



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AE16

Alternative to Fingerprinting Requirement for Foreign Natural Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending existing Commission regulations to establish an alternative to fingerprinting to evaluate the fitness of natural persons who are required to submit fingerprints under the Commission’s regulations and who have not resided in the United States since reaching 18 years of age (“Final Rule”).

DATES: The Final Rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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SUPPLEMENTARY INFORMATION:

I. Proposal

On January 12, 2016, the Commission published a Notice of Proposed Rulemaking (“Proposal”)¹ to amend the requirement that, pursuant to the registration process for determining a registrant’s fitness in part 3 of the Commission’s regulations, natural persons² that wish to be principals³ or associated persons⁴ of Commission registrants,⁵ or who are responsible for entry of orders from an FB’s or FT’s own account, submit their fingerprints (the “Fingerprinting Requirement”).⁶ The Proposal contemplated adding a new paragraph (e) to the existing list of exemptions from the Fingerprinting Requirement in § 3.21⁷ to, among other things, codify and clarify the alternative to the Fingerprinting Requirement provided by CFTC Staff Letter No. 12-49⁸

¹ Alternative to Fingerprinting Requirement for Foreign Natural Persons, 81 FR 1359 (Jan. 12, 2016).

² As used herein, the terms “natural person” and “individual” have the same meaning.

³ See the definition of principal in Commission regulation 3.1(a). 17 CFR 3.1(a).

⁴ An “associated person” is any natural person who is associated in certain capacities with a futures commission merchant (“FCM”), retail foreign exchange dealer (“RFED”), introducing broker (“IB”), commodity pool operator (“CPO”), commodity trading advisor (“CTA”), swap dealer (“SD”), major swap participant (“MSP”), or leverage transaction merchant (“LTM”). 17 CFR 1.3(aa).

For the definitions of these registration categories (other than RFED), see Section 1a of the Commodity Exchange Act (“CEA” or “Act”) and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3. For the definition of RFED, see Commission regulation 5.1(h). 17 CFR 5.1(h).

⁵ Subject to certain exceptions and exclusions, persons engaging in specified activities involving commodity interests are required pursuant to the CEA and/or Commission regulations to register with the Commission in certain registration categories. These include registration as an FCM, RFED, IB, CPO, CTA, SD, MSP, LTM, floor broker (“FB”), and floor trader (“FT”). For the definitions of FB and FT, see Section 1a of the CEA and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

⁶ Currently, the Commission may, directly or indirectly, require fingerprinting pursuant to Commission regulations 3.10(a)(2); 3.11(a)(1); 3.12(c)(3), d(2), f(3), or (i)(3); 3.40(a)(1), (a)(2), or (b); 3.44(a)(5) or (c); or 3.46(a)(3). 17 CFR 3.10(a)(2); 3.11(a)(1); 3.12(c)(3), d(2), f(3), and (i)(3); 3.40(a)(1), (a)(2), and (b); 3.44(a)(5) and (c); and 3.46(a)(3).

In support of its initial promulgation of the fingerprinting requirements, the Commission stated that these requirements “are necessary to permit improvements in the Commission’s background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.” See Revision of Registration Regulations; Final Rules; Designation of New Part, 45 FR 80485, 80485 (Dec. 5, 1980).

⁷ Commission regulation 3.21 provides exemptions to the Fingerprinting Requirement, subject to certain conditions, for persons whose fingerprints have recently been identified and processed by the Federal Bureau of Investigation, for persons whose application for initial registration with the Commission in any capacity was recently granted, for persons that have a current Form 8-R on file with the Commission or National Futures Association (“NFA”), and for principals that are outside directors. 17 CFR 3.21.

⁸ CFTC Staff Letter No. 12-49 (Dec. 11, 2012), available at <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-49.pdf>.

and CFTC Staff Letter No. 13-29⁹ (“DSIO No-Action Letters”). In particular, the Commission proposed adding an alternative to the requirement to provide fingerprints when applying for Commission registration for natural persons who have not resided in the United States since reaching 18 years of age. The Proposal allowed any such person’s registered firm to complete a criminal history background check in lieu of submitting fingerprints for such person.¹⁰

The Commission generally requested comments on the Proposal and also solicited comments on a number of specific matters.¹¹ For example, the Commission solicited comments on potential changes to its proposed definition of a foreign natural person, on the scope and effectiveness of the criminal history background check required by the Proposal and any alternatives thereto, and on the Commission’s analysis of the costs and benefits of the Proposal. The comment period for the Proposal ended on February 11, 2016.

