

Employment in Financial Services

Contributing Editor

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02. Are there particular pre-screening measures that need to be taken when engaging a financial services employee? Does this vary depending on seniority or type of role? In particular, is there any form of regulator-specified reference that has to be provided by previous employers in the financial services industry?

Belgium

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Members of management should at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties (article 91, Directive 2013/36/EU; and article 9, Directive 2014/65/EU).

Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must exclusively be natural persons and must at all times have the necessary professional standing and expertise to perform their duties (article 19, Act of 25 April 2014). Since 2023, it is specified that “in particular, these persons must demonstrate honesty, integrity and independence of mind which, in the case of members of the legal administrative body, enable them to effectively evaluate and, if necessary, question the decisions of the actual management and to ensure the effective supervision and monitoring of the management decisions taken” (Art. 19, Act of 25 April 2014).

In addition, they must not have been convicted of any of the offences listed in article 20 of the Act of 25 April 2014. This concerns convictions with a professional ban and violations of financial legislation, company codes and insurance law.

The NBB will verify that these persons meet the conditions listed above. Forms for a new appointment, additional elements during the employment, termination of an appointment or renewal of an appointment are available on the NBB website (www.nbb.be). These forms require information mainly regarding education, past financial services experience, training, any criminal or administrative or civil proceedings or investigations, disciplinary decisions, bankruptcy, insolvency, potential conflicts of interest, and time commitments for the new appointment.

The NBB will assess the ability of the person based on five criteria:

- expertise, covering knowledge, experience and skills;
- professional repute;
- independence of mind;
- time commitment; and
- collective suitability for the board (ie, to verify whether the expertise within the said body is sufficiently guaranteed, given the person's knowledge, experience and skills (NBB Fit & Proper Handbook of 22 December 2022, 2:26, p. 16)).

Concerning "N-1" effective managers (managers who exercise direct and decisive influence over the management of the institution, but who are not members of the management committee) other than branch managers, the supervisory authority does not have to authorise them (NBB Fit & Proper Handbook of 22 December 2022, 2:9, p. 14). This does not mean that these persons must not have the required expertise and professional reputation, but only that the NBB will not conduct an assessment.

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Brazil

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The law does not require specific procedures or measures before hiring. However, depending on the activities the employee performs, specific certification may be necessary.

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France

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In the financial services sector, candidates must comply with standard recruitment practices, but also with suitability, requirements and, for certain positions, with supervision by the ACPR or the European Central Bank (ECB).

Traditionally, employees in the financial services sector are required to provide the usual documents requested when applying for a job: a cover letter and a curriculum vitae. This is especially important because, as we will see, access to certain positions is conditional. For example, investment advisors must provide proof of either a national diploma attesting to three years of study, or training, or professional experience in the field.

Also, due to the very nature of the financial services business, employees of companies in the sector are required to be honourable.

The Monetary and Financial Code provides that certain operational activities in the financial services sector, such as being a managing director, are barred in the event of a felony conviction, a prison sentence of at least six months with a suspended sentence in connection with the financial world, or a management ban (article L. 500-1 of the Monetary and Financial Code). For this reason, the criminal record of a concerned candidate is generally requested at the time of hiring.

In addition, the appointment or renewal of a senior executive of a credit institution, a finance company, an investment firm other than a portfolio management company, a payment institution or an electronic money institution must be ratified by the ACPR, and by the ECB in the case of major credit institutions. Validation of the appointment or renewal is based on good reputation and competence, which is assessed based on

five criteria: experience, reputation, absence of conflicts of interest and independence of mind, availability, and collective ability.

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Germany

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Different notification procedures exist before employees may take up their roles.

Investment firms may only entrust employees to provide investment advice if they are knowledgeable and have demonstrated the required reliability – as evidenced, inter alia, by not having a relevant and unspent prior criminal record. Furthermore, such employees' identities must be disclosed to BaFin before they commence their activities. The active registration of employees is intended to impart upon employers the significance of employee selection and responsibility for their decisions.

