

I. Analysis of the U.S. Futures Exchange, L.L.C. Proposed Bylaws, Rules, and Outsourcing Agreements for Compliance with the Act’s Designation Criteria for Contract Markets

CRITERIA FOR CONTRACT MARKET DESIGNATION	U.S. FUTURES EXCHANGE, L.L.C. PROPOSAL	COMMENTS
<p>Sec. 5(a) Applications – “A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.”</p>		<p><i>See</i> Application for Designation as a Contract Market dated September 16, 2003 and exhibits thereto.</p>
<p>Sec. 5(b) CRITERIA FOR CONTRACT MARKET DESIGNATION</p>		
<p>Designation Criterion 1 <i>In General</i> – “To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.”</p>		<p><i>See generally</i> U.S. Futures Exchange, L.L.C. Application and exhibits thereto.</p>
<p>Designation Criterion 2 <i>Prevention of Market Manipulation</i> – “The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.”</p>	<p>U.S. Futures Exchange Rules 205 (Compliance Department); 308 (Prohibited Conduct); 406 (Cross Trades and Pre-arranged Trades); 412 (Position Limits); 413 (Exemptions from Position Limits); 414 (Position Accountability); Part 6 – Disciplinary Proceedings; NFA Regulatory Services Agreement; General Services Agreement with Eurex; Service Level Agreement between Eurex and Deutsche</p>	<p>The Exchange Trading System will automatically create a full and accurate record of all bids and orders entered into the system, all matched transactions and all entries in the system allowing for a comprehensive audit trail. U.S. Futures Exchange will maintain its extensive records of all entries in its system for 5 years. Members will be required to maintain customer transaction</p>

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	Börse AG.	records in accordance with Commission regulations. NFA will perform surveillance for trade practice violations and for market manipulation, price distortions or market congestion. U.S. Futures Exchange will conduct its own market supervision, which will include market supervision through a general services agreement with Eurex.
<p>Designation Criterion 3 <i>Fair and Equitable Trading</i> – “The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. The rules may authorize – (A) transfer trades or office trades; (B) an exchange of futures – (i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps; or (C) a futures commission merchant, acting as principle or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded or cleared in accordance with the rules of the contract market or a</p>	<p>U.S. Futures Exchange Rules 205 (Compliance Department); 307 (Duties of Members); 308 (Prohibited Conduct); 401 (Business Day Periods); 403 (Orders); 406 (Cross Trades and Pre-arranged Trades); 410 (Transfer of Positions); 415 (Block Trade Facility); 416 (Basis Trading Facility); 417 (EFS Trading Facility); 418 (Vola Trading Facility); Part 6 – Disciplinary Proceedings.</p>	<p>The U.S. Futures Exchange platform will be based on the a/c/e system, in operation since 2000 through a joint venture with the CBOT. It is designed to provide fair and equitable availability of accurate and timely trading information. Compliance with U.S. Futures Exchange trading rules will be monitored as indicated above. U.S. Futures Exchange through its Compliance Department will have the authority to investigate violations and bring charges where appropriate.</p>

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derivatives clearing organization.”		
<p>Designation Criterion 4 <i>Trade Execution Facility</i> – “The board of trade shall (A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and (B) demonstrate that the trade execution facility operates in accordance with the rules or specifications.”</p>	<p>U.S. Futures Exchange Rules Part 4 - Trading; U.S. Futures Exchange Application Exhibits 10 through 17.</p>	<p>The U.S. Futures Exchange platform will be based on the a/c/e system, in operation since 2000 through a joint venture with the CBOT.</p>
<p>Designation Criterion 5 <i>Financial Integrity of Transactions</i> – “The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization.”</p>	<p>U.S. Futures Exchange Rules 302 (Eligibility); 305 (Admission as a Member); 307 (Duties of Members); 309 (Surveillance); 506 (Margins); 415 (Block Trade Facility); 416 (Basis Trading Facility); 417 (EFS Trading Facility); 418 (Vola Trading Facility); Part 5 Clearing and Financial Integrity of Contracts. NFA Regulatory Services Agreement; General Services Agreement with Eurex.</p>	<p>The Exchange has entered into a Clearing Services Agreement with The Clearing Corporation, a designated Derivatives Clearing Organization, to settle and clear the Exchange contracts.</p>
<p>Designation Criterion 6 <i>Disciplinary Procedures</i> – “The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to</p>	<p>U.S. Futures Exchange Rules Part 6 (Disciplinary Proceedings).</p>	

