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Sent: Monday, April 26, 2010 4:35 PM
To: secretary <secretary@CFTC.gov>
Subject: Industry Filings: Comments on Industry Submissions
Attach: CFTC Letter - dated April 26 Final.pdf

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BETAPRO
MANAGEMENT INC.

April 26, 2010

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

Re: Proposed Federal Speculative Position Limits for Referenced Energy <u>Contracts and Associated regulations; 75 Fed. Reg. 4144 (January 26, 2010)</u>

My name is Adam Felesky. I am the Chief Executive Officer of BetaPro Management Inc ("BPM"), the Manager of the 43 Horizons BetaPro Exchange Traded Funds ("HBP"). I am pleased to provide comments on the Commodity Futures Commission's Notice of Proposed Rulemaking entitled "Federal Speculative Position Limits for Referenced Contracts and Associated Regulations." While BPM is not domiciled in, nor are its funds listed in, the United States, our involvement and experience as manager to commodity exchange traded funds in Canada, we believe, provides an important additional perspective (and limited one) as the Commission considers implementing speculative energy position limits in the United States. Our comments will primarily focus on the role of the passive commodity exchange traded funds, their footprint in the market place and the potential consequences of the proposed position limits as contemplated. This discussion will also address many of the questions posed under Section VIII, #15 of the above notice.

First and foremost we believe that, should the Commission impose the proposed speculative position limits on energy, a special exemption should be considered and implemented for passive commodity exchange traded funds ("PCETF"). In such funds, **<u>the underlying investors are acting independently from one another and drive the overall investment of the Fund - not the manager.</u>** PCETF are simply a microcosm of an exchange – facilitating a wide array of buyers and sellers, with their **<u>net</u>** position and activity being the aggregate expression of the underlying independent investors' sentiment and investment decisions. As such, the manager of a PCETF is adjusting the portfolio exposure to the underlying commodity only in accordance with the aggregate supply and demand of its unit holders. The manager of a PCETF does NOT have any discretion to impose its view on the portfolio given the passive nature of the mandate and is only measured by how closely it tracks its underlying benchmark.

However, we do not believe this exemption should extend to the individual unit holders of a PCETF nor to the funds whose commodity positions can be directed by a single decision maker, regardless whether it is a passive investment or not. This limited exemption, therefore, would ensure that individuals could not aggregate positions across multiple vehicles or venues in order to circumvent imposed limits and ensure no passive commodity investment under the direction of a single decision maker (e.g. portfolio manager of a pension fund) could amass a position in excess of the limit; thereby limiting their activities to the equivalent of an active participant.

The Commission is keenly aware of the necessity of the speculator in order to facilitate a balanced market place for hedgers. PCETFs provide a unique essential source. We believe there are several reasons why they are now the preferred investment choice for the general public seeking commodity exposure rather than trading directly on the commodity futures exchanges:

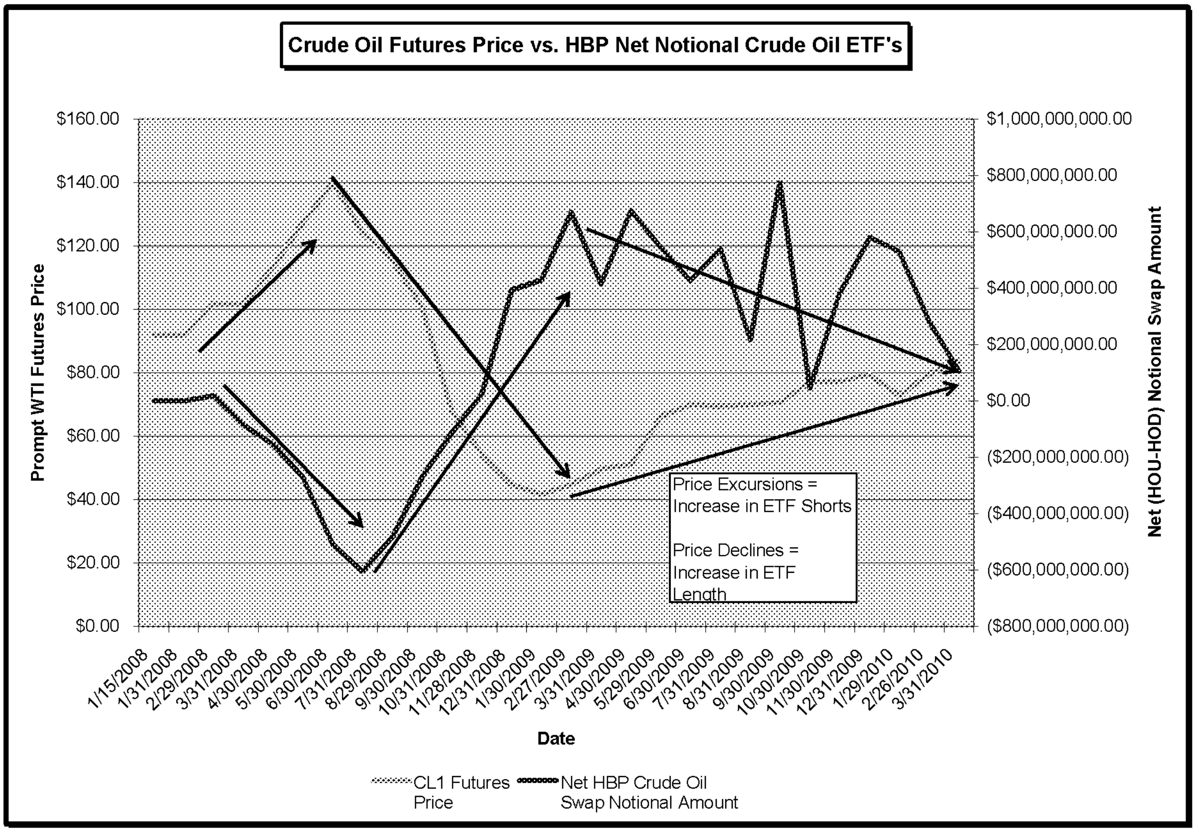
i) the recognition of the diversification benefit commodities can provide to an individual portfolio,
ii) increased appetite to hedge individual exposure to higher commodity prices and inflation,
iii) the limitation of risk to the capital invested – unlike that of a derivative via commodity exchange (i.e. future), and
iv) the ease of access – can be purchased similar to an equity security and in small denominations as they are listed on an exchange.