II. Summary of Comments

The Commission received two relevant comments in response to the Proposal – one from Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group (“The Working Group”) and one from Joyce Dillard (“Dillard”).¹² The Working Group supported the Proposal as a means of alleviating some of, what The Working Group described as, “the undue burdens associated with providing a fingerprint

⁹ CFTC Staff Letter No. 13-29 (Jun. 21, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-29.pdf>.

¹⁰ The Commission has delegated to NFA, a registered futures association under Section 17 of the CEA, the registration functions set forth in subparts A, B, and C of part 3 of the Commission’s regulations, including the collection and review of a completed Form 8-R and related fingerprint submissions from each natural person completing a Form 8-R. See 17 CFR 3.2(a).

¹¹ Proposal, 81 FR at 1361.

¹² The Commission also received two comments that were not relevant to the Proposal. All of the comments are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1657>.

card pursuant to Part 3 of the Commission’s regulations.” However, The Working Group requested that the Commission expand the Proposal to all natural persons that are principals or associated persons of registrants subject to the Fingerprinting Requirement. The Working Group stated that “[t]his approach, rooted in fairness, would provide equal treatment to U.S. residents and non-U.S. residents alike,” but provided no further rationale for its approach. Conversely, Dillard did not support the Proposal, and stated that fingerprinting should be required without alternative.

III. Final Rule

After careful consideration, the Commission is adopting the Final Rule as proposed. The Commission is not expanding the Final Rule to cover persons other than Foreign Natural Persons (as defined below) as requested by The Working Group because, while there are limitations on the usefulness of fingerprints of foreign nationals, fingerprinting is an expedient way to investigate whether someone has a criminal record in the United States. For instance, in the United States, fingerprints may be checked for possible matches against existing repositories of fingerprints quickly and efficiently.

As discussed in the Proposal, the Commission believes the Final Rule, in providing certainty to market participants by way of Commission regulation, makes the commodity interest markets it oversees more liquid, competitive, and accessible by enabling Foreign Natural Persons to demonstrate that they meet the minimum standards for fitness and competency without undue burden. The alternative to fingerprinting removes an impediment to participation in United States’ markets by Foreign Natural Persons while also ensuring the continued protection of market participants and the

public. Further, the Commission believes that, by providing an alternative for Foreign Natural Persons, the Final Rule is consistent with the principles of international comity.

Section 3.21(e)(2) provides that the obligation to provide a fingerprint card for a Foreign Natural Person under part 3 of the Commission's regulations shall be deemed satisfied for a Certifying Firm (as defined below) if: (a) such Certifying Firm causes a criminal history background check of such Foreign Natural Person to be performed; (b) such criminal history background check does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the CEA,¹³ other than those disclosed to NFA; and (c) a person authorized by such Certifying Firm submits, in reliance on such criminal history background check, a certification by such Certifying Firm to NFA.

The certification must: (i) state that the conditions described above have been satisfied; and (ii) be signed by a person authorized by such Certifying Firm to make such certification. In addition, each criminal history background check must: (a) be of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E), or (H) of the CEA¹⁴ relating to the Foreign Natural Person and (b) be completed not more than one calendar year prior to the date that such Certifying Firm submits the certification to NFA described in the Final Rule.

In terms of definitions, § 3.21(e)(1)(i) defines Foreign Natural Person, solely for purposes of paragraph (e), as any natural person who has not resided in the United States since reaching the age of 18 years. Also, § 3.21(e)(1)(ii) defines Certifying Firm, also

¹³ 7 U.S.C. 12a(2) and (3).

¹⁴ 7 U.S.C. 12a(2)(D) and 12a(3)(D), (E), and (H). These provisions of Sections 8a(2) and (3) of the CEA generally relate to criminal convictions.

solely for purposes of paragraph (e), with respect to natural persons acting in certain specified capacities in relation to the firm.

By way of recordkeeping, § 3.21(e)(3) requires that the Certifying Firm maintain, in accordance with Commission regulation 1.31, records documenting each criminal history background check and the results thereof.¹⁵

As discussed in the Proposal, the Final Rule supersedes the DSIO No-Action Letters without prejudice to those that were relying on either of the DSIO No-Action Letters and had satisfied the requirements thereof prior to January 12, 2016, the date the Proposal was published in the Federal Register.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)¹⁶ requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission received no comments with respect to the RFA.

As discussed in the Proposal, the Final Rule affects certain FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, and FTs that wish to take advantage of the alternative to fingerprinting to evaluate the fitness of their Foreign Natural Persons for

¹⁵ 17 CFR 1.31.

