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COMMENT

June 16, 2009

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VIA E-MAIL

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Concept Release on Whether to Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits 74 FR 12282 (March 24, 2009)

Dear Mr. Stawick:

I am writing this letter on behalf of United States Commodity Funds LLC ("USCF"), a commodity pool operator registered with the Commodity Futures Trading Commission ("CFTC"), that manages several exchange traded commodity pools, including the United States Oil Fund, LP and the United States Natural Gas Fund, LP. USCF wishes to provide a response to your request for comments on the CFTC's *Concept Release on Whether to Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits* ("Concept Release"). We believe that (i) the bona fide hedge exemption should be extended to other physical commodities currently subject to exchange position limits and accountability levels; (ii) any future regulation of the commodity futures market should codify the CFTC's no-action position with respect to the activities of index-based tracking funds; and (iii) the CFTC should extend it futures position relief to exchange-traded commodity funds tracking single commodity benchmarks.[1]

[1] Our letter addresses only those questions presented in the Concept Release that relate to the current activities of USCF's publicly traded commodity pools, which include Question 4 (extension of the bona fide hedging exemption to additional physical commodities) and Question 14 (treatment of index-based funds under any new regulatory structure).

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Mr. David Stawick

I. Description of USCF and its Related Funds

As a registered commodity pool operator, USCF is general partner of and manages the United States Oil Fund, LP, the United States Natural Gas Fund, LP, the United States 12 Month Oil Fund, LP, the United States Gasoline Fund, LP, the United States Heating Oil Fund, LP, and the United States Short Oil Fund, LP (each, a "Fund" and collectively, the "Funds"). Each of the Funds is an exchange-traded commodity pool that invests in futures contracts for energy commodities with the investment objective of having the net asset value ("NAV") of the units of each Fund reflect changes in percentage terms of the price of a given commodity futures contract. The specific commodity focus and investment strategy of each Fund varies; however, the structure and method of investing in all of USCF's Funds is identical. Units of each of the Funds are listed on the NYSE Arca, Inc. ('NYSE Arca").

The Funds' units are created or redeemed only in blocks called Creation Baskets and Redemption Baskets, respectively, pursuant to an effective registration statement filed with the Securities and Exchange Commission ("SEC"). Only persons authorized by the Funds ("Authorized Purchasers") may purchase or redeem Creation or Redemption Baskets from a Fund.[2] The amount of the purchase payment for a Creation Basket is equal to the aggregate NAV of units in the Creation Basket. Similarly, the amount of the redemption proceeds for a Redemption Basket is equal to the aggregate NAV of units in the Redemption Basket. The purchase price for Creation Baskets, and the redemption price for Redemption Baskets is the actual NAV calculated at the end of the business day when an order for a purchase or redemption is accepted by a Fund. The NYSE Arca publishes an approximate NAV intra-day based on the prior day's NAV and the current price of each Fund's benchmark commodity futures contract, but the basket price is determined based on the actual value of the assets when the NAV is calculated at the end of the day.

Authorized Purchasers, who are registered broker-dealers and participants in The Depository Trust Corporation, sell units acquired through Creation Baskets to the public at prices that are expected to reflect, among other factors, the trading price of the units on the NYSE Arca, the NAV of the particular Fund at the time the Authorized Purchaser purchased the Creation Baskets and the NAV at the time of the offer of the units to the public. Baskets are generally redeemed when the market price per unit is at a discount to the NAV per unit. Retail investors seeking to purchase or sell units on any day are expected to effect such transactions in the secondary market, on the NYSE Arca, at the market price per unit, rather than in connection with the creation or redemption of baskets.

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[2] Authorized Purchasers do not receive from the Funds, USCF or any of their respective affiliates any fee or other compensation in connection with the sale of the units, although Authorized Purchasers may receive commissions and/or fees from investors who purchase the units.

Each of the Funds has several thousand investors (for example, the United States Oil Fund, LP at December 31, 2008 had over 150,000 investors) and no investor to, to the Funds' knowledge, has ever held more than 5% of the units outstanding, other than when a Fund initially offers its units to the public.[3]

II. Similarity to Index Funds Previously Granted No-Action Relief

As noted in the Concept Release,[4] the CFTC staff has granted no-action relief to two index-based funds from the speculative position limits for futures and options contracts on certain agricultural commodities established pursuant to Section 4a(a) of the Commodity Exchange Act ("CEA").[5] Although these index-based funds did not expressly qualify for the bona fide hedging exemption set forth in CFTC regulation 150.3(a)(1), the CFTC determined that these funds "represented a legitimate and potentially useful investment strategy"[6] and thus extended no-action relief from CFTC position limits, subject to certain conditions aimed at protecting futures markets. These conditions (discussed below) highlight many of the unique attributes of index-based funds that allow these funds to actively participate in the commodity futures market while still providing substantial protections and full disclosure to market participants and the investing public, such that their activities do not trigger the concerns that strict futures position limits are intended to address. Nearly all of the conditions upon which the CFTC staff premised its relief for index-based funds are already operational or structural characteristics of the Funds.

