



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5260
Facsimile: (202) 418-5527

Division of
Market Oversight

CFTC Letter No. 08-10
July 3, 2008
No-Action
Division of Market Oversight

Michael M. Philipp, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601-9703

Re: Amendment to No-Action Letter Issued to the Dubai Mercantile Exchange

Dear Mr. Philipp:

On May 24, 2007, the Division of Market Oversight (Division) of the Commodity Futures Trading Commission (Commission or CFTC) granted to the Dubai Mercantile Exchange (DME) permission to make its electronic trading and order matching system, known as DME Direct, available to DME members in the United States.¹ Specifically, the Division stated that it will not recommend that the Commission institute enforcement action against DME or its members or guaranteed customers if DME does not seek designation as a DCM or registration as a DTEF pursuant to Sections 5 and 5a, respectively, of the Act or comply with any other section of the Act or Commission regulations relating specifically to DCMs or DTEFs if: (1) DME members and guaranteed customers in the U.S. trade for their own accounts through direct access to DME Direct; (2) DME members and guaranteed customers who are registered with the CFTC as FCMs or who are Rule 30.10 Firms submit orders from or on behalf of U.S. customers for transmission through direct access to DME Direct; (3) DME members and guaranteed customers who are registered with the CFTC as CPOs or CTAs, or who are exempt from such CPO or CTA registration pursuant to Commission Regulation 4.13 or 4.14, submit orders on behalf of U.S. pools they operate or U.S. customer accounts for which they have discretionary authority, respectively, for transmission through direct access to DME Direct, provided that an FCM or Rule 30.10 Firm acts as clearing firm with respect to all activity conducted by such CPOs and CTAs through the submission of orders on DME Direct; and/or (4) DME members and guaranteed customers who are registered with the CFTC as FCMs or who are Rule 30.10 Firms accept orders for U.S. customers transmitted via automated order routing systems for submission to DME Direct (DME no-action letter).

¹ Letter from Richard A. Shilts, Director, Division of Market Oversight, to Michael M. Philipp, Esq., Winston & Strawn LLP, dated May 24, 2007.

On December 19, 2007 DME notified the Division of its intent to list for trading for direct access from the United States on DME Direct the DME Brent Crude Oil Financial Futures Contract, DME Oman Crude Oil Financial Futures Contract, and DME West Texas Intermediate Crude Oil Financial Futures Contract (WTI Contract) (collectively, the “Financial Contracts”).² The WTI Contract is settled on the price of a contract traded on a U.S.-regulated DCM, *i.e.*, the contract is cash-settled based on the NYMEX Light, Sweet Crude Oil futures settlement price on the penultimate trading day. On December 19, 2007 the Division advised DME that the Division had no objection to DME listing the Financial Contracts for trading by direct access from within the U.S. on DME Direct.³ The Division noted that it understood that pursuant to the DME no-action letter, NYMEX does the clearing and processing of DME transactions and, pursuant to NYMEX Clearing rules, any DME member or other market participant whose positions exceed reportable levels reports to NYMEX required position data information on a daily basis. NYMEX in turn makes DME large trader reporting data available to the Commission for surveillance purposes.⁴

A foreign board of trade listing for trading a contract which settles on the price of a contract traded on a CFTC-regulated exchange raises very serious concerns for the Commission. Such linkages can create a single market for the subject contracts consisting of both the underlying contract at the CFTC-regulated exchange and the cash-settled “look-alike” contract traded on the foreign board of trade. In the absence of certain preventive measures at the foreign board of trade, this circumstance could compromise the Commission’s ability to carry out its market surveillance responsibilities, as well as the integrity of prices established on CFTC-regulated exchanges. As you are also aware, and as stated in the DME no-action letter, “the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.”

Accordingly, the Division is amending the DME no action letter by adding certain conditions with respect to any DME contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTEF, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract (collectively, “Linked Contracts”). The purpose of these conditions is to ensure that DME applies to any Linked Contract comparable principles or requirements regarding the daily publication of trading information and the imposition of position limits or accountability levels for speculators as apply to the DCM, DTEF or ECM contract against which the Linked Contract settles. The conditions will also ensure that DME provides the Commission with information regarding the extent of speculative and

² The notification was provided pursuant to the Commission’s statement of policy for the listing of new futures and option contracts, the Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that have Received Staff No-Action Relief to Provide Direct Access to their Automated Trading Systems from Locations in the United States. 71 Fed. Reg. 19877 (April 18, 2006); corrected at 71 Fed. Reg. 21003 (April 24, 2006).

³ The no objection notice was issued subject to receipt by NYMEX from the Division of Clearing and Intermediary Oversight of an amended Section 4d clearing order for the new contracts. On April 30, 2008 the Commission issued an order that superseded the original order.

⁴ The Division understands that DME intends to begin trading the WTI Contract in early July, 2008.

nonspeculative trading in Linked Contracts that is comparable to the information provided to the Commission by DCMs, DTEFs or ECMs for publication of the Commitments of Traders Reports.

Those conditions are:

1. DME will impose on Linked Contracts, by rule or otherwise, position limits or position accountability levels (including related hedge exemption provisions) that are comparable to the existing position limits or position accountability levels (including related hedge exemption provisions) as adopted by: (i) the DCM, DTEF or ECM for the contract against which the Linked Contract settles or (ii) the DCM, DTEF or ECM for a financially-settled equivalent of such contract;
2. DME will inform the Commission in a quarterly report of any trader that had positions in a Linked Contract above the applicable DME position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken;
3. DME will publish daily trading information (*e.g.*, settlement prices, volume, open interest, and opening and closing ranges) that is comparable to the daily trading information published by the DCM, DTEF or ECM for the contract against which the DME contract settles; and
4. DME will provide to the CFTC a daily report of large trader positions in each Linked Contract for all contract months in a form and manner that:
 - can be fully integrated into the CFTC's market surveillance systems, including full identification of each position's beneficial owner comparable to the reporting that is provided by the DCM, DTEF, or ECM;
 - can be fully integrated into the CFTC's *Commitments of Traders Report*, including appropriate categorization of traders and their positions.

The Commission recognizes the need for DME to adopt rules and implement system changes to implement the foregoing, and to take such actions in consultation with the Dubai Financial Services Authority (DFSA); in addition, the Commission understands that future rule and system changes may be subject to approval by the DFSA. Subject to DME's satisfaction of these conditions within 120 days of the date of this letter and continuing to satisfy the other terms and conditions included in the DME no-action letter, the Division hereby confirms that it will not recommend that the Commission institute enforcement action against DME or its members solely based upon DME's failure to seek contract market designation or registration as a DTEF under Sections 5 and 5a of the Act. The Division's no-action position does not extend to any other provision of the Act, any other Commission regulations or orders, or to any registered futures association rules and does not excuse DME or its members from compliance with any applicable requirements thereunder.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. Finally, as with all no-action letters, the Division retains the authority to condition further,

Michael M. Philipp, Esq.
Page 4 of 4

modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding this correspondence, please contact David Van Wagner, Chief Counsel, at (202) 418-5481, or Duane C. Andresen, Senior Special Counsel, at (202) 418-5492.

Very truly yours,

Richard A. Shilts, Director

cc: Thomas Leaver, DME
Shahnaz Qaedi, DME
Martin Kinsky, DFSA