

Integrated List of CFTC Staff Questions Concerning the Application of U.S. Futures Exchange, L.L.C. (USFE or Exchange) for Designation as a Contract Market

1. Section 6.5(a) of the Bylaws states that a majority of the entire Board shall constitute a quorum at any meeting of the Board. USFE's response to question 4 on page 2 of the Integrated List of Commodity Futures Trading Commission ("Commission") Staff Questions Concerning the Application of U.S. Futures Exchange, L.L.C. ("US Exchange") for Designation as a Contract Market, received November 5, 2003 (hereinafter referred to as USFE responses), states that if the Board has 12 Directors, six Directors would constitute a quorum of the Board. Please address this apparent inconsistency.

Response: Thank you for pointing out the above inconsistency. The Bylaws are correct. A majority of the entire Board shall constitute a quorum. If the Board has 12 Directors, 7 Directors will constitute a quorum of the Board.

2. With respect to Rule 207, Restrictions on Directors, Officers, Committee members, Employees and Consultants, USFE's letter to the Commission dated November 18, 2003 (hereinafter referred to as USFE letter) states that Board members and employees of any USFE affiliate providing regulatory services to the Exchange are barred from trading on material nonpublic information obtained through the performance of their duties for the Exchange. This restriction is not apparent in the rule. In addition, the USFE letter states that USFE has contracted with corporate affiliates to carry out certain non-regulatory functions. Please discuss whether the restrictions in Rule 207 should or would also apply to board members and employees of these corporate affiliates.

Response: USFE's outsourcing contracts, including its agreements with affiliates, include strict confidentiality provisions that prohibit unauthorized use of confidential information from USFE. In addition, employees of Eurex affiliates providing regulatory services to USFE will be required to abide by the rules and regulations governing USFE. Moreover, Commission Rule 1.59(d)(2) makes unlawful insider trading by persons who knowingly receive insider information from an employee, board member, committee member or consultant of the Exchange. Further, directors, officers, and employees of Eurex, Deutsche-Boerse, AG, SWX AG and other European affiliates of USFE are prohibited from insider trading as a matter of company policy and E.U. directive. Nevertheless, as suggested by CFTC staff, we have amended Rule 206 specifically to prohibit Directors, officers and employees of corporate affiliates of the Exchange performing functions for the Exchange from trading based upon material, non-public information obtained through the performance of such person's official duties.

3. Rule 207 includes the term “significant action.” USFE’s response to question 6 on page 6 describes what it means by this term. Should this term be a defined term in the rules so as to put members on notice as to what constitutes a significant action?

Response: Yes. The term “significant action” comes directly from, and will be amended explicitly to provide that it has the same meaning as, CFTC Rule 1.69(a)(8).

4. Please expand upon the USFE response to question 11 on page 8 with respect to how the provisions of Rule 314(a)(ii) would provide for adequate due process protections and why the due process protections specifically provided in Rule 615, including a written decision, need not be provided.

Response: The Exchange believes that there is a difference between disciplinary action taken as a result of a violation of Exchange Rules and termination due to a member no longer being eligible for membership because, for example, its registration or license to operate has been revoked or the member is in bankruptcy. The Exchange should have more flexibility in addressing issues that relate solely to the eligibility of persons with whom it conducts business. Adequate protection is afforded the member under Rule 314(a)(ii) by the requirement that the member will be given notice and an opportunity for a hearing. However, if the Commission believes otherwise, we would be amenable to amending the rule accordingly.

5. With respect to Rule 408, Cancellation of Transactions, USFE’s letter states that traders would not be permitted to execute counter transactions and that such transactions would be entered by Market Supervision staff. Would the entry of these counter transactions by Market Supervision create false volume?

Response: No. In instances in which Rule 408 is invoked and transactions are cancelled, the market will be informed of the cancellations. Contract volume figures are automatically adjusted downward when the reversing trade from Market Supervision is processed by the trading system. Thus, neither the original trade nor the canceling trade is included in that day’s contract volume statistics.

6. Rule 406 addresses cross trades and prearranged trades. Rule 406(b) requires that a member seeking to match customer orders, to take the opposite side of a customer order, or to execute a pre-negotiated transaction wait 5 or 15 seconds, depending upon the type of contract, after the initial order is entered into the trading system before entering the opposite order. Are such pre-arranged transactions permitted on a member-to-member basis? If not, please describe how existing provisions of the USFE rules would prohibit such transactions? Could a broker solicit an order from a market maker to take the opposite side of a customer order?

