



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Joshua B. Sterling
Director

Re: No-Action Position in Response to the COVID-19 Pandemic for Persons Required to Submit Fingerprints in Connection with Applying for Registration as an Associated Person or Being Listed as a Principal of a Registrant

Ladies and Gentlemen:

This letter is in response to a letter dated April 13, 2020 received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) from the National Futures Association (“**NFA**”). In its letter, NFA advised that, due to concerns about the spread of the corona virus disease 2019 (“**COVID-19**”), it has suspended its applicant fingerprinting service, and that this fact (combined with the measures taken by federal, state and local governments to restrict movement of, and contact among, individuals) has made it difficult for registrants and their principals and associated persons (“**APs**”) to comply with certain requirements in Commission Regulations 3.10 and 3.12.¹

Regulation 3.10(a)(2) requires each applicant for registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant to accompany its registration application with a Form 8-R for each natural person listed as a principal of the applicant, along with the fingerprints of the natural person on a fingerprint card provided by NFA. Regulation 3.12(c)(3) requires each person applying for registration as an AP to accompany his or her Form 8-R with the applicant’s fingerprints on a fingerprint card provided by NFA. NFA sends digital images of the fingerprints of each such individual to the Federal Bureau of Investigation in order to determine whether the individual has a criminal record. Firm and associated person registrations are not granted until the required fingerprint cards are submitted and processed.

In Staff Letter 12-49, DSIO took a no-action position permitting the use of an alternative means for establishing fitness of principals residing outside the United States, where privacy laws and the absence of a uniform fingerprint repository make the fingerprint process used in the

¹ Commission Regulations are found at 17 C.F.R. Chap. 1 (2019), and may be accessed at the Commission’s web site www.cftc.gov.

United States impracticable or impossible. DSIO concluded that an applicant for registration should be permitted to comply with Commission Regulation 3.10(a)(2) with respect to a non-United-States-resident principal by submitting either a fingerprint card *or* a certification, signed by a person with authority to bind the applicant, that: a reasonable criminal history background check using a reputable commercial service was conducted; such criminal history background check did not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act (“**Act**”)², other than those disclosed on Form 8-R; and that the applicant shall maintain, in accordance with Commission Regulation 1.31, records documenting that such criminal history background check was performed and the results thereof. The relief provided in Staff Letter 12-49 was subsequently codified by the Commission and expanded to include APs residing outside the United States as new Regulation 3.21(e).³

In light of the difficult circumstances resulting from the COVID-19 pandemic, DSIO believes that temporary relief is warranted for all newly listed principals and applicants for AP registration. Accordingly, for a period of **ninety (90) days from the date of this letter or until such earlier date as NFA notifies the public that it has resumed the processing of fingerprints**,⁴ DSIO will not recommend that the Commission commence any enforcement action against a registrant (or applicant for registration) listing a principal, or against an applicant for AP registration, based solely upon such registrant’s or applicant’s failure to submit with Form 8-R a fingerprint card for such principal or AP registration applicant, **provided that**:

1. The registrant or applicant for registration listing such principal, or sponsoring such applicant for AP registration, causes a criminal history background check of such principal or applicant for AP registration to be performed;
2. The criminal history background check 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, and it does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act, other than those disclosed to NFA;
3. A person with authority to bind the registrant or applicant for registration listing such principal, or sponsoring such applicant for AP registration, signs and submits a certification that the background check was completed and that it did not disclose any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act; and
4. The registrant or applicant for registration listing such principal, or sponsoring such applicant for AP registration, maintains records documenting the completion and the results of the criminal history background check in accordance with Regulation 1.31.

² 7 U.S.C. 12(a)(2) and (3). The Act may be accessed through the Commission’s web site www.cftc.gov.

³ See 81 Fed. Reg. 18743 (Apr. 1, 2016).

⁴ In its April 13 letter, NFA states that it will issue a public news release when NFA resumes the applicant fingerprint service.

