U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5547

Division of Clearing and Risk

CFTC Letter No. 17-56
No-Action
November 1, 2017
Division of Clearing and Risk

Sunil Cutinho
Senior Managing Director and President
CME Clearing
550 W. Washington Blvd.
Chicago, IL 60661

Re: Request for No-Action Relief from the Written Acknowledgment Requirements in Commission Regulations 1.20(d), 1.26(b), and 22.5

Dear Mr. Cutinho:

This responds to your letter dated October 11, 2017 ("Letter"), to the Division of Clearing and Risk (the "Division") of the Commodity Futures Trading Commission (the "Commission"). In the Letter, the Clearing House of the Chicago Mercantile Exchange Inc. ("CME Clearing") requested that the Division confirm that it will not recommend that the Commission take enforcement action against CME Clearing in connection with deposits made for the purpose of accessing its liquidity facility, or any depository that holds funds in connection with the liquidity facility, for failing to obtain or provide the Commission with an executed copy of the form written acknowledgment letters provided in the appendices to Commission Regulations 1.20 and 1.26. In their place, CME Clearing proposes to use modified versions of these form letters that are tailored to the structure and mechanics of CME Clearing's liquidity facility.

Background

Commission regulations require a derivatives clearing organization ("DCO") to effectively measure, monitor, and manage its liquidity risks.[1] In the case of a systemically important DCO, such as CME Clearing, Commission regulations require the DCO to maintain sufficient liquid financial resources to enable it to meet its intraday, same-day, and multiday obligations to perform settlements with a high degree of confidence under a wide range of liquidity stress scenarios.[2]

[1] 17 C.F.R. § 33.11(e)(2)(i).
[2] 17 C.F.R. § 33.33(c).

Commission regulations further require a DCO to obtain an executed written acknowledgment letter from each depository with which the DCO has opened a futures customer funds account,[3] as well as from each money market mutual fund account that holds futures customer funds.[4] Although the requirement that DCOs and futures commission merchants ("FCMs") obtain acknowledgment letters is a longstanding Commission requirement, in 2013, the Commission adopted form acknowledgment letters "to reaffirm and to clarify the obligations that depositories incur when accepting customer funds."[5] The acknowledgment letters must be in the form provided in Appendix B to Regulations 1.20 and 1.26.[6] Regulation 22.5(a) extends the acknowledgment letter requirement to accounts holding cleared swaps customer funds by requiring use of a modified version of the written acknowledgment contained in Appendix B to Regulation 1.20.[7]

Statement of Facts

Based on the representations made by CME Clearing in the Letter, the Division understands the relevant facts as follows:

CME Clearing maintains a committed, secured multi-billion dollar liquidity facility ("Liquidity Facility") on which it may draw in the event of a clearing member's default, a liquidity constraint or default by a depository, or in other circumstances beyond CME Clearing's control that affect CME Clearing's operations. Although CME Clearing has never drawn on the Liquidity Facility, it relies upon this facility, among other things, to comply with its liquidity obligations under Regulations 39.11 and 39.33. Because the Liquidity Facility is secured, CME Clearing must pledge assets against the amount that it draws from the facility.[8]

The assets that CME Clearing pledges to the Liquidity Facility as security may be clearing member property previously pledged to CME Clearing as guarantee fund or performance bond for proprietary clearing member positions; or, in the alternative, may be customer property previously pledged to CME Clearing as performance bond for customer positions. In the former scenario, a security interest in and continuing lien on the pledged clearing member assets is granted to the collateral agent at the time of transfer for the benefit of the syndicate of banks that lend to the Liquidity Facility. This security interest and lien operates to secure the interests of the syndicate in the transferred collateral.

In the latter scenario, however, when the pledged funds are customer property, CME Clearing cannot grant the collateral agent a security interest in or lien on the transferred assets without potentially violating Regulation 1.20(g)(5)(ii), which expressly prohibits DCOs from granting a

[3] 17 C.F.R. § 1.20(d)(1).
[4] 17 C.F.R. § 1.26(b).
[5] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68506, 68538 (Nov. 14, 2013).
[6] 17 C.F.R. §§ 1.20(g)(4) and 1.26(b).
[7] 17 C.F.R. § 22.5(a).
[8] By way of illustration, CME Clearing might pledge U.S. Treasury securities to the facility to obtain needed U.S. dollars.

