



FUTURES INDUSTRY ASSOCIATION

INC.

2001 Pennsylvania Avenue N.W. • Suite 600 • Washington, DC 20006-1807 • (202) 466-5460
Fax: (202) 296-3184

October 15, 2003

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: US Futures Exchange LLC

Dear Ms. Webb:

The Futures Industry Association (FIA) is pleased to file this letter in support of the application of the US Futures Exchange LLC (USFE) for designation as a contract market.¹ When Congress amended the Commodity Exchange Act (Act) through the Commodity Futures Modernization Act of 2000 (CFMA), an underlying purpose, as expressed in the Act, was “to promote responsible innovation and fair competition among boards of trade, other markets and market participants”. The application of the USFE, an indirect subsidiary of Eurex Frankfurt, A.G. (Eurex), marks an important step in realizing the vigorous competition among markets that Congress anticipated in the CFMA and that the Commission itself sought to encourage in proposing its New Regulatory Framework in 2000.

It should be no surprise that the world’s largest futures exchange would establish a US subsidiary to apply for designation as a contract market. It is, in fact, a logical step in the natural evolution of the international derivatives marketplace. As the Commission is aware, a significant amount of the volume on US futures exchanges is the direct result of foreign participation in our markets. The Commission does not routinely publish figures identifying by country the source of volume on US markets. Nonetheless, in a June 2001 speech at FIA’s London conference, Chairman Newsome disclosed that, in March of that year, 42 percent of the traders in agricultural commodities and 38 percent of traders in financial instruments that were required to file large trader reports with the Commission were foreign based. We have no reason to expect that these numbers would be significantly different today.

These figures are a testament to the well-earned confidence that global market participants have in US futures markets and the regulatory structure to which they are subject, as well as to the vital risk management and price discovery roles that these markets play in the global economy. They also serve to confirm that the tremendous growth that US markets have experienced over the past

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA’s regular membership is comprised of approximately 40 of the largest futures commission merchants (FCMs) in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

few years—and the depth and liquidity that the products traded on these markets enjoy—would not be possible without the participation of foreign traders.

Of course, US participants also trade on foreign markets. Commission records indicate that, as of August 31, 2003, US FCMs held customer funds of approximately \$12.4 billion in connection with transactions on foreign markets. This is approximately 17 percent of the more than \$73 billion in customer funds that US FCMs held in connection with trading on all markets, US and foreign. (This sum does not include proprietary trading conducted by FCMs directly or through their affiliates.)

Eurex estimates that US participants account for 25 percent of the turnover in European benchmark products traded on the exchange. Through the USFE, Eurex is essentially offering to repatriate a significant portion of its volume that is attributable to US participants. FIA understands that, in addition to contracts on US Treasury instruments, the USFE intends to list for trading contracts that are currently listed on Eurex, including the Euro interest rate products and the DAX and Dow Jones STOXX 50 stock index contracts.

This result can only benefit US market participants and their intermediaries. In particular, by choosing to execute trades in these products on the USFE rather than Eurex, US customers will be able to enjoy the full scope of the US regulatory program, including the segregation requirements of the Act and Commission regulations. The additional risks associated with trading on any foreign market will be significantly reduced, as will the additional costs to US customers in executing these transactions through multiple intermediaries.

FIA does not believe that the attraction of the USFE will be limited to US market participants. All market participants, wherever located, will have the choice of executing and clearing transactions in these products under US laws and regulations or German laws and regulations. Since foreign institutional customers already account for approximately 40 percent of trading on US markets and, like US institutional customers, generally prefer to have their positions cleared through a single firm, we have every reason to expect that a significant number of non-US customers will elect to trade Eurex products through the USFE.

FIA understands that, in order to designate the USFE as a contract market, the Commission must find that the exchange meets the criteria specified in the Act and the Commission's regulations. We believe USFE has met this standard. Moreover, in our review of the USFE application, we were not able to identify any public policy or regulatory issues that the Commission has not successfully addressed in the past. To the contrary, we submit that the Commission can have greater confidence in the operational and administrative capabilities of the USFE than it may have with respect to other applicants. The exchange's trading system, after all, will be an enhanced version of the *a/c/e/* trading system, which is the platform that the Chicago Board of Trade has been using since 2000. Contracts executed on the exchange will be settled and cleared through The Clearing Corporation, which has been clearing transactions executed on the Chicago Board of Trade for more than 75 years. Further, through a contract with the National Futures Association, certain market surveillance and compliance programs will be provided by NFA.

Ms. Jean A. Webb
October 16, 2003
Page 3

The fact that the USFE is indirectly owned by Eurex certainly raises no new policy issues. Nasdaq-Liffe, which was approved as a contract market in August 2001, was initially 50 percent-owned by Liffe, a UK exchange. Since July of this year, Nasdaq-Liffe has been 100 percent-owned by Liffe.

Like Liffe, Eurex is not an unknown entity to the Commission. Over a period of more than seven years, in connection with various requests for regulatory relief from US requirements, the Commission has had several opportunities to review Eurex, its operations and the rules and regulations to which it is subject. Each time, it has found no reason not to grant Eurex the same relief that other foreign exchanges were granted.²

In forming the USFE and applying for designation as a contract market, Eurex has demonstrated that it is willing to compete with other US exchanges on the same terms and conditions—and subject to the same laws and regulations—to which all US exchanges are subject. FIA would be greatly troubled if the world's largest futures exchange, or other entrants that are willing and able to comply with US laws and regulations, were unfairly denied this opportunity. FIA encourages the Commission to approve the application of the USFE for designation as a contract market.

Thank you for the opportunity to submit this letter. If the Commission has any questions concerning our comments, please feel free to contact Barbara Wierzynski, FIA's General Counsel, or me at (202) 466-5460.

Sincerely,

John M. Damgard
President

² For example, in 1999, the Commission staff adopted a no-action position, authorizing Eurex, among other foreign markets, to place terminals in its members' offices in the US for trading in certain Eurex contracts. Before adopting this position, the staff conducted a thorough review of Eurex including its operating and trading rules, its trading system, its settlement and clearing system and its compliance programs. In 2000 and again in 2002, the Commission staff adopted no-action positions authorizing the offer and sale of certain stock index futures contracts listed for trading on Eurex. More recently, the Commission, pursuant to its rule 30.10, granted an exemption from registration for firms authorized by Eurex.