As such, we believe the PCETF delivers the marketplace the ideal speculator citizen:

i) individually they have small positions relative to underline open interest (eg. as at 03/11/10 the HBP Natural Gas Bull+ETFs held 0.6 contracts/unitholder),
ii) they are fully collateralized investments – no credit risk, and
iii) investments are on an exchange and are transparent.

Despite these obvious benefits PCETFs provide to the market place, there have been concerns raised that their increased presence has resulted in higher prices, market dislocations during roll periods and a generally significant footprint in the market place. On behalf of PCETFs only, we would like to address these assertions and encourage you to read similar findings published by our largest competitor.

Per our previous written and oral testimony, our fund flow activity has clearly demonstrated, and continues to demonstrate, that as prices decrease our funds exposure to a given commodity tends to increase in size while conversely (and most importantly) when prices increase our funds exposure to a given commodity decreases in size.



Crude Oil Futures Price vs. HBP Net Notional Crude Oil ETF's
Prompt WTI Futures Price
Net (HOU-HOD) Notional Swap Amount
$160.00
$140.00
$120.00
$100.00
$80.00
$60.00
$40.00
$20.00
$0.00
$1,000,000,000.00
$800,000,000.00
$600,000,000.00
$400,000,000.00
$200,000,000.00
$0.00
($200,000,000.00)
($400,000,000.00)
($600,000,000.00)
($800,000,000.00)
Price Excursions = Increase in ETF Shorts
Price Declines = Increase in ETF Length
1/15/2008
1/31/2008
2/29/2008
3/31/2008
4/30/2008
5/30/2008
6/30/2008
7/31/2008
8/29/2008
9/30/2008
10/31/2008
11/28/2008
12/31/2008
1/30/2009
2/27/2009
3/31/2009
4/30/2009
5/29/2009
6/30/2009
7/31/2009
8/31/2009
9/30/2009
10/30/2009
11/30/2009
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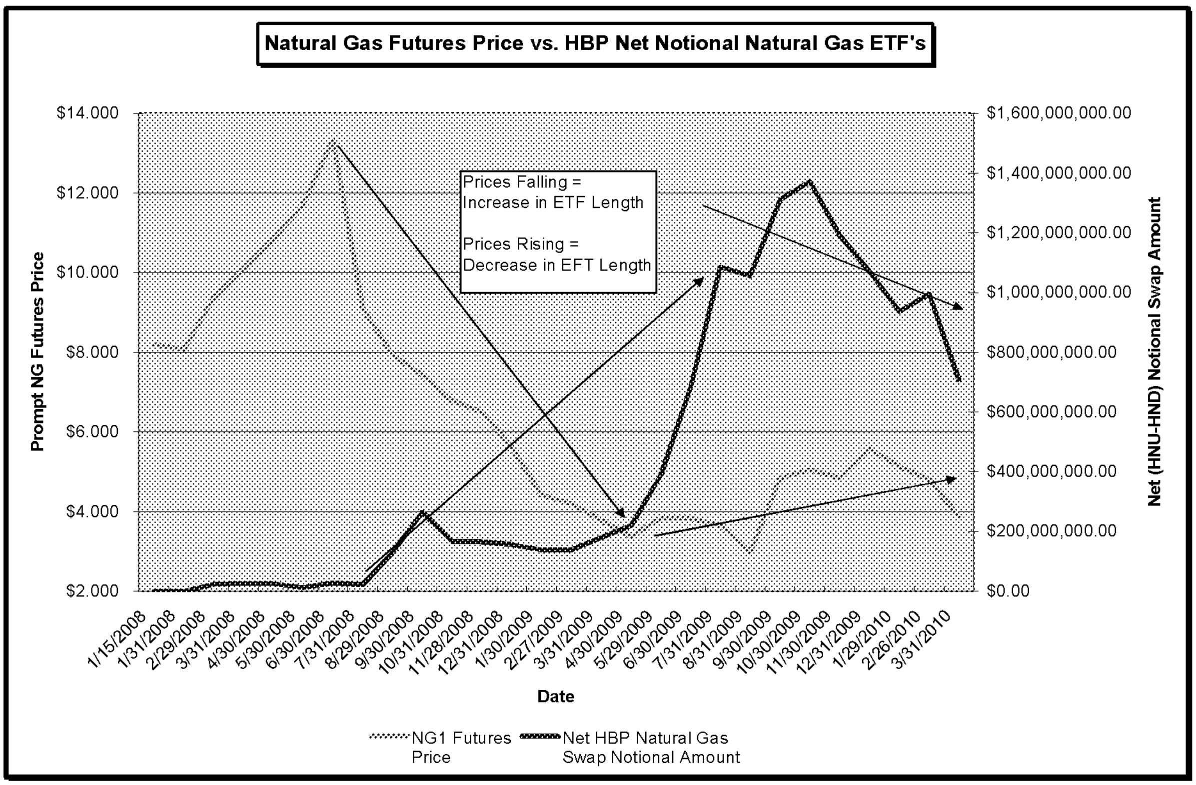
1/29/2010
2/26/2010
3/31/2010
Date
CL1 Futures Price
Net HBP Crude Oil Swap Notional Amount