Representatives of regulated entities of the financial services sector (typically, members of management) must be approved by BaFin before they can take up their role (colloquially known as BaFin's "driver's licence"). To obtain approval, a request must be filed with BaFin, showing the experience and suitability of the candidate for the role. Depending on the financial services delivered by the company, information that must be filed include the following:

- a CV (including information on professional training, career, and references);
- information on reliability (a form or summary to be completed by the manager, including, for example, mandatory declarations on prior criminal or administrative offences);
- a "certificate of good conduct for submission to an authority", a "European certificate of good conduct for submission to an authority", or "corresponding documents" from abroad (depending on the countries of residence in the last 10 years);
- an extract from the central commercial register;
- an overview of other mandates as a managing director or in administrative and supervisory bodies; and
- information about the manager's ability to dedicate sufficient time to the role.

Non-management employees responsible for specific key functions at an insurance provider are subject to a similar notification process. Further, financial services employers must perform a risk analysis under the Anti-Money Laundering Act and take internal security measures, which also includes assessing the reliability of employees.

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Hong Kong

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There are no particular pre-screening measures specified by the financial regulators in Hong Kong. Nevertheless, financial institutions would generally conduct background checks on prospective employees (especially those taking on senior positions) to ensure they comply with the "fit and proper" requirements of the financial regulators.

There is no particular form of regulator-specified reference to be provided by previous employers in the financial services industry. Nevertheless, the SFC has specified disclosure obligations for licensed corporations in respect of outgoing employees who were subject to internal investigations (see question 10).



India

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The pre-screening measures, when employing a financial service employee, are carried out in compliance with the frameworks laid down by the respective industry regulators. For instance, the Reserve Bank of India (RBI), the central banking sector regulator in India, periodically issues certain guidelines for banking and non-banking employers to conduct mandatory employee background checks. These regulators also recognise certain “Self-Regulatory Organisations” (SROs), who then play the primary role in conducting grassroots verifications. SROs conduct character and antecedent verification of employees registered with them as per the standards set by the regulator. Strict police verification of at least the last two addresses is usually mandated and verifications are periodically updated and shared on a common database at an industry level. For instance, the Finance Industry Development Council is an SRO of Non-Banking Finance Companies (NBFCs) and is registered with the RBI.

A financial services employer should be sensitive to the data being used for pre-screening measures as India protects individual privacy. Hence, both the employer and the service provider engaged by the employer should obtain prior consent from the prospective employee before pre-screening. If the pre-screening measures include the collection of “sensitive personal data information[1]”, then an employer must seek the individual’s consent, which would also help mitigate risks for any claims concerning the invasion of an employee’s privacy. Employers should ideally ensure that pre-screening is complete before the employee is hired. A comprehensive pre-screening will include verification of educational qualifications, checks with past employers, verification of residential addresses, police records, and passport status. Usually, with seniority of the role, checks with past employers happen more rigorously, while for entry-level employees, checks with academic institutions about educational qualifications may be done more rigorously. Similar standards must be met by contract employees empanelled by the service providers.

There is no regulator-specified reference that must be provided by previous employers in the financial services industry. However, in practice, most public sector banks (eg, Bank of India) and many central public sector undertakings in financial services (eg, Life Insurance Corporation of India (LIC)), as per their selection or onboarding protocols, require at least two “Character Certificates”, one of which should be from the head of the educational institution last attended or the present employer and the other should be from gazetted officers[2] or bank officers, without any familial ties to the employee.

[1] Information Technology Act, 2000 & Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011.

[2] A ‘gazetted officer’ is a high rank government official working as an officer for the government of India or any state government whose name and credentials are published in the Gazette of India.

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Ireland

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RFSPs must satisfy themselves that all CF and PCF candidates or employees comply with the F&P Standards. Pre-employment due diligence must be performed, including asking the candidate to certify they will comply with the F&P Standards and notify the RFSP immediately of any change in circumstance that may mean they no longer comply. Employers must continue to ensure that in scope employees comply

with the F&P Standards and must complete an annual declaration to this effect. This means that due diligence must continue throughout the employment relationship and not just at the recruitment stage.

