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April 12, 2011

**VIA ELECTRONIC SUBMISSION**

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

Re: Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (RIN number 3038-AD30)

Dear Mr. Stawick:

United Services Automobile Association (USAA) appreciates the opportunity to provide its comments on the Commodity Futures Trading Commission (CFTC) notice of proposed rulemaking (NPR) relating to amendments to compliance obligations for commodity pool operators and commodity trading advisors.

USAA is a member-owned association that seeks to facilitate the financial security of its members, specifically the members of the United States military and their families, by providing a full range of highly competitive financial products and services, including insurance, banking and investment products. USAA Investment Management Company, an indirect wholly owned subsidiary of USAA, serves as the investment adviser and distributor of the USAA family of no-load mutual funds, including the USAA Precious Metals & Minerals Fund (PMMF).

USAA supports the views of and comments submitted by the Investment Company Institute on the proposed amendments to Section 4.5, but is submitting this letter to provide specific comments regarding the “no-marketing restriction” contained in proposed Section 4.5(c)(2)(iii)(b). We believe the proposed restriction would inappropriately capture mutual funds that simply have a commodity-related industry or sector embedded in their names, regardless of the level of commodity investments contained in the fund.

The stated purpose of the proposed amendment to Section 4.5 is to stop the practice of registered investment companies offering “futures-only investment products” and operating as “de facto commodity pools” without CFTC oversight. By letter dated August 18, 2010, the National Futures Association (NFA) petitioned the CFTC to amend Section 4.5. In the letter, the NFA cited three funds that were offering series of de facto commodity pool interests claiming exclusion under Section 4.5. These three funds were marketed to customers, including retail investors, as vehicles for investing in commodity futures and options. Each of these funds had substantial activity in CFTC regulated instruments.

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One of the factors espoused by self regulatory organizations in a subjective test for determining whether a fund is marketing, is the use of a fund's name. USAA believes that a fund's name, absent actual or more than *de minimis* activity in instruments regulated by the CFTC, should not subject that fund to CFTC regulation.

In considering what constitutes marketing under Section 4.5(c)(2)(iii)(b), USAA opposes any test that consists of a weighting of subjective factors, because any such test could place an undue emphasis on a fund's name. A subjective marketing test with fund name as a factor, without that factor requiring more than a *de minimis* use of instruments within the CFTC's jurisdiction, risks sweeping sector funds and broad-based index funds like S&P 500 Funds, into a dual regulatory regime between the SEC and the CFTC.

The factors in a marketing test should be specific enough so that a fund name signifying only an investment emphasis in an industry or sector would not be captured. Sector funds with an industry-linked name, such as the USAA Precious Metals and Minerals Fund, do not operate as *de facto* commodity pools, which the CFTC set out to regulate by amending Section 4.5. And USAA believes, therefore, that the fund name alone, absent speculative or more than *de minimis* exposure in instruments regulated by the CFTC, should not subject that fund to CFTC regulation and the requirements thereunder.

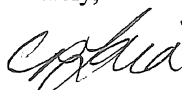
Should, however, the CFTC include fund name as a factor in a subjective test to determine whether a fund is marketing under Section 4.5(c)(2)(iii)(b), USAA believes that the name of a sector fund that signifies an investment emphasis in a particular industry should bear no weight in the subjective test if the fund:

- (i) has only *de minimis* exposure to instruments otherwise within the CFTC's jurisdiction (such as for limited replication or equitization of cash in broad-based market indices), or
- (ii) has exposure to instruments regulated by the CFTC solely for bona fide hedging purposes.

In addition, the no-marketing restriction could also be incorporated as part of, and not in addition to, the speculative trading restriction in Section 4.5(c)(2)(iii)(a), such that only if a fund engages in speculative trading outside of the trading permitted by Section 4.5(c)(2)(iii)(a) must it undergo the marketing analysis. In this regard, the no-marketing restriction should be considered only after a fund shows actual or more than *de minimis* contacts with instruments regulated by the CFTC.

USAA appreciates the opportunity to provide comments on the NPR and looks forward to future input into any proposed rulemaking or regulation. If you have any questions regarding our comments, or would like additional information, please contact me at (210) 498-4103.

Sincerely,



Christopher P. Laia  
Vice President, General Counsel Financial Advice and Solutions  
USAA Investment Management Company