



Summary & Highlight Statement

February 2, 2004

The Honorable Ted Stevens
Chairman
Committee on Appropriations
United States Senate
S-128 Capitol Building
Washington, D.C. 20510-6025

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
United States House of Representatives
S-218 Capitol Building
Washington, D.C. 20515-6015

Dear Chairman Stevens and Chairman Young:

I am pleased to transmit to you the Commodity Futures Trading Commission's Budget & Performance Estimate for FY 2005 and FY 2003 Annual Performance Report. This budget requests an appropriation of \$95,327,000 and 505 staff-years, an increase of approximately \$5,426,000 and 8 staff-years over the FY 2004 Appropriation of \$89,901,433.¹

Compared to the FY 2004 Appropriation, key changes in the FY 2005 Budget are:

\$+1.0 million to provide for salary and expenses of 8 full-time equivalents (FTEs);

\$+2.3 million to provide for compensation and benefits increases;

\$+1.1 million to provide for increases in costs for lease of office space, information technology modernization, and all other services;

\$+1.0 million to provide funding for Enforcement programs support cost to aggressively pursue enforcement action against those who would threaten the integrity of the markets.

Congress created the Commodity Futures Trading Commission (the CFTC or the Commission) in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The Commission's mandate was renewed and/or expanded in 1978, 1982, 1986, 1992, and 1995. In December 2000, the Commission was reauthorized by Congress and the President through fiscal year (FY) 2005 with the passage of the Commodity Futures Modernization Act of 2000 (CFMA).

¹ Reflects net appropriation: (\$90,435,000 less .59% rescission = \$89,901,433)

FY 2005 President's Budget & Performance Plan

The CFMA transformed the Commission from a front-line regulatory agency to an oversight regulator. Although the Commission's approach to regulation has consequently changed, its mission remains the same. The CFTC continues to be responsible for fostering the economic utility of futures markets by encouraging their competitiveness and efficiency, ensuring their integrity, and protecting market participants against manipulation, abusive trading practices, and fraud. Through effective oversight regulation, the CFTC enables the commodity futures markets better to serve their vital function in the Nation's economy—providing a mechanism for price discovery and a means of offsetting price risks.

In accordance with the Commodity Exchange Act (CEA), copies of this submission are also being transmitted to the Senate and House Appropriations Committees, the Senate Committee on Agriculture, Nutrition, and Forestry, and the House Committee on Agriculture.

I would be happy to meet with you to discuss this budget request and to answer any questions you may have about this request.

Sincerely yours,

James E. Newsome
Chairman

THE FY 2005 PRESIDENT'S BUDGET & PERFORMANCE PLAN

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A Note on the Format:

This document is comprised of two sections: Part I is the FY 2005 President’s Budget & Performance Plan, which combines OMB’s newly prescribed format for a “performance budget” as well as the traditional program-based budget structure of the Commission’s request for FY 2005, pages 1-99; Part II is the FY 2003 Annual Performance Report, which summarizes the Commission’s performance as compared to the annual goals set forth in the CFTC Strategic Plan, see pages 100-164. The performance budget portion of Part I reflects the incorporation of the former Annual Performance Plan, which distributes by Strategic Goal and Outcome the funds requested for FY 2005 and disaggregates resources by program.

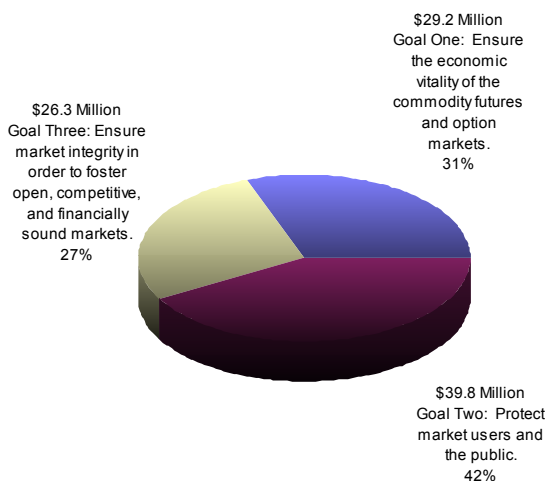
Questions or comments about this document can be directed to: Emory H. Beville, Director, Office of Financial Management at 202-418-5187, via e-mail at ebevill@CFTC.gov or Deidre King, Budget Officer at 202-418-5189, via e-mail at d_king@CFTC.gov.

Overview of Planned Outcomes by Strategic Goal

Introduction

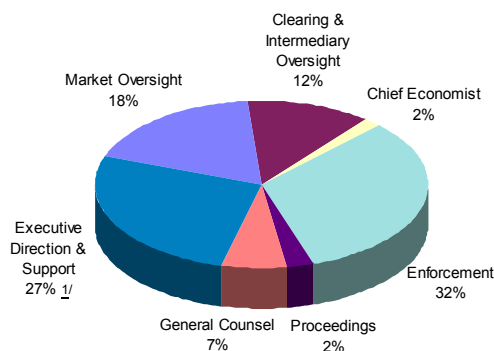
The futures industry is experiencing a period of tremendous growth. Volume has increased almost 50 percent over the last two years and topped one billion contracts traded for the first time in history in 2002. The Commission's mission in the futures industry is to foster competitive and financially sound markets, to protect market users and the public from fraud, manipulation and abusive trading practices and to foster open, competitive, and financially sound markets.

The Commission requests \$95.3 million in FY 2005 to fund its efforts to reach its three strategic goals:



Budget & Performance Estimate by Strategic Goal

To achieve the planned outcomes for FY 2005, the Commission will allocate the \$95.3 million request among six programs: Enforcement; Clearing & Intermediary Oversight; Market Oversight; Chief Economist; Proceedings; and General Counsel. There is one support program: Executive Direction².



\$95.3 Million Budget Estimate by Program

² Includes information technology in support of all programs.

FY 2005 Outcomes by Goal

Goal One: Ensuring Economic Vitality of Commodity Futures & Option Markets

In seeking to fulfill its mission, a substantial portion of the Commission's resources are devoted to daily oversight of registered exchanges, intermediaries, and derivatives clearing organizations. In 1974, when the Commission was founded, the vast majority of futures trading took place in the agricultural sector. These contracts gave farmers, ranchers, distributors, and end-users of everything from corn to cattle an efficient and effective set of tools to hedge against price volatility.

Over the years, however, the futures industry has experienced increased complexity. While farmers and ranchers continue to use the futures markets as actively as ever to effectively lock in prices for their crops and livestock months before they come to market, new and highly complex financial contracts, based on such things as interest rates, foreign currencies, Treasury bonds, and stock market indices, have now far outgrown agricultural contracts in trading volume. Latest statistics show that approximately five percent of on-exchange derivatives activity is in the agricultural sector, while financial derivatives make up approximately 86 percent, and other contracts, such as those on metals and energy products, make up about nine percent.

In FY 2005, the Commission requests \$29.2 million to fund its efforts to reach the following outcomes of Strategic Goal One:

- Markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity—with an FY 2005 performance goal of zero price manipulations of other disruptive activities that would cause loss of confidence or negatively affect price discovery or risk shifting.
- Markets that are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality—with an FY 2005 performance goal of improving effectiveness and efficiency of market surveillance.

Goal Two: Protecting Market Users and the Public

While our country reaps the rewards of an explosive futures industry, never has the risk of fraud and manipulation been higher for market users and the public. The trend toward electronic trading platforms as well as the expanding complexity of trading instruments has challenged the Commission to reconfigure its ability to identify, investigate, and prosecute all parties involved in violating applicable laws and regulations. Typically, the Commission has over 100 investigations open at any particular time. If evidence of criminal activity is found, matters can and will be referred to state or Federal authorities for prosecution under criminal statutes.

Over the years, the Commission has prosecuted a number of cases involving manipulations or attempted manipulations of commodity prices. The Sumitomo copper case and the Hunt brothers silver case are well-known examples. A variety of administrative sanctions are available to the Commission, such as bans on futures trading, civil monetary penalties, and restitution orders. The Commission may also seek Federal court injunctions, asset freezes, and orders to disgorge ill-gotten gains.

In FY 2005, the Commission requests \$39.8 million to fund its efforts to reach the following outcomes of Strategic Goal Two:

- Violations of Federal commodities laws are detected and prevented—with an FY 2005 performance goal of increasing the probability of violators being detected and sanctioned.
- Commodity professionals meet high standards—with an FY 2005 performance goal of zero unregistered, untested, or unlicensed commodity professionals.
- Customer complaints against persons or firms registered under the Act are handled effectively and expeditiously—with an FY 2005 performance goal of resolving customer complaints within one year from the date filed and resolving appeals within six months.

Goal Three: Ensuring Market Integrity in Order to Foster Open, Competitive, and Financially Sound Markets

The Commission also focuses on issues of market integrity, seeking to protect the: economic integrity of the markets so that they may operate free from manipulation; financial integrity of the markets so that the insolvency of a single participant does not become a systemic problem affecting other market participants; and operational integrity of the markets so that transactions are executed fairly and that proper disclosures are made to existing and prospective customers.

In FY 2005, the Commission requests \$26.3 million to fund its efforts to reach the following outcomes of Strategic Goal Three:

- Clearing organizations and firms holding customer funds have sound financial practices—with FY 2005 performance goals of zero loss of customer funds as a result of firms' failure to adhere to regulations and zero customers prevented from transferring funds from failing firms to sound firms.
- Commodity futures and option markets are effectively self-regulated—with an FY 2005 performance goal of zero loss of funds resulting from failure of self-regulated organizations to ensure compliance with their rules.
- Markets are free of trade practice abuses.
- Regulatory environment is flexible and responsive to evolving market conditions.

Summary of CFTC Mission Statement, Strategic Goals & Outcomes

<p>Mission Statement</p> <p><i>The mission of the CFTC is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity futures and options, and to foster open, competitive and financially sound commodity futures and option markets.</i></p>
<p>Goal One</p> <p><i>Protect the economic functions of the commodity futures and option markets.</i></p>
Outcomes
1. Markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.
2. Markets that are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality.
<p>Goal Two</p> <p><i>Protect market users and the public.</i></p>
Outcomes
1. Violations of Federal commodities laws are detected and prevented.
2. Commodities professionals meet high standards.
3. Customer complaints against persons or firms falling within the jurisdiction of the Commodity Exchange Act are handled effectively and expeditiously.
<p>Goal Three</p> <p><i>Ensure market integrity in order to foster open, competitive, and financially sound markets.</i></p>
Outcomes
1. Clearing organizations and firms holding customer funds have sound financial practices.
2. Commodity futures and option markets are effectively self-regulated.
3. Markets are free of trade practice abuses.
4. Regulatory environment is responsive to evolving market conditions.

Progress Toward Outcomes in the Past Year

Progress in Implementing the CFMA

In December 2000, Congress passed the CFMA, which: 1) repealed the ban on single-stock futures and directed the Commission and the Securities and Exchange Commission (SEC) to implement a joint regulatory framework for futures on individual securities and narrow-based stock indices (security futures products); 2) codified the principal provisions of prior regulatory reforms adopted by the Commission; 3) brought legal certainty to trading in over-the-counter derivatives; 4) clarified the Commission's jurisdiction over off-exchange trading in foreign currency (or FOREX) futures and options; and 5) gave the Commission explicit authority to regulate derivatives clearing organizations (DCOs). The CFMA also reauthorized the Commission through the end of FY 2005.

Following passage of the landmark legislation, Commission staff began working to implement the CFMA by promulgating rules and conducting various studies (both independently and in coordination with other members of the President's Working Group on Financial Markets (PWG)) mandated by the CFMA, and the Commission worked closely with the SEC and the Board of Governors of the Federal Reserve System (FRB or the Board) to open the market to security futures products. During FY 2001 and FY 2002, the Commission proceeded to implement the requirements of the CFMA with proposed and final rules published in the *Federal Register*.

Implementation of the CFMA continued in FY 2003. Below is a brief summary of Commission actions taken during FY 2003.

- Annual Report to FRB. On December 30, 2002, the Commission and the SEC submitted a joint report to the FRB concerning the exercise of authority delegated by the Board to the Commission and the SEC to prescribe customer margin rules for security futures products. In its delegation letter of March 6, 2001, the Board requested that the Commission and the SEC submit such an annual report.
- Memorandum of Understanding with the SEC. The Commission and the SEC worked throughout FY 2003 to develop a memorandum of understanding (MOU) to clarify the ability of each agency to conduct inspections of notice-registered intermediaries, exchanges, and limited-purpose national securities associations.

Pay Parity

The Commission's Executive Management Council (EMC) devoted significant time each week for six months to the project of implementing the Commission's initial steps toward pay parity with other Federal financial regulatory agencies, under authority of Section 10702 of Public Law 107-171, the Farm Security and Rural Investment Act of 2002. With aid from a firm expert in the field of compensation and benefits, identified through the competitive bidding process, the EMC assembled the background knowledge required in order to develop revised Commission programs that would meet the central requirement of this new legislative authority—comparability to practices at agencies referred to in Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In order to address the competitive gap in salaries and benefits with those other Federal financial regulators and thereby improve recruitment and retention, the EMC recommended and the Commission approved the implementation of a revised pay system and an added dental benefit.

Enforcement

A primary goal of the Commission is to police markets for conduct that violates the CEA or Commission regulations. Such misconduct undermines the integrity of the markets and the confidence of market participants. The following matters are examples of significant developments during FY 2003:

Investigation of Alleged Misconduct in the Energy Markets. Over the past year, the Enforcement program continued its extensive investigation of alleged abuses in energy-related markets. The investigation has focused on energy trading firms that have allegedly engaged in: a) the reporting of false, misleading or knowingly inaccurate trading information, including price and volume information; b) attempted manipulation; and/or c) "round tripping," a risk-free trading practice that produces wash results and the reporting of non-*bona fide* prices, in violation of the CEA. The Commission's aggressive enforcement actions in the energy sector reflect an approach to market oversight that emphasizes tough enforcement actions against wrongdoers without creating overly burdensome regulations. The Commission is fully committed to resolving the ongoing energy investigations as expeditiously as possible so that, in addition to identifying the wrongdoers, we can exonerate those who were not involved and allow these important risk management markets to work toward restoring the confidence of market participants and the public.

As a result of its efforts, the Commission filed during FY 2003 eight major enforcement actions, six of which were settled with sanctions imposed that included civil monetary penalties totaling \$96 million (see *CFTC v. Enron Corp., et al.*, No. H-03-909 (S.D.Tex. filed March 12, 2003) (litigation pending), *In re El Paso Merchant Energy, L.P.*, CFTC Docket No. 03-09 (CFTC filed March 26, 2003) (settled; \$20 million civil monetary penalty), *In re Dynegy Marketing and Trade, et al.*, CFTC Docket No. 03-03 (CFTC filed Dec. 18, 2002) (settled; \$5 million civil monetary penalty), *In re WD Energy Services Inc.*, CFTC Docket No. 03-20 (CFTC filed July 28, 2003) (settled; \$20 million civil monetary penalty), *In re Williams Energy Marketing And Trading, et al.*, CFTC Docket No. 03-21 (CFTC filed July 29, 2003) (settled; \$20 million civil monetary penalty), *In re Enserco Energy, Inc.*, CFTC Docket No. 03-22 (CFTC filed July 31, 2003) (settled; \$3 million civil monetary penalty), *In re Duke Energy Trading And Marketing, L.L.C.*, CFTC Docket No. 03-26 (CFTC filed Sept. 17, 2003) (settled; \$28 million civil monetary penalty); and *CFTC v. American Electric Power Company, Inc., et al.*, No. C2 03 891 (S.D. Ohio filed Sept. 30, 2003) (litigation pending)). The Commission expects that it will file additional enforcement actions in this program area in the future. The Commission has also assisted the Department of Justice in investigations leading to several indictments (see Cooperative Enforcement section below). Further, Enforcement staff have presented energy training to fellow members of law enforcement on several separate occasions. Among these training programs was a February 12, 2003 CFTC hosted conference for forty federal criminal law enforcement officers from around the country, including Assistant United States Attorneys, Federal Bureau of Investigation agents, and United States Postal Inspectors that focused on cooperative enforcement and current issues in energy investigations.

Foreign Currency Trading Fraud. Fighting forex fraud continues to be a priority for the Commission. During FY 2003, the Commission continued its initiative to battle retail foreign currency fraud. While much foreign currency trading is legitimate, various forms have been touted in recent years to defraud members of the public. Under the CFMA, it is unlawful to offer off-exchange foreign currency futures or option contracts to retail customers unless the counterparty is a regulated financial entity enumerated in the CFMA, such as an FCM or financial institution. In addition, the Commission has jurisdiction to investigate and prosecute

foreign currency fraud involving futures or options. Currency trading scams often attract customers through advertisements in local newspapers, radio promotions, or attractive Internet Web sites. These advertisements may tout purportedly high return, low-risk investment opportunities or even highly paid currency-trading employment opportunities. The Commission has brought enforcement actions against both registered firms (both for fraud and for other CEA violations, such as failure to maintain net capital requirements) and unregistered bucket shops.

In FY 2003, the Commission filed 23 enforcement actions against firms and individuals selling illegal foreign currency futures and option contracts, bringing the total of such actions to 43 since enactment of the CFMA. This year's actions reflect the increasing sophistication of forex scam artists. In some cases, the defendants continuously moved the locus of their operation to try to stay one step ahead of the authorities; in others, the defendants attempted to evade the Commission's jurisdiction by claiming they were dealing with regulated counterparties (some in foreign locations), or that the contracts sold were spot (and not futures) transactions. The Commission was successful in getting orders to stop the misconduct in all but one of these cases. Among the Enforcement program's successes in this area was the recent default judgement in the CFTC's favor that it obtained in *CFTC v. International Financial Services (New York), Inc., et al*, No. 02 CIV 5497 (S.D.N.Y. June 24, 2003). Among other sanctions, the court ordered the defendants to disgorge ill-gotten gains and repay injured investors a total of more than \$25 million, and to also pay a civil monetary penalty of over \$76 million.

The 23 forex cases filed by the Commission in FY 2003 include four administrative enforcement actions (*In re \$K's Forex International, Inc.*, CFTC Docket No. 03-06 (CFTC filed January 6, 2003); *In re Global Capital Investment LLC, et al.*, CFTC Docket No. 02-07 (CFTC filed February 27, 2002); *In re Reliant Global Markets, LLC, et al.*, CFTC Docket No. 03-12 (CFTC filed June 6, 2003); *In re Pate, et al.*, CFTC Docket No. 03-13 (CFTC filed June 6, 2003)) and 19 civil injunctive actions (*CFTC v. Sterling Forex LLC, et al.*, No. 02-2076 (W.D. Wash. Filed Oct. 3, 2002); *CFTC v. Tambiev, et al.*, No. CV 03 *77 (E.D.N.Y. Jan. 7, 2003); *CFTC v. Investors Freedom Club, L.C., et al.*, No. *:03-CV-54-T-17TGW (M.D.Fla. filed Jan. 13, 2003); *CFTC v. World-Wide Currency Services, Corp., et al.*, No. 03-80032 (S.D.Fla. filed Jan. 13, 2003); *CFTC v. Intertrade Forex, Inc., et al.*, No. 6:03-CV-119-ORL-31 DAB (M.D.Fla. filed Jan. 29, 2003); *CFTC v. Wheeler, et al.*, No. 6:03CV42 (E.D.Tex. filed Jan. 30, 2003); *CFTC v. EuroBankcorp, et al.*, No. 03-767 (C.D.Calif. filed Feb. 3, 2003); *CFTC v. Ouyang, et al.*, No. 03-0833 (C.D.Calif. filed Feb. 5, 2003); *CFTC v. Hawker, et al.*, No. 2:03CV-0260 (D.Utah filed March 12, 2003); *CFTC v. Holston, Young and Parker, et al.*, NO. 03 CV 1796 (S.D.N.Y. filed March 14, 2003); *CFTC v. DBS Capital, Inc., et al.*, No. C03-1379 (N.D.Calif. filed March 31, 2003); *CFTC v. Elsesser, et al.*, No. 8:03-CV-681-T-23TBM (M.D.Fla. filed April 11, 2003); *CFTC and State of Oregon v. Orion Int'l, Inc.*, No. CV'03 603 HU (D.Ore. filed May 7, 2003); *CFTC v. Thomas Dooley Inc, et al.*, No. 03-80526 (S.D.Fla. filed under seal June 11, 2003); *CFTC v. Moore, et al.*, No. 1:03-CV-149 (M.D.N.C. filed June 19, 2003); *CFTC v. Fleury, et al.*, No. 03-61199 (S.D.Fla. filed June 20, 2003); *CFTC v. Zelenner, et al.*, No. 03C 4346 (N.D.Ill. filed June 24, 2003); *CFTC v. International Foreign Currency, Inc., et al.*, No. CV 03 3577 (E.D.N.Y. filed July 23, 2003); *CFTC v. Sun Platinum Group LLC, et al.*, No. 03 CV 7112 (S.D.N.Y. filed Sept. 12, 2003) and *CFTC v. International Funding Association, Inc., et al.*, No. CIV 03 1826 PHXPGR (D.Az. filed Sept. 18, 2003)). These matters are discussed in detail below, as are all of the enforcement actions that the Commission filed during the fiscal year.

Unregistered Commodity Pool Operator and Commodity Trading Advisor Fraud. Investors continue to fall prey to unregistered CPOs and CTAs that prom-

FY 2005 President's Budget & Performance Plan

ise great riches with little risk and then, often, steal investor funds. Some of the scams are operated as “Ponzi” schemes³ in which early investors are paid purported “profits” with newer investor funds. In many of these cases the defendants have pre-existing business, social, religious, or ethnic ties to the individual investors. These personal relationships enable the defendants to gain the investors’ trust and then lull them into a false sense of confidence. The Commission addresses this violative conduct through a combination of investor education and enforcement actions .

To alert the public to these dangers, the Commission has issued a number warning the investing public of potential risks and scams. In November 2002, the Commission issued a Consumer Advisory warning the public to be wary of companies making false promises of profits from heating oil and other commodity futures and options trading based on the possible effect of the impending war with Iraq on the prices of these commodities. All seven of the Commission’s Consumer Advisories are available on its website at <http://www.cftc.gov/cftc/cftccustomer.htm>.

Every year, the Enforcement program commits substantial resources to prosecuting such cases, many of which require immediate action to stop ongoing fraud, freeze assets, and preserve books and records. During FY 2003, the Commission filed the following fourteen actions in this program area: *In re Stenberg*, CFTC Docket No. 03-01 (CFTC filed Nov. 7, 2002); *CFTC v. Varner*, No. 2:02 CV 1373 (D.Utah filed Dec. 11, 2002); *In re Cox*, CFTC Docket No. 03-04 (CFTC filed Dec. 24, 2002); *In re Elliot, et al.*, CFTC Docket No. 03-07 (CFTC filed Jan. 21, 2003); *CFTC v. Dias, et al.*, No. 03-2659 (C.D.Cal. filed April 16, 2003); *CFTC v. Wall Street Underground, Inc., et al.*, No. 032193-CM (D.Kan. filed April 22, 2003); *CFTC v. Goldman*, No. 03-3265 (C.D.Cal. filed May 9, 2003); *In re Pate, et al.*, CFTC Docket No. 03-13 (CFTC filed June 6, 2003); *In re Gudino*, CFTC Docket No. 03-17 (CFTC filed June 30, 2003); *In re Jones*, CFTC Docket No. 03-15 (CFTC June 30, 2003); *In re Sidewitz, et al.*, CFTC Docket No. 03-18 (CFTC filed June 30, 2003); *In re Ingwerson*, CFTC Docket No. 03-19 (CFTC filed July 11, 2003); *CFTC v. Ownbey*, No. 03C 6592 (N.D.Ill. filed Sept. 17, 2003); and *CFTC v. Allegheny Gulf Investments, Inc., et al.*, No. H-03-3526 (S.D.Tex. filed Sept. 30, 2003).

Enforcement Program Reorganization/Cooperative Enforcement. In FY 2003, the Commission completed its reorganization of its Enforcement program with the goal of ensuring that its trial attorneys, investigators, and support staff have the necessary tools and structure to efficiently and effectively do their jobs. A key component of this reorganization was the development of smaller, five to six person litigation teams that have provided greater flexibility to the program, including optimizing our senior litigators to “be on the front lines” litigating enforcement actions. The Enforcement program also opened an Office of Cooperative Enforcement whose task is to reach out to financial regulators on the federal and state level, to ensure that they are coordinating investigations and prosecutions of commodities violators, and to ensure that the government addresses misconduct whenever appropriate. The Enforcement program has also been actively representing the Commission’s interests in various meetings with colleagues from the President’s Corporate Fraud task force.

Litigation

The Commission presents and defends cases before the U.S. District Courts and the U.S. Courts of Appeals and assists the Solicitor General in presenting cases before the U.S. Supreme Court. The Commission also monitors litigation that

³A Ponzi scheme is a type of fraud that requires an ever increasing stream of investors in order to fund obligations to the earlier investors, with a resulting pyramiding of the liabilities of the enterprise.

may affect the accomplishment of its mission, including its cooperation with other Federal financial regulators through the PWG and the President's Corporate Fraud Task Force.

During FY 2003, the Commission succeeded in obtaining dismissal of two cases before the U.S. Supreme Court that sought to challenge rulings favorable to the Commission. *Armstrong v. CFTC*, No. 01-10803 (S. Ct.); *Baragosh v. CFTC*, No. 02-5091 (S. Ct.). The Commission also monitored two appeals of interest in the Supreme Court. *The Ken Roberts Co. et al. v. FTC*, No. 01-1772 (S.Ct.); *Nike Inc. v. Kasky*, 02-575 (S.Ct.).

Before the U.S. Courts of Appeals, the Commission obtained favorable rulings upon a variety of issues. Most notably, the U.S. Court of Appeals for the Eleventh Circuit ruled that a brokerage firm was liable for misrepresentations made to prospective customers about the likelihood of large profits in the grain markets due to the effects of El Niño and about the limited risk of loss in trading commodity option contracts. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321 (11th Cir.).

The Commission successfully defended appeals by traders who violated the CEA by engaging in wash sale trading. *Wilson v. CFTC*, 322 F.3d 555 (8th Cir.); *Piasio v. CFTC*, 2003 WL 18519 (2d Cir). The Commission also obtained a dismissal of an appeal by a financial newsletter publisher who had unsuccessfully challenged the Commission's authority to investigate that publisher's subscriber solicitations. *Agora, Inc. v. CFTC*, 2002 WL 31356452 (4th Cir.).

In the U.S. District Courts, the Commission defended a challenge to its primary jurisdiction to review a self-regulatory organization's (SRO) discipline of a registrant in *Hirschberg v. CFTC and the National Futures Association*, No. 02C 6483 (N.D. Ill.). The Commission also participated in litigation involving energy market abuses. *CFTC v. The McGraw-Hill Companies, Inc.* (S.D. TX); *U.S. v. Geiger*, (S.D. TX). In addition, the Commission participated in personnel cases before the district courts and before administrative agencies, such as the Equal Employment Opportunity Commission, and the Merit Systems Protection Board. The Commission defended itself in contract disputes, including a matter pending before the General Services Board of Contract Appeals, which adjudicates such disputes by agreement of the Commission.

The Commission monitored bankruptcy cases involving futures industry professionals and, as appropriate, assisted courts, trustees, and customers in implementing special U.S. Bankruptcy Code provisions that pertain to commodity firms. In FY 2003, the Commission appeared before various bankruptcy courts throughout the country to protect both the Commission's interest in recovering penalties owed due to market misconduct and the interest of public customers in having their funds recovered and returned. Of particular interest during FY 2003 have been cases involving firms alleged to have engaged in misconduct in the energy markets. *In re Enron Corp.*, No. 01-16034 (AGJ)(S.D.N.Y.); *In re NRG Energy Inc.*, No. 03-13024 (S.D.N.Y.).

