VIA ELECTRONIC SUBMISSION

March 28, 2011

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

Re: Comments on Proposed Position Limits under Dodd-Frank

Dear Mr.Stawick:

ETF Securities ("ETFS") appreciates the opportunity to provide the Commodity Futures and Trading Commission ("Commission") with this comment letter regarding the proposed rule-makings under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). ETFS would like to focus your attention upon the provisions therein ("Proposal") that seek to apply position limits to passively-managed, indexed exchange-traded commodities ("ETCs").

Executive Summary:

ETFS is a global ETC issuer and sponsor and has a proven track record as pioneer and innovator in the issuance of ETCs. In 2003, ETFS listed the world's first exchange-traded gold product in Australia and in London. ETFS also listed the world's first ETC platform which was listed on the London Stock Exchange in September 2006. ETFS now offers more than 200 ETCs globally providing market participants with a wide variety of investment strategies and asset classes including commodities. ETFS currently has approximately $27 billion of assets under management globally, of which almost $4 billion is attributable to US exchange listed commodities on the NYSE Arca and close to $8 billion is attributable to swap-based exchanged listed commodities in Europe.

For the reasons described in more detail below, ETFS believes that the application of the Proposal toward ETCs will not only fail to address the targeted concern of the Commission in implementing the objectives of the Dodd-Frank Act, but in fact be anticompetitive, facilitate price manipulation and steer trading away from the US into trading facilities overseas with the potential for the creation of opaque over-the-counter markets. ETCs have had no detrimental impact on market

price and the aims of the Dodd-Frank Act would be hampered by subjecting ETCs to position limits.

I. Commodity ETCs – Impact on the Market

- Passively-managed, indexed ETCs are tools used by both retail and institutional market participants and used as an efficient and cost effective mechanism in gaining commodity exposure. This adoption and broad usage has lead to increased liquidity and overall pricing transparency. Historically, and certainly true in the commodity markets, gaining exposure to agriculture, energy or metal markets was only done by or via institutional firms, who directly had active futures trading accounts.
- ETCs have leveled the playing field for all market participants to gain access in a cost effective, efficient manner. They have also brought more transparency to less conventional markets like commodities which have historically been shrouded in opaqueness to the average person. Again, increased market access to all market participants fosters competition and pricing efficiency.
- Passively-managed, indexed commodity ETCs are an effective tool for market participants who seek to diversify and thus reduce portfolio risk using uncorrelated assets to traditional asset classes like equities and fixed income. This application of ETCs by market participants as a component of their portfolio is consistent with the broadly accepted tenets of Henry Markowitz's Modern Portfolio Theory (MPT) and the "efficient frontier" model of investment.
- A passively-managed, indexed ETC itself is not capable of manipulating markets as the rules are fully transparent and investment objectives track the benchmark.

II. Position Limits – Purpose and Application

- Position limits are intended to prevent a single or small group of market participants from manipulating markets and creating excess price volatility by limiting competition. The key focus of the Proposal should be at the active trading level such as swap dealers. Passively-managed, indexed ETCs by themselves do not take a view on the market or implement trading strategies. Hence, aggregation limits at the ETC level would not address the intended objective of the Proposal.
- The Proposal would have the opposite effect of limiting the size of passively-managed, indexed ETCs thereby making it more difficult and costly for new participants. ETCs are a regulated, transparent, and low-cost means of access particularly for market participants who might not otherwise be able to gain exposure. Thus, position limits on ETCs would not only be irrelevant and ineffective in addressing concerns about price manipulation, but also increase the concerns of taking liquidity out of the market. A larger ETC with sizeable assets is not necessarily an impeding factor to the market. Rather the larger ETC could very well narrow spreads, increase liquidity, and lower overall costs to market participants.

- Imposing position limits at the ETC level also treats them unfairly relative to swap dealers. For example, if a specific commodity has a position limit of $300 million, then an ETC with $300 million in assets under management would be subject to this limit due to aggregation. Conversely, 3 swap dealers, for example, who equally provide this exposure at $100 million each to the ETC, would not be subject to this limit as they would be below the limit. Under the Proposal, the ETC would be penalized in all cases whereby there is either one or multiple swap dealers providing the exposure. The potential risk in this scenario is that it could result in more ETCs unnecessarily being created solely to spread exposure which ultimately will reduce liquidity and increase overall costs to market participants.