Response: Rule 406 permits pre-execution discussions of trades so long as the initial order entered is exposed to the market for the requisite period of time before the matching order is entered into the trading system. Such discussions can be between members. If executed for a customer, such trades, including a trade resulting from a broker's solicitation of an order from a market maker, may only be executed with the customer's consent. Rule 406 is consistent with the rules of other designated contract markets. In response to the CFTC staff's question, we will clarify Rule 406 by deleting the reference to "customer" in the third line of the rule.

7. Should USFE have specific rules that provide for the following: (1) a requirement that customer orders be entered in the order of receipt; (2) a prohibition on the disclosure of orders prior to execution; (3) a prohibition on the withholding of orders from the market; and (4) fitness standards for all persons that may have direct access to the Trading Facility. If not, please describe how existing provisions of the USFE rules would address these four issues.

Response: Rule 307(m) requires each member to use due diligence in receiving and handling customer orders. Rule 307(n) gives priority to customer orders. Rule 308 prohibits members from engaging in conduct or practices that are inconsistent with just and equitable principles of trade. The rules do not purport to address every form of breach of fiduciary duty by a member or its authorized traders. We would be concerned that an effort to delineate the specific instances where a breach would occur, such as those practices listed in items (1)-(4) of the question, would never be complete and would be used as license to engage in acts not so delineated. The Commission has concluded that other contract markets designated by the Commission have met the requirements of the Core Principles without having such rules in their rulebooks. However, if Commission staff concludes that USFE nonetheless should include such a rule in order to comply with applicable statutory requirements, we will amend the rulebook accordingly.

Exchange fitness standards appropriately apply to Exchange members, who legally are the persons or entities having "direct access to the Trading Facility." USFE Rule 304 disqualifies for membership those who are unfit based upon the statutory disqualifications of the Commodity Exchange Act. In contrast, "authorized traders" are agents of members who operate under the control and supervision of the member. The USFE membership agreement requires that the member advise the Exchange if any of the member's authorized traders has been convicted of a crime or had its trading privileges suspended or revoked. However, the members are responsible for their agents who may be authorized by them to enter trades on the Exchange. It is appropriate that members maintain the responsibility for evaluating the fitness of their agents.

8. With respect to the Membership application, should USFE request an NFA Number be provided in order to ease the searches for background checks? Should USFE

request a Form 1-FR-FCM and financial statements in order to verify the financial integrity of members?

Response: USFE currently is requesting that applicants having an NFA number include it with the application.

The chief mechanism for assuring the financial integrity of members is that all trades be guaranteed through USFE's Derivatives Clearing Organization—The Clearing Corporation (C Corp). In this regard, USFE requires that in order to trade, members must themselves be authorized by C Corp to clear trades, or to have their trades guaranteed by an entity that is so authorized. In addition, the Exchange will determine the financial integrity of prospective members by relying on background and credit checks. The Exchange will also rely upon whether applicants who are required to be registered are in good standing with their regulators. With respect to Futures Commission Merchants, specifically, we are accessing information with regard to their financial condition from the CFTC's website. This information is updated monthly. Accordingly, we see no need to require submission of Form 1-FR-FCMs.

9. In USFE's November 18, 2003 letter to the Commission responding to public comments on the USFE application, the Exchange states that Deutsche Boerse AG indirectly holds a 50% equity stake in USFE and "is majority owned by U.S. and UK investors with a U.S. fund manager being its largest shareholder." What is the name of the U.S. fund manager that is the largest shareholder in Deutsche Boerse and what is its approximate percentage of shares. Also, please explain how USFE is able to ascertain the level of U.S. and UK investment in Deutsche Boerse.

Response: The U.S. fund manager referenced in the November 18, 2003 letter is Fidelity. Two Fidelity managed funds together held 9.8% of the shares of Deutsche Boerse AG according to the Investor Relations department of Deutsche Boerse AG. One of the funds was above 5% and one of the funds was below.

The Investor Relations department of Deutsche Boerse AG compiled these figures, as well as the information about the nationality of the majority of shareholders, from information collected from a number of sources including information filed directly with the automated share register, third party providers of shareholder information, information provided in direct conversations with holders, and filings with the German Federal Supervisory Authority.

10. The Commission understands that SWX Swiss Exchange, along with Deutsche Boerse, also indirectly owns a 50% equity stake in USFE and that it is a member-owned organization. Please provide a current listing of the member-owners of SWX Swiss Exchange.