Finally, through its *amicus curiae* program, the Commission assisted the courts in resolving difficult or novel questions arising under the CEA or Commission regulations with the intent of making significant contributions to the development of consistent and accurate legal precedent. In FY 2003, the Commission actively considered participating as *amicus curiae* in seven cases, including *Cary Oil Co. Inc. v. MG Refining*, 1:99cv1725 (S.D.N.Y.).

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International Regulatory Cooperation

- Information Sharing. MOUs provide a framework for authorities to share information and extend assistance to one another in taking statements, collecting information, and conducting investigations. The Commission continued to use these arrangements to facilitate the sharing of information for enforcement and regulatory purposes throughout the fiscal year.
- Best Practices. The Commission also continued its active participation within the International Organization of Securities Commissions (IOSCO) to develop regulatory “best practices” principles in the following areas that are intended to help foster higher international regulatory standards and increase access to markets and products:
 - Regulatory Oversight. The Commission continued its active participation in the IOSCO task force on the implementation of IOSCO’s *Objectives and Principles of Securities Regulation (Core Principles)* that were adopted as a statement of international “best practices.” The Commission chairs the IOSCO Implementation Task Force, which drafted a methodology to assess compliance with the IOSCO Core Principles, which were approved by the IOSCO Executive Committee. The Commission participated in an IOSCO training seminar for members and a meeting of the Americas Regional Committee that was intended to provide background on the assessment program.
 - Internet. The Commission participated in IOSCO task force that examined the regulatory implications of the increasing use of the Internet in securities and derivatives markets and helped to organize the North American roundtable to discuss new developments.
 - Securities Settlement Systems. The Commission continues its participation in a joint IOSCO-Committee on Payment and Settlement Systems Task Force that is developing recommendations for improving risk management and default procedures for central counterparties, such as futures clearing organizations.
 - IOSCO Standing Committee on Secondary Markets and Market Intermediaries. During FY 2003, the Commission continued its participation in IOSCO standing committees that have been examining regulatory issues affecting markets and intermediaries. Issues being examined include single-stock listing standards, indexation, short-selling, the effect of transparency on market fragmentation, current practices of intermediaries in liquidity management, and the regulation of financial intermediaries conducting cross-border business.
 - IOSCO Standing Committee on Enforcement and Information-Sharing. During FY 2003, the Commission continued to participate in IOSCO’s Standing Committee on Enforcement & Information Sharing. This committee considers issues and formulates recommendations relating to international assistance in the detection, investigation, and prosecution of securities and futures violations, including methods to improve cooperation with offshore, “under-regulated” jurisdictions and cooperation between securities regulators after the institution of proceedings. The Commission actively participated in the development of a multilateral MOU that would establish minimum standards for cooperative enforcement and information exchange, including a demonstration of authority to obtain and share information, and the Commission continues to participate in implementation activities with respect to the multilateral MOU. The Commission also participated in an IOSCO Task Force on Client Identification and Beneficial Ownership.

- IOSCO Standing Committee on Investment Management. During FY 2003, the Commission also participated in IOSCO's Standing Committee on Investment Management. Reports arising out of the work of this committee during the year addressed topics such as: investor protection issues relating to retail participation in hedge funds; and best practice standards for performance presentation of collective investment schemes in advertisements.
- Chair's Committee of IOSCO. The Commission was invited for the first time to participate in the Chairs' Committee of IOSCO, which handles "fast-track" projects such as those related to governance, auditor independence, and disclosure relevant to lack of confidence in existing reporting and oversight of these items.
- Emerging Markets Committee. The Commission provided information on its approach to detecting and deterring manipulation to the IOSCO Emerging Markets Committee.
- International Assistance and Cooperation. During FY 2003, the Commission continued to provide assistance to foreign regulators through its annual training seminar in Chicago, publications, individual training, and other forms of assistance, including the annual meeting for international regulators during the Futures Industry Association's (FIA) conference in Boca Raton, Florida. The conference focused on, among other things, issues related to access, cross-border ownership of exchanges, remote clearing, and harmonization of rules.
- Committee of European Securities Regulators. The Commission provided expertise to the Committee of European Securities Regulators related to their inquiry into acceptable market practices for commodity markets as part of its deliberations on possible expansion of the Investment Services Directive to commodity markets.
- Financial Sector Assessment Program. The Commission continued to advise the Toronto Centre on Leadership with respect to securities and derivatives sector programs, provided expertise to the World Bank's International Monetary Fund Financial Sector Assessment Program in countries with derivatives markets and completed a chapter on derivatives markets for a book on capital markets formation in the Americas published by the Inter-American Development Bank.

New and Innovative Exchanges

The Commission is faced with an increasing number of important issues concerning the impact of technological changes on methods of transacting business on futures exchanges and a proliferation of designation applications for new electronic futures exchanges:

- OneChicago (OCX). In FY 2003, the Commission removed the conditions on OCX's conditional order of designation. OCX had originally been designated by the Commission in June 2002 and is currently one of two exchanges with active trading of security futures products.
- CBOE Futures Exchange. On August 7, 2003, the Commission designated as a contract market CBOE Futures Exchange, which is owned and operated by the Chicago Board Options Exchange (CBOE).

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- *Exempt Markets.* During the fiscal year, the Commission staff reviewed notice filings and issued acknowledgement letters to two exempt commercial markets (ECMs), TFS Energy, LLC (TFS) and the Chicago Climate Exchange, Inc. (CCX). TFS is based in Stamford, Connecticut, and trades weather derivatives, while CCX trades derivatives based on environmental commodities, such as emission allowances. ECMs are electronic trading facilities that provide for the execution of futures transactions by eligible commercial entities in exempt commodities. A facility that elects to operate as an ECM must give notice to the Commission and comply with certain informational, record-keeping, and other requirements.
- *Exempt Commercial Market Relief.* On January 9, 2003, the Commission issued an order that deems registered floor brokers and floor traders when acting in a proprietary trading capacity to be "eligible commercial entities." Thus, floor brokers and floor traders are permitted to enter into transactions in exempt commodities on exempt commercial markets that meet the requirements of Section 2(h)(3)(5) of the Act.

New and Innovative Products

In FY 2003, the exchanges filed with the Commission 348 new futures and option contracts based on a wide variety of underlying physical products and financial instruments. Six contracts were submitted for Commission approval, and the remainder were filed under the Commission's certification procedures, whereby exchanges certify that their contracts comply with statutory and regulatory requirements. Many of the contracts represent innovative approaches designed to meet specialized hedging needs of producers and firms. In that regard, exchanges filed over-the-counter-like cash-settled petroleum and natural gas futures contracts, electricity contracts, as well as new mini contracts based on agricultural and financial commodities. In addition, 214 security futures products were filed during the fiscal year.

Exchange Developments

- *Pre-Execution Discussion Rules.* During the fiscal year, Commission staff reviewed separate sets of rules from Nasdaq-LIFFE, LLC Futures Exchange (NQLX) and Chicago Board of Trade (CBOT) clarifying acceptable and unacceptable discussions that may be held between market participants prior to the entry of orders into electronic trading systems.
- *Customer Margin Rules for Security Futures Products.* Commission staff reviewed separate customer margin rules for security futures products from Chicago Mercantile Exchange (CME), NQLX, and OCX in time for the launch of security futures product trading in the fall of 2002. Commission staff closely consulted and coordinated their review with the staff of the SEC.
- *Instinet-Island Merger.* Commission staff reviewed Island Futures Exchange rules implementing its purchase by the ECN Instinet. Island was originally designated as a contract market on February 19, 2002.
- *New York Mercantile Exchange (NYMEX) Unleaded Gasoline Futures Contract Amendments.* The Commission reviewed controversial amendments submitted by NYMEX in May 2003 under the certification procedures of the Act that limited deliverable gasoline to products that comply with New Jersey State gasoline standards if the State of New York implements a ban on reformulating gasoline using methyl tertiary butyl ether.
- *CME Live Cattle Futures Contract Amendments.* In November 2002 and in February 2003, the Commission approved several controversial amend-

ments, including rule changes that reduced the initial spot-month speculative position limit and increased the maximum allowable weights for deliverable cattle.

- Minneapolis Grain Exchange (MGE) Spring Wheat Futures Contract Amendments. The Commission reviewed controversial amendments submitted by MGE in May 2003 under the certification procedures of the Act that gave holders of delivery warehouse receipts the right to require delivery warehouse operators to load non-genetically modified spring wheat into the holders vessel or railcars.

Intermediary Policy

- Bunched Orders. In June 2003, the Commission adopted amendments to Commission Rule 1.35(a-1)(5). Commission Rule 1.35 (a-1)(5) permits certain account managers to bunch customer orders together for execution and to allocate the fills to individual accounts at the end of the day. The Commission amended the rule to expand the availability of bunching, simplify the process, and clarify the respective responsibilities of account managers and FCMs.
- Core Principle for Presentation of Partially Funded CTA Accounts. In March 2003, the Commission proposed to amend its rules regarding CTA past performance representation to permit the use of nominal account size, rather than actual funds, as the basis for calculating rates of return for partially funded accounts. The proposal also requested comment on the adoption of a core principle approach for presentation of CTA past performance. In July 2003, the Commission adopted a core principle for presentation of partially funded CTA accounts. The core principle requires that such presentation be balanced and not in violation of the Commission's antifraud provisions. In adopting this rule, the Commission stated that the core principle would not preclude the development of more specific guidance by SROs or others. The Commission also confirmed that CTAs following the specific rules it proposed in March 2003 would be in compliance with the core principle. Portions of the proposed changes that applied more broadly to CTA performance presentation were addressed in a *Federal Register* release on other Part 4 rule changes adopted in August 2003.
- Risk-Based Capital. During FY 2003, Commission staff developed proposed rules to modernize regulatory minimum capital requirements for FCMs. Staff proposed eliminating the Commission's existing required capital level based on a percentage of customer funds held by the FCM; and adopting margin-based rules that were previously implemented by the Board of Trade Clearing Corporation (now The Clearing Corporation), CBOT, the CME, and National Futures Association (NFA). Staff also proposed rule amendments that would reduce the time periods allowed before an FCM must take a capital charge for outstanding margin calls. The risk-based approach for FCM minimum capital requirements would ensure that a firm's capital requirement reflected the risks of the futures and option positions it carries. In July 2003, the Commission issued proposed risk-based capital rules that were published for public comment in the *Federal Register*.
- Denomination of Customer Funds and Location of Depositories. In January 2003, the Commission adopted Rule 1.49, which governs the treatment of customer funds that are denominated in currencies other than U.S. dollars or that are held outside of the U.S. The rule, among other things, provides that FCM obligations owed to customers may be held in: 1) U.S. dollars; 2) a currency in which funds were deposited by the customer or converted at the request of the customer to the extent of such deposits and conversions; or 3) a currency in which funds have accrued to the customer as a result of trading

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on a designated contract market or registered derivatives transaction execution facility (DTEF). The rule permits an FCM or DCO generally to hold customer funds consisting of any currency in the U.S. or any money center country (as defined under Rule 1.49). In addition, customer funds in any currency generally may be held in the country of origin of the currency, but in no event may customer funds be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets Control of the U.S. Treasury Department. The subordination requirement of Financial and Segregation Interpretation No. 12, which previously governed the treatment of customer funds not denominated in U.S. dollars or held outside the U.S., has been eliminated, and bankruptcy distribution issues are addressed through an amendment to the Commission's bankruptcy rules.

- *Registration and Other Relief for Certain CPOs and CTAs.* In September 2002, the Commission held a roundtable to discuss issues facing the managed funds industry. Among other issues, the participants discussed the overlapping jurisdiction of the Commission and the SEC with regard to CPOs and CTAs. As a result of issues raised in this forum as well as the Commission's 2002 report on its study of the regulation of intermediaries, the Commission developed a series of rule proposals relating to CPO and CTA issues.

In October 2002, the Commission proposed to amend Rule 4.5, which excludes certain "otherwise regulated" persons, such as registered investment companies, regulated insurance companies and banks, and trustees of pension plans subject to the Employee Retirement Income Security Act, from the definition of a CPO. The proposal would amend Rule 4.5 to include an alternative limitation on the non-hedge activities of qualifying entities. In November 2002, the Commission issued an advance notice of proposed rulemaking seeking comment on two proposals it had received to provide additional exemptions from registration as a CPO for persons who commit a limited amount of pool assets to establish commodity interest trading positions and/or who restrict participation in their pools to certain sophisticated participants. The advance notice of proposed rulemaking also contained a proposal to exempt from CTA registration persons whose advice is directed solely to such pools.

Following its review of comments received on the Rule 4.5 proposals and the advance notice of proposed rulemaking, in March 2003, the Commission proposed: 1) elimination of any trading restrictions under Rule 4.5; 2) exemption from CPO registration where pool participants are limited to natural persons (who are Commission or SEC registrants), insiders and their family members, or non-natural persons (who are "accredited investors" under SEC rules or "qualified eligible persons" under Commission Rule 4.7); and 3) exemption from CPO registration if the pool operator limits trading such that no more than two percent of the liquidation value of the pool's portfolio is committed as margin or premium for commodity interests, or the aggregate notional value of the pool's commodity interest positions does not exceed 50 percent of the liquidation value of the pool's portfolio, and the pool participants are limited to accredited investors. CTAs who advise any of the foregoing pools would be similarly exempt from registration. In August 2003, the Commission adopted final rules that were essentially as had been proposed in March, except that the ceilings for the CPO registration exemption based upon limited trading were raised to five percent committed as margin or premium and 100 percent of liquidation value.

- *Eligible Contract Participant Definition.* In March 2003, in response to a request for relief from a bank and its various subsidiaries, the Commission issued an order providing that, subject to certain conditions, Single Asset Development Borrowers (SADBs) that have a natural person, who is an eligible

contract participant acting as a guarantor for the SADBs' over-the-counter derivatives transactions, are "eligible contract participants" as that term is defined under Section 1a(12) of the Act. Accordingly, subject to conditions set forth in the Commission's order, an SADB acting for its own account, whose obligations are guaranteed by a natural person who is an eligible contract participant, is permitted to enter into certain over-the-counter derivatives transactions pursuant to Section 2(c), 2(d)(1) and 2(g) of the Act.

- *Rule 30.5 Exemption from Registration for Certain Foreign Firms.* In July 2003, the Commission adopted rule amendments to Commission Rule 30.5 to facilitate the electronic filing of petitions for registration exemptions under Rule 30.5. The registration exemptions are available to foreign firms acting as introducing brokers (IBs), CPOs, or CTAs with respect to foreign futures and options. The amendments were adopted in conjunction with the approval of amended NFA rules for electronic filing of Rule 30.5 petitions.
- *Domestic Trading by a Rule 30.10 Recipient.* In July 2003, the Commission issued a no-action letter to permit a United Kingdom (U.K.) branch of an international bank to introduce customers located in the U.S. to a registered FCM that also is an affiliate of the bank without being registered with the Commission as an IB. Pursuant to Commission Rule 30.10, the U.K. branch has been granted an exemption from registration as an FCM for purposes of offering foreign futures and options to U.S. customers. As the U.K. branch is not permitted to handle orders for U.S. customers to be executed on U.S. exchanges, no-action relief was necessary to permit the U.K. branch to act as an IB to the U.S. FCM for purposes of trading U.S. exchange-traded futures and options.
- *Comparability Relief for Australian Entities.* In June 2003, the Commission issued an order under Rule 30.10 granting the application for relief by the ASX Futures Exchange Proprietary Limited (ASXF), a subsidiary of the Australian Stock Exchange, on behalf of certain firms located and doing business in Australia. This relief permits those members to solicit and accept orders and funds related thereto from persons located in the U.S. for trades on the exchange without registering under the Act or complying with Commission rules based upon substituted compliance with applicable Australian law and ASXF rules.
- *Revised Comparability Relief for U.K. Entities.* The Commission revised and consolidated various orders issued under Commission Rule 30.10 to U.K. regulatory and self-regulatory bodies in light of the reorganization of U.K.'s financial regulatory structure. In September 2003, the Commission issued a consolidated order granting relief to the U.K. Financial Services Authority and entities subject to its regulation.
- *Acceptable Depositories for Customer Funds.* The Commission issued in August 2003 an interpretative letter to a large bank to confirm that a trust account product developed by the bank was an acceptable deposit account for use by FCMs for the deposit of segregated customer funds. The Commission coordinated with the bank during the year to understand the particular structure of the account and to determine that the bank's analysis and representations were sufficient regarding the availability of funds in the trust account immediately upon demand. In addition, the Commission is reviewing the registration status for a firm that holds minimal customer funds and acts as a pass-through for increasing its customer's ability to obtain a higher yield on its investments.

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Intermediary Oversight

- *Development of Revised Oversight Examination Program for SROs.* In November 2002, the Commission began to completely redevelop the oversight examination programs for SROs to harmonize them with the objectives of the CFMA. The oversight examination process required substantial revision in order to transform traditional compliance-based examination programs into risk-based, functional programs addressing applicable core principle issues for designated contract markets. Drafts of proposed interview questions for the resulting functional program areas—financial capacity, customer protection, market move surveillance and stress testing, risk management, and operational capability—were circulated to the Joint Audit Committee for industry comment. Commission staff completed the revised oversight examination programs for these functional components in early 2003. These programs were first implemented in an SRO oversight examination of the CME.
- *SRO Oversight Review of the CME.* In February 2003, Commission staff initiated an SRO oversight review of the CME. A request for a production of documents accompanied the engagement letter. A three-week period of time was established for the CME to compile and deliver the document production, which consisted primarily of CME audit department, risk management, and market surveillance procedures documentation. The examination covered five functional areas: financial capacity; customer protection; risk management; market move surveillance and stress testing; and operational capability. In addition, four CME-member FCMs were selected for direct testing to independently evaluate the results of CME's program of examination and supervision for these firms. A report was prepared and presented to the Commission issued in December 2003.
- *Updating and Streamlining Financial Condition Filing Requirements.* In FY 2003, Commission staff coordinated with industry participants to revise the financial condition reporting forms that FCMs must file with the Commission in order to reflect the Commission's adoption of risk-based capital rules. In addition, Commission staff tested a program with the NFA that enabled IBs to simplify the process of complying with their requirement to file unaudited financial reports with the Commission and the NFA. The program permitted an IB to file its unaudited reports with the NFA only, which then forwarded the information electronically to the Commission. As part of the proposed capital rules published in the *Federal Register* in July 2003, the Commission also solicited public comment in FY 2003 on whether to permit IBs to employ the same filing process with respect to the IB's certified annual report.
- *Review of Rule 1.25 Investments.* In May 2003, Commission staff issued a report providing an overview of FCM investment in instruments that, by amendment to Regulation 1.25 effective December 2000, had been added as "permissible investments" for customer segregated funds. Based in part on staff reviews of financial information provided by all FCMs and on audits conducted by staff of the investments of selected FCMs in Chicago and New York, the report concluded that increasing numbers of FCMs are investing customer segregated funds in such newly permissible instruments, especially in interests in money market mutual funds.
- *Investment of Customer Funds.* The Commission has proposed amendments to Rule 1.25 governing the investment of customer funds. The amendments address several aspects of the rule, including the use of repurchase agreements. The proposal is part of the Commission's continuing effort to facilitate the safe and efficient handling of customer funds.
- *NFA Review of CPO Disclosure Documents.* In March 2003, the Commission issued an order authorizing NFA to conduct reviews of disclosure documents

required to be filed with the Commission by CPOs for publicly offered commodity pools. The order also authorized NFA to serve as the official custodian of these records. Concurrently with this order, the Commission amended Part 4 of its rules to conform to this delegation of authority.

- *NFA Review of CPO Annual Reports.* In December 2002, the Commission issued an order authorizing NFA to: 1) conduct reviews of annual financial reports filed with the Commission by CPOs; and 2) grant and deny certain requests for extensions of time to file such reports. Additionally, the Commission authorized NFA to serve as the official custodian of these records. Concurrently with this order, the Commission amended Part 4 of its rules to make clear that certain disclosure documents, annual financial reports, notices of eligibility, claims of exemption, and requests for extensions of time to file annual financial reports with regard to privately offered commodity pools need only be filed with NFA and need not also be filed with the Commission. Review of these documents had been delegated to NFA in the December 2002 order and in an order issued by the Commission in 1997.
- *Implementation of Anti-Money Laundering Provisions of USA PATRIOT Act.* The Commission's anti-money laundering task force assisted in the preparation of proposed and final rules issued pursuant to the mandate of the USA PATRIOT Act that affect the futures industry. These include: 1) final rules, jointly adopted with the U.S. Treasury Department in May 2003, requiring FCMs and IBs to establish customer identification and verification programs; 2) proposed rules requiring CTAs and investment advisors to establish anti-money laundering compliance programs; and 3) proposed rules requiring FCMs and IBs to report suspicious transactions. In addition, the anti-money laundering task force consulted with staff of the U.S. Treasury Department and various Federal financial regulators concerning a procedure for facilitating information requests from law enforcement to financial institutions and a report to Congress on recommendations for effective regulations to apply anti-money laundering requirements to investment companies. The task force also refined its in-house training program concerning these anti-money laundering initiatives.
- *Commission Records.* In October 2002, the Commission adopted amendments to its rules governing Commission records and information (Part 145) to take account of the recent conversion of registration records from a paper-based system to an online system and recent changes in the organizational structure of the Commission.
- *Business Continuity and Disaster Recovery Plan.* In April 2003, the Commission approved the adoption of NFA Compliance Rule 2-38 and an Interpretive Notice to Compliance Rule 2-38. The rule requires each NFA member to establish and maintain a written business continuity and disaster recovery plan outlining the procedures to be followed in the event of an emergency or significant business disruption. The interpretive notice provides guidance on the essential components of an effective business continuity plan and the requirements to maintain that plan.
- *Foreign Exchange (FOREX) Dealer Members.* In August 2003, the Commission approved amendments to NFA By-laws 306 and 1301 and NFA Compliance Rule 2-36. These amendments: 1) expanded the definition of "FOREX dealer member" to include more FCMs that act as counterparties in over-the-counter retail foreign exchange transactions; 2) increased membership fees for FOREX dealer members; and 3) made FOREX dealer members liable for the acts of non-NFA members who introduce business to them. The Commission also approved new NFA financial requirements for net capital and retail cus-

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tomor security deposits for FOREX dealer members as well as a new interpretive notice explaining the various rule changes concerning FOREX.

- ***Electronic Communications.*** In July 2003, the Commission approved amendments to NFA Registration Rules 203, 204, 801, and 802 that facilitated the electronic filing of petitions for exemption from registration under Commission Rule 30.5 for foreign firms acting as IBs, CPOs, or CTAs with respect to foreign futures and options, as well as electronic designation of NFA as agent for service of process in the U.S. The Commission also approved amendments to NFA Registration Rule 202 and NFA By-law 301(j), regarding the electronic posting of membership notifications on the NFA online registration system.
- ***Ethics Training Requirements.*** In April 2003, the Commission approved an Interpretive Notice to NFA Compliance Rule 2-9 providing further guidance on the manner in which an NFA member may meet its ethics training requirements.
- ***Enhanced Supervisory Procedures.*** In March 2003, amendments to the Interpretive Notice to NFA Compliance Rule 2-9 became effective under the "10-day" provision without Commission review. The interpretive notice requires firms that employ a significant number of associated persons (APs) who have previously worked for "disciplined firms" to adopt enhanced supervisory procedures. The amendments provided that APs who have been employed for a cumulative total of less than 60 days at a disciplined firm more than 10 years ago will not be included in determining whether a firm is subject to the enhanced supervisory requirements. In addition, the definition of disciplined firm was updated to include firms that have been barred from doing business by the SEC or National Association of Securities Dealers because of deceptive sales practices involving security futures products.
- ***Security Futures Products.*** In November 2002, amendments to NFA Compliance Rule 2-30 and the interpretive notice entitled Risk Disclosure Statement for Security Futures Contracts became effective under the "10-day" provision without Commission review. In May 2003, amendments to the Interpretive Notice to NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401 became effective under the "10-day" provision without Commission review. The amendments provide that an existing training option for security futures product proficiency requirements may be exercised by all new registrants who take the Series 3 or Series 30 exam and apply for registration before revised examinations become available.
- ***Fee Reductions.*** In December 2002, amendments to NFA By-law 1301(b) became effective under the "10-day" provision without Commission review. The amendments reduced assessment fees charged to FCM members to \$.06 per round-turn for futures contracts and \$.03 per option transaction. This represented the fifth reduction in NFA assessment fees since July 2001, when the fees were \$.18 per round-turn for futures contracts and \$.09 per option transaction.
- ***KCBT Audit Trail, Trade Practice Surveillance, Disciplinary, and Dispute Resolution Programs.*** In February 2003, Commission staff issued a rule enforcement review of the Kansas City Board of Trade (KCBT) that covered the period of June 1, 2001 through June 1, 2002. The review evaluated KCBT's audit trail, trade practice surveillance, disciplinary, and dispute resolution programs for compliance with relevant core principles. In its review, staff found that KCBT maintains adequate programs with respect to the areas reviewed. However, staff made recommendations to further improve KCBT's trade practice surveillance program.

- *NYMEX Market Surveillance Program*. In June 2003, Commission staff issued a rule enforcement review of NYMEX that covered the period of September 1, 2001 to September 1, 2002. The review evaluated NYMEX's market surveillance program for compliance with relevant core principles. In their review, Commission staff found that NYMEX maintains an adequate program and made recommendations to further improve certain aspects of their program.
- *CME Market Surveillance Program*. In July 2003, Commission staff issued a rule enforcement review of CME that covered the period from September 1, 2001 to September 1, 2002. The review evaluated CME's market surveillance program for compliance with relevant core principles. In their review, Commission staff found that CME maintains an adequate market surveillance program. However, staff made recommendations to further improve certain aspects of the program.
- *BTEX Audit Trail, Market Surveillance, Trade Practice Surveillance, Disciplinary, and Dispute Resolution Programs*. In September 2003, Commission staff issued a rule enforcement review of BrokerTec Futures Exchange (BTEX) that covered the period from December 1, 2001, to December 1, 2002. The review evaluated BTEX's audit trail, market surveillance, trade practice surveillance, disciplinary, and dispute resolution programs for compliance with relevant core principles. In their review, Commission staff found that BTEX maintains adequate programs with respect to the areas reviewed and made recommendations for further improvement.

Clearing Policy and Oversight

- *Expansion of DCO Responsibilities*. The CFMA defined a new category of registered entity, DCOs, and set forth certain core principles with which each DCO must comply. Commission staff have developed a program for conducting oversight of DCO compliance. As part of the development process, staff provided draft materials to the DCOs and met separately with each DCO to discuss the nature and content of the oversight program. The Commission will be gathering feedback from all DCOs before commencing with the first DCO review.
- *CME/CBOT Common Clearing Link*. In April of 2003, the CBOT entered into an arrangement by which it will clear contracts with the CME, establishing a clearing link between them. CBOT and CME are working to resolve the technical and regulatory issues necessary to implement the link, both together and with the BOTCC, through which CBOT currently clears. The link is intended to provide efficiencies both in processing transactions and in utilization of capital. This arrangement furthers the CFMA's goal of supporting innovation in the futures industry. Commission staff studied and resolved the policy and legal issues raised by the link and its implementation in order to ensure orderly implementation of the arrangement, legal certainty, financial integrity, and customer protection in the futures markets. As part of this ongoing effort, the Commission has recently approved rules submitted by the CBOT and CME, pursuant to Section 5c(c)(3) of the Act.
- *London Clearing House*. The Commission is considering a request to amend its order registering the London Clearing House (LCH) as a DCO to permit LCH to clear contracts traded on U.S. contract markets. LCH was the first foreign entity to obtain registration as a DCO. If approved, LCH would be the first foreign entity to be permitted to clear on behalf of U.S. exchanges. The

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Commission order also would address, among other things, the treatment of customer funds and bankruptcy issues.

