

A world map is centered on the page, rendered in a dark blue color. The map is overlaid with a grid of light blue lines. The map is framed by a dark blue horizontal bar at the top and bottom, and a light green vertical bar on the right side. The text "Preparing for Sweeping New CFTC Rules Affecting Hedge Funds" is centered over the map in a white, sans-serif font.

Preparing for Sweeping New CFTC Rules Affecting Hedge Funds

ROPES
& GRAY



OVERVIEW

Recent legislative and regulatory developments will require a substantial number of hedge fund and other private fund managers to register as a commodity pool operator (“CPO”) or commodity trading advisor (“CTA”) or claim a different exemption from registration than those on which they have been relying. This memorandum provides an overview of CFTC exemption, registration and reporting requirements in the wake of recent developments. Part 1 of this memorandum discusses the types of entities required to register as either a CPO or a CTA and Part 2 summarizes the available exemptions from CPO and CTA registration. Parts 3 and 4 of this memorandum summarize the CPO and CTA registration processes. A timeline summarizing the steps and filings necessary to register as a CPO is attached as Exhibit A. Part 5 discusses new Forms CPO-PQR and CTA-PR, which registered CPOs and CTAs are required to file.


I. BACKGROUND

The Commodity Futures Trading Commission (the “CFTC”) was created in 1974 with a mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act (the “CEA”). The CFTC has delegated many of its responsibilities to the National Futures Association (“NFA”), the futures industry’s self-regulatory organization. The NFA regulates every person who conducts commodity interest business with public customers. A person who operates a commodity pool (*e.g.*, a pooled investment vehicle that is organized for the purpose of, among other things, trading futures contracts or options on futures contracts, and soon to include certain swaps) and solicits funds for that commodity pool is a CPO and, unless an exemption is available, must register. Similarly, any person who for compensation or profit advises others as to the value of or the advisability of, among other things, buying or selling futures contracts or options on futures, and soon to include certain swaps, is a CTA. CTAs are required

to register, unless an exemption is available.

If a fund trades even one commodity interest, or if it holds itself out as being able to do so, CPO/CTA registration will be required unless an exemption applies. If a fund invests in other funds and the other funds trade or can trade futures, the investing fund will itself be required to have a registered CPO and CTA, unless an exemption can be found.

Most swaps will be considered commodity interests. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) expanded the CEA’s statutory definitions of CPO and CTA to include swaps. The statutory definition of “swap” under the CEA is very broad, and includes almost anything commonly known as a swap (interest rate swaps, currency swaps, etc.) and most other over-the-counter derivatives. The new statutory definition of “swap” excludes securities-based swaps (*e.g.*, derivatives based on a single security, a narrow-based security index or a single name credit default swap but not broad-based



indices) and options and forwards on securities. The CEA provisions referencing swaps will become effective upon the earlier of (i) the effective date of final rules defining swaps and related terms, or (ii) December 31, 2012; however, it is possible that this date will be extended. The CFTC has not yet issued its final rules defining swaps.

2. REGISTRATION EXEMPTIONS¹

Historically, many fund sponsors and advisors have been able to take advantage of exemptions from CPO or CTA registration and NFA membership. However, even for fund sponsors and advisors who are able to take advantage of an exemption from CPO or CTA registration, CFTC advertising and antifraud rules remain applicable, as do certain operational requirements (*e.g.*, the fund must be operated as a separate legal entity, monies must be received in the fund's name, the fund's assets may not be commingled, and the fund may not make loans to the CPO or its affiliates). In addition, rules that are applicable to participants in the commodity interest markets, such as position limits, large trader reports, market manipulation and restrictions against United States persons trading certain products, continue to apply.

Exemptions from Registration as a CPO

A. EXEMPTION RELIED UPON BY MANY 3(C)(7) FUND MANAGERS HAS BEEN RESCINDED.

Historically, funds exempt from registration with the Securities and Exchange Commission pursuant to Investment Company Act Section 3(c)(7) ("3(c)(7) funds") have relied on CFTC Rule 4.13(a)(4) to exempt the "fund operator" from registration as a CPO. However, on February 9, 2012, the CFTC announced the rescission of CFTC Rule 4.13(a)(4).


¹ In addition to the exemptions discussed here, non-U.S. managers may be able to utilize relief under part 30 of the CFTC Rules.

Private funds currently operating under the CFTC Rule 4.13(a)(4) exemption have until December 31, 2012 to comply with CFTC rules without relying on CFTC Rule 4.13(a)(4).