Just as the price exposure faced by index-based funds results from a promise or obligation to track an index, each of the Funds is subject to similar exposure resulting from its commitment to track changes in the price of a futures contract relating to a specified commodity. Meeting this objective may require both index-based or commodity futures contract-tracking funds to invest in future positions that exceed current or future CFTC limits. However, offsetting this type of price exposure does not currently fall within the bona fide hedging exemption. The CFTC staff effectively addressed this problem for index-based funds by granting them relief from speculative position limits in its two no-action letters. In these no-action letters, the CFTC staff identified several attributes of the index-based funds that provided sufficient protections to the futures market and thus were required in order to receive the requested relief.

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[3] Since each of the Funds are registered under the Securities Exchange Act of 1934 ("Exchange Act"), investors holding 5% or more of a Fund's units are required to disclose their holdings and intentions under Section 13 of the Exchange Act.

[4] *See* Concept Release, footnote 15.

[5] CFTC Letter 06-09, April 19, 2006; CFTC Letter 06-19, September 6, 2006.

[6] Concept Release, footnote 15.

The following discussion outlines how the Funds already meet the key conditions upon which relief was granted by the CFTC staff for index-based funds (using the conditions as stated in the CFTC staff letters).

a. The futures trading activity passively tracks a widely recognized commodity index.[7]

Each of the Funds is passively managed and employs a "neutral" investment strategy intended to track changes in the price of a benchmark commodity regardless of whether the price goes up or down. This strategy means that the Funds, just like the index-based funds provided no-action relief, do not seek to generate positive returns in all market conditions based on the individual investment decisions of their CPO. Thus the Funds are not actively managed and do not engage in speculative activities in the futures market.

Additionally, the trading activities of the Funds occur in widely recognized commodity futures contracts. The commodities futures tracked by the Funds are each traded on the New York Mercantile Exchange ("NYMEX"), and represent some of the most highly traded and liquid commodity futures contracts in the world. These commodities include the NYMEX futures contracts for (i) light, sweet crude oil delivered to Cushing, Oklahoma; (ii) natural gas delivered to Henry Hub, Louisiana; (ii) RBOB gasoline for delivery to the New York harbor; and (iv) heating oil (also known as No. 2 fuel) delivered at the New York harbor.

b. The futures trading activity is unleveraged.[8]

The futures trading activity of each Fund is unleveraged, as all futures positions are fully collateralized. Each time a Fund receives a purchase order for a Creation Basket the Fund purchases futures contracts in the appropriate commodity that have an aggregate market value that approximates the purchase price received by the Fund for such Creation Basket. After transferring the required margin for the futures contracts purchased with its futures commission merchant, the Fund then invests the remainder of its proceeds from the Creation Basket in short term obligations of the United States of two years or less ("Treasuries"), cash and/or cash equivalents. Through this process each Fund ensures that the value of its Treasuries, cash and cash equivalents, whether held by the Fund or posted as margin or collateral, at all times approximates the aggregate market value of its obligations under its futures contracts.

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[7] *See* CFTC Letter 06-09 at 4; CFTC Letter 06-19 at 5.

[8] *See* CFTC Letter 06-09 at 4; CFTC Letter 06-19 at 5.

c. Positions in excess of the speculative limits are not carried into the spot month.[9]

None of the Funds intends to take delivery of the commodity underlying its futures contracts. Instead, each Fund sells its near month contracts and purchases corresponding next month contracts over a one to four day period beginning on the day that is two weeks prior to the expiration of the near month contract.[10] Rolling contract positions in this manner provides the following two significant protections to the futures market: (i) by rolling out of their front month contracts two weeks prior to expiration, the Funds protect the futures market from any unexpected price fluctuations that could occur if such trades were performed during the final days of the contract month when the risk of price distortion is particularly high; and (ii) by rolling out of their positions over a four-day period the larger Funds are able to trade out of large overall positions in the front month contract without upsetting the market by executing all trades on the same day.

d. Both the index and the fund are highly transparent.[11]

Each of the Funds is highly transparent. The Funds provide the following information on their websites as of the end of the most recent NYSE Arca trading day: (i) current NAV; (ii) closing price; (iii) premium/discount; (iv) shares outstanding; (v) daily holdings of each of the Funds' investments and pending trades in such investments; and (vi) recent performance information. Information on the Funds is also available on the NYSE Arca website, which publishes a wide variety of Fund data, including: (i) intra-day and closing prices; (ii) daily trading volume; and (iii) previous day's closing price.

In addition, the Funds publish their anticipated roll dates on their publically-accessible websites, thus providing full transparency to the market concerning their transactions. Publishing the roll dates ensures that market arbitrage opportunities will prevent speculators in the market from successfully front-running the timing of a Fund's roll, which is the type of activity that carries the risk of disturbing futures markets.

