June 10, 2019

VIA ELECTRONIC SUBMISSION

Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Comments on Securities Exchange Commission Proposed Rule: Securities Offering Reform for Closed-End Investment Companies (File No. S7-03-19); New Registration Fee Payment Method for Interval Funds: Proposal to Permit Additional Categories of Issuers to Pay Registration Statement Fees on an Annual Net Basis as Under Rule 24f-2

Dear Ms. Countryman:

On behalf of United States Commodity Funds LLC ("USCF" or "the firm"), we appreciate this opportunity to comment on the proposed amendments to modify the registration, communications, and offering processes for business development companies and other closed-end investment companies registered under the Securities Act of 1933 ("1933 Act") (the "Proposed Rule")[1]. We are commenting in response to the Securities and Exchange Commission's ("SEC") request in the Proposed Rule as to whether to permit additional categories of issuers to pay registration statement fees on an annual net basis in the manner specified in Section 24(f) under the Investment Company Act of 1940 ("1940 Act") and Rule 24f-2 thereunder.[2]

USCF believes that the proposed amendments modernizing the approach to registration fee payments that would allow interval funds to pay securities registration fees annually pursuant to the Rule 24f-2 under the 1940 Act ("Rule 24f-2") should be extended to securities issued by exchange-traded funds that are registered under the 1933 Act (known as "exchange-traded products" or "ETPs") whose shares trade, and are issued and redeemed, very much like ETFs.[3] Currently, ETPs pay fees to register their securities up front, in the same manner as

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[1] Securities Offering Reform for Closed-End Investment Companies, 84 FR 14448 (April 4, 2019).
[2] See the Proposed Rule, *id.*, at p.14465. The 1940 Act provides that many 1940 Act registered investment companies, such as mutual funds and exchange-traded funds registered under the 1940 Act ("ETFs"), can register an indefinite amount of securities based upon their registration statements' effectiveness. These funds pay registration fees based on their net issuance of shares and must, when paying the fee, file information about the computation of such fee (among other things) on Form 24F-2 under the 1940 Act.
[3] ETPs are not registered under, or otherwise subject to, the 1940 Act. The Division of Trading and Markets has recognized in a series of no-action letter granting relief to allow ETPs, including the ETPs managed by USCF, to offer to purchase and routinely purchase their shares at net asset value in the same manner as ETFs. See, *e.g.,* letter from James Brigagliano, Esq. Acting Associate Director of Trading and Markets to James Cain, Esq., Sutherland, Asbill and Brennan LLP, (United States Oil Fund) dated April 7,

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non-fund 1933 Act issuers of equity and debt. These registration fees are paid by the issuers in advance, whether or not the securities are sold. Allowing ETPs to register their shares in the same manner as ETFs would: (1) provide ETPs with cost savings and efficiencies that would inure directly to the benefit of those ETPs investors, including those who invest in USCF ETPs, who currently bear the cost of follow-on offerings of the ETP shares (offerings under registrations statements registering additional shares after the ETPs initial public offering), and (2) reduce the possibility of an ETP "running out of shares", i.e., not having a sufficient number of SEC registered shares to offer and sell. If an ETP "runs out of shares", it would adversely impact the ability of the ETP's Authorized Participants' ability to maintain an equilibrium between the ETP's per share net asset value and the exchange-traded share price.[4] Rather than undermining the SEC's obligation to protect and promote the integrity and efficiency of the financial markets, the foregoing benefits indicate the relief would directly benefit ETP investors and the markets in which the ETP shares trade.

I. About USCF

USCF is a commodity pool operator and sponsor of ten ETPs that invest in oil, natural gas, and other commodity interests: the United States Oil Fund, LP, United States Natural Gas Fund, LP, United States 12 Month Oil Fund, LP, United States 12 Month Natural Gas Fund, LP, United States Brent Oil Fund, LP, United States Gasoline Fund, LP, United States 3x Oil Fund, United States 3x Short Oil Fund, United States Commodity Index Fund and United States Copper Index Fund. USCF, together with its affiliated investment adviser, USCF Advisers, LLC (USCF Advisers"), manages fourteen ETPs and ETFs across commodity and equity asset classes, and currently, manages approximately $2.2 billion in assets.[5] All of the ETPs and ETFs that are part of the USCF and USCF Advisers platform are listed for trading on the NYSE Arca, Inc.

