

20 de abril de 2023  
016/2023-VPC

## COMUNICADO EXTERNO

Participantes do Listado B3

Ref.: **Informações para Atuação de Participantes na Prospeção de Clientes nos Estados Unidos da América**

A B3 informa que, para melhorar e simplificar a forma de divulgação de orientações e regras para o mercado, revoga e substitui os Comunicados Externos 112/2002-DG de 15/07/2002 e 042/2003-DG de 23/05/2003.

Ressalta-se que segue em vigor a autorização concedida pela Commodity Futures Trading Commission (CFTC) em 2002 para a Bolsa de Mercadorias & Futuros, sucedida pela B3, qual seja a "Order Under CFTC Rule 30.10 Exempting Firms Designated by the Bolsa de Mercadorias & Futuros ("BM&F") From the Application of Certain of the Foreign Futures and Option Rules" 67 Fed. Reg. 45056 (08/07/2002).

Com essa autorização é possível que os intermediários que sejam participantes do Listado B3, conforme aplicável, especificamente para futuros e opções sobre futuros negociados na B3, e que não tenham escritórios nos Estados Unidos da América, possam atuar na prospecção de clientes nos Estados Unidos da América de contratos futuros e de opções sobre futuros negociados na B3, no âmbito de competência da CFTC, por meio de oferta direta aos interessados, sem que sejam necessários **(i)** a interveniência de uma instituição norte-americana e **(ii)** o registro do participante junto a CFTC.

Para tanto, é necessário que o participante submeta-se à jurisdição dos Estados Unidos da América, apontando um agente norte-americano para receber citações, intimações, notificações e outras comunicações em seu nome (*agent for service of process*).

O contrato de indicação de tal agente deve ser arquivado junto a National Futures Association (NFA), organização de autorregulação da indústria de derivativos dos EUA, e deve ser atualizado caso haja qualquer alteração. A NFA pode ser contratada para a prestação desses serviços, nos termos da minuta que integra o Anexo I deste Comunicado Externo e mediante o pagamento para a NFA de uma taxa de USD 100,00 por ano.

Além disso, o participante, dentre outros, deve, por meio de declaração a ser apresentada para a B3 e arquivada na NFA:

- concordar em dar acesso aos seus livros e registros, pertinentes às transações relacionadas à autorização aqui mencionada, para representantes da CFTC e do Departamento de Justiça dos Estados Unidos da América (U.S. Department of Justice), em local nos Estados Unidos da América que venha a ser indicado por estes;
- concordar em submeter ao juízo arbitral da NFA a resolução de disputas inerentes às transações realizadas no âmbito da autorização;
- atestar a idoneidade e capacidade profissional dos colaboradores que manterão contato com clientes residentes nos Estados Unidos da América; e
- declarar que está localizado fora dos Estados Unidos da América, de seus territórios e possessões e, caso aplicável, fornecer informações sobre subsidiárias ou afiliadas (*affiliates*) domiciliadas nos EUA, com a descrição dos respectivos negócios.

A minuta de tal declaração consta no Anexo II deste Comunicado Externo.

Caso o participante possua afiliadas (*affiliates*) ou subsidiárias sediadas nos Estados Unidos da América e que atuem na intermediação de operações nos mercados de futuros e de opções, declarações adicionais serão exigidas, substancialmente nos termos da minuta do Anexo III deste Comunicado Externo.

Vale mencionar que a autorização não possibilita aos intermediários que sejam participantes do Listado B3, conforme aplicável, prospectem clientes nos Estados Unidos da América em relação a outras bolsas de futuros fora dos Estados Unidos da América, tampouco se aplica, no que tange ao Listado B3, a outros produtos que não os contratos futuros e opções sobre futuros que estejam sob a competência da CFTC.

Participantes que desejarem pleitear a autorização aqui mencionada devem notificar a B3 a esse respeito, devendo realizar o contato por meio do [monitoramento\\_cadastro@b3.com.br](mailto:monitoramento_cadastro@b3.com.br).

