

Response to Section 2(d) refusal:

Applicant respectfully disagrees that the cited G GEMSTONE registration and newly cited GEMSTONE registration are a bar to registration of the GEMSTONE FINANCIAL ENGINEERING service mark. The overall differences between the marks, services, channels of trade and consumers are such that confusion is not likely.

Applicant has further amended the services by specifically excluding the "Real estate investment services" covered by the cited registrations, as well as "Real estate securities", which the Trademark Office argues are encompassed by "real estate investment services." This amended recitation of services further distinguishes Applicant's services from those of the cited registrations. By specifically excluding these services, Applicant's services, as identified, are distinct from the services identified in the cited registrations. In effect, Applicant's services explicitly do not encompass, and are not in any way related to, real estate investment services and real estate securities. As a fiduciary to its customers (see further below), Applicant is not allowed to offer services with which it has no professional expertise. Applicant has no experience offering real estate-related services and therefore would be legally barred from providing such services. For more information on Applicant, *see* <https://www.efficient.com/>.

As previously pointed out to the Trademark Office, the sophistication of the consumers of Applicant's services is an important factor in determining likelihood of confusion. The level of sophistication of the marketplace in which Applicant's services are offered necessarily involves investors that are sophisticated, which would exclude the general public. Evidence of the sophistication of Applicant's investors is discussed below.

Applicant's customers are the investors in the private investment funds Applicant manages as the Funds' investment manager and operator (collectively, the "Funds" and each, a "Fund"). The Funds are considered commodity pools (similar to a hedge fund) and are domiciled in the United States or in various tax-efficient jurisdictions outside of the U.S., as applicable. For Applicant to act as the investment manager and operator to the Funds, Applicant is (1) registered with the Securities and Exchange Commission ("SEC") as an investment adviser, (2) registered with the Commodity Futures Trading Commission ("CFTC") as a commodity pool operator and commodity trading advisor, and (3) a member of the National Futures Association ("NFA"). *See*, SEC Investment Advisor Firm Summary at <https://adviserinfo.sec.gov/firm/summary/287958> and NFA BASIC Registration Database at <https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid=7kZggFTak8c%3D>. In these regulated capacities, Applicant is considered a fiduciary to its Funds and held to a strict duty of care, acting only in the best interest of the Funds and their investors, minimizing conflicts of interest, and providing full and fair disclosure of all material facts necessary for the investor to make an investment decision. *See generally* Investopedia - What Are Some Examples of Fiduciary Duty? at <https://www.investopedia.com/ask/answers/042915/what-are-some-examples-fiduciary-duty.asp>

The Funds are not allowed to be offered for sale to the public. Rather, the Funds may be offered only on a "private placement" basis to financially sophisticated investors in reliance on applicable exemptions from applicable securities and commodity futures laws and regulations. Under this private placement exemption, Applicant is not permitted to advertise the Funds to investors generally ("general solicitations" are not permitted). Instead, Applicant is required to have a "pre-existing relationship" (as contemplated by SEC guidance) with a prospective investor before an offer of a Fund's shares can be made to that investor. Shares of the Funds are not listed for sale to the public on any stock exchange, broker platform, or other easily accessible medium. Instead, Shares can only be purchased directly from the Fund, after the investor and its professional advisors (legal counsel, tax advisors, investment consultants, etc.), undertake due diligence on the Fund and the Applicant before making an investment, which can take multiple weeks up to and exceeding a year, depending on the investor's requirements and practices. *See generally*, SEC Investor Bulletin: Private Placements Under Regulation D at https://www.sec.gov/oiea/investor-alerts-bulletins/ib_privateplacements.html; and CFTC Advisory: Seeing Commodity Pools More Clearly at https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/seeing_commodity_pools_clearly.htm.

If the investor ultimately determines to invest, the investor then must make certain written representations and warranties, and provide certain required information, to Applicant in the Fund's Subscription Documents, which demonstrate the investor's financial sophistication, including in particular each of the following:

- A. That the investor has such knowledge and experience in financial and business matters, including investments of this kind, that the Subscriber is financially sophisticated and capable, either alone or with its financial adviser(s), of evaluating the merits and risks of this investment and making an informed investment decision; AND
- B. That the investor is an "Accredited Investor" as such term is defined in Regulation D under the Securities Act of 1933 (generally, individuals with at least \$200K annual income [or \$300K together with spouse's income] or a net worth [exclusive of home] exceeding \$1M); AND
- C. That the investor is a "Qualified Eligible Person" as such term is defined in Regulation 4.7 under the Commodity Exchange Act (generally, individuals who own at least \$2M in securities investments or who have on deposit in commodity futures investments at least \$200K in futures margin or options premium, or certain regulated financial industry professionals) (a higher standard than accredited investor, alone).