Due to the nature of their underlying investments, USCF-sponsored ETPs register the offering of their securities pursuant to the requirements of the 1933 Act and are not subject to registration under the 1940 Act. Currently, all of its ETPs must register a definite number of securities with the SEC and pay registration fees prior to the public offering of such shares.[6] Once issued, even if redeemed, such shares cannot be resold by the ETP. In order to maintain efficient pricing, including the maintenance of equilibrium between an ETP's share price and its per share net asset value ("NAV") and to meet investor demand for new shares, the USCF ETPs must always have a sufficient number of its shares registered under the 1933 Act.

II. USCF Comments

2005 (granting relief from Rules 101 and 102 of Regulation M noting such that the United States Oil Fund, LP would continuously issue an redeem its shares at net asset value).

[4] Authorized Purchasers are the broker dealers who buy from and sell shares to an ETP ("APs").

[5] For more information regarding USCF's and USCF Adviser's ETPs and ETFs, see their website, http://www.uscfinvestments.com/

[6] Currently, none of the USCF ETPs are well known seasoned issuers ("WKSIs") as defined under 1933 Act rule 405 either because, as limited partnerships, they are "ineligible issuers" as defined under Rule 405, or because they do not currently meet the quantitative requirements to be a WKSI. While the Proposal also addresses relief for interval funds that are WKSIs, and it is possible that certain of USCF's ETPs could qualify as WKSIs in the future, our comments focus on USCFs ETPS being able to register their shares with the same timing and fee payment obligations as ETFS.

USCF acknowledges that the requests made herein go beyond the scope of the Proposed Rule, because the Proposed Rule is focused on funds that are subject to both the 1940 Act and the 1933 Act, whereas the USCF ETPs are solely regulated under the 1933 Act. With that said, in the preamble to the Proposed Rule the SEC specifically asked whether there are other types of funds that should be considered for the same relief as interval funds relating to the timing and manner of registration and payment of fees.[7]

USCF believes that the proposal that interval funds be permitted to register and pay fees pursuant to the 1940 Act rules applicable to mutual fund and ETFs should be extended to apply to ETPs that register shares under the 1933 Act for the following similar policy reasons that the SEC identified as applicable to interval funds: (i) ETPs routinely sell shares at NAV and are required to periodically offer to repurchase their shares; (ii) permitting an indefinite number of ETP shares to be registered allows increased flexibility for the ETP and alleviates the consequences associated with over- or underestimating the number of shares that need to be registered by the ETP; (iii) the requirement that additional securities be registered for each offering by the ETP is costly to shareholders and gives registered investment companies such as mutual funds and ETFs a competitive cost advantage over ETPs.

i. <u>ETPs should be able to pay registration fees annually according to their net issuance of shares because ETPs routinely sell shares at net asset value and are required to periodically offer to repurchase their shares.</u>

USCF believes that ETPs should be extended the same relief that that the Proposed Rule would afford to interval funds. ETPs sell, redeem, and register shares in a manner similar to interval funds and ETFs. They also must routinely sell shares at NAV and offer to repurchase those shares from APs which is essential to the APs ability to arbitrage effectively and keep the ETP share trading price close to the share's NAV. In addition, ETPs, like interval funds, are subject to the securities registration requirements of the 1933 Act and therefore, must register shares with the SEC before the shares can be sold to the public. ETP shares that are issued, including those that are subsequently redeemed, cannot be resold by the ETP. Once all shares that have been registered have been issued, so long as there is a need to sell more shares, a new registration statement for additional shares must be filed and a new registration fee paid. The registration process can be both costly and time-consuming for ETPs, that operate like ETFs yet are regulated, like interval funds, the 1933 Act and must continuously register new shares.

