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CFTC Rule 4.7

VIA E-MAIL AND FEDERAL EXPRESS

October 9, 2023

U.S. Commodity Futures Trading Commission
Market Participants Division
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
Attention: Amanda Olear, Director
Emails: MPDLetters@cftc.gov

Subject: Request to Treat Certain Employees of a Registered Commodity Pool Operator as “Qualified Eligible Persons” Pursuant to 17 C.F.R. § 4.7(a)(2)(viii)(A)(4)

Dear Ms. Olear:

We are counsel to Two Sigma Investments, LP (“Two Sigma Investments” and, collectively with its affiliates, “Two Sigma,” and, each, a “Two Sigma Entity”),¹ a registered commodity pool operator (“CPO”). We are writing in connection with entities currently operated by Two Sigma as “employees’ securities companies” as defined in Section 2(a)(13) of the Investment Company Act of 1940, as amended (“1940 Act”) pursuant to Section 6(b) and Rule 6b-1 of the 1940 Act (each such entity, an “ESC” and together, the “ESCs”).

On Two Sigma’s behalf, we request exemptive relief from the tenure conditions set forth for employees in the definition of “Qualified Eligible Person” (“QEP”) under CFTC Rule 4.7(a)(2)(viii)(A)(4) (the “QEP Tenure Conditions”) so that Two Sigma may operate the ESCs under the operational exemption in CFTC Rule 4.7(b) and accept investments from certain senior employees (the “Modeling and Engineering Officers”). As discussed below, the QEP Tenure Conditions generally limit the availability of QEP status to employees with financial services experience. However, as an investment manager that conducts process-driven, systematic investment management by performing quantitative analysis to build mathematical strategies, Two Sigma employees (including many Modeling and Engineering Officers) often have backgrounds working in technology-related

¹ Two Sigma Investments’ NFA identification number is 0333133. One such affiliate is Two Sigma Advisers, LP, whose NFA identification number is 0420715.

fields outside of the financial services sector. Requiring Two Sigma to deprive existing and prospective Modeling and Engineering Officers of investment opportunities in the ESCs runs counter to the purposes of CFTC Rule 4.7.

I. Background

A. Two Sigma; Modeling and Engineering Officers

Two Sigma is an investment management firm with approximately \$59.9 billion in assets under discretionary management across affiliates as of October 1, 2023.

Two Sigma is an investment management firm that specializes in process-driven, systematic investment management, generally by performing quantitative analysis to build mathematical strategies that rely on patterns inferred from data in evaluating prospective investments.

Accordingly, Two Sigma recruits heavily from the technology industry and employs rigorous employment criteria for its personnel, including for the “Modeling and Engineering” group. Modeling and Engineering at Two Sigma is responsible for a variety of critical activities at the firm and comprises the majority of Two Sigma’s research and development personnel. While Modeling and Engineering as a whole consists of over 1,500 individuals with a wide range of financial, technical, and academic backgrounds, fewer than 20% of this already sophisticated population (*i.e.*, the Modeling and Engineering Officers) currently satisfy the seniority requirements imposed by Two Sigma for participation in an ESC.

Given the technology-driven nature of Two Sigma’s investment management business, it is common for Two Sigma’s Modeling and Engineering Officers who are otherwise highly sophisticated and/or integral to Two Sigma’s continued success not to have prior experience in the financial services sector. However, the skills and knowledge that they previously developed are meaningful and important in informing the work they do at Two Sigma and their understanding of Two Sigma’s investment activities and processes. In some cases, these skills can be better developed outside of financial services companies. However, while Modeling and Engineering Officers may not always have a traditional financial service background, they can often have extensive technology, business, and/or finance education and experience that adds to Two Sigma’s differentiated business strategy and can provide a competitive advantage to Two Sigma and the products it manages.

Once at Two Sigma, Modeling and Engineering Officers engage in a variety of activities that are critical to systematic investment management. For example, roles within Modeling and Engineering include, but are not limited to, equities and macro research, portfolio management, trading, trading engineering, modeling engineering, data engineering and other engineering roles.

