Received CFTC
Records Section
7/24/09

COMMENT

09-4
30

2009 JUL 24 PM 1 30
C.F.T.C.
OFFICE OF THE SECRETARIAT

July 24, 2009

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

Dear Mr. Stawick:

Re: Concept Release 74 FR 12282 - *Whether to Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create A New Limited Risk Management Exemption for Speculative Position Limits* (the "Concept Release")

Introduction

I am Adam Felesky, Chief Executive Officer of BetaPro Management Inc. ("BPM"), the manager of the Horizons BetaPro ETFs (the "HBP ETFs"), which is a family of exchange traded funds ("ETFs") domiciled in Ontario, Canada and listed on the Toronto Stock Exchange (the "TSX"). I would like to respond to the Concept Release released by the Commodity Futures Trading Commission (the "CFTC") earlier this year with respect to its impact on our investors as well as on our business capabilities.

The HBP ETFs currently have assets in excess of Cdn. $2.5 billion among 38 ETFs – 14 of which are commodity based. BPM specializes in offering leveraged exposure long and short – and was the first manager to offer such products for commodities in North America. Currently we manage the second largest natural gas ETF in North America. Our ETFs are used by a vast cross section of investors, including mutual funds, hedge funds, pensions, insurance companies, dealer liability desks, financial advisors and retail clients. Many of our investors use the HBP ETFs exclusively to manage the risk within their existing portfolios. Several of the commodity-based HBP ETFs have been or are the most actively traded securities on the TSX.

While the HBP ETFs are not domiciled in the United States, the exposure for many of our ETFs is obtained indirectly through an over-the-counter ("OTC") swap with a Canadian counterparty dealer which, to varying degrees, hedges its position in the underlying futures market.

Concept Release

BPM would like to submit the following comments on the Concept Release in advance of the July 2009 scheduled hearings on this matter. We believe that the HBP ETFs should continue to be eligible for an exemption from the proposed specified position limits for the following reasons:

1) The HBP ETFs are Exchange Traded Funds that track an underlying index such as a commodity and depending on the investment objective of the HBP ETF deliver a return that is a multiple of the performance of its underlying index (e.g., +200%, -100% or -200%). Although the HBP ETFs use leverage to varying degrees, they are passively managed and are rebalanced daily, which limits the exposure of investors. By virtue of the swap activity currently undertaken by the HBP ETFs, they have been very successful in providing investment results that almost perfectly track their investment objectives. In addition, by being listed on the TSX, the HBP ETFs are transparent and are not a source of market manipulation or speculation.

2) Our commodity-based HBP ETFs provide a limited risk, exchange-listed alternative for investors compared to an OTC swap or future position which can involve unlimited risk of their capital.

3) Our commodity-based HBP ETFs never hold spot month futures to expiry. Long commodity HBP ETFs roll out of the current nearby future to the next by selling the spot month which is the most relevant for the end user/ consumer. As a result, if there is any direct price impact emanating from the long HBP ETF activity on the prompt month contract it would be to exert a downward effect on price, serving to moderate any upward price pressures attributable to other market factors.

4) In the spring and summer of 2008, the crude oil futures curve was in backwardation most of the time, with the second month forward contract (which would absorb the HBP ETF's buying activity) trading at a discount to where physical market players were largely establishing the prompt month contract price. Consequently, as the second month contract was trading at a discount, the HBP ETF buying activity in the second contract month did not force up the prompt contract (see Appendix A).

5) Our commodity-based HBP ETFs have attracted sellers when there was significant price appreciation and buyers when there was significant price declines – not vice versa – which arguably promotes price stability, not volatility. This was further established and presented in the CFTC September 2008 Staff Report on Commodity Swap Dealers and Index Traders. In addition, ETFs that provide short exposure, such as the Horizons BetaPro Crude Oil Bear+ ETF, provide a unique means by which investors can take a position against a perceived inflated market, versus simply reducing an existing long position (see Appendix B). Finally it should be noted that the

HBP ETFs that are leveraged long and short oil and gas have holding periods of only 1 to 3 days (see Appendix C). Hence, while these HBP ETFs provide tremendous additional market liquidity (see Appendix D), they do not result in a sustained market position over longer periods.

