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COMMENT

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April 28, 2000

Jean A. Webb, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

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Re: Proposed Amendments to Rule 4.7

Dear Ms. Webb:

The Committee on Futures Regulation of this Association (the "Committee") respectfully submits this comment letter to the Commodity Futures Trading Commission (the "Commission") in response to its request for comments concerning its proposed amendments to Commission Rule 4.7 which was published in the Federal Register on March 2, 2000 (65 F.R.11253). The Association is an organization of approximately 21,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable in the field of futures regulation and has a history of publishing reports analyzing critical regulatory issues which affect the futures industry and related activities.

The Committee supports and commends the Commission's efforts to codify through the proposed rule most of the staff's responses to recurrent issues that have arisen under Rule 4.7 since its adoption in 1992. The Commission's staff has expended substantial time over the past eight years in responding to requests for exemption or no action relief from registrants who wish to permit investments in fund or account programs operating pursuant to Rule 4.7 by persons who did not fulfill all of the qualifications to be a qualified eligible participant ("QEP") or a qualified eligible client ("QEC"). Such persons included principals and family members of registrants, employees experienced in the financial arena, trusts in which the settlor and the trustee were QEPs or QECs and various other sophisticated persons. The Committee believes that the expanded categories for QEPs and QECs cover all of the categories that have previously served as the subject of repeated exemptive or no action relief.

The Committee also believes that the proposed rule deserves support because of the substantial steps it makes towards harmonizing regulation under the Commodity Exchange Act with comparable rules under the federal securities laws. Specifically, the proposed rules harmonize Rule 4.7 with the concept of qualified purchasers added to Section 3(c)(7) of the Investment Company Act of 1940 by the National Securities Markets Improvement Act of 1996. The continuing growth of the futures and securities markets, the expanding use of futures and other derivatives by securities investment managers and the expanding use of securities by futures and derivatives managers have reduced the distinctions between markets and investment vehicles. Therefore, the Committee believes that harmonization of regulation and exemptions across the two regulatory regimes will simplify the conduct of business in both.

The Committee supports adoption of the rule in the form proposed with the minor modifications suggested below. Once adopted, the revised rule should simplify considerably the operation of eligible funds and account programs.

With respect to QECs, the Committee believes that the treatment of non-United States persons deserves further consideration. The proposed rule would vary the requirement for disclosure document distribution depending upon the activities of the commodity trading advisor involved in offering the program rather than on the qualifications of a potential investor. That is, those commodity trading advisors with disclosure documents would be required to distribute them to non-United States clients, while those advisors who exclusively dealt with QECs would have no disclosure document delivery requirement for non-United States clients. The result would be that the same client choosing to do business with two different commodity trading advisors might receive disclosure in one case but not in the other, simply because of variations in the manner in which the advisor markets itself to different groups of investors. The Committee believes that the focus of such a significant regulatory requirement should be on the nature of the investor, rather than on the manner in which the commodity trading advisor chooses to conduct its business.

The Committee believes that non-U.S. persons should be included in the definition of QECs. We believe that foreign regulators are uniquely suited to creating and enforcing laws to protect their citizens. Moreover, a commodity trading advisor soliciting non-U.S. persons is subject to the requirements of applicable foreign law, including any mandatory disclosure requirements. In sum, we believe that including non-U.S. persons in the definition of QEC would remove the odd distinction described above as well as the discrepancy between the definitions of QEP and QEC with respect to non-U.S. persons without sacrificing the protective benefit of the CEA and Commission rules.

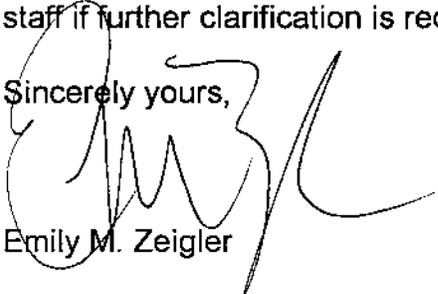
The Committee also questions the exclusion of certain attorneys and other appropriate professionals from the categories of QEPs and QECs. Given the broad scope of relief that is proposed, including, for example, members of the families of certain commodity pool operators ("CPOs") or commodity trading advisors ("CTAs"), the Committee believes that attorneys who are familiar with these types of products from the preparation of disclosure documents and other materials would possess a

higher degree of sophistication and information about them than many family members. The Committee recommends that the Commission consider including as knowledgeable employees, at a minimum, attorneys who supervise the preparation of a CPO's or CTA's disclosure document, and perhaps other professionals whose role and familiarity with the products, in the judgment of the Commission, merit that classification.

Comment was specifically requested on requiring a registrant to have "reasonable belief" as to the QEP and QEC status of its clients. The Committee believes that this is a reasonable addition to the definitions of those categories of investors.

The Association appreciates the opportunity to comment on the proposed rules concerning Commission Rule 4.7 and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised by this letter.

Sincerely yours,



Emily M. Zeigler

**Association of the Bar the City of New York  
Committee on Futures Regulations  
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\* Chair of Subcommittee that drafted this letter of comments.

\*\* Member of the Subcommittee that drafted this letter of comments.

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