

---

# WEISS ASSET MANAGEMENT

---



October 6, 2016

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Order Instituting Proceedings to Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to NYSE MKT Rules 1600 et seq. and the Listing Rules Applicable to the Shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund (the “Order”) (Release No. 34-78804; File No. SR-NYSEMKT-2016-58)

Dear Mr. Fields:

We are writing in response to the request for comment published in the Order, which relates to the above-referenced filing by NYSE MKT (“the Exchange”)<sup>1</sup> to amend the listing rules applicable to shares of the Nuveen Diversified Commodity Fund (“CFD”) and the Nuveen Long/Short Commodity Total Return Fund (“CTF”). As funds managed by Weiss Asset Management are shareholders in CFD and CTF (together, the “Funds”), we appreciate the opportunity to comment on the proposed amendments and express our support for their approval.

We strongly support the rule change, which we believe furthers the regulatory policies underlying the requirement of Section 6(b)(5) under the Securities Exchange Act of 1934 that an exchange have rules “facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. . . .” We believe that conversions such as the ones proposed by the Funds, subject to this rule change, remove impediments to a free and open market and protect investors and the public interest by increasing the chances that the Funds trade at closer to net asset value (“NAV”), therefore allowing shareholders greater opportunity to exit an investment at the desired time at a price closer to the value of the underlying assets.

---

<sup>1</sup> In prior filings, and in the introductory paragraph of the Order, NYSE MKT is indicated as the entity filing for the rule change discussed in the Order. We note that while the captioned text at the beginning of the Order refers to NYSE Arca, we refer throughout this comment letter to “NYSE MKT” or the “Exchange.”

The proposal to convert the Funds from their current closed-end structure into open-end exchange-traded funds (“ETFs”) was intended to narrow the gap between the Funds’ share price and NAV. Prior to the announcement of the conversion plan on December 19, 2014<sup>2</sup>, shares of CFD and CTF were trading at discounts to NAV of 18.02% and 19.80%, respectively. As these wide discounts had persisted for longer than one year, action to restructure the Funds with the goal of reducing discounts and improving liquidity would be beneficial to all shareholders. At the shareholder meetings in the second quarter of 2015, we were among the majority of shareholders of both Funds to vote in favor of the proposed conversions. Our expectation was that after the conversion, shares of the Funds would trade at or near NAV, much like shares of similar Commodity Pool ETF products such as PowerShares DB Commodity Index Tracking Fund (NYSEARCA: DBC) and United States Commodity Index Fund (NYSEARCA: USCI).

In the months since the reorganization proposals were approved by shareholders, the Funds’ trading discounts have been reduced but not eliminated. The current discounts remain, we believe, due to uncertainty regarding the pending regulatory approvals, in particular approval of the proposed rule change referenced in the Order. The above-referenced Order, published in the Federal Register on September 15, 2016, has instituted proceedings that could delay approval for an additional 90 days, with potential for a further 60-day extension, or result in the ultimate failure of the proposed conversions. This most recent delay has had a negative impact on the discounts of the Funds, which have widened back out to 5.5% (CFD) and 8.8% (CTF) as of September 30, 2016. Trading volumes have also decreased during the shareholder and regulatory approval process, with average shares traded daily down about 50% in the last three months (ending on September 30, 2016) when compared to the same period in 2014 (prior to announcement of the ETF conversion plan). From the perspective of shareholders who voted over one year ago for improved liquidity and smaller discounts, watching these trading characteristics trend in the opposite direction has been greatly frustrating. In the event the rule proposal is not approved, our expectation is that the discounts of CFD and CTF would widen to the discounts seen in late 2014, or even wider. This would leave shareholders who have been patient in looking to exit a position at or near NAV to instead receive something like 81 cents on the dollar.

The Order solicits comments on two main topics related to the listing of the shares after the proposed conversions. First, the Commission requests comment on “whether the Exchange’s proposal is designed to sufficiently ensure that the trading of the Shares during the Conversions will be orderly and without undue market confusion or disruption.” In our experience trading listed closed-end fund securities over more than twenty years, we have seen various types of mandatory restructuring events become effective with no meaningful disruption in the market. In a typical case, announcements detailing an upcoming event are made to the market via press

---

<sup>2</sup> See Exhibit 99.1 to Form 8-K filed by Nuveen Diversified Commodity Fund, December 19, 2014, *available at* <https://www.sec.gov/Archives/edgar/data/1345801/000119312514448013/d840518d8k.htm>.

release and a notice to its members, as the Exchange discusses in the proposed rule.<sup>3</sup> While the Funds will change names, ticker symbols and CUSIPs, these are changes that occur regularly with respect to issuers on the exchanges. As long as the changes are clearly and publicly announced, they are not likely to cause confusion. When these details are provided with sufficient notice, it is also common for holders to receive alerts from their broker or custodian, minimizing the likelihood of confusion among market participants (including shareholders that are not industry professionals).

