

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

**Treatment of Funds Held in Connection with the
Clearing by the New York Mercantile Exchange, Inc.
of Contracts Traded on the Dubai Mercantile
Exchange Limited**

ORDER

On May 23, 2007, the Commodity Futures Trading Commission (“Commission”) issued an order (the “Original Order”) regarding the treatment of funds held in connection with the clearing by the New York Mercantile Exchange, Inc. (“NYMEX”), a registered derivatives clearing organization (“DCO”), of contracts traded on the Dubai Mercantile Exchange Limited (“DME”), a foreign board of trade located in the Dubai International Financial Centre (“DIFC”) in the United Arab Emirates. The Commission issued the Original Order to NYMEX, pursuant to Section 4d(a)(2) of the Commodity Exchange Act (“CEA” or the “Act”), permitting NYMEX and Commission-registered futures commission merchants (“FCMs”) to hold customer positions and associated funds held in connection with NYMEX’s clearing of specific futures contracts traded on or subject to the rules of the DME in accounts segregated pursuant to Section 4d(a) of the CEA and CFTC Regulation 1.20 (“Section 4d(a) account”).

The Original Order involved three contracts traded on DME, specifically a physically settled DME Oman Crude Oil futures contract, a cash settled Brent-Oman spread contract, and a cash settled West Texas Intermediate (“WTI”)-Oman spread contract. It also contained a heightened performance bond requirement with respect to the physically settled DME Oman

Crude Oil contract, specifically, requiring that NYMEX charge performance bond rates in an amount consistent with a 99% confidence level for price movements over a two-day period. On April 30, 2008, the Commission issued an order (the “April 2008 Clearing Order”) that superseded the Original Order. The April 2008 Clearing Order permitted NYMEX and registered FCMs to hold in the Section 4d(a) account customer positions and funds related to the physically settled DME Oman Crude Oil contract and three additional cash settled contracts that would be listed on DME. These three additional contracts were the DME Oman Crude Oil cash settled contract, the DME Brent Crude Oil cash settled contract, and the DME WTI cash settled contract.¹ The April 2008 Clearing Order also required that the heightened performance bond requirement be applied to the cash and physically settled DME Oman Crude Oil contracts.

In August 2008, CME Group acquired NYMEX Holdings, the parent company of NYMEX. CME Clearing² and NYMEX have submitted letters dated July 28, 2009 and March 12, 2010 (collectively, the “Request”) asking that the Commission issue an order amending the April 2008 Clearing Order to permit (i) CME Clearing, NYMEX and registered FCMs to hold in the Section 4d(a) account customer positions and funds related to a new cash settled contract that will be listed on DME, specifically the DME Oman Crude Oil European Style Option (the “New Futures Contract”)³ and (ii) CME Clearing and NYMEX to establish performance bond levels

¹ DME delisted the cash settled Brent-Oman spread and WTI-Oman spread contracts. *See* DME Rulebook available at <http://www.dubaimerc.com/rules/rulebook.aspx> (referring to the removal of certain rulebook chapters due to the delisting of certain contracts). DME replaced these contracts with the three cash settled contracts in the April 2008 Clearing Order. The Commission notes that DME delisted the DME Brent Crude Oil cash settled contract in January 2009. *See id.* As a result, the DME Brent Crude Oil cash settled contract will not be included in this superseding Order.

² NYMEX clears DME contracts pursuant to a clearing services agreement executed between NYMEX and DME and has outsourced the performance of such clearing services to CME Clearing.

³ CME Clearing and NYMEX also request that the order permit non-clearing member FCMs to commingle in the Section 4d(a) account customer positions and associated funds with respect to the cash and physically settled Oman Crude Oil futures contracts, the DME WTI cash settled contract, and the DME Oman Crude Oil European Style Option.

for the cash and physically settled DME Oman Crude Oil contracts based on a one-day price movement in the contracts. With respect to (i), CME Clearing and NYMEX provided data demonstrating that a clearing member FCM or CME Clearing itself could hedge the exposure created by the default of, respectively, a customer or member. With respect to (ii), CME Clearing and NYMEX noted that the rationale for requiring a two-day holding period in performance bond calculations was the fact that, at the time the Original Order was issued, both DME and its regulator, the Dubai Financial Services Authority (“DFSA”), were established fairly recently. Since DME and the DFSA have been in operation for four years with no material adverse experience, CME Clearing and NYMEX submit that it is appropriate to reduce the performance bond coverage to an amount adequate to cover price movements in the cash and physically settled DME Oman Crude Oil contracts over a one-day period with a 99% confidence level.