B. REVISIONS TO LIMITED TRADING EXEMPTION

Another exemption for private funds, the so-called "Limited Trading Exemption" (CFTC Rule 4.13(a)(3)), has not been rescinded, but has been revised to reflect the inclusion of swaps in calculating the level of commodity interest trading. CFTC Rule 4.13(a)(3) applies to funds which trade a *de minimis* level of commodity interests and are not marketed as vehicles for trading commodity interests. In order to take advantage of CFTC Rule 4.13(a)(3), a fund must meet one of two trading thresholds: (i) the 5 Percent Test, or (ii) the Net Notional Value Test.

In order to qualify under the 5 Percent Test, a fund's aggregate initial margin, premiums, and required minimum security deposit, determined at the time the most recent commodity interest position was established, must not exceed 5 percent of the liquidation value of the fund's portfolio, after taking into account unrealized profits and losses on such positions. In the case of an option that is in-the-money at the time of purchase, the in-the-money amount may be excluded. In order to qualify under the Net Notional Value Test, the aggregate net notional value of the fund's commodity interest trading positions (determined at the time the most recent commodity interest position was established) must not exceed 100 percent of the liquidation value of the fund's portfolio, after taking into account unrealized profits and losses on such positions. A fund may net futures contracts with the same underlying commodity across designated contracts markets and foreign boards of trade, and may net swaps cleared on the same designated clearing organization, where appropriate. Uncleared swaps



(even with the same counterparty) will not be netted. For purposes of calculating the aggregate net notional value, “notional value” means, in the case of:

- Futures – the product of the number of contracts and the size of the contract (in contract units, taking into account any multiplier specified in the contract) by the current price per unit;
- Options – the product of the number of contracts and the size of the contract adjusted by its delta (in contract units, taking into account any multiplier specified in the contract) by the strike price per unit;
- Retail forex – the USD value of the transaction at the time established, excluding the value of offsetting long and short transactions; and
- Cleared swaps – the value pursuant to Part 45 of the CFTC rules.

Following the initial filing to claim the Rule 4.13(a)(3) exemption, the exemption must be renewed annually, following each calendar year-end.

Rule 4.13(a)(3) poses particular challenges for fund-of-funds managers, who require information from underlying portfolio fund managers in order to determine whether a particular fund-of-funds can meet the 5 Percent Test or the Net Notional Value Test. The CFTC has previously issued guidance concerning the application of Rule 4.13(a)(3) in the context of funds-of-funds, but it is expected that new guidance will be issued with respect to revised Rule 4.13(a)(3).

Exemptions from Registration as a CTA

CFTC Rule 4.14(a)(8) provides an exemption from CTA registration provided that the advisor’s commodity interest trading advice is directed solely to: (i) a commodity pool operator who claimed an exemption from registration under CFTC Rule 4.13(a)(4) or Rule 4.13(a)(3), (ii) certain regulated entities, or (iii) funds organized offshore and owned by non-

U.S. persons. Further, an advisor taking advantage of this exemption must not hold itself out as a CTA and must provide commodity interest trading advice solely incidental to its business of providing securities or other investment advice. To claim this exemption, an advisor must file a notice with the NFA no later than the time that it delivers an advisory agreement to the client. The notice is effective upon filing.

If an advisor relies on the exemption in CFTC Rule 4.14(a)(8) for a fund operating under a CFTC Rule 4.13(a)(3) exemption, the advisor will be required to renew its claim of exemption following each calendar year-end. After December 31, 2012, advisors cannot rely on the exemption in Rule 4.14(a)(8) for funds operating under a CFTC Rule 4.13(a)(4) exemption (as the Rule 4.13(a)(4) exemption will no longer be available to funds after December 31, 2012).

However, advisors may be able to rely on an exemption from CTA registration under CEA Section 4m(1)/CFTC Rule 4.14(a)(10) or CEA Section 4m(3).

An advisor may be able to claim an exemption from CTA registration under CEA Section 4m(1)/CFTC Rule 4.14(a)(10) if the advisor: (i) has not provided commodity trading advice to more than 15 persons in the previous 12 months and (ii) does not hold itself out generally to the public as a commodity trading advisor. For purposes of this exemption, a fund generally counts as one client. No filing is required in order to claim this exemption.

