

CLIENT MEMORANDUM

CFTC Proposes Fingerprinting Alternative for Foreign Natural Persons

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AUTHORS

Rita M. Molesworth | **Deborah A. Tuchman** | **Anne C. Fox**

The Commodity Futures Trading Commission has proposed a new rule that would establish an alternative to the fingerprinting requirement for natural person principals and associated persons of CFTC registrants who have not resided in the United States since reaching 18 years of age.¹ Proposed rule 3.21(e) is intended to codify and clarify no-action letter relief granted by the Division of Swap Dealer and Intermediary Oversight in December 2012 and June 2013 (the “DSIO Letters”).² Comments on the proposed rules are due by February 11, 2016.

CFTC regulations generally require natural persons who wish to be principals or associated persons of CFTC registrants to submit their fingerprints along with Form 8-R. The National Futures Association, working with law enforcement agencies, uses fingerprints to conduct background checks on these natural persons to determine their fitness to engage in the business as futures professionals. The DSIO Letters were issued in response to concerns raised in the industry that the fingerprinting requirement was unduly burdensome to foreign natural persons. They provide principals and associated persons with the ability to submit a background check certification in lieu of fingerprint cards.

¹ Alternative to Fingerprinting Requirement for Foreign Natural Persons, 21 Fed. Reg. 1359 (Jan. 12, 2016) (the “Proposal”).

² CFTC Staff Letter No. 12–49 (Dec. 11, 2012), available [here](#); CFTC Staff Letter No. 13–29 (June 21, 2013), available at [here](#).

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In the Proposal, the CFTC stated that codifying the alternative relief would provide more certainty for market participants and would remove an undue burden that prevents some foreign natural persons from demonstrating that they meet minimum standards for fitness and competency. The CFTC stated that the proposed rule is designed to ensure the continued protection of market participants and the public while allowing U.S. commodity markets to be more liquid, competitive and accessible.

The proposed rules would extend the relief granted by the DSIO Letters to the principals and associated persons of all parties required to register with the CFTC. The fingerprint requirement for a “foreign natural person”³ would be deemed satisfied if: (a) the sponsoring firm performs a criminal history background check⁴ of such person; (b) the background check does not reveal any matters that constitute a disqualification under the Commodity Exchange Act other than those disclosed to the NFA; and (c) the sponsor submits to the NFA a certification in reliance on the background check.

The proposed rule would also require that such firm maintain records, in accordance with CFTC regulation 1.31, documenting each background check and the accompanying results.

If you have any questions regarding this memorandum, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Deborah A. Tuchman (212-728-8491, dtuchman@willkie.com), Anne C. Fox (212-728-8575, afox@willkie.com) or the Willkie attorney with whom you regularly work.

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³ Foreign natural person would be defined as any natural person who has not resided in the United States since reaching the age of 18 years.

⁴ Each background check would have to: (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 CEA (which generally relate to criminal convictions) relating to the foreign natural person; and (b) be completed not more than one calendar year prior to the submission date of the certification.