Attached are excerpts from a representative Subscription Agreement for one of Applicant's Funds (Efficient Diversified Fund, LLC), which contains the discussed requirements. (Attachment A). Many additional customary representations, warranties and undertakings are required of the investor in the Subscription Agreement, which are not reflected in Attachment A. (A Fund's Subscription Documents are lengthy, complicated documents, running to 100 pages or more). In addition, prospective investors receive and review a number of other legal offering

documents, including the Fund's Private Placement Memorandum and the Applicant's SEC-mandated investor disclosure brochure (Form ADV Part 2). These documents are required to provide specific information and satisfy various legal and regulatory standards.

Beyond the foregoing investor sophistication requirements, the Funds' investors as a practical matter generally are limited to institutional and professional investors from the US and globally (pension plans, foundations, endowments, other investment funds) and other high net worth investors (such as family offices). This is so given the nature of the Funds' investment strategies, which are limited to investments in complicated instruments such as futures, options, foreign currencies and other derivative contracts (sometimes referred to as "managed futures"). The Funds do not invest in instruments that are commonly invested in by the general public (like publicly traded mutual funds, index funds or direct holdings of common stock). The performance of the Funds' managed futures strategies are designed to be non-correlated to the performance of the general stock market, and by doing so appeal to those classes of investors who attempt to diversify their existing stock holdings and access strategies that provide positive returns when the stock market is flat or down. The Funds' investors all already have very large investment portfolios held with a variety of other advisors or managed internally (multiple millions of dollars into the billions in total invested assets). Investors who do invest in the Funds are making a long-term investment decision, and the Funds are intended to be "buy and hold" investments (stretching many months into years). It can be said that these investors, then, are among the world's most sophisticated.

What the foregoing clearly demonstrates is that purchasers of Applicant's services do not (and legally cannot, for the reasons stated above) include the general or "retail" public. Here the standard of care for purchasing Applicant's services are that of sophisticated and knowledgeable investors. This high standard of care exercised by potential consumers of Applicant's services minimizes the likelihood of confusion with the cited marks.

As explained in the Trademark Manual of Examining Procedures at §1207.01(d)(vii):

"Circumstances suggesting care in purchasing may tend to minimize the likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (finding that, "even in the case of the least sophisticated purchaser, a decision as important as choosing a senior living community will be made with some thought and research, even when made hastily")."

Similarly, for the reasons stated above, a decision as important as investing in the Funds are made with thought and research, including determining in advance the nature and source of the services and the credentials of the providers of the services. The evidence Applicant has provided shows that Applicant's services are offered and rendered under conditions that involve "careful, sophisticated purchasing." TMEP §1207.01.

Here the evidence of record demonstrates that: (1) purchasers of Applicant's services are required to meet certain regulatory standards for financial sophistication due to Applicant's registrations with its government regulators, the SEC, the CFTC, and the NFA; (2) Applicant's services are not purchased on a whim without first carefully and painstakingly determining in advance the nature and source of the services and the credentials of the providers of the services; and (3) the Funds' investors are limited to a narrow class of very large, private institutional, professional and high net worth investors, not the general or "retail" public. Where, as here, "only very sophisticated purchasers are here involved who would buy with great care and unquestionably know the source of the goods", there is no likelihood of confusing the source of those services merely by reason of any supposed similarity between GEMSTONE FINANCIAL ENGINEERING and the cited marks. *In re N.A.D.*, 754 F.2d at 1000.

Where the services are different, the consumers are sophisticated and knowledgeable, and the services are not purchased on impulse, any alleged similarity between the marks is not enough to support a likelihood of confusion determination.

The dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression tip the balance in favor of finding no likelihood of confusion. The Trademark Office's belief that Applicant's mark is similar to the cited marks is only based on the presence of the term "Gemstone." To reach its finding, the Trademark Office has impermissibly parsed out and ignored part of Applicant's mark, a practice that is contrary to established precedent. It is well settled that marks must be compared as a whole, rather than by breaking them apart and looking at their component parts for comparison. *Recot Inc. v. M.C. Becton*, 54 USPQ2d 1894 (Fed. Cir. 2000) (reversing the Board for improperly dissecting marks to determine if the commercial impression was confusing); *In re National Data Corp.*, 224 USPQ 749, 751 (Fed. Cir. 1985) ("Likelihood of confusion cannot be predicated on dissection of a mark, that is, only on part of a mark."); *Massy Junior College, Inc. v. Fashion Institute of Technology*, 181 USPQ 272, 273-274 (CCPA 1974) ("That the marks must be considered in their entireties in determining whether there is likelihood of confusion or mistake is a basic rule in comparison of marks."). The impression created by the mark as a whole is what is important. When GEMSTONE FINANCIAL ENGINEERING is viewed in its entirety, the differences between Applicant's mark and the cited marks are such that confusion is not likely.

Applicant's mark GEMSTONE FINANCIAL ENGINEERING is different in appearance, sound and meaning from the cited marks. While the marks may incorporate the word "Gemstone", that is where any alleged similarity ends. Applicant's mark consists of three distinct words; the cited marks are a letter and a word, or a single word. The marks also sound different when they are spoken. Phonetic differences can be enough to avoid confusion. *The Coca-Cola Co. v. Essential Products Co., Inc.*, 164 USPQ 628 (CCPA 1970).

Applicant's mark also has a different meaning and creates a different commercial impression from the cited mark, particularly when the marks are considered in relation to the relevant services. Using the definition from the first Office Action, "Financial Engineering" means using "math to solve financial problems." The allusion is that consumers can solve their

financial problems and increase the value of their investments by using Applicant's services. This connotation is supported by the definition of "Financial Engineering" relied on by the Trademark Office, and Applicant's services, which feature a "fee structure that transfers risk from investor to investment manager." The same commercial impression is not created by the cited marks, and the Trademark Office has not argued to the contrary.

A difference in commercial impression has been found to be sufficient to support a finding of no likelihood of confusion, even where the marks at issue have phonetic and visual similarities. *In re Nobody's Perfect Inc.*, 44 USPQ2d 1054, 1057 (TTAB 1997) ("[N]otwithstanding the substantial phonetic and visual similarities in the respective marks and the closely related nature of applicant's services and registrant's goods, ..., in light of the significant differences in connotation, [NOBODY'S PERFECT] is sufficiently distinguishable in commercial impression from [NO BODY'S PERFECT] that confusion as to origin or affiliation is not likely."); *Kellogg Co. v. Pack'em Enterprises, Inc.*, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive."); *Keebler Co. v. Murray Bakery Products*, 9 USPQ2d 1736, 1739 (Fed. Cir. 1989) (the "more important fact for resolving the issue of likelihood of confusion ... is the dissimilarity in commercial impression between the marks."). Here, all three elements - appearance, sound, and commercial impression - are different.

A weighing of the relevant factors clearly establishes that GEMSTONE FINANCIAL ENGINEERING is not likely to be confused with the cited marks. Overall Applicant's mark is different from the cited marks. Applicant's services specifically exclude the relevant cited services. Applicant's services are purchased not on impulse, but under conditions that involve careful, sophisticated purchasing. And Applicant's consumers are sophisticated, knowledgeable investors, and do not include the general public. The weight of each of these factors favor a finding of no likelihood of confusion as to the source or sponsorship of Applicant's services. The Section 2(d) refusal should be withdrawn.

For all the foregoing reasons, Applicant respectfully requests that the Section 2(d) refusal and the cited registrations be reconsidered and withdrawn, and the application be approved for publication.

ATTACHMENT A

APPENDIX 1 TO EXHIBIT A
OF
EFFICIENT DIVERSIFIED FUND, LLC

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SUBSCRIBER
All Subscribers please review