¹⁶ 5 U.S.C. 601 et seq.

which fingerprints must be submitted to NFA.¹⁷ The Commission has previously determined that FCMs, RFEDS, CPOs, SDs, MSPs, and LTMs are not small entities for purposes of the RFA.¹⁸ Therefore, the requirements of the RFA do not apply to those entities. With respect to CTAs, FBs, FTs, and IBs, the Commission has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.¹⁹ As certain of these registrants may be small entities for purposes of the RFA, the Commission considered whether the Final Rule would have a significant economic impact on such registrants. As discussed in the Proposal, the Final Rule solely provides an optional alternative to complying with the Fingerprinting Requirement, which already applies to such registrants, and will, therefore, not impose any new regulatory obligations on affected registrants. The Final Rule is not expected to impose any new burdens on market participants. Rather, to the extent that the Final Rule provides an alternative means to comply with the Fingerprinting Requirement and is elected by a market participant, the Commission believes it is reasonable to infer that the alternative is less burdensome to such participant. The Commission does not, therefore, expect small entities to incur any additional costs as a result of the Final Rule.

¹⁷ The Final Rule also directly affects certain of such individuals; however, the Commission has noted that the RFA, by its terms, does not apply to individuals. See 48 FR 14933, 14954 n.115 (Apr. 6, 1983). Therefore, no analysis on the economic impact of this rule on individuals is provided.

¹⁸ See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (FCMs and CPOs); Leverage Transactions, 54 FR 41068 (Oct. 5, 1989) (LTMs); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010) (RFEDs); and Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs).

¹⁹ See 47 FR at 18620 (CTAs and FBs); Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies, 58 FR 19575, 19588 (Apr. 15, 1993) (FTs); and Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35276 (Aug. 3, 1983) (IBs).

Consequently, the Commission finds that no significant economic impact on small entities will result from the Final Rule.

Accordingly, for the reasons stated above, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Final Rule being published today by this Federal Register release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (“PRA”)²⁰ imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA.

As discussed in the Proposal, the Final Rule contains collections of information for which the Commission has previously received control numbers from the Office of Management and Budget (“OMB”). The titles for these collections of information are “Registration under the Commodity Exchange Act, OMB control number 3038-0023”²¹ and “Registration of Swap Dealers and Major Swap Participants, OMB control number 3038-0072.”²²

²⁰ 44 U.S.C. 3501 *et seq.*

²¹ See OMB Control No. 3038-0023, <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0023#> (last visited Feb. 24, 2016).

²² See OMB Control No. 3038-0072, <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0072#> (last visited Feb. 24, 2016).

The responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by OMB.

The collection of information in the Final Rule provides an optional alternative to complying with the Fingerprinting Requirement (as described above). Eligible persons have the option to elect the certification process, but no obligation to do so. For this reason, except to the extent that the Commission has amended the subject OMB control numbers for PRA purposes to reflect the alternative certification process, the Final Rule is not expected to impose any new burdens on market participants. Rather, to the extent that the Final Rule provides an alternative means to comply with the Fingerprinting Requirement and is elected by market participants, it is reasonable for the Commission to infer that the alternative is less burdensome to such participants.

2. Revisions to Collections 3038-0023 and 3038-0072

Collections 3038-0023 and 3038-0072 are currently in force with their control numbers having been provided by OMB.

As discussed above, the Final Rule incorporates an alternative to fingerprinting to evaluate the fitness of certain Foreign Natural Persons. In order to qualify for this alternative, the Certifying Firm must take the steps required pursuant to the Final Rule, including submitting the required certification to NFA and maintaining records of the criminal history background check and the results thereof. Requiring such actions requires revisions to collections 3038-0023 and 3038-0072. Accordingly, the Commission submitted a request to amend each of collections 3038-0023 and 3038-0072 to OMB and invited public comment on its paperwork burdens in the Proposal. In

particular, as further described in the Proposal, the Commission estimates that approximately 198 FCMs, RFEDs, IBs, CPOs, CTAs, LTMs, FBs, and FTs and 2 SDs and MSPs will submit the required certification²³ and, accordingly, estimates the additional hour burdens below.

a. Estimated Additional Hour Burden for Collection 3038-0023

Collection 3038-0023 relates to collections of information from FCMs, RFEDs, IBs, CPOs, CTAs, LTMs, FBs, and FTs. The estimated additional hour burden for collection 3038-0023 of 495 hours is calculated as follows:

Number of registrants: 198.

Frequency of collection: As needed.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 198.

