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March 23, 2007

BY E-MAIL AND FEDERAL EXPRESS

Ms. Eileen A. Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington D.C. 20581

**Re: New York Mercantile Exchange, Inc. – Request for Relief Pursuant
to Section 4d(a)(2) of the Commodity Exchange Act**

Dear Ms. Donovan:

I. Introduction

A. Request

We are writing on behalf of our client, New York Mercantile Exchange, Inc. ("NYMEX"), a registered derivatives clearing organization ("DCO"), to request that the Commodity Futures Trading Commission ("CFTC") issue an order pursuant to Section 4(d)(a)(2) of the Commodity Exchange Act ("CEA") permitting NYMEX, and CFTC registered futures commission merchants ("FCMs"), to hold customer positions and associated funds in accounts segregated pursuant to Section 4d of the CEA and CFTC Regulation 1.20 in connection with NYMEX's clearing of futures and options on futures contracts traded on or subject to the rules of the Dubai Mercantile Exchange Limited ("DME"), located within the Dubai International Financial Centre ("DIFC") in the United Arab Emirates ("UAE").

B. Benefits

There would be many benefits to market participants, FCMs, the DME and NYMEX of allowing such commingling. Such benefits include, inter alia: (i) the ability to enjoy the heightened protections and benefits afforded to all customers in the U.S. segregated fund account; (ii) portfolio management within a single collateral pool and consolidated margin

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treatment that will more accurately reflect the net risk of the positions in the account; (iii) a reduction in the number of margin and settlement bank accounts that NYMEX and its Clearing Members need to establish and maintain; (iv) avoidance of the need to undertake substantial programming changes to accounting systems to establish separate secured amount accounts; (v) fewer demands on FCM capital because FCMs would not need to set aside funds to cover secured amount accounts; (vi) ease of back office administration (*i.e.*, no need for customers and FCMs to move funds and securities back and forth between segregated and secured amount accounts to satisfy margin or segregated/secured amount funding requirements); and (vii) simpler customer account statements.

II. Background

A. NYMEX

NYMEX is a registered designated contract market ("DCM") for trading energy and metal futures contracts and options thereon through two trading divisions: the NYMEX division, which primarily lists for trading and/or clearing futures and options contracts on energy (*e.g.*, crude oil, gasoline, heating oil and natural gas) and on platinum and palladium products; and the COMEX division, which primarily lists for trading futures and options contracts on metals products (*e.g.*, gold, silver, copper and aluminum). The clearing department of NYMEX (also referred to herein as the "Clearing House") provides clearing services in its capacity as a DCO to both NYMEX and COMEX trading divisions. NYMEX is wholly owned by its parent company, NYMEX Holdings, Inc. ("NYMEX Holdings").

B. DME

1. Ownership

The DME is directly owned by DME Holdings, a company incorporated in Bermuda. DME Holdings is a joint venture between NYMEX Holdings and Tatweer, Inc. ("Tatweer").¹ Tatweer, a member of Dubai Holding LLC, is incorporated in Dubai and currently manages major economic development projects. Tatweer acts as the strategic and operational driver of a selected group of Dubai Holding entities and develops new initiatives to support the further development of Dubai.

2. Regulation

The DME is located within the DIFC, a Financial Free Zone designed to promote financial services within the UAE. It is regulated by the Dubai Financial Services Authority ("DFSA"). DME is currently seeking an Authorised Market Institution license ("AMI") from the DFSA. DME is, and once the DME receives its license, DME will continue to be, under the direct jurisdiction of the DFSA. Once licensed, the DME will operate as a fully electronic

¹ On November 20, 2006, the Sultanate of Oman's Ministry of Finance ("MOF") and the DME reached an agreement for MOF to acquire a 30% equity stake in the DME subject to DFSA approval.

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exchange, utilizing NYMEX's ClearPort[®] Trading system ("CPT") and NYMEX ClearPort[®] Clearing service ("CPC") for the purpose of trading and clearing futures contracts on certain energy commodities, initially contracts based on Oman crude oil.²

3. Oman Crude Oil Futures Contract

The Oman Crude Oil futures contract will be a physically settled contract for delivery of 1,000 barrels of crude oil F.O.B. at the Mina Al Fahal Terminal in Oman. The contract will be denominated in U.S. dollars. It will be listed initially for 72 consecutive calendar months and will be available for trading electronically 23¼ hours each weekday (6:00 PM New York time to 5:15 PM New York time) with an official daily settlement at 4:30 AM New York time that will be used by traders to assess their trading activity for the day as well as a later settlement calculation that will be made at 2:30 PM New York time that will be used for purposes of marking positions to market in relation to variation margin payments. The last day of trading of an expiring contract will be the last trading day that is a Singapore business day of the second month preceding the delivery month. The DME will apply position accountability levels to the contracts. The physical delivery procedures are set forth in Appendix A to Chapter 10 of the DME Rules appended hereto and the settlement and delivery mechanism is summarized in Exhibit B hereto. (Please see Section E. below for background on the underlying Oman crude oil market.)

4. Liquidity Providers

Despite being a fully electronic exchange, DME will also bring together a community of traders that will operate from trading hubs and individual trading stations on the Exchange's floor. To enhance trading liquidity, the DME has established a market maker program. Up to twenty firms will be selected as DME market makers, and will be responsible for posting a bid/ask spread of no wider than 10 cents for no less than 10 contracts in the Oman crude oil futures contract. The DME intends to maintain the market maker program until volume in the Oman crude oil futures contract exceeds 20,000 contracts per day for 20 consecutive days. The DME is intended to be a commercial market, accordingly retail customers will not be eligible to trade on the DME.³ The DME trading rules are substantially similar to the NYMEX trading rules.⁴

² Initially, the DME plans to list the a physically delivered Middle East sour crude futures contract, the Oman Crude Oil Futures Contract. Additionally, DME will list a cash-settled West Texas Intermediate ("WTI") versus Oman Crude Oil Spread futures contract, and a cash-settled Brent versus Oman Crude Oil Spread futures contract. Later in 2007, the DME also plans to list a Middle East-based jet fuel futures contract. Copies of the specifications for these contracts are attached hereto as Exhibit A.

