



CONFIDENTIAL TREATMENT
REQUESTED

PRODUCT CERTIFICATION

March 29, 2012

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, D.C. 20581

Re: Green Exchange LLC
Reference File: GX-2012-07

Ladies and Gentlemen:

Pursuant to Section 40.2 of the regulations (the "CFTC Rules") promulgated by the Commodity Futures Trading Commission (the "Commission") under the Commodity Exchange Act, as amended (the "Act"), Green Exchange LLC ("GreenX"), a designated contract market under the Act, hereby submits this product certification for the following:

1. GreenX is adopting Rule 1108 to include contract specifications for the European Union Aviation Allowance (EUAA) Futures contract. This contract was developed in connection with the European Union Aviation Allowance program under the European Union Emissions Trading Scheme (EU ETS), which in 2012 will begin holding aircraft operators accountable for CO₂ emissions. Flights arriving at and departing from EU airports will fall under the new sector-specific cap. Covered aviation entities can meet their compliance obligation with European Union Aviation Allowances (EUAA), the newly created compliance instrument. In addition, entities can use EUAs and international offsets (e.g., CERs and ERUs) for compliance.
2. GreenX is amending Rule 535, the Position Limit, Position Accountability and Reportable Level Table, to include the European Union Aviation Allowance (EUAA) Futures contract.
3. GreenX is amending Rule 543.G, the Non-Reviewable Ranges Table, to include the European Union Aviation Allowance (EUAA) Futures contract.

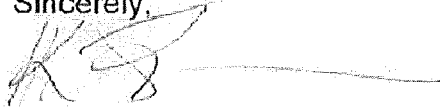
GreenX hereby certifies this submission has been posted on the GreenX website under the "Market Regulation" tab at <http://www.thegreenx.com/market-regulation/pending-rules.html>.

GreenX hereby certifies that European Union Aviation Allowance (EUAA) Futures contract and the related rule amendments comply with the Act and the CFTC Rules. The listing date of this new contract is expected to be Sunday, April 1, 2012 for trade date Monday, April 2, 2012. The effective date of the rule amendments is April 1, 2012.

There are no opposing views among GreenX's Board of Directors, Participants or market participants regarding the rule amendments. The contract specifications for the new contract and the text of the rule amendments, showing deletions and additions is attached as Appendix A hereto. A confidential "research note" describing the EU ETS, the EUAA program, and the contract specifications is segregated and separately attached as Confidential Appendix B hereto. GreenX is separately requesting confidential treatment for Confidential Appendix B.

If you have any further questions or comments about GreenX's actions, please contact me at 212-299-2510.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari S. Larsen", with a long horizontal line extending to the right.

Kari S. Larsen
Chief Regulatory Officer / General Counsel

Attachments: Appendix A: Contract Specifications and Rule Changes
Confidential Appendix B: Research Note

**Green Exchange LLC
GX-2012-07**

Appendix A

(Bold/underlining indicates additions; strikethrough indicates deletions)

RULE 535 Position Limit, Position Accountability and Reportable Level Table

Contract Name	Rule	Commodity Code	All Month Accountability Level	Any One Month Accountability Level	Any/All Month Limit	Expiration Month Limit	Reporting Level	Aggregate Into (1)
			Rule 533	Rule 533	Rule 532	Rule 532	Rule 534	
Emissions								
<u>European Union Aviation Allowance (EUAA) Futures</u>	<u>1108</u>	<u>FLY</u>	<u>9,000</u>	<u>6,000</u>	-	<u>3,000</u>	<u>25</u>	<u>FLY</u>

[Note: Contracts for which no changes have been made are omitted]

543.G. NON-REVIEWABLE RANGES

Futures Contract	Non-Reviewable Range (NRR)	NRR Ticks
<u>European Union Aviation Allowance (EUAA) Futures</u>	<u>€ .40 per allowance</u>	<u>40</u>

[Note: Contracts for which no changes have been made are omitted]

[Rule 1108 is an addition to the Rulebook.]