III. Tangible Risks – Impact of the Proposal

- ETCs generally are already subject to a significant amount of regulatory oversight: specifically, the Securities and Exchange Commission; the Financial Industry Regulatory Authority; the NYSE Arca; and the National Futures Association. The combined oversight by these regulatory organizations provides the framework for the review and comments on the initial registration statements, ongoing regulatory oversight, regularly scheduled reporting and disclosure requirements, business conduct standards, professional licensing and education, and periodic testing. As a result, the ETCs are substantially different from market participants who engage in actual trading in the market without complying with any significant regulation. Hence, subjecting passively-managed, indexed ETCs to position limits as per the Proposal in light of the already comprehensive controls in place mandating transparency in structuring and marketing would not add any further protections for market participants or the broader financial system. Rather, we believe that any further regulation would only hinder the ETC's abilities to meet its objectives and the market objectives.
- Commissioner Sommers rightly stated in the minutes to the December 10, 2010 CFTC hearing that she strongly opposes "driving business overseas and this has been a longstanding concern of mine and that concern remains unaddressed." We agree with this statement and the potential risk of flight to other trading venues by market participants is not only an unwelcome outcome of these proposed rules, but also could establish the creation and development of opaque over-the-counter markets globally.
- Decreased liquidity in the market place could lead to fewer investment options.
- Price distortions resulting in premiums or discounts in price of ETCs thereby providing opportunity for sophisticated market participants to manipulate the market and have advantages over long-term retail market participants.

IV. Potential Solutions – Alternatives to the Proposal

The more practical and effective approach would be as follows:

- Exempt passively-managed, index tracking ETCs from position limits.

- Create added transparency through reporting requirements outlining positions held at the market participant level.
- If there are concerns about position limits and price manipulation, the focus should be at the level of active management of positions. Traders, broker-dealers, hedge funds, and individuals interested in employing strategies to impact market factors can do so directly or through other means. ETCs might be one tool for them to do so, but it is not the driving factor. Sponsors of passive ETCs do not control or even influence investment decisions, and provide transparent, index-based commodity exposure for all market participants particularly for those participants who might not have access.

We would also like to take this opportunity to highlight and cite what we believe to be salient points made in the paper by Irwin, S.H. and D.R. Sanders (2010). "The Impact of Index Swap Funds on Commodity Future Markets: Preliminary Results", OECD Food, Agriculture and Fisheries Working Papers, No.27, OECD Publishing.

- While there was increased participation of index fund investments in commodity markets, such participation has not generated increased price volatility, implied or realized, in agricultural markets.
- There was found to be no statistically significant relationship indicating that changes in index and swap fund positions have increased market volatility. The evidence presented was strongest for agricultural futures markets because the data on index trader positions are measured with reasonable accuracy.
- There is a negative relationship between index and swap fund positions and market volatility. This finding is contrary to popular notions about the market impact of index funds, but is not so surprising in light of the traditional problem in commodity futures markets of the lack of sufficient liquidity to meet hedging needs and to transfer risk.
- The weight of the evidence clearly suggests that increased index fund activity in 2006 – 2008 did not cause a bubble in commodity future prices.

The Commission has issued previous reports on related topics providing data which also suggests that commodity ETCs have reduced market volatility and increased liquidity. See, e.g., Interagency Task Force on Commodity Markets (July 2008) and CFFC Trader Activity and Derivative Pricing (December 4, 2008).

<u>Conclusion:</u>

We appreciate and support the Commission's efforts to ensure well-regulated, transparent financial markets. However, we do not believe that the adoption of the Proposal will achieve the desired objectives of the Commission or Congress. Rather, the outcome, if the Proposal is enacted, may lead to even less transparency, increased risk, and a flight to other trading venues globally by market participants. While we recognize that the Commission is mandated by the passage of the Dodd-Frank Act to impose position limits as it deems appropriate, we strongly request that the Commission exempt issuers and sponsors of passive investment vehicles,

particularly ETCs from position limits at an aggregated fund or sponsor level. If necessary, we suggest that the Commission consider a "look through" approach to regulate any significant positions at the individual market participant level. By doing so, the Commission would meet its objectives for all market participants to have safe, transparent, and cost-effective access to the commodities markets.

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Graham Tuckwell
Chief Executive Officer
ETF Securities Limited