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T. ROWE PRICE SAVINGS BANK
100 East Pratt Street
Baltimore, Maryland 21202

Sent via Electronic Mail

September 6, 2002

Office of Thrift Supervision
Chief Counsel's Office
Attention: No. 2002-27
Electronic Mail Address: regs.comments@ots.treas.gov

Re: Request for Comments on Proposed Rule Regarding Customer Identification Programs for Banks, Savings Associations, and Credit Unions

Dear Sir and/or Madam:

T. Rowe Price Savings Bank is writing in response to the request by the Department of the Treasury, through the Financial Crimes Enforcement Network, and the Office of Thrift Supervision for comments on the proposed rule implementing Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("Act") for banks, savings associations, and credit unions (collectively, "banks").¹ We generally support the proposed rule to aid in combating money laundering and terrorist activity in the financial services industry through implementation of a "Customer Identification Program" or "CIP." However, we have comments relating to: definition of "customer;" requirement to collect residential addresses for natural persons; non-documentary verification methods; notice to customers; recordkeeping requirements; and an implementation period for the final rule.

The T. Rowe Price family of companies ("T. Rowe Price") provides investment, brokerage, banking, and trust services, in addition to related administrative services including transfer agent and recordkeeping services (principally related to our mutual funds and common trust funds) for individual and institutional accounts. Therefore, T. Rowe Price has a keen interest in regulatory issues for a wide variety of financial service companies. T. Rowe Price Associates, Inc., and certain other affiliates are registered investment advisers under the Investment Advisers Act, with assets under management of approximately \$148.8 billion as of June 30, 2002. T. Rowe

¹ See 67 Fed. Reg. 48,290 (Jul. 23, 2002).

Price Savings Bank offers FDIC-insured CD accounts and conducts deposit account business with customers through the mail and by telephone only, and has no branches. Given its multiple lines of business, T. Rowe Price also has an interest in achieving uniformity to the greatest degree possible among the final CIP rules issued by the various agencies.²

Definition of Customer

A customer is defined in Section 103.121(a)(3) of the proposed rule as follows:

- (i) Any person seeking to open a new account; and
- (ii) Any signatory on the account at the time the account is opened, and any new signatory added thereafter.

We believe that the definition of a customer needs to be refined to fully capture those individuals intended to be covered by the scope of the Act. Under a strict reading of the proposed definition, certain owners of accounts could fail to be covered in a manner that we believe is unintentional.

For example, consider a bank's receipt by mail of a request from a court-appointed custodian of an individual to open a deposit account. The account is to be opened in the individual's name. A certified copy of the court order appointing the custodian is included, as is identifying information concerning the individual. Under the proposed rule, the bank could not open the account (presumably even if delay would cause the bank or custodian to violate the order) until the bank: (i) provides notice to the custodian that it is requesting four pieces of information concerning the custodian as set forth in Section 103.121(b)(2)(i)(A); and (ii) collects the four pieces of required information. Under a risk-based approach, however, a bank could make a determination that the judicial safeguards and oversight associated with a court-appointed custodian mitigates against treating such a person as a "customer" under its CIP.³

Conversely, we are concerned that the proposed definition may be overly broad in other situations such that it is impractical and thereby could hinder a bank's administration of the rule with no measurable benefit to be realized. Specifically, the proposed definition of customer to include any person who opens an account (presumably whether or not that person is the registered owner/customer) and any person who is a signatory is overly broad. We believe it goes beyond the language and intent of the Act in this regard, particularly in light of the Act's frequent use of the terms "customer" and "account opening," as those terms are commonly understood.

² Other T. Rowe Price affiliates are submitting similar comment letters to appropriate agencies under the proposed CIP rules for mutual funds, trust companies without a federal functional regulator, and broker-dealers.

³ On the other hand, a CIP could indicate that the custodian of a "Uniform Transfers to Minors Act" account is to be considered a "customer" because the custodian is not court-appointed and has considerable discretion over the account.

While we believe that the Act is best read as including only registered owners of an account, as an alternative we recommend that a bank be permitted to implement a risk-based approach as part of its CIP to identify those persons opening an account on behalf of or for the benefit of another person that should be included as "customers" under the CIP. Further, we believe that the inclusion of all signatories on an account is not supported by the Act or its legislative history and should be removed from the final rule. When information concerning the registered owner of an account has been collected and verified under a CIP (after providing notice to the person), and a risk-based assessment has been made on whether or not to provide notice, collect and verify information concerning any person who opens an account in the name or on behalf of the record owner, there is questionable value, but real and substantial burdens, in providing notice, collecting and verifying information for all persons with signature authority on the account. We believe that the approach we advocate strikes an appropriate and workable balance, focusing the CIP on the account-opening process as stated in Section 326 of the Act and widening the focus as appropriate to other areas, such as account activity, through a bank's anti-money laundering program under Section 352 of the Act.