An advisor may be able to claim an exemption from CTA registration under CEA Section 4m(3) if the advisor: (i) is registered with the Securities and Exchange Commission as an investment adviser, (ii) its business does not consist primarily of acting as a CTA and (iii) it does not act as a CTA to any commodity pool engaged primarily in trading commodity interests. No filing is required in order to claim this exemption.

3. CPO REGISTRATION

CPO registration will be required for any sponsor of a fund that trades commodity interests or holds itself out as being able to do so and does not have an exemption available. This section describes the registration process.

A. REGISTRATION STEPS

1. File a completed online Form 7-R for each sponsor (typically the general partner). (CFTC Rule 3.10, NFA Registration Rule 204)
2. File a completed online Form 8-R with fingerprint card and pay a fee of \$85 for each “principal” of the firm. In general, a “principal” is a general partner, managing member, director, president, CEO, COO, CCO or CFO, or person in charge of a business unit, division or function subject to CFTC regulation, or a 10 percent or more owner. For purposes of CPO registration, a 10 percent or more owner includes: (i) any individual who directly or indirectly through agreement, holding company, nominee, trust or otherwise, is the owner of 10 percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of 10 percent or more of any class of voting securities, or is entitled to receive 10 percent or more of the profits; (ii) any person other than an individual who is the direct owner of 10 percent or more of any class of securities; or (iii) any person who has contributed 10 percent or more of the capital. (CFTC Rule 3.1(a), NFA Registration Rules 203 and 208)
3. File a completed online Form 8-R with fingerprint card and pay a fee of \$85, and provide evidence from FINRA of proof of passage of the Series 3 exam² within the last two years, for each “associated person” of the firm. In general, an “associated person” is an individual who solicits clients, or who supervises those who do,

² In limited circumstances, the Series 3 exam may not be required.

or who is in the supervisory chain of command. (CFTC Rule 1.3(aa), NFA Registration Rules 203, 206, 224, 401)

4. Branch office managers must submit evidence from FINRA of proof of passage of the Series 30 exam, as well as the Series 3 exam. (NFA Compliance Rule 2-7)
5. Pay a registration fee of \$200 and annual NFA membership dues of \$750.
6. File claims of exemption under CFTC Rule 4.7 or Advisory 18-96 immediately upon registration (if applicable -- see discussion below).

B. CPO RELIEF AVAILABLE UNDER CFTC RULE 4.7

CFTC Rule 4.7(b) provides an exemption from certain CPO disclosure, reporting and recordkeeping requirements otherwise applicable to registered CPOs. The exemption can be claimed only for pools offered and sold solely to qualified eligible persons (“QEPs”) in a private offering which qualifies for an exemption from the registration requirements of the Securities Act of 1933. The definition of a QEP is attached as Exhibit D.

C. CPO RELIEF AVAILABLE UNDER CFTC ADVISORY 18-96

CFTC Advisory 18-96 provides relief from disclosure, reporting and certain recordkeeping requirements to registered CPOs who operate offshore commodity pools. The relief can be claimed only for pools organized and operated outside of the United States that do not hold meetings or conduct administrative activities within the United States. Moreover, no participant in the pool may be a United States person and the pool may not receive any capital directly or indirectly contributed from sources within the United States. Finally, neither the CPO nor its affiliates may undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting United States persons.

D. ONGOING REQUIREMENTS FOR CPOS FULLY EXEMPT UNDER CFTC RULE 4.7 OR ADVISORY 18-96

1. Subject to periodic onsite audits by NFA.
2. Under CFTC Rule 4.7, a CPO which only serves as a CPO with respect to pools whose investors are QEPs is generally exempt from filing (and requiring each investor to acknowledge receipt of) a disclosure document with the NFA. Since QEP by definition includes “qualified purchasers” and “knowledgeable employees,” an entity serving as a general partner only to “3(c)(7) funds” will generally be exempt from the disclosure document requirement, although a prescribed legend is required to be furnished to investors, which legend may be included in the offering documents (and which legend differs from the legend required by CFTC Rule 4.13(a)(4)). (CFTC Rule 4.7)
3. Under CFTC Rule 4.7, a CPO which only serves as a CPO with respect to pools whose investors are QEPs is exempt from certain reporting requirements, but will have to make monthly/quarterly and annual audited financial reports to investors and the NFA; additional quarterly reports of the identity of the pool’s administrator, carrying brokers, trading managers and custodians, and a schedule of investments identifying any investment that exceeds 10 percent of the pool’s net asset value; and quarterly or annual risk reports. (CFTC Rule 4.7, CFTC Rule 4.27, NFA Compliance Rule 2-46)
4. Recordkeeping for the CPO and each pool. (CFTC Rule 4.7)
5. Know-your-customer (NFA Compliance Rule 2-30) and advertising rules (CFTC Rule 4.41, NFA Compliance Rule 2-29); cannot do business with anyone required to be an NFA member but not such a member. (NFA By-law 1101)