Estimated annual hour burden per registrant: 2.5.²⁴

Estimated aggregate annual hour burden: 495 (198 registrants x 2.5 hours per registrant).

b. Estimated Additional Hour Burden for Collection 3038-0072

Collection 3038-0072 relates to collections of information from SDs and MSPs.

The estimated additional hour burden for collection 3038-0072 of 5 hours is calculated as follows:

²³ Proposal, 81 FR at 1362.

²⁴ This collection's burdens are restricted to (i) registrants providing necessary information to commercial service provider(s) to conduct a criminal history background check for a Foreign Natural Person; (ii) registrants preparing and submitting the certification described herein; and (iii) registrants maintaining, in accordance with Commission regulation 1.31, records documenting that the criminal history background check was completed and the results thereof. To the extent that a market participant instead elects to conduct the background check internally, it is reasonable for the Commission to infer that doing so is less burdensome to such participant.

Number of registrants: 2.

Frequency of collection: As needed.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 2.

Estimated annual hour burden per registrant: 2.5.²⁵

Estimated aggregate annual hour burden: 5 (2 registrants x 2.5 hours per registrant).

3. Information Collection Comments

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission did not receive any such comments.

C. Cost-Benefit Considerations

Section 15(a) of the Act²⁶ requires the Commission to consider the costs and benefits of its actions before issuing a regulation under the Act. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (i) protection of market participants and the public; (ii) efficiency, competitiveness and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations.

1. Costs

²⁵ See n.24, *supra*.

²⁶ 7 U.S.C. 19(a).

a. Costs to FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, FTs, Associated Persons, and other Foreign Natural Persons

The Final Rule provides an alternative to complying with the Fingerprinting Requirement, which alternative no FCM, RFED, IB, CPO, CTA, SD, MSP, LTM, FB, FT, associated person, or other Foreign Natural Person is required to elect. As such, the Commission believes that the Final Rule does not impose any net cost on such persons, because the Commission presumes that such persons will elect the alternative only if they assess it to have a lower or equal net cost.

b. Other Costs

Because the Final Rule allows FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, and FTs to submit, subject to the terms and conditions herein, a certification in lieu of a fingerprint card for Foreign Natural Persons, NFA will need to develop a process to review and retain such certifications and consider amending its applications and/or other forms to reflect the availability of this alternative to the Fingerprinting Requirement. The Commission expects that the costs of such activities will not be significant, because NFA has been processing and retaining requests under the DSIO No-Action Letters since their issuance and the changes to NFA's applications and/or other forms to take into account the Final Rule would likely be minimal and could be included in other future unrelated updates.

2. Benefits

The Commission believes that, by establishing an alternative method for evaluating the fitness of Foreign Natural Persons for whom a fingerprint card must currently be submitted, the Final Rule helps keep the United States' commodity interest

markets accessible and competitive with other markets around the world by removing an impediment to participation in United States' markets by Foreign Natural Persons while also ensuring the continued protection of market participants and the public. Further, the Commission believes that, by providing an alternative for persons outside the United States, the Final Rule is consistent with the principles of international comity.

3. Commenter's Request

As discussed above, The Working Group requested that the Commission expand the alternative provided in the Proposal to include all natural persons that are principals or associated persons of registrants subject to the Fingerprinting Requirement. The Commission is not making such an expansion, because, while there are limitations on the usefulness of fingerprints of foreign nationals, fingerprinting is an expedient way to investigate whether someone has a criminal record in the United States.

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (i) protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

i. Protection of Market Participants and the Public

The Final Rule continues to protect the public by ensuring that persons who are currently subject to the Fingerprinting Requirement, whether or not they reside in the

United States, must have their fitness reviewed through the completion of a background check.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Final Rule may increase the efficiency and competitiveness of the markets by encouraging more participation in United States markets by Foreign Natural Persons.

The Commission does not believe that the integrity of financial markets is harmed because the Final Rule requires that the background check meet the objective standards which rely on the clearly-stated matters under Sections 8a(2)(D) and 8a(3)(D), (E), and (H) of the CEA.

iii. Price Discovery

The Commission generally believes that providing an alternative means of ensuring the fitness of a person who resides outside the United States for purposes of Commission registration, by reducing the burden that the Fingerprinting Requirement could impose on such persons, could reduce impediments to transact on a cross-border basis, increasing participation in commodity interest markets. The Commission believes that such increased participation and the resulting increased liquidity may help to facilitate price discovery.

iv. Sound Risk Management Practices

One of the critically important functions of registration is to allow the Commission to ensure that all futures and swaps industry professionals who deal with the public meet minimum standards of fitness and competency.²⁷ The fitness investigations

