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July 28, 2011

Douglas Scheidt, Esq.
Associate Director
Division of Investment Management
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Applicability of Rule 17f-6 to Cleared IRS Transactions

Dear Mr. Scheidt:

Pursuant to our recent telephone conversations with the Division of Investment Management (the "Division") staff, we are submitting this letter to request further temporary no-action assurance that the Division staff will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 17(f) of the Investment Company Act of 1940 (the "1940 Act") against any registered Investment Company (a "Fund") if the Fund or its custodian places and maintains cash, securities and/or other property ("assets") in the custody of the Chicago Mercantile Exchange ("CME") or a futures commission merchant ("FCM") registered with the Commodity Futures Trading Commission ("CFTC") that is a CME clearing member (a "CME Clearing Member") for purposes of meeting CME's or a CME Clearing Member's margin requirements for certain interest rate swap contracts ("IRS") that are cleared by CME. We note that the Division staff has previously taken this position in a letter dated March 24, 2011 (the "Current IRS No-Action Letter").[1]

The CFTC recently issued temporary relief to exempt swap market participants from various requirements under the Commodity Exchange Act, as amended (the "CEA") that would otherwise apply to certain swap transactions as a result of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[2] generally becoming effective on July 16, 2011 (the "Effective Date Order").[3] The Dodd Frank Act and the Effective Date Order reflect an underlying policy to facilitate the central clearing of IRS transactions to reduce systemic risk in the global financial markets, while also minimizing unnecessary disruption and costs to the markets. Consistent with the CFTC's issuance of the Effective Date Order, we are requesting that the Division staff issue further no-action assurances for IRS transactions

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1 See CME Group, SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) ¶ 76,712 (March 24, 2011).

2 The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

3 See 76 Fed. Reg. 35372 (June 17, 2011).

as described above, until December 31, 2011.

Section 17(f) of the 1940 Act and the rules thereunder govern the safekeeping of Fund assets, and generally provide that a Fund must place and maintain its securities and similar instruments only with certain qualified custodians. Rule 17f-6 under the 1940 Act permits a Fund to place and maintain assets with an FCM that is registered under the CEA and that is not affiliated with the Fund in amounts necessary to effect the Fund's transactions in exchange-traded futures contracts and commodity options, subject to certain conditions. Among other things, the FCM must comply with the segregation requirements of Section 4d of the CEA and the rules thereunder or, if applicable, the secured amount requirements of CFTC Rule 30.7. Rule 17f-6 was intended to provide Funds with the ability to effect commodity trades in the same manner as other market participants under conditions designed to provide custodial protections for Fund assets. By its terms, Rule 17f-6 does not permit Funds to place and maintain assets with an FCM to effect IRS transactions.

CFTC regulations and CME rules require any CME Clearing Member who clears IRS transactions for customers to be registered as an FCM and to ensure that customer funds and property are treated separately from its own proprietary positions and those of its affiliates. In this regard, the CFTC has adopted amendments to its Part 190 Bankruptcy Rules to create a separate "cleared over-the-counter ("OTC") derivatives" account class (the "OTC Derivatives Account Class") that would apply in the event of the bankruptcy of an FCM which became effective May 6, 2010.[4] At present, the CFTC is relying upon Derivatives Clearing Organizations ("DCOs") such as CME to adopt rules specifying the substantive requirements for the treatment of cleared OTC derivatives in the OTC Derivatives Account Class prior to any bankruptcy. CME rules for the OTC Derivatives Account Class mirror the provisions of Section 4d of the CEA and the CFTC regulations with respect to the futures account class (*i.e.*, 17 C.F.R. §§ 1.20, et seq.), including but not limited to the separate treatment of customer positions and property from the FCM's positions and property.[5] CME's rules for the OTC Derivatives Account Class became effective on October 4, 2010. As a result, all funds and property received from customers in connection with purchasing or holding IRS positions are treated as part of the OTC Derivatives Account Class.

