UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

January 12, 2004

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: U.S. Futures Exchange, L.L.C.

Dear Ms. Webb:

The Federal Trade Commission is pleased to respond to your request for public comments regarding the application of U.S. Futures Exchange, L.L.C. ("USFE") for contract market designation. USFE, a foreign-owned firm, seeks to establish a U.S.-registered futures exchange on which contracts involving U.S. Treasury securities could be traded. This letter will discuss the application's potential impact on consumers of futures trading services, but will not address the regulatory issues relating to the application.

The FTC is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[1] Under this statutory mandate, Commission staff often have assessed the competitive impact of regulations and business practices that impede competition or increase costs without offering countervailing benefits to consumers.[2] In the past, Commission staff have also submitted comments to the CFTC analyzing trading markets.[3]

Economic theory indicates that consumers would likely benefit from having additional competition in the market for futures trading services. Competition is the best mechanism for achieving the optimal mix of products and services in terms of price, quality, and consumer choice.[4] Competition from new entrants can encourage producers to become more efficient and

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[1] Federal Trade Commission Act, 15 U.S.C. § 45.

[2] Lists of recent FTC advocacy filings and economic reports are available at <http://www.ftc.gov/be/advofile.htm> and <http://www.ftc.gov/be/econrpt.htm>.

[3] *See* FTC Staff, *Comment to the CFTC on Proposed Regulation 155.5* (July 20, 1990).

[4] *See* Council of Economic Advisers, Economic Report of the President, Ch. 3, at 99 (2002) ("[C]ompetition keeps prices low. Competition in its various forms discourages any one firm from raising prices above what others would charge for similar goods or services. Second, competition ensures that only those firms that can meet consumer

[10] *See* Patrick de Fontnouvelle, Raymond P.H. Fishe, and Jeffrey H. Harris, "The Behavior of Bid-Ask Spreads and Volume in Options Markets During the Competition for Listings in 1999," forthcoming in J. FINANCE; Stewart Mayhew, "Competition, Market Structure, and Bid-Ask Spreads in Stock Option Markets," 57 J. FINANCE 931 (Apr. 2002).

[11] *See* Beatrice Boehmer and Ekkehart Boehmer, "Trading Your Neighbor's ETFs: Competition or Fragmentation?" European Finance Association 2002 Berlin Meetings Discussion Paper (2002).

[12] *See* Ian Domowitz, "Liquidity, Transaction Costs, and Reintermediation in Electronic Markets," 22 J. FIN. SERVICES RESEARCH 141 (Aug./Oct. 2002); Jennifer S. Conrad, Sunil Wahal, and Kevin Johnson, "Institutional Trading Costs and Alternative Trading Systems," 70 J. IN

[15] *Brooke Group*, 509 U.S. at 224.

[16] *Id.* at 224, 226.

[17] Frank H. Easterbrook, *Predatory Strategies and Counterstrategies*, 48 U. CHI. L. REV. 263, 313-14 (1981) (citations omitted).

[18] DENNIS W. CARLTON AND JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION 342 (3d ed. 2000).

[19] *See* JEFFREY CHURCH AND ROGER WARE, INDUSTRIAL ORGANIZATION: A STRATEGIC APPROACH 659 (2000).

[20] P. AREEDA AND H. HOVENKAMP, ANTITRUST L

[21] *Matsushita Elec.*, 475 U.S. at 589.

[22] *Id.* at 594.