

# FY 2003 ANNUAL PERFORMANCE REPORT

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# FY 2003 ANNUAL PERFORMANCE REPORT

## Executive Summary

### Overview

Most Americans are unaware of the impact the commodity futures and option markets have on their everyday lives. Properly functioning futures and option markets serve vital price discovery and “hedging” functions that are essential to maintaining a healthy capital-based economy. This means that the prices established by these markets affect how much we pay for our food, our clothing, and our shelter.

Because of their pervasive nature, futures and option markets that function improperly can have a devastating effect on our lives. Therefore, the markets must be protected against manipulation, abusive trading practices, and fraud—the elements that cause improper market function. Doing so not only encourages the economic competitiveness, efficiency, and integrity of the markets, but also, more importantly, protects the American public from the detrimental forces seeking to gain monetarily at their expense.

Understanding the impact of the futures and option markets on the lives of all Americans, Congress in 1974 passed the Commodity Futures Trading Commission Act of 1974, which created the Commodity Futures Trading Commission (the Commission or CFTC) as an independent agency with the mandate to regulate commodity futures and option markets in the U.S.

### Oversight of U.S. Futures Industry

Futures contracts for agricultural products have traded in the U.S. for over 150 years. In recent years, futures trading has expanded rapidly into many new markets, beyond the domain of traditional physical and agricultural commodities. Futures and option contracts are offered on a vast array of financial instruments, including foreign currencies, U.S. and foreign government securities, and U.S. and foreign stock indices.

Through its continued leadership role in the oversight of the U.S. futures industry, the Commission achieves its mandate by relying on several oversight actions:

- ***Enforcement***—to police the futures and option markets for conduct that violates the Commodity Exchange Act (CEA) and Commission regulations.
- ***Market Surveillance***—to survey the futures and option markets to ensure that they reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.
- ***Rulemaking, Auditing, and Reviewing***—to protect the economic functions of the market, to protect market users, to foster open, competitive and financially sound markets, and to promote an effective, flexible regulatory environment, responsive to evolving market conditions.

Some of these interventions and actions reside entirely within the Commission, but the work of the Commission also involves significant partnering with local, state, national, and international authorities and with the futures industry. At the same time, some activities are internal—such as financial management, procurement, information resources management, personnel—without which the Commission could not operate or hope to achieve its goals.

Background

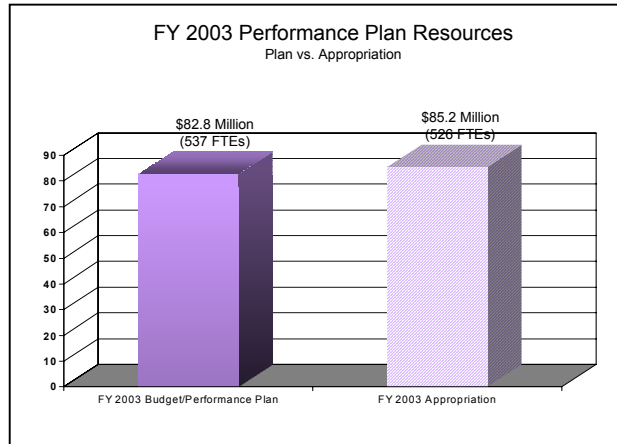
The CFTC five-year strategic plan, which will be submitted to Congress in February 2004, sets forth the overall direction, vision, and mission of the Commission. The strategic plan covers the fiscal years 2004 through 2008. In that plan, the CFTC articulates its vision of the Commission through a mission statement that is supported by three strategic goals along with nine of the most important outcomes of the agency's programs (see *CFTC Mission Statement and Agency Goals* on page 102).

The CFTC's FY 2005 *OMB Budget & Performance Estimate*<sup>1</sup>, a companion piece to the soon-to-be published CFTC Strategic Plan, identifies the program business processes and performance goals the Commission will use to measure its progress toward achieving its strategic goals. By linking these goals to the budget, the Budget & Performance Estimate describes CFTC's effort within one fiscal year and relates this effort to the Commission's mission. The FY 2005 *OMB Budget & Performance Estimate* is Part I of this two-part document (pages 1 to 101) and the strategic plan will be available after February 15, 2004 on the Commission's Web site at:

<<http://www.cftc.gov/files/ofm/ofm2008strategicplan.pdf>>.

The CFTC *FY 2003 Annual Performance Report (APR)* provides a public accounting of performance against the Commission's annual performance goals.

When the original FY 2003 Performance Plan (submitted to Congress in February 2002) was developed, the Commission assumed a resource level of \$82.8 million dollars and 537 full-time equivalents (FTEs) and subsequently received an appropriation of \$85.4 million (after 2.4 percent rescission) and 526 FTEs (see chart, right).



<sup>1</sup> The FY 2005 OMB Budget & Performance Estimate combines the Commission's traditional fiscal year OMB Budget Estimate with its former Annual Performance Plan, as instructed by the Office of Management and Budget.

**CFTC Mission Statement & Agency Goals**

<b>Mission Statement</b>
<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>
<b>Goal One</b>
<b><i>Protect the economic functions of the commodity futures and option markets.</i></b>
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.
<b>Goal Two</b>
<b><i>Protect market users and the public.</i></b>
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.
<b>Goal Three</b>
<b><i>Ensure market integrity in order to foster open, competitive, and financially sound markets.</i></b>
Outcomes
1. Clearing organizations and firms holding customer funds have sound financial practices of
2. Commodity futures and option markets are effectively self-regulated.
3. Markets free of trade practice abuses.
4. Regulatory environment is responsive to evolving market conditions.

**Performance Measurement at the CFTC**

The Commission's FY 2003 Annual Performance Plan focused on outcomes in general because these convey a better sense of value to the American public. In the past, the Commission has tried to describe the activities and relate those activities to *outputs*, the tangible products resulting from staff efforts. The Commission has reasoned that these outputs will result in a set of desired outcomes, some of which are immediate or initial and others of which are intermediate in effect. Likewise, all outputs contribute toward the end outcome, which is synonymous with the mission of the Commission.

<i>CFTC Performance Goals Span a Continuum of Outputs</i>
Program Activities > Program Outputs > Initial Outcomes > Intermediate Outcomes > End Outcomes

When considered along with external factors and internal challenges, this continuum of outputs may provide valuable insight into the performance of the Commission's programs.