6. Mandatory periodic ethics training. (Appendix B to Part 4 of CFTC Rules)

7. Must implement written compliance policies and procedures addressing the above points, and also CFTC Rule 4.16 and NFA Compliance Rule 2-22 (prohibited representations), CFTC Rule 4.20 and NFA Compliance Rule 2-45 (prohibited activities), CFTC Rules Parts 30 (foreign futures and options), 150 (position limits) and 160 (privacy), and NFA Compliance Rules 2-9 (supervision), 2-10 (recordkeeping), 2-29 (communications with the public and promotional material), and 2-38 (business continuity and disaster recovery).

8. If the fund has \$10 million or less in total assets and the fund can trade forex, additional CFTC Rules may apply. (CFTC Rules Part 5)


In addition, Exhibit B sets out the required periodic NFA filings and fees for CPOs.

4. CTA REGISTRATION PROCESS

This section describes the registration process for CTAs unable to claim an exemption from registration.

A. REGISTRATION STEPS

1. File a completed online Form 7-R for the firm. (CFTC Rule 3.10, NFA Registration Rule 204)
2. File a completed online Form 8-R with fingerprint card and pay a fee of \$85 for each “principal” of the firm. In general, a “principal” is a general partner, managing member, director, president, CEO, COO, CCO or CFO, or person in charge of a business unit, division or function subject to CFTC regulation, or a 10 percent or more owner. For purposes of CTA registration, a 10 percent or more owner includes: (i) any individual who directly or indirectly through agreement, holding company, nominee, trust or otherwise, is the owner of 10 percent or more of the



outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of 10 percent or more of any class of voting securities, or is entitled to receive 10 percent or more of the profits; (ii) any person other than an individual that is the direct owner of 10 percent or more of any class of securities; or (iii) any person who has contributed 10 percent or more of the capital. (CFTC Rule 3.1(a), NFA Registration Rules 203 and 208)

3. File a completed online Form 8-R with fingerprint card and pay a fee of \$85, and provide evidence from FINRA of proof of passage of the Series 3 exam³ within the last two years, for each associated person of the firm. In general, an “associated person” is an individual who solicits clients, or who supervises those who do, or who is in the supervisory chain of command. (CFTC Rule 1.3(aa), NFA Registration Rules 203, 206, 224, 401)

4. Branch office managers must submit evidence from FINRA of proof of passage of the Series 30 exam, as well as the Series 3 exam. (NFA Compliance Rule 2-7)

5. Pay a registration fee of \$200 and annual NFA membership dues of \$750.

6. File claims of exemption under CFTC Rule 4.7 immediately upon registration (if applicable).

B. ONGOING REQUIREMENTS FOR CTAS FULLY EXEMPT UNDER CFTC RULE 4.7

1. Subject to periodic onsite audits by NFA.

2. Under CFTC Rule 4.7, a CTA which only serves as a CTA with respect to managed accounts whose owners are QEPs is generally exempt from filing (and requiring each investor to acknowledge receipt of) a disclosure with the NFA, although a prescribed legend is required to be furnished to clients, and clients must consent to their accounts being treated

as exempt accounts.

3. Annual risk reports. (CFTC Rule 4.27)

4. Must comply with know-your-customer (NFA Compliance Rule 2-30), advertising (CFTC Rule 4.41, NFA Compliance Rules 2-29 and 2-34), risk reporting and recordkeeping requirements (CFTC Rule 4.7); cannot do business with anyone required to be an NFA member but not such a member. (NFA By-law 1101)

5. Mandatory periodic ethics training. (Appendix B to Part 4 of CFTC Rules)

6. Must implement written compliance policies and procedures addressing the above points, and also CFTC Rule 4.16 and NFA Compliance Rule 2-22 (prohibited representations), CFTC Rule 4.30 (prohibited activities), CFTC Rules Parts 30 (foreign futures and options), 150 (position limits) and 160 (privacy), and NFA Compliance Rules 2-9 (supervision), 2-10 (recordkeeping), 2-29 (communications with the public and promotional material), and 2-38 (business continuity and disaster recovery).

