

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-756-3300
Fax: 202-756-3333
www.alston.com

Paul M. Architzel

Direct Dial: 202-756-3492

E-mail: paul.architzel@alston.com

April 21, 2008

VIA E-MAIL

David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Petition Pursuant to Section 4(c) of the Commodity Exchange Act for Exemption from Section 2(a)(1)(C)(iv) of the Commodity Exchange Act and Appendix D to Part 30 of the Rules of the Commodity Futures Trading Commission.

Dear Mr. Stawick:

On behalf of our client Hard Eight Futures, LLC, a registered commodity trading advisor with its principal place of business in the United States (NFA Registration Number 0379919), we respectfully petition the Commodity Futures Trading Commission ("Commission") for exemptive relief pursuant to Section 4(c) of the Commodity Exchange Act, 7 U.S.C. §1 et seq. ("Act") with respect to the transactions described below.

This Petition seeks an exemption which is necessary to promote responsible economic innovation and fair competition. Granting this Petition will enable U.S. appropriate persons as defined in Section 4(c)(3) of the Act¹ to trade futures contracts on stock indexes on certain non-U.S. exchanges in the absence of such foreign boards of trade obtaining from OGC a No-action letter relating to the offer and sale of such contracts to U.S. persons. U.S. eligible contract participants² currently are able to trade contracts, agreements or transactions that replicate futures contracts on such foreign stock indexes in the over-the-counter ("OTC") markets. They may not, however, enter into

¹ 7 U.S.C. §6(c)(3).

² The term "eligible contract participant" (hereafter "ECP") is defined in section 1a(12) of the Act.

futures contracts on the same index traded on a foreign board of trade unless the foreign board of trade has applied for, and has been granted, a No-action letter by OGC.³

Granting this exemptive relief will enable appropriate persons, which this Petition requests the Commission to define as including all ECPs, to trade contracts on a foreign board of trade which are the equivalent to those contracts which ECPs are authorized to trade in the OTC markets. As discussed in greater detail below, the purpose behind the OGC No-action process is in furtherance of Congress' expressed intent "to protect the interests of U.S. residents against fraudulent or other harmful practices."⁴ ECPs, due to their size and sophistication, are not dependent upon the OGC No-action process for protection from fraud. In light of the fact that contracts on foreign stock indexes are already broadly traded in the OTC markets by U.S. persons that are ECPs, we believe that it is very much in the public interest to provide U.S. ECPs the choice to trade foreign stock indexes in a more regulated, transparent exchange environment. No public interest is served in preventing them from doing so.

I. Relief Sought

This Petition seeks an exemption upon claim of notice to the Commission so that appropriate persons may trade on a foreign board of trade futures contracts on indexes of foreign securities that are not security futures products under the same conditions under which they may trade any other futures contract on a foreign board of trade. Currently, no prior qualifying action by the Commission or its staff is required in order for U.S. persons to enter into futures contracts traded on a foreign board of trade. Rather, U.S. customers are permitted to access the products offered by a foreign board of trade through a U.S. registered F.C.M. or IB or through a foreign firm that has received an exemption from registration as a U.S. FCM under 17 C.F.R. §30.10. The petitioned for exemption would require that persons wishing to trade a particular non-narrow based index traded on a foreign board of trade that is not subject to an OGC no-action letter notify the Commission of the person's intent to do so. The notice would require the claimant to demonstrate his or her qualification for the exemption and that the index is not a narrow-based security index. The exemption would be effective with respect to that person and index unless the Commission notifies the person within ten business days that the claimant does not meet the requirements of the exclusion or the index does not qualify under the Act as a non-narrow based index and provides the person with an

³ The OGC No-action procedure, which is discussed in greater detail below, is a substitute means for foreign boards of trade to comply with Section 2(a)(1)(C)(iv)'s prohibition on the general offer and sale of stock index contracts except as permitted under Section 2(a)(1)(C)(ii) of the Act. Section 2(a)(1)(C)(ii) of the Act in turn provides that the Commission may only designate a board of trade as a contract market for contracts on a security index that meet the requirements contained in that provision. *See e.g.* CFTC Letter No. 99-25 (July 14, 1999) at <http://www.cftc.gov/tm/letters/99letters/tm/99-25.htm>. These provisions of the Act were formerly found at Sections 2(a)(1)(B)(v) and 2(a)(1)(B)(ii) respectively. Thus, the OGC no-action process relieves foreign boards of trade from the requirement that they become designated contract markets in order to offer stock indexes traded thereon to U.S. persons.

