

## MARKET REGULATION ADVISORY NOTICE

---

Exchange	<b>NYMEX &amp; COMEX</b>
Subject	<b>Recordation and Retention of Records</b>
Rule References	<b>NYMEX Rule 6.01 &amp; COMEX Rule 104.03</b>
Advisory Date	<b>January 30, 2009</b>
Advisory Number	<b>NYMEX &amp; COMEX RA0901-4 – UPDATED</b>
Effective Date	<b>February 2, 2009</b>

The Market Regulation Department is updating NYMEX & COMEX Market Regulation Advisory Notice RA0901-4, which was originally issued on January 26, concerning Monday's adoption of NYMEX Rule 6.01 ("Retention of Records and Trading Floor Telephone Calls") and COMEX Rule 104.03 ("Retention of Records and Trading Floor Telephone Calls"). This notice supersedes the January 26<sup>th</sup> Advisory.

In December 2008, Notice to Members No. 649 advised that the rules would become effective on February 2, 2009, and that further modifications to the rules would be communicated prior to their implementation. The modified rules continue to require the recording and archiving of conversations over trading floor telephone lines. **Please note that all records required to be maintained pursuant to CFTC Regulation 1.35 must be kept in permanent form for a minimum of five years, including any electronic communications that fall within the scope of CFTC Regulation 1.35.**

Based on questions from the industry about the duty to retain certain electronic communications under CFTC Regulation 1.35, Market Regulation staff is presently engaged in discussions with staff at the CFTC regarding Regulation 1.35 as it relates to retention of electronic communications. A subsequent Market Regulation Advisory Notice will be issued as soon as the issue has been clarified.

The texts of revised NYMEX Rule 6.01 and COMEX Rule 104.03 are identical. These rules will become effective on February 2, at which time current NYMEX/COMEX Rule 450 ("Reports and Records") will be deleted. The text of the rules appears below.

### **NYMEX Rule 6.01/COMEX Rule 104.03 – ("Retention of Records and Trading Floor Telephone Calls")**

(A) Each Member, Member Firm and employees of the foregoing must keep full, complete and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, options, and cash transactions in accordance with CFTC Regulation 1.35. Such records must be retained for a minimum of five years in permanent form, and shall at all times be open to the inspection of Exchange Staff, or any representative of the Commodity Futures Trading Commission or the United States Department of Justice.

(B) Each Member, Member Firm and employees of the foregoing shall enter into a trading floor telephone services Subscriber agreement with the Exchange under which the Subscriber agrees to pay the Exchange to record and archive all communications conveyed via Exchange maintained and authorized trading floor telephone lines. Pursuant to the agreement, the Exchange will record and archive phone

calls for a minimum of ten business days from the date of the call, and the Exchange is permitted to inspect and allow the inspection of the archived calls by any representative of the Commodity Futures Trading Commission or the United States Department of Justice. Repeated failures to pay a monthly trading floor telephone services fee may result in the disruption of a Subscriber's trading floor telephone services.

Questions regarding this Advisory Notice should be directed to the following individuals in Market Regulation:

Tom LaSala, Managing Director & Chief Regulatory Officer	212.299.2897
--	--------------

Nancy Minett, Director	212.299.2940
------------------------	--------------