- *Clearing and the Energy Markets.* On February 5, 2003 the Commission jointly sponsored with the Federal Energy Regulatory Commission (FERC) a technical conference on clearing and its potential benefits for mitigating risk in the energy markets. The aim of the conference, "Credit Issues & Potential Solutions in Energy Markets," was to educate FERC and energy market participants about how clearing works and to explore the feasibility of utilizing clearing to address the credit issues that exist in the energy markets. The genesis for the conference resulted from the actions of certain energy market participants to manipulate prices that led to a weakening of confidence in the cash prices for energy products, which contributed to a drain on liquidity. Commission staff coordinated two of the three panels, which included presentations and discussions by a dozen Commission and industry experts. More than 300 people attended the conference, which was held at FERC headquarters.
- *Over-the-Counter Derivatives and Clearing.* The CFMA authorized the clearing of over-the-counter derivatives transactions. Specifically, the law gave the Commission (in addition to the SEC and U.S. Federal banking authorities) express regulatory authority over clearinghouses that seek to provide multi-lateral clearing services for over-the-counter derivatives. Currently, there are four Commission-regulated clearinghouses that provide multilateral clearing services for over-the-counter derivative transactions—the LCH, the NYMEX Clearinghouse, the Guaranty Clearing Corporation, and the EnergyClear Corporation. The Commission has initiated discussions with various industry participants as to whether the regulated futures clearing model is the best model for over-the-counter clearing.

Space Management

The Office of the Executive Director (OED) manages the Commission's real estate portfolio of approximately 250,000 square feet of rental office space for its headquarters and four regional offices. During FY 2003, considerable effort was expended negotiating an extension and expansion of the Commission's Washington, D.C. headquarters office space. As a result, the Commission's headquarters now consists of 161,785 square feet of space, with a rental term expiring on September 30, 2015. In addition, OED carried out the closure of the Commission's Los Angeles regional office.

Other Initiatives

- *Placement of Electronic Terminals in the U.S.* The Commission continued its policy, initiated in FY 1999, of issuing no-action letters in response to requests by foreign boards of trade to permit placement of electronic terminals in the U.S. without requiring contract market designation for those boards of trade. During FY 2003, the Market Review Branch issued three separate amended foreign terminal no-action letters to the International Petroleum Exchange (IPE) of London permitting it to make its Brent futures and gas oil futures contracts available for trading in the U.S. through the Intercontinental Exchange's (ICE's) trading system.
- *Initiatives to Encourage Trading In OTC and ECM Energy Products.* In January 2003, the Commission issued two orders which lowered certain barriers to trading energy products on ECMs and in OTC markets. On January 9, 2003, the Commission issued an order that deems registered floor brokers and floor traders, when acting in a proprietary trading capacity, to be "eligible commercial entities." Thus, floor brokers and floor traders are per-

mitted to enter into transactions in exempt commodities on ECMs that meet the requirements of section 2(h)(3)-(5) of the Act. On January 29, 2003, the Commission issued an order that deemed registered NYMEX floor brokers and floor traders, when acting in a proprietary trading capacity, to be ECPs, thus permitting them to enter into certain specified OTC transactions in exempt commodities executed pursuant to section 2(h)(1) of the Act.

- *Foreign Stock Offerings in the U.S.* The Commission issued no-action relief for foreign boards of trade wishing to offer and sell stock index futures contracts in the U.S. During FY 2003, Commission staff completed economic analyses in support of the issuance of no-action letters for five such index contracts: the SGX-DT's MSCI Japan Index futures contract; Osaka Stock Exchange's FTSE Japan Index and MSCI Japan Index futures contracts; and Euronext's AEX Index and AEX Light Index futures contracts.

Market Surveillance

The mission of the Commission's market surveillance program is to detect and prevent price manipulation. To accomplish this goal, surveillance economists continuously monitor all active futures and option contracts for potential problems. In FY 2003, the Commission conducted intensified surveillance in these markets:

- *Energy Futures Markets.* Energy prices were high and volatile during the year as a result of geopolitical tensions, low inventories, supply disruptions, and strong demand for heating fuels stimulated by a cold winter and for gasoline resulting from a strong driving season.
- *Cattle Futures Markets.* The discovery of a cow with Bovine Spongiform Encephalopathy (BSE) in Canada caused the USDA to ban Canadian cattle and beef imports. This resulted in increased demand for U.S. beef and led to high cash and futures cattle prices and to increased price volatility.
- *Security Futures Product (SFP) Markets.* Trading in SFPs began on two newly designated futures exchanges – NQLX Futures Exchange and OneChicago. Surveillance paid special attention to activity throughout the first year of trading in these new products, looking at price volatility, volume, numbers of open contracts, types of large traders, and the pricing of SFPs relative to the underlying securities.

* * *

Commission Strategies to Influence Outcomes

Modernizing and Streamlining Regulations and Orders

During FY 2003, Commission staff undertook initiatives to reduce regulatory burdens. For example:

- *CPO and CTA Rulemakings.* In September 2002, the Commission held a roundtable to discuss issues facing the managed funds industry. As discussed in the Progress Toward Outcomes in the Past Year section, that event served as the impetus for a series of regulatory initiatives that culminated in the adoption of final rules in August 2003.
- *Elimination of Duplicative Filing and Review Requirements for CPOs and CTAs.* In December 2002, the Commission expanded the categories of documents NFA is authorized to review to include commodity pool annual reports, requests for extensions of time to file such reports, and disclosure documents for publicly offered commodity pools. Corresponding rule changes also eliminated the requirement that CPOs and CTAs file these documents and other filings required under Part 4 with the Commission, and they specified instead that the filings be made solely with NFA. These actions reduced the burden on CPOs and CTAs of filing with multiple regulators and consolidated all reviews of CPO and CTA filings under Part 4 with NFA.
- *Electronic Distribution of Pool Account Statements and Annual Reports.* Final rules adopted in August 2003 codify a prior interpretation permitting CPOs to transmit periodic account statements to commodity pool participants electronically, and for the first time, will permit electronic distribution of commodity pool annual reports. Both account statements and annual reports may be provided electronically as long as the CPO provides disclosure of its intent to do so and participants do not object within 10 days.
- *Rule 30.10 Orders.* The Commission revised and consolidated various orders issued under Commission Rule 30.10 to U.K. regulatory and self-regulatory bodies in light of reorganization of the U.K. financial regulatory structure. In connection with this process, the Clearing and Intermediary Oversight program issued letters to other recipients of Rule 30.10 orders, requesting that: 1) they advise of any material changes to the representations, facts, or circumstances upon which the Commission's order was based, including changes in the regulatory program; and 2) submit an updated list of members and regulatees that have received confirmation of relief. Based upon the responses, Clearing and Intermediary Oversight program staff have determined that revisions to the orders are not necessary.

Trade Surveillance System (TSS)

The Commission has concluded its evaluation of the Commission's aging TSS, and has concluded that the demands of today's futures marketplace require development and implementation of a new system. The TSS identifies possible trading abuses for referral to exchanges and the Division of Enforcement, supports Commission investigations and litigation involving manipulation and trade practice abuses, and is an important adjunct to Commission rule enforcement reviews of contract markets. A new, robust Commission TSS will allow identification of inter-exchange violations which individual exchanges lack the capacity to detect, allow quicker access to and more sophisticated and customizable analysis of, the full range of data supplied by exchanges with respect to electronic, as well

as open outcry trading, and enable meaningful Commission evaluation of the exchanges' own electronic surveillance systems. In designing and implementing the new TSS, Commission staff will combine custom-built components with available off-the-shelf software to give the Commission unqualified, immediate, and confidential access to all exchange-supplied data. The new TSS will cost an estimated \$3.5-\$4.5 million, take approximately two and one-half years to implement fully, and be rolled out incrementally. The necessary funding has already been appropriated. After completion, the new system will reduce ongoing maintenance costs by approximately \$100,000 per year as compared with the current system.

Electronic Trading Platforms

Markets regulated by the Commission have experienced a dramatic shift from floor to screen-based trading over the past several years. The CBOT's and CME's screen-based volume currently accounts for almost 50 percent of total exchange volume. While electronic trading brings certain regulatory benefits, like very precise audit trails, it also increases the opportunity for certain types of abuses, like trading ahead of customers. In order to re-engineer our systems, in FY 2003 the Commission embarked on a study of the various effects the growth of electronic trading is having on market participants' ability to engage in trading abuses and market manipulations. The Commission examined the electronic trading systems and automated surveillance systems used by U.S. designated contract markets, as well as those used by foreign futures exchanges with significantly more experience in electronic trading. The Commission also interviewed foreign regulatory officials in the jurisdictions visited with respect to their mechanisms for oversight of electronic markets. Once the analysis is complete, the Commission will incorporate changes in its oversight systems and, where necessary, recommend alterations to systems of our designated contract markets, to ensure that customers continue to be protected from trading abuses and manipulations.

Electronic Filing and Record-keeping

At the close of FY 2003, all of the approximately 190 fully-registered FCMs have begun filing unaudited financial reports electronically with the Commission. The ability to file electronically increases registrants' efficiency and facilitates Commission staff analysis, retrieval, and storage of the data, while maintaining necessary safeguards.

Commission staff tested a program with the NFA that enabled IBs to simplify the process of complying with their requirement to file unaudited financial reports with the Commission and the NFA. The program permitted an IB to file its unaudited reports with the NFA only, which then forwarded the information electronically to the Commission.

Use of the Internet

The Commission uses the Internet to make information and assistance available to the general public. The Commission's Web site, at <<http://www.cftc.gov>>, provides information about the Commission and its work, including press releases, speeches of Commissioners, the *Weekly Advisory* (which includes Commission events, meetings, news, seriatim actions, *Federal Register* notices and comment periods, initial decisions, and opinions and orders), the *Commitment of Trader Reports*, and other reports from the Market Oversight program, and the *Proceedings Bulletin*. The Commission's Web site also provides the public with information concerning trader sanctions, registration suspensions, and reparations. The Web site also hosts a public questionnaire that encourages the public to report suspected commodity market abuses.

In FY 2004, the Commission will continue to work on the evaluation and redesign of its intranet Web site to improve and expand the quality of service to Commission staff. Based upon an expert review and the completion of the user interface architecture, the Commission will begin implementation of the proposed prototype. The Commission will evaluate the feasibility of portal and technologies to enhance the delivery and management of content, making the Commission's information more readily accessible and available to all staff.

Internet Surveillance

The Commission monitors the Internet for illegal activity involving futures and options. Enforcement staff review the contents of futures and option related Web sites, e-mail spam, bulletin boards, and newsgroups to identify potential misconduct. This monitoring of the Internet generates enforcement inquiries concerning issues such as possible misrepresentations of the success of trading programs and the offer of potentially illegal products that are not traded on a trading facility designated or registered by the Commission. Commission enforcement actions often include allegations of violative conduct involving use of the Internet.

During FY 2003, the Enforcement program's Internet Enforcement Group contracted with an outside vendor in order to increase the efficiency and effectiveness of its surveillance program. The contractor conducts automated searches of the Internet with results reported to the Enforcement program on a monthly basis. The success of the Internet Enforcement Group during FY 2003 is reflected, in part, by the nine enforcement actions filed thus far during the year that involve allegations of fraudulent Internet solicitations: 1) *CFTC v. Tambiev, et al.*, No. CV 03 *77 (E.D.N.Y. Jan. 7, 2003); 2) *In re Elliot, et al.*, CFTC Docket No. 03-07 (CFTC filed Jan. 21, 2003); 3) *CFTC v. Ouyang, et al.*, No. 03-0833 (C.D.Calif. filed Feb. 5, 2003); 4) *In re Pate, et al.*, CFTC Docket No. 03-13 (CFTC filed June 6, 2003); 5) *CFTC v. Moore, et al.*, No. 1:03-CV-149 (M.D.N.C. filed June 19, 2003); 6) *CFTC v. Fleury, et al.*, No. 03-61199 (S.D.Fla. filed June 20, 2003); 7) *In re Ebaugh*, CFTC Docket No. 03-16 (CFTC filed June 30, 2003); 8) *In re Gudino*, CFTC Docket No. 03-17 (CFTC filed June 30, 2003); 9) *In re Sidewitz, et al.*, CFTC Docket No. 03-18 (CFTC filed June 30, 2003); 10) *In re Ingwerson*, CFTC Docket No. 03-19 (CFTC filed July 11, 2003); 11) *CFTC v. International Foreign Currency, Inc., et al.*, No. CV 03 3577 (E.D.N.Y. filed July 23, 2003); and 12) *CFTC v. Ownbey*, No. 03C 6592 (N.D.Ill. filed Sept. 17, 2003).

Project E-Law

During FY 2003, the Enforcement program continued in its efforts to design and implement Project eLaw, an automated law office that seamlessly integrates technology and work processes to support managers and staff across the Commission in their investigative, trial, and appellate work. Driven by the Commission's continued reliance on manual processes and automated tracking systems to manage cases and the approximately one million paper documents received or created annually, Project eLaw will provide the automated tools to assist staff in performing their work more efficiently and effectively, both in the office and in the courtroom facing opposing counsel. Specifically, Project eLaw will enable staff to: efficiently query and retrieve information about investigations and litigation provided to the Commission by outside parties; develop documents in a collaborative electronic work environment across geographically dispersed locations; improve management of investigation leads and trial schedules; track time and resources expended on investigations and cases; and access and present documentary and analytic evidence in court settings. Now that the Commission has secured the integration support and technical expertise to assist with Project eLaw, the plans

are in place to complete a requirements analysis, a technology assessment, a business impact analysis, the identification and installation of hardware and software, and pilot implementation followed by full implementation of Project eLaw.

Enforcement Program Reorganization

In FY 2003, the Commission reorganized the Enforcement program with the goal of ensuring that its trial attorneys, investigators, and support staff have the necessary tools and structure to efficiently and effectively do their jobs. The Enforcement program was also reorganized to utilize more effectively the existing skills of its staff and to fully realize human resource potential.

The reorganization greatly improved the document editing process, lines of authority, docket review procedure, accountability, productivity, and staff morale. This was accomplished by: 1) moving from a one-deputy to a three-deputy format and requiring the deputies to review thoroughly their team dockets on a quarterly basis; 2) flattening the Enforcement program's structure through the reduction of the number of program managers and the movement of the program's senior staff into front-line litigation roles; and 3) shifting to smaller litigation teams that are piloted by team leaders who are experienced litigators.

In addition, the new format provides greater flexibility to the program and decreases the management and reporting burdens on team leaders. Furthermore, under the guidance of their supervisors, program staff are now required to develop employment goals and are accountable for their yearly productivity. The reorganization of the program also included the creation of several specialty areas within the program that focus on efficiency and consistency. The area of cooperative enforcement was developed for the purposes of : 1) reaching out to financial regulators at the Federal and state levels in order to coordinate investigations and prosecutions of commodities violators and ensure that the government addresses misconduct; and 2) training and employing the staff of state and local authorities, thereby reducing the need for the program to investigate and prosecute each and every violation of the Act. The cooperative enforcement area will ensure that program staff and the staff of SROs are properly sharing information, data, and enforcement tasks.

Other new specialty areas in the Enforcement program include: 1) the budget and statistics area, which ensures that the program is constantly focused on budget issues, while simultaneously maintaining and analyzing statistics for Enforcement program management purposes; and 2) the policy and review area, which was developed to streamline the editing process and ensure all memorandums, pleadings, and other policy issues are consistent with Enforcement program procedures and the direction implemented by the Commission and program management.

Enforcement Training

During FY 2003, the Enforcement program continued to devote significant resources and time to develop and implement in-house training, for example in deposition skills and fundamentals of the futures and options industry for newer staff and to provide intensive training in legal writing to professional staff in the Enforcement program. The Enforcement program presented an in-house series of training lectures featuring Enforcement staff experts addressing areas of general and topical interest including: 1) the CEA and Commission regulations; 2) non-CEA legislation affecting enforcement's activities; 3) how to plan and conduct an investigation; 4) futures, forward, spot, and commodity option contracts;

5) illegal instruments—FOREX and precious metals; 6) using international resources in investigations; and 7) sales practice fraud cases involving FCMs and IBs. The Enforcement program also took advantage of training offered by other entities, including the NFA series of five online training modules dealing with issues surrounding securities futures products and the DOJ's videotaped training programs on discovery and trial techniques. The Enforcement program further arranged for: 1) Enforcement investigator training by the NYMEX, which focused on how NYMEX staff conduct trade practice investigations; and 2) NFA training, which focused on the investigative use of the NFA's registration databases.

Regulatory and Legislative Matters

In FY 2003, the Office of the General Counsel (OGC) advised the Commission concerning implementation of the rules and regulations issued pursuant to the CFMA. In particular, OGC coordinated the Commission's work with the SEC and other agencies to implement the joint rulemakings required by the CFMA. OGC also continued its review of requests for no-action relief to allow the offer and sale of foreign exchange-traded foreign stock index futures contracts in the U.S. In FY 2003, OGC issued four no-action letters for seven of these foreign exchange-traded foreign stock index futures contracts. OGC also has been instrumental in advising the Commission as it comprehensively modernizes the rules governing FCMs, CPOs, CTAs and other registrants in light of the study completed by the Commission and submitted to Congress under Section 125 of the CFMA.

OGC, working in conjunction with the operating programs of the Commission, has consulted with staff of the U.S. Treasury Department and various Federal financial regulators to develop several anti-money laundering regulations required under the USA PATRIOT Act. OGC also has coordinated Commission outreach to market participants and SRO representatives to facilitate the presentation of comments and input to Treasury so that the resulting regulations are appropriate to the nature of the industry, and Commission registrants are not placed at a competitive disadvantage relative to other financial services providers.

Opinions Process

During FY 2003, OGC used its newly revised process for reviewing opinions matters and preparing draft decisions for the Commission. Successful implementation of this procedure continues to have a significant impact on the reduction of both the number and average age of cases pending on the Commission's appellate docket.

Expediting Fitness Information Sharing

The Office of International Affairs (OIA) has helped the NFA develop its "International Regulators' Alert System" to keep international regulators informed about U.S. firms operating in their jurisdictions. This system uses information from NFA's Background Affiliation Status Information Center (BASIC) to provide publicly available background and disciplinary information to foreign regulators. The system also can be programmed to provide ongoing alerts to enhance information sharing. When a regulator initially requests information on a firm, they receive registration status, registration history, and disciplinary information on the firm and its principals. From that point forward, any regulatory information about that firm that is entered into BASIC by NFA, the Commission, or an exchange, will trigger an immediate regulatory alert e-mail. Regulators are also immediately notified when a firm withdraws from the industry or is terminated. Increased use of this system by foreign regulators will expedite information shar-

ing and lessen a paperwork burden on Commission staff. Because receipt of such fitness information is typically required by foreign regulators in order to authorize the placement of U.S. exchanges' electronic trading systems in foreign countries, the availability of this system supports market access by U.S. markets.

Automated Access to Research Information

The Commission provides its employees with automated research tools that make information readily accessible at their desktops and provide faster and more efficient search and retrieval capabilities. The Commission Library installed a Windows-based integrated library system, Horizon, which enhances employee access to library materials. All catalog records have been successfully transferred from the previous system and all new borrower records have been included in Horizon. Presently, the system is available only on terminals in the Commission Library. The Commission Library is working to make the system available to all Commission employees at their desktops during FY 2004.

Information Technology Improvements

In FY 2003, a significant effort to improve and enhance the functionality of the Commission's primary mission-critical application that tracks futures and option data on a daily basis, the Integrated Surveillance System, was completed through the implementation of over 5,000 system bug fixes and enhancements. It is an ongoing effort to improve the system's capability to match anticipated changes in the futures industry. This system is also being enhanced to incorporate the requirements defined in the CFMA.

In FY 2004, CFTC will continue to refine the Integrated Surveillance System, responding to key changes in the market, such as the trading of daily futures contracts, in contrast to standard monthly futures contracts. As part of a refinement of the requirements spelled out in the CFMA, the Commission will be increasing its oversight of exempt commercial markets, such as Intercontinental Exchange, Houston Street, NGX, and Trade Spark. Accordingly, the Commission will need to design and develop new computer systems to efficiently and effectively capture, store, and analyze trade data of exempt commercial markets.

In FY 2003, the Commission continued its effort to create Project eLaw, an automated law office that seamlessly integrates technology and work processes to support managers and staff throughout the Commission in their investigative, trial, and appellate work. This work will continue through FY 2004.

In FY 2004 the Commission also will: 1) continue reengineering the Exchange Database System, which tracks monthly trade data; 2) further enhance the Clearing and Intermediary Oversight program's RSR Express application, which is used to receive, process, review, and track financial reports received electronically from FCMs and from IBs; 3) enhance its video-conferencing capability; 4) continue to reengineer its information resource management processes; and 5) assess the potential application of Web technology to provide Commission staff with access to agency systems.

Information Technology Security Improvements

In FY 2003, the Commission made significant progress in developing its information security program. Several of the security program activities focused on deficiencies identified in the Commission's FY 2002 information technology security gap analysis. These activities included: 1) developing a set of standard operating

procedures as the baseline of knowledge necessary to maintain operational stability; 2) conducting a risk assessment of and developing a security plan for the Commission's general support system; and 3) conducting the security test and evaluation necessary to certify and accredit that system.

In FY 2004, the Commission will continue to address high-priority deficiencies identified in an FY 2002 security program assessment. The Federal Information Security Management Act of 2002 mandates the correction of these deficiencies. Primary activities planned for FY 2004 include: 1) conducting risk assessments of and developing security plans for the Commission's major applications; 2) conducting security tests and evaluations necessary to certify and accredit these major applications; 3) completing the information technology disaster recovery plan; 4) developing the program-level business continuity plans; 5) implementing the disaster recovery plan, including build-out of the disaster recovery site; 6) developing the agency-level continuity of operations plan; 7) expanding the Commission's configuration management program from applications to the general support system; and 8) enhancing the Commission's information security awareness and training programs.

In FY 2005, the Commission will continue to address high-priority deficiencies identified in an FY 2002 security program assessment. Primary activities planned for FY 2005 include: 1) completing the certification and accreditation of the Commission's general support system; 2) completing the certification and accreditation of the Commission's major applications; 3) coordinating the Commission-wide COOP, program-level business continuity, and IT disaster recovery exercises; and 4) completing the expansion of the Commission's configuration management program the general support system.

Enhanced Management Strategies

The internal review of the structure and functions of the Office of Management Operations (OMO), which was started in FY 2002 and completed in FY 2003, has led to significant improvements in critical administrative service areas in FY 2003. The progress to date includes: 1) development and implementation of a new automated supply ordering system; 2) review of the Commission's transportation service standards; and 3) relocation for enhanced functionality and security the functions of the main reception center, the mailroom and the administrative help desk.

During FY 2003, OED continued its work to improve financial management through its efforts to align the Management Accounting Code System, the organization of the payroll system, and the budget structure in the financial management system to enable full integration of performance measurement and financial reporting as required by the Accountability for Tax Dollars Act of 2002 and the President's Management Agenda.

OED collaborated with several entities to implement the provisions of the Farm Security and Rural Investment Act of 2002 to bring the Commission's pay system in line with those of other Federal financial regulators. This included working with the Commission's EMC and an expert consultant to develop the new system of pay and benefits as well as working with the National Finance Center, the Commission's payroll service provider, to reprogram the payroll system with the new salary rates. OED also created a secure Web-based, interactive database, the CFTC Emergency Contact Database System, to be maintained to enable prompt response in the event of an emergency affecting the operations of one or more Commission regional offices or the personal well being of one or more employees.

Improved Access to Human Resources Information

The Commission continues to design, test, and implement governmentwide and Commission-wide human resource systems that will provide efficient and effective access to human resources information to its employees, including:

- Maintaining the Employee Resource Center (ERC), which contains a circulating library of paper-based and electronic resources encompassing career and life planning, training and development, health, employee assistance, and work and life balance. The ERC also hosts employee work groups, meetings, and educational outreach programs, including health seminars and preventive screenings, employee assistance programs, new employee orientation, transit subsidy distribution, performance management committee meetings and focus groups, and training program development committees.
- Coordinating interactive training sessions for Commission supervisors and managers to develop skills to effectively communicate and provide feedback to employees on performance, conduct, and other related issues.
- Providing Web-based tools to managers for comprehensive research and analysis on a variety of human resource issues. As emphasized by the President's Management Agenda and the Office of Personnel Management, these include systems such as e-Clearance, Personnel Investigations Processing System, Clearance Verification System, and e-Training.
- Managing the Employee Assistance Program (EAP), a free, confidential counseling program with 24-hour availability for employees and their family members to help with personal problems that may impact their work life. The EAP also includes on-site counseling and training to assist employees with personal and work problems, anxiety levels, and to help traumatized employees with recovery. The EAP also provides consultation to supervisors who have employees with performance and/or attendance problems.
- Maintaining the *Employee Handbook*, which provides important information about the Commission, including the basic principles governing employment in the Federal government.
- Developing a new employee orientation Web page, which is scheduled to be implemented in FY 2004 and will be a user-friendly source of important information to new employees concerning their employment at the Commission. This new Web page will supplement the human resource information already available on Open Interest, the Commission's intranet site.
- Begin design of a new consolidated training database to assist employees and managers in tracking and evaluating training requests reconciling training expenditures, and managing training-related reporting requirements, complaints, and claimants.

Program Contributions to Strategic Goals

Goal One: Ensure economic vitality of the commodity futures and option markets.

Breakout of Goal One Request by Program Activity

	FY 2004		FY 2005		Change	
	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE
Market Oversight	\$12,916	88	\$13,498	88	\$582	0
Clearing & Intermediary Oversight	912	5	947	5	35	0
Chief Economist	2,103	12	2,186	12	83	0
Enforcement	6,777	35	7,323	36	546	1
Proceedings	0	0	0	0	0	0
General Counsel	2,159	11	2,248	11	89	0
Executive Direction & Support ⁴	3,027	17	3,036	17	9	01
TOTAL:	\$27,894	168	\$29,238	169	\$1,344	1

Program Contributions to Goal One

Market Oversight

The Commission anticipates that its new regulatory structure for exchanges and other trading systems will encourage rapid growth in the number of entities trading futures and options in the U.S. as well as an increased number of innovative futures and option contracts in nontraditional commodity areas. New and existing U.S. exchanges will list new products for trading in their efforts to compete with foreign exchanges and to meet the hedging and price discovery needs of firms participating in the electronic business-to-business marketplace. Moreover, a significant number of these new markets may seek Commission recognition as contract markets in security futures or as DTEFs. The Commission expects the number of active futures and option markets requiring surveillance to increase from 500 in FY 2003 to 520 in FY 2004 and to 540 in FY 2005. Most of these new contracts will be security futures and energy futures. Many new exchanges will trade contracts only on electronic systems or simultaneously through electronic and open outcry systems. Industry efforts to integrate financial cash market trading and over-the-counter derivatives trading through common electronic trading platforms or other mechanisms will increase the importance of a surveillance effort that examines the relationship between futures and option contracts and the underlying commodity or market instrument. In view of an FTE allocation of 51 for the Market Surveillance subprogram for FY 2005, the Market Oversight program anticipates that surveillance economists will produce 2,200 weekly surveillance sheets in FY 2005 as compared to 2,100 in FY 2004.

⁴ Represents Executive Direction resources directly allocated to Goal 1. All unallocated resources are prorated among the other programs.

Streamlining Large Trader Reporting

In FY 2000, the Commission introduced its reengineered computer system that supports market surveillance. Enhancements to that system continued in FY 2003. Additional capability was added in order to support new types of contracts, such as security futures products and weekly futures and daily electricity futures. The anticipated growth in U.S. futures and option trading, particularly from security futures contracts, other types of new contracts, and new exchanges will increase significantly the volume of surveillance data that this system must process. In order to maintain adequate computer system processing speed for this growth in data, improvements will continue to be made to system hardware and software architecture. Staff time will be devoted to assuring that these data are received and processed in an accurate and timely manner. Surveillance staff also will continue testing and modifying, as appropriate, enhancements to the core elements of the new surveillance computer system.