⁴ H.R. Report No. 97-565, Part I, at p. 85.

explanation of why it considers the person to not be qualified or the index to be narrow-based, respectively.

This Petition requests relief from the requirement that U.S. ECPs may only enter into contracts on a foreign stock index traded on a foreign board of trade if the foreign board of trade has first received a No-action letter of the Office of the General Counsel. This exemption would be available only with respect to contracts traded on foreign boards of trade the regulator of which has entered into a Memorandum of Understanding with respect to information sharing and cooperation with the Commission. This Petition does not seek an exemption from the requirement that a foreign board of trade be granted an OGC No-action letter before the general public is permitted to enter into such foreign stock index contracts. Nor does it seek an exemption from the requirement that such contracts may be traded on a foreign board of trade's U.S. terminals only pursuant to approval under a staff foreign terminals no-action letter.⁵

In order to promote responsible innovation and fair competition, the Petitioners respectfully request that the Commission modify the current OGC No-action letter process by granting an exemption from Section 2(a)(1)(C)(iv) of the Act and 17 C.F.R. Part 30 Appendix D in the following form:

(X) *Exemption for Eligible Contract Participants Trading Non-narrow Based Stock Indexes on a Foreign Board of Trade.* The Commodity Futures Trading Commission, pursuant to its authority under Section 4(c)(1) of the Commodity Exchange Act, hereby determines that notwithstanding the provisions of Section 2(a)(1)(C)(iv) of the Act and Appendix D to Part 30 of its Rules, nothing in the Act is intended to prohibit any "eligible contract participant," as defined in section 1(a)(12) of the Act, located in the U.S. from purchasing or carrying futures contracts on a securities index that is not a "narrow-based index" as defined in Section 1(a)(25) of the Act, traded on or subject to the rules of a foreign board of trade to the same extent such person may be authorized to purchase or carry a futures contract on any other commodity so long as the underlying securities comprising such index are principally traded on, by or through any exchange or market located outside the United States, and the regulator of such foreign board of trade has entered into a Memorandum of Understanding with respect to information sharing and cooperation with the Commission.

(a) *Notification.* Persons wishing to avail themselves of this exemption shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, D.C. headquarters, in electronic form, shall be labeled as "Notification of Trading in a Non-narrow Based Index Traded on a Foreign Board of Trade," and shall include:

⁵ See 71 Fed. Reg. 19877 (April 18, 2006).

(1) The name and address of the person and a representation that the person qualifies as an Eligible Contract Participant and the basis upon which the person so qualifies;

(2) The name of the non-narrow based index and of the foreign board of trade on which the index is traded;

(3) A demonstration that the index is not a “narrow-based index” under the definition of Section 1a(25) of the Act;

(4) A representation that the regulator of the foreign board of trade has entered into an information-sharing agreement with the Commission or to which the Commission is also a signatory.

(b) *Effective date*; The exemption shall be effective ten business days after filing of the notice with the Commission unless the Commission within that period notifies the person claiming the exemption that the exemption may not be made effective with respect to that person and/or that index and its reason for so finding.

II. Standards for Exemptive Relief

The Futures Trading Practice Act of 1992 (the “1992 Act”) added new Section 4(c)(1) to the Act, which provides the Commission with broad exemptive authority. Section 4(c)(1) of the Act provides that the Commission may exempt any contract, agreement or transaction from any of the provisions of the Act (except for the provisions of subparagraphs 2(a)(1)(C)(ii) and (D))⁶ if the exemption is consistent with the public interest.

The Conference Report to the 1992 Act stated that the public interest should include the national public interests of the Act, the prevention of fraud and preserving the financial integrity of the markets, in addition to promotion of responsible economic or financial innovation and fair competition.⁷ The Commission must also assess “the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants.⁸ In considering fair competition, the Commission must “implement this provision in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike.” The Commission must also determine that the contract, agreement or transaction for which relief is granted “will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act. The Conferees noted that in making this determination, the Commission should consider the impact of the exempt

⁶ This Petition seeks an exemption from the requirement of Section 2(a)(1)(C)(iv) of the Act.

