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April 28, 2000

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Via Overnight Mail

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

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Re: Comments on a Proposed Rule for Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants and Exemption for Commodity Trading Advisors with Respect to Advising Qualified Eligible Clients

Dear Ms. Webb:

On March 2, 2000, the Commodity Futures Trading Commission ("Commission" or "CFTC") requested comments on a proposed rule for "Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors with Respect to Advising Qualified Eligible Clients." 65 Fed. Reg. 11253. National Futures Association ("NFA") welcomes this opportunity to comment on the proposed rule.

NFA applauds the Commission's efforts to simplify the regulatory framework for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). NFA believes, however, that the Commission's regulations could be further simplified by adopting the uniform definition of sophisticated customer set forth in NFA's "Petition for Rulemaking to Amend CFTC Regulations 1.3, 1.55, 4.7, 35.1, and 36.1." (Letter to Ms. Jean A. Webb from Daniel J. Roth, dated June 5, 1999.) We urge the Commission to take this opportunity to do so.

Under NFA's proposed uniform definition, certain persons would be sophisticated customers, participants, or clients under all Commission regulations that differentiate between persons based on their level of sophistication. Where the nature of the activities being authorized or the relief being provided makes it appropriate, a particular rule would then list additional persons who qualify as sophisticated customers for purposes of that rule. In Rule 4.7, for instance, many of the persons listed in the qualified eligible participant ("QEP") and qualified eligible client ("QEC") definitions would be covered by reference to the rule containing the uniform definition. The



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definitions of QEP and QEC would then list additional persons, including those persons added by the Commission's proposed changes to the rule. As NFA stated in its petition, use of a uniform definition would simplify and clarify the many definitions of sophisticated customer that currently exist and would ease registrants' compliance burdens without sacrificing any regulatory protections.

NFA supports the Commission's broadening of the categories of persons who qualify as QEPs or QECs to cover additional sophisticated customers. However, NFA questions the need for providing two separate definitions of "Portfolio Requirement" – one for QEPs and one for QECs. NFA notes that these definitions are virtually identical except for two references where the QEP definition refers to participants and the QEC definition to clients. NFA believes that the definition could be simplified by merging the QEP and QEC portions into one.¹

Finally, NFA requests that the Commission reconsider its treatment of "non-United States person" for purposes of qualifying as a QEC. Under the proposed regulation, a non-United States person will continue to automatically qualify as a QEP. For purposes of qualifying as a QEC, the Commission has expanded the relief here and allows a non-United States person to automatically qualify as a QEC, but only if all of the CTA's U.S. customers qualify as QECs. If any of those U.S. customers do not qualify as a QEC, the non-United States person will be treated as a QEC only if it would otherwise qualify under the definition. NFA agrees that the relief in this area should be expanded, but we do not believe that the Commission has gone far enough.

NFA fails to understand the logic behind tying a non-United States person's QEC status to whether the CTA has any non-QEC U.S. clients. NFA also disagrees with the Commission's argument that this framework does not impose any additional burdens on the CTA because they would already be subject to the disclosure and recordkeeping requirements with regard to their other non-QEC clients. Following this argument, any CTA with both QEC and non-QEC U.S. customers should be required to treat all U.S. customers as non-QECs. Clearly, the Commission recognizes that imposing the disclosure and recordkeeping requirements for additional customers does impose additional burdens on the CTA. Moreover, from an overall framework approach, NFA see no reason why a non-United States person should be treated differently depending on whether it is dealing with a CPO or a CTA. NFA urges the

¹ If the Commission feels that the regulation needs additional clarification that participants refers to QEPs and clients refers to QECs, this could be done through parenthetical explanation. For example, paragraph (v)(A)(1) could read as follows: "Owns securities (including pool participations) of issuers not affiliated with such participant (for QEPs) or client (for QECs) and other investments with an aggregate market value of at least \$2,000,000."



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Commission to simplify the regulation of this area by treating non-United States persons as QEPs and QECs in all situations.

We appreciate this opportunity to present our views to the Commission and, as always, we look forward to working with the Commission on the important issues raised in this release.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel J. Roth / djr".

Daniel J. Roth
Executive Vice President
and General Counsel

/nam(LTRS:Webb3.caw)