Review of Commission Regulations

The Commission will continue a broad review of its regulations to eliminate rules made obsolete by the recent amendments to the Act and the rules promulgated to implement the CFMA. It will also review its rules to further streamline and coordinate regulations across markets. The review is being conducted under the leadership of the Market Oversight program with representatives from all program areas of the Commission. In FY 2005, the Market Oversight program plans to take a leadership role in implementing further regulatory reforms adopted by the Commission.

New Contract Market Filings and Rule Amendments

As a result of ongoing changes in technology, including advances in electronic trading and the use of the Internet for executing business-to-business commercial transactions and the introduction of trading in single-stock futures, the number of derivatives exchanges is expected to grow, consisting of designated contract markets and DTEFs as well as exempt markets. These new exchanges, as well as existing exchanges, are developing derivatives products based on various nontraditional "commodities," including diverse tangible commodities, services, and indexes of commercial or economic activity and events. Exchanges also continue to innovate by developing new security futures products.

In view of these considerations, six new exchanges are expected to file with the Commission during FY 2005 for approval as contract markets or DTEFs, and six entities are expected to notify the Commission as exempt markets. In addition, 39 new contracts are projected to be filed with the Commission under the certification procedures, with 12 requests for approval of products. This projection is based on: 1) the existing and prospective exchanges' continuing interest and competition in developing innovative futures and option contracts in the financial, physical commodity, and other sectors; 2) the prospects for joint ventures between existing exchanges and business-to-business facilities to develop derivatives markets; 3) the introduction of single-stock futures trading; and 4) the tendency to establish option contracts on futures that have traded successfully. In addition, 100 economically significant rule changes are expected to be submitted during FY 2005. These will include a number of significant changes to existing rules to maintain conformity with changing cash market practices. The trend toward development of new innovative products will continue through FY 2004 and FY 2005. Finally, the number of non-product-related rule changes are expected to increase in FY 2005 as contract markets and DTEFs continue to establish new automated trading systems and innovative market structures.

Clearing & Intermediary Oversight

Oversight and Review of Financial Risk Management

During FY 2004 and FY 2005, the Clearing and Intermediary Oversight program will use a new risk management application that it has been developing to help the program become proactive in monitoring firm financial exposure. The application provides the Clearing and Intermediary Oversight program with financial surveillance tools to summarize financial data in a quick and efficient manner and to assess trader losses from risky positions, which have caused firms to become undersegregated and/or undercapitalized. The application uses existing data that the Commission receives from firm financial filings and large trader reports. Thus, the Clearing and Intermediary Oversight program is uniquely positioned to implement this risk management application.

The Clearing and Intermediary Oversight program also will monitor major market moves in an attempt to identify and respond to potentially disruptive situations that adversely affect the financial condition of the market or market participants. Program staff will work on a case-by-case basis to develop appropriate, innovative, and pragmatic responses to such market events. Areas of focus during FY 2004 and FY 2005 may include: 1) systemic risk issues; 2) changes in the markets that further link cash and derivatives (on-exchange and off-exchange); 3) cross-border trading; and 4) growth in the number of automated trading systems.

During FY 2004 and FY 2005, the Clearing and Intermediary Oversight program will work internally and with the industry to review contingency plans, improve communications, and assess best practices to develop sound disaster recovery plans.

Information Efforts on the Functions and Utility of the Markets

During FY 2004 and FY 2005, the Clearing and Intermediary Oversight program will continue to support the PWG, participate in Commission advisory committee efforts, and expand its role in both interagency and private sector intermarket coordination activities. The Clearing and Intermediary Oversight program and the OIA will coordinate Commission efforts with those of foreign regulators and professional organizations in the areas of accounting, capital, market surveillance, and financial compliance, with particular focus upon linkages, full service financial firms, and new products.

Enforcement

Challenges to the proper economic functioning of the markets presented by manipulative and abusive trading practices requires an increased level of Enforcement resources for investigation and litigation. Domestic and foreign markets are becoming increasingly interrelated as technology develops, regulatory barriers are eliminated, and formal links are established between markets. Changes in the regulatory and technological environment for exchanges facilitates trading by institutional market participants. These regulatory and technological changes enable traders to employ complex strategies more easily and could permit abusive conduct in one market to cause greater harm in other related markets. The Commission has identified such potential wrongdoing in the energy markets, for example, and has launched large-scale investigations. Accordingly, the Enforcement program expects to increase its investigations of disruptive or potentially disruptive market situations in order to address price manipulation and fraudulent trading practices.

FY 2005 President's Budget & Performance Plan

Manipulation and trade practice investigations and cases tend to be among the most complex and resource-intensive matters handled by Enforcement staff for several reasons: 1) staff must analyze complex trading strategies and the intricacies of the underlying cash markets; 2) investigations require detailed reconstruction of trading using voluminous records; and 3) assistance sometimes is required from or provided to domestic and foreign regulators. Historically, the Enforcement program has had to deal with a relatively small number of these resource intensive matters at any one time. Current developments, such as the Commission's investigation of alleged abuses in energy-related markets, however, indicate that Enforcement staff will be called upon to investigate and prosecute a growing number of such matters during FY 2004 and FY 2005, which will severely stretch the Enforcement program's resources.

Office of Chief Economist

Research on Market Functions and Developments

In FY 2004 and FY 2005, OCE staff will continue to examine the alternative execution procedures in futures markets. This will include comparison of the liquidity and price discovery of open-outcry systems versus electronic trading systems with supporting details on related economic theories and empirical evidences. This effort should provide valuable input in formulating policy proposals by Commission staff. In pursuit of the same purpose, OCE staff also is examining alternative derivative markets based upon states of nature and various types of events.

During this same time period, OCE staff also will examine market structural issues arising from interest from certain futures market participants in common clearing. OCE staff also will provide economic and statistical analyses to the Enforcement program on a number of cases, including retail FOREX fraud and potential market manipulations.

Derivative Risk Management and Risk-Based Capital Requirements

The rapid growth of derivative markets has dramatically increased the potential impact of derivatives on the stability of international and domestic financial markets. Derivative risk management and risk-based capital requirements are the major tools to maintain the financial integrity of futures and option markets and reduce systemic risk of the financial markets. In FY 2004 and FY 2005, OCE staff will continue to examine the following risk management and risk-based capital issues: 1) analytic models for analyzing, measuring, and monitoring futures market risk and liquidity risk and major issues in implementing a market risk measurement system; 2) alternative models on risk-based capital requirements and quantitative methods for evaluating the adequacy of capital requirements; and 3) evaluation of risk-based margin systems, including the Standard Portfolio Analysis of Risk Margin Systems for futures and options on futures and the Theoretical Intermarket Margin System for options on equities.

Office of Proceedings

The Office of Proceedings will hear and decide administrative enforcement cases brought by the Commission during FY 2004 and FY 2005.

Office of the General Counsel

Contract Market Designation Applications

OGC will continue to review for legal sufficiency and conformance with the CEA and Commission policy and precedent contract market designation applications as well as applications for registration as DTEFs and DCOs.

Manipulation and Other Abusive Trading Practices

OGC will continue to review all enforcement recommendations involving the initiation of investigations and all proposed enforcement actions alleging manipulation and other abusive trading practices to assure their legal sufficiency and conformance with general Commission policy and precedent.

Coordination of Information and Efforts Among U.S. Regulators

OGC will continue to coordinate with other members of the PWG and other Federal regulators on issues as necessary.

Providing Information on the Functions and Utility of the Markets through Public Meetings

OGC will continue to provide the Commission with guidance on both procedural and substantive matters in connection with the public meetings of its three advisory committees—the Agricultural Advisory Committee (AAC), the Global Markets Advisory Committee (GMAC), and the Technology Advisory Committee (TAC)—and all other public Commission meetings.

Commission Reauthorization and Other Legislative Matters

OGC will continue to monitor, review, and comment on the legal and programmatic implications of proposed legislation affecting the Commission and prepare draft legislation as requested by members of Congress or their staff. OGC also will analyze legislative proposals as part of the upcoming Congressional reauthorization process.

Executive Direction & Support

Agency Direction

The increasing global electronic integration of the commodity futures and option markets requires the entire international regulatory community to cooperate as technology significantly increases cross-border trading volume, cross-market participation, and cross-border exchange combinations. OIA will coordinate with regulators throughout the world to: 1) facilitate cross-border business through the elimination of unnecessary legal and practical impediments; 2) enhance customer and market protections through cooperative arrangements; and 3) encourage market discipline through enhanced transparency.

Administrative Management & Support

In FY 2004 and FY 2005, the OIRM will continue to refine the Integrated Surveillance System, responding to key changes in the market, such as the trading of daily futures contracts, in contrast to standard monthly futures contracts. As part of a refinement of the requirements spelled out in the CFMA, the Commission will begin increasing its oversight of exempt commercial markets, such as Intercontinental Exchange, Houston Street, NGX, and Trade Spark. Accordingly, OIRM will need to design and develop new computer systems to capture, store, and analyze trade data of exempt commercial markets.

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In FY 2004, OIRM will continue to support the Commission as it expands the monitoring and oversight of the new electronic exchanges. These electronic exchanges are being created by existing open outcry exchanges and will be integrated with the traditional open-outcry exchange systems. These new exchanges expand the scope of trading and produce significantly more data. The Exchange Database System, which tracks the trading activities, will be enhanced to accommodate the new markets.

In FY 2005, OIRM will continue with the ongoing technical improvements to the exchange database system, improving the Commission's ability to identify irregularities and offenses in the markets. The timeliness and scope of these investigations will be enhanced by the increased availability of trade data and by the advanced capability of a trade practice surveillance system.

Goal Two: Protect market users and the public.

Breakout of Goal Two Request by Program Activity

	FY 2004		FY 2005		Change	
	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE
Market Oversight	\$0	0	\$0	0	\$0	0
Clearing & Intermediary Oversight	5,893	34	6,137	34	244	0
Chief Economist	0	0	0	0	0	0
Enforcement	24,361	124	26,263	128	1,902	4
Proceedings	2,697	17	2,810	17	113	0
General Counsel	4,090	21	4,260	21	170	0
Executive Direction & Support ⁵	269	2	270	2	1	0
TOTAL:	\$37,310	198	\$39,740	202	\$2,430	4

Program Contributions to Goal Two

Clearing & Intermediary Oversight

Oversight of Sales Practices and Registered Futures Associations

Clearing and Intermediary Oversight program staff will conduct oversight reviews of regulatory programs conducted by NFA. As part of its oversight of NFA's audit program, the Clearing and Intermediary Oversight program will conduct reviews of NFA's operations that will include sales practice and other compliance programs for CPOs and CTAs as well as NFA's programs for FCMs, IBs, and their branch offices. If additional futures associations become registered, Clearing and Intermediary Oversight staff will oversee these registered futures associations (RFAs) as well.

Clearing and Intermediary Oversight staff will refine the procedures it has developed to review the self-regulatory programs of new electronic exchanges, particularly the clearing and financial reporting and record-keeping compliance pro-

⁵ Represents Executive Direction resources directly allocated to Goal 2. All unallocated resources are prorated among the other programs.

grams of such entities. Staff will conduct selected FCM, CPO, CTA, and IB audits to test self-regulatory programs. Staff also will conduct examinations on behalf of the Enforcement program and provide technical assistance to the Enforcement program as needed, particularly with the area of off-exchange retail foreign currency transactions.

Clearing and Intermediary Oversight program staff will continue to review all customer complaints received by the Commission as part of the effort to determine if customer protection issues arise in connection with new markets and new products offered on new and existing markets. Staff will continue to confer periodically with NFA and any other RFA on marketing issues. In this regard, such coordination may become more critical in the event NFA or any other RFA takes on additional audit responsibilities for existing and new exchanges.

Oversight of Intermediary Fitness

The Clearing and Intermediary Oversight program staff will oversee the NFA's fitness review program (registration) through formal reviews of the program, informal staff contacts, and meetings of the Registration Working Group. The Clearing and Intermediary Oversight program will continue to work with other Commission staff to provide input and feedback to NFA on its online registration system. If additional futures associations apply for registration and become registered, the program will oversee these RFAs as well.

As the pace of technological change quickens, Clearing and Intermediary Oversight program staff will review rules and other guidance provided to the industry to ensure that customer and marketplace protections are maintained and enhanced. In connection with such efforts, staff will modify oversight programs to conform to any changes in the way market and credit risk are assessed pursuant to relevant capital rules and related reporting requirements. Staff will continue to examine firms' risk assessment and internal control oversight programs.

Anti-Money Laundering

The Clearing and Intermediary Oversight program will continue to participate as members of both an interagency working group and an internal Commission task force responsible for implementing and making recommendations on the implementation of the anti-money laundering provisions (Title III) of the USA PATRIOT Act. Clearing and Intermediary Oversight staff will provide input and assistance for the U.S. Treasury Department in developing rules as required under Title III. Further, because Treasury delegated its anti-money laundering and examination authority with respect to FCMs, IBs, and CTAs to the Commission in November 2003, Clearing and Intermediary Oversight program staff may develop requisite Commission rules to implement an appropriate audit and compliance program.

Study of the Structure of Self-Regulatory Organizations

Commission staff are performing a broad horizontal review of futures exchanges, clearing organizations, and the NFA to: 1) evaluate the role and effectiveness of SROs as the structure of the futures markets continues to change substantially; and 2) assess their methods of fairly and effectively fulfilling their regulatory responsibilities in light of recent changes in the industry. The review will address potential or actual conflicts of interest that may arise when SROs act as both regulator and competitor to the entities they regulate. Staff will be contacting all SROs that are subject to Commission jurisdiction and will conduct interviews with SRO staff, FCMs, and others with the ultimate goal of preparing a report to the Commission on its findings.

Enforcement

The Enforcement program will continue to commit the majority of its resources to investigating and litigating cases involving fraud to protect market users and the public from abuse. The Enforcement program also will focus on cooperative enforcement, both domestically and internationally.

While it is difficult to project what new issues or trends will require an enforcement response, certain current circumstances are likely to be indicative of future resource needs, such as: 1) continued industry growth; 2) the development of technology that allows more complicated trading strategies and enhanced ease of access, including from abroad, to a wider customer base through the Internet and other mass media; 3) the increased volume of pooled and managed money flowing into the industry; and 4) the relatively recent statutory clarification in the CFMA concerning, among other things, the Commission's jurisdiction with respect to retail foreign currency transactions.

The Commission expects to continue to devote resources to matters involving the sale to retail customers of illegal futures and option contracts, including those involving precious metals and foreign currency, by unregulated entities until the problem abates. With the volume of investment dollars flowing to pooled and managed funds, the Commission also continues to pursue numerous cases involving unregistered CPOs and CTAs engaged in fraudulent conduct.

Properly staffed, the Enforcement program is able to investigate rapidly and take injunctive action in quick-strike cases⁶ without diverting staff from large, complex matters. The Enforcement program uses its quick-strike capability effectively to prosecute those engaged in ongoing fraud where customer funds are at risk. Such quick-strike cases not only send a deterrent message, but they also provide the Commission with the opportunity to freeze assets and preserve books and records whenever possible.

In FY 2004 and FY 2005, the Enforcement program anticipates that staff will devote attention to cases in which defendants use mass media to reach broad cross-sections of the general public, including unsophisticated customers. The Enforcement program in the past has pursued cases involving solicitation fraud, including false advertising, but the fact patterns in these cases continue to evolve and grow increasingly complex. Moreover, with the increased use of mass media, such as the Internet, these solicitations are reaching more retail customers than ever before.

The Commission also is dedicated to maintaining both its domestic and international cooperative enforcement activities. The relationships that the Enforcement program has forged with Federal, state, and local authorities are invaluable to the efforts of the Commission to fulfill its mission. The Enforcement program fully expects that its investigations will continue to require assistance from foreign authorities. The Commission has entered into formal cooperative enforcement arrangements with more than 20 foreign authorities and continues to negotiate additional arrangements as authorities obtain comprehensive investigatory powers. Much of the international work can be labor-intensive, given differences in language and regulatory schemes. Similarly, effective domestic cooperative enforcement requires that strong relationships be built over time.

Finally, the Enforcement program expects the amount of staff time and resources devoted to statutory disqualification investigations and cases in FY 2004 and FY 2005 to remain small but steady. The Enforcement program expects that it will

⁶ "Quick-strike" cases are civil injunctive enforcement actions filed by the Commission within four months of the opening of the related investigation.

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continue to investigate and prosecute certain significant statutory disqualification matters as well as disqualifications that are related to matters previously prosecuted by the Commission.

Ensuring that Assessed Penalties Are Collected

Prior to the end of FY 2002, responsibility for assuring that civil monetary penalties assessed in Commission cases—formerly within the purview of the Commission's former of Trading and Markets program—was transferred to the Enforcement program. Consistent with prior practice, the Enforcement program may turn over to the U.S. Treasury delinquent debts for cross-servicing, administrative offsets, and wage garnishments in accordance with both the Debt Collection Improvement Act of 1996 and the letter of agreement entered into between the Commission and the U.S. Treasury Department. The Commission may also, in appropriate cases, continue to refer delinquent debts directly to the DOJ to enforce collection. The Enforcement program will monitor the progress of each such case.

Office of Proceedings

During FY 2003, commodity futures and option markets continued to expand into new areas, and the volume of trading grew. However, the Commission expects the number of reparations complaints filed to remain at 112 in both FY 2004 and FY 2005.

Office of the General Counsel

Deterring Fraud and Other Illegal Activities

OGC will continue to review all enforcement recommendations involving the initiation of investigations and all proposed injunctive actions and administrative proceedings involving fraud and other violations to assure their legal sufficiency and their conformance with general Commission policy and precedent. In addition, OGC will continue to assist the Commission in the performance of its adjudication, litigation, *amicus curiae*, and bankruptcy functions.

Requiring Commodity Professionals to Meet High Standards

OGC will continue to support Commission oversight of the NFA program by reviewing statutory disqualification cases, reviewing the Commission's delegations of registration and other authority to the NFA, and participating in the Registration Working Group.

Providing a Forum for Handling Customer Complaints Against Registrants

OGC will continue to assist the Commission in resolving appeals from initial decisions in reparation cases and will represent the Commission when its reparation decisions are appealed to the U.S. Courts of Appeals.

Anti-Money Laundering

OGC will continue working with the U.S. Treasury Department, other Federal financial regulators, and interested parties to develop anti-money laundering regulations required by the USA PATRIOT Act. OGC also will be coordinating with market participants, the NFA, and other Commission programs on compliance and examination issues as these new regulations come into effect.

Executive Direction & Support

Administrative Management & Support

In FY 2005, the Commission will modernize systems supporting administrative and reparations case management systems. Case tracking for these types of matters will be implemented as part of the Commission-wide Project eLaw effort. Docket management and sanction reporting will be addressed through separate technical modernization initiatives. Sanction reporting and publication of sanction business processes will be modernized to support more frequent posting of information to the Internet. This activity will result in information to the public being more readily accessible and current.

Goal Three: Ensure market integrity in order to foster open, competitive, and financially sound markets.

Breakout of Goal Three Request by Program Activity

	FY 2004		FY 2005		Change	
	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE
Market Oversight	\$8,189	41	\$8,520	41	\$331	0
Clearing & Intermediary Oversight	7,117	41	7,870	43	753	2
Chief Economist	0	0	0	0	0	0
Enforcement	5,447	28	5,891	29	444	1
Proceedings	207	1	216	1	9	0
General Counsel	1,500	8	1,563	8	63	0
Executive Direction & Support ⁷	2,237	12	2,289	12	52	0
TOTAL	\$24,697	131	\$26,349	134	\$1,652	3

Program Contributions to Goal Three

Market Oversight

Information on the Functions and Utility of the Markets

During FY 2004 and FY 2005, Market Compliance program staff will continue to provide analytic support and expertise for enforcement cases involving questionable trade practices or trading abuses.

Promoting Effective Self-Regulation & Protecting Markets from Abusive Trade Practices

Market Compliance subprogram staff will monitor changes in the marketplace that result from new electronic trading systems, advances in order routing technology, the globalization of the markets, and new market practices and clearing structures. The Market Compliance subprogram will also: 1) conduct extensive

⁷ Represents Executive Direction resources directly allocated to Goal 3. All unallocated resources are prorated among the other programs.

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examinations of SRO programs for enforcing their rules, regulations, and by-laws; 2) monitor daily trading activity for potential violations of the Act and the Commission's regulations; 3) review new SRO rules and rule amendments; 4) review and evaluate SRO disciplinary actions; and 5) continue to develop rules to foster open and competitive markets and protect the public interest.

Market Compliance subprogram staff will conduct three reviews of SRO compliance activities in FY 2004 and three such reviews in FY 2005 to ensure that each SRO program is effectively self-regulated. These reviews focus on the affirmative programs through which SROs enforce their rules. Such reviews also will focus on assuring adherence by contract markets and DTEFs to the core principles governing such entities under the new regulatory framework of the CFMA. These reviews have taken on increased importance as one of the Commission's principal regulatory tools in its transformed role of oversight regulator under the CFMA.

With respect to deterring and detecting abusive trade practices, the Market Compliance subprogram will continue its regular activity of trade practice investigations, including about 100 such investigations in FY 2004 and 110 in FY 2005. Staff will refer cases to the Enforcement program and the exchanges as appropriate. Staff will also continue development and implementation of enhancements to the automated trade surveillance system at the Commission. These activities promote markets that are free of trading abuses.

In both FY 2004 and FY 2005, Market and Product Review subprogram staff expect to review approximately 200 SRO rule and rule amendment submissions containing approximately 1,400 rules to ensure the protection of customers, the financial integrity of firms, and the fair treatment of market participants while accommodating product innovations and fostering efficiency. Areas of possible activity include new exchanges, exchange mergers, links with over-the-counter markets and foreign exchanges, and automated trading systems.

The Market and Product Review subprogram will continue to address ongoing regulatory issues regarding application of the multitude of new exemptions and exclusions in the CFMA with respect to trading of derivatives and oversight of an increased number of trading facilities and products. Additionally, Market and Product Review subprogram staff will work with the SEC to coordinate additional rulemakings with respect to the trading of security futures products by futures and securities exchanges.

The Market and Product Review subprogram also will review no-action requests from foreign boards of trade seeking to place terminals in the U.S. without being designated as a contract market or registered as a DTEF. In addition, the program will review and monitor innovative trading mechanisms developed by the energy industry in response to the deregulation of that industry, particularly those existing in an off-exchange environment, and the program will continue to provide guidance and appropriate regulatory relief by no-action letter and other available means.

With the assistance of outside consultants, the Market Compliance subprogram staff will continue to develop and begin to implement an enhanced electronic trade database and surveillance system. Staff also will begin developing new approaches to trade surveillance that are tailored specifically to electronic trading systems.

Clearing & Intermediary Oversight

Fostering Sound Business Practices: Financial Surveillance and Risk Assessment

In FY 2004 and FY 2005, the Clearing and Intermediary Oversight program will maintain and attempt to expand its ongoing activities to ensure sound business and financial practices. These program activities will face increased demands due to the growing complexity of market structures and product innovations in an increasingly global marketplace.

In addition to the expansion of markets and products, the Clearing and Intermediary Oversight program will need to address several proposals and the effects of such proposals on the financial integrity of firms and their SROs. Clearing and Intermediary Oversight program staff anticipate that to fortify risk management absorption it will require additional staff resources for: 1) the assessment of risk management capabilities and financial integrity at FCMs, SROs, and DCOs; and 2) determining the use of risk-based capital in lieu of capital based on a fixed percentage of customer funds.

The Clearing and Intermediary Oversight program will continue to review the Commission's existing regulatory requirements and gather input from registrants and other financial industry participants in order to recommend, for adoption by the Commission, appropriate amendments to regulations that deal with issues of: 1) expanding permissible investments of customer segregated funds; 2) including additional instruments in segregation; and 3) allowing customers electing to "opt-out" of having their funds held in segregation.

Oversight of Market Intermediaries

The Clearing and Intermediary Oversight program will continue its oversight of firms' financial condition. The program addresses the review of FCMs and IBs for appropriate risk management capabilities to prevent financial problems at a single firm from becoming systemic problems that may affect other firms or markets or market participants. The program also will review and recommend appropriate revisions of the capital rules for FCMs and IBs so that such firms, the exchanges, and the clearing organizations can enhance their operating efficiency while maintaining a sufficient capital cushion. In FY 2003, the Clearing and Intermediary Oversight program proposed a risk-based capital requirement to replace the requirement based on a percentage of segregated funds. The new risk-based requirement would correlate an FCM's capital requirement with the risk of proprietary positions and those held by its customers. In FY 2004, the subprogram staff will be working with the exchanges, the NFA, and other industry participants to ensure the smooth implementation of the new capital requirement if it is adopted. Certain forms of FCM financial statements also would have to be updated to reflect the capital requirement change.

Self-Regulatory Organization Oversight Program

In FY 2003, program staff developed and implemented a risk-based oversight program to review the SROs' compliance activities, particularly customer protection and financial monitoring and record-keeping. The first review under this program was completed in early FY 2004. After reviewing these efforts, staff initiated another review and expect to begin additional reviews in FY 2004. In FY 2004 and FY 2005, program staff will continue to conduct examinations of Commission registrants, process risk assessment filings by FCMs, and review financial reports from FCMs and IBs. In addition, staff will monitor the efforts of NFA in reviewing commodity pool annual reports, which the Commission authorized NFA to conduct in FY 2003. Staff also anticipate continuing support to the Enforcement program on accounting matters and the application of financial re-

quirements. Finally, staff will continue to submit to the Commission formal reports on the program's oversight of SROs.

Derivatives Clearing Organization Oversight Program

Clearing and Intermediary Oversight program is well into the development of a comprehensive DCO review program. The program addresses each of the DCO core principles, including the issue of appropriate risk management capabilities, among other things, to prevent financial problems on a single market or at a single institution from becoming systemic problems that may affect other markets or market participants. Clearing and Intermediary Oversight staff have shared some of the information collected as part of the program with industry participants and received favorable feedback. The first review of a DCO will commence in FY 2004.

Ensuring a Regulatory Environment that is Flexible and Responsive to Evolving Market Conditions

Continuing in FY 2004 and FY 2005, the Clearing and Intermediary Oversight program will support the Commission's ongoing regulatory reform program, as well as actions required by or appropriate to the implementation of the CFMA. Staff will continue to review the Commission's existing regulatory requirements and gather input from registrants and other financial industry participants in order to recommend for adoption by the Commission appropriate amendments to regulations that are: 1) consistent with the goals and principles of the CFMA; and 2) flexible enough to maintain a regulatory framework that is effective, efficient, and relevant to developments in financial markets. Rulemakings, reports, and guidance from the Clearing and Intermediary Oversight program will continue to be important regulatory outputs in the new oversight environment created by the CFMA's regulatory framework and as SROs work to adhere to the framework's core principles while responding to the demands of the futures marketplace for innovation and global competitiveness. The staff will, as necessary, develop and promulgate regulations and promote standards that provide appropriate guidance to market participants, but continue to allow sufficient flexibility. The Clearing and Intermediary Oversight program will also provide assistance to industry participants, counsel, and the public in interpreting and applying the new regulatory framework to specific factual situations. Staff will continue to provide guidance and relief as appropriate to the public, persons new to the futures industry, and market professionals on a wide range of basic compliance matters, such as registration, disclosure, record-keeping, and treatment of customer funds.

New Products and Market Structures

The Clearing and Intermediary Oversight program will continue to address ongoing regulatory issues regarding the application of a multitude of new exemptions and exclusions in the CFMA with respect to the trading of derivatives, as well as oversight of an increased number of clearing organizations, products, and RFAs. Staff will also continue to respond to: 1) expanding use of electronic and communication technology; 2) electronic trading systems and cross-border transactions; and 3) resulting changes in how markets are accessed by participants and how intermediaries conduct business with customers. Staff will address potential systemic problems and risks through timely preparation of reports and guidance relating to major market events. Program staff will continue to address the creation of new clearing structures and the proliferation of new electronic execution facilities for derivatives.