Natural Gas Futures Price vs. HBP Net Notional Natural Gas ETF's
Prompt NG Futures Price
Net (HNU-HND) Notional Swap Amount
$14.000
$12.000
$10.000
$8.000
$6.000
$4.000
$2.000
$1,600,000,000.00
$1,400,000,000.00
$1,200,000,000.00
$1,000,000,000.00
$800,000,000.00
$600,000,000.00
$400,000,000.00
$200,000,000.00
$0.00
Prices Falling = Increase in ETF Length
Prices Rising = Decrease in EFT Length
1/15/2008
1/31/2008
2/29/2008
3/31/2008
4/30/2008
5/30/2008
6/30/2008
7/31/2008
8/29/2008
9/30/2008
10/31/2008
11/28/2008
12/31/2008
1/30/2009
2/27/2009
3/31/2009
4/30/2009
5/29/2009
6/30/2009
7/31/2009
8/31/2009
9/30/2009
10/30/2009
11/30/2009
12/31/2009
1/29/2010
2/26/2010
3/31/2010
Date
NG1 Futures Price
Net HBP Natural Gas Swap Notional Amount

As a result, our market impact has clearly demonstrated to have been one of price stability not volatility.

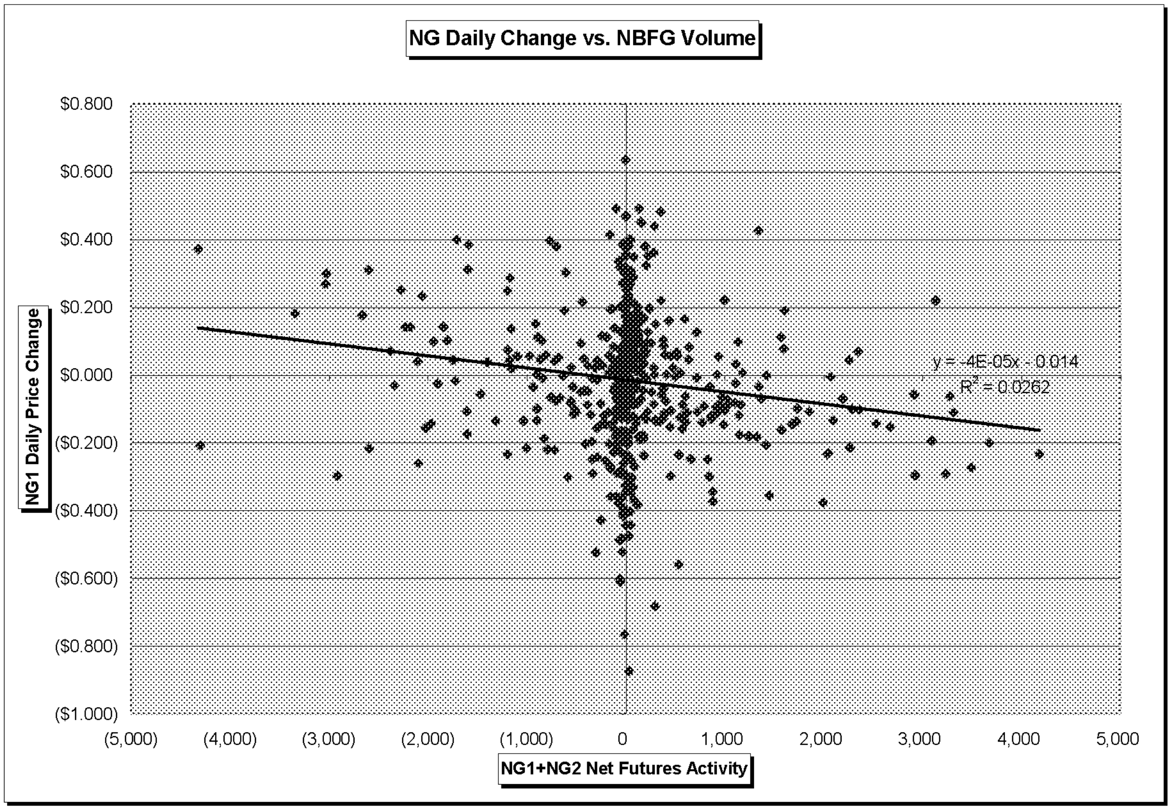
The market impact of a PCETF as it rolls from one future contract to the next and the opportunity for market dislocation as investors pre-position for such activity has also been much debated. However as an example, as shown below (see Table 1 & 2) in the history of our natural gas ETFs (our largest ETF) the volatility of price has proven to actually be lower when we are rolling, than when we are not rolling, which clearly indicates that the roll process is not driving inter-month spreads consistently wider as has been asserted.

NG1 - NG2 AVERAGE ABSOLUTE DAILY PRICE CHANGE			
	ALL DAYS	**ALL DAYS (EX-LAST DAY)**	**ROLL DAYS**
Feb/08 - Apr/10	$0.015	$0.013	$0.012
Jan/09 - Apr/10	$0.015	$0.014	$0.014
May/09 - Apr/10	$0.017	$0.016	$0.015

NG1 - NG2 STANDARD DEVIATION			
	ALL DAYS	**ALL DAYS (EX-LAST DAY)**	**ROLL DAYS**
Feb/08 - Apr/10	$0.024	$0.021	$0.018
Jan/09 - Apr/10	$0.025	$0.024	$0.021
May/09 - Apr/10	$0.028	$0.026	$0.021

We believe the market transparency of the rolls is the key reason why there has been limited opportunity for a consistent market arbitrage.

Finally, in terms of market footprint we believe that their market impact has been overstated. Again taking our largest ETF – the Horizons BetaPro Natural Gas Bull+ETF, we note that there is very little correlation between the price change in natural gas and the ETF's trading activity itself. If the ETF was an influence as argued by some commentators one would expect the regression line to move from lower left to upper right which is clearly not the case.



