

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

**Treatment of Funds Held in Connection with the
Clearing by the Chicago 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”), 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 margin requirement with respect to the physically settled DME Oman Crude Oil

contract, specifically, requiring that NYMEX charge margin 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 On April 30, 2008, the Commission issued an order (the “April 2008 Clearing Order”) that superseded the Original Order.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 margin requirement be applied to the cash and physically settled DME Oman Crude Oil contracts.

In August 2008, NYMEX Holdings, the parent company of NYMEX, was acquired by CME Group, Inc., the parent company of Chicago Mercantile Exchange, Inc. (“CME”), a registered DCO. CME² and NYMEX subsequently submitted letters dated July 28, 2009 and March 12, 2010 (collectively, the “Request”) asking the Commission to issue an order amending the April 2008 Clearing Order to permit (i) CME, NYMEX, and registered FCMs to hold in the Section 4d(a) account customer positions and funds related to a new cash-settled contract that would be listed on DME, specifically the DME Oman Crude Oil European Style Option³ and (ii)

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 cleared DME contracts pursuant to a clearing services agreement executed between NYMEX and DME and had outsourced the performance of such clearing services to CME.

³ CME and NYMEX also requested 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.

CME and NYMEX to establish margin levels for the cash- and physically-settled DME Oman Crude Oil contracts based on a one-day price movement in the contracts.

After determining that adding eligibility requirements for commingling of positions and associated funds relating to the DME Oman Crude Oil European Style Option and changing the required measurement period for margin rates covering price movements in the cash- and physically settled Oman Crude Oil contracts from a two-day period to a one-day period would give rise to benefits to CME, NYMEX, FCMs, market participants, and the public, and that such request would not undermine the CEA's objectives of protecting both customer funds and the integrity of the U.S. clearing system, the Commission approved the Request and the record in such matter (the "Submission") and issued an Order superseding the 2008 Clearing Order on September 16, 2011 (hereinafter, "the 2011 Clearing Order").

By letter dated May 4, 2012, NYMEX petitioned the Commission to vacate its order of registration as a DCO pursuant to Section 7 of the CEA and Commission Regulation 39.3(e), with an effective date of August 6, 2012. As a result, the 2011 Clearing Order is being transferred to CME and all references to NYMEX have been deleted or replaced with references to CME. Therefore, the September 2011 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, registered FCMs that are clearing members of CME, 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 (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 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 (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 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 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, shall notify NFA of such intention. NFA shall then inform CME of such FCM's intent.

(6) NFA shall, in consultation with CME, set notification thresholds for trading activity with respect to DME contracts carried by each FCM that has been identified pursuant to paragraph 5. CME 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, 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 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) Margin Requirements:

(a) CME shall apply the SPAN margining system and set clearing member margin requirements for the physically settled Oman Crude Oil futures contract and the cash settled Oman Crude Oil futures contract cleared through CME pursuant to this Order in an

amount no less than that consistent with a 99% confidence level that such margin rates would cover price movements in the contract over a one-day period.

(b) CME shall apply the SPAN margining system and set clearing member margin 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 shall apply the SPAN margining system and set clearing member margin 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 CME and DME, CME shall set margin requirements with respect to the DME Contracts such that the CME /DME member customer margin requirement will be at least 110% of the clearing member margin requirement, and the CME /DME non-member customer margin requirement will be at least 135% of the clearing member margin requirement.

(10) CME 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 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, CME 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 paragraphs (a) through (c) above.

(12) CME shall promptly inform the Commission of any material change in applicable DIFC law or regulations relevant to CME'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 default rules; and (c) any other change in applicable law or regulations affecting the conclusions contained in the Submission. CME 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 CME.

(13) CME 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 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 3rd day of August, 2012.

By the Commission

A handwritten signature in black ink, appearing to read "David A. Stawick". The signature is written in a cursive style with a large, sweeping initial "D".

David A. Stawick
Secretary of the Commission