RULE 1108. European Union Aviation Allowance (EUAA) Futures

1108.01A. DEFINITIONS

(a) "EU ETS" shall mean the European Union Emission Trading Scheme established pursuant to the Directive.

(b) "EUAA" or "European Union Aviation Allowance" shall mean a unit of account that is an "allowance" as defined in the Directive and is issued pursuant to Chapter II thereof.

(c) "Directive" shall mean Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading and amending Council Directive 96/61/EC, as amended from time to time.

(d) "EUTL" shall mean the independent transaction log provided for in Article 20(1) of the Directive, the operation of which is further detailed in the Registries Regulation.

(e) "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively. Further, for purposes of this Contract, Sellers and Buyers may utilize a designee to perform their respective and necessary obligations with regard to transferring and accepting allowances at the Registry (UK). The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product or swap transaction.

(f) "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last trading day shall be determined in accordance with the procedures set forth in GreenX Rule 905.

(g) "Community Independent Transaction Log" and "CITL" shall mean the predecessor log to the EUTL provided for in Article 20(1) of Directive 2003/87/EC, for the purpose of recording the issue, transfer and cancellation of EUAAs under the Scheme and established, operated and maintained pursuant to Article 5 of the Registries Regulation.

(h) "Communication Link" shall mean the electronic exchange of messages/notifications (1) by which a buyer and seller communicate with a Registry, and/or (2) by which a Registry communicates with CITL or EUTL, which in any case is necessary to facilitate a transfer.

(i) "Registry (UK)" shall mean the Registry under the jurisdiction of the United Kingdom (collectively being the holding accounts within the Union Registry that are under the jurisdiction of the United Kingdom).

(j) "Registry" means the registry established by a Member State or the EU pursuant to the Directive or the Registries Regulation, in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation and replacement of allowances (including EUAAs). For the avoidance of doubt, references to a Registry shall include (i) the Union Registry and (ii) collectively the holding accounts within the Union Registry that are under the jurisdiction of a single Member State. In the case of (ii), such holding accounts will together be deemed to be a Registry for that Member State.

(k) "Registries Regulation" shall mean the EU regulation no. 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to the Directive 2003/87/EC and Decision 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No. 2216/2004 and (EU) No. 920/2010.

(l) "Union Registry" means the Registry referred to as the "Community registry" in Article 19(1) of the Directive.

1108.01. SCOPE

The provisions of these rules shall apply to all EUAAs bought or sold for future delivery on the Exchange with the Delivery at the Registry (UK).

1108.02. TIME REFERENCES

For purposes of this Rule, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in UK local time.

1108.03. CONTRACT UNIT

The Contract unit shall be one thousand (1,000) EUAAs for a delivery made by transfer through the Registry (UK).

1108.04. DELIVERY

EUAA delivery shall comply with all requirements for the electronic transfer of EUAAs on the Registry (UK). All deliveries made under this Rule shall be final and there shall be no appeal. Notwithstanding the use of a designee, all Clearing Members will remain ultimately responsible for performance of all applicable Contract terms specific to Sellers and Buyers.

1108.05. DELIVERY MONTHS

Trading shall be conducted in Contracts providing for delivery in such periods as shall be determined by the Exchange.

1108.06. PRICES AND FLUCTUATIONS

Prices shall be quoted in Euros and Euro cents per EUAA. The minimum price fluctuation shall be €0.01 per EUAA (€ 10.00 per Contract). There shall be no maximum price fluctuation.

1108.07. TERMINATION OF TRADING

Trading in the delivery month shall cease on the last Monday of the delivery month. If the last Monday of the delivery month occurs on a UK Bank Holiday or, if a UK Bank Holiday occurs on any of the four (4) days following the last Monday of the delivery month, trading shall cease on the penultimate Monday of the delivery month. If the penultimate Monday of the delivery month occurs on a UK Bank Holiday or, if a UK Bank Holiday occurs on any of the four (4) days following the penultimate Monday of the delivery month, trading shall cease on the antepenultimate Monday of the delivery month.