In terms of the account-opening process, we believe the Act intended to cover persons who open accounts as the "customers" (i.e., registered owners) of the account. Indeed, this is the approach taken in the proposed rule for mutual funds through use of the phrase "mutual fund shareholder of record who opens an account with a mutual fund."⁴ Should another person open the account in the name of or on behalf of the registered owner, it may be appropriate in some, but not all circumstances, to treat such a person as a "customer" as well. A risk-based concept is discussed in connection with the verification requirements, but not in connection with the collection requirements.⁵ The burdens and delays associated with the collection and notice requirements cannot be overstated in many situations where there would be little to no benefit in the goals of combating money-laundering or other crimes.⁶ The market volatility of the past months has shown that delays in processing new accounts and transactions can have adverse consequences to banks and their customers.

Another example of the usefulness of a risk-based approach is in the area of accounts established by entities. Under the proposed rule, a "customer" would include each person seeking to open the account on behalf of the entity, even if that person does not have continuing signatory

⁴ 67 Fed. Reg. at 48,327 (proposed Section 103.131(a)(3)(i)). Again, we request uniformity among the various final rules to the greatest degree possible.

⁵ 67 Fed. Reg. at 48,292 – 48,293. Also, Section 103.121(b)(2) refers to implementation of verification procedures "to the extent reasonable and practicable."

⁶ We have found that systems changes will be required for various products offered by T. Rowe Price simply to capture the residential addresses of joint owners (when different) and for natural persons opening an account for another person. While in theory we could capture this information in paper format, it then would not be available for a systems feed to any automated database or other means used to verify the information. Since companies rely to an ever-increasing extent on the mail, telephone, and Internet to open accounts and effectuate transactions, providing some risk-based flexibility in the verification portion of the proposed rule without similarly granting appropriate flexibility on the notice and collection portions is of little value.

authority and even when the identity and “good standing” of the entity is not in doubt.⁷ Instead, the bank should be allowed to assess the relevant risk factors relating to an entity to determine the extent to which further data needs to be collected and verified concerning individuals who open an account on behalf of an entity. One or more factors that may be relevant could include, but are not limited to:

- the size of the entity;
- prior dealings with the entity;
- the length of time the entity has been in existence;
- the entity’s principal line of business and/or location;
- whether the entity is closely held;
- the bank’s familiarity with affiliated companies of the entity; or
- whether the entity is required to have an anti-money laundering program in place.

On the other hand, a bank’s CIP should indicate factors where persons opening an account on behalf of an entity will be treated as “customers,” which, for example, may include a newly-established corporate entity with which the bank has had no previous relationship and whose sources of income is largely cash based. It may also be appropriate to name some, but not all, of the persons associated with an account opening as “customers” depending on their relative powers and duties.

In light of all of these concerns, we therefore recommend that the definition of “customer” in 103.121(a)(3) be revised to read:

“(3) *Customer* means:

- (i) Any person in whose name a new account is opened; and
- (ii) Any person who opens an account on behalf of or for the benefit of another person, if under the bank’s customer identification program the person is a customer.”

A new sentence should then be added to the end of the first paragraph of 103.121(b)(2) regarding the elements of a CIP to include:

“The Program must identify risk-based circumstances under which a person who opens an account on behalf of or for the benefit of another person will be treated as a customer.”

Additionally, to the extent that Treasury does not implement our recommendation to delete the “any signatory on the account” language in the definition as proposed, we strongly recommend

⁷ An example would be an account opening by the Chief Financial Officer (“CFO”) of a corporation, where the CFO has been granted authority by the Board of Directors to open and close accounts and name those employees who have daily transactional duties.

that a risk-based standard be adopted for such persons as well. Given that a substantial number of individuals often are signatories, and that these persons often change over time without affecting the ownership of record, we believe an inflexible rule treating these persons as customers under a bank's CIP would lead to a significant number of delays in processing transactions in these accounts.⁸ Moreover, we question whether the treatment of each and every such individual as customers is useful in addressing money laundering and terrorist concerns.