Security Futures Products

The Clearing and Intermediary Oversight program will continue to work with the SEC to coordinate rulemakings with respect to the implementation and trading of security futures products. In this regard, program staff will focus upon the issues of customer margin, protection of customer funds, registration of intermediaries, product fungibility, and possible further exemptions for notice registrants. In addition, staff may participate in the development of rules and procedures for trading options on security futures. Staff also expect to continue working with SEC staff and industry representatives in connection with the development and introduction of portfolio margining for securities products, including security futures products. Staff also anticipate responding to myriad inquiries from intermediaries, their counsel and accountants, and the general public concerning operational issues as the market for security futures products develops.

Cooperation with the SEC

In implementing requirements of the CFMA, and in accordance with recommendations contained in the Commission's report on intermediaries, the Commission intends to work with the SEC to address the following issues related to futures and securities intermediaries: 1) standardizing definitions for sophisticated customers and the relief available to intermediaries dealing solely with such customers; 2) establishing a standard determination or a safe harbor as to when the business of a CTA or investment advisor does not consist of "primarily" acting as the other, so as to provide additional exemptions from registration; and 3) coordinating Commission and SEC reviews of offering materials of publicly offered commodity pools to minimize the time and costs imposed by duplication of efforts.

Enforcement

The Enforcement program will continue to devote resources to its role in fostering open, competitive, and financially sound markets through investigations and prosecutions relating to financial, supervision, and compliance failures by firms handling customer funds and trade practice abuses by market participants. In addition, the recent USA PATRIOT Act and anti-money laundering regulations require registered firms to implement reporting, compliance, and customer identification and verification programs to fight money laundering.

The Enforcement program anticipates that its investigation and prosecution of significant supervision, compliance, and internal control failures may grow as trading volume increases and regulated firms compete aggressively for customers in a changing regulatory and technological environment. Such violations threaten the financial integrity of registered firms holding customer funds and, if large enough, can threaten the financial integrity of clearing organizations. In addition, without adequate supervision and compliance systems in place, customers remain vulnerable to fraud, including misallocation of trades and unauthorized trading. Diligent supervision by registered firms also protects markets from the abusive practices of traders, including wash sales and manipulation. Such cases tend to be complex and time consuming, requiring extensive testimony from employees and managers in the supervisory chain. These cases can result in substantial remedial changes in the supervisory structures and systems in large FCMs following comprehensive reviews by the firms pursuant to Commission orders. These cases have had a significant impact on the way firms do business and are an important part of the responsibility of the Commission to promote sound practices by registered firms.

Enforcement staff will continue, in the first instance, to rely on SROs and independent auditors to monitor compliance and supervision by registered firms.

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Where appropriate, however, Enforcement program staff will undertake aggressive investigations and prosecutions to remedy failures in this area.

Enforcement staff will continue to prosecute trade practice violations in appropriate cases. Even with statutory and regulatory changes to reduce regulatory requirements, the Commission continues to be responsible for fostering markets that are free of manipulative and fraudulent trading practices. This requires a strong enforcement presence in this area. Exchanges play an important role in assuring open, competitive markets through surveillance and disciplinary actions. Their technological improvements and enhanced audit trails may impact the number of Commission enforcement actions in this area. Nevertheless, their jurisdiction is limited and certain misconduct crosses product lines and markets. As a result, the Enforcement program must be prepared to act when necessary. Such investigations tend to be among the most complex and time-consuming matters undertaken by Enforcement staff and will require the commitment of significant resources for the foreseeable future. The highly resource-intensive Enron investigation and other energy-related matters are strong indications of this trend.

Internationally, the Enforcement program will continue to negotiate cooperative enforcement arrangements as foreign authorities obtain enhanced regulatory and enforcement powers and become full partners in investigating and prosecuting futures and option violations. Such arrangements have been critical to the investigation and prosecution of cases involving fraud and manipulation. The Enforcement program will continue to pursue opportunities to enter into such arrangements in the future and also will participate in international organizations that encourage the development of high regulatory standards and cooperative enforcement. Such organizations have had a meaningful effect on lowering the barriers to sharing information between futures regulators and encouraging foreign jurisdictions to empower their regulators to enforce futures and option laws.

Office of Proceedings

During FY 2004 and FY 2005, the Office of Proceedings will continue to hear and decide administrative enforcement cases brought by the Commission against persons or firms charged with violating the Act or Commission rules and regulations.

Office of the General Counsel

Promulgating Regulations to Ensure Sound Business, Financial, and Sales Practices

OGC will continue to draft or review all proposed and final Commission rules and rule amendments to assure their legal sufficiency and conformance with the CEA and Commission policy and precedent. In particular, OGC will continue to coordinate the Commission's work with the SEC and other agencies to implement the joint rulemakings required by the CFMA.

Financial, Capitalization, Segregation, and Supervision Violations

OGC will continue to review all enforcement recommendations and actions involving the investigation, prosecution, and sanctioning of violators of financial, capitalization, segregation, and supervision requirements to assure their legal sufficiency and conformance with the requirements of the CEA and general Commission policy and precedent.

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Promoting Effective Self-Regulation

OGC will continue to review all proposed SRO rules and rule amendments for legal sufficiency and conformance with general Commission policy and precedent.

Facilitating a Flexible Regulatory Environment

OGC will continue to provide support to Commission efforts to coordinate and cooperate with global financial service regulators, share vital information, and develop appropriate global standards. It will also assist the Commission in promoting a flexible regulatory environment by analyzing requests for exemptions from the CEA and Commission regulations and by preparing and reviewing exemptive, no-action, and interpretive letters.

Coordination of Information and Efforts Among U.S. Regulators

OGC will continue to provide support to Commission representatives participating in the PWG, the President's Corporate Fraud Task Force, and the efforts of other Federal regulators.

Administrative Matters

OGC will continue to advise the Commission with respect to a wide range of administrative matters. Ongoing responsibilities will include: 1) assisting the Commission in responding to congressional inquiries; 2) advising the Commission with respect to issues involving the Freedom of Information, Privacy, Government in the Sunshine, Regulatory Flexibility, Paperwork Reduction, Small Business Paperwork Reduction, and Federal Advisory Committee Acts; 3) assisting the Commission in responding to third-party subpoenas; 4) providing support with respect to ethics issues; and 5) advising the Commission on personnel, labor, and employment law matters.

Executive Direction & Support

Agency Direction

In FY 2004 and FY 2005, OIA will continue to: 1) coordinate the Commission's representation in international forums; 2) cooperate with global financial services regulators to share information concerning markets, intermediaries, and regulatory structures; and 3) develop appropriate standards and arrangements in the commodities industry.

Also, in FY 2004, OIA will continue to participate in IOSCO, the Council of Securities Regulators of the Americas, and other international organizations to facilitate cross-border business through the elimination of unnecessary legal and practical impediments, to encourage market discipline through greater transparency, and to enhance customer and market protections through the development of cooperative arrangements and internationally accepted standards for the regulation of markets and financial services firms. During FY 2004, OIA will continue to coordinate the Commission's activities within the IOSCO Technical Committee and its standing committees with special focus on issues related to the needs of organized markets, clearing and settlement systems, and cross-border intermediation. The Commission also will continue to work within IOSCO to develop an assessment methodology for IOSCO's core regulatory principles.

During FY 2004 and FY 2005, OIA will continue to: 1) provide technical assistance to foreign market authorities; 2) develop cooperative arrangements to share information needed by other regulators or SROs to register firms that are remote members of U.S. markets; and 3) encourage arrangements that facilitate the exchange of such information directly among regulators through electronic

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media. During FY 2004 and 2005, OIA will also continue to provide technical support for the U.S. Treasury Department's efforts in international groups, such as the Financial Stability Forum to increase the transparency of markets and strengthen the global markets' financial architecture.

Administrative Management & Support

In FY 2003, the Commission continued its efforts to create Project eLaw, an automated law office that seamlessly integrates technology and work processes to support managers and staff across the Commission in their investigative, trial, and appellate work. Specifically, with the acquisition in late FY 2003 of integration support and expertise to assist with Project eLaw, planned activities for FY 2004 and FY 2005 include a requirements analysis, a technology assessment, a business impact analysis, the identification and installation of hardware and software, and pilot implementation followed by full implementation of Project eLaw.

Summary of Performance Targets

Goal One: Ensure the economic vitality of the commodity futures and option markets.				
Outcome 1.1: Futures and option markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.				
Annual Performance Goal: No price manipulation of other disruptive activities that would cause loss of confidence or negatively affect price discovery or risk shifting.				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage growth in market volume (<i>Growth in market volume</i>)	TBD	TBD	TBD	TBD
Percentage increase in number of products traded (<i>Expanding number of products</i>)	TBD	TBD	TBD	TBD
Percentage of new exchange and clearinghouse applications completed within fast track review period	TBD	TBD	TBD	TBD
Percentage of new contract certification reviews completed within two months to identify and correct deficiencies in contract terms that make contracts susceptible to manipulation	TBD	TBD	TBD	TBD
Percentage of rule change certification reviews completed within two months, to identify and correct deficiencies in exchange rules that make contracts susceptible to manipulation or trading abuses or result in violations of law	TBD	TBD	TBD	TBD
Outcome 1.2: Markets are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality.				
Annual Performance Goal: To have an effective and efficient market surveillance program.				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Length of advance warning of significant economic trends and patterns that require CFTC intervention (<i>Quick and efficient identification</i>)	TBD	TBD	TBD	TBD
Percentage of DCO applications demonstrating compliance with core principles	100%	100%	100%	100%
Ratio of contracts surveilled per economist	TBD	TBD	TBD	TBD
Percentage of contract expenditure without manipulation	99.9%	99.9%	99.9%	99.9%

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Goal Two: Protect market users and the public.

Outcome 2.1: Violations of Federal commodities laws are detected and prevented.

Annual Performance Goal: Violators have a strong probability of being detected and sanctioned.

Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Number of enforcement investigations opened during the fiscal year	127	172	120	135
Number of enforcement cases filed during the fiscal year	40	64	60	65
Percentage of enforcement cases closed during the fiscal year in which the Commission obtained sanctions (e.g., civil monetary penalties, restitution and disgorgement, cease and desist orders, permanent injunctions, trading bans, and registration restrictions)	100%	100%	100%	100%
Cases filed by other criminal and civil law enforcement authorities during the fiscal year that included cooperative assistance from the Commission	NA	19	20	21

Outcome 2.2: Commodity professionals meet high standards.

Annual Performance Goal: No unregistered, untested, or unlicensed commodity professionals.

Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage of professionals compliant with standards regarding testing, licensing, and ethics training (<i>Professional compliance</i>)	100%	100%	100%	100%
Estimated percentage of unregistered, untested, or unlicensed professionals engaged in commodity trading activities (<i>Detection of violators</i>)	0%	0%	0%	0%
Percentage of self-regulatory organizations that comply with requirement to enforce their rules	100%	100%	100%	100%
Percentage of derivatives clearing organizations that comply with core principles and other rules	100%	100%	100%	100%
Percentage of total requests receiving CFTC responses for guidance and advice	92%	93%	90%	90%

Outcome 2.3: Customer complaints against persons or firms registered under the Act are handled effectively and expeditiously.

Annual Performance Goal: Customer complaints are resolved within one year from the date filed and appeals are resolved within six months.

Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage of filed complaints resolved within one year of the filing date	52%	50%	50%	50%
Percentage of appeals resolved within six months	25%	50%	35%	35%

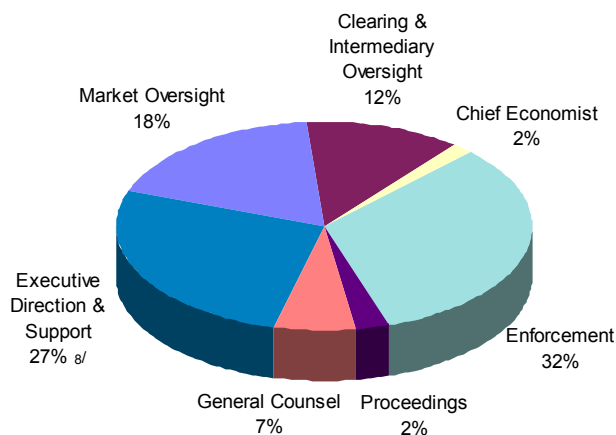
Goal Three: Ensure market integrity in order to foster open, competitive, and financial sound markets.				
Outcome 3.1: Clearing organizations and firms holding customer funds have sound financial practices.				
Annual Performance Goal: No loss of customer funds as a result of firms' failure to adhere to regulations. No customers prevented from transferring funds from failing firms to sound firms.				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Lost funds:				
a) Percentage decrease in number of customers who lose funds	0	0	0	0
b) Amount of funds lost	\$0	\$0	\$0	\$0
Number of rulemakings to ensure market integrity and financially sound markets	2	2	1	1
Percentage of clearing organizations that comply with requirement to enforce rules	100%	100%	100%	100%
Outcome 3.2: Commodity futures and option markets are effectively self-regulated.				
Annual Performance Goal: No loss of funds resulting from failure of self-regulated organizations to ensure compliance with their rules.				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage of intermediaries who meet risk-based capital requirements	100%	100%	100%	100%
Percentage of clearing organizations that comply with requirement to enforce their rules	100%	100%	100%	100%
Outcome 3.3: Markets are free of trade practice abuses.				
Annual Performance Goal: Minimize trade practice abuses.				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage of exchanges deemed to have adequate systems for detecting trade practice abuses	100%	100%	100%	100%
Percentage of exchanges that comply with requirement to enforce their rules	100%	100%	100%	100%
Outcome 3.4: Regulatory environment is flexible and responsive to evolving market conditions.				
Annual Performance Goal: TBD				
Performance Measures	FY 2002 Actual	FY 2003 Actual	FY 2004 Plan	FY 2005 Plan
Percentage of CFMA Section 126(b) objectives implemented	100%	100%	100%	100%
Number of rulemakings, studies, interpretations, and guidances to ensure market integrity and exchanges' compliance with regulatory requirements	2	2	4	2
Percentage of requests for no-action or other relief completed within six months related to novel market or trading practices and issues to facilitate innovation	TBD	TBD	TBD	TBD
Percentage of total requests receiving CFTC responses for guidance and advice	92%	93%	90%	90%

Justification of the FY 2005 Budget Report

Breakout of \$95.3 Million Budget Estimate by Program

	FY 2003		FY 2004		FY 2005 Current Svcs.		FY 2005 Request	
	FTE	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE	\$ (000)
Market Oversight	99	\$15,939	101	\$16,377	101	\$17,186	101	\$17,186
Clearing & Intermediary Oversight	67	\$10,815	61	\$10,803	61	\$10,803	63	\$11,672
Chief Economist	8	\$1,292	8	\$1,632	8	\$1,632	8	\$1,706
Enforcement	146	\$24,336	145	\$28,391	145	\$30,603	149	\$30,813
Proceedings	17	\$2,778	14	\$2,254	14	\$2,254	14	\$2,362
General Counsel	35	\$5,656	30	\$5,940	30	\$5,940	30	\$6,223
Exec. Direction & Support	149	\$24,613	138	\$24,504	138	\$24,915	140	\$25,365
Total	521	\$85,429	497	\$89,901	497	\$93,333	505	\$95,327

Budget Estimate by Program



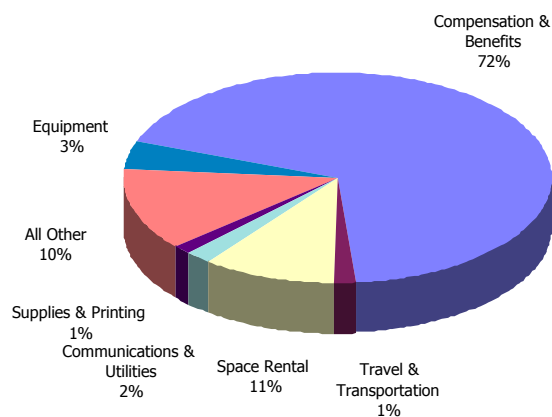
\$95.3 Million Budget Estimate by Program⁸

⁸ Includes information technology in support of all programs.

FY 2005 President's Budget & Performance Plan

Breakout of \$95.3 Million Budget Estimate by Object Class

	FY 2003	FY 2004	FY 2005
	(\$000)	(\$000)	(\$000)
11.1 Perm. Compensation	\$48,146	\$50,899	\$53,163
11.3 Other Than Perm. Compensation	922	500	500
11.5 Other Personnel Compensation	1,194	1,183	1,215
11.8 Special Pers. Serv. Payments	<u>349</u>	<u>325</u>	<u>325</u>
11.9 Subtotal, Personnel Comp.	50,611	52,907	55,203
12.1 Personnel Benefits: Civilian	12,291	12,194	13,241
13.0 Benefits for Former Personnel	56	63	63
21.0 Travel & Transportation of Persons	1,313	1,237	1,237
22.0 Transportation of Things	7	10	10
23.2 Rental Payments to Others	9,251	10,577	10,833
23.3 Comm., Utilities & Miscellaneous	1,572	2,034	2,034
24.0 Printing and Reproduction	329	376	376
25.0 Other Services	6,888	6,601	8,645
26.0 Supplies and Materials	753	835	835
31.0 Equipment	2,335	2,810	2,850
42.0 Claims/Indemnities	<u>-</u>	<u>257</u>	<u>-</u>
99.0 Subtotal, Direct Obligations	85,406	89,901	95,327
99.0 Reimbursable	<u>20</u>	<u>100</u>	<u>100</u>
99.0 Total Obligations	<u>\$85,426</u>	<u>\$90,001</u>	<u>\$95,427</u>



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Crosswalk from FY 2004 to FY 2005

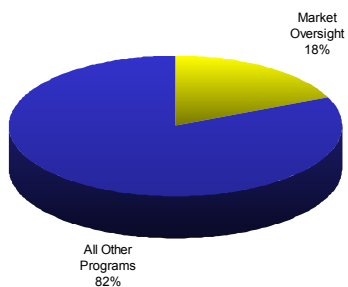
	<u>FY 2004 Estimate</u>	<u>FY 2005 Request</u>	<u>Change</u>
Budget Authority (\$000)	\$89,901	\$95,327	\$5,426
Full-Time Equivalents (FTEs)	497	505	8

<u>Explanation of Change</u>	<u>FTEs</u>	<u>Dollars (\$000)</u>
Increases: (Adjustments to FY 2004 Base)		
To provide for the following changes in personnel compensation (excluding benefits):		
-- Estimated April 2004 4.1% pay increase (annualization of)		1,137
-- Estimated April 2005 1.5% pay increase		349
To provide for increased costs of personnel benefits		863
To provide salaries and expenses for 8 more FTEs (from 497 to 505 FTEs)	+8	994
To provide for the following changes in non-personnel costs:		<u>2,083</u>
--Space Rental (\$256)		
--IT Systems Analysis, Development (\$934)		
--All Other Services (\$110)		
--Equipment (\$40)		
--Claims/Settlements (\$-257) ⁹		
--Enforcement Programs Support Cost (\$1,000)		
Total Increases	<u>+8</u>	<u>\$5,426</u>

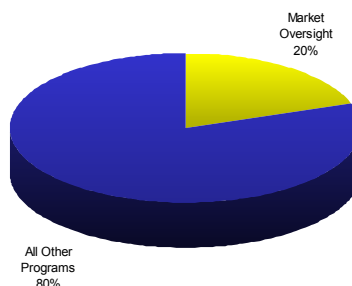
⁹ Equal Access to Justice Act Claim, Settlements.

Market Oversight

Total Budget: \$17,186,000 101 FTEs
 Total Change: \$ 809,000 0 FTEs



Market Oversight
 Percentage of Total Budget Dollars



Market Oversight
 Percentage of Total Budget FTEs

Justification of the FY 2005 President's Budget & Performance Report

The primary responsibility of the Market Oversight program is to foster markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity. By detecting and protecting against price manipulation and abusive trading practices, this program assists the markets in performing the vital economic functions of price discovery and risk transfer (hedging). The Market Oversight program will initiate and carry out the Commission's surveillance and oversight programs for these markets. The program also will conduct trade practice surveillance and reviews of exchange and futures association rule amendments and submissions. In addition, the program will develop, implement, and interpret regulations that protect customers, prevent trading and sales practice abuses, and assure the financial integrity of the futures markets.

In FY 2005, the Market Oversight program requests 101 FTEs, resulting in no increase over the FY 2004 level. The three subprograms—Market Surveillance, Market and Product Review, and Market Compliance—are requesting 48 FTEs, 18 FTEs, and 35 FTEs, respectively.

Market Surveillance

Futures prices are generally quoted and disseminated throughout the U.S. and abroad. Business, agricultural, and financial enterprises use the futures markets for pricing information and for hedging against price risk. The participants in commercial transactions rely extensively on prices established by the futures markets, which affect trillions of dollars in commercial activity. Moreover, the prices established by the futures markets directly or indirectly affect all Americans. They affect what Americans pay for food, clothing, and shelter, as well as other necessities. Since futures and option prices are susceptible to manipulation and excessive volatility and since producers and users of the underlying commodities can be harmed by manipulated prices, preventive measures are necessary to ensure that market prices accurately reflect supply and demand conditions.

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Actions to detect and prevent price manipulation are taken by economists who monitor all active futures and option contracts for potential problems. The FTEs requested for the Market Oversight will work on investigating possible manipulation and other trading abuses, analyze routine reports of large trader activity, conduct rule enforcement reviews, and work to detect and prevent threats of price manipulation or other major market disruptions caused by abusive trading practices. This involves:

- Analyzing the activities of large traders, key price relationships, and relevant supply and demand conditions for an anticipated 540 futures and option contracts representing major agricultural commodities, metals, energy, financial instruments, equity indices, foreign currencies, and newly authorized security futures products; and
- Preparing reports on special market situations and weekly reports on market conditions for contracts approaching their critical expiration periods. Potential problems are discussed weekly with the Commissioners and senior staff. The Commission and the affected exchange, jointly in most cases, develop and administer any necessary responsive measures. The Commission shares pertinent information with other regulatory agencies.

Price manipulation prevention activities of Market Surveillance economists are enhanced by support personnel, such as futures trading specialists, futures trading assistants, and statisticians. Their activities include:

- Operating an extensive daily data-gathering and verification system and collecting reports from exchanges, futures industry firms, and traders. The reports provide current market information on the size of futures and option positions held by large traders as well as other background information that is necessary to enforce Commission and exchange speculative limits;
- Providing software development and statistical support to quantify and display important relationships between key economic variables; and
- Improving the effectiveness and efficiency of the large trader reporting system.

Market and Product Review

In order to serve the vital price-discovery and hedging functions of futures and option markets, exchanges must provide consumers safe marketplaces that have appropriate protections in place and provisions for ensuring the integrity of contracts traded. Exchanges must list products for trading that are not readily susceptible to manipulation and do not lead to price distortions or disruptions in the futures or option markets and in the underlying cash markets. Adherence to the approval criteria, core principles, and appropriate contract design minimizes market disruptions and the susceptibility of the contracts to manipulation or price distortion.

The Market and Product Review subprogram, in cooperation with other offices of the Commission, reviews exchanges' applications for approval as a contract market or as a DTEF to ensure that the exchange is in compliance with approval criteria and core principles and Commission regulations for futures exchanges and DTEFs. The subprogram also reviews filings by exempt markets and, on an ongoing basis, reviews these entities to ascertain whether they comply with statutory requirements.

The subprogram also reviews requests from exchanges for approval of new contracts and rule amendments to existing contracts to ensure that contracts are in compliance with statutory and regulatory anti-manipulation requirements. It also conducts pre-surveillance reviews of new products and rule changes of economic significance submitted under certification procedures to provide information about the markets

FY 2005 President's Budget & Performance Plan

and product design features to ensure that contracts and rules comply with statutory requirements as well as the Commission's rules and policies. The reviews foster markets free of disruptions or price manipulation and provide essential information to conduct effective market surveillance and address regulatory and public interest issues. In this regard, deficiencies in the terms and conditions of futures and option contracts increase the likelihood of cash, futures, or option market disruptions and decrease the economic usefulness and efficiency of contracts.

In cooperation with other Commission staff, Market and Product Review staff also review the Commission's rules and policies related to oversight of regulated and exempt markets and products to ensure that the Commission's regulatory subprogram is achieving Commission goals and does not hinder innovation. Together with OIA as members of international working groups, the subprogram works with foreign regulatory bodies as members of international working groups to provide assistance and expertise about futures and option trading, product design, surveillance, and the regulation of derivatives markets. The subprogram also provides support to the Enforcement program in the form of economic analyses in connection with manipulation cases or other violations of commodity laws.

The Market and Product Review subprogram also reviews exchange rule submissions with a view toward: 1) maintaining the fairness and financial integrity of the markets; 2) protecting customers; 3) accommodating and fostering innovation; and 4) increasing efficiency in self-regulation consistent with statutory mandates. These rule submissions often present complex new trading procedures and market structures as well as financial arrangements that raise novel issues.

Market Compliance

The Market Compliance subprogram oversees the compliance activities of all designated contract markets in furtherance of the Commission's primary goals of ensuring customer protection and market integrity. The oversight program consists of examinations of exchange self-regulatory programs on an ongoing, routine basis to assess continuing compliance with applicable core principles under the Act and the Commission's regulations. The examinations result in rule enforcement review reports that evaluate an exchange's enforcement capabilities. The reports set forth recommendations for improvement where appropriate with respect to an exchange's trade practice surveillance, market surveillance, disciplinary, audit trail, record-keeping, and governance programs. These periodic reviews promote and enhance continuing effective self-regulation and ensure that exchanges rigorously enforce compliance with their rules.

The Market Compliance subprogram also monitors trading activity on all exchanges in order to detect and prevent possible trading violations. This type of oversight is conducted through the use of automated surveillance and floor surveillance, and it fosters markets that are free of trading abuses. The identification of potential trading violations results in referrals to relevant exchanges and to the Commission's Enforcement program. In addition, the Market Compliance subprogram reviews and analyzes proposed exchange trading platforms, rule enforcement programs, and disciplinary procedures in conjunction with new designated contract market applications. The subprogram also conducts special studies of exchange rules, procedures, and trading practices as issues arise affecting a particular exchange. This serves to promote orderly trading and facilitates open and competitive markets.

Impact of Requested Level of Resources

The growth in the number and different types of markets that trade a wider array of derivatives products, including single-stock futures, requires an increased quantity of surveillance, data collection, analysis, reporting, and research about

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new developments in derivatives trading. Surveillance and oversight of exchanges and product design involves monitoring an increasing number of futures and option contracts to detect or prevent potential problems, price manipulation, and other major market disruptions caused by abusive trading practices of contract design flows.

In FY 2005, the Market Oversight staff will be required to monitor a large and diverse array of markets and will continue to carry out the Commission's program of surveillance and oversight of single-stock futures. The Commission anticipates that a large number of these contracts will continue to be listed for trading, both on futures and securities exchanges, and that options on security futures products may also be trading. The number of energy futures contracts is also expected to continue to grow. At the requested level, surveillance, exchange oversight, and contract design reviews should be commensurate with the growth in new types of exchanges and the initiation of trading in new products, such as options on single-stock futures and new energy products. The staff should be able to detect and prevent price manipulation and abusive trading practices. The staff also will be able to review filings by exempt markets and, on an ongoing basis, assess whether these markets continue to comply with statutory requirements. At the requested level of FTEs, staff may need to shift some attention from markets that are less susceptible to market disruption toward both new markets and established markets that are more susceptible to disruption.

In addition, at the requested level, staff would be able to conduct reviews of applications by entities seeking to become an approved futures exchange. At the requested level, the staff would also be able to monitor developments in derivatives trading and market innovations. In this regard, innovations in technology and derivative instruments and trading methods in futures markets create many challenging economic and regulatory issues. The performance of derivative markets has a potentially large impact on the stability of international and domestic financial markets. Market research and effective monitoring of these developments help ensure that the Commission has in place sound regulatory policies to reduce systemic risk in financial markets and protect the economic function of the markets without undermining innovation and the development of new approaches to risk management.

