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OFFICE OF THE SECRETARIAT

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July 29, 2009

Mr. David Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: NYMEX & COMEX Market Regulation Advisory Notice RA0906-4  
NYMEX Submission No. 09.145**

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") hereby notifies the Commodity Futures Trading Commission that it will issue NYMEX & COMEX Market Regulation Advisory Notice RA0906-4 on July 30, 2009, informing the NYMEX and COMEX membership about the upcoming adoption on new Rule 515 ("Registration and Identification of Broker Associations") resulting from the harmonization of NYMEX and COMEX Rule 515 with CME Rule 515. Information on the changes to trade practice rules taking place on August 17, 2009, based on the harmonization of NYMEX and COMEX rules with those of CME and CBOT, including the changes to Rule 515, is included in prior NYMEX Submission #09.141 and CME/CBOT Submission #09-137 from July 28.

A copy of the Advisory Notice is included with this submission.

NYMEX certifies that the Advisory Notice complies with the Commodity Exchange Act and regulations thereunder.

If you have any questions regarding the Advisory Notice, please contact Robert Sniegowski, Market Regulation, at 312.341.5991 or me at 312.648.5422. Please reference NYMEX Submission No. 09.145 in any related correspondence.

Sincerely,

/s/ Stephen M. Szarmack  
Director and Associate General Counsel

## MARKET REGULATION ADVISORY NOTICE

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Exchange	<b>NYMEX &amp; COMEX</b>
Subject	<b>Registration and Identification of Broker Associations</b>
Rule References	<b>Rule 515</b>
Advisory Date	<b>July 30, 2009</b>
Advisory Number	<b>NYMEX &amp; COMEX RA0906-4</b>
Effective Date	<b>August 17, 2009</b>

### **NYMEX AND COMEX ADOPT NEW BROKER ASSOCIATION RULE**

Effective on August 17, 2009, NYMEX and COMEX will adopt new Rule 515 ("Registration and Identification of Broker Associations") in connection with the harmonization of NYMEX and COMEX trade practice related rules with the rules of CME. As a result of the harmonization, CME, NYMEX and COMEX will have a completely harmonized broker association rule. The new rule will differ in several important respects from current broker association requirements. The complete text of Rule 515 begins on page 3 of this Advisory Notice.

#### **Elimination of Billing Entities & Broker Association Registration Categories**

**NYMEX and COMEX will eliminate the requirement that members and member firms operating brokerage businesses on the trading floor register as Billing Entities with the Exchange.** Rule 515 requires that members on the trading floor involved in floor brokerage activity register as Revenue Sharing Associations or Non-Revenue Sharing Associations. For purposes of Rule 515, floor brokerage activity is defined as the execution or pre-execution handling of orders on the trading floor.

Revenue Sharing Associations include individuals who share profits or losses associated with brokerage or error account activity or otherwise have an employer-employee relationship relating to floor brokerage activity. Non-Revenue Sharing Associations include individuals who share 1) a deck of orders and/or 2) employee salary expenses. **Based on the broker association registration requirements, the majority of existing Billing Entities will need to become registered as broker associations.**

#### **Mandatory Re-Registration of Broker Associations**

**As a result of the adoption of the new rule, all NYMEX and COMEX broker associations and all Billing Entities meeting the definition of a broker association will be required to complete new broker association registration paperwork identifying the members and investors in the broker association. The new paperwork must be completed and returned to the Market Regulation Department no later than Monday, August 31. Broker association registration forms may be obtained in Market Regulation's offices on the 14<sup>th</sup> Floor or by contacting Alben Weinstein at 212.299.2910. The principals or spokespersons of broker associations are responsible for ensuring that the new registration process is completed by August 31.**

## Changes to Non-Member Employee Rules

Based on NYMEX and COMEX adopting new Rule 501 ("Employees of Members"), nonmembers with floor access privileges who act as employees of members and member firms will not be allowed to have any ownership or other financial interest in a broker association. Pursuant to Rule 501, nonmember employees may be compensated only via a salary and normal bonus. Nonmember employees are expressly prohibited from soliciting customers, benefitting from the production of orders and trading or having any interest in an account trading in any NYMEX or COMEX products.

**As a result of this change, nonmember employees with floor access privileges who currently have any ownership or other financial interest in a Billing Entity or broker association must take one of the following actions prior to November 16, 2009: 1) divest themselves of any financial or ownership interest in a Billing Entity or broker association, 2) relinquish floor access privileges, or 3) obtain a membership and register in the broker association.**

### Principal Requirements

All Revenue Sharing Associations with the exception of Revenue Sharing Associations owned by clearing member firms will be required to register each individual who has formal and or de factor control over the affairs of the association or a ten percent or greater ownership interest in a Revenue Sharing Association as a principal of the association.

Individuals that meet the definition of a principal who are regularly involved in floor brokerage must have trading privileges in the membership division required for access to the products handled by the members of the association. These principals may either be lessees or owners of the membership.

Principals not involved in floor brokerage activity must own a membership in the membership division required for access to the products handled by the members of the association unless the association is owned by a member firm and the member firm owns a membership in that division.

Principals must diligently supervise the association's members and any nonmember employees and may be held directly liable for rule violations by such individuals. Additionally, each principal is jointly liable for the payment of any fines assessed against another principal, registrant or employee provided that violation occurred while that person was functioning in his capacity with the association.

### Spokesperson Requirements

Non-Revenue Sharing Associations and Revenue Sharing Associations owned by clearing member firms will be required to register a spokesperson. The spokesperson will be responsible for ensuring that the association is appropriately registered and that changes to the association are communicated to the Market Regulation Department within two business days of the changes.