However, during FY 2003, the CFTC examined the methodology of its performance measurement structure and decided to streamline it, replacing the emphasis on outputs and detailed activities with an emphasis on outcomes and business processes, or collections of activities. Since FY 2003 represents a transitional year—that is the FY 2003 Annual Performance Plan outlined plans based on the old structure, while the collection of performance data for FY 2003 was based on the new structure—the Commission’s FY 2003 Annual Performance Report will combine key measures from the Plan with the new measures of the revised performance measurement structure. (See Appendix 1: Summary of Commission Performance on page 160)

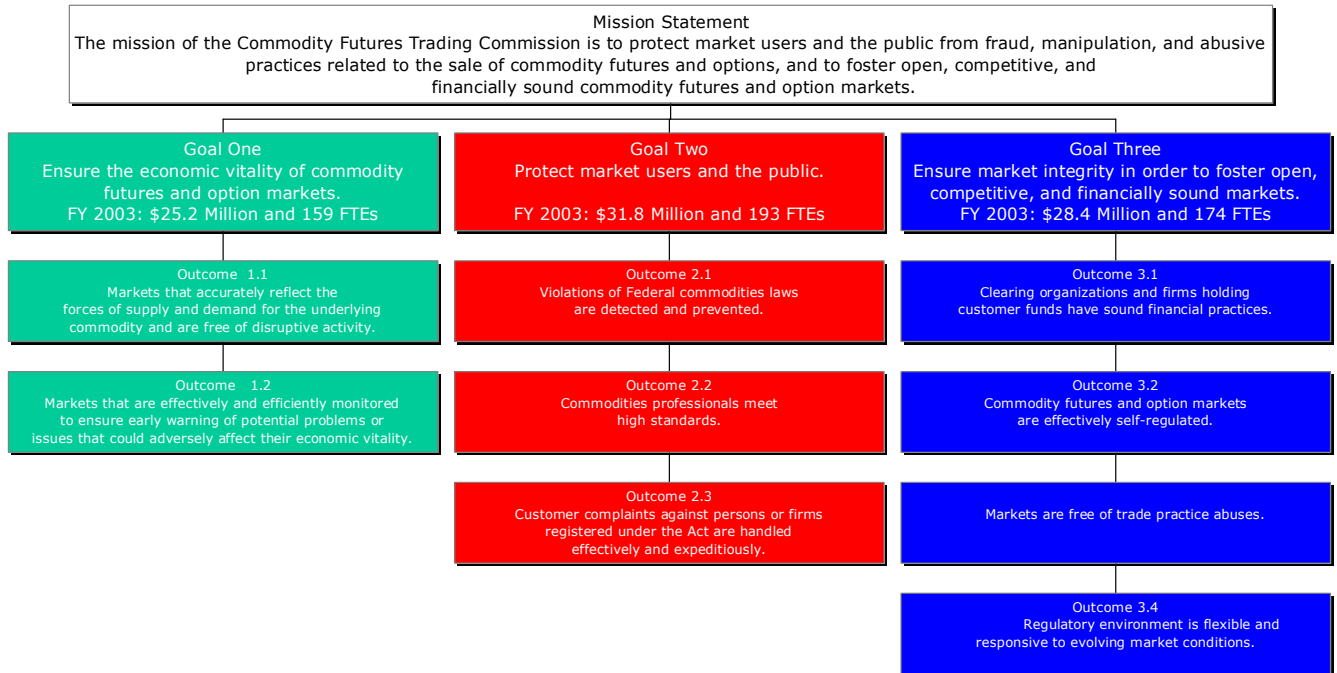
#### Alignment of Budgetary Resources with Strategic Goals

The budget of the CFTC supports the broad range of the Commission’s three strategic goals. Therefore, resources produce public value in multiple program areas. For example, a dollar spent on surveillance may not only protect the economic functions of the market (Goal One), but may also protect the market user and the public (Goal Two). Multiple program activities sometimes support all goals, and for efficiency, some support programs (information resources, financial management, and human resources) provide common support across all strategic goals. Because of this cross-cutting programmatic contribution to the agency’s mission, the Commission has developed a resource table that is organized by program activity and by goal and by outcome objective. Hopefully, this will promote a better understanding among all interested parties as to how the Commission uses its resources to achieve its mission (see *CFTC Resource Logic Model* on page 104).

#### Reporting on FY 2003 Performance

For each of the Commission’s three Strategic Goals, this FY 2003 Annual Performance Report: 1) summarizes resource levels and anticipated performance outcomes; 2) discusses each programs’ progress in achieving anticipated outcomes, including factors that affected performance, such as the Commission’s dealings with stakeholders; 3) describes the methodology for collecting, maintaining, and analyzing performance data; 4) discusses the impact of Commission performance in FY 2003 on current and future performance; and 5) summarizes external challenges and contextual factors affecting overall Commission performance.

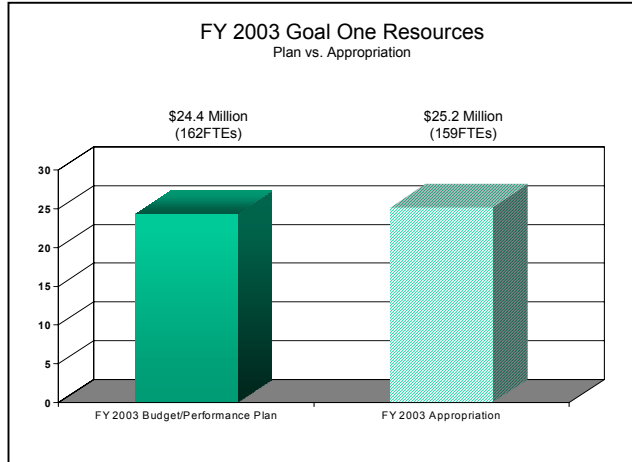
**CFTC FY 2003 Resource Logic Model**  
**Distribution of FY 2003 Resources by Strategic Goal**



## PERFORMANCE RESULTS BY STRATEGIC GOAL

### Strategic Goal One: Protect the economic functions of the commodity futures and option markets.

The focus of this goal is the marketplace. If the U.S. commodity futures and option markets are protected from and are free of abusive practices and influences, they will better operate to fulfill their vital role in our market economy and the global economy—accurately reflecting the forces of supply and demand and serving market users by fulfilling an economic need.



#### Resources

In FY 2003, the Commission requested and the Annual Performance Plan was based on a budget of \$24.4 million and 162 FTEs. The Commission was appropriated \$25.2 million and 159 FTEs (see chart, right).

#### Outcomes

For Strategic Goal One, in FY 2003 the Commission aimed to achieve these “intermediate” outcomes:

- Futures and option markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.
- Markets that can be used effectively by producers, processors, financial institutions, and other firms for the purposes of price discovery and risk shifting.

The Commission also worked toward these “initial” outcomes:

- Prevention or mitigation of potentially disruptive situations; and
- Prevention or mitigation of decreased market use because of a loss of confidence in the integrity of the markets.

## Goal One Program Performance Results

### Market Oversight

Monitoring market activity represents one of the ways the Commission seeks to protect the economic functions of the markets. Market Surveillance is conducted to detect attempted manipulation and other abusive practices that could undermine the capacity of these markets to perform their economic function. The Commission takes preventive measures to ensure that market prices accurately reflect fundamental supply and demand conditions, including the routine daily monitoring of large trader positions, futures and cash prices, price relationships, and supply and demand factors in order to detect threats of price manipulation.