7. If there are non-eligible contract participant clients that can trade forex, additional CFTC Rules may apply. (See CFTC Rules Part 5)

Exhibit C sets out the required periodic NFA filings and fees for CTAs.

5. CFTC RULE 4.27 AND FORMS CPO-PQR AND CTA-PR

The CFTC recently adopted CFTC Rule 4.27, which will require CPOs and CTAs that are registered (or required to register) with the CFTC to report certain information to the CFTC on Forms CPO-PQR and CTA-PR, respectively. The amount of information a CPO is required to disclose will vary depending on the entity’s assets under management (“AUM”).

³ In limited circumstances, the Series 3 exam may not be required.



In the case of CPOs and CTAs registered or required to be registered with both the CFTC and the SEC (a “Dual Registrant”), the reporting requirements under CFTC Rule 4.27 generally supplement the reporting requirements on SEC Form PF. Nonetheless, Dual Registrants are required to report information to and make filings with both the CFTC and the SEC. However, CPO Dual Registrants will be required to complete only CPO-PQR Schedule A.

In the case of a pool with more than one CPO, the co-CPO with the greater AUM reports the pool on Form CPO-PQR. However, if one co-CPO is a Dual Registrant and is thus only required to file CPO-PQR Schedule A, the other co-CPO must file all other applicable schedules. A fund-of-funds is required to be reported only on Schedule A.

A. EFFECTIVE DATE AND COMPLIANCE DATES

The effective date for CFTC Rule 4.27 is July 2, 2012. The compliance date for CTAs to report information on Form CTA-PR is 90 days after calendar year-end 2012, and the compliance date for filing Forms CPO-PQR will depend on the size of the reporting CPO:

- CPOs with at least \$1.5 billion AUM – 60 days after the end of the CPO’s first calendar quarter ending after July 2, 2012
- CPOs with AUM of less than \$1.5 billion – 90 days after calendar year-end 2012

B. INFORMATION REPORTED ON FORM CPO-PQR

1. Schedule A – to be filed by all CPOs
 - Schedule A seeks basic identifying information about the CPO and each of its pools, including rates of return, service providers, subscriptions, redemption restrictions and high water marks.
 - For purposes of reporting information on Form CPO-PQR, a CPO will be required to aggregate parallel pool structures, parallel managed

accounts and master-feeder arrangements. Further, a CPO may exclude pool assets invested in other pools on a consistent basis, but may not exclude liabilities even if incurred in connection with such investments.

- The information disclosed with respect to rates of return, high water marks, subscriptions, redemptions, marketers and changes in AUM will be kept confidential.

2. Schedule B – to be filed by all midsized CPOs and large CPOs

- Schedule B solicits data about each pool, including each pool’s strategies, borrowings, counterparty exposure, clearing and a schedule of investments.
- All of the information reported on Schedule B will be kept confidential.

3. Schedule C – to be filed by large CPOs

- Schedule C seeks a detailed breakdown of each pool’s investments, liquidity, counterparty exposure, risk metrics, participants, borrowing, derivatives and collateral.
- All of the information reported on Schedule C will be kept confidential.

C. INFORMATION REPORTED ON FORM CTA-PR

- Form CTA-PR seeks the name, number of trading programs, total AUM, total pool AUM, the names of pools and their CPOs.
- The names of the pools and their CPOs will be kept confidential.

* * *

Fund managers that have not begun preparing for the significant changes in CFTC regulation taking place this year should do so now. We would be happy to discuss any questions you may have, at your convenience.

EXHIBIT A

CPO Sample Registration Timeline (Full 4.7 Exemption Claimed)

Date	Task	Notes
Month 1-2	Exams; Fingerprints	<ul style="list-style-type: none"> • Associated persons to take and pass the Series 3⁴ • Branch manager exams: Series 3 and Series 30 • Principals and associated persons to complete fingerprint cards
Month 1-2	Form 8-R Form 7-R	<ul style="list-style-type: none"> • R&G to provide overview of Form 8-R and Form 7-R • Circulate disciplinary questionnaires • R&G to review completed forms • Finalize based on R&G comments • Establish registration account at NFA
Month 1-2	Document Preparation	<ul style="list-style-type: none"> • R&G to review contracts, PPMs, LPAs, subscription documents, marketing materials for CFTC/NFA compliance • Provide comments • Finalize revisions
Month 1-2	Compliance Manual	<ul style="list-style-type: none"> • R&G to draft compliance manual • R&G to receive comments to manual • Finalize compliance manual
Month 3	Implementation	<ul style="list-style-type: none"> • Disclosure • Reporting • Recordkeeping • Policies and Procedures
Month 3	File with NFA	<ul style="list-style-type: none"> • Electronically file Form 7-R and Form 8-R • Manually file fingerprint cards
Month 3-4	NFA Review Period	<ul style="list-style-type: none"> • File 4.7 claims on or before 12/31/12⁵