Consequence of Not Receiving Requested Level of Resources

If the Commission does not receive the resources requested for its Market Oversight program for FY 2005, the level of surveillance, exchange oversight, contract designation reviews, and studies to enhance understanding of the markets will be less commensurate with the growth in new types of exchanges, new trading execution methods in futures markets, and the initiation of trading in new products, such as single-stock futures. Thus, some price manipulations and abusive trading practices may go completely undetected or detected too late to permit amelioration or intervention.

In addition, staff may not be able to review all new contract and rule change submissions for approval within statutory time frames. This would result in direct economic harm to producers and other users of the underlying commodities and indirect harm to the economy as a whole since market prices may not accurately reflect supply and demand conditions.

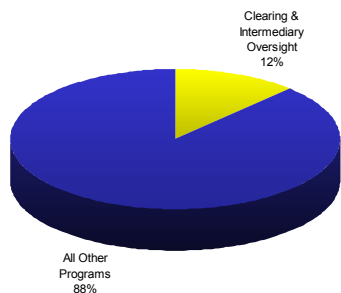
Moreover, staff efforts to monitor developments in derivatives trading and market innovation would be delayed. This would undermine the ability of the Commission to keep its regulatory policies in line with new developments in the industry, which could impede innovation, lead to systemic risk in financial markets, and adversely affect the economic function of the markets. The staff levels re-

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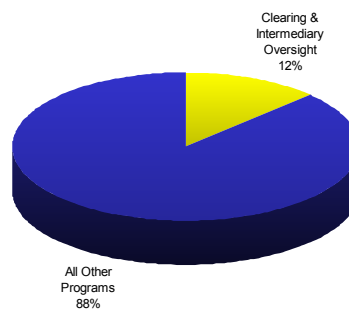
requested for FY 2005 are the minimum that the Commission believes necessary to meet its market surveillance and oversight responsibilities.

Clearing & Intermediary Oversight

Total Budget: \$11,672,000 63 FTEs
Total Change: \$ 869,000 2 FTEs



Clearing & Intermediary Oversight
Percentage of Total Budget Dollars



Clearing & Intermediary Oversight
Percentage of Total Budget FTEs

Justification of the FY 2005 OMB Budget & Performance Estimate

In FY 2005, the Clearing and Intermediary Oversight program requests 63FTEs, an increase of two FTEs from the FY 2004 level. The requested level is necessary for the Clearing and Intermediary Oversight program to meet established responsibilities as well as the additional responsibilities directed by Congress through the CFMA. The additional two FTEs requested in FY 2005 will be allocated to the Audit and Financial Review subprogram, while the Compliance and Registration subprogram's allocation of FTEs will remain at the same level as FY 2004.

The Act, as amended in December 2000 by the CFMA, contemplates a system of flexible yet effective self-regulation and sets forth several purposes of the Act:

- To deter and prevent price manipulation or any other disruptions to market integrity;
- To ensure the financial integrity of all transactions subject to the Act and the avoidance of systemic risk; and
- To protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets.

The Clearing and Intermediary Oversight program is responsible for:

- Oversight of market intermediaries to monitor their financial integrity, risk management capabilities, protection of customer funds, and compliance with appropriate sales practice standards for the protection of customers and the public;
- Oversight of SROs to ensure their fulfillment of responsibilities for monitoring and ensuring the financial integrity of market intermediaries, ensuring their compliance with appropriate sales practice standards for the protection of customers and the public, and for the protection of customer funds;

- Review of applications for registration as DCOs and DCO rule submissions and oversight of DCOs for continued compliance with core principles, including maintenance of appropriate risk management capabilities;
- Oversight of the registration and fitness review of market intermediaries through review of the NFA, an RFA authorized to receive, review, and process intermediary applications for registration;
- Development of rules to protect market users and financial intermediaries, including requirements related to registration, fitness, financial adequacy, risk management capabilities, sales practice activities, the protection of customer funds, and clearance and settlement activities;
- Stock-index margin reviews; and
- Oversight of foreign market access by intermediaries.

Compliance and Registration

During FY 2005, the Compliance and Registration subprogram will be maintained at the FY 2004 FTE staffing level. This staffing level will enable the Compliance and Registration subprogram to address its current and anticipated additional responsibilities in a satisfactory manner.

The Compliance and Registration subprogram is responsible for providing policy advice and recommendations to the Commission, other staff units, the public, and the industry concerning the activities of futures industry intermediaries with respect to, among other things, registration, disclosure, sales practices, and record-keeping. The subprogram is engaged in an ongoing regulatory modernization effort to keep the Commission's regulatory framework abreast of market developments. This permits the Commission and the subprogram to provide rules and interpretations that are flexible, effective, and efficient and allow for further industry innovation and enhancements. In response to changes in the business environment for futures intermediaries, the subprogram makes policy recommendations to the Commission regarding intermediaries and develops rules and interpretations to implement the Commission's policies. Subprogram staff work closely with the staff of the NFA and other industry groups to effectively address issues that arise in connection with the business practices of intermediaries.

More specifically, in FY 2005, the ongoing responsibilities of the Compliance and Registration subprogram will include: 1) addressing regulatory issues and implementing a regulatory modernization program for intermediaries; 2) assisting in conducting and documenting oversight reviews of SROs and DCOs to determine the sufficiency of programs for monitoring and enforcing compliance with rules applicable to registrant members as well as compliance with core principles by the SROs and DCOs; 3) overseeing and working with the Enforcement program concerning firms engaged in retail foreign currency transactions; 4) assisting in the administration of the Commission's anti-money laundering activities; and 5) overseeing an increased number of RFAs. It is also expected that the Compliance and Registration subprogram will continue to coordinate with the SEC with respect to the trading of security futures products. Among other things, subprogram staff will participate in addressing issues related to trading of foreign security futures products and foreign index products by U.S. customers.

The responsibilities of the Compliance and Registration subprogram further include assuring that clearing organizations, firms holding customer funds, and other industry professionals are able to compete in dynamically evolving markets without sacrificing customer protections. Rapid market and product evolution

will require that existing rules be reviewed, refined, and applied in a manner that facilitates competitiveness while preserving core customer and market safeguards. The globalization of markets, the blurring of distinctions among financial institutions, and the explosive growth of technology have made it essential that the Commission adapt its rules continually and appropriately to market conditions.

As advances in information technology increasingly free markets from geographic and time-of-day constraints, resources must be allocated to reviewing and monitoring trading systems that originate both inside and outside the U.S. and that are available electronically around the world and around the clock for their impact on intermediaries. The subprogram develops rules and responds to inquiries from market professionals and the public concerning the impact of these systems on intermediaries and customer funds. Further, as other sectors of the global economy continue the process of deregulation, there will be new risks and increasing competition in those sectors among producers and consumers and a concomitant need to develop innovative price discovery and hedging instruments. Staff of this subprogram review and monitor systems developed to address these needs, particularly in an off-exchange environment and with respect to the impact on intermediaries and customer funds. They also evaluate other off-exchange products and new types of trading mechanisms.

Compliance and Registration subprogram staff will continue to review the Commission's Part 30 rules, which govern the trading of persons located in the U.S. on futures markets located outside of the U.S., to assure that the Commission provides a flexible structure that maintains opportunities for U.S. competitiveness in a growing global marketplace.

The Compliance and Registration subprogram will continue its work in the area of implementing and making recommendations on the implementation of the anti-money laundering provisions (Title III) of the USA PATRIOT Act. These efforts include Commission rulemakings and oversight of intermediaries' operations as well as providing policy advice and recommendations for additional anti-money laundering rulemakings that are undertaken by the U.S. Treasury Department.

Audit and Financial Review

An increase of two FTEs requested in FY 2005 will be allocated to the Audit and Financial Review subprogram. The AFR subprogram has, as its most important responsibility, ensuring the adequacy, reliability, and resilience of system safeguards designed to protect against: 1) the financial problems of a single market participant becoming systemic problems that could affect other market participants or other markets; 2) customer funds being misused or exposed to inappropriate risks of loss; and 3) abusive sales practices that harm customers and undermine market integrity.

The Audit and Financial Review subprogram is responsible for ensuring that market intermediaries, particularly FCMs, are adequately capitalized, have in place appropriate risk management systems and procedures, and are operationally capable and resilient to perform their crucial role as the first line of defense against systemic problems. The subprogram also is responsible for verifying that industry SROs are fulfilling their responsibilities with respect to the futures firms and other market intermediaries over whom they have direct oversight. This direct oversight is an important next line of defense in protecting customers, customer funds, and market integrity. Finally, the subprogram is responsible for ensuring that clearinghouses are adequately capitalized, effectively organized and properly managed, appropriately resourced in all functional areas particularly

with respect to risk management, and operationally resilient so that they can serve their critically important role as the ultimate defense against systemic risks in the marketplace.

The subprogram staff will accomplish this through monitoring the financial integrity, risk management capabilities, protection of customer funds, and compliance with appropriate sales practice standards of market intermediaries and SROs. Toward this end, the subprogram staff will also review applications for registration as DCOs, DCO rule submissions, and oversight of DCOs for continued compliance with core principles, including maintenance of appropriate risk management capabilities.

The proliferation of new and innovative derivative contracts require the Commission to explore measures that remove artificial barriers to competition while continuing to ensure that the goals of systemic financial integrity, individual registrant integrity, and customer protection are met. As the Commission continues moving from a direct regulatory posture to an oversight posture, such capacity will be critical, and the increase in staff resources is necessary to achieve this outcome.

The subprogram staff will continue to explore technological advancements that will provide for more efficient monitoring of the financial condition of the markets and market participants. In this area, staff seeks to be able to expand its use of RSR Express, the Clearing and Intermediary Oversight program's electronic filing and financial statement monitoring and analysis software for FCMs, which allows better access and analysis of FCM financial reports. Staff also will be able to continue developing a software program called SPARK, which allows staff to monitor the vulnerability of FCMs to financial risk arising from market volatility through the customer positions they carry.

Another program priority is the development and implementation of a comprehensive SRO oversight program that is capable of: 1) identifying, measuring, monitoring, and controlling risks to which the SROs and their members are exposed; and 2) evaluating the SROs' risk management capabilities. Such risk management capabilities are critical to the prevention and containment of adverse financial consequences that could become systemic risks affecting other financial institutions and market participants. The design of this important program element requires the skills of a risk management expert.

The subprogram staff also has responsibilities for implementation of CFMA provisions governing registration of DCOs; oversight of the operations, risk management capabilities, and clearing and settlement activities of DCOs; and monitoring of compliance by DCOs with core principles and other provisions of the CEA and Commission rules. The subprogram staff's development and implementation of a risk-based oversight program will require an increase in staff resources necessary for the subprogram to provide appropriate coverage of this area.

The CFMA further authorizes DCOs to clear over-the-counter transactions. Commission rules provide that applicants for DCO registration are deemed registered 60 days after submission of the application unless notified otherwise. Therefore, these applications require immediate attention from program staff who are experienced and knowledgeable in DCO operations. The additional staffing is necessary for coverage in this area.

Carrying out the regulation and review of broad-based stock-index futures and security futures product margin is another responsibility of the Audit and Financial Review subprogram. The increase in resources also will allow subprogram

staff to monitor the financial integrity of individual registrants and the markets generally and to improve SRO oversight programs.

Impact of Requested Level of Resources

The Clearing and Intermediary Oversight program is committed to maintaining an effective regulatory system responsive to technological development, business changes, and evolution of the markets and the clearing process. The increased level of resources is necessary for the Clearing and Intermediary Oversight program to meet the responsibilities assigned to it by Congress through the CFMA and to help keep pace with the rapid growth in futures and option trading volume and the profound changes resulting from global competition, innovation in derivative contracts, new clearing organizations, advances in technology, and new market practices.

The Clearing and Intermediary Oversight program will continue to be capable of maintaining the level of oversight activity necessary to ensure an open and competitive marketplace. In particular, the program will continue to be able to review the applications of persons seeking to become registered DCOs and RFAs. The increase in staff resources will aid the program to: 1) provide the appropriate level of oversight of SROs, intermediaries, and clearing organizations, as well as other compliance and investigative activities performed by staff to ensure the integrity of the marketplace; and 2) develop and implement the Commission's oversight program for monitoring DCOs and RFAs.

The level of resources requested is necessary for the Clearing and Intermediary Oversight program to provide appropriate guidance to industry professionals, customers, and other market users regarding compliance with an increasingly changing business and regulatory environment as promptly and effectively as possible, which will facilitate innovation and market growth and improve the environment for the international competitiveness of U.S.-based clearing organizations.

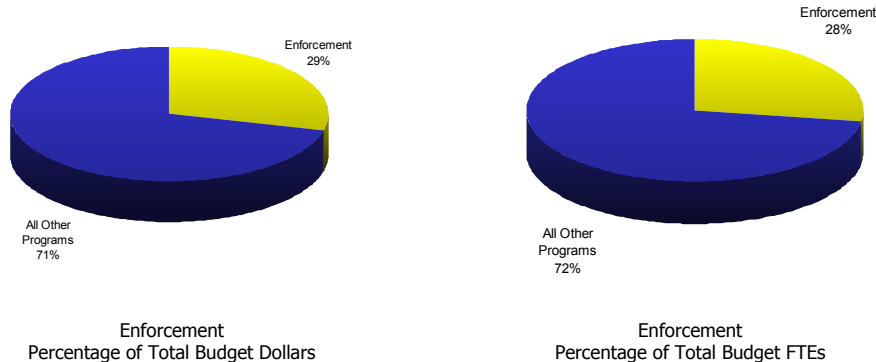
Consequences of Not Receiving Requested Level of Resources

If the requested level of resources is not received, the Clearing and Intermediary Oversight program will be less able to promptly implement and maintain an effective regulatory system to fulfill its increased responsibilities under the CFMA. Without adequate levels of staffing, the Clearing and Intermediary Oversight program will be less capable of meeting its responsibilities concerning the registration of DCOs and RFAs, the oversight of the operations and activities of DCOs and SROs, and enforcement of compliance by DCOs and SROs with core principles and other provisions of the CEA and Commission rules. Fewer resources also would impair the program's ability to carry out activities for the oversight and review of broad-based stock-index futures and security futures product margins.

An insufficient level of resources also would hinder the ability of the program to provide guidance on complying with an ever-changing business and regulatory environment. Not responding promptly to these inquiries could delay innovation and restrict market growth, and it may burden the international competitiveness of U.S.-based clearing organizations and intermediaries with regulatory inefficiencies and outmoded regulatory structures.

Enforcement

Total Budget:	\$30,813,000	149 FTEs
Total Change:	\$ 2,422,000	4 FTEs



Justification of the FY 2005 OMB Budget & Performance Estimate

The primary responsibility of the Enforcement program is to police for conduct that violates the CEA and Commission regulations. Such conduct undermines the integrity of the market and the confidence of market participants.

In FY 2005, the Enforcement program is requesting 149 FTEs, an increase of 4 FTEs from the FY 2004 budget. This increase in FTEs is vitally needed by the Enforcement program to address the following developments:

- Trading strategies have become more complex, crossing product lines and markets, which has required the Enforcement program to expand the scope of its investigations concerning fraud, market manipulation, and other abusive trading practices. A striking example is the program's intensive investigation into Enron and other energy-related market abuses. Due to their complexity, the Enforcement program must devote significantly more resources to these investigations in order to analyze voluminous trading data and to examine the roles of diverse energy market participants and their practices. The investigative time lines for these matters has also decreased over time requiring adjustments to staff assignments than previously implemented in this program area.
- The Enforcement program continues to battle the pervasive fraudulent sale of illegal, off-exchange futures and options contracts to retail customers, including those involving precious metals and foreign currency. With respect to foreign currency, the Enforcement program expects that challenges to the Commission's jurisdictional authority will require additional resources to enforce against this area of fraud.
- The Enforcement program also focuses resources against other types of off-exchange fraud as well as fraud by registered and unregistered pool

operators and trading advisors. These matters typically require immediate action using the Enforcement program's "quick strike" capability to freeze assets belonging to customers and preserve books and records.

- Violative Internet solicitations continue to increase and, therefore, require additional resources to investigate and prosecute.
- The USA PATRIOT Act and anti-money laundering regulations have increased the responsibilities of the Enforcement program to include analysis of new transaction reporting requirements and the establishment of anti-money laundering and customer identification and verification programs by registered firms.

Responding to Violative Conduct

When an enforcement investigation indicates that violative conduct has occurred, the Commission either files an administrative or civil injunctive enforcement action against the alleged wrongdoers. In administrative actions, wrongdoers found to have violated the CEA or Commission regulations or orders can be prohibited from trading and, if registered, have their registrations suspended or revoked. Violators also can be ordered to cease and desist from further violations, to pay civil monetary penalties of up to \$120,000 per violation or triple their monetary gain, and to pay restitution to those persons harmed by the misconduct. In civil injunctive actions, defendants can be enjoined from further violations, their assets can be frozen, and their books and records can be impounded. Defendants also can be ordered to disgorge all illegally obtained funds, make full restitution to customers, and pay civil penalties.

As detailed above, violations prosecuted by the Enforcement program may arise from commodity futures or option trading on U.S. exchanges or from the sale of illegal futures or option contracts not traded on trading facilities designated or registered by the Commission. The Enforcement program addresses various types of violative conduct including conduct that threatens the economic functions of the markets. For example, one function of the futures markets is to provide an accurate reflection of cash or spot commodity prices based on legitimate supply and demand forces—in other words, to provide a price discovery mechanism. Therefore, the markets must remain free of fraud, manipulation, and abusive trade practices that undermine this price discovery function. The Enforcement program will investigate and bring enforcement actions against possible manipulation and illegal trade practices by market participants. Through these actions, the Commission can remove threats to the market by imposing trading prohibitions and registration revocations on abusive traders. These cases are often highly complex and labor intensive because they require staff to reconstruct transactions and analyze complex trading strategies, as is occurring, for example, in the Enron and other energy-related investigations.

Protecting Market Users

The Enforcement program also works to protect market users and the public by promoting compliance with and deterring violations of the CEA and Commission regulations. The bulk of the work in this area involves investigating and bringing enforcement actions in matters involving fraud and imposing sanctions against wrongdoers. These actions send a message to industry professionals about the kinds of conduct that will not be tolerated. These actions also seek to protect the funds of market participants, both large and small.

The Enforcement program pursues actions involving various types of fraudulent conduct. For example, it pursues fraud cases against unregistered CPOs and CTAs who provide trading advice—often the small investor's first avenue into the

markets. These cases frequently involve misappropriation from victims who have pre-existing business, social, religious, or ethnic ties to the defendants.

The Commission also pursues actions involving false or misleading advertising. Over the past several years, there has been substantial false and deceptive advertising of commodity-related investment products, often by unregistered persons and entities through various forms of mass media, such as cable television, radio, and the Internet. The Enforcement program has worked aggressively to detect and stop such advertising by filing enforcement actions. Similarly, the Enforcement program pursues cases charging illegal futures and options, often in FOREX and precious metals. Such cases typically involve unregistered "boiler rooms" selling illegal futures contracts and options to the general public. Again, the most likely victims are individual retail investors.

Quick-Strike Capability

The Enforcement program uses its quick-strike capability effectively to prosecute those engaged in ongoing fraud where customer funds are at risk. In quick-strike cases, the Enforcement program prosecutes civil injunctive actions against wrongdoers as soon as possible after violative conduct is detected. The goal is to obtain injunctive relief rapidly, thereby preserving customer funds and preventing the destruction of records that may prove wrongdoing and/or identify customer funds. When possible, cases are brought to obtain injunctive relief within days of detecting the wrongdoing.

Supervision and Compliance Failures

The Enforcement program also investigates and prosecutes cases involving supervision and compliance failures by registrants handling customer business. Such violations can threaten the financial integrity of registered firms holding customer funds and can, in certain circumstances, threaten the financial integrity of clearing organizations. In addition, without adequate supervision and compliance systems in place, customers remain vulnerable to fraud, including misallocation of trades and unauthorized trading. Diligent supervision by registered firms also protects markets from abusive trading practices, including manipulation and wash sales.

Under the USA PATRIOT Act, the Enforcement program expects to have additional responsibilities for ensuring that registrants have proper supervision and record-keeping programs in place to fight money laundering. Cases alleging supervision and compliance failures can result in substantial remedial changes in the supervisory structures and systems of large FCMs. These cases have had a significant impact on the way particular firms are required to do business and are an important part of the responsibility of the Commission to ensure sound practices by registered firms.

Cooperative Enforcement Efforts

The Enforcement program works cooperatively with both domestic and foreign authorities to maximize its ability to detect, deter, and bring sanctions against wrongdoers involving U.S. markets, registrants, and customers. The benefits of cooperative enforcement include:

- Use of resources available from other authorities to support Commission enforcement actions;
- Coordination of the filing of actions with other authorities to further the impact of enforcement efforts; and
- Enhancement of the consistency and clarity of governmental responses to misconduct and avoidance of duplication of efforts by authorities.

On the domestic level, this includes sharing information with, and on occasion providing testimony or other assistance to, state regulators and other Federal agencies, such as the DOJ, the FBI, the SEC, the FERC, and Federal banking regulators. The Commission may also file injunctive actions jointly with state authorities with concurrent jurisdiction. These cooperative efforts bolster the effectiveness of the Enforcement program by allowing it to investigate and litigate more efficiently.

Similarly, in the international realm, the Commission has entered into more than a dozen formal information-sharing arrangements and numerous other informal arrangements with foreign authorities. These arrangements permit information sharing and cooperative assistance among regulators. Such arrangements benefit all nations involved and greatly enhance the ability of the Enforcement program to investigate matters that involve either foreign entities and/or individuals or transfers of tainted funds to foreign individuals. (See *Working Relationships* for a fuller discussion of cooperative enforcement efforts.)

Impact of Requested Level of Resources

The markets continue to grow in volume and complexity as increasingly sophisticated instruments are being employed across markets. An ever-larger segment of the population has money at risk in the futures markets, either directly or indirectly through pension funds or ownership of shares in publicly held companies that participate in the markets. Moreover, the markets continue to provide a price-basing function for transactions in interstate commerce. The growing globalization of futures markets presents new challenges for the Enforcement program and new demands on its resources. The ability of the Enforcement program to institute enforcement cases serves as a powerful deterrent, discouraging wrongdoers and engendering confidence in the markets.

The Enforcement program will utilize the 4 additional FTEs requested for FY 2005 in targeting certain program areas, for example: 1) allegations of manipulation, trade practice violations, and false reporting, especially in the energy sector; 2) supervision, reporting, and record-keeping by registrants as required under the USA PATRIOT Act and anti-money laundering regulations; 3) off-exchange fraud, involving illegal futures and options contracts by, among others, unregulated boiler rooms and bucket shops targeting the general public; and 4) unregistered CTA/CPO fraud. The requested FTE level also will allow the Enforcement program to continue its commitment both to cooperative enforcement activities, and to providing its staff with training opportunities designed to increase their expertise and effectiveness.

Consequences of Not Receiving Requested Level of Resources

In recent years, the Enforcement program has been striving to process matters more quickly in order to be able to address a wide a range of potential violations. One of the cornerstones of effective enforcement is the program's ability to pursue significant violations of all types, whether they result in large, complex market investigations and cases or discrete retail fraud matters. Adequate staffing levels give the Enforcement program the flexibility to address conduct that gives rise to complex investigations and litigation as well as conduct, which, though equally serious, may not require the same resources to address effectively.

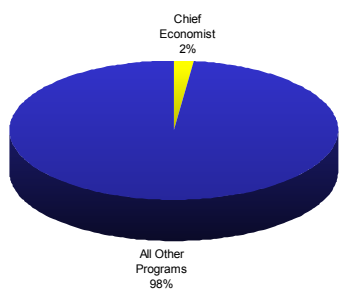
Without adequate staffing, the Enforcement program must be more selective in the matters it investigates, potentially leaving serious wrongdoing, like the ongoing energy-related manipulation and trade practice matters, unaddressed. In addition, investigations will take longer to complete, particularly when priority liti-

gation needs draw resources away from investigations. Emergency enforcement actions to address ongoing fraud may be delayed or may draw staff from other pending matters, thereby interfering with the timely completion of complex investigations and cases. Domestic and international cooperative enforcement activities may be undermined, adversely affecting not only the mission of the Commission, but also that of its domestic and international counterparts. With insufficient staff, the Enforcement program's ability to target certain problem areas, such as retail fraud, will be limited. The Commission's Enforcement program also will be unable to maintain the training required of a nationwide enforcement program.

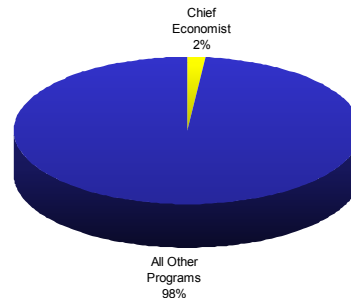
If the Enforcement program is unable to bring actions because of insufficient resources, other authorities may not be available to step in and fill the void. SROs can take action only against their own members, and their sanctions cannot affect conduct outside their jurisdiction or markets. In addition, other Federal regulators and state regulators have limited jurisdiction and expertise in handling futures-related misconduct. Finally, while criminal prosecutions by the DOJ are an important adjunct to effective enforcement of the CEA, the criminal justice system is not an adequate substitute for aggressive civil regulatory enforcement.

Office of the Chief Economist

Total Budget: \$ 1,706,000 8 FTEs
Total Change: \$ 74,000 0 FTE



Chief Economist
Percentage of Total Budget Dollars



Chief Economist
Percentage of Total Budget FTEs

Justification of the FY 2005 OMB Budget & Performance Estimate

As innovation in the futures and option markets continues, the ability of staff to conduct thorough market research is vital to achieving Commission goals. Innovations in technology and trading instruments and methods create significant challenges that require economic research in the form of:

- Participation in the development of flexible and effective regulatory responses to evolving market conditions;
- Review and analysis of new market structures and off-exchange derivative instruments over which the Commission may have jurisdictional authority;
- Frequent support to the Commission's Enforcement program in the form of economic and statistical analysis or expert testimony to promote compliance with and deter violations of commodity laws;
- Development of educational materials on futures and option trading for dissemination to producers, market users, and the general public; and
- Review and analysis of alternative derivative risk management models and risk-based capital requirement rules.

In FY 2005, the Office of the Chief Economist requests 8 FTEs, which is the same as the FY 2004 level.

Impact of Requested Level of Resources

The growth in the number of different types of markets that trade a wider array of derivatives products, particularly single-stock futures, requires analysis and research about new developments in derivatives trading. In FY 2005, staff of the Office of the Chief Economist will be required to monitor a large and diverse array of markets, including single-stock futures. The Commission anticipates that a

large number of these contracts will be listed for trading, both on futures and securities exchanges.

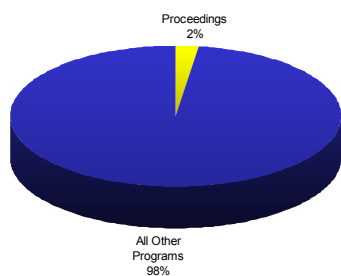
With the same level of resources, studies to enhance understanding of the markets may lag somewhat the growth in new types of exchanges and the initiation of trading in new products. However, at the requested level, the staff would be able to monitor most developments in derivatives trading and market innovations. In this regard, innovations in technology and derivative instruments and trading methods in futures markets create many challenging economic and regulatory issues. The performance of derivative markets has a potentially large impact on the stability of international and domestic financial markets. Market research and effective monitoring of these developments help ensure that the Commission has in place sound regulatory policies to reduce systemic risk in financial markets and protect the economic function of the markets without undermining innovation and the development of new approaches to risk management.

