

Qualified Eligible Person ("QEP") Definition

Although this summary is intended to offer useful and practical information, [CFTC Regulation 4.7](#) sets forth the complete definition of a Qualified Eligible Person. Should information in this summary be inconsistent with some provision in the Regulations, it is the CFTC Regulation that is the final word.

Definition of QEP

A qualified eligible person is an investor who fits into one of two distinct groups: (1) investors who do **not** need to meet the portfolio requirement and (2) investors who **do** need to meet the portfolio requirement.

(1) Investors who do **not** need to meet the portfolio requirement:

The following are considered to be QEPs regardless of whether or not they meet the portfolio requirement:

- registered FCM or RFED
- registered broker/dealers
- registered commodity pool operators (that have been registered and active for at least two years **or** operate pools with total assets in excess of \$5 million)
- registered commodity trading advisors (that have been registered and active for at least two years **or** provide advice to commodity accounts with aggregate total assets in excess of \$5 million deposited at one or more FCMs)
- state or SEC registered investment advisers (that have been registered and active for at least two years **or** provide advice to securities accounts with aggregate total assets in excess of \$5 million deposited at one or more registered security brokers)
- qualified purchasers as defined in the Investment Company Act of 1940 (see definition below)
- non-United States persons
- knowledgeable employees of the CPOs, CTA or Investment Advisor, plus certain other persons that provide services to the exempt pool. (See 4.7(a)(2)(viii) for complete details)
- 501(c)(3) organizations whose organizer and authorized investment manager are QEPs
- entities in which all of the owners/participants are QEPs

(2) Investors who **must** meet the portfolio requirement:

The following will be considered to be QEPs only if they also meet the portfolio requirement described below:

- investment companies registered under the Investment Company Act (i.e. mutual funds)

- banks, savings and loan associations, and other like institutions acting for their own accounts or for the account of a QEP
- insurance companies acting for their own account or for the account of a QEP
- plans established and maintained by various governments and related bodies for the benefit of their employees, if such plan has total assets in excess of \$5,000,000
- employee benefit plans within the meaning of the ERISA (if the investment decision is made by a plan fiduciary specified in the rule; has total assets in excess of \$5 million; **or** for a self-directed plan, the investment decisions are made solely by person that are QEPs)
- 501(c)(3) organizations with total assets in excess of \$5,000,000
- corporations, business trusts, partnerships, LLCs or similar business ventures with total assets in excess of \$5,000,000 and not formed for the specific purpose of participating in the exempt pool
- a natural person whose individual **net worth**, or joint net worth with that person's spouse, at the time of either his purchase in the exempt pool or his opening of an exempt account exceeds \$1,000,000
- a natural person who had an individual **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 has a reasonable expectation of reaching the same income level in the current year
- pools, trusts, insurance company separate accounts or bank collective trusts, with total assets in excess of \$5,000,000, which was not formed for the purpose of investing in the exempt pool and whose authorized investment manager is a QEP

Portfolio Requirement

If an investor is one of the individuals or entities described in (2) above, it will also need to meet the portfolio requirement in order to be considered a QEP. The portfolio requirement can be met in one of three ways:

- Owns securities and other investments with an aggregate market value of at least \$2 million;
- Has had on deposit with an FCM at least \$200,000 in exchange-specified initial margin and option premiums for commodity interest transactions, together with required minimum security deposit for retail forex transactions, in the six months prior to the investment; or
- Has a combination of the two above. For example, has \$1 million in securities/investments and \$100,000 in exchange-specified initial margin in the six months prior to the investment

Definition of Qualified Purchasers

The definition of **qualified purchaser** is found in the Investment Company Act of 1940:

- i. any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person's qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined below;
- ii. any company that owns not less than \$ 5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;
- iii. any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or
- iv. any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.
- v. any qualified institutional buyer as defined in Rule 144A under the Securities Act, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser, provided that (i) a dealer described in paragraph (a)(1)(ii) of Rule 144A shall own and invest on a discretionary basis at least \$25,000,000 in securities of issuers that are not affiliated persons of the dealer; and (ii) a plan referred to in paragraph (a)(1)(D) or (a)(1)(E) of Rule 144A, or a trust fund referred to in paragraph (a)(1)(F) of Rule 144A that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan;
- vi. any company that, but for the exceptions provided for in Sections 3(c)(1) or 3(c)(7) under the ICA, would be an investment company (hereafter in this paragraph referred to as an "excepted investment company"), provided that all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with Section 3(c)(1)(A) thereunder, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as "pre-amendment beneficial owners"), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) or any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser.

- vii. any natural person who is deemed to be a “knowledgeable employee” of the [fund], as such term is defined in Rule 3c-5(4) of the ICA; or
- viii. any person (“Transferee”) who acquires Interests from a person (“Transferor”) that is (or was) a qualified purchaser other than the [fund], provided that the Transferee is: (i) the estate of the Transferor; (ii) a person who acquires the Interests as a gift or bequest pursuant to an agreement relating to a legal separation or divorce; or (iii) a company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in this paragraph.
- ix. any company, if each beneficial owner of the company’s securities is a qualified purchaser.

For the purposes of above, the term **Investments** means:

- securities (as defined by section 2(a)(1) of the Securities Act of 1933), other than securities of an issuer that controls, is controlled by, or is under common control with, the prospective qualified purchaser that owns such securities, unless the issuer of such securities is: (i) an investment vehicle; (ii) a public company; or (iii) a company with shareholders’ equity of not less than \$50 million (determined in accordance with generally accepted accounting principles) as reflected on the company’s most recent financial statements, provided that such financial statements present the information as of a date within 16 months preceding the date on which the prospective qualified purchaser acquires the securities of a Section 3(c)(7) Company;
- real estate held for investment purposes;
- commodity interests held for investment purposes;
- physical commodities held for investment purposes;
- to the extent not securities, financial contracts (as such term is defined in section 3(c)(2)(B)(ii) of the ICA entered into for investment purposes;
- in the case of a prospective qualified purchaser that is a Section 3(c)(7) Company, a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the ICA, or a commodity pool, any amounts payable to such prospective qualified purchaser pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the prospective qualified purchaser upon the demand of the prospective qualified purchaser; and
- cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include: (i) bank deposits, certificates of deposit, bankers acceptances and similar bank

instruments held for investment purposes; and (ii) the net cash surrender value of an insurance policy.

Definition of Accredited Investors

The **accredited investor** definition can be found in the Securities Act of 1933:

1. Any bank as defined in section 3(a)(2) of the [Securities] Act or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity;
2. any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;
3. any insurance company as defined in section 2(a)(13) of the Act;
4. any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act;
5. any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
6. any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
7. any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
8. Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
9. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
10. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

11. Any natural person whose individual net worth, or joint **net worth** with that person's spouse, at the time of his purchase exceeds \$1,000,000;
12. Any natural person who had an individual **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 has a reasonable expectation of reaching the same income level in the current year;
13. Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) and
14. Any entity in which all of the equity owners are accredited investors.