of any document relied upon to include the type of document, any identification number contained therein, the place of issuance, and the issuance and expiration dates, if any. With respect to non-documentary verification, required records must include a description of the methods and results of any measures undertaken to verify the identity of a customer.

Required customer information (e.g., Name, Date of Birth, Address, etc.) must be retained for five years after an account is closed; other specified records (e.g., customer verification information) must be retained for five years after the record is made. Relevant records not specified in the Rule must be maintained pursuant to the provisions of 17 CFR 240.17a-4.¹³

Comparison with Government Lists

The CIP must include procedures for determining, within a reasonable time, whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must also require compliance with all Federal directives issued in connection with such lists.

Customer Notice

The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities. Sample language is provided in the Rule.

The Rule states that notice is adequate if it generally describes the identification requirements of the Rule and is provided in a manner reasonably designed to ensure that a customer views it before opening an account. The Rule states that, depending on how an account is opened, a broker-dealer may post notice in its lobby or on its website, or use any other form of oral or written notice, such as a statement on an account application.

Reliance on Another Financial Institution

The CIP may include procedures specifying when a broker-dealer will rely on another financial institution (including an affiliate) to perform CIP functions with respect to any customer of the broker-dealer who is opening, or has opened, an account with the other financial institution to engage in services, dealings, or other financial transactions provided:

- such reliance is reasonable under the circumstances;

¹³ See 31 CFR 103.122(b)(3)(ii).

- the other financial institution is required¹⁴ to have an anti-money laundering program in place;
- the other financial institution is regulated by a Federal functional regulator; and
- the broker-dealer enters into a contract with the other financial institution requiring it to annually certify to the broker-dealer that it has implemented its anti-money laundering program and that it, or its agent, will perform the specified requirements of the broker-dealer's CIP.

Questions regarding this memo may be directed to Stephen A. Kasprzak at (212) 656-5226.

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¹⁴ Pursuant to 31 U.S.C. 5318(h).