third party a security interest in or a lien on customer property for the purpose of securing an obligation of the DCO. To nevertheless allow for use of the Liquidity Facility, CME Clearing uses a "springing lien" mechanism following transfer of customer funds in which no security interest in or continuing lien on the account holding the customer funds is created or granted when the funds are initially transferred. Instead, the transferred assets are initially unencumbered, but at the precise moment that CME Clearing receives the proceeds of the draw from the Liquidity Facility, the security interest in and continuing lien on the account is created and granted to the collateral agent. At that point in time, the encumbered account no longer holds customer funds, as the customer funds at issue are not the asset that was transferred to access the Liquidity Facility, but are instead the cash proceeds of the Liquidity Facility received by CME Clearing.[9] Through this mechanism, there is no time in the course of the transaction during which customer funds are encumbered. CME Clearing represents that this collateral transformation process takes approximately 60 minutes for U.S. dollars and approximately one day for certain foreign currencies. As a result, assets transferred to the collateral agent ordinarily will remain customer property for only a short period of time.[10]

Acknowledgment Letter Requirements and Request for Relief

The form written acknowledgment letters required by Regulations 1.20, 1.26, and 22.5 do not contemplate the mechanics of CME Clearing's Liquidity Facility, in which an account holds assets that remain customer funds on only a temporary basis, and are thus subject to limitations on their use for only a portion of the time they are held in the relevant account. In this scenario, the depository cannot accept certain language contained in the form acknowledgment letters, including language in which the depository must broadly agree that the assets may not "be used . . . to secure or guarantee any obligations that [CME Clearing] might owe to [the depository]," be "used by [CME Clearing] to secure or obtain credit from [the depository]," or "be subject to any right of offset or lien for or on account of any indebtedness, obligations, or liabilities [CME Clearing] may now or in the future have owing to [the depository]."[11]

CME Clearing therefore has requested that the Division grant no-action relief permitting CME Clearing and each depository, money market fund, or money market fund affiliate that holds customer funds in conjunction with CME Clearing's Liquidity Facility (each, a "Liquidity Facility Depository") to use the written acknowledgment letters contained in Appendices 1 through 4 to this letter, including the account titling contained therein, rather than the form letters required by Regulations 1.20(g)(4), 1.26(b), and 22.5(a). These modified acknowledgement letters attempt to ensure that, consistent with Commission regulations, depositories provide the

[9] CME Clearing represents it will appropriately treat these proceeds as customer funds throughout the duration of the draw.

[10] CME Clearing relies upon CME Rule 817 to authorize its use of clearing member and customer collateral to access the Liquidity Facility. In connection with its discussions with Division staff related to the Letter, and as a condition to the grant of this no-action relief, CME Clearing updated Rule 817 and agreed to update related procedures to precisely describe the circumstances in which CME Clearing may use customer collateral to access the Liquidity Facility.

[11] *See* Appendix A and B to 17 C.F.R. § 1.20.

required acknowledgments covering the limited time period during which transferred assets are customer funds in a manner consistent with the characteristics of the Liquidity Facility.

CME Clearing's Proposed Changes to the Written Acknowledgment Letters

Specifically, CME Clearing has proposed to use acknowledgment letters containing the following changes to the form written acknowledgment letter included in Appendix B to Regulation 1.20:

- *Explanation of Changes to the First Paragraph* – CME Clearing proposes to add the word "Temporarily" to the first sentence and the word "Temporary" to the prescribed title of the Account.[12] These changes more accurately describe a situation in which depositories only will treat the account and any Funds therein as customer property on a temporary basis.

- *Explanation of Changes to the Second Paragraph* – CME Clearing proposes to add the word "initial" to explain that the initial purpose of the account is to deposit customer funds. This addition reinforces that the Funds only remain customer funds on a temporary basis, and that the account otherwise holds assets that are not customer funds.

  CME Clearing also proposes to insert the following language (the "limiting language") after the first sentence of the second paragraph: "Through operation of our liquidity facility, the Funds only remain customer funds on a temporary basis, specifically from the time at which the Funds are transferred to the Account(s) until the time that a lien attaches on such Funds (the "Non-Lien Period"). As a result, the terms and conditions of this letter only apply during the Non-Lien Period. After the Non-Lien Period, they will be used for the purpose of securing cash proceeds from our liquidity facility." The limiting language provides the precise time period during which the Funds are to be treated as customer funds subject to the terms and conditions of the modified acknowledgment letters.[13]

Similarly, CME Clearing has proposed to use acknowledgment letters containing the following changes to the form written acknowledgment letter included in Appendix B to Regulation 1.26:

- *Explanation of Changes to the First Paragraph* – CME Clearing proposes to delete the phrase "invest funds" from the first paragraph and replace it with the phrase "transfer shares." This change recognizes that under the contemplated

[12] This section of the letter uses defined (capitalized) terms consistent with the usage in the form acknowledgment letters in the appendices to Regulations 1.20 and 1.26.