B. The ESCs

Two Sigma began operating employee investment vehicles as ESCs following its filing of an application (the “Application”) to the U.S. Securities and Exchange Commission (“SEC”) for an ESC exemptive order pursuant to Section 6(b) and 6(e) of the 1940 Act on June 30, 2017. Rule 6b-1 of the 1940 Act permitted the operation of ESCs while such requested exemptive order was pending, and on April 22, 2020, the requested exemptive order

was granted in accordance with the Application, as amended.² Two Sigma currently operates three ESCs, two of which it operates in reliance on CFTC Rule 4.7(b) as discussed below, and may also operate additional ESCs in the future for the benefit of its employees. The ESCs are part of Two Sigma's program designed to create capital building opportunities for certain of its employees that are competitive with those at other comparable firms and to promote the recruitment and retention of high caliber professionals. For purposes of this request for relief, the ESCs discussed herein refer to those ESCs Two Sigma operates in reliance on CFTC Rule 4.7(b).

The ESCs invest all or substantially all of their assets in various private investment vehicles that are managed by Two Sigma ("Underlying Funds"). The Underlying Funds are operated by Two Sigma in reliance on CFTC Rule 4.7(b) and/or CFTC Rule 4.13(a)(3). Because such ESCs are operated as funds-of-funds, and invest in Underlying Funds that are operated by Two Sigma in reliance on CFTC Rule 4.7(b) and/or CFTC Rule 4.13(a)(3), or could invest in commodity interests directly, the ESCs are considered "pools" as defined in CFTC Rule 4.10(d)(1).

To date, the ESCs have only admitted as investors Two Sigma employees (and trusts or vehicles organized by or for the benefit of such persons) who meet specific firm seniority requirements and were at the time of investment (i) "accredited investors" as defined under Regulation D of the Securities Act of 1933 Act, as amended ("1933 Act") ("Accredited Investors") and (ii) QEPs.

The firm seniority requirements imposed by Two Sigma have limited the availability of the ESCs to senior officers of the firm. With respect to the employees subject to this request for relief, these are the Modeling and Engineering Officers described above, which currently account for under 20% of Two Sigma's Modeling and Engineering headcount. Additionally, because the relief requested herein is only applicable to employees that do not meet the QEP Tenure Conditions (*i.e.*, employees with less than 24 months of financial services experience), and because most senior officers at Two Sigma have achieved their level of seniority after many years at the firm, the requested relief relates to a relatively small subset of Two Sigma's current employee base. Specifically, currently fewer than 2.5% of Two Sigma's Modeling and Engineering personnel are Modeling and Engineering Officers that have not been employed by Two Sigma for 24 months or longer.

All investors in the ESCs (i) receive extensive offering materials comparable to materials Two Sigma provides to third-party investors in externally-offered funds, (ii) receive additional documentation regarding certain "Frequently Asked Questions" regarding an investment in the ESC, (iii) receive audited financial statements prepared in accordance with CFTC Rule 4.7(b)(4) on an annual basis, (iv) receive monthly account statements prepared in accordance with CFTC Rule 4.7(b)(3), and (v) have access to additional reporting regarding the performance of the ESC. Notably, these materials meet or exceed the disclosure and reporting requirements of CFTC Rule 4.7.

An investor's investment in an ESC does not terminate automatically upon termination of the investor's employment relationship with and/or departure from Two Sigma, though Two Sigma may opt to compulsorily withdraw any such investor's interests at the time of or following such termination and/or departure in its discretion. Further, investors are generally able to withdraw from the ESCs in accordance with such entities' withdrawal terms, which are on at least a monthly basis upon thirty (30) days' notice.

² Investment Company Act Release No. 33846.

Two Sigma has been operating the ESCs under the operational relief available for certain CPOs in CFTC Rule 4.7(b) with additional investor reporting available to participants as described herein. Members of the ESCs are not and will continue not to be permitted to sell, assign, or otherwise transfer their interests, in whole or in part, to any person without the prior written consent of such ESC's managing member.

C. Challenges Posed by CFTC Rule 4.7

CFTC Rule 4.7(b) provides operational relief from otherwise applicable disclosure, reporting, and recordkeeping requirements to a registered CPO where the CPO offers or sells participations in a pool solely to QEPs in an offering which qualifies for exemption from registration requirements of the 1933 Act or pursuant to Regulation S. CFTC Rule 4.7(a) sets forth various ways that an individual or entity may qualify as a QEP.