³ See DME Rules 4.9(I) and 4.15(J). The client eligibility requirements for trading on the DME are equivalent, but not identical to the standards for qualifying as an eligible contract participant under Section 1a (12) of the CEA.

⁴ Attached hereto as Exhibit C is a copy of the current draft of the DME Rules.

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5. Organization

The DME is a limited liability company incorporated under the laws of the DIFC. It is currently governed by an eight-member Board of Directors (the "Board") comprised of appointees from each of the joint venture partners - Tatweer and NYMEX.⁵ The Board has the power to appoint the members of several committees to assist in the governance of DME, including: disciplinary, appeal, compliance review, product advisory, and membership committees. The Board is also responsible for issuing Floor Memberships, Off-Floor Memberships and Clearing Memberships, although it is anticipated that the Board will delegate the power to admit members to the DME's Membership Committee.

6. Membership

DME will have three classes of members: Floor Members, Off-Floor Members and Clearing Members. The Exchange will issue 50 seats and thus there will be the potential for 50 Floor Members. All Floor Members must be bodies corporate, partnerships or unincorporated associations and must be established in DIFC and authorized by DFSA. All Floor Members are required to be authorized by DFSA as Authorised Firms and to hold a license which covers all activities that they propose to undertake on the DME. DME intends to issue initially approximately 50 Off-Floor Memberships and the Board has the authority to issue additional memberships.

7. Clearing Members

Clearing Memberships will only be available to Clearing Members of NYMEX, and all such Clearing Members that conduct customer business are registered with the CFTC as FCMs. Clearing Members must apply for DME Clearing Membership. There is no requirement under DME rules, or under DIFC law, that DME Clearing Members must establish a place of business in the DIFC. To the extent that a Clearing Member does establish a presence in the DIFC, it will be necessary for that Clearing Member to apply for DFSA Authorised Firm status.

DME rules with respect to Clearing Membership do not conflict with the clearing rules of NYMEX. In particular, the requirement that NYMEX Clearing Members must also be Members of the DME is not inconsistent with NYMEX's risk management policies and procedures that guard against default risk with respect to contracts it clears. Each NYMEX Clearing Member is still liable to contribute to the guaranty fund and to meet assessments levied on it by NYMEX if there are insufficient funds to cover a deficit and no DME rules interfere with the Clearing Members' obligations under NYMEX rules. Moreover, because NYMEX Clearing Members are registered as FCMs with the CFTC, U.S. dollar denominated customer margin held by such Clearing Members in respect of DME contracts in customer segregated fund accounts must be held in a U.S. depository in accordance with CFTC Regulation 1.49 (e)(1).

⁵ According to DFSA guidelines at least 50% of the Board of an Authorised Market Institution such as the DME must be comprised of independent directors.

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C. Legal and regulatory framework of the UAE and the Dubai Financial Services Authority applicable to the DME and its members, and NYMEX

1. The UAE

The UAE is a federation of seven separate emirates, of which Dubai is one. As part of this federal system Dubai is governed by both federal and Emiri law. The UAE Constitution lists certain areas where the federal government has exclusive legislative and executive jurisdiction. These include matters of foreign affairs, finance and taxes, civil and commercial transactions. Pursuant to Article 121 of the UAE Constitution, the UAE federal government has exclusive jurisdiction in relation to the order and the manner of establishing Financial Free Zones. UAE COSNT. art. 121. For matters not assigned exclusively under federal jurisdiction, the Emirates are free to pass local laws, decrees and orders within their respective jurisdictions. According to Articles 123, 125 and 149 of the UAE Constitution, Emirates are permitted to legislate in areas assigned to the federal government but for which no federal legislation exists, provided they comply with the UAE Constitution and other federal laws.

2. Governmental Framework

Legislative and executive powers reside in one body: the Cabinet of Ministers appointed by the President of the UAE and referred to as the Council of Ministers ("Council"). Under Articles 60 and 110 of the UAE Constitution, the draft of federal law is prepared by the relevant Minister who then submits it to the Minister of Justice. He or she then presents the draft to the Council for discussion and approval. Once approved, the Council presents the draft to a unicameral legislature, the National Council, whose members are appointed by the Rulers of the constituent Emirates to serve two-year terms. The National Council has no power to change or veto the draft law. After review by the National Council, the draft is submitted for the UAE's President's approval and Supreme Council's ratification. The Supreme Council is composed of the Rulers of the seven Emirates.⁶ The UAE Constitution does not specifically provide for a procedure for repealing or amending federal law. As a matter of practice, laws are repealed or amended by the promulgation of subsequent laws.

3. Financial Free Zones

Under the exclusive federal jurisdiction, Financial Free Zones operate under a separate legal and regulatory framework. Such zones were created by the federal government to offer an opportunity for the development of a regional capital market for the benefit of the UAE and the Arab Gulf region generally. Pursuant to the authority granted by Article 121 of the UAE Constitution, Federal Law No. 8 of 2004 allows the creation of Financial Free Zones by a

⁶ Although these are the general principles for promulgating federal law, some deviations may occur. Article 110 of the UAE Constitution allows the promulgation of law when the Assembly is not in session when circumstances require. In addition, Federal Decrees may be passed for urgent promulgation when the Supreme Council is not in session by the signature of the Council and the President.