6) The assets in our commodity-based HBP ETFs are the aggregate investment of thousands of investors and to our knowledge no one investor has indirectly obtained a position in a commodity-based HBP ETF in excess of the speculative limit that would otherwise be imposed directly on such an ETF. Our commodity-based HBP ETFs only held on average less than 0.20 contracts per unit holder as of December 31, 2008 (see Appendix E).

   That said, BPM supports any regulatory efforts to ensure that there is adequate transparency and is willing to immediately enter into discussions with the Ontario Securities Commission, the HBP ETF's principal regulator, to achieve that result.

7) The HBP ETFs, which are not actively managed, require a customized passive swap which tracks its customized underlying index, which allows the underlying commodity returns to be hedged back to the Canadian dollar. This exposure would not be attainable in the futures market on a same margin basis.

8) If the bona fide hedge exemption is eliminated and if no exemption was allowed by the CFTC for the HBP ETF's related swap activity, each HBP ETF could conceivably dissolve into a series of ETFs to ensure it was below the CFTC speculative limit. This could result in a larger number of ETFs to monitor, greater costs to the investor (i.e., due to reduced economies of scale), and arguably, increased risk that an individual could aggregate a position in excess of the CFTC speculative limit across several ETFs with the same investment objective without triggering a traditional securities disclosure event.

9) If the bona fide hedge exemption is eliminated and if no exemption was allowed by the CFTC for the HBP ETF's related swap activity, there would also be an attraction for dealers that are currently not involved in commodity-related trading activity to enter the market, as the scarcity value of speculative limits for non-commercial clients would be significant. We believe in time the market structure and price dynamics would be unchanged but the CFTC may have significantly more dealers to monitor and the costs to investors may be substantially higher.

Possible Response

Our perception is the CFTC is most concerned about market transparency and potentially imposing speculative limits to avoid market manipulation and to mitigate excessive speculation, while at the same time ensuring that non-commercial activity is sufficiently robust in order to support commercial hedging needs. To achieve these goals while still exempting commodity-based ETFs, like our commodity-based HBP ETFs, from the proposed speculative limits, the CFTC might want to consider:

a) Requiring disclosure to the CFTC by such ETFs of any investors who indirectly hold investments in such ETFs with a value that is more than a specified level (e.g., 33%) of the speculative limit on a monthly basis;

b) Mandating any investor in such ETFs to notify the manager of such ETFs if their investment in such ETFs at any time exceeds 100% of the speculative limit; and

c) Requiring the managers of such ETFs to have the ability to force an investor in such ETFs to redeem a portion or all of their investment in such ETFs such that the investor does not exceed any stipulated guidelines adopted by the CFTC.

The foregoing would help assist the CFTC in monitoring an individual investor's position in such ETFs and potentially in such ETFs in the same fund complex. As you can appreciate, implementing such a solution will require the coordination of all applicable regulatory authorities (i.e., the Securities and Exchange Commission and the Canadian securities administrators in the case of the HBP ETFs). However, as the number of investors that will likely be impacted is probably quite small, the cost of imposing these requirements may be appropriate.

Conclusion

In summary, we strongly believe that commodity-based ETFs, like our commodity based HBP ETFs, play an integral role in enhancing the underlying liquidity of the commodities market through a structure which is cost effective, transparent and liquid (i.e., as they are usually listed on an exchange). Furthermore, our data with respect to our commodity-based HBP ETFs and other competitors indicate that the recent price appreciation in crude oil in June 2008 was curtailed by crude oil ETFs, rather than being exaggerated. In addition, the inability of such ETFs to limit the price move in crude oil in 2008 further illustrates that the physical market continues to be substantially larger and of greater influence.