Assuming they do not otherwise qualify as a QEP, employees of a CPO may qualify via the QEP Tenure Conditions set forth in CFTC 4.7(a)(2)(viii)(A)(4). However, the QEP Tenure Conditions contemplate a more traditional means of achieving relevant employment experience and do not reflect the increasingly technical backgrounds of individuals involved in a process-driven, systematic investment manager like Two Sigma. The QEP Tenure Conditions generally require 24 months of prior employment at a financial services company.³

If a Modeling and Engineering Officer's previous employer was not "engaged in providing commodity interest, securities or other financial services," such Modeling and Engineering Officer would not be able to satisfy this 24-month QEP Tenure Condition except through service at Two Sigma. However, Two Sigma considers the Modeling and Engineering Officers to be serving in integral functions to its overall business in a far more sophisticated capacity than clerical, secretarial or administrative functions. Accordingly, CFTC Rule 4.7(a)(2)(viii)(A)(4) does not account for a complex, multi-line investment advisory business that needs high-caliber professionals with relevant prior work experience that may have been garnered outside of the financial services industry to run its overall business.

Because certain Modeling and Engineering Officers that are permitted to invest in the ESCs under the Application may not satisfy the QEP Tenure Conditions, but for the relief requested herein, Two Sigma is required to restrict such employees' ability to invest in the ESCs, notwithstanding the somewhat broader scope of eligible employees under the Application. Any such restriction negates the terms of, and certain benefits Two Sigma has obtained under, the Application and the related employees' securities company exemptive relief under the 1940 Act.

³ Specifically, under this provision, with respect to an exempt pool, the term QEP includes in relevant part "any other employee of . . . the exempt pool or the [CPO], [CTA] or investment adviser of the exempt pool, or any other employee of . . . an affiliate of any of the foregoing." Such an employee must also: (i) be an Accredited Investor; and (ii) have "been employed or engaged by the exempt pool, [CPO], [CTA], investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months." (emphasis added) The employee may not be performing solely clerical, secretarial or administrative functions with regard to one of the listed persons or its investments.

II. Request for Relief

A. Relief is Not Contrary to the Purpose of Rule 4.7 or to the Public Interest

Two Sigma believes that it would be appropriate and not contrary to the goals that the CFTC stated for Rule 4.7 for the CFTC to grant exemptive relief to Two Sigma for purposes of treating Modeling and Engineering Officers as QEPs notwithstanding the QEP Tenure Conditions. Two Sigma believes this would be appropriate in light of (i) the senior roles of the Modeling and Engineering Officers, (ii) the eligibility requirements imposed under the Application and certain more stringent eligibility requirements and limits on investment in the ESCs that Two Sigma imposes, (iii) the unique nature of an employees' securities company operated by an investment manager, and (iv) the availability of the exemptions from the 1940 Act for the ESCs.

CFTC Rule 4.7 was intended, in relevant part, (i) to “reduc[e] unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria . . . , do not appear to need the full protections offered by the [CFTC P]art 4 framework” and (ii) to coordinate with SEC rules applicable to private offerings exempt from registration so that “most qualifying offerings may operate under an exemption from otherwise applicable requirements” of both the CEA and securities laws.⁴ Moreover, in proposing and adopting CFTC Rule 4.7(a)(2)(viii)(A)(4), the CFTC reiterated that its reasons for proposing and adopting this and certain other elements of the QEP definition were to “reduce unnecessary regulatory prescriptions” with respect to persons who do not need the full CFTC Part 4 protections and to harmonize its regulations with then-recently adopted relief for private funds for investments by certain employees under Section 3(c)(7) of the 1940 Act.⁵ While ESCs rely on a different exemption from the 1940 Act than private funds, they are similar vehicles to private funds in practice due to the broad relief from the requirements of the 1940 Act that is afforded in each instance.

In addition, we acknowledge that the qualifying criteria for QEPs under CFTC Rule 4.7 were intended to be objective indications that the potential investors had “a relatively high degree of investment acumen and resources.”⁶

Analysis of First Stated CFTC Goal for CFTC Rule 4.7: Two Sigma believes that, in the unique situation of an ESC, the senior roles of the Modeling and Engineering Officers and the eligibility restrictions imposed by Two Sigma above and beyond the minimum SEC requirements (*e.g.*, by limiting investment to senior officers of Two Sigma rather than employees as a whole) and investment limits provide clear indications of investment acumen as it relates to Two Sigma's methods of operation and resources sufficient to evidence that the Eligible Employees do not “need the full protection offered by the CFTC Part 4 framework.” In this regard, Two Sigma submits that:

First, Modeling and Engineering Officers possess the sophistication necessary to understand and assess the proposed investments, and the related risks of investing, in the ESCs. For example, Two Sigma believes that the technical background that Modeling and Engineering Officers possess, while not contemplated by the QEP Tenure Conditions, will often help these Eligible Employees to understand the systematic strategies and techniques employed by the Underlying Funds and the risks attendant thereto.

