



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

February 4, 2004

Mr. Daniel R. Waldman  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004-1206

Re: Application of the U.S. Futures Exchange, L.L.C. for Designation as a Contract Market

Dear Mr. Waldman:

By letters dated September 16, 2003 through January 30, 2004, the U.S. Futures Exchange, L.L.C. (USFE or Exchange) applied to the Commodity Futures Trading Commission (Commission), pursuant to Sections 5 and 6(a) of the Commodity Exchange Act (Act), 7 U.S.C. §§7 and 8(a), for designation as a contract market. The Commission has reviewed the materials submitted, including all comments received in response to the materials submitted, and has determined to designate the USFE as a contract market, pursuant to Sections 5 and 6(a) of the Act, 7 U.S.C. §§7 and 8(a).

Concurrent with designation, the Commission approved, pursuant to Section 5c(c) of the Act, 7 U.S.C. §7a-2(c), USFE Amended and Restated Bylaw Sections 1.1, 2.1-2.7, 3.1-3.4, 3.6-3.16, 3.26, 5.1-5.7, 6.1-6.10, 7.1-7.2, 8.1-8.2, 8.4, 9.1-9.8, 10.1-10.5, and 12.1-12.3; and USFE Rules 101-103, 201-208, 301-315, 401-418, 501-504, 506-510, 601-617, 701, and 801-805.

The Commission's designation is based upon, among other things, written submissions, explanations, and representations provided by the Exchange describing the manner in which the USFE will operate. The Commission's designation is also based upon written submissions, explanations and representations provided by the USFE and the National Futures Association (NFA) concerning how the NFA will, among other things, assist the USFE in meeting the Exchange's self-regulatory obligations and upon explanations, demonstrations, and representations provided by the USFE and The Clearing Corporation (C Corp), a Commission-registered derivatives clearing organization, concerning how C Corp would, among other things, assist the USFE in meeting the Exchange's clearing and settlement obligations and in financial surveillance of certain members. The USFE should inform the Commission of any material modifications to the operation of the USFE, the USFE Trading System, the clearing and settlement arrangements provided by C Corp, or the USFE's self-regulatory program, including, but not limited to, those services provided by the NFA and C Corp. Any change in the identity of the regulatory service providers or the regulatory services they provide to the Exchange are considered rule changes, and should be submitted to the Commission as such, pursuant to Section 5c(c) of the Act.

The Commission reminds the USFE that any modification to its trade matching algorithm and any selection of a particular algorithm for a particular contract also constitutes a rule change that must be submitted to the Commission pursuant to Section 5c(c) of the Act. The Commission further reminds the Exchange that position limits or position accountability procedures must be specified for futures contracts listed by the Exchange. Position limits or position accountability procedures should be included with the Exchange's filing to the Commission in connection with the listing of each futures contract submitted under the Commission's certification or approval procedures.

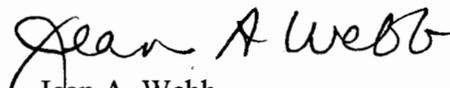
In approving the USFE's application, the Commission is not approving the agreements covering compliance and surveillance services between the USFE and the NFA and the agreement for clearing and other services, including surveillance of certain members, between the USFE and C Corp. In this connection, the USFE itself remains directly responsible to the Commission for ensuring the performance of all self-regulatory functions required of it as a designated contract market under the Act and Commission Regulations, including enforcement of the terms of all the USFE Bylaws and Rules. The USFE remains responsible for compliance with all designation criteria and core principles for which relevant functions have been contracted out. The Commission reminds the USFE of its continuing obligation, under Core Principle 2, to devote sufficient resources to the enforcement of its rules, whether through outsourcing to the NFA or otherwise. The Commission further reminds the USFE that prior to the implementation of any clearing link that would permit trades executed at the USFE to be cleared, directly or indirectly, at Eurex Clearing AG, the USFE must ensure that a formal procedure is in place that would provide the NFA with direct and prompt access to necessary and appropriate surveillance data, including data relating to positions, trading and monies for any Eurex Deutschland clearing firm, trader and customer.

The Commission reminds the USFE that it must comply with the terms of the enclosed Order of Designation, which includes certain undertakings offered by the USFE in its letter dated January 26, 2004. The Commission also reminds the USFE that, as a condition of the USFE's designation as a contract market, C Corp must also comply with the terms of the enclosed Order of Designation, which includes certain undertakings offered by C Corp in its letter dated January 23, 2004. In addition, the USFE is obligated, with respect to the Revenue Commission Agreements (RCA) entered into between the Exchange and certain persons (RCA Participants), to take the actions identified in its letter dated January 23, 2004, and to enforce its rules with respect to the obligations of RCA Participants.

The Commission notes that the USFE has represented that it will obtain commitments from any employees of the USFE's affiliates providing regulatory services (*i.e.*, market supervision in a backup capacity) that such employees will: (1) abide by Commission Regulation 1.59 and USFE Rule 207 and not trade on the basis of material non-public information; (2) consent to Commission jurisdiction to enforce that commitment; and (3) agree that the USFE may accept service of communications from the Commission on their behalf with respect to that commitment. The USFE also has represented that it will enter into appropriate information sharing agreements, including the International Information Sharing Memorandum of Understanding and Agreement dated March 15, 1996. Finally, the USFE has represented that

it would participate in the Commission's Exchange Database System project and would work with the Commission in order to provide trading information to the project.

