October 18, 2010

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

Re: CFTC Request for Comment Regarding NFA Petition to Amend Rule 4.5

Dear Mr. Stawick:

OppenheimerFunds, Inc. ("OFI")[1] appreciates that the Commodity Futures Trading Commission ("CFTC") has published for comment a petition for rulemaking from the National Futures Association ("NFA") to amend CFTC Rule 4.5, which excludes certain "otherwise regulated persons," including registered investment companies ("funds"), from the definition of "commodity pool operators" ("CPO") under the U.S. Commodity Exchange Act, as amended. The NFA's petition asks that the CFTC place limitations on the current exclusion by requiring funds with greater than *de minimis* investments in the commodities futures market to register and be regulated as CPOs.

We support the NFA's role in ensuring the protection of customers participating in the commodity futures market. However, we believe the NFA's proposed changes to Rule 4.5 could result in unnecessary and undue regulatory burdens on funds, whose shareholders would have to bear the associated costs. The Investment Company Institute ("ICI") effectively highlights this and other concerns in its separate comment letter to the NFA's petition, and we endorse the ICI's views expressed therein. We take this opportunity to discuss in greater detail the extent to which the commodity-focused fund structures (including their use of subsidiaries) are currently subject to robust regulation by the U.S. Securities and Exchange Commission ("SEC"). As the CFTC rightly acknowledged in 2003 when it adopted the amendments to Regulation 4.5, the current regulatory restrictions and SEC oversight of mutual funds obviate the need for the additional layer of regulation the NFA requests.

Background on Commodity-Focused Funds

Commodity-focused funds are designed to provide investors with portfolio diversification, long-term growth potential and a hedge against inflation through exposure to commodities markets. Investors are often encouraged to diversify across a broad range of assets classes under modern portfolio theory, and investing in mutual funds provides a practical, cost-effective and transparent means to obtain exposure to commodities.

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[1] OFI is a registered investment adviser, providing investment management and other services to 110 registered investment companies and a number of institutional investment accounts. OFI, with more than $170 billion in assets under management, has been in the investment advisory business since 1961.

While commodity-focused fund strategies may vary, these funds generally invest in a combination of commodity-linked derivatives and structured notes. Derivatives may be linked to the price movements of physical commodities, commodity options or futures contracts, a commodity index, or some other readily measurable variable that reflects changes in the value of particular commodities or commodities markets. These funds also invest in portfolios of corporate and government fixed-income securities, which serve as collateral for their derivative positions.

In 2005, the Internal Revenue Service published a Revenue Ruling that had a detrimental affect on commodity-focused funds.[2] Specifically, one of the requirements for favorable tax treatment as a regulated investment company under the Internal Revenue Code (the "Code") is that a fund derives at least 90 percent of its gross income from certain qualifying sources. This Revenue Ruling provided that income from commodity-linked derivatives does not qualify as "good income" for purposes of this test.

In order to maintain exposure to commodity markets without jeopardizing their tax status under the Code, funds implemented investment and structural alternatives that would generate qualified income from commodity-related investments. First, funds began investing in (or significantly increasing their allocation to) commodity-linked structured notes, whose return is tied to the performance of a commodity or commodity index. Second, funds organized offshore, wholly-owned subsidiaries, which would invest directly in commodity-linked swaps, futures and other instruments.[3]

Regulation of Commodity-Focused Funds

Investment companies are extensively regulated by the SEC under the Investment Company Act of 1940 (the "Investment Company Act"), and investor protection is the central focus of this regulatory scheme. The protections afforded include, among others, limits on the use of leverage, antifraud provisions, comprehensive disclosure to investors, and oversight by an independent boards of directors.

Some commodity-linked derivatives entail implicit leverage. Accordingly, the SEC and its staff apply the limitations of Section 18 of the Investment Company Act to a fund's use of derivatives.[4] The SEC staff has established an interpretive approach under Section 18 pursuant to which funds are required to enter into offsetting transactions or segregate assets in amounts that would cover a fund's potential liabilities under the instruments.[5] The application of Section 18

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2 One of the requirements for favorable tax treatment as a regulated investment company under the Internal Revenue Code (the "Code") is that the fund derives at least 90 percent of its gross income from certain qualifying sources. This Revenue Ruling provided that income from commodity – linked swap agreements will not qualify as "good income" for purposes of this test.

3 Funds have received private letter rulings from the Internal Revenue Service acknowledging that income from these subsidiaries would be qualifying income under the Code.

4 Section 18(f) of the Investment Company Act prohibits an open-end fund from issuing any "senior security." The SEC's staff has taken the position that the use of certain derivative instruments may equate to the issuance of prohibited senior securities.

5 *See* Report of the Task Force on Investment Company Use of Derivatives and Leverage, ABA Committee on Federal Regulation of Securities (July 6, 2010) (the "ABA Report").

effectively reduces the effects of leverage created by a commodity-focused fund's use of commodity-linked derivatives, and thus differentiates these products from traditional managed futures trading accounts or pooled commodity accounts.

In addition to commodity-linked derivatives, commodity-focused funds utilize commodity-linked structured notes to gain exposure to commodity markets. These instruments are fully funded (*i.e.*, the maximum amount a fund can lose is the amount of its initial investment in the security), and do not entail significant leveraging risks.[6]

From a disclosure standpoint, commodity-focused funds provide significant disclosure with respect to a fund's use of commodity-linked derivatives and structured notes, investments in a wholly-owned subsidiary, and the principal risks associated with investments in these instruments and entities. In addition, funds provide robust disclosure with respect to the structural risk associated with investments in unregistered wholly-owned subsidiaries.