In FY 2003, the Market Surveillance subprogram conducted daily surveillance of 500 active futures and option markets. Particularly close monitoring was conducted on the energy futures markets, which experienced periods of high price volatility due to low stocks, demand spikes resulting from unusually cold weather, and geopolitical tension in the Middle East. In addition, very close monitoring was conducted on the cattle futures markets as a result of the discovery of BSE disease in a single cow in Alberta, Canada, and the consequent USDA ban on Canadian beef imports. The surveillance included collecting and analyzing approximately 36.6 million line items of data regarding large trader activity and approximately 15,109 reports identifying the large traders. In the course of the year, economists prepared approximately 1,850 weekly surveillance reports and compiled 23 special market reports.

The Market and Product Review staff reviewed three applications of entities seeking to become designated contract markets. The Market and Product Review staff also reviewed seven filings by entities that notified the Commission of their intention to operate as exempt markets under the CEA.

The Market and Product Review staff reviewed six new contract approval requests and 20 rule amendment approval requests for existing futures and option contracts in FY 2003. Staff reviewed the terms and conditions of contracts submitted for approval to ensure that the contracts' terms and conditions were in compliance with Commission regulations and policies and did not raise any public interest issues. Under the Commission's certification procedures for listing new products, 279 new contracts were filed, and under its certification procedures, 171 rule changes were filed. Staff reviewed the terms and conditions of contracts submitted under certification procedures to ensure that statutory and regulatory anti-manipulation requirements were met and to provide essential background information in order to conduct market surveillance.

The Commission's review of exchange rules is a key aspect of the statutory framework for self-regulation under Commission oversight. The staff of the Market and Product Review subprogram reviewed exchange rule submissions with a view toward maintaining the fairness and financial integrity of the markets, protecting customers, accommodating and fostering innovation, and increasing efficiency in self-regulation consistent with the Commission's statutory mandates. During FY 2003, staff reviewed 225 exchange rule submissions containing 613 separate new rule amendments. The Market and Product Review subprogram is also responsible for providing exemptive, interpretive, or other relief to various markets and market participants to facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions.



## Clearing and Intermediary Oversight

The Commission's Clearing and Intermediary Oversight program monitors the potential for, and instances of, market disruptions or emergencies related to: 1) the proper capitalization of firms; 2) the proper segregation of customer funds; or 3) issues with respect to systemic risk. Clearing and Intermediary Oversight staff monitor cases of volatile markets in order to advise the Commission of any potential impairment of a registrant or potential systemic risk. It is not possible to estimate in advance the number of such events that will occur annually because market volatility cannot be predicted. Nevertheless, such events are expected to occur. In this connection, Clearing and Intermediary Oversight staff conducted 39 market move reviews in FY 2003. Such reviews met the objectives of: 1) assuring that registrants and financial intermediaries are not impaired by market volatility or disruptions; and 2) detecting any failure to meet clearinghouse obligations or other impairment of a registrant.

## Enforcement

### Energy Markets

During FY 2003, the Commission filed a total of eight enforcement actions in this program area. Of these actions, six have been settled while two remain in litigation along with a related subpoena enforcement action. These enforcement actions are discussed in detail below:

#### Pending Energy Market Enforcement Actions

- *CFTC v. Enron Corp., et al.* On March 12, 2003, the Commission filed a civil injunctive action against Enron Corp. (Enron), and Hunter S. Shively, who was the supervisor of the Central Desk of Enron's natural gas trading operation. The complaint alleged that the defendants engaged in manipulation or attempted manipulation, and further alleged that Enron operated an illegal futures exchange, and traded an illegal, off-exchange agricultural futures contract.

Until its bankruptcy in December 2001, Enron was one of the largest energy companies in the United States. Its natural gas trading unit was based in Houston and managed several natural gas over-the-counter (OTC) products. Enron's natural gas trading unit was divided into geographical regions and included a natural gas futures desk. Shively was the supervisor and trading manager of Enron's Central Desk from May 1999 through December 2001. From November 1999 through at least December 2001, Enron Online (EOL) was Enron's web-based electronic trading platform for wholesale energy, swaps, and other commodities, including the Henry Hub (HH) natural gas next-day spot contract that was delivered at the HH natural gas facility in Louisiana. The HH is the delivery point for the natural gas futures contract traded on the New York Mercantile Exchange (NYMEX), and prices in the HH Spot Market are correlated with the NYMEX natural gas futures contract. During its existence, EOL became a leading platform for natural gas spot and swaps trading.

The complaint alleged that on July 19, 2001, Shively, through EOL, caused Enron to purchase an extraordinarily large amount of HH Spot Market natural gas within a short period of time, causing artificial prices in the HH Spot Market and impacting the correlated NYMEX natural gas futures price. The complaint also alleged that in September 2001, Enron modified EOL to effectively allow outside users to post bids and offers. Enron listed at least three swaps on EOL that were commodity futures contracts. The complaint alleged that with this modification, Enron was required to register or designate EOL with the CFTC or notify the CFTC that EOL was exempt from registration. Enron failed to do either of these things, and the complaint charged that, because of this failure, EOL operated as

an illegal futures exchange. Finally, the complaint alleged that Enron with offering an illegal agricultural futures contract on EOL. According to the complaint, between at least December 2000 and December 2001, Enron offered a product on EOL it called the US Financial Lumber Swap. The complaint alleged that the EOL lumber swap was an agricultural futures contract that was not traded on a designated exchange or otherwise exempt, and therefore was an illegal agricultural futures contract. *CFTC v. Enron Corp., et al.*, No. H-03-909 (S.D.Tex. filed March 12, 2003).

- *CFTC v. American Electric Power Company, Inc., et al.* On September 30, 2003, the Commission filed a civil injunctive complaint against American Electric Power Company, Inc. (AEP), and its wholly-owned subsidiary, AEP Energy Services, Inc. (AEPES). The complaint alleged that the defendants, from at least November 2000 through October 2002, knowingly reported false natural gas trading information, including price and volume information, to certain reporting firms that used such information in publishing surveys or indexes (indexes) of natural gas prices with the intent to skew the indexes to benefit their trading positions. Specifically, the complaint alleged that the defendants knowingly delivered to one reporting firm, Platts, over 3,600 purported natural gas trades, 78% of which were false, misleading or knowingly inaccurate. The complaint further alleged that defendants conduct constitutes an attempted manipulation, which, if successful, could have affected prices of NYMEX natural gas futures contracts. *CFTC v. American Electric Power Company, Inc., et al.*, No. C2 03 891 (S.D. Ohio filed Sept. 30, 2003).

