

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.

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:

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.

§ 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.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

General Rules and Regulations, Securities Exchange Act of 1934

CFR Correction

In Title 17 of the Code of Federal Regulations, part 240 to End, revised as of April 1, 2015, on page 543, § 240.17a–23 is removed and reserved.

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