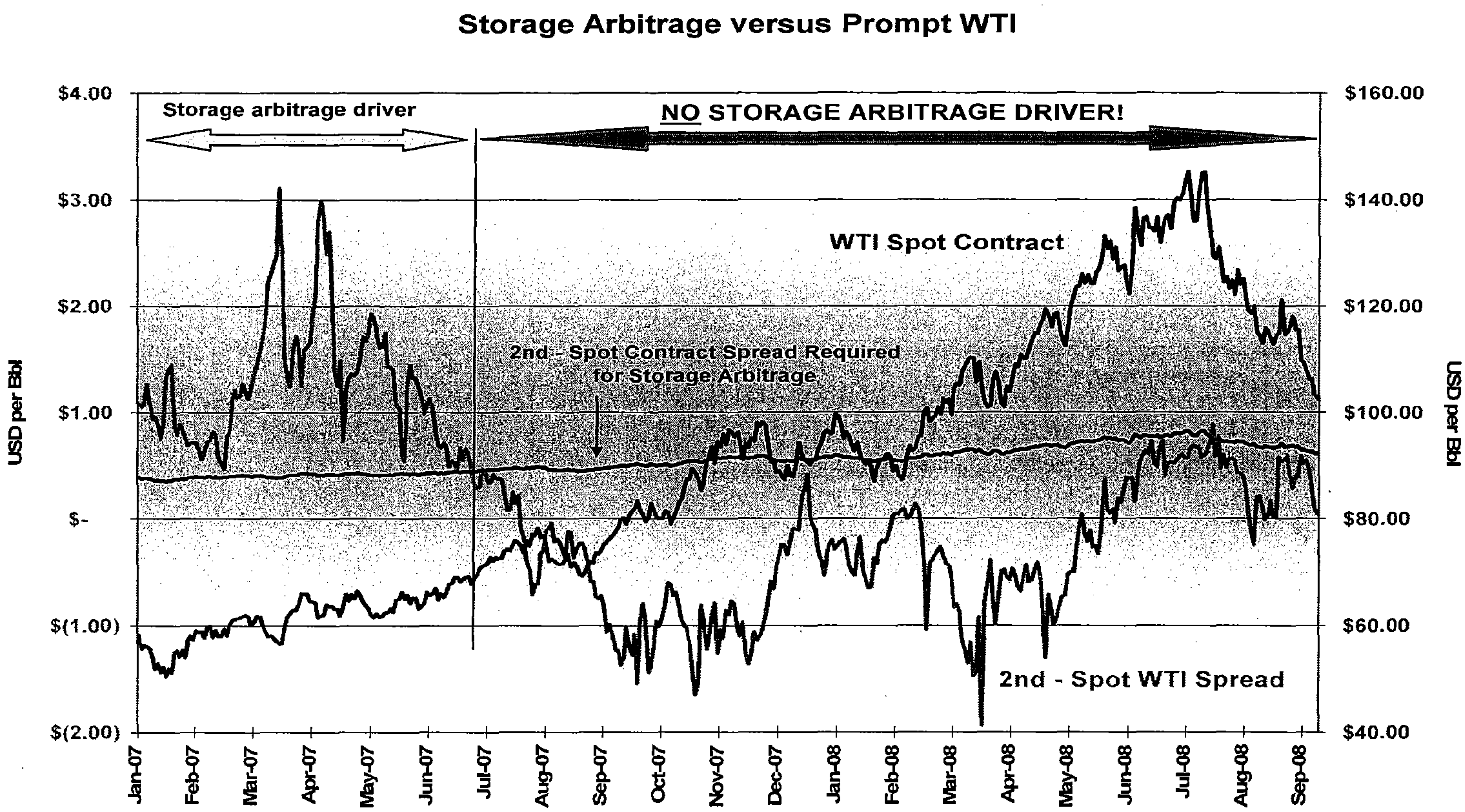
The possible elimination of the bona fide hedge exemption could also result in an immediate fractionalization of ETFs and potentially increase the number of dealers that would begin acting as counterparties, which would increase the need for regulatory oversight and potentially the cost for investors. Commodity-based ETFs, such as our commodity-based HBP ETFs, which passively track an index, are listed on a public exchange, are subject to regulatory oversight and do not take delivery of the commodity, are transparent and are important investment vehicles for many investors. They should not be viewed negatively and should not be restricted from providing benefits to investors, particularly when they are not a source of market manipulation or speculation.

Thank you for considering my remarks. Please do not hesitate to contact me at 416 933 5739 if I can be of any other assistance.