Sincerely,

  
Jean A. Webb  
Secretary of the Commission

cc: Satish Nandapurkar, USFE  
Michael McErlean, USFE  
Yvonne Downs, NFA  
Dennis A. Dutterer, C Corp  
Dr. Ekkehard M. Jaskulla, Deutsche Boerse AG

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the Application of  
the U.S. Futures Exchange, L.L.C.  
for Designation as a Contract Market

ORDER OF DESIGNATION

The U.S. Futures Exchange, L.L.C. (USFE), a Delaware limited liability company, 80% of which is owned by U.S. Exchange Holdings, Inc., a separately capitalized Delaware Corporation that is a wholly-owned subsidiary of Eurex Frankfurt AG, and 20% of which is owned by Exchange Place Holdings, L.P., submitted pursuant to Sections 5 and 6(a) of the Commodity Exchange Act (Act), 7 U.S.C. §§ 7 and 8(a), an application for designation as a contract market. Having reviewed the application and the complete record in this matter, including all public comments submitted with respect to the application, the Commission adopts the reasons set forth in the February 2, 2004, Memorandum of the Division of Market Oversight (Staff Memorandum) as the basis for the following findings and rulings:

1. The Commission FINDS that, as required by Section 6(a), 7 U.S.C. § 8(a), the USFE's application provides a showing that it complies with the conditions set forth in the Act and the Commission's regulations thereunder applicable to it for designation as a contract market, and provides a sufficient assurance that it will continue to comply with the requirements of the Act and the Commission's regulations;

2. The Commission FINDS that the USFE and the USFE's business partner The Clearing Corporation (C Corp) have committed to certain conditions and undertakings as set forth in Section VIII of the Staff Memorandum;

3. IT IS ORDERED, under Sections 5 and 6(a) of the Act, 7 U.S.C. §§ 7 and 8(a), that the application of the USFE for designation as a contract market is approved;

4. IT IS FURTHER ORDERED, that this approval of designation shall be subject to compliance with all sections of the Act and regulations thereunder applicable to the USFE as a designated contract market;

5. IT IS FURTHER ORDERED that the USFE will comply with commitments it made to the Commission by its letter dated January 26, 2004, as follows:

a. The USFE will not utilize, directly or indirectly, any clearing organization that is not a Commission-registered derivatives clearing organization (DCO), in connection with the clearing, settlement, netting, offsetting of, or implementation of any clearing link for the USFE listed or traded contracts, whether dollar denominated or non-dollar denominated, without prior Commission approval or permission;

b. The USFE will provide to the Commission, one month in advance of its proposed effective date, any non-traditional form of incentive program that the USFE plans to implement; and

c. The USFE will not operate the BrokerTec Futures Exchange, L.L.C. (BTEX) as a contract market in reliance on the designation previously granted by the Commission to BTEX, without prior Commission approval or permission; and

6. IT IS FURTHER ORDERED that C Corp will comply with commitments it made to the Commission by its letter dated January 23, 2004, as follows:

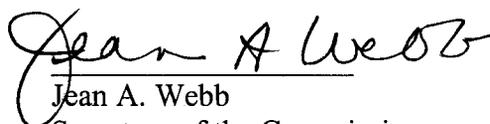
a. C Corp will not utilize, directly or indirectly, any clearing organization which is not a Commission-registered DCO in connection with the clearing, settlement, netting, offsetting of, or implementation of any clearing link for USFE listed or traded contracts, whether dollar denominated or non-dollar denominated, without prior Commission approval or permission.

b. C Corp will not: (i) clear, net, settle, offset (either position or risk), or otherwise provide any other clearing services for futures and options contracts (whether dollar denominated or non-dollar denominated) that are listed and traded on any affiliate of the USFE, or (ii) implement portfolio margining between, or any form of clearing link involving, futures and options contracts (whether dollar denominated or non-dollar denominated) that are listed or traded on the USFE and those that are listed or traded on any affiliate of the USFE, without consultation with and prior Commission approval or permission. For this purpose, the Commission will have 10 business days from the date that C Corp makes a formal submission proposing such an arrangement to determine whether C Corp may self-certify the arrangement pursuant to Commission Regulation 40.6. If the Commission does not object by the close of business on the 10th business day, the arrangement will be deemed to be proper for certification.

c. Notwithstanding paragraphs 6(a) and 6(b), in accordance with the Act, C Corp need not seek prior Commission approval or permission to enter into a cross-margining arrangement, for non-customer positions, with respect to the USFE listed or traded contracts, whether dollar denominated or non-dollar denominated, with a Commission-registered DCO or a clearing agency registered with the Securities and Exchange Commission.

Issued in Washington, D.C., this 4th day of February, 2004.

By the Commission

  
Jean A. Webb  
Secretary of the Commission