⁴ The Series 3 exam may be taken up to two years in advance of registration. There is a 30-day waiting period before the second and third attempts to pass the exam and a 180-day waiting period before subsequent attempts. NFA is expected to issue guidance on the timing of submitting applications.

⁵ If a 4.7 claim is filed before 12/31/12, audited financial statements will be required for 2012, unless the NFA issues new guidance to the contrary.

EXHIBIT B

CPO Periodic Obligations (Full 4.7 Exemption Claimed)

What

Annual Questionnaire

Annual Registration Update

Pay NFA Dues

NFA Self-Examination Checklist

Annual Pool Financial Statements to NFA

Annual Pool Financial Statements to Investors

Quarterly Pool Financial Statements to Investors

Quarterly Report to NFA

Privacy Policy to Investors

Test Disaster Recovery Plan and make any necessary adjustments

Provide Ethics Training

File any new Exemption Notices with NFA

Update Questionnaire for pools that have liquidated

Final Annual Report to NFA when a pool ceases trading

Final Annual Report to Investors when a pool ceases trading

File Form CPO-PQR

When

Anniversary date of registration

Anniversary date of registration

Anniversary date of registration

Annually

Within 90 days after the pool's fiscal year-end (fund-of-funds can request an extension for an additional 90 days)

Within 90 days after the pool's fiscal year-end (fund-of-funds can request an extension for an additional 90 days)

Within 30 days after end of each quarter

Within 45 days after end of each quarter

Annually

Annually

Per written ethics training procedures

Prior to any offer or sale of a pool interest

Promptly following liquidation

Within 90 days after permanent cessation of trading

Within 90 days after permanent cessation of trading

Based on AUM



EXHIBIT C

CTA Periodic Obligations (Full 4.7 Exemption Claimed)

What	When
Annual Questionnaire	Anniversary date of registration
Annual Registration Update	Anniversary date of registration
Pay NFA Dues	Anniversary date of registration
NFA Self-Examination Checklist	Annually
Privacy Policy to Investors	Annually
Test Disaster Recovery Plan and make any necessary adjustments	Annually
Provide Ethics Training	Per written ethics training procedures
File Exemption Notice with NFA	Prior to any offer of CTA services
Form CTA-PR	Annually within 90 days of calendar year-end


EXHIBIT D

Qualified Eligible Person Definition

An investor in an exempt pool must meet one of the tests 1-24 below to be a Qualified Eligible Person (a “QEP”).

As used in the tests below, “Portfolio Requirement” means that the investor:

- (a) owns securities (including pool participations) of issuers not affiliated with the investor and other investments with an aggregate market value of at least \$2,000,000; or
 - (b) has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date of sale to the investor of an interest in the exempt pool, at least \$200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or
 - (c) owns a portfolio comprised of a combination of the funds or property described in (a) and (b) above in which the sum of funds or property includable under (a), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under (b), expressed as a percentage of the minimum amount required thereunder, equals at least 100 percent. Example: \$1,000,000 in securities and other property (50 percent of requirement in (a)) and \$100,000 in exchange-specified initial margin and option premiums (50 percent of requirement in (b)).
1. A natural person who is an “accredited investor” as defined under Regulation D of the Securities and Exchange Commission and who satisfies the Portfolio Requirement.
 2. A corporation, Massachusetts or similar business trust, or partnership, limited liability company or similar business venture, other than a pool, which has total assets in excess of \$5,000,000 and is not formed for the specific purpose of participating in the exempt pool, and which satisfies the Portfolio Requirement.
 3. A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible person, and which satisfies the Portfolio Requirement.
 4. An organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”), with total assets in excess of \$5,000,000, and which satisfies the Portfolio Requirement.
 5. An employee benefit plan within the meaning of Employee Retirement Income Security Act of 1974 (“ERISA”), provided that the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is a bank, savings and loan association, insurance company, or registered investment adviser; or an employee benefit plan with total assets in excess of \$5,000,000; or a self-directed plan whose investment decisions are made solely by persons that are qualified eligible persons, and in each case the plan satisfies the Portfolio Requirement.
 6. A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such a plan has total assets in excess of \$5,000,000, and if the plan satisfies the Portfolio Requirement.
 7. An investment company registered under the Investment Company Act or a business development company as defined in Section 2(a)(48) of the Investment Company Act not formed for the specific purpose of investing in the exempt pool, and in each case the company satisfies the Portfolio Requirement.
 8. A bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the “Securities Act”), or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible person, and which satisfies the Portfolio Requirement.