1108.08. RESERVED

1108.09. DELIVERY PROCEDURES AND OBLIGATIONS

The Clearing House is a party to all deliveries under this Contract and will receive EUAAs from the Seller into the Clearing House Holding Account of the Registry (UK). Following receipt from the Seller, the Clearing House will deliver EUAAs to the Buyer from the Clearing House Holding Account to the Registry (UK) Holding Account nominated by the Buyer.

The Seller shall comply with such requirements and obligations imposed by, or under, applicable Registries Regulation in all respects material to the submission of the forms noted in this Rule. The Buyer shall comply with such requirements and obligations imposed by, or under, the Registries Regulation in all respects material to ensure the acceptance of a valid transfer into its Holding Account. If a provision of the Regulations or the Clearing House Rules is inconsistent with a provision of the Registries Regulation, the provision of the Regulations or the Clearing House Rules shall prevail as between the Buyer, Seller, and the Clearing House to the extent of such inconsistency and to the extent permitted by law.

By transferring EUAAs to the Clearing House, the Seller represents and warrants that, at the time of delivery, it has good and marketable title to such EUAAs, and that such EUAAs are free and clear of all liens, security interests, claims, encumbrances and adverse claims.

(a) OPERATIONAL RESPONSIBILITIES OF CLEARING MEMBERS

(i) Notice of Intention to Accept:

By 10:00 p.m. UK local time on the final day of trading of the expiring delivery month, a Buyer having an open long position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include: Number of Contracts to be accepted; Registry (UK) Account Number; Name; Telephone Number and e-mail address of the Authorized Representative(s) for that Holding Account, and any additional information as may be required by the Exchange.

(ii) Notice of Intention to Deliver:

By 10:00 p.m. UK local time on the final day of trading of the expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Number of Contracts to be delivered; Registry (UK) Account Number; Name; Telephone Number and e-mail address of the Authorized Representative(s) for that Holding Account, and any additional information as may be required by the Exchange. By 6:30 p.m. UK local time on the first Business Day after the final day of trading of the delivery month, the Seller will transfer EUAAs subject to delivery to the Clearing House Holding Account of the Registry (UK).

(iii) By 7:00 p.m. UK local time on the first Business Day after the final day of trading of the delivery month, for each Buyer that has satisfied its obligations under Rule 1108.09.(a)(vi), the Clearing House will initiate the process of transferring the EUAAs to the Buyer's account at the Registry (UK).

(iv) By 3:00 p.m. UK local time the second Business Day after the final day of trading of the delivery month, Buyer shall receive EUAAs from the Clearing House Holding Account of the Registry (UK).

(v) By 2:00 p.m. UK local time on the Business Day following the last day of trading, the Buyer shall deposit / transfer Euro currency equal to the full value of the product to the designated Clearing House bank account.

(vi) By 3:00 p.m. UK local time on the second Business Day following the last day of trading, for each Seller that has satisfied its obligations under Rule 1108.09(a)(iii), the Clearing House shall pay the Seller full Contract value.

(b) ASSIGNMENT DAY

(i) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching positions, to the extent possible.

(ii) The Clearing House shall provide Assignment Notice Reports to the respective Clearing Members on the final day of trading of the delivery month.

(c) PAYMENT AND DELIVERY MARGINS

(i) Definitions:

(A) Daily Margin: The Buyer and Seller shall deposit with the Clearing House margins in such amounts and in such form as required by the Clearing House. Such margins which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the Business Day following notification to the Exchange that delivery and payment have been completed.

(B) "Payment" shall include the settlement price times the number of Contracts times 1,000.

(C) "Payment Date" shall mean the date on which the Clearing House transfers payment in connection with a delivery to a Seller.

(ii) Any payment made on Payment Date shall be based on EUAAs that the Seller is obligated to deliver pursuant to the applicable delivery.

1108.10. VALIDITY OF DOCUMENTS

The Exchange makes no representation with respect to the authenticity, validity or accuracy of any Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these Rules.

1108.11. EXCHANGE OF FUTURES FOR RELATED POSITIONS

Any Exchange of Futures for Related Positions ("EFRP") shall be governed by the provisions of GreenX Rule 603.

An EFRP transaction is permitted at any time before 6:00 p.m. UK local time on the last trading day of the delivery month.