⁴ 57 Fed. Reg. 3148, 3150 (Jan. 28, 1992).

⁵ 65 Fed. Reg. 11253, 11259 (Mar. 2, 2000), 65 Fed. Reg. 47848, 47849 (Aug. 4, 2000) (“2000 Adopting Release”).

⁶ 57 Fed. Reg. 34853, 34855 (Aug. 7, 1992).

Second, employees investing in an ESC of an investment manager are generally closer to the operation of the company than would be the case for other employees' securities companies because the entity is operated by the investment manager rather than by a third-party manager. Depending on the employees' roles, the employees frequently have access to information relating to their investments in employees' securities companies and/or investment strategies, operations or processes more generally. This relationship clearly distinguishes an investment management company's employees' securities company from pools that are employees' securities companies of operating companies that are not in the investment management business. This close relationship to its employees—closer than is required by Section 2(a)(13) of the 1940 Act—significantly reduces the Modeling and Engineering Officers' need for the disclosure and reporting requirements and other protections which would apply to an ESC that is a pool absent the CFTC Rule 4.7 relief.

Finally, the Modeling and Engineering Officers that invest in the ESCs would still have the full protections granted under CFTC Rule 4.7 (*i.e.*, the disclosure, reporting and recordkeeping requirements that are conditions to reliance on CFTC Rule 4.7) along with access to additional reporting that Two Sigma makes available to ESC investors.

Analysis of Second Stated CFTC Goal for CFTC Rule 4.7: Allowing Two Sigma to treat the Modeling and Engineering Officers as QEPs eligible to invest in the ESCs on day one of working for Two Sigma, rather than needing to wait up to 24 months after they are hired, would serve the goal of creating consistency with the SEC exemptions available to the ESCs.

Finally, granting Two Sigma's requested exemptive relief would not be contrary to the public interest. Financial services is increasingly reliant on expertise obtained in the technology sector. It is in the public interest that individuals possessing this expertise enter the financial services sector, particularly investment management firms that serve a wide variety of investors including pension plans, university endowments, and charities. As explained above, this relief does not limit the protections provided to Modeling and Engineering Officers and instead allows Two Sigma to offer employment opportunities that are more competitive and thereby provide investors with the benefit of the expertise of those individuals.

B. Relief is Consistent with Prior CFTC No-Action Relief

Prior CFTC No-Action relief has permitted the treatment of non-QEP employees of CPOs and other types of companies as QEPs in a variety of relevant contexts, including in the context of ESCs, and this request is consistent with those CFTC determinations. An evaluation of such No-Action relief letters reveals a pattern of such relief being granted where sophisticated employees who are not QEPs agree to be treated as QEPs. In these letters, the employee investors also continued to receive all other protections from the Commodity Exchange Act. Additionally, certain letters demonstrate that the CFTC Staff has been willing to provide relief in respect of senior employees in technological and mathematical fields.

CFTC Letter 00-68 is particularly analogous to Two Sigma's request. In that instance, the CFTC Staff permitted a CPO to treat certain of its non-QEP employees as if they satisfied the QEP requirements of Rule 4.7(a). Notably, relief was granted to two employees with mathematical and information technology experience responsible for running and maintaining a fund's nonlinear mathematical portfolio management system, despite the fact that both employees had less than two years of employment experience with the fund. The CFTC Staff stated that "[t]he purpose of Rule 4.7 is to 'reduc[e] unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the rule, do not appear to need the full protections

offered by the Part 4 framework” and went on to find that it “would not be contrary to the public interest or the purposes of Rule 4.7(a)” to allow these types of employees to invest in the fund in question as if they were QEPs. In our view, a reasonable interpretation of this relief is a recognition by the CFTC Staff that employees with employment history and training in the fields of mathematics and information technology such as the Modeling and Engineering Officers in question could very well have the requisite knowledge and experience to justify not needing the full protections of the CFTC Part 4 rules framework.

For a more comprehensive discussion of these letters, please see Appendix A.

III. Proposed Conditions of the Requested Relief

As discussed throughout this request, Two Sigma believes the relief requested herein is appropriately safeguarded to ensure that participation in its ESCs will be limited to investors with sufficient suitability and transparency for such an investment.