Settled Energy Market Enforcement Actions

- *In re Dynegy Marketing and Trade, et al.* On December 18, 2002, the Commission simultaneously filed and settled an administrative action against Dynegy Marketing and Trade and West Coast Power LLC. The Order found that, from at least January 2000 through June 2002, the respondents reported false natural gas trading information, including price and volume information, to certain reporting firms in an attempt to manipulate the price of natural gas in interstate commerce. The Order further found that this manipulation, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying its findings, the respondents consented to the entry of the Order that: 1) ordered them to cease and desist from further violations; and 2) imposed a \$5,000,000 civil monetary penalty. The Federal Energy Regulatory Commission and the Department of Justice provided assistance to the Commission in its investigation of this matter. *In re Dynegy Marketing and Trade, et al.*, CFTC Docket No. 03-03 (CFTC filed Dec. 18, 2002).
- *In re El Paso Merchant Energy, L.P.* On March 25, 2002, the Commission simultaneously filed and settled an administrative action against energy company El Paso Merchant Energy, L.P. (EPME), a division of El Paso Corporation (El Paso), finding that the respondent committed attempted manipulation and false reporting. Specifically, the Order found that from at least June 2000 through November 2001, EPME reported false natural gas trading information, including price and volume information, and failed to report actual trading information, to certain reporting firms. According to the Order, price and volume information is used by the reporting firms in calculating published indexes of natural gas prices for various hubs throughout the United States. The order finds that EPME knowingly submitted false information to the reporting firms in an attempt to skew those indexes for EPME's financial benefit. According to the order, natural gas futures traders refer to the published indexes for price discovery and for assessing price risks. The order also found that EPME's employees provided false trade

data because they believed it benefited their trading positions or derivative contracts. In addition, the Order found that EPME did not maintain required records concerning the information that it provided to the reporting firms or the true source of the information relayed to those firms, as required by Commission regulations. The order further found that EPME specifically intended to report false or misleading or knowingly inaccurate market information concerning, among other things, trade prices and volumes, and withheld true market information, in an attempt to manipulate the price of natural gas in interstate commerce, and that EPME's provision of the false reports and failure to report true market information were overt acts that furthered the attempted manipulation. According to the order, EPME's conduct constituted an attempted manipulation under the CEA, which, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying its findings, EPME consented to the entry of the Order that: 1) ordered it to cease and desist from further violations; and 2) imposed, jointly and severally on EPME and El Paso, a civil monetary penalty of \$20 million; and ordered EPME and El Paso to comply with various undertakings, including an undertaking to cooperate with the Commission in this and related matters, including any investigations of matters involving the reporting of natural gas trading information.

EPME provided significant cooperation in the course of the Commission's investigation by, among other things, conducting an internal investigation through an independent law firm, waiving work product privilege as to the results of that investigation, and compiling and analyzing trading data which detailed all reported and actual trades in the natural gas markets. The Commission took that significant cooperation into consideration in its decision to accept EPME's settlement offer. *In re El Paso Merchant Energy, L.P.*, CFTC Docket No. 03-09 (CFTC filed March 26, 2003).

- *In re WD Energy Services Inc.* On July 28, 2003, the Commission simultaneously filed and settled an administrative action against WD Energy Services, Inc (WD Energy), the U.S. based energy trading unit of EnCana Corporation (EnCana). The order found that from at least June 2000 through at least August 2001, WD Energy reported false natural gas trading information, including price and volume information, to certain reporting firms. The order further found that one employee of WD Energy discussed false reporting with traders at two other energy companies. The order also found that WD Energy specifically intended to report false or misleading or knowingly inaccurate market information concerning trade prices and volume of trading in an attempt to manipulate the price of natural gas in interstate commerce, and that WD Energy's provision of the false reports and failure to report true market information were overt acts that furthered the attempted manipulation. According to the order, WD Energy's conduct constituted an attempted manipulation under the CEA, which, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying the findings, WD Energy consented to entry to the order that: 1) orders it to cease and desist from further violations; 2) orders it to pay a \$20,000,000 civil monetary penalty; and 3) requires WD Energy and EnCana Corporation to comply with certain undertakings, including an undertaking to cooperate with the CFTC in this and related matters. WD Energy provided cooperation to staff of the CFTC's Division of Enforcement during the course of this investigation. The CFTC factored this cooperation into its decision to accept WD Energy's settlement offer. *In re WD Energy Services Inc.*, CFTC Docket No. 03-20 (CFTC filed July 28, 2003).
- *In re Williams Energy Marketing And Trading, et al.* On July 29, 2003, the Commission simultaneously filed and settled an administrative action against The Williams Companies, Inc. and its subsidiary, Williams Energy Marketing and Trading. The order found that from at least January 2000 through June 2002,

respondents reported false natural gas trading information, including price and volume information, to certain reporting firms. The order found that the respondents specifically intended to report false or misleading or knowingly inaccurate market information concerning, among other things, trade prices and volumes, to attempt to manipulate the price of natural gas in interstate commerce, and that respondents' false reports and failure to report true market information were overt acts that furthered the attempted manipulation. According to the order, respondents' conduct constituted an attempted manipulation under the CEA, which, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying the findings, respondents consented to entry to the order that: 1) orders respondents to cease and desist from further violations; 2) orders the respondents to pay, jointly and severally, a \$20,000,000 civil monetary penalty; and 3) required respondents to comply with certain undertakings, including an undertaking to cooperate with the CFTC in this and related matters. The order recognizes respondents' cooperation in this matter. *In re Williams Energy Marketing And Trading, et al.*, CFTC Docket No. 03-21 (CFTC filed July 29, 2003).

- *In re Enserco Energy, Inc.* On July 31, 2003, the Commission simultaneously filed and settled an administrative action against Enserco Energy, Inc., a subsidiary of Black Hills Corporation. The order found that, from at least May 2000 through at least June 2002, Enserco reported false information, including price and volume information, concerning natural gas cash transactions to certain reporting firms. During the relevant period, Enserco knowingly reported trades that did not occur, reported certain actual trades at false prices and/or volumes, and did not disclose other actual trades, in an attempt to benefit the Respondent's trading positions. According to the order, respondents' conduct constituted an attempted manipulation under the CEA, which, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying the findings, Enserco consented to entry to the order that: 1) orders it to cease and desist from further violations; 2) orders it to pay a \$3,000,000 civil monetary penalty; and 3) required respondents to comply with certain undertakings, including an undertaking to cooperate with the CFTC in this and related matters.

In the order, the Commission recognized Enserco's extraordinary level of cooperation in its decision to settle this matter. In less than three months, Enserco swiftly and aggressively investigated its trade reporting activities and provided DOE with detailed reports of its analyses and findings, as well as transcriptions of over one hundred relevant telephone recordings, and all other details related to its internal investigation, without asserting claims of attorney-client privilege or attorney-work product or requiring a limited waiver agreement. The Commission also took into consideration the small size of Enserco's trading operation and how it addressed the misconduct discussed in this Order. *In re Enserco Energy, Inc.*, CFTC Docket No. 03-22 (CFTC filed July 31, 2003).