Sincerely,

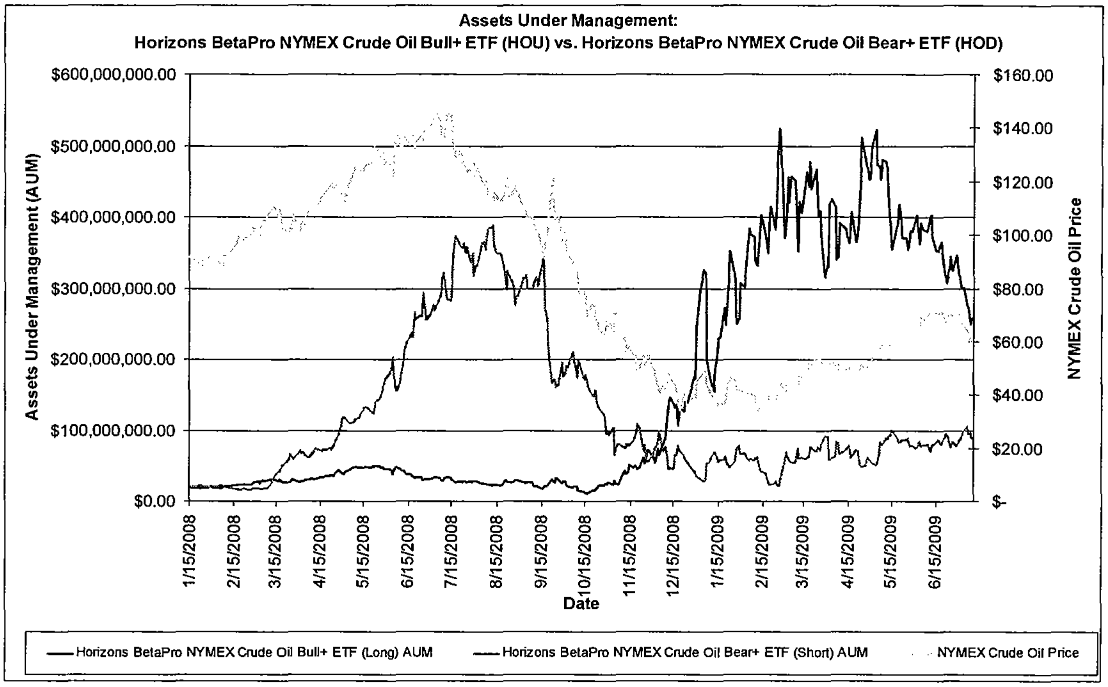
Adam Felesky
Chief Executive Officer,
BetaPro Management Inc.

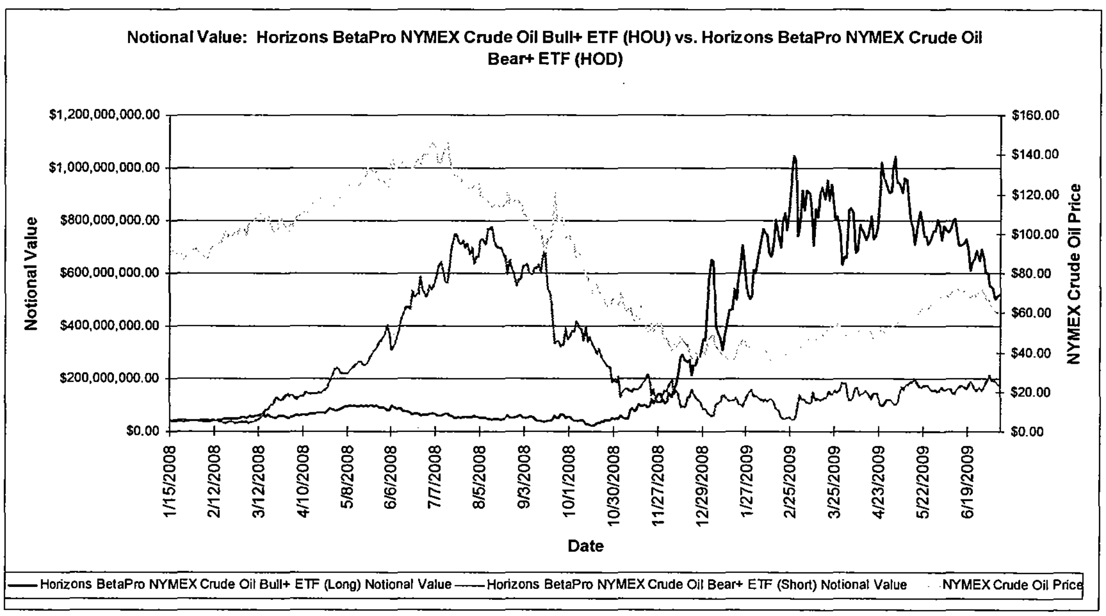
Appendix A – Crude Bull Market Review: 2007 – 2008