Candidates for PCF roles must complete an online individual questionnaire, which is submitted to the CBI in advance of appointment to the role through the Central Bank portal. The CBI must grant its approval for the PCF appointment before a candidate can take up the role. Any PCF offer of employment must be conditional on that approval being obtained. The CBI may request applicants attend an interview as part of the approval process.

Employers should take all reasonable steps to secure references from previous employers in order to due diligence the candidate's compliance with the F&P Standards and their suitability for the role. However, an employer is not obliged to issue a reference in respect of a former employee which means that a prospective employer may not be able to secure a reference from a previous employer. The CBI does not oblige employers to either issue or obtain a reference as part of screening checks, however employers must make good efforts to do so.

There are material obstacles from a data privacy and practical perspective to employers conducting criminal background checks in relation to prospective employees. Data relating to criminal convictions is special category data under the GDPR. Employers would need to satisfy both Article 6 and Article 9 requirements under the GDPR to justify the processing of this data. In terms of Article 9, this means employers would need to show reasons of substantial public interest or that they are carrying out their legal obligations in processing the data. In terms of Article 6 the employer will need to show that the processing is necessary to comply with a legal obligation to which the employer is subject or the processing is necessary for the employer's legitimate interests for example to ensure the suitability and honesty of its employees and to protect its reputation. Employers are also prevented from asking candidates about "spent convictions" which are usually minor criminal offences dating back over seven years.

Pre-employment medical checks must also have a clear legal basis justifying the processing of an employee's medical and health information.

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Isle of Man

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There is a general obligation on employers in the Isle of Man to undertake legal working checks to ensure that the prospective employee has the right to work lawfully in the Isle of Man.

In addition, financial institutions must take reasonable steps to ensure that individuals who perform any regulated activity in the course of their employment, or under any contract with the financial institution, are fit and proper for the tasks they perform, by providing adequate training and supervision and (where necessary) undertaking additional checks. Where the financial institution wishes to employ an individual in a Controlled Function, the financial institution must carry out sufficient due diligence to satisfy itself that the candidate is fit and proper to perform the proposed functions.

There are two types of Controlled Functions, those that require notification to, and acceptance by, the IoM FSA and those that require notification only. In either case, the financial institution is required to notify the IoM FSA of the appointment or intended appointment of certain key roles at least 20 business days before the appointment takes effect. Where the Controlled Function also requires acceptance, the financial institution will require the IoM FSA's consent to the appointment of a prospective candidate to a particular role. It is recommended that job offers in such circumstances are made subject to the written acceptance of the IoM FSA.

While the IoM FSA does not specify any particular pre-screening measures, it provides guidance on the nature of the expected due diligence that it would expect a financial institution to carry out, particularly where the individual will be undertaking a key role. Such due diligence includes carrying out a professional body check (ie, any memberships held and if disciplinary action has been taken), capacity check^[1],

criminal record check, credit check and website checks. The financial institution should also consider the individual's qualifications, training and competency.

The IoM FSA may ask for evidence of the due diligence carried out by the financial institution at any time, either remotely or during a supervisory visit.

The IoM FSA recommends financial institutions request a reference from the prospective candidate's current employer and previous employers covering, as a minimum, the past ten years of employment.

[1] For instance, does the individual have enough time to devote to the role when considering other roles held with the regulated entity and other roles held elsewhere?

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Mexico

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For employees with general positions, there are no pre-screening measures. Under article 1 of the Constitution and article 21 of the FLL, discrimination is prohibited. Furthermore, article 21 of the FLL establishes that distinctions will not be deemed discriminatory if certain qualifications are required for certain work. Specifically, if there is no legal ground or work-related justification to request criminal records for a determined position, conditioning the position on that information may be deemed discriminatory.