- *In re Duke Energy Trading And Marketing, L.L.C.* On September 17, 2003, the Commission simultaneously instituted and settled an administrative action against Duke Energy Trading And Marketing, L.L.C. (DETM), an affiliate of Duke Energy Corporation. The Order found that, from at least January 2000 through August 2002, DETM knowingly reported false natural gas trading information, including price and volume information, to certain reporting firms that used such information in publishing surveys or indexes (indexes) of natural gas prices. Specifically, the Order found that DETM intended to skew the indexes to benefit DETM's trading positions. The Order further found that DETM's false reports were overt acts in furtherance of its attempt to manipulate the price of natural gas in interstate commerce, which, if successful, could have affected prices of NYMEX natural gas futures contracts. Without admitting or denying its findings,

DETM consented to the entry of the Order that: 1) ordered it to cease and desist from further violations; and 2) imposed a \$28,000,000 civil monetary penalty. *In re Duke Energy Trading And Marketing, L.L.C.*, CFTC Docket No. 03-26 (CFTC filed Sept. 17, 2003).

#### Pending Subpoena Enforcement Action

- *CFTC v. The McGraw-Hill Companies, Inc.* On May 19, 2003, the Commission filed an application to enforce its administrative subpoenas to The McGraw-Hill Companies, Inc. (MGH). The application stated that MGH obtains energy price information from energy trading companies and uses it to create surveys or indexes of natural gas prices for various natural gas trading hubs throughout the United States. Platts, a division of MGH, calculates these indexes, which are then used by market participants, including natural gas futures traders, for price discovery and for assessing price risks. The application alleged that MGH failed to comply with two Commission subpoenas seeking documents related to trade data submitted by various energy trading companies to MGH. The application further alleged, and Commission orders have found (see Settled Energy Market Enforcement Cases, above), that certain energy companies made false reports of trade data to MGH. *CFTC v. The McGraw-Hill Companies, Inc.*, No. MC-03-187 (S.D.Tex. filed May 19, 2003).

#### Office of the Chief Economist

The Office of the Chief Economist performed economic and empirical analyses to evaluate the performance of futures markets and to evaluate the impact of changes in trading rules and in contract specifications on the performance of the futures markets. The office also provided economic and statistical consulting services to Commission staff and offered economic and financial research seminars and short courses in futures, options, and financial economics.

Staff also provided economic and statistical analysis to the Enforcement program on a number of cases involving foreign currencies and energy products and to the Market Oversight program on a review of position limits for narrow-based stock index futures contracts and on several recently developed derivatives products.

During FY 2003, OCE staff presented research findings relating to price discovery, hedging and risk aversion, and market development issues at industry or academic conferences as well as through refereed academic journals.

#### Office of Proceedings

The Office of Proceedings continued to hear and decide statutory disqualification actions brought by the Commission.

#### Office of the General Counsel

In FY 2003, the Office of the General Counsel (OGC) continued to review for legal sufficiency and for conformance with the CEA and Commission policy and precedent contract market designation applications and applications for registration as derivatives transaction execution facilities (DTEFs) and derivatives clearing organizations (DCOs).

In FY 2003, OGC continued to advise 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 has been instrumental in advising the Commission as it comprehensively modernizes the rules governing market intermediaries such as futures commission merchants (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 also reviewed all proposed enforcement actions alleging manipulation and other abusive trading practices during FY 2003 to assure their legal sufficiency and conformance with Commission policy and precedent.

## **Executive Direction & Support**

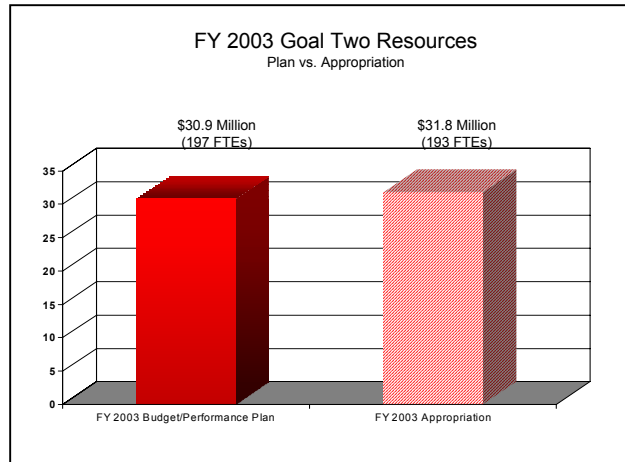
### **Administrative Management & Support**

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 (ISS), was completed through the implementation of over 5,000 system bug fixes and enhancements. This is an ongoing effort to improve ISS's capability to match anticipated changes in the futures industry. This system continues to be enhanced to incorporate the requirements defined in the CFMA.

During FY 2003, the Office of Information and Resources Management (OIRM) also improved the data collection technology used by the Exchange Database System to provide a more efficient means for data collection from the exchanges more effectively supporting the Commission's market oversight objectives. The improvements provide data on a more frequent basis through electronic transfers and eliminating manual collection and handling the tape cartridges.

## Strategic Goal Two: Protect market users and the public.

The focus of this goal is protection of the firms and individuals—market users—who come to the marketplace to fulfill their business and trading needs. Market users must be protected from possible wrongdoing on the part of the firms and commodity professionals with whom they deal to access the marketplace, and they must be assured that the marketplace is free of fraud, manipulation, and abusive trading practices.



### Resources

In FY 2003, the Commission requested and the Annual Performance Plan was based on a budget of \$30.9 million and 197 FTEs. The Commission was appropriated \$31.8 million and 193 FTEs (see chart, right).

### Outcomes

For Strategic Goal Two, in FY 2003 the Commission aimed to achieve these “intermediate” outcomes:

- Compliance with federal commodity laws and deterrence of violations.
- Commodities professionals meet high standards.
- Customer complaints against persons or firms registered under CEA handled effectively and expeditiously.

The Commission also worked toward these “initial” outcomes:

- Potential wrongdoing is identified, investigated, and prosecuted.
- Registered, tested, and licensed commodity professionals.
- Complaints resolved through settlement, informal voluntary proceedings, or formal adjudicatory proceeding.

## Goal Two Program Performance Results

### Clearing and Intermediary Oversight

#### Oversight of Sales Practices and Registered Futures Associations

A core part of the Commission's mission is to operate a program that protects market users and the public from fraud and abusive practices related to the offer and sale of commodity futures and options. The Clearing and Intermediary Oversight program conducts ongoing oversight related to screening market professionals for fitness and assuring that DCOs have appropriate risk management programs. The Clearing and Intermediary Oversight program also develops disclosure standards, particularly for managed futures and option products, to assure that market users and potential market users are appropriately and consistently informed of the risks of futures and option trading as well as important background information about trading managers.

