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VIA EMAIL (etfcpoexemptcomment@cftc.gov)

October 27, 2010

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

Re: Proposed Regulatory Relief for CPOs of Exchange-Listed Commodity Pools

Dear Mr. Stawick:

NYSE Euronext appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") proposal to codify relief from disclosure, reporting and recordkeeping requirements that the staff has previously provided on case-by-case basis to commodity pool operators ("CPOs") of exchange-traded commodity pools. NYSE Euronext fully supports the Commission's proposal which provides appropriate regulatory relief in response to the developing financial marketplace consistent with the goal of customer protection.

NYSE Euronext operates one of the world's largest Exchange Traded Products marketplaces, and is a leading venue for listing and trading Exchange Traded Products ("ETPs"), which include Exchange Traded Funds ("ETFs"), Exchange Traded Notes ("ETNs"), Exchange Traded Vehicles ("ETVs"), Warrants and Certificates. NYSE Euronext provides investors access to regulated listings along with fast and innovative trading tools to access liquidity. NYSE Arca, NYSE Euronext's US market for ETPs, has 781 ETFs and 51 ETVs for which it is the primary listing market. On its European markets, NYSE Euronext is the primary listing market for 497 ETFs and 74 ETVs across the European markets.

I. Background

ETFs were first listed in 1993¹ and ETPs that trade commodities ("Commodity ETPs") have only developed more recently.² Despite this, demand by investors for Commodity ETPs has

¹ The first ETF was introduced in 1993. See *2010 Investment Company Fact Book*, Investment Company Institute (available at www.icifactbook.org) at p. 40.



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quickly grown. To illustrate this point, assets under management for commodity ETPs has grown from \$1.3 Billion USD in 2004 to over \$95 Billion USD in 2010.³

Shares of Commodity ETPs are publicly offered pursuant to an effective registration statement filed with the Securities and Exchange Commission (the "SEC") and listed for trading on a national securities exchange, in accordance with the listing standards of the relevant exchange. The registration statement consists of a detailed prospectus, which includes, among other things, a description of the instruments in which the Commodity ETP will invest and the related risks, and must be provided to prospective and existing shareholders.⁴ Commodity ETPs are also subject to the periodic reporting and recordkeeping requirements of the Securities Exchange Act of 1934 (the "1934 Act"), including the filing and dissemination of financial statements as well as the reporting of any events that would have a material effect on the Commodity ETP.⁵ The registration statement and other filings are readily available on the SEC's and the ETP's web sites.

Commodity ETPs are also subject to transparency requirements. In addition to making the prospectus and monthly financial statements available on its web site, each business day a Commodity ETP must publish on its web site a holdings report that discloses the identities and quantities of the investment positions and other assets in the ETP that will form the basis for the calculation of the net asset value at the end of the day. Commodity ETPs will also commonly publish an actual holdings report reflecting the actual holdings as of the close of the preceding trading day.⁶

² The Commission identifies the first Commodity ETF as being offered in 2005. *See Commodity Pool Operators: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools*, 75 FR 54794 at 54795 (Sept. 9, 2010)(the "Rule Proposal").

³ *Bloomberg*, December 2004 – October 2010.

⁴ *See* Section 6 of the Securities Act of 1933 and Rule 404 thereunder.

⁵ *See* Sections 12(b) and 13(a) of the 1934 Act.

⁶ Letter from Josephine J. Tao, Assistant Director, Division of Trading and Markets, SEC, to David Yeres, Esq., Clifford Chance US LLP, dated November 12, 2009 (Re: iShares Diversified Alternatives Trust Actively-Managed Commodity-Based Investment Vehicle); and *see also*, Letter from Racquell L. Russell, Esq. Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP, dated June 21, 2006 (Re: CurrencyShares British Pound Sterling Trust, CurrencyShares Australian Dollar Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust, and CurrencyShares Swiss Franc Trust).



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II. The Commission's Proposal

The Commission's proposal provides CPOs of Commodity ETPs with relief from certain Commission disclosure, reporting and recordkeeping requirements, but, through substituted compliance, still maintains the investor protections underlying these requirements. The Commission's proposed relief, like the prior exemptive relief provided by Commission staff in this area, implicitly recognizes the differences between Commodity ETPs, which are publicly offered and listed on a registered national securities exchange, and traditional commodity pools, which are almost uniformly privately offered. Commodity ETPs are extensively regulated under applicable Securities laws and the rules of the exchange on which they are listed, as discussed above. Additionally, the manner in which shares in these funds are offered and sold to the public is significantly different from those of traditional commodity pools. While the number of participants in a traditional commodity pool tends to be a relatively small number, the holders of Commodity ETP shares can number in the thousands and tens of thousands. Additionally, because shares are actively traded on an exchange, ownership of the Commodity ETP shares will change regularly on a daily basis.

A prospectus for a Commodity ETP, which contains the information required to be included in a commodity pool Disclosure Document, must be prepared and made available to investors under the applicable securities laws and regulations. Commodity ETPs make the prospectus, along with other information that would be material to a prospective investor readily available on their web sites. The Commission's proposal will provide CPOs of Commodity ETPs relief from having to deliver the Disclosure Document directly to prospective shareholders and from having to obtain a signed acknowledgment of receipt of the Disclosure Document. The Commission's proposal also provides CPOs of Commodity ETPs relief from having to distribute monthly account statements to shareholders, recognizing the unduly difficult and costly task of identifying the ultimate owners of interests in the Commodity ETP every month. Just as with the relief provided for regarding Disclosure Documents, shareholders in Commodity ETPs will still have timely and easy access to all the information required under the Commission's periodic reporting requirements on the Commodity ETP's web site.

The Commission is also proposing to provide registration relief for independent directors and trustees of Commodity ETPs. Requiring independent directors to take on additional regulatory duties by becoming registered as CPOs could discourage qualified persons from serving as a director or trustee of a Commodity ETP.



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III. Conclusion

Commodity ETPs and their CPOs are subject to significant regulation by the Commission and the SEC. NYSE Euronext fully supports the Commission's proposal and believes that it responds to changing market conditions by continuing to provide proper regulatory oversight without adding unnecessary or overly burdensome requirements.

We would be happy to discuss any of the issues raised in this letter with Commission staff. Please feel free to contact me at 212-656-2039 or at jmcginness@nyx.com.

Very truly yours,

Janeth McGinness