As an additional method of review, the Commission requested and reviewed 6-month, one-year and two-year performance bond analyses, and compared, for each of the contracts currently trading, the absolute value of the contract’s daily settlement price movement against the required two-day performance bond and the implied one-day performance bond. The Commission confirmed that the one-day performance bond level always covered the daily price movement during each one-day period.

The letters were posted on the Commission’s website for 30-day public comment periods which ended on October 30, 2009 and April 15, 2010, respectively. No comments were received.

The Commission has reviewed the Request and the record in this matter (the “Submission”), and finds that CME Clearing and NYMEX have demonstrated that they can

comply with the requirements under the CEA and the Commission's regulations thereunder applicable to them, including in connection with the Submission. Moreover, the Commission has determined that adding eligibility requirements for commingling of positions and associated funds relating to the New Futures Contract and changing the required measurement period for performance bond rates covering price movements in the cash- and physically settled Oman Crude Oil contracts from a two-day period to a one-day period will give rise to benefits to CME Clearing, NYMEX, FCMs, market participants, and the public, and that granting this request will not undermine the Act's objectives of protecting both customer funds and the integrity of the U.S. clearing system. Therefore, the April 2008 Clearing Order is SUPERSEDED and:

IT IS ORDERED, pursuant to Section 4d(a)(2) of the CEA, 7 U.S.C. § 6d(a)(2), that, subject to the terms and conditions below, CME Clearing, NYMEX, registered FCMs that are clearing members of CME Clearing, and registered FCMs that are not such members, in each such case acting pursuant to this Order, may hold money, securities, and other property (collectively, "customer funds") used to margin, guarantee, or secure trades or positions in certain commodity futures contracts executed on the DME and cleared through CME Clearing (hereinafter "DME transactions") with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts executed on a contract market designated pursuant to Section 5 of the CEA ("DCM"), in a segregated account or accounts maintained in accordance with Section 4d(a)(2) or 4d(b) of the CEA and the regulations thereunder, (including any orders issued pursuant to Section 4d(a)(2) of the CEA) and all such customer funds shall be accounted for and treated and dealt with as belonging to the exchange-traded futures customers of the participating FCM consistently with Section 4d of the CEA and the regulations thereunder.

IT IS FURTHER ORDERED, that:

(1) This Order shall apply only to the following contracts traded on the DME: the physically settled Oman Crude Oil futures contract, the cash settled Oman Crude Oil futures contract, the DME WTI cash settled contract, and the DME Oman Crude Oil European Style Option (collectively, the “DME Contracts”). The DME Contracts shall not be fungible with any contract cleared by CME Clearing or any successor clearing house.

(2) Each registered FCM subject to this Order shall take appropriate measures to identify, measure, and monitor financial risk associated with carrying the DME Contracts in the customer segregated account and implement risk management procedures to address those financial risks.

(3) CME Clearing (with respect to registered FCMs that are clearing members of CME) and the National Futures Association (NFA) (with respect to registered FCMs that are not such members) shall apply appropriate risk management oversight procedures with respect to transactions and open interest in the DME Contracts. CME Clearing or NFA, as appropriate, shall conduct oversight sufficient to assure that each such FCM has the appropriate operational capabilities necessary to manage defaults in such contracts.

(4) CME Clearing shall conduct financial surveillance and oversight with respect to the DME Contracts carried by each registered FCM subject to this Order that is a clearing member of CME.

(5) Each registered FCM that (a) intends to act pursuant to this Order and (b) is not a clearing member of CME Clearing, shall notify NFA of such intention. NFA shall then inform CME Clearing of such FCM’s intent.

(6) NFA shall, in consultation with CME Clearing, set notification thresholds for trading activity with respect to DME contracts carried by each FCM that has been identified pursuant to paragraph 5. CME Clearing shall monitor the trading of these contracts by such FCMs, and shall promptly notify NFA of activity in excess of such thresholds. NFA shall take reasonable steps to inquire into and, as appropriate, address such activity and any related financial risks.