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discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”		
Designation Criterion 7 <i>Public Access</i> – “The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.”		The U.S. Futures Exchange, L.L.C. Agreement and Bylaws, Rules, and Contract Specifications, including the terms and conditions of all Exchange Contracts and the mechanisms for executing transactions on or through the Trading System, will be posted on the Exchange’s website.
Designation Criterion 8 <i>Ability to Obtain Information</i> – “The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.”	U.S. Futures Exchange Rules 307 (Duties of Members); 308 (Prohibited Conduct); 415 (Block Trade Facility); 416 (Basis Trading Facility); 417 (EFS Trading Facility); 418 (Vola Trading Facility).	The Exchange will enter into appropriate information-sharing arrangements, including the International Information Sharing Memorandum of Understanding and Agreement of March 15, 1996. The Exchange will participate in the Commission’s EDS project and will work with the Commission in order to provide trading information to the project.

II. Preliminary Analysis of the U.S. Futures Exchange, L.L.C. Proposed Rules and Bylaws with the Act’s Core Principles for Designation as a Contract Market.

CORE PRINCIPLES FOR CONTRACT MARKETS	U.S. FUTURES EXCHANGE, L.L.C. PROPOSAL	COMMENTS
Sec. 5c – COMMON PROVISIONS FOR REGISTERED ENTITIES		
<p>Sec. 5c(b) – Delegation of Functions Under Core Principles (1) In General – “A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.” (2) Responsibility – “A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.”</p>	<p>NFA Regulatory Services Agreement; General Services Agreement with Eurex; Service Level Agreement between Eurex and Deutsche Börse AG.</p>	<p>Market, trade practice, financial and sales practice surveillance, will be conducted by NFA. NFA will also provide dispute resolution services.</p> <p>Market supervision and real time monitoring will be performed by U.S. Futures Exchange and will include market supervision through a general services agreement with Eurex.</p> <p>The Exchange has entered into a Clearing Services Agreement with The Clearing Corporation, a designated Derivatives Clearing Organization, to settle and clear the Exchange contracts.</p>
<p>SEC. 5c(c) – New Contracts, New Rules, and Rule Amendments (1) In General – Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or</p>		<p>U.S. Futures Exchange will be certifying that the contracts to be traded on the Trading System comply with the Commodity Exchange Act and the regulations thereunder.</p>

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<p>may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in case of a contract for sale of a government security for future delivery (or an option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).</p> <p>(2) Prior Approval – (A) In General – A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.</p> <p>(B) Prior Approval Required – notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.</p>		

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SEC. 5(d) – CORE PRINCIPLES FOR CONTRACT MARKETS		
<p>Core Principle 1 <i>In General</i> – “To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.”</p>	<p><i>See generally</i> U.S. Futures Exchange, L.L.C. Application and exhibits thereto.</p>	<p>The Exchange has entered into a Clearing Services Agreement with The Clearing Corporation, a designated Derivatives Clearing Organization, to settle and clear the Exchange contracts.</p>
<p>Core Principle 2 <i>Compliance with Rules</i> – “The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.”</p>	<p>U.S. Futures Exchange Rules 301 (Status of Members); 302 (Eligibility); 303 (Application Procedures); 304 (Denial of Admission); 305 (Admission as a Member); 306 (Payment of Company Fees); 307 (Duties of Members); 308 (Prohibited Conduct); Part 4 (Trading); Part 6 (Disciplinary Rules); NFA Regulatory Services Agreement.</p>	<p>Compliance with U.S. Futures Exchange Trading Rules will be monitored as indicated above. U.S. Futures Exchange through its Compliance Department will have the authority to investigate violations and bring charges where appropriate.</p>
<p>Core Principle 3 <i>Contracts Not Readily Subject to Manipulation</i> – “The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.”</p>		<p>U.S. Futures Exchange will be certifying that the contracts to be traded on the Trading System comply with the Commodity Exchange Act and the regulations thereunder.</p>

