DB Commodity Services LLC

Deutsche Bank
Group

DB Commodity Services LLC
60 Wall Street
5th Floor
New York, NY 10005

October 13, 2010

Via E-mail

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Regulatory Relief for CPOs of Exchange-Listed Commodity Pools Notice of Proposed Rulemaking (75 *Federal Register* 54794) (September 9, 2010) (the "Proposal")

Dear Mr. Stawick:

DB Commodity Services, LLC ("DBCS"), a Delaware limited liability company that is a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), welcomes the opportunity to submit this letter in response to the Commodity Futures Trading Commission's ("Commission" or "CFTC") request for comments in respect of the Proposal. DBCS has been registered with the Commission and has been a member of the National Futures Association since 2005. Its principal place of business is 60 Wall Street, New York, New York 10005, telephone number (212) 250-5883. DBCS is a wholly-owned subsidiary of DB U.S. Financial Markets Holding Corporation, which is a wholly-owned, indirect subsidiary of Deutsche Bank AG. DBCS currently operates 11 commodity pools traded on NYSE Arca, a national securities exchange, in 2009 having in the aggregate over 900,000 public investors and approximately $11B in investor assets.

As the staff of the Commission is aware, DBCS was the first registered CPO to develop a Commodity ETF, and request and obtain relief from the Commission with respect to a commodity pool whose shares are publicly offered, listed and traded on a national securities exchange with respect to compliance with certain disclosure, reporting and recordkeeping requirements under Rules 4.21, 4.22 and 4.23. *See* Commission Letter 06-26 (September 26, 2006).

DBCS agrees that it is not contrary to the public interest for the Commission to codify relief from the disclosure, reporting and recordkeeping requirements that the staff has previously issued on a case-by-case basis to Commodity ETFs. As the CPO of eleven Commodity ETFs, DBCS endorses the Commission's Proposal which allows a registered CPO to file with the National Futures Association a self-executing claim for relief from specified provisions of Rules 4.21, 4.22 and 4.23 with respect to any Commodity ETF that is (i) offered and sold pursuant to an effective registration statement under the Securities Act of 1933 and (ii) listed for trading on a national securities exchange registered under the Securities Exchange Act of 1934. We believe this procedure will alleviate time delays in issuing such relief and the burden on the Commission's staff to evaluate each Commodity ETF on a case-by-case basis. Public investors who seek to diversify into commodities through highly regulated and transparent Commodity ETFs will benefit from the efficiency of the routinized exemptive relief and the elimination of the costs involved in obtaining case-by-case relief.

We wish to address one issue that we think needs clarification.

Rule 4.21 Disclosure Document Customer Acknowledgment. In CFTC Letter 06-26 (September 26, 2006), Commission staff acknowledged at footnote 11 that:

> The CPO's obligation to deliver a Disclosure Document (and the requirements to obtain a signed acknowledgment of receipt) extends to the direct purchaser of units of participation, and not to persons who purchase from that purchaser. In this regard, the Commission has stated that, with respect to the transfer of a participation unit in a commodity pool, the CPO of the pool "is not required to provide a Disclosure Document (Rule 4.21) to a person who purchases a unit of participation or interest in the pool from a pool participant if the pool operator did not solicit the purchase." 44 Fed. Reg. 25658, 25659 (May 2, 1979).

We suggest that the Commission acknowledge in its adopting release that the Disclosure Document delivery and acknowledgment requirement of Rule 4.21 does not apply to secondary market purchases of shares in a Commodity ETF that are made on a national securities exchange and that are not purchased directly from the CPO, notwithstanding the exemption contained in the final rule. Otherwise, the rule suggests that such secondary market transfers do, in fact, implicate Rule 4.21, whereas prior published guidance from the CFTC suggests the contrary. Furthermore, Authorized Participants (certain registered broker-dealers who are also participants in the Depository Trust Corporation) typically create additional Baskets of shares of the Commodity ETF to sell to the public. In so doing, they are acting for their own account or for the account of their customer, and they receive no compensation from the CPO or the Commodity ETF. Authorized Participants inform the public investors where they can obtain the Disclosure Document or upon request will deliver a Disclosure Document to the public investor in accordance with applicable securities laws. We suggest that the final rule explicitly exempt Authorized Participants who create Baskets of shares in exchange-traded Commodity ETFs for sale to the public from the Rule 4.21 Disclosure Document delivery and acknowledgment requirement or otherwise acknowledge that they need not comply with Rule 4.21.

DBCS thanks the Commission for the opportunity to submit this comment letter. Please do not hesitate to contact the undersigned or our counsel, Michael Sackheim of Sidley Austin LLP at (212) 839-5503, if you want to discuss our comments.

Sincerely,

Martin Kremenstein
Chief Operating Officer

cc: Michael S. Sackheim

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