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Federal decree. Article 2 states that any such zones "shall have a body corporate and shall be represented by the President of its Board. It and no one else shall be responsible for the obligations arising out of the conduct of its activities. The Cabinet will prescribe its area and locations." (Federal Law No. 8, art. 2 (2004)).⁷ Federal Law No. 8 also exempts any Financial Free Zones created, and the financial activities conducted within it from "all federal civil and commercial laws." (*Id.*, at art. 3(2)). Otherwise, other federal laws do apply, such as the Penal Code. Also, Federal Law No. 4 of 2002 regarding the criminalization of money laundering is explicitly listed as applicable. (*Id.*, at art. 3(1)). Effectively, this exemption allows Financial Free Zones to create their own legal and regulatory framework for all civil and commercial matters. However, laws and regulations applicable in Financial Free Zones must comply with the UAE Constitution and may not conflict with the UAE's obligations under international treaties.

4. DIFC

Within this framework, the DIFC was created as a Financial Free Zone under Federal Decree No. 35 of 2004.⁸ A resolution of the Federal Cabinet prescribed the geographical area and location of the DIFC in the heart of Dubai in an area of approximately 110 acres.

In conjunction with these federal laws, Emiri Dubai Law. No. 9 in Respect of the Dubai International Centre,⁹ recognizes the financial and administrative independence of the DIFC and establishes various bodies to assist the DIFC in its operations. (Dubai Law. No. 9, art. 13(2), 6(2), (3)). These bodies include the DIFC Authority and the DFSA. (Dubai Law. No. 9, art. 3(3), 6, 7). Article 5 also enables the Ruler of Dubai to appoint the President of the DIFC, who in turn has wide authority to administer the DIFC including the authority to appoint the members of the DIFC Board and create administrative bodies and entities to achieve the objectives of the DIFC.

Dubai Law No. 9, Article 8 provides for the formation of DIFC courts. These courts have jurisdiction to hear any claims involving DIFC or any of its entities and establishments or any transaction carried out in the DIFC. (Dubai Law. No. 9, art. 2). The court system is composed of a Court of First Instance and a Court of Appeal. Also, under Article 5(B)(2), judgments of the Court of Appeal are final and cannot be appealed "by any means of appeals." (*Id.*, at art. 5). However, Article 3 explicitly provides that any criminal matter arising in the DIFC falls under the jurisdiction of the courts in Dubai. (*Id.*, at 8(3)). Federal Law No. 12 of 2004 in Respect of The Judicial Authority at Dubai International Financial Centre provides the legal framework and procedure for these courts.

⁷ Attached hereto as Exhibit D is a copy of Federal Law No. 8.

⁸ Attached hereto as Exhibit E is a copy Federal Decree No. 35.

⁹ Attached hereto as Exhibit F is a copy Dubai Law. No. 9.

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Article 5(c) authorizes the President of DIFC to "submit proposed Centre's Laws to the Ruler [of Dubai] for enactment." Therefore, the President, with the approval of the Ruler, has the authority to promulgate the laws, regulations and rules applicable within the DIFC. Pursuant to this authority DIFC enacted its Regulatory Law DIFC Law No.1 of 2004, regulating the financial services industry in the Financial Free Zone.¹⁰

5. DFSA

The DFSA is the "body solely responsible for the regulation of financial services and related activities" in the DIFC. (Dubai Law. No. 9, art. 7(2)). The DFSA is responsible for proposing to the President laws related to the regulation of financial services. *Id.*, at art. 7(8)(a). Also, the DFSA, in an independent manner, carries out the licensing, registration and supervision of "Licensed Centre Establishments," *i.e.* Authorised Firms or AMIs such as the DME. To act as a Clearing House for DME trading, NYMEX is required by DFSA to obtain Recognised Body status. That application is currently before the DFSA. Currently, NYMEX is recognized by the DFSA as a Recognised Body to act as an exchange in relation to the electronic trading of NYMEX products undertaken in the DIFC.

D. Applicable Law

In conjunction with DIFC and DFSA laws and regulations, to govern its operations, DME is in the process of promulgating DME Rules.¹¹ Under DME Rule 9.1, the DME Rules will be governed by DIFC law, with the exception of those Rules governing the terms of the contracts to be traded on the Exchange. Rules relating to contract terms will be governed by the same law that governs the contract itself. Namely, English Law will govern the DME's first futures contracts, the Oman Sour Crude futures contract, the WTI versus Oman Crude Oil Spread futures contract, and the Brent versus Oman Crude Oil Spread futures contract. (DME Rule 10.21). Any obligations associated with delivery under the contract are also governed by English law. Issues relating to the existence of a contract will be determined by DIFC law pursuant to DME Rule 6.25. However, all NYMEX financial resources and default rules and New York law will apply to DME contracts once such contracts are accepted by NYMEX for clearing.

Under DME Rule 9.2(A) any claim, dispute, grievance or controversy arising out of DME Rules or out of or in connection with Market Contracts¹² falls under the exclusive jurisdiction of DIFC courts (whether applying English or DIFC law). DME however, has discretion to take proceedings in any competent jurisdiction. In addition, Rule 9.2(C) creates an

¹⁰ Attached hereto as Exhibit G is a copy DIFC Law No.1 of 2004.

¹¹ See Exhibit C.

¹² A Market Contract is defined in Rule 1.1 as "a contract in the terms of an Exchange Contract entered into by a Member or Designated Non-Member which is either: (i) a contract made on the Exchange; (ii) a contract made on an exchange to whose undertaking the Exchange has succeeded; or (iii) a contract in the making which the Member or Designated Non-Member was subject to the Rules."

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exception to the above rule. The U.S. District Court for the Southern District of New York shall have exclusive jurisdiction to settle any dispute, claim, grievance or controversy involving NYMEX, arising out of or in connection with DME Rules. Any claims by Clearing Members party to a DME contract for damages that arise out of a failure by another Clearing Member to perform its delivery obligations under a DME contract are subject to arbitration under NYMEX arbitration rules. (DME Rule 10.19).