Regulatory Oversight of Wholly-Owned Subsidiaries

The NFA's petition focuses on the risks associated with off-shore subsidiaries that some commodity-focused funds employ. According to the NFA's petition, these subsidiaries are neither commodity pools regulated by the CFTC and NFA, nor registered investment companies regulated under the Investment Company Act. Along the same lines, the NFA claims that the subsidiaries' daily operations, including their actual derivatives positions (including the positions' leverage amounts) and fees charged are not entirely transparent.

However, contrary to the NFA's concerns, the SEC has by and large insisted that these offshore subsidiaries abide by the substantive provisions of the Investment Company Act. At the inception of these structures, the SEC explicitly required confirmation that these subsidiaries would comply with important investor protection provisions of the Investment Company Act with regard to their fee structures, liquidity and leverage limits, custody[7], recordkeeping[8], auditing requirements and pricing procedures.[9] These confirmations are also clearly reflected in commodity-focused fund disclosures.

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6 As noted in the ABA Report, it is important to distinguish the leveraging effects of a fund's use of derivatives from the leverage that is created when a fund invests without recourse in a structured note.

7 Any assets held by the Oppenheimer Commodity Strategy Total Return Fund's (formerly, the Oppenheimer Real Asset Fund) subsidiary that are maintained offshore will be held consistent with the requirements of Rule 17f-5.

8 The books and records of the Oppenheimer Commodity Strategy Total Return Fund's subsidiary are maintained in the United States in accordance with Section 31 of the Investment Company Act.

9 As the Oppenheimer Commodity Strategy Total Return Fund noted in its response letter to the SEC, its wholly-owned subsidiary was formed for legitimate business reasons (i.e., avoidance of unfavorable tax consequences). Consequently, the use of this subsidiary structure would not implicate Section 48(a) of the Investment Company Act. *See* Letter from Robert Hawkins to Richard Pforte and Vicent DiStefano, Division of Investment Management, U.S. Securities and Exchange Commission, Responding to Comments on Post-Effective Amendment No. 14 (August 31, 2006).

For example, the Oppenheimer Commodity Strategy Total Return Fund (the "Fund") prospectus clearly provides that its subsidiary (the "Subsidiary") will be subject to the same investment restrictions and limitation, and will follow the same compliance policies and procedures as the Fund. Importantly, the Subsidiary is required to observe the leverage restrictions under Section 18(f) of the Investment Company Act, as interpreted by the SEC, to the same extent as the Fund. As such, the Fund's investment in the Subsidiary will not increase the overall effects of leverage created by commodity-linked derivative instruments (as the NFA seems to imply based on their non-registered status).

Furthermore, the NFA's concerns that the subsidiaries' operations lack transparency should be alleviated by the fact that the Subsidiary provides separate financial statements, prepared in accordance with the same accounting rules as the Fund and by the same independent registered public accounting firm. These financial statements are provided to Fund shareholders concurrently with the Fund's financial statements. In addition, any fees associated with the management of the Subsidiary are clearly disclosed in the Fund's prospectus.

Additional Layer of Regulation is Unwarranted

In light of the current regulation and oversight of commodity-focused funds by the SEC (both at the fund and subsidiary level), the NFA's proposed changes to Rule 4.5 would likely result in overlapping and possibly conflicting regulation between the SEC and CFTC. The cost of compliance with additional regulations would be borne by shareholders without commensurate enhancements in investor protection. Alternatively, to avoid this additional layer regulation, funds may scale back their use of commodity-linked derivatives instruments to a point where they no longer provide investors with meaningful exposure to this asset class, or use alternative, more costly means to gain this exposure – again at the cost of their shareholders.

In either of these scenarios, shareholders of commodity-focused funds would be disadvantaged. Commodity-focused funds have played a critical role in providing shareholders with practical, highly regulated and transparent exposure to commodity markets. Unlike other commodity-focused products, registered funds (including their subsidiaries) must operate within the strict leverage limits of the Investment Company Act, as interpreted by the SEC. In addition, despite the NFA's concerns to the contrary, commodity-focused funds are highly transparent and provide investors clear and meaningful disclosure with respect to their investment strategies, structures and risks.

As aptly noted by the ICI in their letter, the CFTC's 2003 amendments rightly acknowledged that registered investment companies do not need to be subject to the full weight of CFTC and NFA regulation and oversight, and the NFA petition fails to present a compelling case to the contrary.

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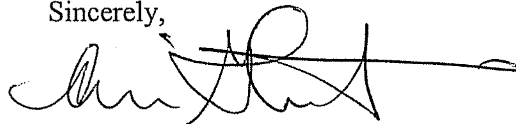
We appreciate the opportunity to comment on the NFA petition and respectfully request that the CFTC consider the comments and recommendations set forth above.

Sincerely,



Ari Gabinet
Executive Vice President and General Counsel

cc: The Honorable Gary Gensler, Chairman
The Honorable Michael V. Dunn, Commissioner
The Honorable Jill E. Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott D. O'Malia, Commissioner

Robert G. Zack, Executive Vice President and General Counsel, OppenheimerFunds, Inc.
Lisa Bloomberg, Senior Vice President and Deputy General Counsel, OppenheimerFunds, Inc.
Derek B. Newman, Vice President and Assistant Counsel, OppenheimerFunds