The Clearing and Intermediary Oversight program oversees the National Futures Association's (NFA) Disclosure Document Review program for commodity pool operators (CPOs) and commodity trading advisors (CTAs). Pursuant to a March 2003 delegation of authority by the Commission to the NFA, the program now includes oversight of NFA reviews of disclosure documents filed by CPOs for publicly offered commodity pools. Further, pursuant to a December 2002 delegation of authority by the Commission to the NFA, the program now includes oversight of NFA reviews of annual reports by CPOs for commodity pools that they operate. Commission staff has frequent contact with NFA staff to coordinate regulatory efforts.

#### Oversight of Intermediary Fitness

In FY 2003, there were 67,836 industry registrants. These registrants included 205 FCMs (18 of which were notice-registered), 1,646 introducing brokers (IBs) (42 of whom were notice-registered), 2,059 CPOs, and 2,812 CTAs. These firms employ 50,900 sales personnel, known as associated persons (APs). In addition, there are 8,756 individuals registered as FBs and 1,458 individuals registered as FTs executing trades on U.S. exchanges.

The Clearing and Intermediary Oversight program is responsible for performing the Commission's formal oversight of the NFA registration program. This oversight involves inspection of records and interviews with NFA staff as well as numerous informal contacts between NFA and the Clearing and Intermediary Oversight program on a weekly basis. These oversight activities are designed to protect market participants and the public interest by assuring that persons who deal directly with customers and those who handle customer orders and customer funds meet the standards for fitness, integrity, and training established under the CEA. Persons who cannot meet these standards may be subject to statutory disqualification from registration and may have their registration denied, conditioned, or revoked.

The Clearing and Intermediary Oversight program seeks to protect market users and the public by requiring futures industry professionals to meet high standards through registration and passing of a proficiency exam by salespersons. A performance measure established to indicate the percentage of professionals compliant with standards regarding testing, licensing, and ethics training shows that in FY 2003 the program reached 100 percent. When Commission staff uncover persons who are not registered but should be, a letter is sent to the person, and/or the matter is referred for enforcement action.

The Clearing and Intermediary Oversight program chaired the Registration Working Group, which is composed of Commission and NFA representatives. The Registration



Working Group was created as a means for the Commission and NFA staff to share ideas and concerns about issues that are not tied to any specific pending registration case. Commission staff participated in four meetings of the Registration Working Group during FY 2003, in which the group discussed, among other things: 1) conditional registration of floor brokers and floor trader registrants; 2) issues arising from FCMs conducting retail foreign exchange; 3) implementation of NFA's online registration system; 4) Rule 30.5 exemptions from Commission registration; and 5) fingerprint processing.

#### Anti-Money Laundering

Clearing and Intermediary Oversight staff have participated as members of both an interagency working group and an internal Commission task force in developing and adopting anti-money laundering rules and procedures effective May 18, 2004 as required under Title III of the USA PATRIOT Act of 2001. Staff will continue to provide input and assistance to Treasury, and now that Treasury in November 2003 delegated its anti-money laundering examination and procedures authority with respect to FCMs, IBs and CTAs to the Commission, staff may propose requisite Commission rules and develop and implement an appropriate audit and compliance program.

#### Enforcement

##### Foreign Currency Cases

The Commission's work in fighting fraud in FY 2003 continued in the foreign currency (forex) trading arena. Below is a detailed description of the cases filed and results achieved during FY 2003 with respect to the offer and sale of illegal foreign currency futures and option contracts to the general public.

- *CFTC v. Sterling Forex LLC, et al.* On October 2, 2002 the Commission filed a civil injunctive action against Sterling Forex LLC ("Sterling") and Sterling's chief executive officer and chairman, Maurice Mills. The complaint alleged that, since at least March 2002, the defendants have fraudulently solicited retail customers to engage in speculative trading of FOREX futures contracts. Specifically, the complaint alleged that the defendants claimed profitable trading for their managed accounts every month starting in December 1998, and further claimed annual profits for those accounts in excess of 60 percent during the years 1999 through 2001, when, in fact, Sterling's managed accounts did not first trade until June 2002 and lost in excess of \$1.8 million in trading. On October 4, 2002, the court entered a consent order of preliminary injunction against Sterling and Mills enjoining them from further violations and requiring them to disclose to current and prospective customers that they had been sued by the CFTC for alleged fraud violations. *CFTC v. Sterling Forex LLC, et al.*, No. 02-2076 (W.D. Wash. Filed Oct. 3, 2002).
- *In re \$K's Forex International, Inc., et al.* On January 6, 2003, the Commission simultaneously filed and settled an administrative enforcement action against \$K's Forex International, Inc., d/b/a S.K.'s Forex International, Inc. ("SK") and its president, Elizabeth Miskus Kemp. Kemp was SK's office manager with responsibility for maintaining its financial and trading records from October 1999 through April 20, 2000 when she became SK's president. The Order found that, between October 1999 and September 2000, the respondents fraudulently solicited over \$400,000 from unsophisticated retail customers to trade illegal futures on foreign currencies. The Order further found that the respondents in fact misappropriated the customers' funds for personal expenses, produced fictitious account statements and falsely misrepresented to some investors that their funds had been used to purchase futures contracts. Without admitting or denying the

findings, the respondents consented to the entry of the Order that: 1) directed them to cease and desist from further violations; 2) imposed a permanent trading ban; 3) imposed a \$220,000 civil monetary penalty pursuant to a payment plan; and 4) ordered SK and Kemp to comply with their undertakings never to seek registration. *In re \$K's Forex International, Inc.*, CFTC Docket No. 03-06 (CFTC filed January 6, 2003).