(7) CME Clearing, NFA and each FCM subject to this Order shall take all other steps appropriate to manage risk related to clearing the DME Contracts.

(8) CME Clearing shall hold all funds deposited with it by clearing members to margin, guarantee, or secure DME Contracts traded on the DME in depository or safekeeping accounts located in the United States. Each FCM acting pursuant to this Order shall hold all funds deposited with such FCM to margin, guarantee, or secure DME Contracts in accordance with the requirements of Section 4d of the CEA and the Commission's regulations.

(9) Performance Bond Requirements:

(a) CME Clearing shall apply the SPAN margining system and set clearing member performance bond requirements for the physically settled Oman Crude Oil futures contract and the cash settled Oman Crude Oil futures contract cleared through CME Clearing pursuant to this Order in an amount no less than that consistent with a 99% confidence level that such performance bond rates would cover price movements in the contract over a one-day period.

(b) CME Clearing shall apply the SPAN margining system and set clearing member performance bond requirements for the DME Brent Crude Oil cash settled contract in an amount no less than that required for the NYMEX Brent Crude Oil contract.

(c) CME Clearing shall apply the SPAN margining system and set clearing member performance bond requirements for the DME WTI cash settled contract in an amount no less than that required for the NYMEX WTI contract.

(d) Pursuant to the agreement between NYMEX and DME, CME Clearing shall set performance bond requirements with respect to the DME Contracts such that the NYMEX/DME member customer performance bond requirement will be at least 110% of the clearing member performance bond requirement, and the NYMEX/DME non-member customer performance bond requirement will be at least 135% of the clearing member performance bond requirement.

(10) CME Clearing and NYMEX shall at all times fulfill all representations made in the Submission, including all attachments and supporting materials thereto.

(11) Large Trader (Position) Reporting:

(a) CME's Market Regulation Department and NYMEX shall provide to the Commission the information described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations with respect to all DME transactions.

(b) Each FCM acting pursuant to this Order shall provide to the Commission the information described in Part 17 of the Commission's regulations in the manner described in Parts 15 and 17 of the Commission's regulations with respect to all DME transactions in which it participates.

(c) Upon request by the Commission, each FCM acting pursuant to this Order, NYMEX and/or DME shall obtain from specified traders and provide to the Commission the information set forth in Part 18 of the Commission's regulations.

(d) If the Commission promulgates a regulation under the CEA addressing obligations under Parts 15, 16, 17, and/or 18 of the Commission's regulations, then such regulation will supersede the obligations referred to in ¶¶ (a)-(c) above.

(12) CME Clearing and NYMEX shall promptly inform the Commission of any material change in applicable DIFC law or regulations relevant to CME Clearing's operation as a DCO clearing for DME including, but not limited to: (a) any material change to DIFC requirements for Authorised Market Institutions; (b) any material change to DIFC law, including any material change to DIFC insolvency law (or official legal interpretation thereof) that could have an impact on the operation of CME Clearing default rules; and (c) any other change in applicable law or regulations affecting the conclusions contained in the Submission. NYMEX also shall promptly inform the Commission of any change in DME's status as an Authorised Market Institution and any change in DME's rules that affects its cooperation with the Commission or with NYMEX.

(13) CME Clearing and NYMEX shall keep all records relating to the clearing of DME contracts in the U.S.

(14) DME shall maintain a binding agreement appointing an agent in the U.S. for purposes of communications, including acceptance on behalf of DME of any summons, complaints, orders, subpoenas, requests for information, notice, or any other written document or correspondence issued by or on behalf of the Commission, the U.S. Department of Justice, or any U.S. clearing member, and DME shall promptly inform the Commission of any change in such agent or agreement with such agent.

This Order is issued pursuant to Section 4d(a)(2) of the CEA based upon the representations made and supporting material provided to the Commission by CME Clearing and

NYMEX in their Submission. Any material changes or omissions in the facts or circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the relief set forth herein is appropriate. Further, in its discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

Issued in Washington, D.C., this 16th day of September, 2011.

By the Commission

A handwritten signature in black ink that reads "David A. Stawick". The signature is written in a cursive style with a large, stylized initial "D".

David A. Stawick
Secretary of the Commission