



October 25, 2010

**Via E-Mail (secretary@cftc.gov)**

Mr. David A. Stawick  
Secretary of the Commission  
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

Dear Mr. Stawick:

NFA appreciates the opportunity to comment on the Commission's proposed rules relating to exchange traded commodity pools, which codify the relief from certain disclosure, reporting and recordkeeping requirements that Commission staff has previously issued on a case-by-case basis. NFA fully supports the proposed rules and encourages the Commission to consider similar relief for other commodity pool vehicles, particularly those that are not exempt from the federal securities laws.

The Commission's proposed changes apply to commodity pools whose units of participation are offered and listed for trading on a national securities exchange – Commodity ETFs. These funds are also subject to the federal securities laws applicable to registered public offerings. Because these funds are subject to two regulatory regimes and are distributed differently than a typical commodity pool, the Commission's relief is necessary to permit these funds to operate. The Commission's proposed changes provide the appropriate relief without materially impacting customer protection, and NFA commends the Commission for appropriately modifying its requirement to promote innovation in the marketplace.

When the Commission adopted the delivery requirement for disclosure documents, it noted that the purpose of the regulation was "to protect pool participants – particularly those who are unsophisticated in financial matters -- by ensuring that they are informed about the material facts regarding a pool before they commit their funds."<sup>1</sup> At the same time the Commission noted that the purpose of the periodic account statement requirement was to "ensure that participants have reasonably current knowledge of the pool's trading performance and operating costs".<sup>2</sup> Neither of these purposes is diminished

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<sup>1</sup> 44 Fed. Reg. 1918,1920 (Jan. 8, 1979)

<sup>2</sup> 44 Fed. Reg. at 1922 (Jan. 8, 1979)



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by permitting the CPO to provide this information through its Web site. Rather, the proposed changes recognize that technology and, in particular, the Internet has changed the way investors obtain information. NFA agrees with the Commission that under the appropriate circumstances, a CPO's Internet Web site is an effective method of providing the pool's disclosure document and monthly account statements.

The Commission's proposed changes also provide relief from the requirement that the CPO keep its books and records at its main business office, provided that the books and records are maintained by the pool's administrator, distributor or custodian or registered broker-dealer acting in a similar capacity with respect to the pool. As a condition of this relief, the CPO must notify NFA of the books and records custodian, along with contact information, and file a statement with NFA from the records custodian making certain representations. NFA requests that the Commission consider whether it is necessary that this statement be filed with NFA. Since the CPO's notice of exemption will provide NFA with the necessary identifying information related to the records custodian, NFA requests that the Commission consider requiring the CPO to maintain the statement as a business record and make it available to NFA upon our request. NFA believes that this will provide the same protections without burdening the CPO with the requirement of filing the statement with NFA.

As noted above, NFA believes the Commission's proposed changes strike the appropriate balance of adapting to the changing marketplace without sacrificing any customer protection. NFA encourages the Commission to carefully consider the comments of other industry participants on the appropriateness of providing similar relief to other commodity pool vehicles, especially those that are not exempt from application of the federal securities laws.

If you have any questions or would like to further discuss the proposal or comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Tom Sexton", is written over the typed name.

Thomas W. Sexton  
Senior Vice President/General Counsel