Chapter 5 of the DME Rules provide for mandatory arbitration for (1) disputes between Members if the dispute arises out of transactions executed on the DME or (2) business of such member on the DME. In disputes between Members and customers that arise out of transactions subject to DME Rules, arbitration is mandatory upon the election of the customer. The location of any arbitration proceedings under DME Rules will be in London, England and proceedings will be conducted subject to English Law specifically, the Arbitration Act 1996. (DME Rule 5.5).

E. Background on the Oman Crude Oil Market

1. Production

Oman crude oil is seen by many market participants as a preferred benchmark for medium sour Middle East crude for a number of reasons. Oman crude oil quality is broadly representative of other Middle East crude oils. The production levels and tradability of Oman crude oil are sufficient to support benchmark status. The market for Oman crude oil is deep, liquid, and transparent, consisting of a physical forward market, physical spot market and an active financially settled OTC swap market. There are numerous participants in the market with no single party dominating the secondary market trading of physical cargoes or financial contracts. The average daily crude oil production in Oman was approximately 740,000 barrels per day in 2006, according to data from the *International Petroleum Monthly*, which is published by the U.S. Department of Energy's Energy Information Administration.¹³ At present, approximately 600,000 barrels per day (or approximately 85% of total Omani oil production) is controlled by the Petroleum Development Oman (PDO), which is a joint venture owned 60% by the Oman government, 34% by Shell, 4% by Total, and 2% by Partex. In addition, Occidental Petroleum and other private oil companies have extensive oil production in Oman. Accordingly, there are multiple producers of Omani crude, rather than a monopoly. Further, PDO announced it had discovered three new oil fields that will help to expand production after 2011, to around 900,000 barrels per day of oil controlled by the PDO. Thus, while the percentage of oil controlled by the PDO may fluctuate over time, the overall crude supply that is delivered at the DME's delivery point is quite large and is expected to increase in the next several years.

The Oman government is politically neutral, stable and pro-business, and is supportive of the DME's listing of the contract. Oman is not a member of OPEC. Consequently, Oman crude oil is not subject to OPEC production, destination or end-user restrictions. The Oman

¹³ Attached hereto as Exhibit H is a copy of EIA O.1 Monthly 2006.

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government sells most of its equity share of production through term contracts, and some of these term cargoes are resold in the spot market. The remaining share of Oman crude oil production that is owned by private oil companies is typically sold in the spot market. Thus, there is robust trading activity in the Oman crude oil spot market. The standard cargo size is 500,000 barrels, and there are typically around 35 cargoes loaded per month at Mina al Fahal. To put the physical market for Oman crude oil in context, the quantity of exported Oman crude oil is significantly larger than the physical size of either WTI or Brent crude oil markets. In the U.S., the daily production of WTI is around 500,000 barrels per day, while Brent crude oil production in the U.K. has fallen to around 350,000 barrels per day.

2. Export Terminal

Typically, oil exports run in the area of 600,000 barrels per day from the Oman port at Mina al Fahal, which will be the delivery point for the DME's Oman crude oil futures contract. The Mina al Fahal port is a deep water port that is located approximately 100 miles outside of the entrance to the Straits of Hormuz and can accommodate variable cargo sizes and ultra large crude carriers. The terminal is able to load three vessels simultaneously, has minimal load port restrictions on vessel draft and best in-class loading measurement and delivery procedures. In addition, as this is a warm weather port, there are no seasonality factors that would restrict the loading activity. Oil exports from Iran, Iraq, Kuwait and Saudi Arabia pass through the strategically important Straits of Hormuz, but Omani crude oil does not. The Straits narrows at its northern-most end to several miles, and the southern end, which opens into the Indian Ocean, is fifty miles wide. The Mina al Fahal port is positioned adjacent to significant U.S. naval presence. The terminal is jointly owned by the Oman government and Shell, and is operated by Shell. Scheduling of deliveries is determined by the Oman Ministry of Oil and Gas.

3. Pricing

The Oman government currently prices its term contracts using a retroactive monthly average, called the Official Selling Price (OSP). The OSP is a "retrospective" price that is based on the previous month's average of spot market deals. Recently, the Oman government publicly announced that it will change its OSP formula from the current "retrospective" methodology to a forward-curve method that will be based on the settlement prices of the DME's Oman futures contract.

When the Oman government changes its pricing formula for physical crude so that Oman crude oil is linked to the settlement prices of the DME's Oman crude futures contract, commercial participants will then be able to utilize the DME futures contract as a better hedge for managing their price risk, and companies will be more likely to use EFP and EFS transactions to lock in (and thereby hedge) their exposure. This may well result in more EFP and EFS transactions in DME's contract, which, in turn, should encourage more trading volume. Indeed, DME's futures contract volume could be supported by the interaction of the futures market with the deep and liquid cash market via EFP and EFS transactions. Under the current retroactive OSP methodology, because purchasers do not know their oil price until the delivery

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month is over, it is more difficult for companies to hedge their price exposure because the price is not determined beforehand.

4. Cash Market Participants

There is a large and diverse number of cash market participants in the Oman crude oil market.¹⁴ There are approximately 20 companies that are term customers of the Oman government, and there are an additional 15 to 20 oil companies that actively participate in the Oman cash market. The list of companies active in the Oman cash market includes large oil refiners (such as Chinese, Korean, and Japanese refiners), the super-majors (such as BP, Shell, ExxonMobil, and Total), and oil traders (such as Occidental Petroleum, Vitol, Glencore, Phibro, Arcadia, Trafigura, and Sempra).