Under the proposed amendments, the SEC would afford interval funds relief from the need to periodically register additional shares by allowing such funds to register an indefinite amount of securities and pay registration fees annually based on their net issuance of shares. The SEC correctly acknowledges that this modernized registration process will yield lower costs and other operational benefits for interval funds. Because ETPs operate in a similar fashion to ETFs, ETPs should be permitted to pay registration fees annually according to net issuance. This would produce benefits for ETPs similar to those that would be afforded to interval funds by the Proposed Rule. Specifically, this would lower operational costs for ETPs by obviating the need

[7] See note 2, *supra*.

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to constantly pay additional fees with every offering, and reduce cost associated with paying to register shares that may not be sold. As noted above, this would also benefit ETP investors by potentially eliminating unnecessary costs.

ii. <u>Permitting an indefinite number of shares to be registered allows increased flexibility and mitigates the consequences associated with over- or under- estimating the number of shares that need to be registered.</u>

Because ETPs are subject to the same risks and costly consequences as interval funds of registering too few or too many shares, USCF believes that ETPs should be extended the same relief under the Proposed Rule. Like interval funds, the 1933 Act typically requires ETPs to register a definite number of shares prior to a public offering, which can increase costs if the demand for shares is higher or lower than projected. It is often difficult to accurately predict how many shares a fund will need to register at any given time. In registering new shares, fund issuers must rely on past trends to speculate on the number of shares that need to be registered for the next three years, or even for the next three months if there is a sharp increase in demand.

With respect to existing funds, the issuer must consider complex factors: (1) how many shares are remaining and an estimate of how long those shares will last, (2) the current share burn-rate (e.g., how many shares are created by APs in a 90 day period), (3) the maximum share burn-rate over the life of the fund, and (4) the impact on the fund's expense ratio of registering new shares immediately versus at a later date. With respect to new funds, it is impossible to project how many shares could be needed. As a result, new ETPs often register much larger amounts than the shares than may be needed to ensure the ETP has a sufficient number of shares available to sell should there be unanticipated excess demand after the ETP is launched. For example, assume that prior to its initial offering, an ETP were to register 25,000,000 shares with an offering price of $25.00 (a typical amount of additional shares and price for a USCF ETP at launch) in addition to the minimum number of shares that would need to be purchased in order to launch and trade the ETP on the NYSE Arca. At the current registration cost pursuant to the 1933 Act of $121.20 per $1,000,000, this amounts to an approximate $75,000 levy on ETP sponsors for the fees for projected sales of shares that may never materialize.

Even if fairly accurate predictions are made, demand for shares can fluctuate, still rendering the estimation too high or too low. The estimate might prove correct for a year, but a sudden burst of creation activity could unexpectedly leave the fund with only a few months of shares remaining. Worse, a sharp spike in demand could cause the ETP to sell all of its shares before additional shares can be registered, which would halt trading.[8] In either situation, the

[8] One of USCF ETPs has experienced the difficulty in anticipating demand for its shares first hand. United States Natural Gas Fund, LP ("UNG") was launched in 2007 and prior to 2009 had registered 180,000,000 shares of which 107,700,000 shares were issued. In the first and second quarters of 2009, uncharacteristically strong demand for UNG shares necessitated the registration of an additional 300,000,000 shares. Continued demand for UNG shares continued and required still another registration of shares. UNG stopped allowing its APs to purchase shares from UNG pending this registration. To avoid having to file multiple registrations statements and to avoid stopping share purchases, at great expense, 1,000,000,000 shares were registered. While UNG has filed additional registration statements on Form

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fund would have to register additional shares and pay additional registration fees before the three-year period expires. Should the registration process with the SEC be delayed for any reason, the ETP may be left unable to issue shares or trade altogether which could increase demand for the shares or, like closed end funds, cause the shares to trade at a discount to their NAV, in either case causing the shares market price to significantly deviate from its per share NAV. On the other hand, if demand drops, and far more shares than necessary are registered, the ETP's expense ratio can increase significantly if the shares are not sold, even if the fees for registration of the shares are amortized over a period of time in anticipation that the shares will be sold during that period. Such higher expense ratios typically result in lower returns to the ETP's investors.

