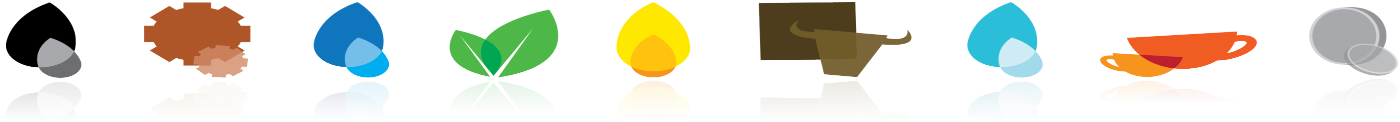

February 10, 2014

VIA ELECTRONIC SUBMISSION

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

CFTC Proposed Rule – Position Limits for Derivatives (RIN 3038-AD99 and 3038-AD16)(78 Fed. Reg. 75680)(December 12, 2013)(the "Position Limits Proposal") and Aggregation of Positions (RIN 3038-AD82) (78 Fed. Reg. 68946) (November 15, 2013) (the "Aggregation Proposal" and collectively, the "Proposed Rules")

Dear Mr. Stawick:

United States Commodity Funds, LLC ("USCF") is pleased to have this opportunity to comment on the above-referenced Proposed Rules. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires the Commodity Futures Trading Commission (the "CFTC") to consider position limits for exchange-traded futures and options contracts and swaps and swaption contracts that are economically equivalent to such futures and options contracts. The CFTC issued the Proposed Rule, which proposes certain initial position limits and a framework for establishing other limits to meet the Dodd-Frank Act's requirements.

The mere fact that the Dodd-Frank Act requires the CFTC to consider adopting position limits does not mean that such limits should be imposed in an overly restrictive fashion or without detailed analysis. Furthermore, regardless of the statutory mandate in the Dodd-Frank Act, USCF believes that the CFTC cannot escape the question of whether it is wise or appropriate to adopt rules that may inappropriately disrupt fair and open markets or that interfere with the ability of main street investors to gain exposure to the commodity markets in a cost effective and efficient manner by investing in commodity pools, as discussed below, until after the CFTC has presented a reasoned analysis demonstrating that such actions will actually be beneficial to the markets. As USCF has noted in previous comment letters filed with the CFTC, as a general matter USCF strongly urges the CFTC to exercise caution in implementing position limits so as not to create volatility or diminish liquidity in the market. USCF specifically

United States Commodity Funds LLC
1999 Harrison Street Suite 1530
Oakland CA 94612
Phone: 510.522.9600 | Fax: 510.522.9604

believes that instead of preventing speculation or manipulation in the marketplace, position limits will hamper the ability of USCF and other managers of publicly traded, unlevered, passive commodity funds to prudently meet the investment objectives of the commodity pools that they manage. The value of the exchange-traded pools managed by USCF to the hundreds of thousands of investors in such pools, and the several million investors in all similar pools currently in operation in the United States, could be adversely affected by the Proposed Rule.

Further, in order to prevent regulatory arbitrage, USCF believes that CFTC should continue to coordinate with foreign regulators regarding the form,timing and implementation of position limits. The Dodd-Frank Act requires the CFTC to consult with designated contract markets to study the effect of position limits on excessive speculation and migration to trading venues abroad. USCF believes that any analysis of such effects and potential migration outside of the U.S. markets is a crucial first step that the CFTC must take before it can effectively set position limits.

We believe that there are four major areas of concern that we have as a participant in the commodity markets that are raised by the CFTC's Proposed Rules and the method through which the CFTC reached its current status on this topic.

First, we are disheartened that the CFTC failed to use the opportunity and the time provided by the US District Court for the District of Columbia's (the "District Court") rejection of the initial position limit rule to conduct proper economic analysis to determine, if in fact, the position limits as proposed were likely to have any positive impact in promoting fair and orderly commodity markets.[1] We note with alarm that the last time the CFTC's staff economists analyzed commodity markets to determine if large scale investments by financial investors ("speculators") were in fact driving spot energy market prices to levels that were not reflective of physical supply and demand, was in late 2008. The conclusion of that work was in fact not supportive of the notion that financial investors drive the spot price of energy commodities and, indirectly, not supportive of placing position limits on Speculators. Since that paper was published over five years ago, the CFTC has failed to conduct additional research that establishes that either Speculator's activities unreasonably impact spot prices, or has the CFTC conducted research that demonstrates how the blanket implementation of position limits will have any positive impact on promoting fair and orderly markets. Of the 132 papers and studies cited by the CFTC in the Position Limits Proposal, hardly any are from the CFTC's own staff and fewer still from any time period after late 2008.[2]

We are certainly aware that the CFTC may feel that it is resource constrained and that this may, in fact, have been a factor in the paucity of the published record by the CFTC's s own staff. However, in the extensive list of papers and studies cited by the CFTC in the rule making,

[1] *Int'l Swaps and Derivatives Assoc., et al. v. U.S. Commodity Futures Trading Commission*, 887 F.Supp.2d 259 (D.D.C., Sept. 28, 2012).