5. OTC Financial Market

Further, there is a liquid derivatives or “paper” swaps market that is used for hedging Oman crude oil price exposure.¹⁵ The primary OTC hedging vehicles used to manage price risk for Oman crude oil are various types of Dubai and Oman crude oil swaps. The two most actively traded OTC instruments in the Middle East-Asia Pacific market are the Dubai calendar month swap and the Brent-Dubai spread swap. These two swaps instruments are also currently listed by NYMEX on CPC for clearing. The total NYMEX open interest in these two swaps is currently almost 30,000 contracts and steadily growing (equivalent to 30 million barrels of oil) with exposure 3 years forward. For the first two months of 2007, the NYMEX ClearPort[®] clearing system has recorded average daily volume of Dubai-related swaps of 250,000 barrels per day, which represents only a small percentage of actual deals done for those companies seeking the credit protection of the NYMEX Clearing House. Typically, cleared swaps transactions on NYMEX represent only 3% to 5% of the total volume transacted in the OTC oil market.

The liquidity in the OTC swaps market for Dubai and Oman crude oil swaps is robust, with an estimated average daily trading volume of 5 to 10 million barrels per day. There are several OTC brokerage firms that are active in the Dubai swaps markets, including PVM, Amerex, Spectron, Tullet Prebon, Ginga Petroleum, and GFI Group. As discussed above, the

¹⁴ Cash market participants in the Oman crude oil market include: Shell, BP, ExxonMobil, Total, Occidental Petroleum, Vitol, Phibro Trading, Glencore, Sempra Oil Trading, Trafigura, Arcadia, Mercuria Energy Trading, Idemitsu (Japanese), Nippon (Japanese), Itochu (Japanese), Mitsubishi (Japanese), Mitsui (Japanese), Marubeni (Japanese), Sumitomo (Japanese), Cosmo Oil Co. (Japanese), Sinochem (Chinese), UNIPEC (Chinese), SK (Korean), Hyundai (Korean), LG-Caltex (Korean), Reliance (Indian), Bharat Petroleum (Indian), Indian Oil Company, Singapore Refining Company, and PTT (Thai).

¹⁵ In addition to the cash market participants noted above, significant OTC swap market participants in Oman crude oil include: Goldman Sachs, Morgan Stanley, Deutsche Bank, Emirates National Oil Co. (ENOC), ConocoPhillips, Barclays Bank, JP Morgan Chase Bank, Merrill Lynch, Societe Generale Bank, RWE Trading Company, and Lehman Brothers.

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OTC market participation is deep and diverse, and includes both cash market and OTC market players. Many of the same companies that are trading Brent and WTI are also active in the Dubai market.

Currently, most of the OTC swaps in Oman crude oil are priced as a spread differential to Brent crude oil. Pricing information regarding spot physical cargoes and OTC swap transactions in Oman crude oil is available from pricing services such as Platts, Argus and ICIS-LOR. Platts is generally regarded at this time as the principal source of data relating to the physical forward market. On a daily basis, Platts publishes assessments of the Oman and Dubai markets. The latest version of the Platts methodology and specifications guide, which was updated in January 2007, is included as an attachment in Exhibit I to this letter. Platts typically publishes assessments for three forward months in these markets.

In addition, a number of reporting services, such as Bloomberg, publish a forward curve of prices for the Oman and Dubai swaps markets. A number of OTC dealers, such as PVM, generate their own forward curves and then make them available to their customers and to other interested parties. At present, the practice is to provide OTC forward curves that extend out for three years. Because Dubai crude oil is generally accepted as a substitute for Oman oil, the prices for these two products are tightly linked and thus the prices for Dubai swap activity is understood to be highly relevant for Oman swaps as well.

F. Description of NYMEX/DME Clearing Arrangements

1. Clearing Service Agreement

All contracts executed on DME will be submitted for clearing to NYMEX's Clearing House. DME and NYMEX have entered into a Clearing Service Agreement ("CSA" or "Agreement") that sets out the specification for clearing and settlement services provided by NYMEX. Under the Agreement, NYMEX will clear all trades initiated on DME on the same basis as it clears trades on its own DCM. The Clearing House rules will be amended to cover trades executed on or subject to the rules of the DME and cleared on NYMEX. All members of DME will be required to clear through a Clearing Member of NYMEX (accordingly, all customer transactions will be cleared by a CFTC-registered FCM and, as noted above, U.S. dollar denominated customer funds held in a customer segregated account supporting DME positions must be held by Clearing Members in a U.S. depository).

2. NYMEX As Central Counterparty

NYMEX Clearing Members will submit DME trades to NYMEX pursuant to the applicable clearing and settlement rules, regulations and procedures of NYMEX. The Clearing House will function as the central counterparty to every open DME futures and options position that it clears. All contracts made on DME will be a contract between the two Clearing Members to whose accounts the matching positions have been allocated, and on acceptance for clearing will be replaced by two contracts with the Clearing House: (a) one between the buying Clearing

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Member and the Clearing House as seller, and (b) another between the selling Clearing Member and the Clearing House as buyer. This structure allows parties to trade without counterparty credit risk to each other as set forth in NYMEX Rule 9.12 and Section 602 of the NYMEX Bylaws.¹⁶ As a DCO, NYMEX has instituted comprehensive risk-management policies and procedures to guard against default risk with respect to contracts cleared by it.¹⁷

3. Margin and Daily Settlement

With respect to DME transactions, the Clearing House will collect both original margin and variation margin from its Clearing Members on a daily basis. Original margin will be collected at least once daily and variation margin at least twice daily. The original margin requirement is a function of a Clearing Member's open positions and the margin rate. The margin requirement is established by the Clearing House using the U.S. Standard Portfolio Analysis of Risk (SPAN) model and the margin rate will be set by the Clearing House internally with reference to current and historical price levels and volatility of Oman crude oil and spread relationships between Oman crude oil and Brent crude. Historical volatility, price and spread data are available to NYMEX from services such as Platts and Argus. Variation margin represents the difference between (1) the trade price (or the previous settlement or market price against which the position has been margined) and the (2) current settlement or market price. Under DME Rule 6.26, the daily settlement price of the contracts traded on DME will be determined by the DME using procedures specified under that rule. Please see Exhibit L for a summary of daily settlement and margin collection timelines. In practice, NYMEX will determine daily settlement prices on DME's behalf. Physical and OTC swap price information regarding transactions in Oman crude oil is readily available to NYMEX from Platts, Argus, voice brokers and other market participants. Under DME Rule 6.26, the DME shall notify the daily settlement price determined by the DME (through NYMEX's advice) to the Clearing House and such price shall be used by the Clearing House in the calculation of original and variation margin.