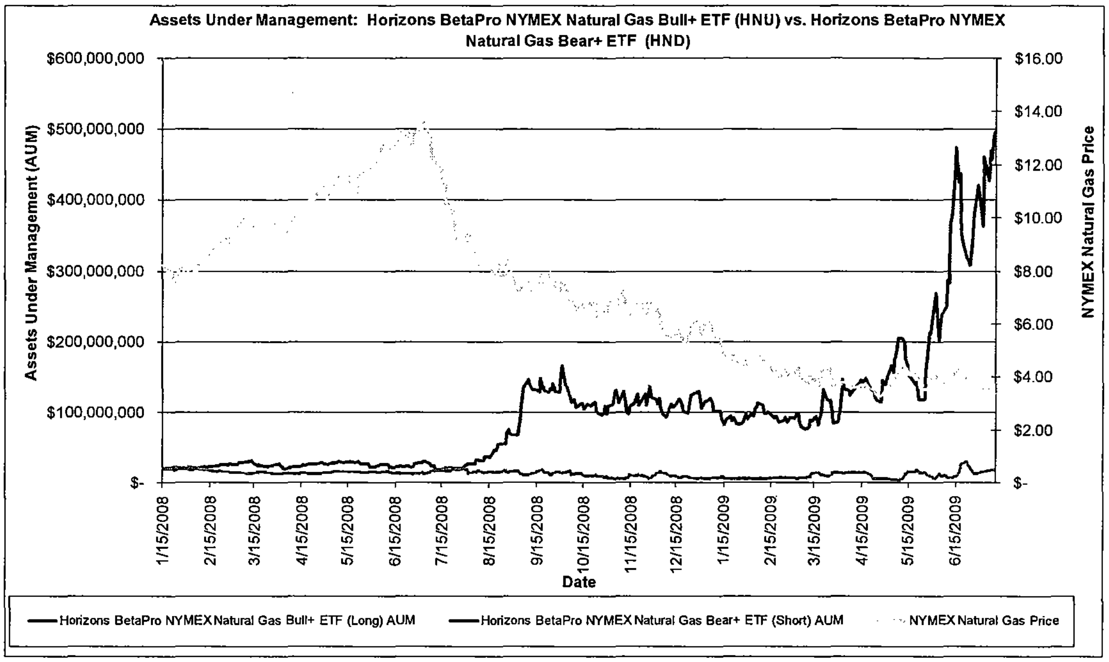


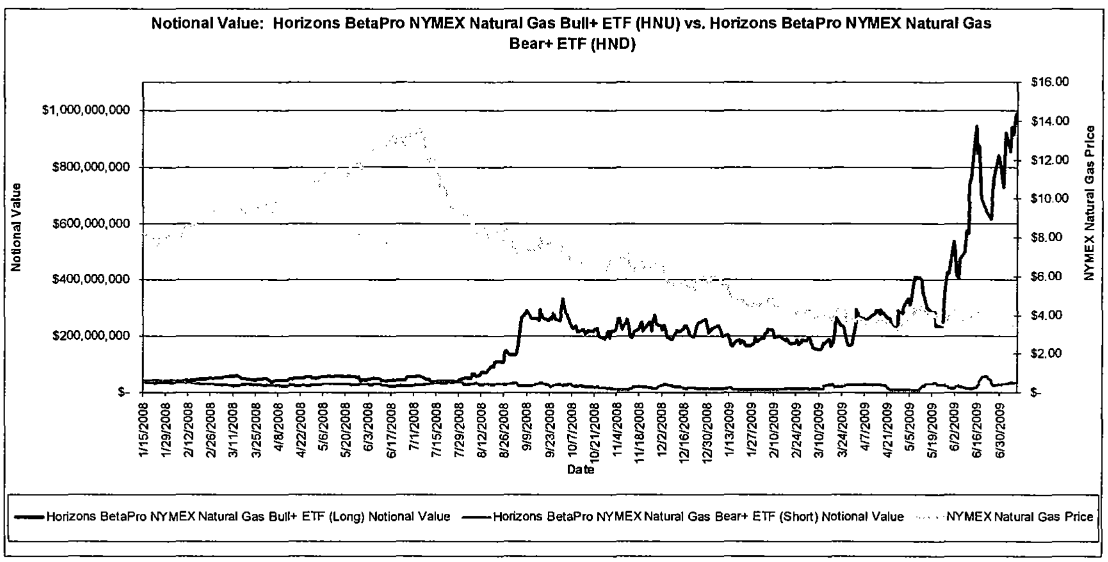
Source: National Bank Financial

Appendix B – HBP ETF Assets under Management and Corresponding Notional Values Relative to Underlying Futures Contract Prices









Source: Bloomberg

*Data from ETF inception (January 15, 2008) to June 30, 2009

