



Securities Industry Association

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Via Electronic Mail

July 31, 2003

326 Recordkeeping Comments/326 Identification Comments
U.S. Department of the Treasury
Office of the General Counsel
1500 Pennsylvania Avenue, NW
Washington D.C. 20220-0002

Re: Section 326 Notice of Inquiry: Recordkeeping and Identification

Ladies and Gentlemen:

The Securities Industry Association (“SIA”)¹ appreciates this opportunity to comment on the Notice of Inquiry issued by the Department of the Treasury on two issues under the final regulations recently issued pursuant to section 326 of the USA PATRIOT Act.² The regulations require broker-dealers, banks, mutual funds and other financial institutions to establish procedures to verify the identity of customers opening new accounts. Specifically, Treasury is seeking comment on whether the regulations should be revised to (i) require the photocopying of government identification documents used to verify a customer’s identity, and (ii) preclude reliance on certain forms of foreign government identification. SIA does not believe any changes should be made to the regulations with respect to these issues.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated \$198 billion in U.S. revenue and \$358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States (More information about the SIA is available on its home page: <http://www.sia.com>.)

² “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (“PATRIOT Act”) Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

SIA is strongly committed to the detection and prevention of money laundering and believes that the final rule under section 326 will play an important role in the industry's efforts to prevent accounts from being opened by money launderers and terrorists. The rule requires financial institutions to adopt comprehensive written customer identification programs that enable them to form a reasonable belief that they know the true identity of their customers. These programs must include risk-based procedures for obtaining information from customers opening new accounts and for verifying their identities within a reasonable time after the account is opened. The programs must specify when the institution will verify a customer's identity by means of government-issued identification documents (e.g., driver's licenses, passports) or through other methods (e.g., credit bureau checks, public databases). Institutions must also maintain records of all information obtained, including a description of any documents relied upon to verify identity and the results of any non-documentary verification methods.

SIA does not believe that the rule should be revised to require institutions to photocopy and retain identification documents used to verify customers, nor preclude reliance on certain forms of foreign government issued identification. We commend Treasury and the SEC for issuing a rule that permits broker-dealers to adopt a risk-based approach to their customer identification programs. Such an approach gives firms the needed flexibility to tailor their anti-money laundering efforts to fit the nature and scope of their businesses and to allocate their resources to those areas where the risks of money laundering are the greatest.

I. Recordkeeping

In crafting the final rule, Treasury correctly adopted a flexible approach that allows institutions to determine when it is appropriate to verify a customer using a government-issued identification document and when it is appropriate to use other methods, such as electronically searching a database. In many cases, there may be advantages to using some of the vast public databases that are now available because the information from the customer can be instantaneously compared with information in the database in essentially one touch of a key. In other circumstances, checking a driver's license or other government identification document may be appropriate.

Treasury is now seeking comment on whether the rule should require that when a financial institution relies on a government identification for verification, it should have to make and maintain a photocopy of that document. Treasury also seeks comment on whether the rule should alternatively identify specific instances when financial institutions should make and maintain photocopies, or provide guidance concerning risk factors indicating when photocopying may be appropriate.

SIA supports the present terms of the rule, which do not require that institutions keep actual copies of documents, such as driver's licenses, that are used to verify a customer's identity. Instead, the rule requires that if a firm verifies a customer through examination of a government issued identification document, it must make a record of the type of document that was relied on, any identification number contained in the document, the place and date of issuance and the expiration date.

Requiring the copying of identification documents would be an ineffective use of resources and would increase burdens and costs without adding meaningfully to the safeguards financial institutions are presently implementing. Making and retaining copies also presents several insurmountable operational issues for financial institutions. For instance, copying and storing drivers' licenses is not only limited by certain state laws, but also could potentially result in warehouses full of these documents that would have to be safeguarded; and these records would not be easily accessible when trying to retrieve a document in response to a law enforcement request.

Moreover, SIA does not believe that the lack of a paper copy will impede law enforcement efforts. The information firms are required to obtain by the rule – a description of the document, the document number, the place and date of issuance, and the expiration date – should provide law enforcement authorities with the essential data needed for their investigative purposes. Although there may occasionally be instances where a document has been forged or not issued by a valid government agency, SIA does not believe that the usefulness of a copy in such limited circumstances is sufficient to outweigh the burden, operational issues and security concerns raised by firms having to maintain copies of documents for tens of thousands of legitimate customers.

Treasury also seeks comment on whether the rule should provide guidance to financial institutions when photocopying identification documents may be appropriate. Because there may be times when the government is aware of heightened risks of forgery or use of invalid types of identification documents, we encourage Treasury to issue such guidance. Agency-issued guidance provides a flexible mechanism for adapting to changes or trends that government intelligence is aware of and is able to share with industry. As we have advocated throughout the Patriot Act implementation period, we believe that the more information provided by regulators and law enforcement, the better industry will be able to identify suspicious activity.

II. Identification of Foreign Customers

The final rule requires firms to obtain "identification numbers" for non-U.S. customers, including resident aliens. These numbers are associated with certain types of government-issued identification documents, specifically: (i) a U.S. taxpayer identification number; (ii) a passport number and country of issuance; (iii) an alien identification card number; or (iv) a number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. In addition, the rule allows firms to use such government-issued identification documents to verify the identity of foreign customers, and gives firms discretion in determining what documents may be appropriate for this purpose. Treasury is now seeking comment on whether the rule should preclude firms from relying on certain types of identification documents issued by specified foreign governments and whether the rule should require financial institutions to obtain a passport number from all customers who are not U.S. citizens.

SIA supports the flexible approach adopted by Treasury in the final rule which allows financial institutions to determine, based upon their assessment of appropriate risk factors, which documents they will rely on to verify the identity of a foreign individual opening an

account. This flexibility is crucial given that there is currently no standard identification number or document that can be used to verify non-U.S. individuals. While it is important to protect against foreign individuals using the U.S. financial markets for illicit purposes, it is equally important that requirements not be overly restrictive so as to deny legitimate persons access to financial services.

We think that Treasury has incorporated appropriate safeguards in the rule to prevent reliance on suspect documents. First, in determining which types of foreign government-issued identification they will accept, firms must assess the risks associated with reliance on such documents. Second, the documents relied upon must allow the institution to form a reasonable belief that it knows the true identity of the customer. Finally, the rule encourages institutions to use multiple forms of identification where appropriate to minimize risk.

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In conclusion, Treasury listened to the concerns of consumers and industry and crafted a sensible and workable approach by not requiring financial institutions to keep copies of identification documents, and by allowing flexibility in the identification obtained for non-U.S. persons. The rule strikes the appropriate balance between the information required from customers and how it can be used by financial institutions to prevent our financial system from being used for illicit purposes.

We appreciate the opportunity to comment on the proposed rule. If you wish to receive additional information related to our comments, please feel free to contact the undersigned.

Sincerely,

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Associate General Counsel
Securities Industry Association
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cc: (Via Electronic Mail)

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U.S. Department of the Treasury

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