NYMEX will mark-to-market the DME products at the same time as NYMEX products (at 2:30 PM New York time) for margin purposes. The DME will also publish official settlement prices at 4:30 PM Singapore time, but these official settlement prices will not be used for purposes of margin calculation. Only the NYMEX marks at 2:30 PM New York time will be used for margin calculation.¹⁸ Original margin is collected intra-day at noon New York Time

¹⁶ Attached hereto as Exhibit J is a copy of NYMEX Clearing Rules Chapter 9.

¹⁷ The Clearing House will not have any direct contractual relationship with DME Members who are not Clearing Members of NYMEX. (NYMEX Rule 9.8). Accordingly, the Clearing House will not be liable for any obligations of a DME member who is not also a clearing member of NYMEX, or for any obligation of a Clearing Member to DME members or their customers, or for any obligation of a Clearing Member to another Clearing Member who is acting for him or her as a broker. Finally, the Clearing House will not be liable to customers of DME Members to make or take deliveries or otherwise.

¹⁸ Attached hereto as Exhibit K is a table that summarizes the clearing cycle of DME.

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based on open positions as of 10:00 AM New York time. Variation margin is collected at 09:00 AM New York time based on open positions as of 7:00 PM New York time the previous day and the previous day's settlement price; and again together with the original margin call intra-day at noon based on open positions as of 10:00 AM New York time and market prices as of 11:00 AM New York time. The Clearing House sends margin call reports to clearing banks by 9:00 AM (for variation margin) and 12:00 PM (for original margin and variation margin) and the banks have one hour to reject any invoice. As a precaution, the Clearing House holds back 10% of any return of margin due to a Clearing Member until the next morning.

Under NYMEX Rule 9.5(E), Clearing Members may post original margin in the form of cash, U.S. Government securities, certain money market mutual funds and letters of credit in a specified form issued by an approved issuer. All variation margins must be posted in cash. The Clearing House also requires its clearing members to collect margin from their customers at set percentages in excess of the Clearing Members' requirement. Non-Clearing Members will have smaller add-ons than non-member customers. All margin funds collected by NYMEX in respect of DME contracts will be held at settlement banks located in the U.S.

4. Physical Settlement

In its role as Clearing House for DME's physically settled Oman crude oil futures contract, NYMEX will match open short and long positions for delivery, allocate delivery notices, generate delivery statistics, collect delivery margins and will support physical delivery on DME contracts in the same way as it facilitates delivery of physically settled NYMEX and COMEX contracts. The final settlement price of the DME Oman crude oil contract will be calculated on the last day of trading of the contract by reference to the volume weighted average of all competitively executed transactions in the final 30 minutes of trading. On the business day following the last trading day of each contract, Clearing Members with open positions in Oman Crude Oil Futures contract will be required to issue notices to the Clearing House of their intention to deliver or accept delivery. The Clearing House will match these notices and will assist in the delivery process by notifying the Clearing Members of the identity of the party to which it is matched and by requiring additional margin to secure delivery. As with all other physically settled contracts currently cleared by the Clearing House, NYMEX does not guarantee the performance of physical delivery between the buyer and seller, but rather provides a mechanism whereby the non-defaulting party may seek to be compensated financially by the defaulting party through a Clearing House arbitration process. In addition, the Clearing House will have the right to assess the defaulting party a penalty of up to 20% of the contract value.

5. Clearing Member Eligibility

Currently, NYMEX has 38 active Clearing Members. All members clearing trades for DME will either be a Clearing Member of DME or be required to clear through one. Clearing Memberships will only be available to Clearing Members of NYMEX. The NYMEX Clearing House Committee recommends and the Board approves applications for Clearing Members. Clearing Members must be corporate entities or partnerships and must apply in accordance with

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NYMEX Rule 2.13. The applicant must have "such business integrity and financial responsibility as to justify the Clearing House in assuming the risk involved in the clearing of the applicant's trades." (NYMEX Rule 9.2(A)(1)). NYMEX rules also establish financial resources, adjusted net capital, banking arrangement and physical presence requirements. NYMEX and DME will both have broad powers to investigate the conduct and transactions of Clearing Members and non-Clearing Members. (NYMEX Rule 8.0(E) and DME Rule 4.7). Clearing and non-Clearing Members will be required to respond to any inquiries made by NYMEX's compliance department and make available their books and records for inspection.

6. Financial Surveillance

DME will outsource financial risk surveillance and management in relation to DME Clearing Members to NYMEX. Pursuant to NYMEX General Services Agreement between NYMEX and DME, NYMEX's Compliance Department – Market Surveillance division will examine daily reports on open interest to ensure that no DME market participant exceeds position accountability levels. Also, on a daily basis under the surveillance program the Clearing House will: monitor settlements, monitor change in settlement prices, analyze customer margin calls, review position accountability levels as set by DME, review Clearing House banking activities, monitor intra-day margin calls and analyze segregation calculations. NYMEX will collect large trader data from DME Clearing Members on behalf of the DME and will utilize this data in conducting financial surveillance of its Clearing Members. DME will authorize NYMEX to provide such large trader data to the CFTC in light of the CFTC staff's view that such data is useful for its financial surveillance purposes.