Appendix C – Average Hold Periods for Horizons BetaPro ETFs

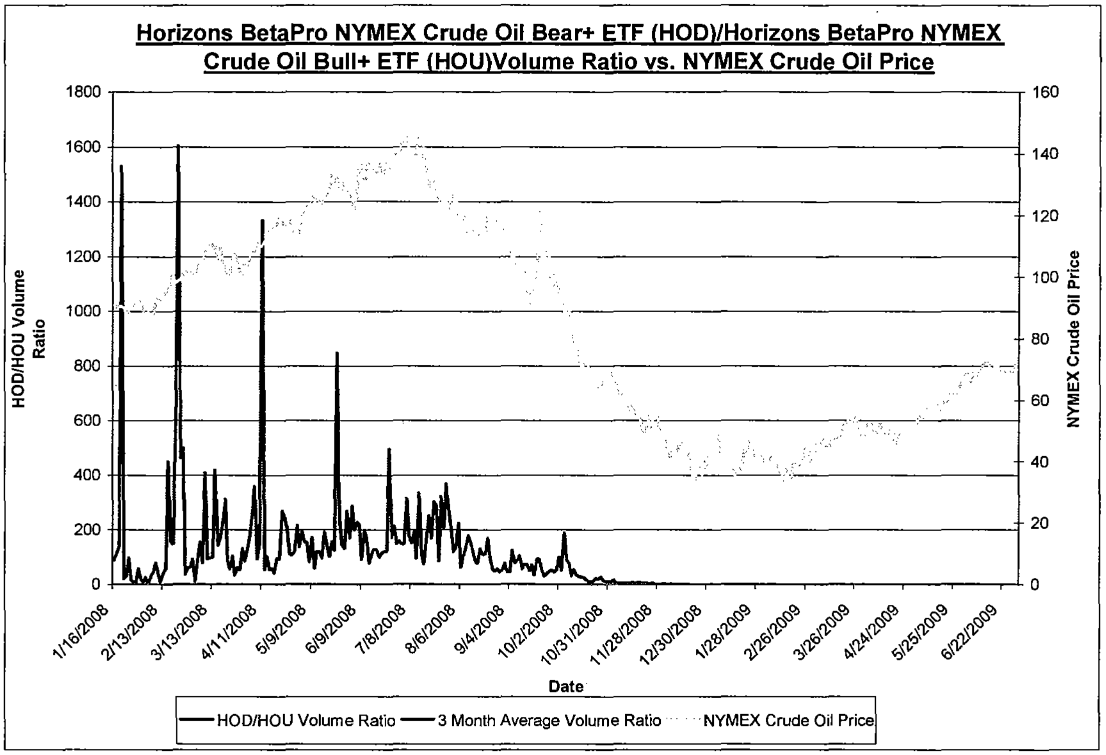
Horizons BetaPro ETFs – Average Hold Period (June 1, 2009 – June 30, 2009)

ETF	Average Hold* (Days)
Horizons BetaPro NYMEX® Crude Oil Bull+ ETF	3
Horizons BetaPro NYMEX® Crude Oil Bear+ ETF	3
Horizons BetaPro NYMEX® Natural Gas Bull+ ETF	2
Horizons BetaPro NYMEX® Natural Gas Bear+ ETF	1

