

MEMORANDUM

Date: November 26, 2012

To: Shagufta Ahmed and Nicholas Fraser, Office of Management and Budget
(OMB), Office of Information and Regulatory Affairs

From: Katherine Driscoll
Commodity Futures Trading Commission (CFTC)
Division of Swap Dealer and Intermediary Oversight

Re: Justification Statement for Non-Substantive Revisions to CFTC Form 8-R

Form 8-R is the CFTC's form by which an individual applies for registration with the CFTC or by which a firm applying for registration provides information about individuals who are principals or associated persons of the applicant. Except under certain specific circumstances, CFTC regulations require applicants for registration to submit the fingerprints of each natural person the applicant lists as a principal, and the fingerprints are used for the background fitness check for that principal. By signing Form 8-R, the firm makes a set of certifications, acknowledgments and undertakings, including certification that the firm has submitted fingerprints cards for the necessary individual(s).

The CFTC has learned that the usefulness of the fingerprint requirement is significantly diminished outside the United States, where various national and regional law enforcement agencies have widely varying capabilities in terms of the information they are able to provide and the promptness with which they can provide it. In addition, concerns have been raised by the industry that, in other jurisdictions, requiring the submission of fingerprints may contravene privacy laws, and that in the context of a multi-national financial services entity, the definition of "principal" under Commission regulations may encompass a substantial number of persons who have no (or only remote) contact, control or influence over the entity's activities that are subject to regulation.

The change to Form 8-R consists of insertion of language by which the sponsor for application certifies that, if the principal has not resided in the U.S. since reaching 18 years of age and the sponsor has notified the National Futures Association ("NFA") within 30 days after the filing of the application that it has not submitted a fingerprint card for the principal: the sponsor has performed a reasonable criminal history background check using a reputable commercial service; 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 other than those disclosed in response to the Disciplinary History - Criminal Disclosures section of the application; and that the sponsor shall maintain, in accordance with Commission Regulation 1.31 but subject to any privacy, secrecy and blocking laws as may be applicable and that have been disclosed by the sponsor to NFA, records documenting that sponsor performed such criminal history background check and the results thereof.