First, the Application generally requires that investors in an ESC be “Qualified ESC Participants” that are Accredited Investors. The Application also requires that, prior to offering interests in an ESC to an eligible employee, Two Sigma must reasonably believe that the person will be capable of understanding and evaluating the merits and risks of participation in the ESC and that each such person is able to bear the economic risk of such participation and afford a complete loss of his or her investments in the ESC.

As noted above, Two Sigma has to date limited participation in the ESCs to senior officers across Two Sigma. With respect to the Modeling and Engineering employees potentially subject to this request for relief, fewer than 2.5% of Two Sigma’s Modeling and Engineering population are Modeling and Engineering Officers that have not been employed by Two Sigma for 24 months or longer. Two Sigma also limits the permitted investment amounts by such senior officers. Though not required by the Application, Two Sigma intends to continue to require that employees who are investors in ESCs be officers of Two Sigma and to limit such persons’ permitted allocations to ESC investments. Such seniority requirements and investment limitations (i) ensure a certain level of investor sophistication in the ESCs and (ii) protect against employees making unsuitable investments.

Additionally, Two Sigma believes that its transparency and reporting practices in respect of the ESCs provide additional investor protection safeguards. All investors in the ESCs (i) receive extensive offering materials comparable to materials Two Sigma provides to third party investors in externally-offered funds, (ii) receive additional documentation regarding certain “Frequently Asked Questions” regarding an investment in the ESC, (iii) receive audited financial statements prepared in accordance with CFTC Rule 4.7(b)(4) on an annual basis, (iv) receive monthly account statements prepared in accordance with CFTC Rule 4.7(b)(3), and (v) have access to additional reporting regarding the performance of the ESC. Notably, these materials meet or exceed the disclosure and reporting requirements of CFTC Rule 4.7.

Further, and for the avoidance of doubt, Two Sigma does not request relief in respect of any investors in the ESCs that are not current employees of Two Sigma. For example, in the event that an existing investor in the ESCs ceases to be an employee of Two Sigma, no relief is requested in respect of any further investment by such investor. If such employee did not otherwise qualify as a QEP under CFTC Rule 4.7(a), the employee would not be permitted to make additional investments in their respective ESC. As noted above in this request, an investor’s investment in an ESC does not terminate automatically upon termination of the investor’s employment

relationship with and/or departure from Two Sigma, though Two Sigma may opt to compulsorily withdraw any such investor's interests at the time of or following such termination and/or departure in its discretion. Further, investors are generally able to withdraw from the ESCs in accordance with such entities' withdrawal terms.

Finally, as contemplated by a number of the precedent CFTC No-Action letters discussed above and in Appendix A, Two Sigma will obtain the consent of any non-QEP Modeling and Engineering Officers prior to treating them as QEPs as requested herein.

IV. Conclusion

As identified in this letter, permitting Two Sigma to rely on CFTC Rule 4.7 as requested herein would be consistent with the CFTC's goals and the public policy inherent in CFTC Rule 4.7, and the requested relief is consistent with the rationale underlying the relief previously granted by the CFTC Staff in analogous circumstances. We therefore respectfully request that the Market Participants Division issue a letter confirming that Two Sigma will remain able to avail itself of the CFTC Rule 4.7(b) operational exemption to CPO registration with respect to the ESCs and allow investments by Modeling and Engineering Officers who do not satisfy the applicable QEP Tenure Conditions, and advising it that it will not recommend any CFTC enforcement action based on the facts described herein.

We further request that, in advance of any preliminary or final decision by the Market Participants Division in response to our request letter, we have the opportunity to speak or meet with the CFTC Staff to answer questions, provide information, and discuss the urgent need and appropriateness of the requested relief.

Certification and Undertaking

See Annex I hereto.

Contacts and Additional Information

If you have questions or require additional information, please contact the undersigned (telephone at 202-261-3460 or email at philip.hinkle@dechert.com) or Audrey Wagner (telephone at 202-261-3365 or email at audrey.wagner@dechert.com). Thank you in advance for your consideration of this matter.