Em caso de interesse na atuação indicada neste Comunicado Externo, esclarecimentos adicionais sobre o processo mencionado poderão ser obtidos com o seu Relationship Manager (RM), cujo contato está disponível na página [https://clientes.b3.com.br/pt\\_br/atendimento](https://clientes.b3.com.br/pt_br/atendimento). Os documentos correspondentes podem ser enviados para o e-mail [monitoramento\\_cadastro@b3.com.br](mailto:monitoramento_cadastro@b3.com.br).

José Ribeiro de Andrade  
Vice-Presidente de Produtos e Clientes



**Anexo I do COMUNICADO EXTERNO 016/2023-VPC**

**REQUEST TO APPOINT  
NATIONAL FUTURES ASSOCIATION  
AS AGENT FOR SERVICE OF PROCESS**

Name of Firm	Other Names Used by Firm
Contact Name	
Street Address 1	International Telephone Number
Street Address 2	International Facsimile Number
Street Address 3	E-Mail Address
City	
Province	
Zip/Postal Code	
Country	

WHEREAS, the Commodity Futures Trading Commission of the United States of America ("CFTC") has provided for the registration and regulation of persons engaged in the offer or sale in the United States, its territories or possessions, of futures contracts and options transactions made or to be made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions;

WHEREAS, the firm desires to engage in activities which would require it to register with the CFTC as a futures commission merchant;

WHEREAS, the firm has been granted an exemption from registration pursuant to CFTC Regulation §30.10 on the condition that it appoint a United States agent for service of process and other communications;

WHEREAS, National Futures Association ("NFA") is a Delaware corporation authorized by the CFTC to act as agent for service of process and other communications for purposes of the alternative procedure; and

WHEREAS, Requestor desires to appoint NFA as its agent for service of process and other communications;

NOW THEREFORE, the firm agrees as follows:

1. Services. The firm appoints NFA as its agent for service of process and other communications, as contemplated by CFTC Regulation §30.5 (a) and (b). NFA shall accept service of process and other communications on behalf of the firm and shall transmit such communications to the firm. Such communications shall be transmitted to the address set forth above, or to such other address as the firm directs in writing, by guaranteed four-day delivery if the firm is located in a major metropolitan area serviced by generally recognized international air carriers or by the fastest available means of delivery if the firm is not located in such a major metropolitan area. Provided, however, that nothing in this Agreement shall require NFA to transmit communications by electronic or telephonic means except as provided below.

If communications served on NFA on behalf of the firm require a response in five days or less, NFA shall make a reasonable attempt to telephone the firm and advise it of the nature of the communication. At the firm's expense, NFA

shall follow any reasonable instructions from the firm concerning the delivery of the communication. Provided, however, that NFA shall not be required to transmit any written communication by electronic or telephonic means without assurance, acceptable to NFA, that the firm will pay any costs connected with such transmission.

Nothing in this Agreement shall authorize or require NFA to do any of the following: determine validity of service or refuse to accept service; enter an appearance on behalf of the firm; or settle, compromise, or defend any claim or action on behalf of the firm.

2. Termination of Agreement. This Agreement shall remain in force until terminated. The firm may terminate this Agreement upon five days' written notice to NFA in accordance with Paragraph 10 of this Agreement. This Agreement can be terminated by NFA upon thirty days' written notice to the firm. The withdrawal of the firm's confirmation of exemption from registration pursuant to CFTC Regulation 30.10 shall automatically terminate this Agreement effective on the date of such withdrawal.

Notwithstanding the termination of this Agreement, NFA's appointment as agent shall continue in effect for, and this Agreement shall govern, service of process or other communications with respect to any foreign futures or foreign options transactions entered into on or before the date this Agreement terminated.

3. Liability. NFA shall not be liable for incidental, consequential, or other special damages arising out of any actual or alleged breach of contract, negligence, or other action or inaction by NFA, its directors, officers, employees or agents in regard to the performance or nonperformance of this Agreement. NFA shall not be liable for any losses or damages, including actual damages, which are or could be mitigated by the firm.

If the firm defaults in any of the terms of this Agreement, it shall pay all costs and expenses, including reasonable attorneys' fees incurred by NFA in enforcing this Agreement.

