

**Response of U.S. Futures Exchange, L.L.C. to CFTC Staff Question
Concerning Financial Surveillance**

1. *U.S. Futures Exchange, L.L.C. (“USFE”) has entered into a Regulatory Services Agreement (“RSA”) with the National Futures Association (“NFA”), under the terms of which, among other things, NFA will perform certain activities described in the RSA as “Financial Analysis and Risk Analysis” of USFE members (“FARA Activities”). USFE has also entered into a Clearing Services Agreement (“CSA”) with the Clearing Corporation (“C Corp”), under the terms of which, among other things, USFE may “request [C Corp’s] assistance with ... the financial surveillance of [USFE] Members” (“FS Activities”). The Commission has noted previously that, with regard to such arrangements,*

the [contract market] must assure itself that the ... contracted services will enable it to remain in compliance with the Act’s requirements. Moreover, the [contract market] must have a sufficient degree of control over the persons under contract because it remains the [contract market’s] responsibility to ensure that its obligations under the Act are met.¹

Please describe in detail USFE’s plan for overseeing proper performance of the FARA Activities and FS Activities. Please include in your response discussion of, among other things, specific USFE management responsibilities with respect to the RSA and CSA; USFE authority to direct changes in NFA and C Corp systems, procedures, or practices utilized by the FARA Activities and FS Activities; and USFE internal controls to ensure fulfillment of the RSA and CSA.

Response: USFE places the highest priority on ensuring the financial integrity of its market and the contracts it will be offering. USFE is committed to providing financial surveillance that meets and exceeds industry standards. In our prior submission of December 31, 2003 regarding financial surveillance and in our meeting with the CFTC staff on January 14, 2004, we described in detail the financial and risk analyses and monitoring procedures to be undertaken by USFE and its partners, the NFA and C Corp.

Section 5c(b) of the Act makes clear that a contract market or derivatives transaction execution facility that complies with any applicable core principle through delegation of a relevant function “remain[s] responsible for carrying out the function.” USFE recognizes that it assumes responsibility for ensuring that the regulatory services outsourced to NFA and C Corp are performed in accordance with Core Principles and USFE has committed to take appropriate steps to effectively monitor and supervise these activities. USFE is carrying out that commitment both informally, through coordination efforts and staffing, as well as in its formal agreements with NFA and C Corp.

Specifically, USFE intends to appoint a full time risk manager with direct responsibility for overseeing financial surveillance, including the NFA and C Corp services. This risk manager will report directly to the head of compliance or another senior management officer. We further

¹ 66 Fed. Reg. 42,256 at 42,266 (August 10, 2001)(“A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations”).