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January 28, 2008

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

COMMENT

**Re: Risk Management Exemption from Federal Speculative Position Limits - - Comment File 07-015**

Dear Mr. Stawick:

Thank you for the opportunity to comment on the above-referenced proposal. We support the Commission's proposal to provide an exemption from Federal speculative position limits for "risk management positions." However, we respectfully request that the Commission consider making the exemption available based on factors other than those outlined in the proposal. We also request that the Commission clarify some technical points in the proposed rule.

Specifically, we believe that the exemption should be available for all exchange-traded commodity pools following passive indexes that do not include spot futures positions ("Passive Pools"), which would put Passive Pools on an even footing with swaps and other products with respect to this issue.

I. The Exemption should be Available to All Passive Pools

**Purpose of Speculative Limits**

Section 4a of the Commodity Exchange Act, pursuant to which Commission regulations 1.3(z) and 1.47 were adopted, authorizes the Commission to set speculative trading and position limits "for the purpose of diminishing, eliminating or preventing … excessive speculation" (commonly referred to as "Spec Limits"). Spec Limits only apply to speculators. Hedgers are exempted from Spec Limits. Commission regulation 1.3(z) provides, in pertinent part, that hedging transactions are transactions that are "economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise."

**Exchange-Traded Pools following Passive Indexes are not Speculators**

Exchange-traded Passive Pools are commercial enterprises in the business of offering investors convenient access to commodity index returns. Their only commercial activity is to track a commodity index by buying and selling futures contracts using a non-discretionary strategy. Because CPOs and CTAs of Passive Pools have a fiduciary duty to follow an index and are not able to enter into discretionary trades, there is no motive to speculate, and Passive Pools therefore are not able to be speculators.

**Exemption should not be Limited to Pools Following Broadly Diversified Indexes**

There is no valid reason to limit the proposed exemption only to commodity pools following a "broadly diversified index", and imposing the "broadly diversified index" requirement does not comport with Commission precedent in this area. Indeed, in the rule proposal, the Commission notes that it has in the past granted no-action relief to swap transactions on indexes composed of wheat, corn and soy. Accordingly, we believe that the exemption should not focus on whether a commodity pool is following a broadly diversified index.

**Passive Pools should be Treated like Swaps**

Rather, the Commission recognizes in the proposed rule that it has granted hedge exemptions in the past to swap providers under certain conditions. We propose that the Commission allow Passive Pools' futures contracts to be considered "risk management positions" under the same criteria that the Commission cites in the proposed rule as having been imposed on swap providers - -

1. *The futures positions must offset specific price risk.* In the case of a Passive Pool, the pool should only be allowed to classify a futures position as a "risk management position" if the Passive Pool has disclosed to investors in a prospectus or other disclosure document that the Passive Pool's investment objective is to follow a particular commodity index that includes the particular future that the Passive Pool seeks to classify as a risk management position.

2. *The dollar value of the futures positions would be no greater than the dollar value of the underlying risk.* The Passive Pool must have a fiduciary duty to investors to track a commodity index as closely as possible.

3. *The futures positions would not be carried into the spot month.* A Passive Pool would not be able to avail itself of the exemption if the index it followed included spot positions.

**Passive Pools Aid the Commission's Ability to Prevent Excessive Speculation**

Although the Commission expresses concern in the proposal that Passive Pools might be used by investors to circumvent position limits, we believe that the Commission would further its mandate to diminish excessive speculation by encouraging product providers to give investors exposure to commodity indexes in the form of exchange-traded Passive Pools, which are within the Commission's jurisdiction and which the Commission therefore can monitor more easily. Exchange-traded Passive Pools afford the Commission the ability to better monitor real aggregate exposure to particular commodity futures because exchange-traded Passive Pools are particularly transparent. Trading in exchange-traded Passive Pools and their assets under management are observable daily. Because the Commission has jurisdiction over exchange-traded Passive Pools, it could react to any observed potential excessive speculation by imposing emergency position limits on the particular pool.

Additionally, we believe that the Commission should balance its concern that Passive Pools might be used by investors to circumvent position limits with the recognition that providers of investment products may opt to avoid the CFTC regulatory regime entirely by issuing swaps or other products that allow providers to offer investors exposure to commodity indexes without being subject to position limits. By providing an even playing field for exchange-traded Passive Pools, swaps and other products, the Commission will ensure that the position limits rules do not inadvertently encourage product providers to offer commodity-linked investments in forms not subject to the Commission's jurisdiction.

## II. Additional Considerations

We believe that the following points may be implicit in the proposed rule, but we request that the Commission clarify in the final rule that - -

1. The concepts of a "passively managed position" and "limited discretion" should include both the ability to exercise some discretion with respect to when to roll futures positions forward (as is mentioned in the proposed rule) and discretion regarding the expiration month of the contracts to which an index will roll. The proposed rule could be read to limit the availability of the exemption only to indexes that roll futures positions forward "into the next delivery month".

2. Commodity pools following indexes under the proposed rule should be able to post as collateral cash equivalents such as money market mutual funds, as well as cash and U.S. Treasuries, in accordance with current Commission margin rules and no-action relief.

3. The exemption should not be all-inclusive and other index-based positions should be eligible for risk management relief on a case-by-case basis.

4. Exchanges should be able to adopt similar exemptions.

Thank you again for giving us the opportunity to comment on the above-referenced proposal.

Respectfully submitted,

DB Commodity Services LLC

By:______________________________
Kevin Rich, Chief Executive Officer

By:______________________________
Greg Collett, Chief Operating Officer