⁷ House Conference Report No. 102-978 to H.R. 707, p.78.

⁸ *Id.*

product on such regulatory concerns as “market surveillance, financial integrity of participants, protection of customers and trade practice enforcement.”⁹ The Commission was also instructed to apply section 15 to its consideration of exemptive orders.¹⁰

III. Foreign stock indexes and the OGC No-action process

The Futures Trading Act of 1982, Pub. Law 97-444, 96 Stat.2294 (“82 Act”), established the treatment of foreign stock index contracts under the Act through the addition of two separate provisions of the Act--the Shad-Johnson jurisdictional accord found in Section 2(a)(B) of the Act and a new section 4(b) of the Act.

The Shad-Johnson accord continued the Commission’s exclusive jurisdiction over futures contracts on broad-based security indexes. Section 2(a)(B)(v) as added by the 82 Act provided that “no person shall enter into or confirm the execution of” a stock index contract except as provided by Section 2(a)(B)(ii). The House Committee on Agriculture explained that new Section 2(a)(B)(ii) of the Act provided that no board of trade may be designated as a contract market with respect to such broad-based security indexes unless it demonstrates to the Commission that 1) the contract is cash settled; 2) trading in the contract would not be readily susceptible to manipulation; and 3) such index is a widely published measure of the market for all publicly traded equity or debt issues or a substantial segment thereof.¹¹ Section 2(a)(B) therefore did not distinguish between the offer and sale of stock index contracts to U.S. persons traded on U.S. markets from those traded on foreign markets.

The 82 Act also clarified the Act’s applicability with respect to foreign boards of trade in new Section 4(b). As the House Committee on Agriculture explained, “Section 4(b) expressly empowers the Commission to protect the interests of United States residents against fraudulent or other harmful practices by a vendor of foreign futures who

⁹ *Id.*

¹⁰ In order to afford the Commission and its staff the flexibility to determine the most appropriate procedure for considering the requested relief, this letter also requests in the alternative that the relief being sought be provided under Commission rule 140.99. If the Commission were to conclude for any reason not to exercise its Section 4(c) authority in order to grant the requested relief, it would also be appropriate for OGC to consider granting the requested relief through the amendment of the current OGC No-action policy with respect to the offer and sale of foreign stock indexes. The current OGC No-action policy was adopted many years prior to the Commission’s grant of exemptive authority under Section 4(c) of the Act. Accordingly, the OGC No-action procedures could be modified as requested by this Petition under Rule 140.99 and such a modification would not be dependent upon an Order of the Commission under Section 4(c) of the Act to be made effective. In any event, the standards for issuing a Section 4(c) Order are also instructive with respect to, and support equally, granting the requested relief under Commission Rule 140.99.

¹¹ H.R. Rep. No. 97-565, Part I, at 81. The last criterion was amended by the Commodity Futures Modernization Act of 2000, which substituted the requirement that the index not constitute a narrow-based security index.

is located in the United States. . . .”¹² Section 4(b) also provides, however, that the Commission may not adopt a rule that requires approval of a foreign contract or governs in any way a rule of a foreign board of trade. As the Committee explained, Section 4(b):

does not authorize the commission to regulate the internal affairs of a foreign board of trade, exchange, market, or clearing house for such market (such as terms and conditions of foreign futures created by a foreign exchange) or require Commission approval of any action of any such market or its clearinghouse.

However, nothing in the provisions prevents a foreign board of trade from applying to the Commission for certification that its futures contracts conform with requirements of this Act where, by its terms, the Act establishes minimum requirements for a specifically identified contract. For example, a foreign board of trade may seek certification from the Commission that a futures contract offered by it that is based upon a group or index of American securities meets the minimum requirements specified in subparagraphs (a) through (c) of section 2(a)(1)(B)(ii) of the Act, without seeking or obtaining designation by the Commission as a contract market. Any such certification is to be conducted under the procedures, and subject to the rights of other persons, set forth in the provision of the Act establishing such minimum requirements. A futures contract, based upon a group or index of foreign securities only, could be certified by the Commission under such criteria as the Commission may deem appropriate. Upon certification by the Commission, the minimum requirements for such contract will be deemed to have been met, and the offering and sale of the contract in the United States, its territories or possessions will be lawful so long as such activity complies with the regulations of the Commission adopted under section 4(b) and the Act.