- *CFTC v. Tambiev, et al.* On January 7, 2003, the Commission filed a civil injunctive action against Tamb International, Inc. and its sole owner, officer and director, Russell Tambiev, neither of whom has ever been registered. The complaint alleged that the defendants fraudulently solicited retail customers to trade illegal foreign currency futures. Specifically, the complaint alleged that, from December 22, 2000 through October 2002, the defendants, through e-mails and two Internet web sites, misrepresented that: a) customer funds would be held in segregated accounts “used only for trading purposes;” b) their trading business was merged with a state-chartered commercial bank and that customer funds would be covered by FDIC insurance; and c) that they were either a Swiss bank or a Montenegrin bank with headquarters in Switzerland. In fact, as the complaint further alleged, the defendants commingled and misappropriated customer funds, there was no merger, and they were never associated with any legitimate foreign bank or regulatory system. *CFTC v. Tambiev, et al.*, No. CV 03 177 (E.D.N.Y. filed Jan. 7, 2003).
- *CFTC v. Investors Freedom Club, L.C., et al.* On January 13, 2003, the Commission filed a civil injunctive action against Investors Freedom Club L.C., William Anthony Folino and George Belanger (individually and doing business as: 1) from January 2001 through at least October 2002, IFC, L.C., Investment Freedom Club, Venture Freedom Fund, Ltd. and Venture Freedom Foundation; and 2) from April 9, 2001 to the present, Investors Freedom Club, L.C. (IFC)), none of whom have ever been registered with the Commission. The complaint alleged that the defendants fraudulently solicited retail customers to trade illegal, off-exchange foreign currency futures contracts. Specifically, the complaint alleged that from August 8, 2001 through late September 2002, the defendants solicited more than \$1.5 million from over 150 customers by falsely representing to potential customers that they would receive consistent profits with annual yields as high as 100% with little or no risk of loss. The complaint further alleged that the defendants solicited customers through IFC’s Internet website, e-mails, and an Internet chat forum accessed via the IFC website. In fact, the complaint alleged that Folino misappropriated more than half of the customers’ funds, and used them for personal goods or services for himself and his family, and diverted other funds to accounts his family controlled, including the account of his wife, Tina Folino, who was named as a relief defendant. *CFTC v. Investors Freedom Club, L.C., et al.*, No. 8:03-CV-54-T-17TGW (M.D.Fla. filed Jan. 13, 2003).
- *CFTC v. World-Wide Currency Services, Corp., et al.* On January 14, 2003, the Commission filed a civil injunctive complaint against World-Wide Currency Services, Corp. (World-Wide), Genady Spivack a.k.a George Spivack (a World-Wide director), and Ellison Kent Morrison (salesman for World-Wide and self-described vice-president), none of whom have ever been registered with the Commission. The complaint alleged that, since at least December 21, 2000, the defendants fraudulently solicited approximately \$767,000 from retail customers to trade illegal, off-exchange foreign currency contracts. Specifically, the complaint alleged that the defendants lured customers through aggressive telemarketing and false statements including boasts of large profits to be made in a short period of time, usually with little or no risk. In fact, the complaint alleged that the defendants rarely invested customer funds to purchase currency futures or options contracts, and instead misappropriated nearly all the funds solicited for

their personal uses. *CFTC v. World-Wide Currency Services Corp., et al.*, No. 03-80032 CIV-HURLEY (S.D.Fla. filed Jan. 14, 2003).

- *CFTC v. InterTrade Forex, Inc., et al.* On January 29, 2003, the Commission filed a civil injunctive action against InterTrade Forex, Inc. (InterTrade), InterTrade's managing director, Stanley Craig Wakefield, and its CEO, Pritesh Patel; none of whom have ever been registered with the Commission. The complaint alleged that the defendants fraudulently solicited retail customers through InterTrade's website to trade illegal, off-exchange foreign currency contracts. Specifically, the complaint alleged that, since at least March 2001, the defendants made material misrepresentations regarding the profitability of InterTrade's historical performance record (e.g. on November 4, 2002, InterTrade claimed that its trading gains from inception to that date had been +114.26%, with average monthly returns of +5.19%, when, in fact, its trading resulted in losses). On January 30, 2003, the Court entered a statutory restraining order freezing the assets of the defendants and preventing the destruction of documents. On March 6, 2003, the Court entered a consent preliminary injunction order against defendant Wakefield preliminarily restraining him against further violations of the Act. On June 6, 2003 and July 8, 2003, the Court entered default judgments against defendants Patel and InterTrade, respectively. *CFTC v. InterTrade Forex, Inc., et al.*, No. 6:03-CV-119 (M.D.Fla. filed Jan. 29, 2003).
- *CFTC v. Wheeler, et al.* On January 30, 2003, the Commission filed a civil injunctive action against John A. Wheeler and two limited liability companies he formed and operated, Long Point Investments, LLC (Long Point) and CDM Technologies, LLC (CDM), none of whom are registered with the Commission. On June 9, 2003, the court entered a consent order of permanent injunction against Wheeler, Long Point and CDM. The order found that the defendants, from at least November 2000, fraudulently solicited at least \$35 million from at least 810 investors to trade foreign currencies, among other alleged high-yield investment schemes, through a pooled investment. Specifically, the order found that while the Wheeler lost some customer funds trading foreign currency futures and used some other funds received from "new" customers to repay "earlier" customers in the manner of a Ponzi scheme, he spent at least \$8.4 million – and perhaps as much as \$18 million – of customer funds for personal and luxury items. The defendants consented to entry of the order that: 1) permanently enjoins defendants from further violations; 2) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 3) imposes permanent trading bans; 4) orders them to pay, jointly and severally, restitution of \$23,157,505; and 5) orders them to pay, after they have paid the full amount of restitution, a civil monetary penalty of \$8,400,000. *CFTC v. Wheeler, et al.*, No. 6:03CV42 (E.D.Tex. filed January 30, 2003).
- *CFTC v. EuroBancorp, Inc., et al.* On February 3, 2003, the Commission filed a civil injunctive action against Paris DeLesseppes (a/k/a Nancy LeMay Cassidy a/k/a Nancy Rae Newman), John Lassen, EuroBancorp, and EuroBancorp's precursor, Global Interbank, Inc. (Global), none of whom have ever been registered with the Commission. The complaint alleged that Global (from January through March 2001) and EuroBancorp (from March 2001 through January 2002) solicited retail customers to purchase illegal, off-exchange foreign currency futures contracts. The complaint further alleged that DeLesseppes and Lassen misappropriated customer funds and made false statements to EuroBancorp customers regarding profits and investment risks. The complaint further alleged that DeLesseppes issued false account statements to EuroBancorp customers that showed profitable trading when in fact the accounts were losing money. On February 6, 2003, the court entered a statutory restraining order against defendants, enjoining further violative conduct and preventing them from soliciting or ac-

cepting money from customers and from engaging in any commodities-related activities. *CFTC v. EuroBancorp, Inc., et al.*, No. 03-767 FMC JWJx (C.D.Calif. filed Feb. 3, 2003).