The Subscriber (a) has received and carefully read the Subscription Agreement and a copy of the Memorandum and the LLC Agreement, and fully understands them and agrees to all of the terms and provisions contained therein, including the calculation and payment of fees, (b) has carefully reviewed and understands the various risks of an investment in the Fund, including those described in the Memorandum, and is aware that an investment in the Fund involves a high degree of risk, (c) has such knowledge and experience in financial and business matters, including investments of this kind, that the Subscriber is financially sophisticated and capable, either alone or with its financial adviser(s), of evaluating the merits and risks of this investment and making an informed investment decision, (d) has not relied upon a Purchaser Representative (as defined in Regulation D under the U.S. Securities Act of 1933, as amended, the “**Securities Act**”) in determining whether to invest in the Fund, (e) has determined that an investment in the Fund is a suitable investment for it and it can afford to bear the risks of an investment in a speculative venture such as the Fund having the risks and objectives of the Units, including the risk of losing all or a substantial portion of its entire investment, (f) meets the suitability requirements set forth in the Memorandum, and the Subscriber is both an “accredited investor”, as such term is defined in Regulation D under the Securities Act, and is a “qualified eligible person” or “knowledgeable employee”, as such terms are defined in Rule 4.7 promulgated under the U.S. Commodity Exchange Act, as amended (“**CEA**”), and has on Appendix 3 and Appendix 4 indicated the basis on which the Subscriber qualifies as an accredited investor and a qualified eligible person (or knowledgeable employee), respectively, (g) has reviewed and understands the Manager’s Privacy Policy as set forth in the Memorandum, (h) is not precluded by law, contract, judgment, order, consent decree, settlement agreement or otherwise from purchasing Units, (i) understands the restrictions on the transferability of the Units described in the Memorandum and will not transfer any Units without the consent of the Fund, which consent may be granted or withheld in its sole discretion, (j) understands that the Units cannot be resold unless the Units are registered under the Securities Act and applicable state securities laws or the transfer is exempt therefrom, such transfer is in compliance with the Memorandum and as described herein and any other applicable law, (k) the Subscriber and each Beneficial Owner, if the Subscriber is an Intermediary, is acquiring the Units for the Subscriber’s or each Beneficial Owner’s own account, for investment purposes only, and not with a view to or for the resale or distribution or fractionalization hereof, in whole or in part, and the Subscriber has no present intention to, and presently does not have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant any participation in, or otherwise distribute any Units to any such third Person, and no other Person has a direct or indirect beneficial interest in the Units (other than the Beneficial Owners if the Subscriber is an Intermediary), (l) was not formed for the specific purpose of investing in the Fund and the investment in the Fund will not be allocated to only some of the Beneficial Owners of the Subscriber, and (m) is not precluded by law, regulation, contract, judgment, order, consent decree, settlement agreement or otherwise from purchasing Units.

APPENDIX 3 TO EXHIBIT A
OF
EFFICIENT DIVERSIFIED FUND, LLC

ACCREDITED INVESTOR CERTIFICATION
To be completed by all Subscribers

You must qualify as both an Accredited Investor and a Qualified Eligible Person (please refer to Appendix 4) in order to invest in the Fund.

With respect to your qualification as an Accredited Investor, check all that are applicable:

- The Subscriber hereby represents and Warrants that the Subscriber is an Accredited Investor as defined under Regulation D of the Securities Act, as amended (“Regulation D”), because Subscriber is [check all as applicable]:**
- (a) An individual Subscriber who has, or an Individual Retirement Account (“IRA”), a Keogh Plan covering only a self-employed individual or a self-directed account of a one member retirement plan whose beneficial owner has, a net worth or joint net worth with that person’s spouse at the time of his or her subscription hereunder in excess of \$1,000,000. For purposes of calculating net worth, (i) such person’s primary residence shall not be included as an asset, (ii) indebtedness that is secured by such person’s primary residence, up to the estimated fair market value of the primary residence at the time of his or her subscription hereunder, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of his or her subscription hereunder exceeds the amount outstanding 60 days prior to such subscription, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability), and (iii) indebtedness that is secured by such person’s primary residence in excess of the estimated fair market value of the primary residence at the time of his or her subscription shall be included as a liability.
- (b) An individual Subscriber who has, or an IRA, a Keogh Plan covering only a self-employed individual, or a self-directed account of a one member retirement plan whose beneficial owner has, an income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and who reasonably expects an income in excess of the same income level in the current year.
- (c) A corporation, Massachusetts or similar business trust, a partnership, a limited liability company or a similar organization, not formed for the specific purpose of making this investment, with total assets in excess of \$5,000,000.
- (d) An entity in which all of the equity owners are Accredited Investors under Rule 501 of Regulation D.
- (e) A trust with total assets in excess of \$5,000,000, not formed for the specific purpose of making this investment, the investments of which are directed by a person with knowledge and expertise in financial and business matters, as described in Rule 506(b)(2)(ii) of Regulation D.
- (f) A bank, savings and loan association, broker, dealer, insurance company, registered investment company, business development company, licensed small business investment company or private business development company (as such terms are defined under applicable sections of the Securities Act of 1933, as amended, the U.S. Securities Exchange Act of 1934, as amended, the U.S.