1108.12. ALTERNATIVE DELIVERY PROCEDURE

An Alternative Buyer may agree with the Seller with which it has been matched by the Exchange under Rule 1108.09(b) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Rule. In such a case, Buyers and Sellers shall execute an Alternative Delivery Procedure on a form prescribed by the Exchange and shall deliver a completed executed copy of such form to the Clearing House. The delivery of an executed Alternative Delivery Procedure form to the Clearing House shall release the Buyer, Seller and the Exchange from their respective obligations under the Exchange Contracts. In executing such Alternative Delivery Procedure form, Buyers and Sellers shall indemnify the Exchange and the Clearing House against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Delivery Procedure form, the Clearing House will return to the Buyer and Seller all margin monies held for the account of each with respect to the Contracts involved.

1108.13. LATE PERFORMANCE, FAILURE TO PERFORM AND FORCE MAJEURE

(a) DEFINITION. As used in this Rule 1108.13, the following terms, as well as variations thereof, shall have the meaning described below.

(i) "Late Performance" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, this Rule. Late Performance shall be restricted to three Business Days. Late Performance beyond three Business Days by, a Seller or a Buyer will be deemed a Failure to Perform.

(ii) "Day of Late Performance" shall mean the twenty-four hour period commencing immediately after a Buyer, a Seller, or the Clearing House was to have performed. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act was to have performed shall be a Day of Late Performance.

(iii) "Failure to Perform" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(iv) "Contract Value" shall mean the amount equal to the settlement price on the last day of trading in a Futures Contract times 1,000 (the number of EUAAs per Contract) times the number of Contracts to be delivered.

(v) (A) "Party" shall mean a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under this Rule.

(B) "Other Party" shall mean the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(vi) "Force Majeure" shall mean any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, registry failure or act of God) which is beyond the

control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

(b) RESPONSIBILITIES OF PARTIES TO THE DELIVERY

(i) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(ii) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

(c) EMISSIONS ALLOWANCE DELIVERY COMMITTEE

(i) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(A) When the Chairman of the Emissions Allowance Delivery Committee is advised by the Chief Executive Officer or any person designated by the Chief Executive Officer that it appears that the performance of a Party to the delivery is late;

(B) Upon the written request of both the Buyer and the Seller;

(C) When the Chief Executive Officer or any person designated by the Chief Executive Officer requests such appointment; or

(D) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(ii) The Chairman of the Emissions Allowance Delivery Committee shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. The general counsel of the Exchange, or its designee, shall serve as advisor to the Panel.

(iii) The Panel shall meet within one Business Day of notification as provided in these Rules. Unless good cause for delay exists, within one Business Day the Panel shall determine whether Force Majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in this Rule, and advise the Regulatory Oversight Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(iv) Upon a finding of Force Majeure, the Panel may take any one or combination of the following actions as it deems suitable order: an extension of time not to exceed ten days from the date of the scheduled delivery; or, refer the delivery to the Exchange, represented by the Regulatory Oversight Department, for emergency action as provided in Exchange Rules.

(d) EXCHANGE ACTION

(i) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of a delivery obligation, the Exchange, represented by the Regulatory Oversight Department, shall issue a Notice of Assessment, assessing a penalty of 10% of Contract value for each applicable day of Late Performance.

(ii) Whenever a Buyer or Seller is found by the Panel or otherwise deemed to have a "Failure to Perform" the Exchange, represented by the Regulatory Oversight Department shall issue a Notice of Assessment assessing penalties of twenty percent (20%) of the Contract value, in addition to any penalties assessed pursuant to subparagraph (1) above, to be paid to the Exchange.

(iii) (A) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Disciplinary Panel and by serving a copy of the same on the Exchange's Regulatory Oversight Department, within two Business Days of receipt of the Notice of Assessment from the Regulatory Oversight Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after

filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Chief Regulatory Officer.

(B) The Regulatory Oversight Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(C) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (d)(iii)(A) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Chapter 7. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment, the Assessment and findings of the Emissions Allowance Delivery Committee shall constitute a final disciplinary action of the Exchange.