Respectfully submitted,

Philip T. Hinkle

Philip T. Hinkle
Partner

Enclosure: Annex I

cc: Elizabeth Groover (CFTC)
Pamela Geraghty (CFTC)
Audrey Wagner (Dechert LLP)
Steve H. Metzger, Esq. (Two Sigma)
Gregory C. Shih, Esq. (Two Sigma)
Kenneth F. Geller, Esq. (Two Sigma)
R. Houston Adair, Esq. (Two Sigma)
Hunter R. Landrum, Esq. (Two Sigma)

Appendix A: Discussion of Prior No-Action Letters

Relief Granted in Connection with ESCs and/or Similar Employee Vehicles

- Prior to the existence of the operational relief available to a registered CPO under CFTC Rule 4.7, in CFTC Letter 85-08, the CFTC Staff granted CPO registration relief in respect of certain ESCs organized as limited partnerships for employees of a parent corporation and its subsidiaries who earned amounts somewhat comparable to today's Accredited Investor standard for income, and where the ESCs met certain other conditions.⁷ One of the reasons the CFTC Staff cited for its relief was that the ESC investors would enjoy certain fiduciary, anti-fraud and reporting requirements under the 1940 Act. Although the Two Sigma ESCs would not meet all the same conditions as the ESCs in CFTC Letter 85-08, the Two Sigma ESCs would not only have the protections afforded under the 1940 Act, but would also have the protections afforded by Two Sigma's operation in its *registered* CPO capacity of the ESCs under CFTC Rule 4.7, which include certain disclosure, reporting to investors and the CFTC, and recordkeeping requirements, as well as the NFA's suite of investor protection rules applicable to registered CPOs regardless of operation under CFTC Rule 4.7. Like the employees in CFTC Letter 85-08, the Modeling and Engineering Officers would also meet a minimum financial sophistication standard as Accredited Investors.
- In CFTC Letter 94-11, the CFTC Staff granted relief from CFTC Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11) for a CPO operating pools offered exclusively to "high-level" sophisticated employees of a consulting and management company of which the CPO was a wholly-owned subsidiary where not all of the eligible employees had QEP status, but were Accredited Investors.⁸ The CFTC granted relief that would permit the CPO to operate the pools subject to similar on-going operational requirements as would apply if the pools could be operated under CFTC Rule 4.7: disclosure to prospective pool participants that the pool was not required to make all the disclosures that would otherwise be required by CFTC rules, preparation and distribution of periodic and annual reports specified in CFTC Rules 4.7(a)(2)(ii) and (iii),⁹ and maintenance of some but not all records that would otherwise be required under CFTC Rule 4.23.

The CFTC Staff granted the relief in CFTC Letter 94-11 where most of the non-QEP employees were "high-level administrators and client service support personnel of the consulting and management company." The CFTC staff likened their positions to those of a chief financial officer, general counsel and other executive-type positions in other large corporations finding that their positions lent to them "investment acumen." In contrast to the non-QEP employees of a consulting and management company,

⁷ Letter No. 85-8 (Feb. 8, 1985).

⁸ Letter No. 94-11 (Dec. 17, 1993). Although CFTC Letter 94-11 did not explicitly state that the pools were ESCs, in a subsequent letter expanding the relief requested, the CFTC Staff noted that at least one of the pools for which the relief was sought had received the exemptive relief necessary to be treated as an ESC (*See* CFTC Letter No. 00-67 discussed below).

⁹ Note that these section references have since been moved to CFTC Rule 4.7(b)(3) and (4).

the Modeling and Engineering Officers' positions at Two Sigma are in many cases closer to Two Sigma's systematic investment process and potentially better positioned to garner the investment acumen necessary to invest without all the protections of the CFTC Part 4 rules.

Note also, at the time the CFTC Letter 94-11 relief was granted, annual reports of commodity pools operated under CFTC Rule 4.7 were not required to be audited by an independent public accountant. In the case of the Two Sigma ESCs, Modeling and Engineering Officers would receive more protection than the investors in the pools receiving relief in CFTC Letter No. 94-11 because the ESCs' annual reports will be required to be audited as CFTC Rule 4.7 as of the date of this request does not provide relief from CFTC Rule 4.22(d)(1).

- In CFTC Letter 00-67, the CFTC Staff expanded the relief it had provided in CFTC Letter 94-11 to certain employees of the CPO's parent company that did not meet the definition of a QEP *or even an Accredited Investor*.¹⁰ By contrast, the Modeling and Engineering Officers subject to the relief requested by Two Sigma will be Accredited Investors.
- In CFTC Letter 93-33, the CFTC Staff permitted certain non-QEP partners and key employees of a certain company along with their immediate family members to remain invested in a fund that would henceforth be operated by a registered CPO notwithstanding that all of the original participants did not qualify as QEPs.¹¹ This employee fund appeared to be designed along the lines of what might constitute an ESC. The CFTC Staff conditioned the relief on the non-QEP participants consenting to being treated as QEPs and that the non-QEP participants continue to be general partners of the company or senior managers of the same. Similarly, the Modeling and Engineering Officers would have significant seniority at Two Sigma and would consent to being treated as QEPs for purposes of their investment in the ESCs.