House Report No. 97-565 (1982) at p. 85. Thus, Congress distinguished the Commission’s interest in the offer and sale in the U.S. of contracts on indexes on U.S. securities from indexes on foreign securities.

The Commission has not adopted the certification procedure suggested by the Committee as a means of confirming which foreign security indexes can be offered and sold to U.S. persons consistent with Section 4(b)’s regulatory interest in protecting U.S. persons from fraudulent or other harmful practices. Rather, OGC has established a process wherein it issues a No-action letter with respect to requests from foreign exchanges to confirm that a foreign security index may be offered or sold within the United States.¹³ Under that process, OGC, exercising its discretion, has determined to

¹² *Id.* at 85.

¹³ See <http://www.cftc.gov/international/foreignmarketsandproducts/filingreqs.html> and 17 C.F.R. Part 30, Appendix D.

apply the same criteria to foreign stock indexes as the Act applies to stock indexes on domestic securities.

Subsequent to the Act's inclusion of the Shad-Johnson accord and Section 4(b) and the establishment of the OGC No-action process with respect to foreign stock indexes, the Congress on December 21, 2000, enacted into law the Commodity Futures Modernization Act of 2000, 114 Stat. 2763 ("CFMA"). The CFMA introduced a system of tiered regulation of the regulated futures markets. It also excluded from regulation certain contracts, agreements or transactions in "excluded commodities," which include security indexes.¹⁴ Section 2(d) of the Act excludes from the Act contracts, agreements and transactions in security indexes (an excluded commodity) that are entered into by ECPs and not executed on a trading facility. Under the terms of this exclusion, therefore, ECPs are free to trade foreign stock indexes in the OTC markets, including on a principal-to-principal basis on an electronic trading facility, with no required Commission approval or procedure.

Although the CFMA did not make major changes with respect to the framework of regulation that applies to broad-based security indexes, it did establish a new regulatory framework which applies to security futures products, that is, futures contracts on single stocks and narrow-based indexes. In adopting the framework for security futures products, Congress extended the CFMA concept of tiered regulatory treatment to security futures products traded on foreign boards of trade. Specifically, Congress refrained from imposing additional U.S. regulatory requirements for security futures products on foreign securities traded on a foreign exchange with respect to transactions by ECPs. Specifically, new Section 2(a)(1)(F)(ii) provides:

Nothing in the Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.

IV. The Petition satisfies the Standards for Relief under Section 4(c)

A. The Proposed Relief is Consistent with the Public Interest and the Purposes of the Act

One of the fundamental purposes of the Act is "to provide a means for managing and assuming price risks, discovering prices, or disseminating pricing information

¹⁴ Section 1a(13) of the Act.

through trading in liquid, fair and financially secure trading facilities.”¹⁵ The proposed relief from OGC’s No-action procedure will enable U.S. ECPs to trade contracts on foreign stock indexes that are currently available in the OTC markets in a more regulated and secure exchange environment on the same basis as they are able to trade any other commodity futures contract on a foreign exchange. This is consistent not only with the fundamental purpose of the Act, but it is consistent with the changes to the Act made by the CFMA.

Neither the Commission nor OGC reexamined OGC’s No-action procedures which apply to broad-based foreign stock indexes following enactment of the CFMA.¹⁶ Such a reexamination is highly appropriate in light of the profound changes made to the regulatory framework by the CFMA. In this regard, the CFMA’s nuanced approach to the regulatory treatment of security futures contracts traded on a foreign board of trade or foreign market should also be applied to the security indexes that are within the Commission’s exclusive jurisdiction. Specifically, Section 2(a)(1)(F)(ii) provides that an ECP may purchase or carry a security futures product on a foreign security traded on a foreign board of trade under the same conditions that pertain to purchasing or carrying any other foreign security.¹⁷ It is noteworthy that in crafting Section 2(a)(1)(F)(ii) Congress relied upon two factors—the provision extends only to U.S. ECPs and it differentiates between contracts traded on a foreign board of trade whose underlying security is principally traded on a foreign exchange from contracts whose underlying security is traded principally on a U.S. exchange. The relief this Petition seeks relies upon these same two factors. It would be consistent with this provision of the Act for the Commission to permit ECPs to access a broad-based security index, which is a commodity under the Commission’s exclusive jurisdiction, under the same conditions and procedures which apply to any other commodity.