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<p>Core Principle 4 <i>Monitoring of Trading</i> – “The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.”</p>	<p>U.S. Futures Exchange Rules 205 (Compliance Department); 307 (Duties of Members); 308 (Prohibited Conduct); Part 6 (Disciplinary Rules); NFA Regulatory Services Agreement; General Services Agreement with Eurex; Service Level Agreement between Eurex and Deutsche Börse AG.</p>	<p>Trade practice and market surveillance will be performed by NFA. Market supervision and real time monitoring will be performed by U.S. Futures Exchange and shall include market supervision through a general services agreement with Eurex.</p>
<p>Core Principle 5 <i>Position Limitations or Accountability</i> – “To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.”</p>	<p>U.S. Futures Exchange Rules 412 (Position Limits); 413 (Exemptions from Position Limits); 414 (Position Accountability).</p>	<p>U.S. Futures Exchange intends initially to list for trading contracts on underlying commodities for which position accountability procedures and not speculative position limits are applicable.</p>
<p>Core Principle 6 <i>Emergency Authority</i> – “The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to – “(A) liquidate or transfer open positions in any contract; (B) suspend or curtail trading in any contract; and (C) require market participants in any contract to meet special margin requirements.”</p>	<p>U.S. Futures Exchange, L.L.C. Agreement and Bylaws Section 5.6 (Eligibility for Service on Boards and Committees); 5.7 (Improper Use or Disclosure of Material, Non-Public Information); 9.11 (Restrictions on Trading and Disclosure by Employees).</p> <p>U.S. Futures Exchange Rules 207 (Restrictions on Directors, Officers, Committee Members, Employees and Consultants); 412 (Position Limits);</p>	

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	413 (Exemptions from Position Limits); 414 (Position Accountability); 506 (Margin); 804 (Emergency Powers).	
<p>Core Principle 7 <i>Availability of General Information</i> – “The board of trade shall make available to market authorities, market participants, and the public information concerning – (A) the terms and conditions of the contracts of the contract market; and (B) the mechanisms for executing transactions on or through the facilities of the contract market.”</p>		<p>The U.S. Futures Exchange, L.L.C. Agreement and Bylaws, Rules, and Contract Specifications, including the terms and conditions of all Exchange Contracts and the mechanisms for executing transactions on or through the Trading System, will be posted on the Exchange’s website.</p>
<p>Core Principle 8 <i>Daily Publication of Trading Information</i> – “The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.”</p>		<p>Daily information on settlement prices, volume, and open interest for actively traded contracts will be posted on the Exchange website and will be available through various price reporting providers.</p>
<p>Core Principle 9 <i>Execution of Transactions</i> – “The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.”</p>	<p>U.S. Futures Exchange Rules Part 4 generally (Trading); 415 (Block Trade Facility); 416 (Basis Trading Facility); 417 (EFS Trading Facility); 418 (Vola Trading Facility); U.S. Futures Exchange Application Exhibits 10-17.</p>	