4. Indemnification. Except as provided in Paragraph 3 of this Agreement, the firm shall indemnify and hold NFA harmless from any and all claims, liability, loss, damage, or expenses, including reasonable attorneys' fees, arising from NFA's performance of the services specified under this Agreement.

5. No Assignment. This Agreement shall not be assigned by either party without the written consent of the other.
6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, United States of America. Provided, however, that nothing in this Agreement shall be construed in any manner that is inconsistent with the Commodity Exchange Act and CFTC Regulations.
7. Execution of Agreement, Choice of Forum and Consent to Jurisdiction. This Agreement shall be deemed to have been made by both parties in Cook County, State of Illinois, United States of America. Each party hereto consents to the personal jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois over any action at law, suit in equity, or judicial proceeding under or which may otherwise arise out of this Agreement and agrees not to contest venue for any such proceeding in Cook County, State of Illinois. The firm agrees that any action at law, suit in equity, or judicial proceeding under or which may otherwise arise out of this Agreement shall be instituted by the firm only in the Courts of the State of Illinois or the United States District Court for the Northern District of Illinois.
8. Severability. If any provision of this Agreement is held by any Court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Agreement shall not be affected and this Agreement shall be construed and enforced as if this Agreement did not contain the provision which is held to be invalid, illegal, or unenforceable.
9. Heirs, Successors, and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing contained in this paragraph shall be construed as a consent by either party to any assignment of this Agreement except as provided in Paragraph 5 of this Agreement.
10. Notices. Except as otherwise provided in this Agreement, all notices or communications required by or given under this Agreement shall be deemed given as of the date of receipt or, if earlier, as of the date five days after such notices or communications are deposited in the United States mail, airmail postage prepaid, or in the mails of any other country, airmail postage prepaid, or delivered to any generally recognized international air carrier.



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All notices to NFA shall be addressed as follows:

Vice President, Membership & Registration  
National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
U.S.A.

All notices to the firm shall be addressed to the address set forth at the beginning of this Agreement, or to such other address as the firm directs in writing.

11. Effective Date. Confirmation of the exemption from registration pursuant to CFTC Regulation 30.10 shall constitute NFA's acceptance of this Agreement and this Agreement shall be effective upon such confirmation.

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Name of Firm

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Print Name of Signatory

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Title of Signatory

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Signature





## Anexo II do COMUNICADO EXTERNO 016/2023-VPC

### PETITION LETTER TO NFA

DATE

Ms. Yvette Christman  
Membership & Registration Department  
National Futures Association  
300 S Riverside Plaza  
18th Floor  
Chicago, Illinois 60606  
United States of America

Re: Petition for filing of the proper consents set forth in the exemptive order granted by the Commodity Futures Trading Commission to firms designated by B3 S.A. - Brasil, Bolsa, Balcão pursuant to CFTC Rule 30.10 (67 FR 45056 - July 8, 2002)

Dear Madam:

COMPANY NAME ("COMPANY'S ACRONYM"), located STREET, NUMBER, CITY, STATE, Brazil, hereby requests confirmation on the relief, granted by the Commodity Futures Trading Commission ("CFTC"), from certain of the foreign futures and options rules set forth in Part 30 of its regulations, to designated members of B3 S.A. - Brasil, Bolsa, Balcão ("B3"), according to the exemptive order published on Monday, July 8th of 2002, on page 45056, of the U.S. Federal Register, number 30, volume 67 ("the Order").

In order to validate this notice to the CFTC, to comply with the conditions provided in the Order and to make the exemption effective to COMPANY'S ACRONYM, a Brazilian duly and fully registered member of B3 the undersigned is authorized to make the following representations on its behalf:

- a) COMPANY'S ACRONYM is located outside the U.S., its territories and possessions and is affiliated to \_\_\_\_\_, Tax ID # \_\_\_\_\_, located at \_\_\_\_\_.