Principals and APs of registrants and applicants for registration relying upon the relief provided herein must submit their fingerprints to NFA within thirty (30) days of NFA's public announcement of its resumption of fingerprint processing.

DSIO recognizes that due to the COVID-19 pandemic registrants and other affected market participants may seek additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, any registrants that seek other relief are encouraged to contact DSIO staff. DSIO staff will address issues on a case-by-case basis in light of the requesting registrant's particular fact and circumstances.

This letter, and the positions taken herein, represent the views of DSIO only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to DSIO. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Finally, as with all staff letters, DSIO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Amanda Olear, Deputy Director, at (202)-418-5283 or aolear@cftc.gov, or Christopher Cummings, Special Counsel, at 202-418-5445 or ccummings@cftc.gov.

Very truly yours,

Joshua B. Sterling
Director
Division of Swap Dealer and Intermediary
Oversight

cc: Carol Wooding, Senior Vice President
and General Counsel
National Futures Association, Chicago

Regina Thoele, Compliance
National Futures Association, Chicago



Commission Regulations 3.10(a)(2)
and 3.12(c)(3)

April 17, 2020

Mr. Joshua B. Sterling, Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Dear Mr. Sterling:

As the Commission has noted in adopting a number of recent no-action letters, the coronavirus disease 2019 (COVID-19) global pandemic has severely disrupted business operations and may present challenges for registrants and applicants for registrations (collectively, registrants) in timely meeting certain obligations under the Commodity Exchange Act (CEA) and the Commission's regulations. In NFA's capacity as the Commission's delegee for processing applications for registration for futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, and commodity pools operators, and their associated persons, as well as swap dealers, as described more fully below, NFA has become aware that registrants and their associated persons may have difficulty in complying with certain requirements in Commission Regulations 3.10 and 3.12 due to COVID-19.

Commission Regulation 3.10(a)(2) requires each Form 7-R filed for application for registration be accompanied by a Form 8-R executed for each natural person who is a principal of the applicant, along with the fingerprints of the natural person on a fingerprint card provided by NFA. Similarly, Commission Regulation 3.12(c)(3) requires that each Form 8-R filed by an applicant for registration as an associated person must be accompanied by the fingerprints of the associated person applicant on a fingerprint card provided by NFA. NFA sends digital images of the fingerprints of the individuals to the Federal Bureau of Investigation to determine if the individual who submitted them has a criminal record. Firm and associated person registrations will not be granted until those required fingerprint cards are submitted and processed. Due to concerns about the spread of COVID-19, on March 16, 2020, NFA suspended its applicant fingerprinting service until further notice. This suspension, combined with the "stay at home" related orders issued by a number of state and local authorities, as well as the federal government's social distancing guidelines, may make it difficult for applicants for registration to obtain the required fingerprints.



Given this difficulty resulting from the COVID-19 outbreak, NFA requests that the Commission issue temporary relief from the fingerprinting requirements of Commission regulations 3.10(a)(2) and 3.12(c)(3). This relief should be conditioned on the registrant sponsoring the associated person or the registrant for which the natural person is a principal submits a certification, signed by a person with authority to bind the registrant, that the registrant has conducted a reasonable background check and to the best of registrant's knowledge and belief the individual is not subject to any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the CEA, other than those disclosed; and that the registrant or applicant will maintain, in accordance with Commission Regulation 1.31, a record documenting the check performed and the results. NFA will issue a public new release when we resume the applicant fingerprinting service.

NFA appreciates DSIO's consideration of this matter. As always, please do not hesitate to contact me if you have any questions or comments.

I hereby certify that the material facts set forth in this letter dated April 17, 2020 are true and complete to the best of my knowledge.

Very truly yours,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive, flowing style.

Carol A. Wooding
Senior Vice President
and General Counsel

/caw/Letters: CFTC DSIO No Action Request (04.17.2020)