Consequence of Not Receiving Requested Level of Resources

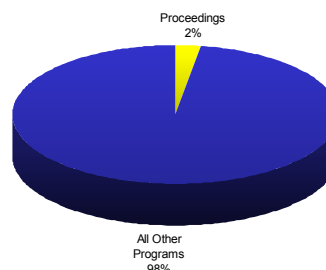
If the Commission does not receive the resources requested for FY 2005 for the Office of the Chief Economist, the extent of its effort to conduct market research and analysis will not be commensurate with the growth in new types of exchanges, new trading execution methods in futures markets, and the initiation of trading in new products, such as single-stock futures. Moreover, staff efforts to monitor developments in derivatives trading and market innovation would be delayed. This would undermine the ability of the Commission to keep its regulatory policies in line with new developments in the industry, which could impede innovation, lead to systemic risk in financial markets, and adversely affect the economic function of the markets.

Office of Proceedings

Total Budget:	\$ 2,362,000	14 FTEs
Total Change:	\$ 108,000	0 FTEs



Proceedings
Percentage of Total Budget Dollars



Proceedings
Percentage of Total Budget FTEs

Justification of the FY 2005 OMB Budget & Performance Estimate

The Office of Proceedings is responsible for providing an inexpensive, impartial, and expeditious forum for handling customer complaints against persons or firms registered under the CEA. In FY 2005, the Office of Proceedings is requesting 14 FTEs—no change from the FY 2004 level.

The Complaints section of the Office of Proceedings receives and prepares customer claims for action by appropriate officials, dismissing those that are outside the jurisdiction of the Commission or are pending in another forum. The Hearings section includes judgment officers (JOs) who decide reparations complaints in voluntary and summary proceedings and administrative law judges (ALJs), who conduct formal proceedings.

The ALJs also decide administrative enforcement cases brought by the Commission against persons or firms responsible for violating the CEA or Commission regulations. The Office of Proceedings expects to carryover 20 administrative enforcement cases into FY 2005. This projection is based on estimates that 27 cases will be filed and 27 cases will be resolved.

The Office of Proceedings expects to carryover 64 reparations cases into FY 2005. This projection is based on estimates that 112 cases will be filed and 100 cases will be disposed of, leaving a balance of 84 reparations cases—23 cases in the Complaints section and 61 cases in the Hearings section.

In response to over 11,000 telephone inquiries each year, the Office of Proceedings also provides information about the complaints process and the number of complaints filed against specific firms. Many inquiries are from members of the public who are considering investing with these firms.

The Office of Proceedings maintains a case-tracking system that tracks the progress of each case from receipt of complaint through disposition, including any appeal to the Commission or Federal court. The case-tracking system not only assists with case management within the Commission, but it also enables the Of-

Office of Proceedings to provide current information on the status of cases in response to public inquiries.

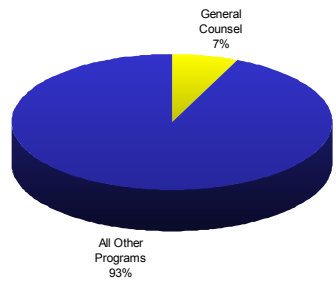
The Office of Proceedings maintains the *Reparations Sanctions in Effect List* publication, a record of individuals and firms that have not paid reparations awards. This document is published annually and updated twice a month. The office also maintains the *Administrative Sanctions in Effect List* publication, a record of individuals and firms that have outstanding against them enforcement sanctions, such as trading prohibitions. This document is published annually and updated quarterly. These lists are made available to the public and are distributed to the exchanges, the NFA, the FIA, the National Association of Securities Dealers, and the SEC for use in their compliance efforts.

Consequence of Not Receiving Requested Level of Resources

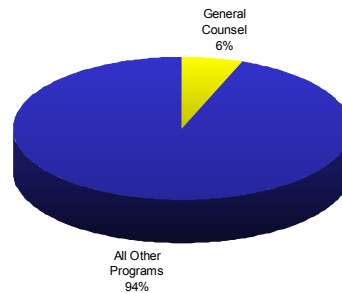
The Office of Proceedings' ability to perform its activities in a timely fashion depends on the requested level. If the requested level is not received, the Office of Proceedings may experience time delays in the performance of its activities. For example, there may be time delays in: 1) reviewing and processing reparations complaints; 2) responding to requests for information from the public; 3) processing orders and decisions of the Commission in administrative enforcement and reparation cases; and 4) processing incoming documents and serving orders and decisions issued by ALJs and JOs in reparation cases.

Office of the General Counsel

Total Budget: \$ 6,223,000 30 FTEs
Total Change: \$ 283,000 0 FTEs



General Counsel
Percentage of Total Budget Dollars



General Counsel
Percentage of Total Budget FTEs

Justification of the FY 2005 OMB Budget & Performance Estimate

The Office of the General Counsel (OGC) provides legal services and support to the Commission and its programs. These services include: 1) engaging in defensive, appellate, and *amicus curiae* litigation; 2) assisting the Commission in the performance of its adjudicatory functions; 3) providing legal advice and support for Commission programs; 4) drafting regulations; 5) interpreting the CEA; 6) providing advice on legislative issues; and 7) providing exemptive, interpretive, and no-action letters and opinions to the public. OGC requests 30 FTEs for FY 2005 – the same as the FY 2004 level.

OGC is the legal advisor to the Commission, and a large portion of its workload is reactive in nature. The office:

- Reviews all substantive regulatory, legislative, and administrative matters presented to the Commission and advises it on the application and interpretation of the CEA and other pertinent administrative and legislative issues;
- Assists the Commission in performing its adjudicatory functions through its Opinions Program;
- Represents the Commission in appellate litigation and certain trial-level cases, including bankruptcy cases involving futures industry professionals;
- Provides legal support to Commission administrative programs, such as compliance with the Freedom of Information, Privacy, Government in the Sunshine, Regulatory Flexibility, Paperwork Reduction, Small Business Paperwork Reduction, and Federal Advisory Committee Acts;
- Monitors, reviews, and comments on proposed legislation affecting the Commission and prepares draft legislation as requested by members of Congress or their staff and provides liaison with other Federal regulators as necessary on specific projects;
- Provides Commission support to the PWG and the President's Corporate Fraud Task Force;

- Counsels other Commission staff on legal aspects of various issues arising during the course of Commission business;
- Provides written interpretations of Commission statutory and regulatory authority to members of the public and, where appropriate, provides exemptive, interpretive, or no-action letters to regulatees and potential regulatees of the Commission;
- Advises the Commission on personnel, labor, and employment law matters, including cases arising under Title VII of the Civil Rights Act of 1964 and Merit Protection Board cases arising under the Civil Service Reform Act of 1978; and
- Advises the Commission with respect to all matters related to the Commission's ethics standards and compliance with its Code of Conduct as well as with governmentwide ethics regulations promulgated by the Office of Government Ethics, including the requirement of annual ethics training for Commission employees.

OGC's activities, programs, and support contribute to all of the outcomes and functions of the Commission and have a direct and significant impact on the ability of the Commission to perform its mission.

Additional Responsibilities

In addition to the foregoing, as a result of: 1) the enactment of the CFMA and the USA PATRIOT Act; 2) controversial trading practices in the energy markets; and 3) the reorganization of certain responsibilities within the Commission, OGC is undertaking responsibilities in several additional areas as described below:

Gramm-Leach-Bliley Act

OGC is involved in activity arising from Congress' passage of the Gramm-Leach-Bliley Act (GLBA), which facilitates the modernization of financial services. Among other things, the GLBA: 1) repeals Depression-era restrictions on affiliations among banks, securities firms, and insurance companies; 2) establishes parameters for conducting non-banking business within banks; and 3) reinforces the obligation of each financial institution to respect the privacy of its customers. As a Federal financial regulator under the GLBA, the Commission has adopted rules drafted by OGC that implement the privacy provisions of the GLBA and continues to coordinate with other federal financial regulators in the uniform implementation of these provisions. OGC has adopted a proactive role in privacy matters and continues to provide interpretive guidance to the industry and the bar on financial privacy issues.

Ethics

OGC is responsible for all matters relating to the Commission's ethics standards and compliance with its Code of Conduct and the Office of Government Ethics governmentwide ethics regulations. OGC also has assumed full responsibility for reviewing and certifying the confidential financial disclosure reports of approximately 370 Commission employees. Assumption of this function, previously the responsibility of the Office of Human Resources, has contributed to an increased workload for OGC, including intensive training of staff and allocation of significant staff time to the review of these reports. In addition to this additional responsibility, OGC continues to: 1) provide annual ethics training; 2) review and certify public financial disclosure reports; 3) counsel Commission personnel regarding ethics standards and programs; 4) advise departing and former Commission officials on post-employment conflict of interest responsibilities; 5) administer a system for periodic evaluation of the ethics program; 6) assist in tracking system implementation; and 7) provide support in coordinating with the Office of

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Government Ethics and ethics officials at other Federal financial regulatory agencies.

USA PATRIOT Act

Title III of the USA PATRIOT Act, amending the Bank Secrecy Act, imposes a number of new anti-money laundering requirements on all financial institutions, including commodity pools as well as CPOs, CTAs, IBs, and FCMs. Although the U.S. Treasury Department has the lead authority under the Bank Secrecy Act to develop regulations to implement those requirements, the Commission is actively participating in the rulemaking process. OGC is working closely with the U.S. Treasury Department, other Federal financial regulators, and interested parties to ensure that regulations do not place Commission registrants at a competitive disadvantage relative to other financial services providers. OGC also will be coordinating with market participants, the NFA, and other Commission programs on compliance and examination issues as the several new anti-money laundering regulations come into effect.

Federal Energy Regulatory Commission

Recent concerns relating to the use of energy derivative products in the markets for natural gas and electricity have resulted in increased regulatory and enforcement activity in this area by the Commission and the FERC, the Federal agency that regulates the Nation's wholesale power markets. The Commission's involvement derives from its role as regulatory overseer of the commodity futures and option markets and the increasing use of energy derivative contracts by firms that trade in these markets. As a result of recent findings of trading abuse, false reporting, and attempted manipulation by some energy traders, the Commission is working closely with FERC to coordinate the agencies' law enforcement and regulatory efforts. In order for OGC to properly advise the Commission and carry out additional responsibilities in this area, it will be necessary to maintain legal resources in the office with appropriate expertise in the area of Federal energy regulation.

Antitrust Concerns

In addition to its ongoing responsibility to advise the Commission regarding the antitrust and competitive implications of its actions, OGC's advisory role has expanded from the CFMA's inclusion of the core principles relating to DCOs and the criteria for designation of boards of trade as contract markets. In particular, the CFMA requires the avoidance of "any material anticompetitive burden on trading" in contract markets. Also, the CFMA authorizes the Commission at the request of a DCO to issue an order concerning whether a rule or practice of the DCO is the "least anti-competitive means" of achieving the Act's objectives. Recent issues include competitive implications of intellectual property rights, international competition among exchanges, and common clearing of contracts by exchanges. OGC is increasingly devoting resources to antitrust considerations in light of the additional responsibilities imposed by the CFMA.

Securities Law

As the Commission continues to implement and administer its regulatory program for single-stock futures and other final rules related to security futures products, OGC continues to develop expertise with regard to the application of the securities laws and related rules to these jointly regulated products. This need has taken on greater relevance in light of the applicability of both Commission and SEC customer protection, record-keeping, reporting, and bankruptcy rules, and the Securities Investor Protection Act of 1970 to accounts holding security futures products, and coordinated regulation of collective investment vehicles (including hedge funds) and the managers who advise these vehicles. Coordi-

nated agency enforcement under the CFMA continues, while the Commission works with the SEC to address issues of U.S. investor access to foreign market products under the CFMA.

Administrative Responsibilities

OGC has assumed full responsibility for the legal work required to discharge various administrative responsibilities of the Commission. Some of these responsibilities previously were undertaken by OED. These include analysis of appropriation law issues and responsibilities in the area of regulatory burden under statutes such as the Paperwork Reduction Act. Assumption of these functions has contributed to an increased workload for OGC. Responsibilities associated with the Paperwork Reduction Act, for example, necessitate significant staff time to: 1) identify when paperwork submissions must be filed or are about to expire; and 2) work with other Commission programs in ensuring that proper steps are taken on a timely basis to file or renew the submissions, where appropriate.

Commission Reauthorization

Legislative activities in FY 2005 will include ongoing proceedings conducted by Congress to reauthorize the Commission for the seventh time. The current authorization for the Commission's appropriations extends through the end of FY 2005. The reauthorization process requires a comprehensive review of the Act, including its underlying purposes and objectives, and the regulatory structure implementing the Act. It also requires analysis of proposals to amend the Act and the regulations advanced by industry participants as well as analysis of legislation proposed by members of Congress. The Commission's seventh reauthorization will raise particularly complex issues since it will be the first reauthorization after the enactment of the CFMA and comes as the industry is undergoing rapid development in innovative trading systems, new business models, and novel products. OGC will monitor legislative activity and advise the Commission on the legal and programmatic implications of all legislative proposals. OGC also will assist the Commission in preparing legislative proposals it may submit to Congress.

Consequence of Not Receiving Requested Level of Resources

As a result of not receiving requested resource levels, OGC may experience time delays in performing its activities. For example, there may be time delays in:

- Performing its critical review function with respect to contract market designation applications and rule changes;
- Reviewing proposed enforcement actions;
- Assisting the Commission in the performance of its adjudicatory functions;
- Analyzing legislation and proposed legislation affecting the Commission, including legislative analyses in connection with the Commission's upcoming reauthorization;
- Carrying out its responsibilities to defend the Commission in appellate and other litigation; and
- Assisting the Commission in personnel, labor, and employment law matters.

Moreover, a reduction in the requested level of resources would have an adverse impact on the ability of OGC to provide general legal advice and assistance to the Commission. The office may also experience difficulty in fulfilling its advisory role to the Commission in connection with international cooperative efforts and in the provision of exemptive, interpretive, or no-action relief. Such an outcome

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would have a direct and negative impact on the development of effective and timely responses to evolving market conditions.

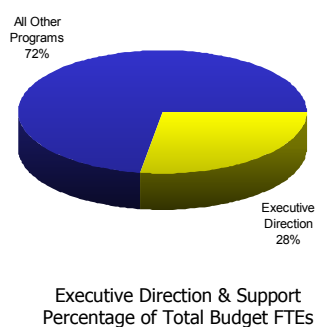
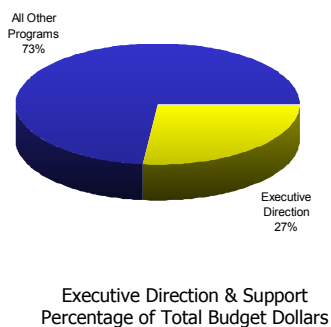
The contribution of OGC to the goals and outcomes of the Commission is significant. The impact of not receiving the requested levels of resources would be felt broadly, adversely affecting or completely impairing the Commission's ability to:

- Enforce the high standards for futures industry professionals mandated by Congress;
- Remain abreast of the rapid changes in the futures markets, resulting in regulatory impediments to private sector innovation;
- Enforce vigorously its consumer protection programs;
- Respond quickly to innovative off-exchange activities; and
- Deal effectively with market emergencies.

Many deadlines governing the litigation program are imposed by courts or other tribunals and are mandatory. The failure to adhere to such deadlines exposes the Commission to adverse decisions and potential sanctions, including monetary sanctions by courts or other tribunals. Other specific effects of a reduced level of resources in OGC might include a developing backlog of Commission adjudicatory cases; a curtailment of the *amicus curiae* program; a reduction in assistance to foreign governments as well as in cooperative efforts between the Commission and other government agencies; and time delays in performing advisory and legal review functions in all areas.

Executive Direction & Support

Total Budget:	\$25,365,000	140 FTEs
Total Change:	\$ 861,000	2 FTEs



Justification of the FY 2005 OMB Budget & Performance Estimate

Agency Direction

The Commission develops and implements agency policy in furtherance of the purposes of the CEA. This policy is designed to foster the financial integrity and economic utility of commodity futures and option markets for hedging and price discovery, to conduct market and financial surveillance, and to protect the public and market participants against manipulation, fraud, and other abuses. Agency Direction is administered by the Chairman and Commissioners and includes the following offices of the Chairman: 1) External Affairs; 2) the Secretariat; 3) the Inspector General; and 4) International Affairs.

The Commission continues to implement the CFMA. The legislation, signed by President Clinton in December 2000: 1) repealed the ban on single-stock futures and implemented a regulatory framework for these instruments based on the agreement between the Commission and SEC; 2) enacted the principal provisions of the Commission's new regulatory framework; 3) brought legal certainty to bilateral and multilateral trading in over-the-counter financial markets; 4) confirmed the Commission's jurisdiction over certain aspects of the retail market in foreign exchange trading; and 5) gave the Commission authority to regulate clearing organizations. Implementation, which continued in FY 2003 and will continue in FY 2004, is summarized briefly in the Progress Toward Outcomes section of this document on page 7.

Agency Direction requests a total of 45 FTEs for FY 2005, an increase of 1 FTE above the FY 2004 level. The additional FTE would allow the Chairman and the Commissioners to improve administration and regulatory responsiveness of the Commission to Congress, other government agencies, the international community, and the public.

Administrative Management and Support

Administrative Management and Support is provided by OED, which is responsible for policy development and implementation of the management and administrative functions of the Commission. OED staff:

- Formulate budget and resource authorization strategies;

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- Supervise the allocation and utilization of agency resources;
- Promote management controls and financial integrity;
- Manage administrative support offices;
- Manage the Commission's technical and information infrastructure;
- Manage human resource strategies;
- Oversee the development and implementation of the Commission's automated information systems; and
- Oversee the library services of the Commission.

In addition, the staff of OED and subordinate offices oversee Commission-wide compliance with Federal requirements enacted by Congress and imposed by the Office of Management and Budget (OMB), the U.S. Treasury Department, the General Accounting Office (GAO), and the Office of Personnel Management (OPM). The administrative support offices include the offices of Financial Management (OFM), Information Resources Management (OIRM), Human Resources (OHR), Management Operations (OMO), and the Commission Library.

The Administrative Management and Support subprogram requests a total of 93 FTEs for FY 2005, an increase of 1 FTE over the FY 2004 budget level. The additional FTE is for the Office of Human Resources.

For OHR, the additional FTE would provide support and expertise for implementing the Commission's pay parity legislation and managing the complex changes associated with maintaining parity with other Federal financial regulatory agencies; and managing the increased volume and complexity of activities related to the President's Management Agenda and legislative initiatives to modernize civil service practices, including additional programs and changes, such as merit pay for performance, pay banding, student loan repayment, etc.

Consequences of Not Receiving Requested Level of Resources

Agency Direction

Without the increase of 1 FTE, the Offices of the Commissioners and Chairman would suffer a diminution in the administrative and regulatory responsiveness of the Commission. For example, public outreach, responsiveness to Congress, other government agencies, international organizations and foreign governments, the futures industry, and other public inquiries may be slower, or administrative and technical review of Commission memoranda, correspondence, or official actions, such as responding to Freedom of Information Act (FOIA) requests, may take longer. In addition, not meeting statutory deadlines associated with FOIA and other legislative mandates would cause additional workload on the appeals and litigation process for the attorneys in the General Counsel's office.

Administrative Management & Support

Not receiving the requested level of resources for the Administrative Management & Support subprogram would impair its ability to manage the: 1) increased complexity associated with novel programs under pay parity and directives related to the President's Management Agenda; 2) accelerated modernization of the Commission's civil service programs, such as pay for performance; and 3) increased activities related to recruiting for and providing direct service to new program staff.

Implementing the President's Management Agenda

The Commission continues to make progress in meeting the five goals of the President's Management Agenda as discussed below:

Strategic Management of Human Capital

In line with the President's Management Agenda, OHR continues to focus on strategic management of human capital as its priority goal. Progress to date retains a self rating of yellow, since specific programs are in place to address, and are gaining strength to meet, each standard for success under that goal on the Executive Branch Management Scorecard. Specific ongoing activities relative to each standard are as follows:

- Strategy aligned with mission, goals, and organizational objectives. The Commission's human capital strategy has focused on initial implementation of its authority, provided by the Farm Security and Rural Investment Act of 2002, to provide pay and benefits parity with other Federal financial regulators. The Commission has approved and OHR has taken the initial formal steps to implement an alternative compensation system that is specifically designed to support many of the other criteria under this goal, such as recruiting and retaining mission-critical employees with up-to-date skills who can support a more responsive organizational structure.
- Citizen-centered organizational structure. Since the passage of the CFMA in December 2000, OHR has supported the Commission's plan to convert from a front-line regulator to an oversight body. This planning has culminated in several stages of Commission restructuring into a flatter organization with more efficient lines of authority and greater outward focus on industry participants. In its new form, the Commission will continue to review and change its business practices so as to fully realize the potential offered by the CFMA to center its activities on the citizenry and its mission.
- Sustains performance, utilizes flexibilities, and plans succession. OHR actions responsive to each element include: 1) enlarged executive and other individual training plans and programs to enhance the depth of management talent and employee skills, including information technology; 2) use of system flexibilities, including recruitment bonuses, retention allowances, a completed, pending student loan repayment plan, and technology and tools that range from an online orientation emphasizing electronic references for new employees such as health plan options to phased implementation of new staffing flexibilities, including category ranking; 3) developing plans to follow up on the Commission's restructuring with a systematic review of agency recruitment and job classification practices.
- Meet mission-critical skill needs. Agency restructuring under the CFMA continues to reorganize Commission programs around broader functional roles, rather than more limiting subject matter areas. For example, the programs continue to merge units that had been responsible for narrow types of cases into flatter units that are each capable of responding to the full range of cases or requests. This continues to improve both the responsiveness of programs and offices and the ability to cross-train staff so that the greatest number may develop the skill sets currently in demand.
- Reward performance. The Commission implemented a revised performance appraisal system on July 1, 2002. It includes features designed to improve the communication process, assure an initial and continuing communication

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of yearly goals, provide for objective review and assessment geared toward results, and reward employee contributions promptly. The Commission will review the system's first full year of operation to identify further ways to increase the link of pay to performance.

- *Workforce emphasizes e-government and competition.* The Commission has continued to aid its employees to develop modern workforce skills by offering a quarterly curriculum of in-house training covering line program issues and information technology as well as prototyping of industry e-learning seminars and linking our employees to OPM's e-Learning center. The Commission has demonstrated its own commitment by implementing the governmentwide e-security, e-training, and associated Web-based payroll software in anticipation of e-payroll. Competitive bidding resulted in award of contracts to support development of Commission's evolving compensation programs now being implemented, including pay for performance, and special temporary needs for support staff. On-site procurement training enhanced Commission-wide awareness and use of competitive sourcing.

OHR continues to base its planning on the expectation that actions under each criterion above will reinforce the activities relative to all the other criteria, continuing agency progress toward full realization of the overall standards for success represented by a green light rating.

Expanding Electronic Government

Expanding electronic government to serve citizens and help the Commission meet the demand for online government is extremely challenging. However, the Commission has completed its first step in the government-to-business initiative for online rulemaking. A citizen can now use the one-stop service delivery integrated through *Firstgov.gov* to access the Commission's docket information. As this initiative develops further within the top 10 rulemaking agencies, the Commission will stay abreast of the requirements to migrate to a unified cross-agency online rulemaking docket system.

During FY 2003, the Commission also focused on upgrading its internal processes to more efficiently and effectively support the exchanges' electronic submission of financial data. Working with the major exchanges, such as NYMEX, NYBOT, and CBOT, the Commission now receives and processes weekly, rather than monthly, data files using file transport protocols rather than data tapes. Migrating to this technical approach of receiving information eases the reporting burden on the exchanges and provides a more efficient and timely manner for the Commission to receive and manage exchange data submissions.

Competitive Sourcing

The Commission has begun incorporating the elements of performance-based service contracting in its service contract solicitations. Specifically, a solicitation was recently released for administrative support services that contained all required elements. Additionally, a request for information for financial statement audit services was recently issued containing these elements.

Improved Financial Performance

OFM continues to work toward improving its financial performance through increasing the efficiency of financial reporting, enhancing financial systems to improve functionality and strengthen regulatory compliance, and improving the technical skills of the staff through on-the-job cross-training as well as participation in seminars, conferences, and other formal training events. Initiatives for

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improving the Commission's financial performance to meet the core criteria for successful financial management standards include the following:

- Financial management systems meet Federal financial management systems requirements and applicable Federal accounting and transaction standards. As a result of the passage of the Accountability of Tax Dollars Act of 2002 and the E-Government Act of 2002, OFM is completing an in-depth analysis of the Commission's financial management system to determine if: 1) all regulatory, management, program, and operating needs are met; 2) the system continues to be the most cost-effective and efficient system available in comparison to other JFMIP-certified financial systems; and 3) the Commission needs to pursue the acquisition and implementation of a new system that will better meet its needs. In FY 2004, OFM will complete the analysis and develop a plan for enhancing its current financial system or acquiring and implementing a new system. Enhancements to the current system or implementation of a new system will begin in FY 2005 with plans to become operational in FY 2006.

In addition to reviewing the Commission's core financial system, an assessment of the its asset management system will be completed. The Commission lacks a comprehensive asset management program, a centralized automated software system, and overall support for financial management reporting and systems compliance. The Commission's FY 2002 Federal Managers' Financial Integrity Act Report identified this system as a material weakness and provided a remediation plan. In FY 2003, OFM will complete the establishment of Commission policy on depreciation and capitalization and revalue its assets on the agency's financial statements. In FY 2004, OFM will lead a team in developing an integrated, agency-wide solution for implementing an integrated asset management system to become operational by FY 2005.

The E-Government Act has resulted in the passage of an eTravel Service (eTS) initiative by the General Services Administration (GSA) to improve financial performance of agency travel services. In FY 2004, the Commission will be required to submit migration plans and schedules for implementing eTS no later than FY 2006. In FY 2004, the Commission will work with GSA's eTravel Program Management Office to submit the plans and begin migration to eTS in FY 2005.

- Accurate and timely financial information. In FY 2003, OFM began working with the U.S. Treasury Department to prepare for meeting the new regulatory reporting requirements of the Accountability of Tax Dollars Act of 2002, including making changes to its current financial management system and developing automated reports. In FY 2004, OFM plans to submit accurate and timely financial information that will fully comply with the requirements of the Accountability Act. An independent audit of the agency's financial statements will be conducted in FY 2004. The audit results will provide the agency with a roadmap for improving the accuracy of its financial information for FY 2005.
- Integrated financial and performance management systems supporting day-to-day operations. In FY 2003, OFM completed an assessment of its current methods for producing financial and performance data from its systems. As a result, enhancements to the core financial system will be made that will provide better integration of cost and performance data for FY 2004. In FY 2005, OFM will continue its effort to improve the integration of financial and performance data to support better performance measurement and decision making regarding the Commission's resources.
- Unqualified and timely audit opinions. The Accountability of Tax Dollars Act of 2002 will also require the Commission to comply with reporting requirements of the Chief Financial Officers Act of 1990 for FY 2004. Reporting re-

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quirements include submitting unaudited financial statements for the first three fiscal quarters of FY 2004, and audited financial statements for fiscal year-end. In FY 2005, the Commission will receive the results of its first audited financial statements, and OFM will develop a plan for correcting any reported deficiencies.

Budget & Performance Integration

In its continuing effort to meet the requirements of GPRA and the budget and performance integration goal of the President's Management Agenda, the Commission took a fresh look at its strategic performance planning and measurement structure in FY 2003. A team of senior program executives and key managers from OED attended a two-day working session for the purposes of documenting the Chairman's vision of success for the next five years, determining the indicators of success, and how to measure them. The result is a new system that enables the Commission to: 1) allocate FTEs by business process rather than activity; and 2) measure its performance using fewer, more meaningful outcome measures rather than numerous output measures.

In addition, the two-day session served to help the Commission make additional progress with respect to each of the standards for success associated with the President's goal of budget and performance integration as outlined below:

- *Creation, implementation, and monitoring of an integrated performance plan/budget.* With this FY 2005 OMB estimate, the budget request and the Annual Performance Plan have been integrated—with the budget now showing the request broken out by object class, by program, and by strategic goal and planned outcome. In addition, to reflect the new integration, the submission has been renamed, the *FY 2005 OMB Budget & Performance Estimate*.