The Petition also includes as a condition of the exemptive relief that the foreign securities index may not be a “narrow-based index” within the definition of Section 1(a)(25) of the Act and that a Memorandum of Understanding for information sharing and cooperation be in place between the Commission and the regulator of the relevant foreign board of trade. These conditions have been applied by OGC in approving foreign stock indexes under its No-action procedures and their inclusion within the terms of the exemptive relief assures the Commission that the foreign indexes that will qualify for the

¹⁵ Section 3 of the Act.

¹⁶ OGC’s No-action guidance was first added as 17 C.F.R. Part 5, Appendix E in 1999. 64 *Fed. Reg.* 29217 (June 1, 1999). Following enactment of the CFMA, this guidance was merely re-designated as 17 C.F.R. Part 40 Appendix C. 66 *Fed. Reg.* 42255 (August 10, 2001). In 2002 the Commission made technical changes to the OGC No-action guidance to reflect the CFMA’s revision of the criteria for determining what indexes would be considered to be “non-narrow-based” indexes. 67 *Fed. Reg.* 62873 (October 9, 2002). In 2003, the Commission added an introductory section providing an explanation of how the information submitted is used and by deleting some information that was no longer used. 68 *Fed. Reg.* 33623 (June 5, 2003). All of these amendments were technical in nature and none re-examined the no-action process in light of the fundamental structural changes to futures regulation made by the CFMA.

¹⁷ 2a(1)(F)(ii) of the Act.

exemption are similar in nature to those which have been approved by OGC in the past under its No-action procedure.

Moreover, the Petition provides that the exemption shall be subject to the filing of a notice by the person claiming the exemption. This notice provides the Commission an opportunity within ten days to notify the requesting person of its determination that the person or the index does not meet the eligibility requirements of the exemption. In this way the Commission can be assured that only eligible persons claim the relief and that the index for which the exemption is claimed meets the statutory definition of “non-narrow index.”

B. The Proposed Relief is Consistent with the Prevention of Fraud

The proposed relief is consistent with the prevention of fraud in two ways. First and foremost, by its terms, the relief only applies to ECPs. ECPs are by definition the largest and most sophisticated market participants. It is highly likely they have the knowledge and economic resources to protect themselves from fraud. In reliance on this fact, Congress has excluded or exempted ECPs from many of the Act’s protections. Accordingly, the requested relief, because it applies only to ECPs is consistent with the prevention of fraud. Equally important, however, under the proposed relief, ECPs would continue to access broad-based security indexes on foreign securities traded on foreign boards of trade under the conditions which apply to all other commodities. As noted above, foreign futures can be accessed by U.S. persons through U.S. registered FCMs or IBs or through foreign firms that have been exempt from registration based upon the comparability of the regulatory framework to which they are subject. Accordingly, even though ECPs are sophisticated traders with sufficient resources to protect themselves from fraud, under the proposed relief they nevertheless will benefit from the protections of the regulatory framework through the requirement that they trade on foreign boards of trade through U.S. registrants and comparably regulated non-U.S. firms.

C. The Proposed Relief will Preserve the Financial Integrity of the Markets and Participants

The proposed relief will provide ECPs the choice to trade contracts for broad-based security indexes on foreign securities in an exchange environment, which includes the financial protections of clearing. Such contracts are available to ECPs today in the OTC markets. In this regard, although clearing of OTC energy contracts is well established, OTC synthetic stock index contracts generally are not cleared. Accordingly, granting the proposed relief will, for the first time, provide U.S. ECPs the ability to enjoy the financial integrity protections of exchange traded contracts for foreign stock index contracts that are today available to them on the OTC markets. The proposed relief will further the financial integrity of the markets by providing ECPs with the choice to trade on exchange. This will no doubt enhance the competitiveness of foreign boards of trade,

and potentially increase liquidity on these markets, thus reinforcing their financial integrity and promoting competition.