(iv) Within ten (10) days after receipt of Regulatory Oversight Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by Regulatory Oversight Department or are otherwise relevant to the matter.

(v) In the event of an appeal by a Party, the Chief Executive Officer, or its designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chief Executive Officer, or its designee, any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Assessment Appeal Panel.

(vi) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(A) At a date to be set by order of the Assessment Appeal Panel, and prior to such hearing, the Appellant and the Regulatory Oversight Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(B) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(C) The Regulatory Oversight Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Regulatory Oversight Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(D) The Appellant shall be entitled to rebut the Regulatory Oversight Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(E) The Regulatory Oversight Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(F) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Assessment Appeal Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(G) The Assessment Appeal Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(H) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(I) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the CFTC.

(vii) The Assessment Appeal Panel shall consider, and make recommendations to the Chief Executive Officer, or his designee concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Chief Executive Officer shall constitute the final disciplinary action of the Exchange.

(e) **ARBITRATION PROCEDURE**

(i) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this Contract shall be settled by arbitration in accordance with these Rules.

(ii) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three Business Days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(iii) The Arbitration will be governed by Chapter 8 of the GreenX Rules except that the Chief Executive Officer or his designee shall appoint an Arbitration Panel.

1108.14. EXCLUSION OF LIABILITY

Except as specifically provided in the GreenX Rules (and to the extent permitted by law), the Clearing House accepts no liability in connection with this Futures Contract, its performance, non-performance or its termination whether based on breach of contract, warranty, negligence or tort. In particular, but without limitation, the Clearing House shall not be responsible for or shall have any liability whatsoever to any Buyer or Seller for the: availability, suitability, unavailability or malfunction of a Communication Link or any part thereof; performance or non-performance by the Registry (UK), any other Registry, or EUTL or CITL of their respective obligations under the Registries Regulation or otherwise; any act or omission of any operator of a Communication Link or any part thereof; or any act or omission of an authorized agent of any other party; or any performance or non-performance by the Clearing House in relation to its serving as a party to the deliveries and the Clearing House shall under no circumstances be liable for any indirect or consequential loss or loss of profits. Additionally, nothing in these Rules will constrain the Clearing House from performing its duties under Clearing House Rule 802.

A Clearing Member that breaches its representation and warranty in Rule 1108.09, shall be liable to the Clearing House and Exchange for their respective losses arising from such breach.

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CONFIDENTIAL TREATMENT
REQUESTED

By Electronic Mail

March 29, 2012

Assistant Secretary of the Commission for FOIA Matters
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Green Exchange LLC–
FOIA Confidential Treatment Request & Detailed Written Justification

Dear Secretary:

I am writing on behalf of Green Exchange LLC (“GreenX”) to request confidential treatment in accordance with Commission Regulations 40.8(c) and 145.9 for certain confidential information contained in GreenX’s Rule Certification GX-2012-07 (the “Submission”), relating to the listing of the European Union Aviation Allowance (EUAA) Futures contract (the “Contract”).

Specifically, GreenX is requesting confidential treatment for its Research Note relating to the Contract that contains GreenX’s proprietary analysis of the European Union Emissions Trading Scheme, the European Union Aviation Allowance program, and the Contract specifications (the “Confidential Information”).

The Confidential Information has been segregated and attached as Confidential Appendix B to the Submission in accordance with Commission Regulation 40.8(c)(2). In accordance with Commission Regulation 40.8(c)(3), the Submission also indicates that the Confidential Information has been segregated.

Pursuant to Commission Rule 145.9(d)(5), GreenX requests that confidential treatment of the Confidential Information be maintained until further notice from the Submitter. GreenX requests that the Commission notify it immediately after receiving any request under the Freedom of Information Act (“FOIA”) or any other court order, subpoena or summons for the Confidential Information. GreenX specifically notes that it does not waive in any manner its rights under Section 8(f) of the Commodity Exchange Act to receive a copy of any subpoena or

Assistant Secretary of the Commission
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summons for the Confidential Information prior to the Commission's disclosure of such information pursuant to such subpoena or summons. Finally, GreenX requests that the Commission notify it in the event that the Commission intends to disclose the Confidential Information to Congress or any federal or state governmental agency or department.