Finally in this area, we also ask that the final rule make clear that a bank's customers do not include participants of a qualified retirement plan (or other qualified benefit plan) customer. This was stated in the legislative history of the Act and in the Supplementary Information to the proposed rule for mutual funds.⁹ In the interests of uniformity, we ask that this be made clear for all financial service providers. Of course, the bank would be required to provide notice, collect and verify information concerning the qualified plan itself, but there is little usefulness in providing notice, collecting, and verifying information concerning what may be thousands of individual plan participants.¹⁰

Obtaining a "Residential Address" for Natural Persons

The proposal asked for comments on how banks can comply with the requirement to obtain a residential address for natural persons who lack a permanent address. We believe this is a problem and that a mailing address alone should be sufficient for persons who lack a permanent address. For example, we encounter persons who reside full-time on boats, which may or may not have a permanent mooring "address," thus necessitating legitimate reliance on a P.O. Box or other service to collect and forward mail. Of much greater frequency, we find that members of the military commonly use the appropriate "APO" address assigned to them by the military since the meaning of "residence" is not always applicable in the traditional sense. Because under the proposed rule accounts cannot even be opened before a residential address is obtained, the lack

⁸ Consider a corporation whose employee with signature authority over the account gives notice that he is leaving. It is not uncommon in such situations to immediately remove the person from all accounts and name a new person. However, under the definition as proposed, the corporation would not be able to have a new employee named to conduct transactions until the bank gave notice to the new employee and collected the four pieces of information. This would force fundamental changes in the way legitimate entities conduct business. Also, to the extent the normal verification procedures used by the bank for natural persons involve credit reports, then the new employee's written (not telephonic) consent would be required under the federal Fair Credit Reporting Act because it is not the employee's personal account.

⁹See, e.g., 67 Fed. Reg. at 48,321 n. 14. While the example given in the legislative history was for a retirement plan holding mutual fund shares, the stated purpose—to mimic the approach used in the privacy rules promulgated under Title V of the Gramm-Leach-Bliley Act of 1999—applies to all financial service providers at issue here. H.R. Rep. 107-250, pt. 1, at 62. Indeed, it is specifically the case for T. Rowe Price Savings Bank under the privacy rules to which it is subject. 12 C.F.R. § 573.3(e)(2)(viii).

¹⁰ Given the broad definition of "customer" in the proposed rule and the lack of certainty as to who may be construed to be a "signatory" in this area, we are concerned that participant elections of particular investment strategies or the request for a distribution or loan under plan rules may make all participants potential "customers."

of a permanent residential address for natural persons creates an unduly harsh result that we do not believe was intended under the Act, and we ask that changes be made accordingly.

Non-Documentary Verification Methods

The second sentence of Section 103.121(b)(2)(ii)(B) lists a number of circumstances under which a bank's CIP procedures must address when non-documentary verification methods will be used in addition to, or instead of, relying on documents. One of the circumstances is when "the account is not opened in a face-to-face transaction." This clause differs from the language used in the proposed rules for mutual funds and for broker-dealers where, instead, the phrase "does not meet face-to-face with a customer who is a natural person" is used.¹¹ We do not believe that Treasury intended to create a different standard, and we ask that the language from the mutual fund and broker-dealer proposed rule be used in the interest of uniformity.¹²

Notice to Customers

The proposed rule states that the CIP must include procedures "for providing customers with adequate notice that the bank is requesting information to verify their identities." We believe the proposed rule is overly broad and may lead to unintended consequences, even with the more tailored definition of "customer" discussed above. For example, the Supplementary Information to the proposed rule states that notice may be posted in a bank's lobby. Yet if a husband alone comes in to obtain account opening forms for a joint account with his wife (which are to be signed and returned later by mail), the wife will not have received notice. Even if the notice is printed on the application, an owner who does not sign the application (e.g., an account opened under a power of attorney for the named principal, a Uniform Transfers to Minors Act account, etc.) similarly will not receive notice. We do not believe that Congress intended that the requirement to provide notice be absolute so as to leave financial service providers with no choice but to refuse to open accounts if notice could not be provided to each and every customer.