7. Clearing Member Risk Management

In the event a customer defaults or is a potential defaulter to a Clearing Member with respect to DME contracts, the Clearing Member would be able to mitigate its risk by offsetting its customer's position by accessing the liquidity provided by the DME market makers (described above), the EFP and EFS markets, and the OTC financial market in Oman crude oil. If that Clearing Member was unable to manage the risk arising out of the DME positions, NYMEX would attempt to work with the Clearing Member to find another party and/or Clearing Member to assume the contracts. NYMEX most recently proved its ability to effectively manage the risk of a potential customer default by working with its Clearing Members and their customers to facilitate the transfer of the NYMEX positions of two non-member hedge funds, Mother Rock, and then Amaranth, to strong hands without subjecting the Clearing House or its Clearing Members to systemic risk and without roiling the markets.

8. Clearing House Risk Management

If a Clearing Member were to default as a result of exposure to DME contracts, NYMEX would actively look for another Clearing Member or group of Clearing Members to assume the contracts, using the margin and remaining financial resources of the defaulting Clearing Member to compensate the Clearing Member taking on board the contracts. It is anticipated that NYMEX

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staff would first approach the largest and best-capitalized Clearing Members that were already active in clearing DME contracts. If the Clearing House were faced with having to liquidate the DME contracts of a defaulting Clearing Member, the Clearing House will be able to manage its exposure because of the significant depth of and number of major participants in the physical and OTC derivative markets in Oman crude oil and the availability of the EFP, EFS and Brent basis markets noted above in Section I.E. Based on reports published by Platts, the bid/offer spread in the spot Oman crude oil market is typically five to ten cents per barrel. By comparison, the WTI and Brent cash markets typically have a bid/ask spread of approximately five cents or less per barrel. (The difference in the size of the spread between these markets and the spread in the Oman market reflects the fact that the Brent and WTI markets are mature, well-established cash markets that also benefit from highly efficient EFP mechanisms that interact with futures markets, that up until now were not available in the Oman crude market.)

Given the depth and liquidity of the underlying Oman crude oil market and related OTC derivatives market, NYMEX is confident that it and its Clearing Members will be able to efficiently and timely manage the unlikely occurrence of a default involving DME Oman Crude Oil contracts.

At this time there will be no fungibility between NYMEX contracts and DME contracts. This means that to the extent NYMEX and DME list contracts with the same specifications, the contracts will *not* offset each other within the Clearing House. Nonetheless, the Clearing House anticipates providing portfolio margining benefits for correlated NYMEX and DME futures contracts held in the same collateral pool (*i.e.*, portfolio margining will apply (i) to correlated contracts held in customer segregated accounts and (ii) to correlated contracts held in the Clearing Member's house account). Subject to the relief requested in this letter, NYMEX Clearing Members will be able to utilize their current NYMEX-approved clearing settlement bank accounts (all of which are located in the U.S.) for funds supporting both NYMEX and DME positions.

NYMEX believes that its existing Clearing House resources, procedures and protections are sufficient to protect the funds of customers trading domestic products in the event of a default by a NYMEX Clearing Member as a result of carrying positions in DME products. NYMEX represents that, with respect to the Clearing Arrangements, NYMEX will continue to comply with the DCO Core Principles enumerated in Section 5b(c)(2) of the CEA and Part 39 of the CFTC Regulations.

9. Information Sharing

We have been informed by DME's Dubai counsel, Denton Wilde Sapte, that DME is permitted under applicable Dubai and DIFC law to share with the CFTC information relevant to NYMEX's clearing of DME contracts, and that the DME will provide such information upon the request of the CFTC. Further, DME Rules specifically authorize DME to share information upon the request of any other regulatory organization. Additionally, under the Clearing Services Agreement between NYMEX and DME, NYMEX is permitted to share with the CFTC

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information that NYMEX obtains from the DME in connection with providing clearing services for the DME.

III. CFTC Relief Requested: U.S. Customer Segregation Requirements vs. Secured Amount Requirements

A. Statutory Background

Under Section 4(d)(a)(2) of the CEA and CFTC Regulation 1.20, NYMEX, as a DCO, must segregate and separately account for all customer funds received by NYMEX from a clearing member to margin or settle the trades of such member's customers and all funds accruing to such customers from the funds of NYMEX members and of NYMEX itself ("customer segregation"). The same customer segregation requirements apply to customer accounts carried by FCMs. However, as a general matter, the foregoing sections of the CEA and the CFTC Rules only apply to funds deposited with respect to trading of contracts on or subject to the rules of a U.S. contract market. Although not specified in the CEA, CFTC Regulation 1.3(rr) and 30.7 effectively require an FCM to set aside funds required to margin non-futures transactions in an account that is held separate both from house funds and from customer segregated funds (the "secured amount"). Accordingly, absent relief from the CFTC, margin to support trading on DME would be deemed subject to the secured amount rules rather than the customer segregation requirements.

B. Authority to Grant Relief

Notwithstanding the foregoing requirements, Section 4(a)(2) of the CEA also provides that "in accordance with such terms and conditions as the commission may prescribe by rule, regulation, or order, such money securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities and property received by such futures commission merchant and required by the commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant." In addition, CFTC Regulation 30.10 permits any party adversely affected by any requirement under part 30 of the CFTC's rules to petition the CFTC for relief from such requirement. Accordingly, NYMEX is hereby requesting that the CFTC allow the treatment of funds to support trading of contracts on DME as U.S. customer segregated funds rather than in accordance with the CFTC Regulation 30.7 secured amount requirements.