[13] The Securities Account Control Agreement identifies the collateral agent for the Liquidity Facility as the "Secured Party." The "Notice of Exclusive Control" is a form of notice attached to the Securities Account Control Agreement that the Secured Party may issue to establish exclusive control over the assets in the Account.

mechanics, CME Clearing would transfer existing shares to the Account(s) rather than investing funds to purchase shares.

CME Clearing also proposes to add the word "Temporary" to the prescribed account title. This change more accurately describes a situation in which depositories only will treat the account and any shares therein as customer property on a temporary basis.

- *Explanation of Changes to the Second Paragraph* – In the first sentence, CME Clearing proposes to replace the phrase "funds, including any shares issued" with "shares." This change again clarifies that the account is receiving existing shares, which CME Clearing would have transferred from an existing customer omnibus account to the Account.

  CME Clearing also proposes to add the limiting language referenced above to provide the precise period during which the shares are to be treated as customer funds subject to the terms and conditions of the modified acknowledgment letters.

Discussion of Request for No-Action Relief

The form acknowledgment letters required by Regulations 1.20,1.26, and 22.5 are intended to ensure that depositories receiving customer funds acknowledge that they are in fact customer funds and handle the funds accordingly. Under CME Clearing's Liquidity Facility, depositories receive assets that are initially customer funds, but that lose that status when the springing lien mechanism executes. The form acknowledgment letters do not contemplate a scenario such as this in which deposited funds remain customer funds on only a temporary basis, and as a result, depositories holding accounts used in connection with the Liquidity Facility are unable to accept all of the terms contained in the form letters.

CME Clearing's proposal requires Liquidity Facility Depositories holding customer funds in connection with the Liquidity Facility to acknowledge and agree to abide by all of the requirements and conditions contained in the form letters appended to Regulations 1.20 and 1.26, but limit the applicability of the terms and conditions of the letter to the period when the assets on deposit retain their status as customer funds. This approach acknowledges the obligations that depositories incur when accepting customer funds, while also tailoring the letter to recognize the individual characteristics of Liquidity Facility Depository accounts that CME Clearing uses to manage its liquidity risks.

Grant of No-Action Relief

Based on the facts CME Clearing has presented and representations it has made, the Division will not recommend that the Commission take enforcement action against CME Clearing or Liquidity Facility Depositories executing and submitting to the Commission the modified written acknowledgment letters attached to this no-action letter in place of the form letters required by Regulations 1.20, 1.26, and 22.5.

The relief provided in this letter does not excuse CME Clearing from any other obligation under the CEA or Commission regulations.

Conclusion

The position taken in this letter concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations CME Clearing made to the Division, including the representations contained in its no-action request dated October 11, 2017, any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided in this letter, in its discretion.

Should you have any questions regarding this matter, please contact Michael Margolis (mmargolis@cftc.gov, 312-596-0576) or Theodore Polley (tpolley@cftc.gov, 312-596-0551).

Sincerely,

Brian A. Bussey
Director
Division of Clearing and Risk

Appendix 1
Amended written acknowledgment for a Clearing Member Securities Account that will hold futures customer segregated funds

[Date]

[Name and Address of Bank or Trust Company]

Re: Chicago Mercantile Exchange Inc.: Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account No. _____

Ladies and Gentlemen:

We refer to the Temporarily Segregated Account(s) which Chicago Mercantile Exchange Inc. ("we" or "our") have opened or will open with [Name of Bank or Trust Company] ("you" or "your") entitled:

Chicago Mercantile Exchange Inc. Futures Customer Omnibus Account Temporary CFTC Regulation 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act (Abbreviated as [abbreviation used in Bank's electronic system , if applicable]).

Account Number(s): [ ] (collectively, the "Account(s)").

"You acknowledge that we have opened or will open the above-referenced Account(s) for the initial purpose of depositing, as applicable, money, securities and other property (collectively the "Funds") of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulations, including Regulation 1.20, as amended. Through the operation of our liquidity facility, the Funds only remain customer funds on a temporary basis, specifically from the time at which the Funds are transferred to the Account(s) until the time that a lien attaches on such Funds (the "Non-Lien Period"). As a result, the terms and conditions of this letter only apply during the Non-Lien Period. After the Non-Lien Period, they are no longer customer funds, and will be used for the purpose of securing cash proceeds from our liquidity facility. You further acknowledge that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any

indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the

CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

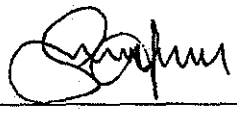
You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC). We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

Chicago Mercantile Exchange Inc.