In recent years, we have frequently seen orderly processing of corporate events with more complexities than the Funds' proposed conversions. For example, we have seen several closed-end funds merge on a "NAV-for-NAV" basis, where the exchange ratio of old-for-new shares is a fractional value not available until the effective date. Even in these cases, which do have potential for confusion regarding a holder's precise entitlement, we have experienced no significant interruptions or difficulties when trading such securities. Due to well-established settlement and corporate event procedures, shareholder accounts are credited with the appropriate number of resultant securities in a timely manner. By comparison, the conversion of the Funds to ETFs will be at a one-for-one ratio, essentially registering as a ticker change to market participants. Our understanding is that with proper notice provided from the Exchange to the market, any outstanding trades in the existing CUSIP identifiers can be adjusted at the effective time to allow for regular settlement in the new CUSIP lines. Additionally, there should be no disruptive price movements associated with the conversion effective date, as can sometimes be the case with stock splits, large distributions or spin-offs.

For the reasons noted above we expect trading in the shares of the Funds to be orderly during the conversions. Importantly, we also expect that with the addition of the creation/redemption process and the advance publication to market participants regarding the conversion as discussed above, combined with the current publication by the Funds of their daily portfolio holdings, will provide an arbitrage opportunity to such market participants that will cause the difference between NAV of the Funds' shares and the market price to be arbitrated away. This ETF arbitrage process is the basis for the issuance by the Staff of the Division of Trading and Markets of a series of no-action letters that permit ETFs to operate under the strictures of Regulation M and other market regulations. *See, e.g.*, "Letter to George T. Simon, Esq., Foley & Lardner LLP" (June 21, 2006) (Commodity-based Investment Vehicles Class Letter). It is also discussed in the Request for Comment on Exchange-Traded Products issued last year by the Staff of the Division of Trading and Markets (Rel. No. 34-75165; File No. S7-11-15 (June 12, 2015) ("Request for Comment")).

The opportunity for Authorized Participants, market makers and other market participants<sup>4</sup> to engage in riskless arbitrage is created when market makers can calculate an intraday NAV of a Fund's shares and if there is sufficient commensurate liquidity in the

---

<sup>3</sup> Order, 81 Fed. Reg. 63,543, at 63,546-63,547.

<sup>4</sup> The Order notes that the Manager will engage multiple Authorized Participants with respect to the Funds.

underlying commodity futures market. The Funds already publish their daily portfolio holdings. Accordingly, by way of example, if at 10:00 a.m. on the day the conversion takes place, the shares of a Fund are trading at a discount to NAV, a market maker can buy a creation unit of shares in the secondary market and simultaneously establish a short position in the corresponding underlying futures contracts (the market for which is, we believe, generally deep enough to provide sufficient liquidity at any given time). The market maker can then redeem the creation unit to the Fund at the following 4:00 p.m. ET NAV, which reflects the current market price of the underlying futures contracts, so that the redemption proceeds (the prospectuses for the Funds indicate that creation and redemption transactions will occur on a cash basis) can be used to close out the short futures contract position. The market maker will therefore have captured the 10:00 a.m. prevailing discount on 50,000 shares of the Fund, minus expenses. Finally, as the Staff of the Division of Trading and Markets noted in the Request for Comment, purchasing a Fund's shares in the secondary market and selling the corresponding underlying futures contracts short should apply market pressures that, all other things being equal, will bring the Fund's share price closer to the value of the underlying futures contracts and ultimately eliminate any prevailing discount. (Our observations about the role of Authorized Participants relate to the benefits of the arbitrage process described for all shareholders. We do not expect to become an Authorized Participant but note the benefits from the perspective of a shareholder in the Funds.)

Finally, we believe that the conversion does not present any additional risks beyond those that any ETF launch presents. Specifically, the listing guide available on the NYSE Website called "Listing an ETF on NYSE Arca" explains that detailed information regarding the ETF will be made available to market data vendors and the DTCC through NYSE Market Data two days prior to launch, and a summary of the ETF will be available to all market participants on the day of launch. In both situations, of course, prospectuses will also be available ahead of launch or the conversions, as the case may be, on the SEC's EDGAR Website. In summary, it appears that in fact more information than that required for ETF launches will be made available with respect to the Funds' conversions.