The SEC affords interval funds relief from the risk and consequences of inadvertently selling more or fewer shares than registered by allowing these ETPs to register an indefinite number of shares upon their registration statements' effectiveness. Because ETPs are subject to the same risks and costly consequences, these funds should be afforded the same relief. Permitting ETPs to register an indefinite number of securities will alleviate the hardship that can be associated with over- or underestimating the number of shares because issuers will no longer need to speculate about the number of shares that will be needed. ETPs could continuously trade without having to periodically register new shares for every offering. This would relieve the ETP of the risk of running out of shares, or registering too many shares. Permitting a single registration statement also mitigates potential costs associated with waiting for the SEC to approve a new registration every time additional shares are needed.

iii. <u>The requirement that additional securities be registered for each offering is potentially unfair to shareholders, and thus gives ETFs and other registered investment companies a competitive advantage over ETPs.</u>

The ongoing requirement to file new registration statements, particularly where the number of shares outstanding has not increased beyond the amount of shares previously registered, is potentially unfair to ETP shareholders who may face either higher expense ratios because of the frequent registrations, or end up paying for projected activity that may never materialize. Mutual funds and ETFs need only register shares once before being able to offer the shares on a continuous and as needed basis, paying fees only when new shares are issued and sold. The resulting lower operational costs provides these funds with an unfair competitive advantage over ETPs. To the extent that interval funds are permitted to register shares and pay fes using in the same manner as ETFs and mutual funds, these funds also have a cost advantage over ETPs. Extending the proposed relief to ETPs will place these funds on equal footing with comparable types of funds and alleviate unnecessary costs to shareholders.

iv. <u>Granting the requested relief will not undermine the SEC's obligation to protect and promote the integrity and efficiency of the financial markets.</u>

S-3 since that time to comply with SEC Rule 415 and to register additional shares, demand for its shares during the period immediately after 2009 slowed considerably.

As noted above, the relief would directly benefit ETP investors and the markets in which the ETP shares trade by lowering operating costs and fees that are passed on to the ETP investors and by assuring markets are not disrupted, and the equilibrium between an ETPs market price and its NAV is not inappropriately imbalanced, because of delays in getting additional shares registered for sale when needed.

The relief will not diminish SEC oversight of ETPs or the protections afforded to ETP investors under the 1933 Act, including (i) in the case of ETPs that register their shares on Form S-1, the need to annually file annual post-effective amendments to such registration statements updating financial and other information and which are subject to SEC staff review,[9] and (ii) in the case of ETPs that register their shares on Form S-3, the need to file a new registration statement every three years, whether or not new shares need to be registered.[10] (An ancillary benefit of not requiring more frequent registrations statements merely to register additional shares and would also be that the SEC staff would not have to review or have the SEC declare effective such registration statements, freeing the staff to engage in activities that deserve more of their attention.)

USCF appreciates this opportunity to provide comments on the Proposed Rule and respectfully requests that the SEC consider the comments set forth herein. We recognize that granting the relief to ETPs that are not registered under the 1940 Act may not have been anticipated in the Proposal and granting the relief requested hereunder may require a reproposal that could include other revisions to SEC rules, including its 1933 Act rules relating to the registration of 1933 Act offerings. We look forward to the opportunity to comment on such a reproposal and to assist the SEC's staff in crafting a solution that provides the relief requested hereunder.

Please do not hesitate to contact the undersigned our General Counsel, Daphne Frydman, [redacted] [redacted] or our counsel, James M. Cain at [redacted] or [redacted] with any questions you may have.

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Respectfully submitted,

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John P. Love
President and Chief Executive Officer
United States Commodity Funds LLC

cc: Daphne G. Frydman, General Counsel, United States Commodity Funds, LLC
James M. Cain, Eversheds Sutherland (U.S.) LLP

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[9] See 1933 Act Section 10(a)(3) and 1933Act Rule 427.
[10] See 1933 Act Rule 415(a)(5).