The CFTC recently proposed requirements which would be applicable to FCMs

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[4] See 75 Fed. Reg. 17297 (April 6, 2010) (adopting final rules establishing a sixth and separate account class applicable for cleared OTC derivatives only); 74 Fed. Reg. 40794 (August 13, 2009) (proposing rules to establish a sixth and separate account class applicable for cleared OTC derivatives only).

[5] See Letter from Lisa A. Dunsky, Director and Associate General Counsel, CME Group, to David Stawick, Secretary to the CFTC, dated September 30, 2010 (submitting amendments to CME's rules to implement the substantive requirements for the treatment of cleared OTC derivatives in the OTC Derivatives Account Class prior to any FCM bankruptcy).

and DCOs regarding the treatment of cleared swaps customer contracts (and related collateral) and conforming amendments to the commodity broker bankruptcy provisions.[6] CME and CME Clearing Members will comply with these requirements upon the effectiveness of final rules.

The timetable for the temporary no-action assurances previously provided to CME by the Division staff was based on the requirement that the CFTC promulgate final rules implementing the Dodd-Frank Act by July 16, 2011 with respect to the centralized clearing of swaps, including IRS transactions. As the Effective Date Order makes clear, however, a substantial number of requirements of the CEA did not become effective by July 16, 2011.

Each CME Clearing Member who holds assets for an unaffiliated Fund customer wishing to clear IRS on CME will address each of the requirements of Rule 17f-6, as follows:

The manner in which the CME Clearing Member will maintain such a Fund's assets will be governed by a written contract between the Fund and the CME Clearing Member, which provides that:

- the CME Clearing Member will comply with the requirements relating to the separate treatment of customer funds and property which specify the substantive requirements for the treatment of cleared OTC derivatives in the OTC derivatives account class prior to any bankruptcy;[7]

- the CME Clearing Member may place and maintain the Fund's assets as appropriate to effect the Fund's cleared IRS transactions through CME and in accordance with the CEA and the CFTC's rules thereunder, and will obtain an acknowledgement, as required under CFTC Rule 1.20(a), as applicable, that such assets are held on behalf of the CME Clearing Member's customers in accordance with the provisions of the CEA;[8]

- the CME Clearing Member will promptly furnish copies of or extracts from its records or such other information pertaining to the Fund's assets as the Commission through its employees or agents may request;[9]

- any gains on the Fund's transactions, other than de minimis amounts,

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6 See 76 Fed. Reg. 33818 (June 9, 2011).

7 See Rule 17f-6(a)(1)(i).

8 See Rule 17f-6(a)(1)(ii) under the 1940 Act. Under CFTC Rule 1.20(a), an acknowledgement need not be obtained from a DCO such as the CME that has adopted and submitted to the CFTC rules that provide for the segregation as customer funds, in accordance with relevant provisions of the CEA and the rules thereunder, of all funds held on behalf of customers.

9 See Rule 17f-6(a)(1)(iii) under the 1940 Act.

may be maintained with the CME Clearing Member only until the next business day following receipt;[10] and

- the Fund has the ability to withdraw its assets from the CME Clearing Member as soon as reasonably practicable if the custodial arrangement no longer meets the requirements of Rule 17f-6, as applicable.[11]

Based on the foregoing, we believe that it is appropriate for the Division staff to flexibly apply the custody requirements of the 1940 Act in this instance, which would be consistent with the approach taken by the Commission and the Division staff in applying the safe custody requirements of Section 17(f) of the 1940 Act as reflected in the Current IRS No-Action Letter, as well as the policies articulated in the Effective Date Order.

If you or your staff has any questions or need additional detail, please do not hesitate to contact the undersigned at (212) 299-2200.

Sincerely,

Christopher K. Bowen
Managing Director
Chief Regulatory Counsel

[10] See Rule 17f-6(a)(2) under the 1940 Act.

[11] See Rule 17f-6(a)(3) under the 1940 Act.