



June 27, 2012

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: NYSE Arca Fixed Incentive Program (File No. SR-NYSEArca-2012-37)

Dear Ms. Murphy:

The United States Commodity Funds LLC is writing to respond to NYSE Arca's proposal to create the Lead Market Maker ("LMM") Issuer Incentive Program ("Fixed Incentive Program"), a pilot program that would provide incentives to market makers to undertake LMM assignments in certain exchange-traded products ("ETF/ETPs") listed on the Exchange.

United States Commodity Funds LLC ("USCF"), is an issuer of exchange traded commodity funds (ETF/ETPs). At present USCF sponsors twelve different funds with combined assets under management of approximately \$3.05 billion (as of 3/31/2012). We listed our first such fund, the United States Oil Fund, LP (NYSE: USO), in 2006. As such we are not only the exact sort of firm who will be heavily impacted by any new Fixed Incentive Programs, but we have also been active in this space for a number of years and believe we can bring a particular vantage point that other commentators may lack.

The Fixed Incentive Program is one of several market maker incentive programs offered by exchanges to issuers of ETFs/ETPs. USCF has long been a supporter for regulatory changes that would result in more efficient markets for issuers of ETFs. In particular we are interested in any programs that will achieve two goals.

First, programs which will encourage market makers, either Lead Market Makers or ordinary market makers, to make tighter and more liquid markets is a benefit that would primarily accrue to investors. This is particularly true for newer exchange traded funds or for those funds that for whatever reason have not yet achieved enough scale that natural competition among market makers has produced liquid, tight markets.

Second, we encourage programs that make it possible for all firms to attempt to list new and innovative securities in the marketplace and have an opportunity to receive adequate support from the market making community. This is a benefit that would directly benefit either newer entries



into this space, or smaller existing players, who may have innovative products but may otherwise lack the market presence to receive adequate attention from the market making community. By allowing innovation to occur from a source other than large, existing sponsors that may dominate the current space, may provide a valuable benefit to investors, as well as alleviate regulatory concerns about various parties becoming too dominant in any financial space.

In composing our comments, we are not addressing the topic of the relative merits of the LMM approach, as practiced on the NYSE Arca, with other approaches used on other trading platforms such as NASDAQ. We believe that is a separate discussion. Rather we assume that it is deemed beneficial for a trading platform to have a market structure that requires at least one market maker to make a two-sided market in securities and where in exchange for this obligation the market maker(s) receive some form of economic benefit.

Our own observation over the last six plus years that our firm has been active in the ETF/ETP space is that, due to a variety of circumstances, the LMM model has become increasingly sub-optimal. When issuers of ETF/ETPs products seek to bring new products to market, the number and quality of firms that are both able and willing to serve as an LMM has declined dramatically compared to 2006 or 2007.

There are a number of reasons why this may be the case and not all of them are related to the market structure of LMMs. In some cases firms that were active LMMs have left the market making space entirely. However it is clear to us that the current arrangement often leaves a situation where, for long periods of time, only one (or, at most, two), of the firms that are designated as LMMs with NYSE Arca are actually willing to take and support new listings. We do not view that as a healthy situation for either issuers of ETF/ETPs, or for the investors in such funds, or for that matter, for the market making community as a whole.

We would also raise the concern that the current situation actually leaves the marketplace open for certain practices that the Commission may not wish to encourage. Under the current state of affairs, it may be possible for new or existing sponsors of ETF/ETPs that also have extensive trading and money management efforts in areas other than in the ETF/ETP space (such as in the open-ended mutual fund or institutional fund management arena), to use that outside trading revenue to encourage regular market makers and LMMs to make active markets in their newest listings. In essence the firm would be using either the promise of more trading revenue and executions, or the threat of withholding of existing trading activity, to encourage or compel attention to be paid to their new ETF/ETP offerings.

The above raises the two issues. First, unlike in the case of the NYSE Arca proposal, such arrangements would not be disclosed to either the regulators or to investors. Second, it raises the question of the appropriateness of using the trading activity of non-ETF/ETP business as either a carrot or a stick for the benefit of a firm's ETF/ETP business.



As a result of our concerns about the decline in the current robustness of the LMM universe, we are interested in any new approach that would logically lead to a situation where either existing LMMs are more eager to take on new listing assignments or where market making firms that are not currently active as LMMs would find sufficient economic benefit to become LMMs.

USCF supports this pilot program as proposed by the NYSE Arca. However, we support it subject to the appropriate use of the word “pilot.”

We are aware that due to the Law of Unintended Consequences, it is possible that this program may produce undesirable results. We do believe that the current proposal, which sets limits on the number of ETF/ETPs that may be subject to this new arrangement (five per issuers), strikes an appropriate balance between having the pilot program too small to be a meaningful test and too large to avoid damage to different participants if the program is flawed.

In addition, we also believe the design of the economic incentives, which would tend to provide a disincentive for a LMM to take part in this program when dealing with ETF/ETPs that are already actively trading, will eliminate the concern that LMMs will be “paid extra for doing little or nothing” to quote a market participant.

We do believe that the proposal should be amended to require that it is clearly disclosed in any ETF/ETP offering document who is responsible for the payment of such financial arrangements and whether such payment will be an ongoing obligation of the Sponsor or the Shareholders. We do not believe the proposal needs to require that it be one or the other, but can be done on a case by case basis as long as it is clearly disclosed in the offering documents.

Finally, we believe the Commission should consider under what circumstances this program should move forward from the pilot program. We are uncertain that the program should be allowed to move forward without a review process to ensure that the Law of Unintended Consequences have in fact not been a factor.



On balance, we believe that the current proposal from NYSE Arca does strike a reasonable balance between the stakeholders when attempting to enhance the market making process. We encourage the Commission to support this effort, subject to the concerns we mentioned above.

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If you have any questions on our comment letter, please feel free to contact me directly at (510) 522-9600.

Sincerely,

/s/ John Hyland, CFA

John T. Hyland, CFA  
Chief Investment Officer

Ms Elizabeth M. Murphy

cc: The Honorable Mary L. Schapiro

The Honorable Elisse B. Walter

The Honorable Luis A. Aguilar

The Honorable Troy A. Paredes

The Honorable Daniel M. Gallagher

Robert W. Cook, Director Division of Trading and Markets