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<p>Core Principle 10 <i>Trade Information</i> – “The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.”</p>	<p>U.S. Futures Exchange Rules 307 (Duties of Members); 308 (Prohibited Conduct); Part 4 generally (Trading); 803 (Confidentiality of Information); U.S. Futures Exchange Application Exhibits 10-17; NFA Regulatory Services Agreement; General Services Agreement with Eurex.</p>	<p>The U.S. Futures Exchange Trading System will automatically create a full and accurate record of all bids and orders entered into the system, all matched transactions and all entries in the system allowing for a comprehensive audit trail. U.S. Futures Exchange will maintain its extensive records of all entries in its system for 5 years. Members will be required to maintain customer transaction records in accordance with Commission regulations. Trade activity will be monitored by NFA. U.S. Futures Exchange will also conduct its own market supervision, which shall include market supervision through a general services agreement with Eurex.</p>
<p>Core Principle 11 <i>Financial Integrity of Contracts</i> – “The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing</p>	<p>U.S. Futures Exchange Rules Part 3 (Membership); 302 (Eligibility); 305 (Admission as a Member); 307 (Duties of Members); 308 (Prohibited Conduct); 309 (Surveillance); 506 (Margins);</p>	<p>The Exchange has entered into a Clearing Services Agreement with The Clearing Corporation, a designated Derivatives Clearing Organization, to settle and clear the Exchange contracts.</p>

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<p>organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.</p>	<p>NFA Regulatory Services Agreement.</p>	
<p>Core Principle 12 <i>Protection of Market Participants</i> – “The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.”</p>	<p>U.S. Futures Exchange Rules 307 (Duties of Members); 308 (Prohibited Conduct); 309 (Surveillance); 403 (Orders); NFA Regulatory Services Agreement.</p>	
<p>Core Principle 13 <i>Dispute Resolution</i> – “The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.”</p>	<p>U.S. Futures Exchange Rules Part 7 (Customer Disputes); 701 (Procedure for Resolution); NFA Regulatory Services Agreement.</p>	<p>NFA will provide dispute resolution services.</p>
<p>Core Principle 14 <i>Governance Fitness Standards</i> – “The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).”</p>	<p>U.S. Futures Exchange, L.L.C. Agreement and Bylaws Article V (Directors); Sections 5.2 (Number, Election, Tenure); 5.3 (Resignation and Removal); 5.6 (Eligibility for Service on Boards and Committees); 5.7 (Improper Use or Disclosure of Material, Non-Public Information); 9.11 (Restrictions on Trading and Disclosure by Employees).</p> <p>U.S. Futures Exchange Rules 207 (Restrictions on Directors, Officers,</p>	

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	Committee Members, Employees and Consultants); 301 (Status of Members); 302 (Eligibility); 305 (Admission as a Member); 307 (Duties of Members); 308 (Prohibited Conduct).	
<p>Core Principle 15 <i>Conflicts of Interest</i> – “The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest.”</p>	<p>U.S. Futures Exchange, L.L.C. Agreement and Bylaws Article V (Directors); Sections 5.2 (Number, Election, Tenure); 5.3 (Resignation and Removal); 5.6 (Eligibility for Service on Boards and Committees); 5.7 (Improper Use or Disclosure of Material, Non-Public Information); 6.5 (Quorum and Voting); 9.11 (Restrictions on Trading and Disclosure by Employees).</p> <p>U.S. Futures Exchange Rule 207 (Restrictions on Directors, Officers, Committee Members, Employees and Consultants).</p>	
<p>Core Principle 16 <i>Composition of Boards of Mutually Owned Contract Markets</i> – “In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.”</p>		Not Applicable.

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<p>Core Principle 17 <i>Recordkeeping</i> – “The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.”</p>	<p>U.S. Futures Exchange Rules 307 (Duties of Members); 415 (Block Trade Facility); 416 (Basis Trading Facility); 417 (EFS Trading Facility); 418 (Vola Trading Facility); 602 (Investigation Report).</p>	<p>The U.S. Futures Exchange Trading System will automatically create a full and accurate record of all bids and orders entered into the system, all matched transactions and all entries in the system allowing for a comprehensive audit trail. U.S. Futures Exchange will maintain its extensive records of all entries in its system for 5 years.</p>
<p>Core Principle 18 <i>Antitrust Considerations</i> – “Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid – “(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading on the contract market.”</p>	<p><i>See generally</i> U.S. Futures Exchange, L.L.C. Agreement and Bylaws and U.S. Futures Exchange Rules.</p>	