For example, financial entities must include a list of the expected members of the board of directors, general manager, and main officers, including their respective professional and academic backgrounds, in the filing to obtain authorisation of the CNBV (except insurance and bond institutions) to start operations. These positions require certain special requirements, and thus financial entities must verify – by prior appointment and thereafter, at least every year – that general managers and officers:

- have a standing reputation;
- have expertise in legal, financial and management matters;
- have a satisfactory credit record and credit eligibility;
- are residents in Mexico (for credit entities); and
- have no other legal impediment (see below).

All financial entities must guarantee that high-level employees are capable, experienced and not subject to any procedure involving conduct contrary to financial stability or compliance with business or financial business standards. General managers and officers in controlling entities and auxiliary credit organisations, and in exchange bureaus and brokerage houses, and general managers in insurance and bonding institutions must have at least five years' experience at a high decision-making level that required financial and management expertise.

Also, these individuals must not have any of the following legal impediments:

- a pending dispute with the financial entity or any other financial entities in the group;
- a conviction for a wilful economic crime;
- a disqualification from owning a business, public service positions or the Mexican financial system;
- declared bankruptcy or insolvency;
- carried out regulation, inspection, and monitoring of the financial entity or any other financial entities in the group; or
- participated in the board of directors of the financial entities.

Additionally, for exchange bureaus and brokerage houses, such individuals must not have been an external

auditor of the exchange bureau or related entity in the 12 months before their appointment.

Specifically, in credit organisations, general managers and officers must not:

- be a partner or have a position within entities or associations that render services to the entity or its related entities;
- be a client, provider, debtor, creditor, partner, member of the board of directors or employee of an entity that is a client or provider (whose services or sales represent more than 10% of the client's services or sales), or a debtor or creditor (of which the debt is higher than 15% of the assets);
- be an employee of a foundation, association or civil society that receive important contributions from the entity (which represent more than 15% of the total contributions received by such entities in a fiscal year).
- be a general manager, officer, or employee of another entity that is part of the financial group;
- be a spouse or domestic partner of any individual mentioned above, or be in a cohabiting relationship with them; or
- carry out regulation duties of credit organisations and exchange bureaus.

Financial entities must inform the CNBV, CNSF, or CONSAR, as applicable, of general managers' and officers' appointments, resignations or removals, within five business days of such events. Meanwhile, controlling entities, brokerage houses, surety deposit institutions and compensation chambers must inform the CNBV, CNSF, or CONSAR within 10 days of the same.

There are also limits to employees participating in the board of directors of these companies. Only the general manager and officers two levels below may be members, and no other employees may occupy these positions.

According to the Insurance and Bonds Regulations, officers and employees of credit institutions, insurance institutions, bond institutions, brokerage houses, stock market specialists, auxiliary credit organisations, investment companies, operating companies of investment companies, exchange houses, financial commissioners, retirement fund managers, specialised investment companies of retirement funds, and controlling companies with 10% or more of representative shares of such companies will not be authorised to act as insurance or bond agents.

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Netherlands

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Under Dutch law, all financial services sector companies must make substantiated assessments on the reliability and integrity of candidates to be appointed in integrity-sensitive positions. However, in practice, almost all financial services sector companies have made a pre-employment screening mandatory for all candidates (for any position).

The exact pre-screening process differs per financial service industry and company. In general, the following components are part of the pre-screening process: proof of identity; insolvency check; highest level of education; work experience (reference check); certificate of conduct (VOG, see question 3); and an integrity questionnaire.

Reference checks that go back five years are common in the financial services sector.

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Singapore

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Pre-screening measures are only required if the FI employee is going to be involved in the provision of financial services (or other MAS-regulated activities).

Such employees need to pass a fit-and-proper assessment, referring to the MAS Guidelines on Fit and Proper Criteria. Criteria to be considered include the employee's honesty, integrity and reputation; competence and capability; and financial soundness.