Many laws call for notice to customers in broad statutory language. Title V of the Gramm-Leach-Bliley Act mandates that banks, among others, provide notice concerning the bank's privacy policies, with the notice to be provided "to consumers" at the time a customer relationship is formed and then on an annual basis. While one of the key purposes of that law is to provide notice, the OTS and other federal functional regulators recognized that a requirement to provide notice of privacy practices to each and every customer created an unworkable burden. In crafting the regulations to implement the law, the OTS and other regulators provided that in the case of joint accounts, all notice requirements are satisfied if notice is provided to any one of

¹¹ See 67 Fed. Reg. at 48,328 (proposed Section 103.131(d)(2) for mutual funds) and at 48,317 (proposed Section 103.122(d)(2) for broker-dealers). There are other subtle differences in language and use of commas and semicolons in the mutual fund/broker-dealer versions when compared to the bank version; the mutual fund/broker-dealer versions should be used to avoid the potential for differing standards.

¹² Also, under a strict reading of the proposed rule for banks, there is doubt that a "face-to-face transaction" can ever be said to be held with an entity (e.g., a non-natural person), meaning that banks would always have to have procedures for non-documentary verification of every non-natural person customer.

the joint owners.¹³ Similarly in the case of legal representatives of customers, notice could be provided to the legal representative in lieu of the customer.¹⁴

We urge that the same standards be adopted for notice under the CIP proposed rule as such standards are well-established and create the right balance between the goal of providing notice as broadly possible without, however, creating an inflexible rule that may actually prevent the opening of an account or the adding of a person with transaction authority over the account. This could be accomplished by adding a second sentence to 103.121(b)(5) to read:

“Such procedures may include provisions specifying that notice may be provided to the legal representative of a customer, or that in the case of an account established in the name of multiple persons, notice to any one of them is sufficient.”

Recordkeeping Requirements

As proposed, the rule requires retention of all records used for verification for a period of five years after the account is closed. We anticipate that the verification of customers will most effectively be done through the processing of all accounts opened on a particular day on exceptions reports. The rule as proposed would require retention of the exception reports until five years after all accounts opened on the particular day are closed, which would essentially lead to indefinite retention of these records. This requirement would be both burdensome and expensive.

More importantly, the indefinite retention of verification records does not seem necessary to achieve the legitimate policy goal of providing appropriate records to test for compliance with the CIP rule.¹⁵ Verification procedures could be tested by examining recent verification records; a complete history of exception reports does not seem necessary for this purpose.

Therefore, we ask that Section 103.121(b)(3)(ii) be changed to require the records made or obtained pursuant to subsection (b)(3)(i)(C) be maintained for a period of five years from the date verification is performed.

In the area of resolving discrepancies, Section 103.121(b)(3)(i)(D) of the proposed rule would require that the resolution of *any* discrepancy in the identifying information obtained pursuant to the CIP be retained for five years after the account associated with the information is closed. Minor discrepancies, such as typographical errors, often arise and are resolved during the account opening process. These discrepancies would not seem to be of interest or value for anti-

¹³ See, e.g., 12 C.F.R. § 573.9(g).

¹⁴ See, e.g., 12 C.F.R. § 573.3(e)(1).

¹⁵ Clearly, the recordkeeping requirements in the proposed rule also are intended to provide records to support future investigations relating to the account. However, we believe that identification records and records reflecting the resolution of material discrepancies are far more useful than verification records in this regard.

money laundering compliance purposes. We therefore recommend that the final rule incorporate a materiality standard into this subsection, such that the records retained pursuant to the rule need only reflect the resolution of material discrepancies in the information obtained pursuant to a CIP.

Implementation Period

We recognize the desire of Treasury to implement the rule for customer information programs on a timely basis. However, we are concerned that, given the breadth of the rule, it is extremely burdensome for banks to efficiently implement all of the operational and information technology related changes that the rule demands. While we are in continuing conversations with all of our systems service providers, the provider for the Price Funds, for example, has informed us that system changes under the rule as proposed relating to address fields and automated feeds to verification systems will take at least six months. Also, past experience with changes to our application forms (often necessitated as here by new legal requirements) has taught us that, despite substantial efforts to circulate revised forms, potential customers retain application forms obtained previously and attempt to use them for more than a year after new forms are released.

To minimize the disruption of services to our customers, we respectfully request that mandatory compliance with all provisions of the customer identification program rule be delayed for at least nine months after promulgation of the final rule. In the interim, banks should be encouraged to make best efforts to comply.

We appreciate the opportunity to comment on the proposed rule. Should you have any questions about our comments, please call me at 410-345-2260.

Sincerely,

Karen Nash-Goetz
Compliance Officer and Legal Counsel