9. An insurance company as defined in Section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible person, and which satisfies the Portfolio Requirement.

10. A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the “Advisers Act”), and which satisfies the Portfolio Requirement.

11. Except as provided for the governmental entities referenced in item 7 above, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state or foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency or department of any of the foregoing, which satisfies the Portfolio Requirement.

12. A “qualified purchaser” as defined in Section 2(a)(51) (A) of the Investment Company Act, or a “knowledgeable employee” as defined in Rule 3c-5 under the Investment Company Act.

13. A trust, not formed for the specific purpose of participating in the exempt pool, in which the trustee or other person authorized to make the investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible person.

14. An organization described in Section 501(c)(3) of the Code, in which the trustee or other person authorized to make the investment decisions with respect to the organization, and the person who established such organization, is a qualified eligible person.

15. An entity in which all of the unit owners or participants are qualified eligible persons.

16. A pool that is operated pursuant to an effective claim for exemption under CFTC Rule 4.7.

17. An entity as to which a notice of eligibility has been filed pursuant to CFTC Rule 4.5 which is operated in accordance with such rule and in which all of the unit owners or participants are qualified eligible persons.

18. A futures commission merchant registered pursuant to Section 4d of the CEA, or a principal thereof.

19. A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, or a principal thereof.

20. A registered commodity pool operator, or a principal thereof, provided that the commodity pool operator has been registered and active as such for two years or operates pools which, in the aggregate, have total assets in excess of \$5,000,000.

21. A registered commodity trading advisor, or a principal thereof, provided that the commodity trading advisor has been registered and active as such for two years, or provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of \$5,000,000 deposited at one or more futures commission merchants.

22. An investment adviser registered pursuant to Section 203 of the Advisers Act or pursuant to the laws of any state, or a principal thereof, provided that the investment adviser has been registered and active as such for two years, or provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of \$5,000,000 deposited at one or more registered securities brokers.

23. Any employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or any other employee of, or agent so engaged by, an affiliate of any of the foregoing (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments), provided that such employee or agent: (i) is an accredited investor; and (ii) has been employed or engaged by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months.

24. A Non-United States person, as defined in CFTC Rule 4.7(a).

Boston

Prudential Tower
800 Boylston Street
Boston, MA 02199
T +1 617 951 7000
F +1 617 951 7050

Chicago

111 South Wacker Drive
46th Floor
Chicago, IL 60606
T +1 312 845 1200
F +1 312 845 5500

Hong Kong

41st Floor, One Exchange Square
8 Connaught Place
Central, Hong Kong
T +852 3664 6488
F +852 3664 6588

London

5 New Street Square
London EC4A 3BF
United Kingdom
T +44 20 3122 1100
F +44 20 3122 1101

New York

1211 Avenue of the Americas
New York, NY 10036
T +1 212 596 9000
F +1 212 596 9090

San Francisco

Three Embarcadero Center
San Francisco, CA 94111
T +1 415 315 6300
F +1 415 315 6350

Shanghai

36F, Park Place
1601 Nanjing Road West
Shanghai 200040 China
T +86 21 6157 5200
F +86 21 6157 5299

Silicon Valley

1900 University Avenue
6th Floor
East Palo Alto, CA 94303
T +1 650 617 4000
F +1 650 617 4090

Tokyo

Yusen Building 2F
3-2 Marunouchi 2-Chome
Chiyoda-ku Tokyo 100-0005 Japan
T +81 3 6259 3500
F +81 3 6259 3501

Washington, D.C.

One Metro Center 700
12th Street, NW, Suite 900
Washington, DC 20005-3948
T +1 202 508 4600
F +1 202 508 4650

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