In considering the employee's honesty, integrity and reputation, relevant factors include whether the employee has been the subject of proceedings or investigations (whether criminal or disciplinary) or has been dismissed or asked to resign. MAS' Circular CMI 01/2011 also sets out MAS' expectations on due diligence checks, declarations and documentation concerning employees who are expected to be representatives of specific FIs. Among other things, this entails conducting reference checks with the previous employers of the FI's proposed employees.

In December 2023, MAS issued its response to a May 2021 consultation paper which sought to address issues arising from the recycling of "bad apples" through FIs. In doing so, the MAS noted it will proceed with its proposal to impose mandatory requirements to conduct and respond to reference checks. The anticipated reference check regime will apply to specific groups of employees, with the information to be addressed in reference checks standardised. The MAS will look to consult on the relevant draft notices in this respect in due course, and this will bear watching.

For more senior roles (eg, senior managers, material risk personnel, directors, committee members, chairpersons and key executives), FIs are expected to ensure that they are fit and proper for their roles. MAS' prior approval may also have to be obtained or notices may have to be made, depending on the licence, registration and role sought. FIs in these sectors are expected to conduct more rigorous checks before seeking MAS' approval or submitting a notice, with a greater emphasis on considering circumstances that may give rise to a conflict of interest.

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Switzerland

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Under Swiss civil law, there is no requirement to apply pre-screening measures. However, while not a statutory requirement under Swiss financial market laws per se, companies subject to these laws apply pre-screening measures to ensure that a prospective financial services employee meets the requirements set forth by these laws. In particular, regulated companies such as banks, securities firms, insurance companies, fund management companies, managers of collective investment schemes and asset managers are required to obtain authorisation from the Swiss Financial Market Supervisory Authority (FINMA) relating to strategic and executive management and each change thereto.

As a general rule, the higher the responsibility or position of a person, the more requirements financial services employees may need to fulfil. Persons holding executive or overall management functions (eg, a member of the board or members of the senior management) are required to fulfil certain requirements set forth by the applicable Swiss financial market regulations. Such requirements may include providing current CVs showing relevant work experience and education as well as excerpts from the debt and criminal register. It may also include providing various declarations (eg, concerning pending and concluded proceedings, qualified participations and other mandates). Furthermore, financial services employees holding certain control functions (eg, compliance officer, risk officer and their deputies) may also be required to prove that they are suitable for the position by providing, for example, a current CV showing relevant work experience and education.

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In the DIFC, an individual who performs a “licensed function” must be approved in advance by the DFSA.

The roles which fall within the meaning of an authorised person for the DFSA includes someone appointed as:

- the Senior Executive Officer, who has ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) of an authorised firm’s financial services carried on, in or from the DIFC;
- the Finance Officer;
- Compliance Officer; and
- Money Laundering Reporting Officer.

Where a firm proposes to appoint an authorised individual, an application to the DFSA must be made in advance; the DFSA will make an assessment of the individual in order to satisfy itself that they are fit and proper to be an authorised individual. The Regulator will consider the individual’s integrity, competence and capability, financial soundness, their proposed role, and any other relevant matters. That individual may not be considered as fit and proper where they have been declared bankrupt, convicted for a serious criminal offence, or incapable - through mental or physical incapacity - of managing their affairs.

In the ADGM, an individual who performs a “controlled function” must be approved in advance by the ADGM. A controlled function includes someone appointed as the Senior Executive Officer, Finance Officer, Compliance Officer, and Money Laundering Reporting Officer.

Where a firm proposes to appoint someone in a controlled function, an application to the ADGM must be made in advance. The ADGM will make an assessment of that individual in order to satisfy itself that they are fit and proper to be an approved individual. The Regulator will consider the individual’s integrity, competence and capability, financial soundness, their proposed role and any other relevant matters. That individual may not be considered as fit and proper where they have been declared bankrupt, convicted for a serious criminal offence, or incapable - through mental or physical incapacity - of managing their affairs.

