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October 28, 2010

VIA E-MAIL

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

Re: Agricultural Swaps ANPRM

Dear Mr. Stawick:

We submit these comments on behalf of United States Commodity Funds, LLC (“USCF”) in response to the Commodity Futures Trading Commission’s (the “CFTC” or the “Commission”) Advanced Notice of Proposed Rulemaking pertaining to the appropriate conditions, restrictions or protections that should be afforded to agricultural swaps pursuant to Section 723(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” or the “Act”).¹ USCF is a commodity pool operator registered with the CFTC that manages several exchange traded commodity pools, including the United States Commodity Index Funds Trust (the “Trust”) and its related funds. The Trust’s current fund invests, and certain of its future funds are anticipated to invest, in various commodity futures contracts, including those related to agricultural commodities. While the current fund only invests in futures contracts as the means to meet its investment objective, in the future it may invest in swaps to meet this objective.

We appreciate the opportunity to comment on the Commission’s consideration of appropriate regulation of agricultural swaps. We believe that agricultural swaps should be permitted subject to the same regulatory regime that other types of swaps are subject to under Dodd-Frank. Prohibiting agricultural swaps, or regulating such swaps differently than other swaps, will remove or could unreasonably restrict a meaningful and proven method for market participants to hedge or mitigate their exposure to agricultural commodity price movements.² To the extent agricultural swaps, like other swaps, have been found to pose inappropriate risks to the market and its participants, Dodd-Frank and the regulations to be promulgated thereunder as to swaps generally should be sufficient to address such risks. We therefore urge the Commission

¹ Agricultural Swaps, 75 Fed. Reg. 59,666 (Sept. 28, 2010).

² See, e.g., Betsy Jensen, Op-Ed., *Reap What You Swap*, N.Y. TIMES, Aug. 11, 2010, at A21.

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to permit agricultural swaps and to refrain from imposing requirements on agricultural swaps that are different from or in addition to those imposed on other types of swaps.

Agricultural swaps do not pose greater risk than other types of swaps.

Section 723(c) of Dodd-Frank prohibits agricultural swaps unless the CFTC grants an exemption for such transactions under Section 4(c) of the Commodity Exchange Act. In distinguishing agricultural swaps from other types of swaps Congress seems to imply that farmers and other persons trading agricultural swaps require additional, special protections beyond those available to persons trading other types of swaps.³ However, no mention of these additional risks was included in the CFTC's request for comment and a significant market has developed that allows producers and purchasers of agricultural commodities to mitigate their risk through tailored, negotiated agricultural swap contracts. We are unaware of any meaningful evidence that agricultural swaps pose any greater risk than other types of swaps. Accordingly, prohibiting such swaps or imposing distinct or additional protections on agricultural swaps is unnecessary.

Dodd-Frank's purpose is to reduce risk and increase transparency in the United States financial system. The CFTC is charged with adopting regulations to that end. Other than with respect to restrictive position limits and the potential regulation of firms that manage publicly traded, un-levered, passive commodity funds as major swap participants, we believe that Dodd-Frank and its new regulatory regime will improve the integrity and stability of the United States financial markets.⁴ Further, we are certain the CFTC will comply with Dodd-Frank's mandate and adopt appropriate safeguards for the swaps market. The regulations adopted by the CFTC for non-agricultural swaps should suffice for agricultural swaps. Distinguishing between agricultural swaps and non-agricultural swaps will result in limited vehicles to hedge and mitigate agricultural commodity price risk and will likely increase the costs for the remaining alternative, agricultural futures contracts, without any demonstrated increased safety or benefit.

Distinct or additional requirements for agricultural swaps will inhibit market participants' ability to mitigate commercial risk and increase costs.

Assuming that agricultural swaps will be permitted in some form, additional or different regulation of such swaps could limit appropriate hedging opportunities, *e.g.*, if only standardized cleared swaps are permitted and non-cleared tailored swaps are prohibited. Limiting agricultural commodity producers and buyers' ability to tailor the way they hedge their price risk could lead

³ Don Heitman, Special Counsel, Commodity Futures Trading Commission Agricultural Swaps Rulemaking Team, Presentation for the CFTC Agricultural Advisory Committee: Agriculture and the Dodd-Frank Bill (Aug. 5, 2010).

⁴ For our thoughts on position limits and the "major swap participant" definition see our pre-proposal comment letter: Letter from John T. Hyland and Nicholas D. Gerber to David A. Stawick, Secretary, Commodity Futures Trading Commission (Oct. 21, 2010) (available at <http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative26sub102110-sutherla.pdf>).

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to increased volatility in the prices of agricultural commodities and the goods that are produced using such commodities.

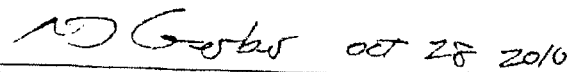
Different regulatory regimes will result in increased cost of compliance and complexity. Dealer-counterparties engaging in agricultural commodity-based swap transactions could potentially be subject to two regulatory regimes: one for their non-agricultural swaps and another for their agricultural swaps. Compliance with both sets of requirements would result in increased costs. Dealer-counterparties will likely pass their increased costs on to the farmers who use agricultural swaps to mitigate risk and buyers of their products.

* * *

We appreciate the Commission's efforts to comply with Dodd-Frank's mandate to ensure that agricultural swaps are well-regulated and transparent. However, prohibiting agricultural swaps or imposing requirements on agricultural swaps that are distinct from those imposed on other types of swaps is unnecessary and will likely cause greater volatility in agricultural commodity prices. Adopting distinct or additional requirements for agricultural swaps will result in increased costs to the market, will cause unnecessary confusion and complexity, and, as a result, farmers and other persons engaged in agricultural swap transactions' ability to mitigate risk will be inappropriately inhibited. To address the risks posed by agricultural swaps, the Commission should impose its regulations for non-agricultural swaps onto agricultural swaps.

Respectfully,


John T. Hyland
Chief Investment Officer
United States Commodity Funds, LLC


Nicholas D. Gerber
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United States Commodity Funds, LLC

Cc: James M. Cain, Sutherland Asbill & Brennan LLP