### Prohibition on Sharing of Personal Trading Profits and Losses

Members of a broker association will be expressly prohibited from sharing profits and losses associated with their personal trading profits by direct or indirect means. The only exception to this prohibition is that broker association members may share profits and losses related to brokerage errors. New Rule 516 ("Error Accounts") requires all brokers to maintain a designated error account with their qualifying clearing firm into which they place their brokerage errors.

### Elimination of Broker Association Trading Restrictions

NYMEX and COMEX will eliminate the current prohibition on members of a broker association from trading or executing orders opposite other members of the association. Elimination of this prohibition

**in no way relieves the requirement that all pit transactions be executed openly and competitively without prearrangement.**

While Section E. of new Rule 515 provides for the Exchange to impose various trading restrictions on members of a broker association and sets forth various penalties, no such restrictions will be imposed on members of NYMEX and COMEX broker associations in connection with the adoption of the new rule.

**Market Regulation Department Contacts**

Questions regarding this advisory may be directed to one of the following individuals in the Market Regulation Department:

Alben Weinstein, Lead Investigator, 212.299.2910  
Peter Leider, Senior Investigator, 212.299.2868  
Russell Cloughen, Associate Director Investigations, 212.299.2880

**Text of Revised NYMEX and COMEX Rule 515**

**REGISTRATION AND IDENTIFICATION OF BROKER ASSOCIATIONS**

**515.A. Definitions**

1. Floor Brokerage Activity - The execution or pre-execution handling of orders on the trading floor.
2. Broker Association - A broker association shall include the following associations between two or more members with trading floor access privileges, at least one of whom is engaged in floor brokerage activity:
  - a. Revenue Sharing Association: Associations between members who:
    - i. share profits or losses associated with their brokerage and/or error account activity; and/or
    - ii. have an employer and employee relationship which relates to floor brokerage activity;
  - b. Non-Revenue Sharing Association: Associations between members who:
    - i. regularly share a deck of orders; and/or
    - ii. share employee salary expenses.
  - c. Any other group or combination deemed by the Exchange to be a broker association.
3. Principal of a Revenue Sharing Association – Each individual who has formal or de facto control over the affairs of, or has a ten percent or greater ownership interest in, a Revenue Sharing Association not owned by a clearing member firm.
4. Spokesperson of a Non-Revenue Sharing Association and Revenue Sharing Associations owned by a clearing member firm – An individual authorized to represent a Non-Revenue Sharing Association or Clearing Firm owned Revenue Sharing Association in connection with its registration obligations set forth in Section B.
5. Investor – An individual who has a direct beneficial interest in a Revenue Sharing Association but is not a principal as defined in A.3. above.

**515.B. Registration Requirements**

1. A member of a broker association shall not handle or execute an order unless that association has registered with the Exchange.
2. Members or Member Firms must have majority ownership interest in any broker association.
3. Principals involved in floor brokerage activity must have trading privileges in the membership division required for access to the products handled by the members of the association. Principals who are not involved in floor brokerage activity must own a membership in the membership division required for access to the products handled by the members of the association. Notwithstanding the above, principals not regularly involved in floor brokerage activity may hold a membership in any division in circumstances where the association is owned by a Member Firm and such Member Firm owns a membership in the membership division required for access to the products handled by the members of the association.
4. No registered broker association or member thereof shall permit a party to have any direct or indirect profit or ownership interest in a broker association unless such party is registered in the association in accordance with this rule.

5. Registration shall be accomplished by filing the appropriate registration forms with the Market Regulation Department.
6. It shall be the responsibility of the broker association and its principals or spokespersons to ensure that the association is properly registered. Any additions, deletions or other changes to the information already reported must be provided to the Market Regulation Department within two business days after the event giving rise to such changes.
7. The Exchange may request any additional information from a broker association as deemed appropriate.

**515.C. Prohibition on Sharing of Personal Trading Profits**

Registrants in a broker association may not share profits or losses associated with their personal trading activity by direct or indirect means, except for profits and losses related to brokerage errors.

**515.D. Supervision**

Each principal of a Revenue Sharing Association must diligently supervise the association's member registrants and non-member employees and may be held directly liable for violations of any rule of the Exchange by such registrants and employees. Regardless of whether the principal is held responsible for the act or acts constituting the violation, each principal is jointly liable for the payment of any fines assessed against another principal, registrant or employee of the association provided that the violation occurred while that person was functioning in his capacity with the association.

**515.E. Trading Restrictions**

The Exchange may impose limits on the percentage of personal trading and/or brokerage volume that members of a broker association may execute with one another. Violations of such restrictions will result in summary action according to the following schedule on a rolling 24 month period:

First Occurrence	Letter of Warning
Second Occurrence	\$1,000 fine
Third Occurrence	\$5,000 fine
Subsequent Occurrence	\$10,000 fine

The Exchange may restrict a member of a Revenue Sharing Association from trading for any account such member owns, controls or in which such member has a financial interest opposite other members of the association executing orders. Violation of such restrictions will result in summary action according to the following schedule on a rolling 24 month period:

First Occurrence	Letter of Warning
Second Occurrence	\$500 fine
Third Occurrence	\$1,000 fine
Subsequent Occurrence	\$5,000 fine

Actions taken pursuant to this section are final and may not be appealed; however members will have 15 days following receipt of notification of the action to present evidence to the Market Regulation Department that administrative, clerical or other errors caused the apparent rule violation.

Notwithstanding the provisions of this section, the Market Regulation Department may, at any time, refer matters that it deems egregious to the Probable Cause Committee.