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[9] *See* CFTC Letter 06-09 at 4; CFTC Letter 06-19 at 6.

[10] Currently, the only Funds that do not sell their contracts over a four-day period are the United States 12 Month Oil Fund, LP ("US12OF"), the United States Gasoline Fund ("UGA") and the United States Heating Oil Fund ("USHO"). Unlike the other funds managed by USCF, which generally hold all of their futures contracts in the near month and then roll all of these contracts into the next month contract, US12OF holds futures contracts spread over a 12 month period. When US12OF rolls out of its near month contract, it purchases new positions in the thirteenth month contract. As a result, US12OF's roll does require extension over a four-day period in order to ensure that no disturbance in the market occurs. At this time, UGA and USHO do not roll over a four-day period due to their small size. However, should these two funds increase to a size that requires them to hold more significant amounts of futures contracts they will be moved to a four-day roll.

[11] *See* CFTC Letter 06-09 at 4; CFTC Letter 06-19 at 6.

e. The fund is subject to unique federal and self-regulatory oversight by virtue of the shares being listed on the NYSE Arca, and thereby subject to regulation by the SEC and FINRA, as well as to regulation by the CFTC and the NFA.[12]

The structure of the Funds places them under the same multi-tiered regulatory structure as the index-based funds that obtained no-action relief from the CFTC.[13] In addition to regulation of USCF as a commodity pool operator by the CFTC and National Futures Association, the sale of Fund securities on the NYSE Arca subjects each Fund to comprehensive federal securities regulation by the U.S. Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA") and NYSE Arca. These regulatory organizations review the offering documents of each Fund and provide ongoing regulatory oversight of the Funds' operations.

f. The futures trading does not result in price exposure for the fund.[14]

As noted above, each Fund employs a "neutral" investment strategy intended to track changes in the price of a benchmark commodity future regardless of whether the price goes up or down. The fact that each Fund seeks only to track its benchmark commodity future and not to achieve any financial gain from its trading activities in futures markets means that the Funds do not experience the price exposure typically attendant to their futures trading. Instead, as with index-based funds, the Funds only experience price exposure with respect to their commitment to track their specified benchmark. The Funds best hedge this risk through their purchase of futures contracts that constitute or are closely related to their respective benchmarks. If stringent position limits were placed on their investments in the commodity futures contracts serving as benchmarks for the Funds, the Funds would be required to invest in investments that would not provide a direct correlation to price changes in the benchmark or may not provide the same level of credit risk that is provided by investments in exchange traded commodity futures.

III. Requested Action

We understand that the CFTC is currently reviewing its regulation of commodity futures activities in light of recent market events. These events were wholly unrelated to the activities of index- and commodity-tracking funds using the commodity futures market to hedge the exposure to investors that results from their obligation to track the price movement of an index or commodity. In fact, the Funds play an important role in providing liquidity to the futures markets in a manner that is both transparent and contains less risk than alternative investments

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[12] *See* CFTC Letter 06-09 at 4.

[13] *See, e.g.*, CFTC Letter 06-09 at 3.

[14] *See* CFTC Letter 06-19 at 5.

(*e.g.*, purchasing futures contracts directly on a leveraged basis, through a commodity trading advisor on a leveraged basis, or by entering into over-the-counter contracts).

As price takers—merely tracking the price movement of their respective commodities—the Funds' investment strategies preclude them from acting in a way that could lead to the manipulation of prices or cornering of the futures market. Empirical data shows that the Funds' activities in the futures market have resulted in little or no price disruption even as the overall size of the Funds' positions have increased dramatically. Instead of disrupting the futures market, the Funds provide a steadying force by adding significant liquidity to the market. In 2008, nearly 324,000 individual investors gained access to the futures market through investments in the Funds. These investors were able to enter the futures market without the traditional settlement risk attendant to futures contracts acquired on a leveraged basis, due to the unleveraged nature of the Funds' investments.

Rather than acting as a source of risk, the Funds provide investors with a transparent vehicle through which to hedge their pre-existing price risk in commodities. Whether this risk arises from direct economic interests in commodities, or from broader inflationary or other investment risks, the Funds provide an important hedging alternative to individual investors, without increasing market risk or otherwise adversely affecting the futures market. Although the futures positions held by the Funds may appear to be large in relation to each Fund as the legal holder of such positions, these investments represent the aggregation of demand from tens of thousands of individual investors seeking to reduce their financial risk through hedging in the commodity futures market.

The CFTC staff has previously noted that passively managed index-tracking investment vehicles represent "a legitimate and potentially useful investment strategy"[15] and that view should equally apply to investment in vehicles such as the Funds. We strongly encourage the CFTC to codify its staff's position and extend it to the Funds in any future regulation resulting from the Concept Release.

Sincerely,

Nicholas D. Gerber

cc: James M. Cain
Sutherland Asbill & Brennan LLP

[15] Concept Release, footnote 15.