[2] *See generally*, Position Limits for Derivatives (78 Fed. Reg. 75680)(December 12, 2013).

a number represent economic studies done since 2008 by academic researchers touching on the impact of large investors or hedgers in the commodity markets. The conclusions of many of these studies have bearing as to the possible utility of the Position Limits Proposal. We note that many or most of these studies relied on public data released by the CFTC. It seems that the results of these studies would have been more robust if the respective authors had been provided controlled access to all of the CFTC's data regarding investor and hedger trading records. If in fact the CFTC felt it lacked the resources to conduct appropriate research to substantiate the utility of the Proposed Rules, one avenue that may have been available to the CFTC were the suitable economists located in universities and colleges around the United States would have been more than happy to have conducted the research at no cost to the CFTC.

Instead, the CFTC used for its justification of position limit rules the repeating of several anecdotal stories regarding market participants and their impact on markets, one of which dates back from the late 1970s. We are reminded of a well-known aphorism in research circles that "the plural of anecdote is not data." Market participants are left with the conclusions that either the CFTC felt that demonstrating that position limits are a useful tool was not something the CFTC needed to do, notwithstanding the opinion of the District Court, or that the CFTC did not conduct such research because they felt the data would not in fact support the proposed position limit regulations. In the context of markets where confidence in the usefulness and fairness of regulations is essential, neither conclusion is comforting. We encourage the CFTC to take steps to remedy this lapse.

A second issue we feel that the Proposed Rules rulemaking has failed to address is the rules utility in the presence of existing commodity exchange mandated accountability limits. If we assume that there are in fact bad actors out there whose activities have the potential to harm the markets, why does the CFTC not feel that the existing accountability limits are adequate to deal with such situations? To use the hoary example of the Hunt Brothers and their attempts to profit in movements in both the physical and the futures based silver markets, it is apparent that under the current regulatory regime that before such actors would today reach the CFTC mandated position limits, they would have first crossed the appropriate exchange's accountability limit. In the CFTC's filing discussing the Hunt Brothers, Table 2 clearly shows that out of the 26 months of data shown, the Hunt Brother's holdings exceeded the current COMEX accountability levels in 15 of the months. Under those circumstances, it seems far more likely that corrective action could be taken at an appropriate time to deal with the potential disruptions. Position limits seem to be an inferior tool to the management of market risk issues presented by bad actors. If the CFTC has an alternative view, we feel they should articulate it at this time.

A third issue raised by the Proposed Rules is the very way the position limits are calculated. For limits other than the spot months, the rule appears to be "10% of the first 25,000 contracts and 2.5% of the rest." The practical effect of this calculation is to say to the market "the bigger the commodity market, the smaller percentage of it you can own." However, it is also true that the reverse is true and the same formula tells the market "the smaller the commodity market,

the bigger the percentage of it you can own." We are unaware of exactly how the CFTC came to put forth this curious proposition. Nor can we see where the justification of the "10 and 2 ½" formula came from or how the CFTC would explain or defend such a formula to a curious judge. It seems arbitrary, lacks a logical foundation and, to be honest, seems a bit capricious. If there is any basis to support this formula, we encourage the CFTC to provide it to the public.

Fourth, we believe that if the CFTC seeks to provide preferential treatment under the proposed regulations to physical participants, end users, and hedgers, as compared to purely Speculators in these markets, we believe the CFTC should provide a detailed explanation as to why the difference is appropriate and what data supports that view. USCF in particular notes that the Financial Services Authority ("FSA"), the commodity regulator in the United Kingdom, has gone on record as expressing grave concerns about the use of position limits as a regulatory tool. They have further questioned the logic of exempting one class of commodity futures users such as "hedgers", "end users" or other physical participants, while focusing solely on Speculators, noting that they are unaware of any data that actually suggests that one category is more likely than another to create market disruptions. We echo that view and feel that the CFTC has suggested a two-tier approach where some physical participants get favorable rules compared to others, without providing a sound basis as to why such distinction should be the case. Far too often observers are left to conclude that the reason it is being proposed that way is because "we have also done it that way." We would encourage the CFTC to provide the rationale for why some participants get favorable treatment compared to others, and to accept or refute the FSA's viewpoint.

Conclusion

We appreciate the CFTC's efforts to ensure well-regulated, transparent derivatives markets. However, we do not believe that the imposition of restrictive position limits will further the CFTC's efforts in this area. In fact, the unintended consequences of the position limits to be imposed pursuant to the Proposed Rule may lead to more volatility, less liquidity and, as a result, more risk for investors in the commodity markets. Given that Dodd-Frank Act requires the CFTC to consider imposing position limits, we strongly urge the CFTC to modify and clarify the Proposed Rule as discussed herein. We also urge the CFTC to continue to be mindful of the questionable necessity of position limits, the negative impacts that such limits could have on individual retail investors in exchange-traded, unlevered passive investment vehicles such as the funds managed by USCF and the need for market participants to have meaningful opportunities to comment on any regulations to which they will be subject. By taking these steps, the CFTC can ensure that all investors have safe, transparent, and cost-effective access to the hedging benefits provided by the financial energy markets.

* * *

Mr. David Stawick
Secretary
Commodity Futures Trading Commission

/s/John T. Hyland____________________
John T. Hyland
Chief Investment Officer
United States Commodity Funds LLC