²⁷ See, e.g., Commodity Futures Trading Comm'n, Division of Clearing and Intermediary Oversight, Public Report on the Registration Program of the National Futures Association, June 2010, at 1 (citing H.R. REP. NO. 97-565(I), at 48 (1982), reprinted in 1982 U.S.C.C.A.N. 3871, 3897–3899).

that are part of the registration process permit the Commission and/or its delegates to (a) uncover past misconduct that may disqualify an individual or entity from registration and (b) help determine if such persons have disclosed all matters required to be disclosed in their applications to become registered with the Commission.²⁸ Having futures and swaps market participants that are not subject to any of the matters that would lead to a disqualification of registration under Sections 8a(2) or (3) of the CEA is one way to help ensure that a Commission registrant will not be a risk to its customers or to the market in general.

v. Other Public Interest Considerations

The Commission believes that, by providing an alternative for persons outside the United States, the Final Rule is consistent with the principles of international comity.

List of Subjects in 17 CFR Part 3

Associated persons, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Customer protection, Fingerprinting, Foreign exchange, Futures commission merchants, Introducing brokers, Leverage transaction merchants, Leverage transactions, Major swap participants, Principals, Registration, Reporting and recordkeeping requirements, Retail foreign exchange dealers, Swap dealers, Swaps.

²⁸ See <http://www.nfa.futures.org/NFA-registration/index.HTML> (last visited Feb. 24, 2016), stating that “[t]he primary purposes of registration are to screen an applicant's fitness to engage in business as a futures professional and to identify those individuals and organizations whose activities are subject to federal regulation.”

Pursuant to Commission regulation 3.60, the Commission may, subject to some limitations, deny, grant with conditions, suspend, revoke, or restrict registration to an applicant if the Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act. 17 CFR 3.60. Sections 8a(2) and 8a(3) of the Act contain an extensive list of matters that provide grounds for refusing or conditioning an applicant's registration, including, without limitation, felony convictions, commodities or securities law violations, bars or other adverse actions taken by financial regulators, and willfully omitting to state any material fact in an application. See 7 U.S.C. 12a(2) and (3). See also Interpretative Statement With Respect to Section 8a(2)(C) and (E) and Section 8a(3)(J) and (M) of the Commodity Exchange Act, appendix A to part 3 of the Commission's regulations.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 3 as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. In § 3.21, add paragraph (e) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(e) Foreign natural persons. (1) For purposes of this paragraph (e):

(i) The term foreign natural person means any natural person who has not resided in the United States since reaching the age of 18 years.

(ii) The term certifying firm means:

(A) For any natural person that is a principal or associated person of a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader, such futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader; and

(B) For any natural person that is responsible for, or directs, the entry of orders from a floor broker's or floor trader's own account, such floor broker or floor trader.

(2) Any obligation in this part to provide a fingerprint card for a foreign natural person shall be deemed satisfied with respect to a certifying firm if:

(i) Such certifying firm causes a criminal history background check of such foreign natural person to be performed; and

(ii) The criminal history background check:

(A) Is of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E), or (H) of the Act relating to such foreign natural person;

(B) Does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act, other than those disclosed to the National Futures Association; and

(C) Is completed not more than one calendar year prior to the date that such certifying firm submits the certification described in paragraph (e)(2)(iii) of this section;

(iii) A person authorized by such certifying firm submits, in reliance on such criminal history background check, a certification by such certifying firm to the National Futures Association, that:

(A) States that the conditions of paragraphs (e)(2)(i) and (ii) of this section have been satisfied; and

(B) Is signed by a person authorized by such certifying firm to make such certification.

(3) The certifying firm shall maintain, in accordance with § 1.31 of this chapter, records documenting that the criminal history background check performed pursuant to paragraph (e)(2)(i) of this section was completed and the results thereof.

Issued in Washington, DC, on March 28, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Alternative to Fingerprinting Requirement for Foreign Natural Persons—Commission Voting Summary and Chairman’s Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I support the rule being finalized today, which provides foreign natural persons with an alternative to the fingerprinting requirement that applies to certain participants in our markets. This will reduce unnecessary burdens on foreign individuals while maintaining appropriate standards of fitness and competency. This final rule also continues the Commission’s ongoing efforts to codify, where appropriate, and through notice-and-comment rulemaking, no-action relief that previously had been provided by Commission staff.

[FR Doc. 2016-07304 Filed: 3/31/2016 8:45 am; Publication Date: 4/1/2016]