To further demonstrate the Commission's progress, the Budget & Planning and Accounting teams of OFM have begun working to restructure the financial management system to align the monitoring of spending with that of budgeting or planning for spending. This meant a complete overhaul of the Management Accounting Structure Code (MASC) system to better align it with the goals, outcomes, and business processes of the new strategic performance planning and measurement structure.

- *Performance plan/budget sets forth outcome goals, output targets, and requested resources in context of past results.* As mentioned previously, a new strategic planning and measurement structure guided the Commission's latest development of the integrated performance plan and budget. The modifications to the structure were based on input from the Chairman and senior executive staff and evaluations of past performance conducted quarterly by program managers. In addition, the GAO critiqued the Commission's strategic planning structure, providing valuable suggestions regarding how to improve its effectiveness. This year's efforts and these internal evaluations and past critiques have led to a more streamlined set of business processes and performance indicators of success, measures of outcome, and annual performance targets.
- *Budget accounts, staff, and programs/activities are aligned to achieve program targets.* The work of the Budget & Planning and Accounting teams to restructure budget accounts and the MASC system has enabled a better understanding by program staff of how their activities help the Commission reach its goals, outcomes, and performance targets. As a result, monitoring of resource expenditures—monetary and human—will become more successfully aligned as originally envisioned.
- *Full cost of outputs and programs is integrated with performance.* The Commission's fully integrated budget and performance estimate contain a

FY 2005 President's Budget & Performance Plan

cross-cutting analysis that demonstrates how the full cost of each budget request is fully integrated with planned performance. That is, the program-based and object class-based analyses of the request are augmented by a programmatic distribution of resources by each of the Commission's strategic goals. Conversely, the goal-based analysis of request's planned performance also disaggregates resources by program. This analysis was developed both to demonstrate that full costs were integrated with performance *and* to engender greater understanding among the public, the Congress, the Administration, market users, and the many other interested persons and entities regarding how resources contribute to the accomplishment of the Commission's mission.

- *Agency documents program effectiveness, analyzes policies' impact on outcomes, and demonstrates how results inform budget decisions.* With the work of the senior staff to revamp the strategic performance planning and measurement system as well as the efforts of the Budget & Planning and Accounting teams of OFM to align planning and monitoring of resource expenditure, the Commission will have the foundation in place to begin documenting program effectiveness, analyzing the impact of policy decisions on outcomes, and demonstrating how performance results affect budget decisions. Since these efforts have just begun in FY 2003, achieving this standard for success, however, can only be realized in the future—hopefully by the end of the FY 2004 budget cycle.

The Commission rates its progress in this area as a “yellow,” meaning it has achieved some, but not all, of the core criteria outlined in the Executive Branch Management Scorecard.

APPENDIX

The Commissioners

James E. Newsome, Chairman

James E. Newsome was confirmed by the U.S. Senate on December 20, 2001, to serve as Chairman of the CFTC. He was sworn in on December 27, 2001, to a term expiring in June 2006. Chairman Newsome has served as a Commissioner of the CFTC since August 10, 1998, and as Acting Chairman from January 20, 2001, until becoming Chairman.

Prior to joining the CFTC, Chairman Newsome served for nine years as Executive Vice-President of the Mississippi Cattlemen's Association and Beef Council. Additionally, he served as Chairman of the Mississippi Agribusiness Council, which is devoted to the development of domestic and international agribusiness opportunities within the state of Mississippi.

Chairman Newsome's involvement in agriculture led to his association with numerous organizations in both Mississippi and his home state of Florida. He has served as President of the Association of Mississippi Agriculture Organizations; as a member of the Governor's Task Force on the Future of Mississippi Agriculture and the Governor's Task Force on the Future of Florida's Small Farms; as a Delegate to the National Council for Agriculture Research, Extension and Teaching; as President of the Florida Future Farmers of America; and as President of the University of Florida Agriculture Council.

Since joining the Commission, Chairman Newsome has actively encouraged industry participation in regulatory initiatives, and has served as Chairman of the CFTC's TAC. His conservative approach to Commission responsibilities has been open and inclusive and has contributed to major regulatory reform of the U.S. futures and derivatives markets.

A native of Plant City, Florida, Chairman Newsome received his B.S. degree in Food and Resource Economics from the University of Florida and his M.S., and Ph.D. degrees in Animal Science/Agricultural Economics from Mississippi State University. He is married to the former Mary Margaret Pomeroy of Carmel Valley, California and they have two daughters.

Walter L. Lukken, Commissioner

Walter L. Lukken was sworn in on August 7, 2002 as a Commissioner of the CFTC. He was nominated by President George W. Bush on April 16, 2002, and confirmed by the Senate on August 2, 2002, to a term expiring April 13, 2005.

Mr. Lukken joins the Commission after having served four years on the professional staff of the U.S. Senate Agriculture Committee under Ranking Member Richard Lugar. While working for the committee, Mr. Lukken specialized in futures and derivatives markets, agricultural banking, and agricultural tax issues. Before joining the committee, Mr. Lukken worked for five years in the personal office of Senator Lugar as a legislative assistant specializing in finance and tax matters.

A native of Richmond, Indiana, Mr. Lukken received his B.S. degree with honors from the Kelley School of Business at Indiana University, and his Juris Doctor degree from Lewis and Clark Law School in Portland, Oregon. Mr. Lukken is a member of the Illinois Bar.

Sharon Brown-Hruska, Commissioner

Sharon Brown-Hruska was sworn in as Commissioner of the CFTC on August 7, 2002. Dr. Brown-Hruska was nominated by President George W. Bush on April 9, 2002, and confirmed by the Senate on August 2, 2002, to a term expiring April 13, 2004.

Dr. Brown-Hruska came to the Commission from George Mason University, where she was an Assistant Professor of Finance in the School of Management. Prior to joining the faculty at George Mason University, she taught at Tulane University and Virginia Polytechnic Institute and State University (Virginia Tech). Courses taught by Professor Brown-Hruska included Risk Management and Financial Innovation, International Finance, Venture Capital and Private Finance, Investments, and Financial Markets.

From 1990 to 1995, Dr. Brown-Hruska was a staff economist in the CFTC's Division of Economic Analysis, where she conducted policy and technical research in the areas of anti-competitive behavior and market microstructure of futures, options, and derivatives markets.

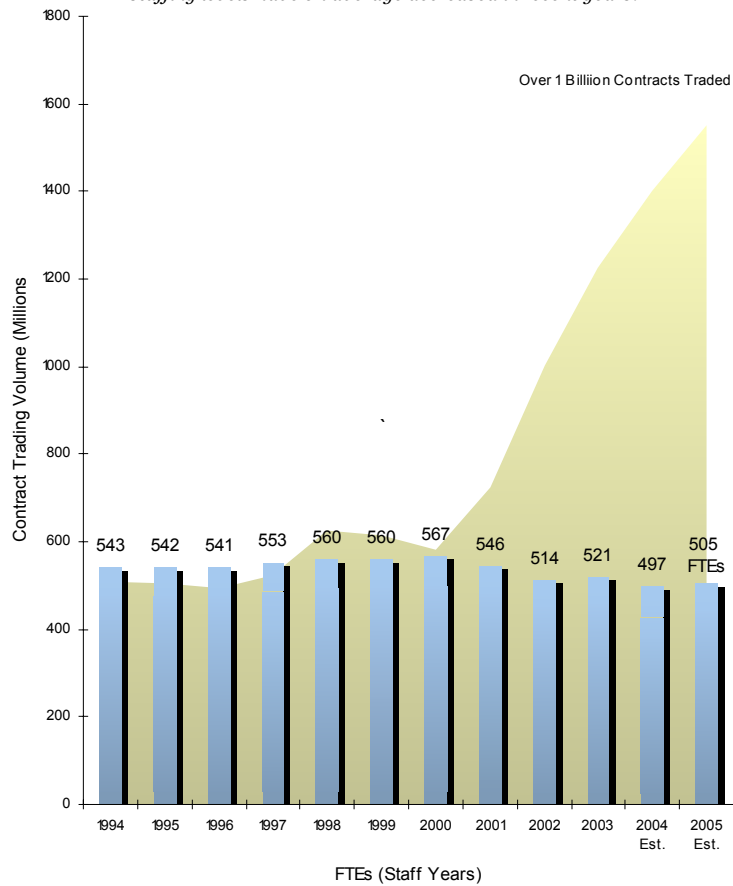
Dr. Brown-Hruska has authored numerous scholarly papers and publications based on her extensive research in the areas of derivatives and market microstructure. In her writings, she has considered how differences in market structure and regulation affect market quality and the competitive environment in derivatives and their underlying asset markets.

A native of Winchester, Virginia, Dr. Brown-Hruska received her B.A. in economics and international studies in 1983, her M.A. in economics in 1988, and her Ph.D. in economics in 1994 from Virginia Tech in Blacksburg, Virginia.

Commodity Futures Trading Commission

Growth in Volume of Futures & Option Contracts Traded & FTEs

. . . . In the past 12 years, trading volume has doubled while staffing levels have on average decreased in recent years.



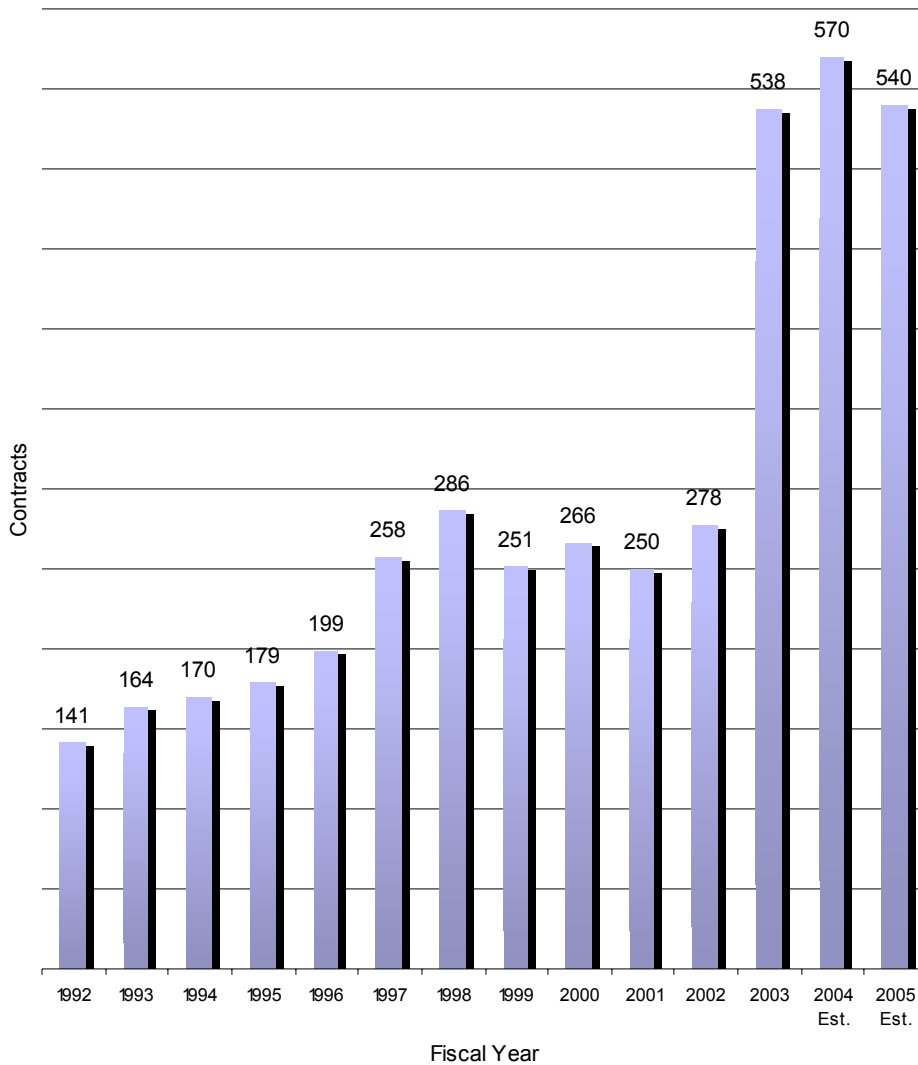
Growth of Volume of Contracts Traded and FTEs

Commodity Futures Trading Commission

Actively Traded Futures & Option Contracts

The number of actively traded contracts traded on U.S. exchanges has almost doubled in the last decade, 1992-2003.

The number is expected to grow to over 500 contracts by FY 2005.



CFTC Actively Traded Contracts

Commodity Futures Trading Commission

Number of Registered Commodities Professionals

Companies and individuals who handle customer funds or give trading advice must apply for registration through the NFA, an SRO to which the Commission has delegated that responsibility subject to CFTC oversight.

The Commission regulates the activities of nearly 68,000 registrants:

<u>Type of Registered Professional</u>	<u>Number in Sept 2003</u>
<i>Associated Persons (AP) (Sales People)</i>	<i>50,900</i>
<i>Commodity Pool Operators (CPOs)</i>	<i>2,059</i>
<i>Commodity Trading Advisors (CTAs)</i>	<i>2,812</i>
<i>Floor Brokers (FBs)</i>	<i>8,756</i>
<i>Floor Traders (FTs)</i>	<i>1,458</i>
<i>Futures Commission Merchants (FCMs)</i>	<i>205¹⁰</i>
<i>Introducing Brokers (IBs)</i>	<i><u>1,646¹¹</u></i>
<i>TOTAL</i>	<i><u>67,836</u></i>

Number of Registered Commodities Professionals

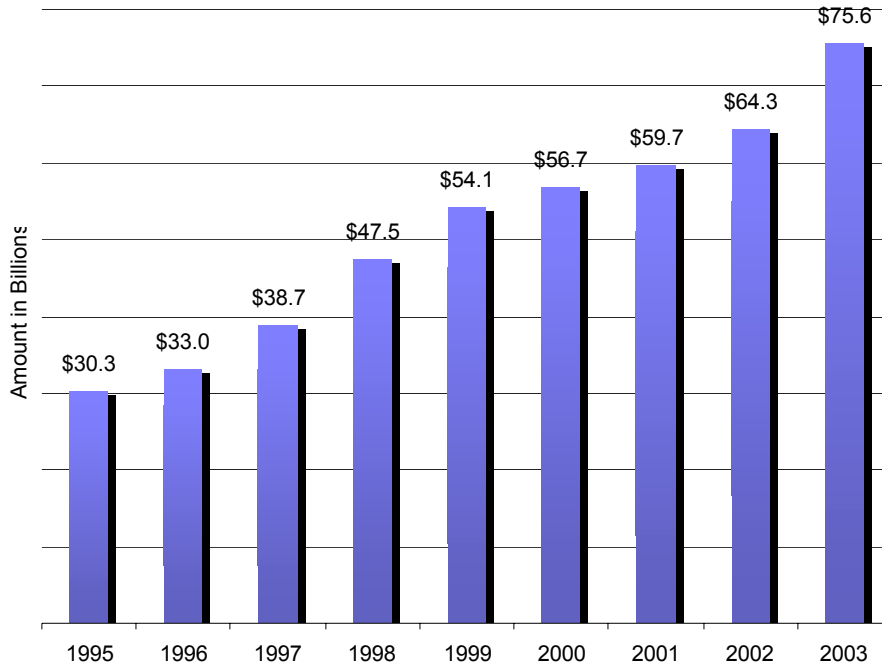
¹⁰ Includes 18 notice-registered FCMs.

¹¹ Includes 42 notice-registered IBs.

Commodity Futures Trading Commission

Customer Funds in Futures Commission Merchants Accounts

From 1995 through 2003, the amount of customer funds held in FCM accounts has more than doubled.



Customer Funds in FCM Accounts

Commodity Futures Trading Commission

CFTC-Regulated Commodity Exchanges

Amarillo, TX

- *FutureCom (FCOM) **

Cambridge, MA

- *OnExchange Board of Trade (ONXBOT) **

Chicago, IL

- *Chicago Board of Trade (CBT)*
 - MidAmerica Commodity Exchange (MCE) *
- *Chicago Mercantile Exchange (CME)*
- *Merchants' Exchange (ME)*
- *OneChicago Futures Exchange (OCX)*

Jersey City, NJ

- *BrokerTec Futures Exchange (BTEX)*

Kansas City, MO

- *Kansas City Board of Trade (KCBT)*

Minneapolis, MN

- *Minneapolis Grain Exchange (MGE)*
- *Twin Cities Board of Trade (TCBT) **

New York, NY

- *Amex Commodities Corp (ACC) **
- *Cantor Financial Futures Exchange (CFFE) **
- *INET Futures Exchange (IFE)*
- *NQLX, LLC Futures Exchange (NQLX)*
- *Coffee, Sugar and Cocoa Exchange (CSCE)*
- *New York Cotton Exchange (NYCE)*
- *New York Futures Exchange (NYFE)*
- *New York Mercantile Exchange (NYMEX)*
 - Commodity Exchange Division (COMEX)

Philadelphia, PA

- *Philadelphia Board of Trade (PBOT)*

San Francisco, CA

- *Pacific Futures Exchange (PFE)*

* CFTC-regulated commodity exchanges include only exchanges with non-dormant contracts.

Commodity Futures Trading Commission

CFTC-Registered Derivatives Clearing Organizations

Cambridge, MA

- *OnExchange Clearing Corporation **

Chicago, IL

- *The Clearing Corporation (formerly the Board of Trade Clearing Corporation)*
- *Chicago Mercantile Exchange (CME) Clearinghouse*
- *The Options Clearing Corporation (OCC)*
- *Guaranty Clearing Corporation (GCC)*

Houston, TX

- *EnergyClear Corporation*

Jersey City, NJ

- *BrokerTec Clearing Company LLC (BCC) **

Kansas City, MO

- *Kansas City Board of Trade (KCBT) Clearing Corporation*

Minneapolis, MN

- *Minneapolis Grain Exchange (MGE) Clearinghouse*

New York, NY

- *New York Clearing Corporation (NYCC)*
- *New York Mercantile Exchange (NYMEX) Clearinghouse*

Philadelphia, PA

- *Intermarket Clearing Corporation (ICC) **

United Kingdom

- *London Clearing House (LCH)*

* Not currently active in clearing futures contracts.

Summary of Goals, Outcomes, and Business Processes

Goal One: <i>Ensure the economic vitality of the commodity futures and option markets.</i>	
Outcome	Business Process
1.1 Markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.	<ol style="list-style-type: none"> 1. Conduct financial surveillance 2. Conduct market surveillance 3. Conduct trade practice surveillance 4. Conduct economic research 5. Review trading facility filings and clearing organization contracts and rules 6. Conduct cooperative enforcement 7. Investigate violations 8. File and prosecute cases 9. Take appropriate remedial or punitive action
1.2 Markets are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality.	<ol style="list-style-type: none"> 1. Conduct financial surveillance 2. Conduct market surveillance 3. Conduct trade practice surveillance 4. Conduct economic research 5. Review trading facility filings and clearing organization contracts, and rules 6. Investigate violations 7. File and prosecute cases 8. Share information externally 9. Coordinate with domestic regulators
Goal Two: <i>Protect market users and the public..</i>	
Outcome	Business Process
2.1 Violations of Federal commodities laws are detected and prevented.	<ol style="list-style-type: none"> 1. Conduct financial surveillance 2. Conduct cooperative enforcement 3. Investigate violations 4. File and prosecute cases 5. Resolve administrative enforcement cases 6. Resolve appeals 7. Share information externally 8. Take appropriate remedial or punitive action 9. Represent Commission in litigation or other disputes 10. Collect monetary penalties from violators.
2.2 Commodity professionals meet high standards.	<ol style="list-style-type: none"> 1. Provide guidance, advice, and regulate business, financial, and sales practices 2. Review self-regulatory organizations and clearing organizations 3. Investigate, file, and prosecute cases

Goal Two: <i>Protect market users and the public. (Continued)</i>	
Outcome	Business Process
2.3 Customer complaints against persons or firms registered under the Act are handled effectively and expeditiously.	<ol style="list-style-type: none"> 1. Manage reparations program 2. Resolve appeals 3. Represent Commission in litigation or other disputes
Goal Three: <i>Ensure market integrity in order to foster open, competitive, and financial sound markets.</i>	
3.1 Clearing organizations and firms holding customer funds have sound financial practices.	<ol style="list-style-type: none"> 1. Conduct financial surveillance 2. Provide guidance, advice, and regulate business, financial, and sales practices 3. Review self-regulatory organization enforcement 4. Investigate violations 5. File and prosecute cases 6. Take appropriate remedial or punitive action
3.2 Commodity futures and option markets are effectively self-regulated.	<ol style="list-style-type: none"> 1. Conduct financial surveillance 2. Provide guidance, advice, and regulate business, financial, and sales practices 3. Review exchange applications, contracts, and rules 4. Review self-regulatory organization enforcement
3.3 Markets are free of trade practice abuses.	<ol style="list-style-type: none"> 1. Investigate violations 2. File and prosecute cases
3.4 Regulatory environment is flexible and responsive to evolving market conditions.	<ol style="list-style-type: none"> 1. Coordinate with domestic regulators 2. Coordinate with foreign and international regulators 3. Draft, review, and comment on legislation 4. Provide guidance, advice, and regulate business, financial, and sales practices

Commodity Futures Trading Commission

Summary of Financial Management Plan

The President's Management Agenda initiatives for improving financial performance, expanding electronic government, and integrating budget and performance have resulted in the passage of the Accountability of Tax Dollars Act, Improper Payments Information Act, E-Government Act, and eTravel Service requirements. These new legislative mandates significantly impact the Commission's business processes that support its mission, goals, and outcomes. To comply with these mandates will require modernization of the Commission's financial management and travel systems to Web-centric, end-to-end enterprise architecture solutions.

In FY 2004, the Commission will complete its first submissions of quarterly unaudited financial statements, year-end audited financial statements, and a consolidated Performance and Accountability Report. The Commission will also complete an assessment of its business processes and financial management systems, including travel. This assessment will provide the basis for developing a strategic plan for acquiring and implementing financial management and eTravel system solutions that are fully compliant with the new legislative mandates associated with the President's Management Agenda.

In FY 2005, the Commission will continue complying with financial statement and performance and accountability reporting requirements. In addition, the Commission plans to acquire and implement financial management and eTravel systems that provide Web-centric, end-to-end enterprise architecture solutions for supporting the President's Management Agenda.

Table of Acronyms

AAC	Agricultural Advisory Committee
ALJ	Administrative Law Judge
AP	Associated Person
BASIC	Background Affiliation Status Information Center
ASXF	ASX Futures Exchange Proprietary Limited (Australia)
BOTCC	Board of Trade Clearing Corporation
BTEX	BrokerTec Futures Exchange
CANYCE	Citrus Associates of the New York Cotton Exchange
CBOE	Chicago Board Options Exchange
CBOT	Chicago Board of Trade
CEA	Commodity Exchange Act
CFFE	Cantor Financial Futures Exchange
CFTC	Commodity Futures Trading Commission
CFMA	Commodity Futures Modernization Act of 2000
CME	Chicago Mercantile Exchange
COMEX	Commodity Exchange, Inc. Division of the New York Mercantile Exchange
CPO	Commodity Pool Operator
CSCE	Coffee Sugar and Cocoa Exchange
CTA	Commodity Trading Advisor
DCO	Derivatives Clearing Organizations
DOJ	Department of Justice
DTEF	Derivatives Transaction Execution Facility
EAP	Employee Assistance Program
EMC	Executive Management Council
EMP	Enforcement Modernization Project
ERC	Employee Resource Center
eTS	eTravel Service
FB	Floor Broker
FBI	Federal Bureau of Investigation
FBIIC	Finance & Banking Information Infrastructure Committee
FCC	Federal Communications Commission
FCM	Futures Commission Merchant
FCOM	FutureCom
FERC	Federal Energy Regulatory Commission
FIA	Futures Industry Association
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FOIA	Freedom of Information Act
FOREX	Foreign Currency
FRB	Board of Governors of the Federal Reserve System
FT	Floor Trader
FTE	Full-time Equivalent
FY	Fiscal Year
G-7	Group of Seven Industrialized Nations
GAO	General Accounting Office
GISRA	Government Information Security Reform Act
GLBA	Gramm-Leach-Bliley Act
GMAC	Global Markets Advisory Committee
GPRA	Government Performance and Results Act
GSA	General Services Administration
IB	Introducing Broker

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ICC	Intermarket Clearing Corporation
IOSCO	International Organization of Securities Commissions
IRS	Internal Revenue Service
JO	Judgment Officer
KCBT	Kansas City Board of Trade
LCH	London Clearing House
MASC	Management Accounting Code Structure
MCE	MidAmerica Commodity Exchange
ME	Merchants' Exchange
MGE	Minneapolis Grain Exchange
MOU	Memorandum/Memoranda of Understanding
NFA	National Futures Association
NFE	NexTrade Futures Exchange
NQLX	Nasdaq-LIFFE, LLC Futures Exchange
NYBT	New York Board of Trade
NYCC	New York Clearing Corporation
NYCE	New York Cotton Exchange
NYFE	New York Futures Exchange
NYMEX	New York Mercantile Exchange
OCC	The Options Clearing Corporation
OCX	OneChicago Futures Exchange
OED	Office of the Executive Director (CFTC)
OFM	Office of Financial Management (CFTC)
OGC	Office of the General Counsel
OHR	Office of Human Resources (CFTC)
OIA	Office of International Affairs (CFTC)
OIG	Office of the Inspector General (CFTC)
OIRM	Office of Information Resources Management (CFTC)
OMB	Office of Management and Budget
OMO	Office of Management Operations (OMO)
ONXBOT	OnExchange Board of Trade
OPM	Office of Personnel Management
PBT	Philadelphia Board of Trade
PWG	President's Working Group on Financial Markets
RFA	Registered Futures Association
SADB	Single Asset Development Borrowers
SEC	Securities and Exchange Commission
SRO	Self-Regulatory Organization
TAC	Technology Advisory Committee
USA PATRIOT	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
USDA	United States Department of Agriculture
UK	United Kingdom

Privacy Policy for CFTC Web Site

The purpose of this policy statement is to describe how the Commission handles information learned about visitors when visitors access the CFTC Web site. The information the Commission receives depends on how the visitor uses the Web site. Visitors are not required to give personal information to visit the site.

If a visitor accesses the CFTC Web site to read or download information, such as press releases or publications, the Commission will collect and store the following information:

- The name of the domain (the machine or Web site) from which the visitor accesses the Internet (for example, aol.com if a visitor is connecting from an America Online account) and/or the name and Internet protocol address of the server the visitor is using to access the CFTC Web site;
- The name and Internet protocol address of the CFTC server that received and logged the request;
- The date and time the request was received;
- The information that the visitor is accessing (for example, which page or image the visitor chose to read or download); and
- The name and version of the Web browser used to access the Web page.
- The Commission uses the information collected to measure the number of visitors to the different sections of its Web site and to help us make the Web site more useful to visitors.

The Commission does not enable "cookies." A "cookie" is a text file placed on a visitor's hard drive by a Web site that can be used to monitor his or her use of the site.

If a visitor completes a form or sends a comment or e-mail, he or she may be choosing to send us information that personally identifies him or her. This information is used generally to respond to the visitor's request, but may have other uses that are identified on each form. For example, if a visitor sends the Commission a comment letter on a proposed regulation, that letter becomes part of the comment file and is available to the public. The comments are used to help CFTC and other members of the public evaluate proposed Commission actions. Other forms that a visitor may choose to submit, such as FOIA requests or requests for correction of information, contain information that is used by the Commission to track and respond to visitors' requests. Information provided on the enforcement questionnaire may be shared with other law enforcement agencies, if appropriate.

Questions about CFTC's privacy policy and information practices should be directed by e-mail to webmaster@cftc.gov. Information on the Commission's systems of records maintained under the Privacy Act can be found under Section D of the *CFTC Federal Register Notices*.