The basis for this confidential treatment request is that disclosure of the Confidential Information would reveal confidential commercial information of GreenX relating to the development of the Contract. GreenX's analysis of the European Union Emissions Trading Scheme, the European Union Aviation Allowance program and the Contract specifications have not been made available to the public. The disclosure of the Confidential Information to the public would cause competitive harm to GreenX by allowing GreenX's competitors to develop products that compete with the Contracts. This would result in a loss of revenue to GreenX.

The Confidential Information is therefore exempt from disclosure pursuant to Section 8 of the CEA, Section (b)(4) of the Freedom of Information Act (5 USC 552(b)(4)) (commonly referred to as "Exemption 4"), which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential," and Commission Regulation 145.9(d)(ii), which implements Exemption 4.

Exemption 4 is generally viewed to cover two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

The Court of Appeals for the District of Columbia Circuit has firmly held that the terms "commercial and financial" should be given their "ordinary meanings" and has specifically rejected the argument that the term "commercial" be confined to records that "reveal basic commercial operations," holding instead that records are commercial so long as the submitter has a "commercial interest" in them.¹ As described above, GreenX has a "commercial interest" in the Confidential Information.

¹ Pub. Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (citing Wash. Post Co. v. HHS, 690 F.2d 252, 266 (D.C. Cir. 1982), and Bd. of Trade v. Commodity Futures Trading Comm'n, 627 F.2d 392, 403 (D.C. Cir. 1980)); accord Judicial Watch, Inc. v. United States Dep't of Energy, No. 01-0981, 2004 WL 635180, at *24 (D.D.C. Mar. 31, 2004) (holding that reports that "constitute work done for clients" are "commercial' in nature"), stay pending appeal on other grounds granted (May 26, 2004); Brockway v. Dep't of the Air Force, 370 F. Supp. 738, 740 (N.D. Iowa 1974) (concluding that reports generated by commercial enterprise "must generally be considered commercial information"), rev'd on other grounds, 518 F.2d 1184 (8th Cir. 1975).

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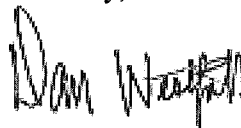
Only information “obtained from a person” is included under Exemption 4. GreenX is a person, as the term “person” includes entities such as corporations.²

There is a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public.³ GreenX provided the Confidential Information to the Commission in connection with the Submission in order to demonstrate to the Commission the compliance of the Contract with the CEA and relevant Commission Regulations. Further, as discussed above, the Confidential Information is not customarily made available to the public by GreenX.

Notwithstanding this presumption of confidentiality, the Confidential Information still would be considered “confidential” because it is information that GreenX would not and has not disclosed to the public and its disclosure would cause substantial harm to the competitive position of GreenX since its competitors would be able to develop products that compete with the Contracts.⁴ In applying the “competitive harm” test for confidentiality, there is no requirement to demonstrate actual competitive harm.⁵ “Actual competition and the likelihood of substantial competitive injury is all that need to be shown.”⁶ Neither the Commission nor the courts must conduct a sophisticated economic analysis to determine the likely effects of disclosure; evidence demonstrating the potential for economic harm is sufficient.⁷

For the foregoing reasons, GreenX respectfully request that the Commission staff make an initial determination to maintain the confidentiality of the Confidential Information. Please contact me if you have any questions regarding this matter.

Sincerely,



Dana D.C. Westfall

² Stone v. Export-Import Bank, 552 F.2d 132 (5th Cir. 1977), cert. denied, 434 U.S. 1012 (1978).

³ See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (affirming continuing validity of Critical Mass and applying tests detailed in that case).

⁴ National Parks & Conservation Association v. Morton, 478 F.2d 765 (D.C. Cir. 1974).

⁵ Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979).

⁶ Id.

⁷ Utah v. Bahe et al., No. 00-4018, 2001 WL 777034, at 2 (10th Cir. July 10, 2001); Pub. Citizen Health Research Group, 704 F.2d at 1291.