It is also worth noting that the proposed conversion of the Funds would not be the first time that closed-end fund shares have traded continuously through a conversion to ETF units. First Trust Value Line Dividend Index Fund ("FVD") and First Trust Value Line 100 Exchange-Traded Fund ("FVL") each completed mergers into existing ETFs without any trading interruption in late 2006 (FVD) and mid-2007 (FVL). Although, unlike the Funds, these products are registered under the Investment Company Act of 1940, the trading issues relating to a conversion of products from a closed-end structure to an exchange-traded open-end product are substantially similar.

It appears that the Exchange has chosen to amend Rule 1602, a listing rule for non-ETF commodity pools, shares of which are referred to as "Trust Units," to add certain requirements to which ETFs generally must adhere. It did not elect "re-apply" for listing under Rule 1202, the NYSE MKT rule designed specifically for ETFs, shares of which are referred to as "Trust Issued Receipts." While the Exchange has proposed to require the Funds to report any material non-

compliance events to the Exchange, Commentary .01 to Rule 1602 does not include any guidance regarding the Exchange's suspension or delisting of the shares of a Trust Unit. However, we note that Commentary .07(d)(2) to NYSE MKT Rule 1202, which provides guidance for delisting commodity futures-based ETFs, specifies that the Exchange "will" remove from listing Trust Issued Receipts under specified circumstances, including some that would require consideration by the Exchange under proposed amendment to Commentary .01 to Rule 1602.

We believe it is more instructive as to current ETF regulation to look at the listing rules employed by NYSE Arca, the exchange where ETFs are generally currently listed. The analogue of NYSE MKT Rule 1602 appears to be Rule 8.500, the listing rule for "Trust Units." We note that like NYSE MKT Rule 1602, NYSE Arca Rule 8.500 includes Commentary .03 that does not include any guidance relating to the suspension or delisting of shares of Trust Units. Importantly, however, we believe that the analogue of NYSE MKT Rule 1202 appears to be NYSE Arca Rule 8.200, for "Trust Issued Receipts." It is instructive, we believe, that Commentary .02(d)(2) to Rule 8.200 (the section of Rule 8.200 for commodity futures-based ETFs) affords NYSE Arca considerably more discretion in determining when to suspend or delist shares of a commodity futures-based ETF listed on NYSE Arca instead of NYSE MKT. Notably, this guidance provides that NYSE Arca "will consider removing from listing Trust Issued Receipts . . . under any of the following circumstances: . . ." The circumstances are similar to those specified in Commentary .07(d)(2) NYSE MKT 1202.<sup>5</sup>

The use of the terminology "will consider removing" in the NYSE Arca rules, which is the rule currently in use for ETFs listing on NYSE Arca, as opposed to the "will remove" in the NYSE MKT rules, explains, we believe, why NYSE MKT, in proposing the addition of guidance for when and how to suspend or delist shares of the CFD and CTF, believes it was appropriate in light of current ETF listing standards to stipulate that it should "consider" suspending trading in or delisting shares of CFD and CTF based on "material" noncompliance with statements and representations the funds made regarding fundamental ETF listing requirements to which ETFs current generally must adhere. In any case, we believe that the stipulated suspension or delisted provisions appropriately reflect that technical non-compliance (such as a foot fault) should not cause a suspension, as it would harm shareholders who would be unable to trade shares of the funds. Moreover, we believe it is appropriate, as reflected in Commentary .02(d)(2) to NYSE Arca 8.200, for the Exchange to be permitted some level of discretion for determining when it is necessary or appropriate to suspend or delist the shares of an ETF.

\* \* \*

---

<sup>5</sup> We note that while we believe Rule 8.200 is the more applicable listing rule for commodity-based ETFs like the Funds, Listing Rule 8.600 for Managed Fund Shares, that is, actively managed ETFs, contains similar provisions regarding suspension and delisting of shares.

Secretary, Securities and Exchange Commission  
October 6, 2016  
Page 6 of 6

We appreciate the opportunity to comment on the proposed rule change and strongly support its timely approval, which we believe will benefit shareholders of Nuveen Diversified Commodity Fund and Nuveen Long/Short Commodity Total Return Fund by permitting the conditions for the Funds to trade closer to NAV. We believe that the steps proposed to be taken by the Manager and the Exchange should permit the proposed conversions to take place without undue market confusion or disruption.

Sincerely,

*Michael Szkodzinski*

Michael Szkodzinski  
Associate General Counsel

cc: W. Thomas Conner, Esq., Reed Smith LLP  
Matthew Maddalo, Weiss Asset Management LP