Given all of the empirical evidence demonstrated above, we believe it is clear that PCETFs are not a source of market manipulation or excessive speculation in these markets. Moreover they provide an ideal and necessary source of speculative liquidity.

We also believe these observed results of the limited, if any, impact of the PCETF in the market place are reflective of the size of their exposure relative to the entire energy complex which includes the physical and over-the-counter ("OTC") markets. We would welcome further transparency of these markets via clearing or reporting which we believe would further demonstrate the limited foot print PCETFs have relative to the entire energy market place.

However, should Congress not provide the Commission with the authority to regulate all markets within the energy complex, we share the view of many that the implementation of such limits would be premature, lead to less transparency and possible international regulatory arbitrage. Moreover should the Commission move forward with proposed energy limits without the authority and oversight of the OTC markets (as well as their inclusion for purposes of the open interest calculation) and absent a passive exemption for PCETFs, we believe the consequences on investors and the market as a whole would be as follows:

i) Less transparency; as PCETFs would seek more exposure in OTC markets.

ii) Lower ultimate liquidity in underlying commodity futures; as fractualization of large PCETFs in to multiple funds will not equate to the same overall liquidity.

iii) Potential regulatory arbitrage if other jurisdictions do not adopt the same limits and methodology.

iv) Higher costs to end investors as the scarcity value of limits will be exploited by counterparties.

v) Degradation of the credit worthiness of OTC counterparties as larger players will hold their own limit capacity for their own internal asset management purposes.

As stated in previous testimony, we strongly believe that PCETFs are an essential and ideal participant in these markets. Their aggregate contribution of liquidity, stability and access for individual investors are all aligned with key tenants of the Commission.

Regards,

Adam Felesky
Chief Executive Officer

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