Investment Company Act of 1940, as amended, the U.S. Investment Advisers Act of 1940, as amended or the U.S. Small Business Investment Act of 1958, as amended).

- (g) An employee benefit plan within the meaning of ERISA if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser.
- (h) An employee benefit plan within the meaning of ERISA or a plan established and maintained by a state or its political subdivisions or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, in each case with total assets in excess of \$5,000,000.
- (i) An employee benefit plan within the meaning of ERISA which is completely self-directed and whose investment decisions are made by a person who is an "Accredited Investor" under Regulation D.
- (j) An organization described in Section 501(c)(3) of the Code, not formed for the specific purpose of making this investment, with total assets in excess of \$5,000,000.
- (k) Any director or executive officer of the Fund or the Manager, or an IRA for the benefit of any such person.
- (l) Other (please explain): _____

OR

The Subscriber is not an Accredited Investor.

APPENDIX 4 TO EXHIBIT A
OF
EFFICIENT DIVERSIFIED FUND, LLC

QUALIFIED ELIGIBLE PERSON CERTIFICATION
To be completed by all Subscribers

If Subscriber is a commodity pool, please provide name of the commodity pool operator:

With respect to your qualification as a Qualified Eligible Person, check all that are applicable:

Subscriber hereby represents and Warrants that Subscriber is a Qualified Eligible Person (“QEP”) within the meaning of CFTC Rule 4.7 under the U.S. Commodity Exchange Act, as amended (“CEA”) because it qualifies under I and II, or III below.

I. Subscriber satisfies one or more of the following [check applicable sections]:

- (a) Owns securities and other investments with an aggregate market value of at least \$2,000,000 (excluding interests in issuers with which Subscriber is affiliated, as defined in Exhibit I to this Appendix 4).
- (b) Has, or has had, on deposit for its own account with a futures commission merchant at any time during the preceding six months, \$200,000 or more in exchange-specified initial margin and option premiums for commodity interest transactions, together with required minimum security deposit for Retail Forex Transactions, as defined in Exhibit I to this Appendix 4.
- (c) Has a portfolio comprised of a combination of the investments specified in (a) above and the margin and premium specified in (b) above such that the sum of the combination equals, as a percentage of each of the minimum required investments and margin and option premiums, at least 100% (e.g., investments of \$1 million (50%) and margin and option premiums of \$100,000 (50%)).

AND

II. Subscriber is one of the following [check applicable sections]:

- (a) An Accredited Investor as set forth in sub-sections (a), (b), (c), (e), (f), (g), (h), (i) or (j) of the Accredited Investor Certification - Appendix 3 (other than an investment company or business development company formed for the specific purpose of making this investment or a licensed small business investment company). *If Subscriber is a broker or dealer or a commodity pool operator, please go to section III(b) or (c).*
- (b) A pool, trust, insurance company separate account or bank collective trust, (i) that has total assets in excess of \$5,000,000, (ii) that is not formed for the specific purpose of making this investment, and (iii) whose investment is directed by a QEP (other than a person who qualifies as a QEP under section III(g)(ii) or (h)(iii)).
- (c) An employee benefit plan within the meaning of ERISA (as defined below) so long as (i) the investment decisions are made by a plan fiduciary (as defined in 3(21) of ERISA) that is also a bank, savings and loan association, insurance company, or registered investment adviser, or (ii) the

plan has total assets in excess of \$5,000,000, or (iii) the plan is self-directed and its investment decisions are made by a person who is a QEP.

- (d) A government entity (including the United States, a State, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing, except for (i) plans established and maintained by a State, its agencies or subdivisions for the benefit of employees, with total assets which do not exceed \$5,000,000, or (ii) plans which are not otherwise authorized by law to engage in such transactions.