By: 

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND AGREED:

[Bank]

By: _____

Print Name: _____

Title: _____

Date: _____

Contact Information: [Insert phone number and e-mail address]

Appendix 2
Amended written acknowledgment for a Clearing Member Securities Account that will hold cleared swaps customer property

[Date]

[Name and Address of Bank or Trust Company]

Re: Chicago Mercantile Exchange Inc.: Acknowledgment Letter for CFTC Regulation 22.5 Cleared Swaps Customer Account No. _____

Ladies and Gentlemen:

We refer to the Temporarily Segregated Account(s) which Chicago Mercantile Exchange Inc. ("we" or "our") have opened or will open with [Name of Bank or Trust Company] ("you" or "your") entitled:

Chicago Mercantile Exchange Inc. Cleared Swaps Customer Account, Temporary CFTC Part 22 Cleared Swaps Customer Account under Section 4d(f) of the Commodity Exchange Act (Abbreviated as [abbreviation used in Bank's electronic system, if applicable]).

Account Number(s): [ ] (collectively, the "Account(s)").

"You acknowledge that we have opened or will open the above-referenced Account(s) for the initial purpose of depositing, as applicable, money, securities and other property (collectively the "Funds") of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulations, including Regulation 22.5, as amended. Through the operation of our liquidity facility, the Funds only remain customer funds on a temporary basis, specifically from the time at which the Funds are transferred to the Account(s) until the time that a lien attaches on such Funds (the "Non-Lien Period"). As a result, the terms and conditions of this letter only apply during the Non-Lien Period. After the Non-Lien Period, they are no longer customer funds, and will be used for the purpose of securing cash proceeds from our liquidity facility. You further acknowledge that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and Part 22 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers,

lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with

such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

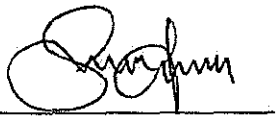
You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC). We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

Chicago Mercantile Exchange Inc.

By: 

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND AGREED:

[Bank]

By: _____

Print Name: _____

Title: _____

Date: _____

Contact Information: [Insert phone number and e-mail address]

Appendix 3

Amended written acknowledgment for a Clearing Member Securities Account that will hold futures customer segregated funds in the form of money market fund shares

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to transfer shares held by Chicago Mercantile Exchange Inc. ("we" or "our") on behalf of customers in shares of [Name of Money Market Mutual Fund] ("you" or "your") under account(s) entitled (or shares issued to):

Chicago Mercantile Exchange Inc. Futures Customer Omnibus Account, Temporary CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, ", Abbreviated as [short title reflected in the depository's electronic system]"]

Account Number(s): [ ]

(collectively, the "Account(s)").

You acknowledge that we are holding these shares and amounts accruing in connection therewith (collectively, the "Shares"), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulation 1.26, as amended. Through operation of our liquidity facility, the Shares only remain customer funds on a temporary basis, specifically from the time at which the Shares are transferred to the Account(s) until the time that a lien attaches on such Shares (the "Non-Lien Period"). As a result, the terms and conditions of this letter only apply during the Non-Lien Period. After the Non-Lien Period, the Shares will no longer be customer funds, and will be used for the purpose of securing cash proceeds from our liquidity facility. You further acknowledge that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the

Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable

by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

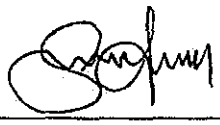
(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

Chicago Mercantile Exchange Inc.

By: 

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

By: _____

Print Name: _____

Title: _____

Date: _____

Appendix 4
Amended written acknowledgment for a Clearing Member Securities Account that will hold cleared swaps customer property in the form of money market fund shares

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to transfer shares held by Chicago Mercantile Exchange Inc. ("we" or "our") on behalf of customers in shares of [Name of Money Market Mutual Fund] ("you" or "your") under account(s) entitled (or shares issued to):

Chicago Mercantile Exchange Inc. Futures Customer Omnibus Account, Temporary CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Section 4d(f) of the Commodity Exchange Act [and, if applicable, ", Abbreviated as [short title reflected in the depository's electronic system]"]

Account Number(s): [ ]

(collectively, the "Account(s)").

You acknowledge that we are holding these shares and amounts accruing in connection therewith (collectively, the "Shares"), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulation 1.26, as amended. Through operation of our liquidity facility, the Shares only remain customer funds on a temporary basis, specifically from the time at which the Shares are transferred to the Account(s) until the time that a lien attaches on such Shares (the "Non-Lien Period"). As a result, the terms and conditions of this letter only apply during the Non-Lien Period. After the Non-Lien Period, the Shares will no longer be customer funds, and will be used for the purpose of securing cash proceeds from our liquidity facility. You further acknowledge that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and part 22 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

Chicago Mercantile Exchange Inc.

By: 

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

By: _____

Print Name: _____

Title: _____

Date: _____