



1100 Clarendon Way, Parkway  
Suite 1100  
Washington, DC 20002  
Phone: 202 391-9700  
Fax: 202 391-9701

October 22, 2010

VIA E-MAIL

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

Re: CFTC Proposed Rule Codifying Disclosure, Reporting and Recordkeeping Requirements of Commodity Pool Operators

Dear Mr. Stawick:

We are submitting this comment letter on behalf of United States Commodity Funds LLC (“USCF”), a commodity pool operator (“CPO”) registered with the Commodity Futures Trading Commission (the “CFTC” or the “Commission”), that manages several exchange traded commodity pools, including the United States Oil Fund, LP and the United States Natural Gas Fund, LP. USCF has obtained exemptive relief for each of its operating funds relating to certain of the disclosure, reporting and recordkeeping requirements of CPOs outlined in Part 4 of the CFTC regulations (the “regulations”).

We appreciate the Commission’s efforts to codify relief from such requirements to CPOs whose units of participation are offered and sold pursuant to an effective registration statement under the Securities Act of 1933, and that are listed for trading on a national securities exchange registered as such under the Securities Act of 1940 (“Commodity ETFs”). However, we respectfully suggest that the Commission (1) clarify the meaning behind the term “more restrictive” with respect to whether a CPO of a Commodity ETF should file for exemptive relief pursuant to the proposed rule, and (2) notwithstanding footnote 35 of the proposed rule, consider including the requirement of CPOs to deliver Annual Reports in the exemptive relief granted to Commodity ETFs.

Clarification of “More Restrictive” Condition

Section IV of the Commission’s proposed rule addresses the effect of final rulemaking on prior relief letters, noting that if the requirements for obtaining relief in the final rule are no more restrictive than those set forth in a prior relief letter, then the person granted relief under the prior

relief letter will not be required to do anything further to continue operating under that relief. However, if the requirements for obtaining relief in the final rule are more restrictive than those set forth in a prior relief letter, then the person granted relief must file a notice under the final rule to request such relief. USCF requests that the Commission clarify the meaning behind the term “more restrictive,” and whether this would include relief that is the same as what has been granted in a prior relief letter, but is contingent on certain conditions that were not set forth in a prior relief letter but outlined in the proposed rule.

### Relief from Requirement to Deliver Annual Reports

Part 4.22(c) of the regulations requires that a CPO provide pool participants with an Annual Report within ninety calendar days of the end of the pool’s fiscal year. The CPO is also required to provide the NFA with a copy of the Annual Report within the same timeframe. The Annual Report must be prepared in accordance with generally accepted accounting principles, certified by an independent certified public accountant and include an auditor’s opinion with respect to (1) any financial statements and schedules; and (2) the consistency of application of accounting principles as they relate to the Annual Report.

The Commission has provided relief in the past, and seeks to codify such relief in its final rule, to Commodity ETFs from the requirement to deliver monthly Account Statements. The relief has been granted based on the fact that a CPO of a Commodity ETF typically does not know the identities of the ultimate beneficial owners of the shares and that it is unduly burdensome and costly to ascertain, on a monthly basis, the identities of purchasers of shares in the secondary market and deliver monthly statements to those participants. The Commission also acknowledges that unlike traditional publicly-offered commodity pools which typically provide for the redemption of shares no more often than once a month, ownership of the shares of a Commodity ETF are expected to change on a daily basis, and even throughout the day. The Commission agreed that given these obstacles faced by Commodity ETFs with respect to who actually owns shares at any given moment, the most efficient and effective way to provide monthly account information as required by the regulations is to make such information readily available via the CPO’s website.

While we acknowledge that the delivery of the Annual Report certainly is not as burdensome as delivering Account Statements on a monthly basis, we believe that the same compelling obstacles exist for CPOs with respect to the delivery of the Annual Report. As noted above, the identities of the beneficial owners of the shares of Commodity ETF are constantly changing. To comply with Rule 4.22 of the regulations, the CPO is required to take a “snapshot” of the beneficial owners on a particular day in the calendar year (*e.g.*, December 31<sup>st</sup>) and deliver the reports to those owners. It may be that by the time those individuals receive the Annual Reports, they no longer own the shares of the Commodity ETF. Conversely, individuals who

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purchased shares at a subsequent date (e.g., January 1<sup>st</sup>) would not receive the Annual Report since they were not included in the “snapshot.” While we understand and acknowledge the purpose of the Annual Report delivery requirement, we do not believe that the practical application of the requirement with respect to Commodity ETFs best serves the beneficial owners of the shares. If the Annual Report were made available on the CPO’s website, then on any given day, everyone would have the requisite information available for review. Allowing a CPO to post the Annual Report on its website would also relieve the CPO from the burden of ascertaining the identities of owners on a particular day of the calendar year and spare the CPO of the cost of providing paper copies to the individuals who were owners on that day.

Further, we would like to emphasize that as a company subject to disclosure requirements under the 1933 Act, a Commodity ETF is required to file an annual report with the Securities and Exchange Commission (the “SEC”) on Form 10-K, which provides a comprehensive summary of the Commodity ETF’s performance, history, organizational structure, executive compensation, equity, subsidiaries and audited financial statements, among other information. We believe this information is equally if not more useful to owners of Commodity ETF shares as the Annual Report required under the CFTC regulations and is currently available on the SEC website site for public review as well as on the websites of many Commodity ETFs, including those of the USCF funds. We respectfully suggest that a Commodity ETF be permitted to provide its SEC filed Form 10-K on its website, along with the monthly account reports and the Disclosure Document, to satisfy the Annual Report requirement under the regulations.

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We appreciate the Commission’s efforts to streamline the relief process for Commodity ETFs and the opportunity to submit suggestions and questions we have regarding the proposed rule.



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Howard Mah  
Chief Financial Officer  
United States Commodity Funds LLC

cc: James M. Cain  
Sutherland Asbill & Brennan LLP