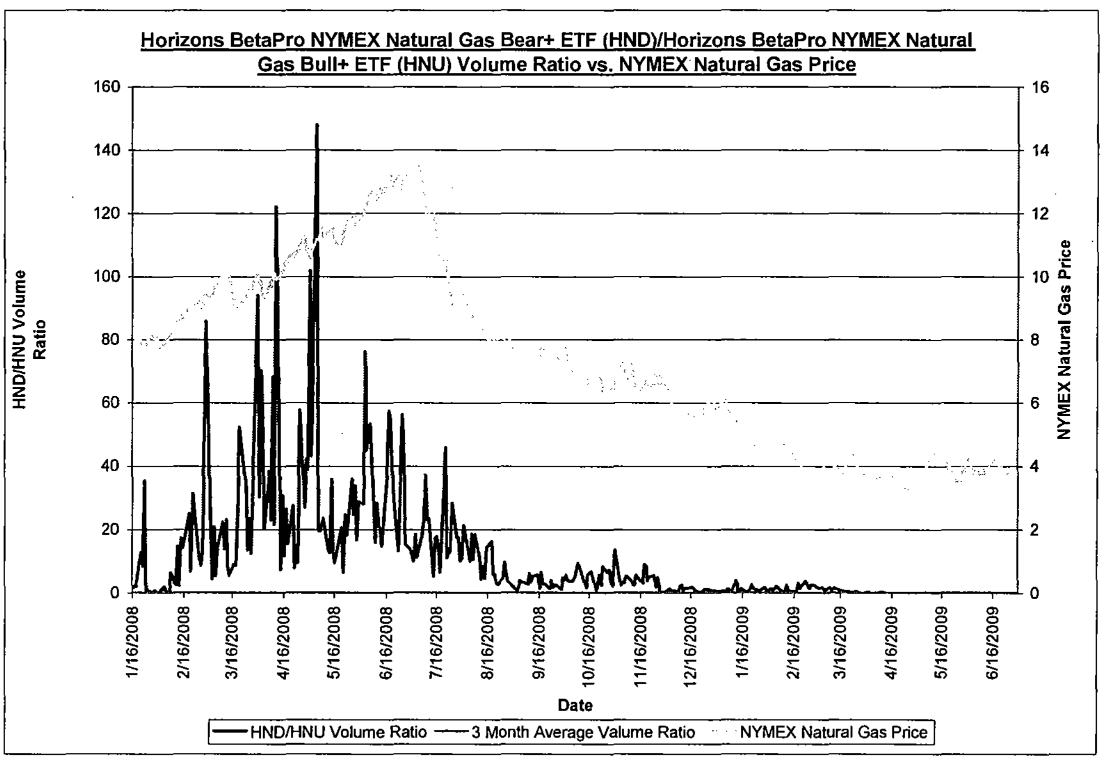
Source: BetaPro Management Inc., Bloomberg

*Average Hold calculated as: dollar value of ETFs traded per day (Volume*NAVPU) divided by Assets under Management for each ETF