D. The Proposed Relief Will Not have a Material Adverse Impact on the Commission or on Contract Market Regulatory or Self-Regulatory Responsibilities

Granting the relief requested will not have a material adverse effect on the Commission's regulatory program or on the self-regulatory program of any contract market or foreign board of trade. To the contrary, by providing U.S. ECPs with a choice to trade such contracts on a foreign board of trade, potentially more information concerning their activities will be available to self-regulators and, through its information sharing agreements, to the Commission. In the absence of this relief, U.S. ECPs will continue to have no choice in certain markets but to continue trading in the unregulated OTC markets. Moreover, the Petition would require that in order to claim the exemption, persons file a notice with the Commission. This will provide the Commission with an opportunity to ensure that the claim is properly claimed both with respect to the status of the claimant's status as an ECP and with respect to the contract not being a narrow-based contract. Thus, granting this relief is certain to assist the relevant authorities, including the Commission, in carrying out their regulatory and self-regulatory functions.

E. The Proposed Relief Will Promote Responsible Economic or Financial Innovation and Fair Competition

The Proposed relief will further responsible innovation and fair competition by removing a regulatory obstacle to U.S. ECPs being able to trade on foreign markets. Moreover, the proposed relief would permit futures contracts on broad-based indexes on foreign securities traded on a foreign board of trade to be traded in an equivalent manner to the manner in which security futures products on foreign securities traded on a foreign market are treated under the Act. The Act specifically provides that ECPs should be able to trade or carry foreign security futures products to the same extent that they may carry foreign securities. The Proposed relief would permit broad-based foreign stock indexes to compete on a similar basis, permitting ECPs to enter into such contracts to the same extent that they are authorized to trade other futures contracts.

For the foregoing reasons, granting the requested relief is also appropriate under Section 15 of the Act, which instructs the Commission to take the least anticompetitive means of achieving the purposes of the Act. As noted above, the OGC No-action procedure is unnecessary to protect ECPs from fraudulent sales activities and granting the requested relief will serve to increase competition in the markets for foreign stock indexes.

* * * * *

The current OGC No-action procedure was established in response to the 1982 Amendments to the Act and has operated without modification since that time. However, the CFMA made a number of profound changes to the structure of the Act. Under the CFMA's changes, ECPs are authorized to trade foreign stock index contracts in the OTC markets. Nevertheless, they are prevented from trading such contracts on exchange, unless the foreign board of trade first obtains a No-action letter from OGC. Moreover, the CFMA, in enacting the regulatory scheme for security futures products, ensured that ECPs would be able to enter and carry foreign security futures products on the same basis they are permitted to enter into or carry foreign securities.

In light of these changes introduced by the CFMA, the Commission should reconsider the OGC No-action procedure with respect to futures contracts on security indexes that are not security futures products. Modifying the OGC No-action procedure to provide an exemption therefrom for ECPs so that they can enter into and carry positions in foreign security indexes on the same basis as other foreign futures contracts is consistent with the conditions for exemption under Section 4(c) of the Act and with the changes to the Act made by the CFMA and is in the public interest. Failure to grant the proposed relief will have the perverse effect of depriving ECPs from being able to choose to trade such contracts in the safer, more regulated exchange environment.

For the foregoing reasons, we respectfully request that the Commission grant the proposed relief.

Respectfully submitted,



Paul M. Architzel

cc: Hard Eight Futures, LLC
Brendon Weiss
Chairman Lukken
Commissioner Dunn
Commissioner Chilton
Commissioner Sommers
Terry Arbit, General Counsel

Certification Pursuant to Commission Rule 140.99(c)(3)(i)

The undersigned hereby certifies that the material facts set forth in the attached letter, dated April 21, 2008, are true and complete to the best of my knowledge.

Pursuant to Commission Rule 140.99(c)(3)(ii), Hard Eight Futures, LLC hereby undertakes that, if at any time prior to the issuance of such no-action letter(s), any material representation made in this letter ceases to be true and complete, it will promptly inform the Commission staff in writing of any material change in facts and circumstances.

Hard Eight Futures, LLC

Dated: April 21, 2008

By: _____

Title:

LEGAL02/30535793v3


Certification Pursuant to Commission Rule 140.99(c)(3)(i)

The undersigned hereby certifies that the material facts set forth in the attached letter, dated April 21, 2008, are true and complete to the best of my knowledge.

Pursuant to Commission Rule 140.99(c)(3)(ii), Hard Eight Futures, LLC hereby undertakes that, if at any time prior to the issuance of such no-action letter(s), any material representation made in this letter ceases to be true and complete, it will promptly inform the Commission staff in writing of any material change in facts and circumstances.

Hard Eight Futures, LLC

Dated: April 21, 2008

By: 

Title: *managing member*

LEGAL02/30535793v3
