

**UNITED STATES OF AMERICA**

**Before the**

**COMMODITY FUTURES TRADING COMMISSION**

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**Treatment of Funds Held in Connection with the  
Clearing of Over-the-Counter Products by  
The Chicago Mercantile Exchange**

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**ORDER**

The Board of Trade of the City of Chicago (“CBOT”) has petitioned the Commodity Futures Trading Commission (“Commission”) to issue an Order permitting the Chicago Mercantile Exchange (“CME”), a registered derivatives clearing organization, and registered futures commission merchants (“FCMs”) that are clearing members of the CBOT to hold customer funds of eligible contract participants (“ECPs”) used to margin, secure, or guarantee certain contracts executed in the over-the-counter markets and cleared by the CME on behalf of the CBOT (“cleared-only contracts”) with other funds held in segregated accounts maintained in accordance with Section 4d of the Commodity Exchange Act (“Act”).

The Commission has reviewed the CBOT’s petition dated November 9, 2007, and its supplemental submissions (collectively, the “Submission”) and finds that the CBOT has demonstrated that it can continue to comply with the Act and the Commission’s regulations promulgated thereunder. Therefore:

IT IS ORDERED, pursuant to Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), that, subject to the terms and conditions set forth herein, notwithstanding any provision to the contrary in the Commission’s regulations (including, but not limited to, Regulations 1.20(a), 1.22 and 1.24), CME and registered FCMs that are clearing members of the CBOT, acting pursuant to this

Order, may hold money, securities, and other property belonging to ECPs used to margin, guarantee, or secure transactions in the cleared-only contracts cleared by CME on behalf of the CBOT and enumerated below (“eligible products”), with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts executed on or subject to the rules of a contract market designated pursuant to Section 5 of the Act, in a segregated account or accounts maintained in accordance with Section 4d of the Act (including any applicable orders issued pursuant to Section 4d(a)(2) of the Act) and the Commission’s regulations promulgated thereunder.

All such money, securities, and other property received by a participating FCM to margin, guarantee, or secure eligible products shall be accounted for and treated and dealt with as belonging to the customers of the participating FCM consistent with Section 4d of the Act.

IT IS FURTHER ORDERED that:

- (1) This Order applies and is limited to the following eligible products:
  - (a) Denatured Fuel Ethanol Forward Month Swaps;
  - (b) Cash-Settled Options on Denatured Fuel Ethanol Forward Month Calendar Swaps;
  - (c) New York Harbor Denatured Fuel Ethanol Basis Swaps;
  - (d) Gulf Coast Denatured Fuel Ethanol Basis Swaps;
  - (e) Los Angeles Denatured Fuel Ethanol Basis Swaps; and
  - (f) Cash-Settled Denatured Fuel Ethanol Options.
- (2) CME shall apply appropriate risk management procedures to transactions and open interest in the eligible products. CME shall conduct financial surveillance and oversight of FCMs clearing the eligible products, and CME and FCMs acting pursuant to this Order shall take all other steps necessary and appropriate to manage risk related to clearing the eligible products.

(3) Each eligible product shall be marked-to-market on a daily basis, and final settlement prices shall be established as described in the Submission.

(4) Eligible products shall not be treated as fungible with any contract listed for trading on the CBOT.

(5) The CBOT shall make available open interest and settlement price information for eligible products on a daily basis in the same manner as it does for contracts that are listed for trading on the CBOT.

(6) Because the eligible products are cash settled based in whole or in part on the underlying CBOT denatured fuel ethanol futures contract settlement price, the CBOT shall establish and maintain a coordinated market surveillance program that encompasses the eligible products cleared by CME and the underlying futures contract listed by the CBOT on its designated contract market. In order to minimize the potential for manipulation or distortion of the futures contract's price, the CBOT shall adopt appropriate position accountability levels for each of the eligible products.

(7) The SPAN margining system shall be applied to the eligible products, and customer performance bond rates shall be set consistent with a 99% level of confidence that such performance bond rates will reflect the risk of price movement over a one-day period.

(8) Participating FCMs shall use a customer initial performance bond requirement that is at least 135% of the clearing member performance bond requirement.

(9) Large Trader (Position) Reporting (for purposes of financial surveillance).

(a) The CBOT 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 eligible products;

(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 eligible products in which it participates;

(c) If the Commission promulgates a regulation under the Act addressing obligations under Parts 15, 16, and/or 17 of the Commission's regulations, then such regulation shall supersede the obligations referred to in paragraphs (9)(a) and (b), above; and

(d) The CBOT shall establish an appropriate reportable level for each of the eligible products.

(10) This Order shall not provide an exemption from any provision of the Act or Commission regulations not specified herein.

This Order is issued pursuant to Section 4d of the Act based upon the representations made and supporting material provided to the Commission by the CBOT in its 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 terms and conditions set forth herein are appropriate. Further, in its discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the exemption granted in this Order, as appropriate, on its own motion.

Issued in Washington, D.C. this 26<sup>th</sup> day of September, 2008.

By the Commission,



David Stawick  
Secretary of the Commission