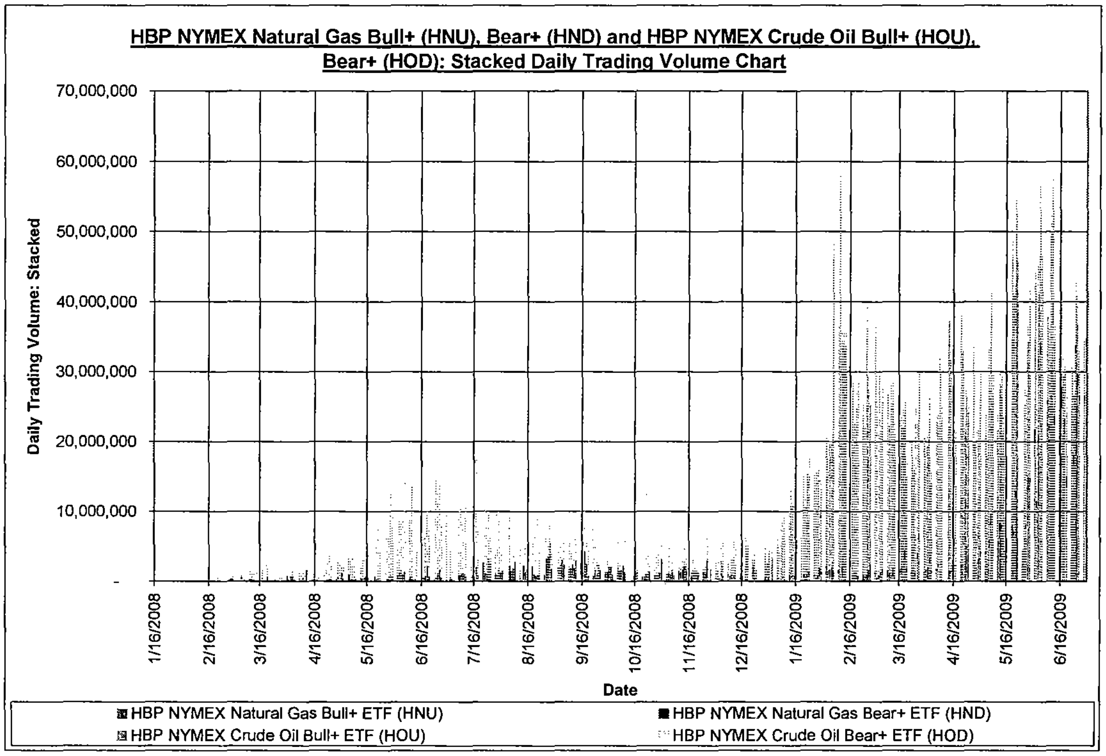
Appendix D



Horizons BetaPro NYMEX Crude Oil Bear+ ETF (HOD)/Horizons BetaPro NYMEX Crude Oil Bull+ ETF (HOU)Volume Ratio vs. NYMEX Crude Oil Price
HOD/HOU Volume Ratio
NYMEX Crude Oil Price
Date
HOD/HOU Volume Ratio
3 Month Average Volume Ratio
NYMEX Crude Oil Price



Horizons BetaPro NYMEX Natural Gas Bear+ ETF (HND)/Horizons BetaPro NYMEX Natural Gas Bull+ ETF (HNU) Volume Ratio vs. NYMEX Natural Gas Price
HND/HNU Volume Ratio
NYMEX Natural Gas Price
Date
HND/HNU Volume Ratio
3 Month Average Valume Ratio
NYMEX Natural Gas Price


HBP NYMEX Natural Gas Bull+ (HNU), Bear+ (HND) and HBP NYMEX Crude Oil Bull+ (HOU), Bear+ (HOD): Stacked Daily Trading Volume Chart
70,000,000
60,000,000
50,000,000
40,000,000
30,000,000
20,000,000
10,000,000
-
Daily Trading Volume: Stacked
1/16/2008
2/16/2008
3/16/2008
4/16/2008
5/16/2008
6/16/2008
7/16/2008
8/16/2008
9/16/2008
10/16/2008
11/16/2008
12/16/2008
1/16/2009
2/16/2009
3/16/2009
4/16/2009
5/16/2009
6/16/2009
Date
HBP NYMEX Natural Gas Bull+ ETF (HNU)
HBP NYMEX Natural Gas Bear+ ETF (HND)
HBP NYMEX Crude Oil Bull+ ETF (HOU)
HBP NYMEX Crude Oil Bear+ ETF (HOD)

Appendix E - Number of Underlying Futures Contracts Held per Unit Holder*

ETF	Number of Contracts per Unit Holder
Horizons BetaPro NYMEX Crude Oil Bull+ ETF	0.1606
Horizons BetaPro NYMEX Crude Oil Bear+ ETF	0.1884
Horizons BetaPro NYMEX Natural Gas Bull+ ETF	0.1194
Horizons BetaPro NYMEX Natural Gas Bear+ ETF	0.0016

Source: BetaPro Management Inc., Bloomberg

*Number of Contracts per Unitholder calculated as: Assets under Management divided by the underlying Futures Contract Value divided by the number of unitholders for each ETF.
All data as at December 31, 2008