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United Kingdom

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For employees subject to the SMR, anyone performing an SMF must be pre-approved by the relevant regulator before they can start their role. Generally, firms that wish to employ a senior manager must first carry out sufficient due diligence to satisfy themselves that the candidate is a fit and proper person to perform their proposed functions. In this regard, firms must consider the individual’s qualifications, training, competency and personal characteristics. The firm must also carry out a criminal records check. They may then apply to the relevant regulator for that candidate’s pre-approval. In the firm’s application, all matters relating to the candidate’s fitness and propriety must be disclosed. The firm must also enclose a statement of that individual’s proposed responsibilities and (depending on the firm) the latest version of the firm’s management responsibilities map.

For employees subject to the CR, before the appointment and annually thereafter, these employees must be certified by the employing SM&CR firm as being fit and proper. Certification does not involve pre-approval by the FCA or PRA.

Additionally, firms must comply with the regulatory reference rules for all candidates subject to either the SMR or CR before their employment. These rules require employing firms to request a regulatory reference from all previous employers covering the past six years of employment. Information must be shared between regulated firms using a particular template, which includes information relevant to assessing whether a candidate is fit and proper. Firms are also expected to retain records of disciplinary and fit and proper findings going back six years for their employees (or longer for findings of gross misconduct), and they must update regulatory references that they have previously given where new significant information comes to light that would impact the content of a previously given regulatory reference.

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United States

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In addition to the standard hiring measures that must be taken when engaging an employee, several additional steps must be taken when engaging financial services employees in the United States. Generally, financial services employees must pass certain screening and disclosure steps, including:

- background checks;
- criminal background disclosures; and
- fingerprinting.

Broker-dealers and investment advisors must register with FINRA (see below).

Background checks

FINRA-regulated entities must investigate each person they plan to register with FINRA to ensure that they meet FINRA Form U4 requirements regarding that person's history of formal charges and indictments.

If the applicant has previously registered with FINRA, broker-dealers must also review an applicant's most recent Form U5 or be able to demonstrate to FINRA that it has made reasonable efforts to review Form U5 but has been unable to do so. If the applicant has previously registered with a CFTC-registered firm, the broker-dealer must review CFTC Form 8-T.

Bank employees must undergo a background check. Certain criminal conduct may statutorily disqualify an applicant from employment. For example, federal law prohibits any person convicted of a criminal offence involving dishonesty or breach of trust (or who has entered into a pre-trial diversion or similar programme regarding such an offence) from serving as a director, officer, or employee of an FDIC-insured bank without the FDIC's consent. Banks must conduct reasonable inquiries into an applicant's background to avoid hiring persons barred from employment by this law. Banks may be protected from claims of disparate impact (under state "ban-the-box" laws) when terminating or withdrawing offers from disqualified employees under this law. Both California and New York explicitly provide such carve-outs. However, these are position-specific rather than employer-specific, and employees with positions not subject to FINRA or other statutorily required background checks or disqualifiers based on criminal history may still be subject to state or local "fair chance" or ban-the-box laws. Therefore, as a best practice, non-bank financial services employers should avoid relying on these exceptions for all of their employees. Relatedly, the FDIC does not consider "de minimus" criminal violations disqualifying, including minor offences by young adults, bad cheques for less than \$1,000 and simple theft of less than \$500.

Fingerprinting

Entities covered by the SEC are also subject to fingerprinting requirements. Every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processor, national securities exchange, and national securities association must ensure that each of its partners, directors, officers, and employees are fingerprinted and must submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for

identification and appropriate processing. Employees who will not be selling, keeping, or handling securities or supervising those who do are exempt from this requirement.

While New York generally prohibits fingerprinting, there is an exception where, as here, fingerprinting is statutorily required.

California Financing Law requires fingerprinting for certain individuals seeking to license in California.

Please note, during the COVID-19 epidemic, the SEC temporarily paused the fingerprinting requirements. This pause was lifted in September 2022.

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