OR

III. Subscriber is one or more of the following [check applicable sections]:

- (a) A futures commission merchant registered pursuant to section 4d of the CEA, or a principal (as defined in Exhibit 1 to this Appendix 4) of such futures commission merchant.
- (b) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal (as defined in Exhibit 1 to this Appendix 4) of such broker or dealer.
- (c) A commodity pool operator registered pursuant to section 4m of the CEA that (i) has been registered and active as such for two years or (ii) operates pools which, in the aggregate, have total assets in excess of \$5,000,000, or a principal (as defined in Exhibit 1 to this Appendix 4) of such a commodity pool operator.
- (d) A commodity trading advisor registered pursuant to section 4m of the CEA that (i) has been registered and active as such for two years or (ii) 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, or a principal (as defined in Exhibit 1 to this Appendix 4) of such a commodity trading advisor.
- (e) An investment adviser, registered pursuant to section 203 of the Investment Advisers Act of 1940 or the laws of any state, that (i) has been registered and active as such for two years or (ii) 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, or a principal (as defined in Exhibit 1 to this Appendix 4) of such an investment adviser.
- (f) A “qualified purchaser” as defined in section 2(a)(51)(A) of the U.S. Investment Company Act of 1940, as amended.
- (g) (i) A “knowledgeable employee” as defined in Exhibit 1 to this Appendix 4; or
(ii) An immediate family member of a “knowledgeable employee” who has been directed to the investment by such knowledgeable employee.
- (h) (i) A commodity pool operator, commodity trading advisor or investment adviser for the Fund, or an affiliate (as defined in Exhibit 1 to this Appendix 4), of any of the foregoing (collectively, “**Fund Professionals**”);
(ii) A principal (as defined in Exhibit 1 to this Appendix 4), or its affiliate, of the Fund or a Fund Professional (a “**Principal of a Fund Professional**”); or
(iii) An immediate family member of a Fund Professional or a Principal of a Fund Professional who has been directed to this investment by such person.
- (i) A trust not formed for the specific purpose of participating in the Fund so long as (i) the trustee or other person authorized to make investment decisions with respect to the trust is a QEP, and (ii) each settlor or other person who has contributed assets to the trust is a QEP.

(j) An organization described in section 501(c)(3) of the Code, so long as the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a QEP.

(k) A retail foreign exchange dealer registered pursuant to section 2(c)(2)(B)(i)(II)(gg) of the CEA, or a principal thereof.

(l) A swap dealer registered pursuant to Section 4s(a)(1) of the CEA, or a principal thereof.

(m) An entity in which all of the unit owners or participants are QEPs.

(n) Other (please explain): _____

EXHIBIT 1 TO
APPENDIX 4 - QUALIFIED ELIGIBLE PERSON CERTIFICATION

QEP-RELATED DEFINITIONS

“**Affiliate**” of a specified person for purposes of section III(h) to the Qualified Eligible Person Certification, or a person “affiliated” with a specified person for purposes of section I(a), 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.

“**Knowledgeable employee**” for purposes of section III(g) means:

- (a) an employee of the Fund who is:
 - (i) an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Fund or an Affiliated Management Person of the Fund; or
 - (ii) an employee of the Fund or an Affiliated Management Person of the Fund (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the Fund, other Covered Companies or investment companies, the investment activities of which are managed by such Affiliated Management Person of the Fund, provided that such employee has been performing such functions and duties for or on behalf of the Fund or the Affiliated Management Person of the Fund, or substantially similar functions or duties for or on behalf of another company, for at least 12 months;
- “**Covered Company**” means a company formed under section 3(c)(1) or 3(c)(7) of the U.S. Investment Company Act of 1940, as amended.
- “**Affiliated Management Person**” means an affiliated person, as such term is defined in section 2(a)(3) of the U.S. Investment Company Act of 1940, as amended, that manages the investment activities of a Covered Company. For purposes of this definition, the term “investment company” as used in section 2(a)(3) of the U.S. Investment Company Act of 1940, as amended, includes a Covered Company.
- (b) an employee of the Fund, its affiliate or Fund Professional (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the Fund, other commodity pools operated by the pool operator of the Fund or other accounts advised by the trading advisor or the investment adviser of the Fund, or by the affiliate; provided, that such employee has been performing such functions and duties for or on behalf of the Fund, its affiliate or Fund Professional, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months; or
 - (c) any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for the Fund, its affiliate or Fund Professional (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 as set forth in sub-sections (a) or (b) of the Accredited Investor Certification - Appendix 3; and

(ii) has been employed or engaged by the Fund, its affiliate or Fund Professional, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months.

“Principal” for purposes of sections III(a), (b), (c), (d), (e), (h), (k) and (l), when referring to a person that is a principal of a particular entity, means:

- (a) any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;
- (b) any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; or
- (c) any person who has contributed ten percent (10%) or more of the capital of the entity.

“Retail Forex Transaction” for purposes of section I(b) means any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the CEA. A Retail Forex Transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a contract market designated pursuant to section 5(a) of the CEA.