Response: The list below contains the names of all of the members of the Verein SWX Swiss Exchange, which is the sole owner of SWX Group, in turn the sole owner of SWX Swiss Exchange, the 50% owner of Eurex Zurich AG. The members of the Verein (association) are as follows:

**ABN AMRO Bank N.V. (Schweiz)
Banca del Gottardo
Bank am Bellevue
Bank CIAL (Schweiz)
Bank Hofmann AG
Bank Julius Bär & Co. AG
Bank Leu AG
Bank Sal. Oppenheim jr. & Cie (Schweiz)
Bank Sarasin & Cie
Bank Vontobel AG
Banque Bonhôte & Cie SA
Banque Cantonale de Genève
Banque Cantonale Vaudoise
Banque de Dépôts et de Gestion
Banque Edouard Constant SA
Banque Piguet & Cie SA
Banque Privée Edmond de Rothschild S.A.
Basler Kantonalbank
BNP Paribas Private Bank (Switzerland) SA
BSI SA
BZ Bank Aktiengesellschaft
Cornèr Banca S.A.
Coutts Bank (Schweiz) AG
Crédit Agricole Indosuez
Crédit Lyonnais (Suisse) SA
CREDIT SUISSE
Deutsche Bank (Schweiz) AG
Dreyfus Söhne & Cie AG, Banquiers
E. Gutzwiller & Cie, Banquiers
Ehinger & Armand von Ernst AG
Fortis Bank (Nederland) N.V. Frankfurt Branch
Goldman, Sachs & Co. Bank
Hottinger & Cie, Banquiers
HSBC Republic Bank (Suisse) S.A.
ING Bank (Switzerland) Ltd.
La Roche & Cie, Banquiers
LGT Bank in Liechtenstein AG
Liechtensteinische Landesbank AG
Lombard Odier Darier Hentsch & Cie
Maerki Baumann & Co. AG**

**Merrill Lynch Capital Markets AG
Mirabaud & Cie, Banquiers
Pictet & Cie, Banquiers
Privatbank IHAG Zürich AG
Rahn & Bodmer, Banquiers
Rüd, Blass & Cie AG, Bankgeschäft
SG Rüegg Bank AG
Société de Bourse Lémanique
Société Générale, Paris,
Swissnetbank.com AG
Timber Hill (Europe) AG
UBS AG
Union Bancaire Privée
Zürcher Kantonalbank**

11. Please explain the process by which USFE's board will be selected. Will the board be selected by any official, employee or board of a parent company of USFE? Will any USFE directors be drawn from the officials, employees or boards of USFE's parent companies?

Response: The Board of Directors of U.S. Futures Exchange, L.L.C. (“USFE”) will be constituted in accordance with the Limited Liability Company Agreement and Bylaws (“Bylaws”). The Bylaws were submitted to the Commodity Futures Trading Commission as part of the application for designation on 16 September 2003. Pursuant to Section 5.2(a) of the Bylaws, there is currently an initial member of the Board of Directors, Mr. Michael McErlean. Additional Directors will be appointed prior to the launch of trading. Please see Section 3.6 of the Bylaws.

The Board of Directors of USFE will be selected by its Shareholders at a USFE Shareholders meeting. Currently, USFE has one shareholder, U.S. Exchange Holdings, Inc. (“Holdings”), a Delaware corporation wholly owned by Eurex Frankfurt AG.

Before the USFE Shareholders meeting, at which the new USFE Board members will be elected, the Board of Directors of Holdings will meet and decide whom it will elect to the USFE Board of Directors. All of the Directors so elected will meet the statutory requirements regarding the fitness of directors of exchanges, and a majority will be U.S. citizens or located in the United States. The sole Holdings Directors are Thomas Lenz and Michael Widmer who are also Members of the Eurex Frankfurt AG and Eurex Zurich AG Executive Committees. Mr. Lenz and Mr. Widmer are both based in Chicago, Illinois. The Holdings Directors will likely consult with its shareholder Eurex Frankfurt AG, which in turn may consult with its parent companies.

When expanded, the Board will be composed of twelve Directors. Of these, at least six will be drawn from Exchange members and are intended to represent different general groups of members, such as brokers, arbitrage firms, institutional investors and independent clearers. The remaining six Directors may include officials, employees or members of the boards of USFE's parent companies.