C. Prior Precedent

The CFTC has previously granted identical relief to NYMEX in connection with its clearing activities on behalf of its non-U.S. affiliate, NYMEX Europe Limited ("NYMEX Europe"), a Recognized Investment Exchange located in London, England and regulated by the

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U.K. Financial Service Authority.¹⁹ The CFTC also allowed similar "commingling" of customer funds that support U.S. and non-U.S. futures markets with respect to other DCOs and FCMs.²⁰ In doing so, the CFTC concluded that it had authority to construe its own rules to permit the inclusion of what would otherwise be a secured amount in segregated funds account. It appears the CFTC concluded that it was permissible to do so because customer margin deposits for foreign futures transaction would be held in accordance with the stricter standards applicable to U.S. customer-segregated funds. Further, in connection with its grant of such "commingling" relief, the CFTC has issued an interpretation to its Part 190 Rules that address bankruptcy issues in this context. Under the CFTC's Part 190 Interpretation,²¹ the CFTC clarifies that in cases where money, securities or other property margining, guaranteeing or securing futures contracts traded on non-U.S. boards of trade has been deposited, pursuant to a CFTC order, in a segregated account established pursuant to CFTC Regulation 1.20, such customer funds will enjoy the same protections and benefits as all other customers in the segregated funds accounts (that is, collateral supporting foreign futures contracts placed in U.S. segregation pursuant to such CFTC order shall be treated as in a futures account, not a "foreign futures account," for purposes of CFTC Part 190).

The proposed NYMEX-DME clearing arrangement is essentially identical to the NYMEX-NYMEX Europe clearing arrangement that was the subject of the CFTC's NYMEX 2005 Order. As was the case with NYMEX Europe, NYMEX will serve as the sole Clearing House to DME, and only Clearing Members of NYMEX that are registered with the CFTC as FCMs will be allowed to clear DME customer transactions. Likewise, all settlement accounts will be located in the U.S. and payment flows between NYMEX and its Clearing Members will be essentially the same as they are today. Notably, the physical Oman crude oil market on which the DME contracts are based is far larger than the Brent crude oil market on which NYMEX Europe contracts were based, with daily production of Oman crude oil currently more than double the rate of Brent production. Both markets are deep, liquid and transparent, which will facilitate NYMEX's risk management of open positions.

¹⁹ Treatment of funds held in connection with clearing by the New York Mercantile Exchange of contracts traded on NYMEX Europe, CFTC Order issued September 6, 2005 ("NYMEX 2005 Order").

²⁰ The CFTC has previously allowed "commingling" of customer funds that support US and non-US futures markets with respect to other DCOs and their clearing links with non-US clearing organizations. In particular, the CFTC provided such relief with respect to the clearing links between (i) Chicago Mercantile Exchange ("CME") and MEFF Sociedad Rectora de Productos Financieros de Renta Variable, S.A. ("MEFF") and (ii) The Clearing Corporation ("CCorp") and Eurex Clearing AG, Frankfurt ("Eurex Clearing"). See 64 Fed. Reg. 34110 (June 27, 2001); <http://www.cftc.gov/files/tm/tmclearingcorpphase1order.pdf>. (Order issued October 21, 2004). With respect to each of the foregoing "link" arrangements, the CFTC issued Orders that permit the holding, in a segregated funds account, of margin deposits and other property associated with trades made on non-US futures markets where those trades are cleared in the US through a clearing link that has been established between the US DCO (*i.e.*, CME, CCorp) and a non-US clearing house (*i.e.*, MEFF and Eurex Clearing, respectively).

²¹ 69 Fed. Reg. 69510 (November 30, 2004) (Part 190 – Interpretive Statement Regarding Funds Determined to be Held in the Futures Account Type of Customer Account Class).

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NYMEX and DME are affiliated entities. NYMEX will be providing the same services to DME, as it provided to NYMEX Europe, including risk management, trade surveillance, price reporting and trading systems and certain other compliance services.²² The proposed clearing arrangement is analogous to NYMEX adding another trading division to be cleared by the Clearing House in addition to the current NYMEX and COMEX trading divisions.

D. Public Benefits

As noted above in the Introduction, there would be many significant benefits to market participants, FCMs, the DME and NYMEX of allowing such commingling. Importantly, the proposed order would facilitate collateral efficiencies and reduce transactional and operational costs to all market participants. It would eliminate the need for multiple redundant custody and settlement accounts, fund transfers, margin requirements and calculations, and promote the efficient risk management of a related portfolio of positions.

IV. Relief Requested

For the reasons stated above, in connection with NYMEX providing clearing services directly to DME, NYMEX requests that the CFTC issue an order permitting the Clearing House and FCMs to carry in U.S. customer segregated accounts customer positions arising out of, and funds related to, the contracts specified herein traded on or subject to the rules of the DME. The issuance of the requested order would be a prudent, judicious and reasonable exercise of the Commission's authority.

Thank you for your prompt consideration of this request. If you have any questions please contact the undersigned at (312) 558-5905.

Very truly yours,



Michael M. Philipp

Enclosures

cc: Chairman Reuben Jeffery III, CFTC

²² In addition, DME has modeled its rules after the NYMEX rules. This will greatly enhance NYMEX and DME's ability to monitor and enforce the Clearing Arrangement from the outset. Additionally, DME's rules are designed to coordinate with those of the Clearing House enabling NYMEX to continue to meet its regulatory obligations as a DCO. NYMEX personnel will therefore already be familiar with the rules which they are charged with monitoring and enforcing. Lastly, many of DME's Members will have U.S. affiliates who are familiar with the NYMEX Rules and will act as their Clearing Members. To the extent DME Rules are the same as NYMEX Rules, this will greatly facilitate member review and enhance DME Members' ability to comply with such rules.

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Commissioner Michael V. Dunn, CFTC
Commissioner Walter L. Lukken, CFTC
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