- b) COMPANY'S ACRONYM consents to jurisdiction in the United States of America under the Commodity Exchange Act ("the Act") by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in CFTC Rule 30.5.
- c) COMPANY'S ACRONYM agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Brazil upon the request of any representative of the CFTC or United States Department of Justice at the place in the United States designated by such representative, within seventy two hours or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;
- d) COMPANY'S ACRONYM has no principal, or employee who solicits or accepts orders from customers located in the United States, who would be disqualified under Section 8(a)(2) of the Act, 7 U.S.C. 12(a)(2), from directly applying to do business in the U.S.;
- e) COMPANY'S ACRONYM consents to participate in any National Futures Association (NFA) arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the United States of the availability of such a program;
- f) COMPANY'S ACRONYM undertakes to comply with the applicable provisions of Brazilian laws and B3's rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and
- g) COMPANY'S ACRONYM consents that all futures transactions for customers located in the United States will be undertaken from a location in Brazil (except as otherwise permitted by the Commission) solely with respect to transactions on or subject to the rules of B3, and which United States customers may trade.



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Finally, COMPANY'S ACRONYM acknowledges its general and ongoing duty of notifying the regulatory authorities should there be a material change to any of the representations above, specially notifying the CFTC promptly of any change in those representations based on a change in control as generally defined in Rule 3.32.

Yours Truly,  
AUTHORIZED SIGNATURE  
DIVISION / DEPARTMENT  
COMPANY'S ACRONYM



## **Anexo III do COMUNICADO EXTERNO 016/2023-VPC**

### **INFORMATION TO NFA**

DATE

Ms. Yvette Christman  
Membership & Registration Department  
National Futures Association  
200 West Madison Street, Suite 1600  
Chicago, Illinois 60606  
United States of America

Re: Petition with information for compliance with procedures for firm applying for confirmation of the exemptive order granted by the Commodity Futures Trading Commission to firms designated by B3 S.A. - Brasil, Bolsa, Balcão, pursuant to CFTC Rule 30.10 (67 FR 45Q56 - July 8, 2002) which have affiliates or subsidiaries in the United States of America

Dear Madam:

COMPANY NAME ("COMPANY'S ACRONYM"), located STREET, NUMBER, CITY, STATE, Brazil, which have AFFILIATES/SUBSIDIARIES in the United States of America that may operate in a related capacity to COMPANY'S ACRONYM, either by soliciting or introducing customers to COMPANY'S ACRONYM, hereby complies with procedures disclosed in the Commodity Futures Trading Commission ("CFTC") Advisory Letter 41-93, dated July 26, 1993, expressly for confirmation on the relief, granted by the same agency, from certain of the foreign futures and options rules set forth in Part 30 of CFTC regulations, to designated members of B3 S.A. - Brasil, Bolsa, Balcão ("B3"), according to the exemptive order published on Monday, July 8th of 2002, on page 45056, of the U.S. Federal Register, number 30, volume 67 ("the Order").

According to the requirements proposed in the Order and described in the related Advisory Letter, COMPANY'S ACRONYM, a Brazilian duly and fully registered participant of B3, is attaching to the present petition a notice describing the identity of its subsidiaries and affiliates domiciled in the United

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States that may conduct any related business, as well as, their location and address in America and COMPANY'S ACRONYM'S shareholder stake on them.

In order to validate this notice to the CFTC and to comply with the conditions provided in the Order and to make the exemption effective as to COMPANY'S ACRONYM, the undersigned is authorized to make the following representations on its behalf:

a) COMPANY'S ACRONYM will not accept any futures related business from any of its affiliates or subsidiaries in the United States (other than a proprietary account of the affiliate or subsidiary), unless such entities are registered in the appropriate capacity;

b) COMPANY'S ACRONYM has informed its bank, broker dealer and dealer in cash commodity, futures and options affiliates or subsidiaries in writing that they may not introduce to, or solicit futures business on behalf of, COMPANY'S ACRONYM, unless such entities are registered in the appropriate capacity.

Finally, COMPANY'S ACRONYM acknowledges its general and ongoing duty of notifying the regulatory authorities should there be a material change to any of the representations above, specially notifying the CFTC promptly of any change in those representations based on a change in control as generally defined in Rule 3.32.

Yours Truly,

AUTHORIZED SIGNATURE  
DIVISION / DEPARTMENT  
COMPANY'S ACRONYM