Relief Granted in Connection with Sophisticated Employees' Investments

- In CFTC Letter 00-68, the CFTC Staff permitted a CPO to treat certain of its non-QEP employees as if they satisfied the QEP requirements of Rule 4.7(a). Notably, relief was granted to two employees with mathematical and information technology experience responsible for running and maintaining a fund's nonlinear mathematical portfolio management system, despite the fact that both employees had less than two years of employment experience with the fund.¹² The CFTC stated that "[t]he purpose of Rule 4.7 is to 'reduc[e] unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the rule, do not appear to need the full protections offered by the Part 4 framework'" and went on to find that it "would not be contrary to the public interest or the purposes of Rule 4.7(a)" to allow these types of employees to invest in the fund in question as if they were QEPs. It appears that, in granting this relief, the CFTC Staff recognized that employees with

¹⁰ Letter No. 00-67 (May 26, 2000).

¹¹ Letter No. 93-33 (March 31, 1993).

¹² Letter No. 00-68 (May 22, 2000).

employment history and training in the fields of mathematics and information technology such as the Modeling and Engineering Officers in question could very well have the requisite knowledge and experience to justify not needing the full protections of the CFTC Part 4 rules framework.

- Similarly, in CFTC Letter 00-17, the CFTC Staff granted relief for certain CPOs to operate pools under Rule 4.7 notwithstanding investments by employees of the CPOs who were not QEPs.¹³ In both CFTC Letter 00-68 and CFTC Letter 00-17, the non-QEP employees happened to be “knowledgeable employees” as defined in the regulations under the Investment Company Act of 1940. At the time the two letters were written, knowledgeable employees did not qualify as QEPs under CFTC Rule 4.7 whereas today they do. In those instances, the CFTC Staff was willing to provide relief to categories of sophisticated employees who happened to fall just outside the definition of QEP as in effect at that time. The current request with regard to the Modeling and Engineering Officers is not different in that regard.
- In CFTC Letter 00-06, the CFTC Staff granted relief to permit the Director of Information and Technology for a firm to be treated as if the individual satisfied the criteria to be treated as a QEP under CFTC Rule 4.7(a). In that instance, the individual was responsible for software development for the CPO. The individual had “researche[d] historical price data for all of the commodities traded by the Fund and ha[d] built computer models based primarily on this research.” No mention was made of the individual’s Accredited Investor status.
- In CFTC Letter 94-01, the CFTC Staff permitted an individual who was an Accredited Investor but not a QEP to make an additional capital contribution to a commodity pool that had begun to be operated by its registered CPO under CFTC Rule 4.7 during the interim between the individual’s initial investment and additional capital contribution. The individual was the engagement partner for the fund’s outside counsel and had been engaged in the practice of law as a corporate and securities law specialist for twenty years. In granting the relief, the CFTC Staff cited the individual’s familiarity with the fund’s structure, operations and objectives. Although the individual was a lawyer rather than an investment professional, the CFTC Staff concluded that he was “well qualified to assess the merits and risks of an additional investment in the Fund.” Due to their employment at Two Sigma, the Modeling and Engineering Officers would similarly be familiar with the structure, operations and objectives of the ESC and, due to the systematic nature of the Two Sigma’s investment process, would be positioned to assess the merits and risks of investment in the ECSs. Like the lawyer in this instance, the Modeling and Engineering Officers would also be Accredited Investors.

¹³ Letter No. 00-17 (Jan. 28, 2000).

Certification and Undertaking

The undersigned hereby certifies that the material facts set forth in this request letter are true and complete to the best of my knowledge.

The undersigned hereby undertakes that, if at any time prior to issuance of the relief and guidance requested by this letter, any material representation made herein ceases to be true and complete, the undersigned will ensure that the Market Participants Division is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of such relief and guidance, the undersigned will promptly inform the Market Participants Division.

Sincerely,

Kenneth Geller

Kenneth F. Geller, Esq.
Managing Director, Deputy General Counsel
Two Sigma Investments, LP