§ 4.6 Exclusion for certain otherwise regulated persons from the definition of the term “commodity trading advisor.”

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term “commodity trading advisor:

(1) An insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof; 
Provided, however, That its commodity interest advisory activities are solely incidental to the conduct of the insurance business of the insurance company as such; and

(2) A person who is excluded from the definition of the term “commodity pool operator” by §4.5; 
Provided, however, That:

(i) Its commodity interest advisory activities are solely incidental to its operation of those trading vehicles for which §4.5 provides relief; and

(ii) Where necessary, prior to providing any commodity interest trading advice to any such trading vehicle the person files a notice of eligibility as specified in §4.5 to claim the relief available under that section.

(3) A swap dealer registered with the Commission as such pursuant to the Act or excluded or exempt from registration under the Act or the Commission’s regulations; 
Provided, however, That the commodity interest and swap advisory activities of the swap dealer are solely incidental to the conduct of its business as a swap dealer.

(b) Any person who has claimed an exclusion under this §4.6 must submit
§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

This section is organized as follows: Paragraph (a) contains definitions for the purposes of § 4.7; paragraph (b) contains the relief available to commodity pool operators under § 4.7; paragraph (c) contains the relief available to commodity trading advisors under § 4.7; paragraph (d) concerns the Notice of Claim for Exemption under § 4.7; and paragraph (e) addresses the effect of an insignificant deviation from a term, condition or requirement of § 4.7.

(a) Definitions. Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term qualified eligible person with respect to those persons who do not need to satisfy the Portfolio Requirement and paragraph (a)(3) of this section contains the definition of the term qualified eligible person with respect to those persons who must satisfy the Portfolio Requirement. For the purposes of this section:

(i) In general—(i) Affiliate of, or a person affiliated with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) Exempt account means the account of a qualified eligible person that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(iii) Exempt pool means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) Non-United States person means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity. Provided, That units of participation in the entity held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of part 4 of the Commission’s regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) Portfolio Requirement means that a person:

(A) Owns securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least $2,000,000;

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums, together with required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) for commodity interest transactions; or