



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

**FIN-2006-G007**

**Issued: April 25, 2006**

**Subject: Frequently Asked Question**

**Customer Identification Program Responsibilities under the  
Agency Lending Disclosure Initiative**

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*Please note:* During the process of developing this guidance, the federal banking agencies were also consulted. Banks that borrow securities through an agent lender in the manner described below may rely on this guidance in implementing their customer identification programs.

### **Guidance from the Financial Crimes Enforcement Network and the Staff of the U.S. Securities and Exchange Commission**

**Background.** This guidance addresses Customer Identification Program (“CIP”) responsibilities where a U.S. bank or broker-dealer (“agent lender”) arranges a loan of securities to a broker-dealer under the Agency Lending Disclosure Initiative. In the typical agency lending relationship, a customer whose securities are held by an agent lender agrees to make them available to be loaned through the agent lender’s securities loan program. In some cases, the customer may place limitations as to which broker-dealers can borrow the customer’s securities. The limitation may identify a specific entity or entity type (*e.g.*, it may impose a minimum required credit rating). Other than the pre-set limitations, the customer does not pre-approve the loan. The agent lender’s customer has the ability to obtain periodic reports showing the loan transactions involving the customer’s securities. The agent lender enters into a separate master loan agreement with the broker-dealer borrower, which governs all loans the borrower obtains through its securities loan program.

The agent lender notifies potential broker-dealer borrowers regularly of the securities available to be borrowed through its securities loan program. The agent lender pools identical securities held for different customers such that the notice identifies the particular security and quantity available (the aggregate across customer lenders) but not the customer or customers who own the securities. If a broker-dealer borrower wants to obtain a loan, it notifies the agent lender of the security and quantity. The agent lender and broker-dealer borrower negotiate the lending rate and collateral to be applied to the loan. If more than one of the agent lender’s customers has made the security available, the agent lender generally fulfills the loan request through a queue and allocation method recommended by the U.S. Department of Labor. The broker-dealer borrower typically records the loan transaction in an account in the name of the agent lender.

Under the Agency Lending Disclosure Initiative, the agent lender will provide a broker-dealer borrower at the end of the day or by the next business day with information as to the identities of the agent lender's customers whose securities are being loaned to the borrower. Access to the information will generally be limited to personnel at the broker-dealer borrower responsible for credit risk management and regulatory capital reporting and will be used to assist them in meeting these responsibilities.

**Q.** In the type of transaction described above: (1) the agent lender's customer does not initiate the transaction; (2) the agent lender determines the securities that will be used to fulfill the broker-dealer borrower's request; (3) the broker-dealer borrower records the loan transaction into an account in the name of the agent lender; and (4) the information about the agent lender's customer is generally provided to the broker-dealer borrower after the fact and principally for the purposes of determining credit risk and reporting regulatory capital. Under these circumstances, is a broker-dealer borrower required to treat the agent lender's customers as "customers" for purposes of the CIP rule (31 C.F.R. § 103.122) issued jointly by the U.S. Department of the Treasury ("Treasury") and the Securities and Exchange Commission (the "Commission")?

**A.** No. Notwithstanding the limited information that the broker-dealer borrower obtains about the underlying lender(s), the "customer" of the broker-dealer for purposes of the CIP rule is the agent lender. Paragraph (a)(4)(i) of the CIP rule defines the term "customer" as "a person that opens a new account."<sup>1</sup> In the preamble to the final rule, Treasury and the Commission (collectively, the "agencies") explained that the definition "means the person identified as the accountholder."<sup>2</sup> The agencies further explained that under this definition, a broker-dealer is not required to look through an omnibus, trust, or similar account to its beneficiaries, and is required only to verify the identity of the named accountholder.<sup>3</sup> Similarly, in the preamble to the final CIP rule for banks, savings associations, credit unions and non-federally regulated banks, Treasury and the federal banking agencies stated that, in the case of brokered deposits, the customer (for purposes of the CIP rule) will be the broker that opens the deposit account.<sup>4</sup> Under the circumstances described in the question above, the broker-dealer borrower should treat only the agent lender as the person opening the account.

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<sup>1</sup> 31 C.F.R. § 103.122(a)(4)(i).

<sup>2</sup> Customer Identification Programs for Broker-Dealers, Securities Exchange Act Release No. 47752, 68 FR 25113 (May 9, 2003).

<sup>3</sup> *Id.*

<sup>4</sup> Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks, 68 FR 25090 (May 9, 2003).