- *CFTC v. Ouyang, et al.* On February 5, 2003, the Commission filed a civil injunctive action against Ben Ouyang, Yuen Kwong “Anthony” Wong (doing business as IBF Capital Limited Company) and Victo Financial Services, Inc. (Victo). The complaint alleged that from at least February 2001, the defendants have defrauded customers they solicited to trade illegal, off-exchange foreign currency futures contracts through advertisements in local foreign language newspapers and on the Internet. Specifically, the complaint alleged that the defendants: issued fictitious account statements, falsely guaranteed trading profits, falsely led customers to believe that Victo was CFTC-registered and an NFA member, and falsely represented that customers funds were being deposited in a United Kingdom bank, when in fact, some of their funds were deposited in the defendants’ own bank accounts in Los Angeles County, California. On the same day that the complaint was filed, the court issued a restraining order freezing the defendants’ assets and preserving books and records. *CFTC v. Ouyang, et al.*, No. 03-0833 (C.D.Calif. filed Feb. 5, 2003).
- *CFTC v. Hawker, et al.* On March 12, 2003, the Commission filed a civil injunctive action against Bryan Keith Hawker and his firm G, Hawker & Stone, LLC, neither of whom have ever been registered with the Commission. The complaint alleged that, from approximately October 2002 through February 2003, the defendants fraudulently solicited approximately \$311,000 from at least 12 retail customers to trade foreign currencies upon their behalf. Specifically, the complaint alleged that the defendants misrepresented the potential risk of foreign currency trading and Hawker’s trading experience (*e.g.*, he claimed to be a successful trader with 90% winning trades). The complaint further alleged that the defendants failed to disclose material facts regarding Hawker’s criminal background (on February 15, 2000, he pled guilty to one third-degree felony count of attempted false/fraudulent insurance and on January 16, 2002, he was charged with state securities fraud, or in the alternative theft by deception) and that Hawker provided at least one customer with a false trading statement that showed large profits. In fact, the complaint alleged that the defendants did not use customer funds to trade foreign currencies; instead, they misappropriated most of the funds they accepted. On March 13, 2003, the court entered a statutory restraining order freezing the defendants’ assets and preventing the destruction of their books and records. On April 17, 2003, the court entered an agreed preliminary injunction continuing the asset freeze, enjoining defendants from further violations, and ordering defendants to make a full accounting subject to assertions of claims of privilege under the 5<sup>th</sup> Amendment. *CFTC v. Hawker, et al.*, No. 2:03CV-0260 (D.Utah filed March 12, 2003).
- *CFTC v. Holston, Young, Parker & Associates, et al.* On March 14, 2003, the Commission filed a civil injunctive action against Holston, Young, Parker & Associates (Holston), Conetto Holding Company, Ltd., and Holston’s president and day-to-day manager, Aleksander Aizen, none of whom have been registered with the Commission. The complaint alleged that the defendants fraudulently solicited retail customers to trade in illegal, off-exchange foreign currency futures contracts, and that they misappropriated customer funds. Specifically, the complaint alleged that, since at least May 2002, the defendants fraudulently solicited approximately \$6.4 million from 230 retail customers by misstating the risk of futures trading and making false statements regarding Holston and Conetto that were intended to create the impression that they were legitimate firms operating within the requirements of the CFMA. The complaint further alleged that the defendants: issued false account statements reflecting modest profits; instead of trading customer funds, immediately sent them to offshore banks located in Cy-

prus and elsewhere; and misappropriated customer funds. On the same date that the complaint was filed, the court entered a statutory restraining order freezing the defendants' assets and preventing the destruction of their books and records. On May 23, 2003, the court entered an agreed preliminary injunction continuing the asset freeze, enjoining defendants from further violations, and ordering defendants to make a full accounting subject to assertions of claims of privilege under the 5<sup>th</sup> Amendment. *CFTC v. Holston, Young, Parker & Associates, et al.*, No. 03 CV 1796 (S.D.N.Y. filed March 14, 2003).

- *CFTC v. DBS Capital, Inc., et al.* On March 31, 2003, the Commission filed under seal a civil injunctive action against DBS Capital, Inc. (DBS) and its president Douglas Stevens. DBS was registered as a CPO from July 1997 through October 1998, and Stevens was registered as an AP of DBS during this time, and was also registered as an AP of registered CPO/CTA Premier Trading Group from May 1999 until the present. The complaint alleged that, since at least 1998 through the present, the defendants solicited retail customers to trade illegal, off-exchange foreign currency futures contracts. Specifically, the complaint alleged that the defendants solicited at least \$5 million from at least 200 customers using word of mouth and the Internet. The complaint further alleged that the defendants misappropriated customer funds for personal and business uses, including funding a gambling trip to a Reno, Nevada casino, and issued false written and oral account statements and reports to conceal their misappropriation and trading losses. On May 15, 2003, the court entered a consent order for preliminary injunction enjoining defendants from further violations, ordering defendants to make a full accounting of all customer funds, and ordering defendants to transfer all foreign-held assets and documents to the United States. *CFTC v. DBS Capital, Inc., et al.*, No. C 03-1379 VRW (N.D.Calif. filed under seal March 31, 2003).
- *CFTC v. Elsesser, et al.* On April 11, 2003, the Commission filed a civil injunctive action against Keith Elsesser and his firm Phoenix Global Trading, Inc., neither of whom have ever been registered with the Commission. The complaint alleged that, beginning in or around September 2001, the fraudulently solicited at least \$72,000 from retail customers to trade illegal, off-exchange foreign currency options. Specifically, the complaint alleged that the defendants' written and oral misrepresentations concealed that: no customer funds were actually being traded in options on foreign currencies as promised; a small amount of trading in foreign currencies did take place, but that such trading resulted in losses, not profits as they reported to customers; customers' accounts never grew in value and the defendants, in fact, misappropriated customer funds for their personal use and benefit. *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 International, Inc., et al.* On May 7, 2003, the Commission and the State of Oregon filed a joint civil injunctive action against Orion International, Inc. (Orion), Russel B. Cline (Orion's self-described president, director and head trader), April Duffy (an Orion account manager), Bangone Vorachith (who along with Duffy and Holt controlled a bank account into which customer funds were deposited), and Nancy Hoyt, none of whom were either registered with the Commission or licensed with the State of Oregon's Department of Consumer and Business Services (ODCBS). The complaint alleged that, from at least December 1998 through the present, the defendants fraudulently solicited at least \$27 million from over 600 retail customers to trade in illegal foreign currency futures contracts through a purported foreign currency fund (the Orion Fund). Specifically, the complaint alleged that the defendants: 1) falsely represented that trading in the fund had produced annual profits in excess of 150 percent and monthly profits from December 1998 through May 2002; 2) issued false written reports and made oral misrepresentations to customers showing consistently profitable trading; and 3) to the extent that they used cus-

tomers funds for trading, they did so in the name of Orion, not in the name of the Orion Fund or the individual customers. In fact, it is alleged that the defendants misappropriated at least \$9 million in customer funds for personal purposes. The complaint further alleged that in August 2002, the defendants falsely reported to customers that 90% of pool funds were lost due to closing out of “unrealized long term positions.” Finally, it is alleged that the defendants continued to misrepresent the value and trading success of the fund (a \$6.5+ million balance in December 2002, with a 210 percent trading gain between July and November 2002), when, in fact, its balance had dwindled as it continued to sustain trading losses (approximately \$240,000 balance in December 2002, with \$400,000 in trading losses between July and November 2002). The ODCBS charged the defendants with violations of the state anti-fraud and securities laws based upon the same conduct. On May 8, 2003, the court issued a statutory restraining order freezing the defendants’ assets, preventing the destruction of their books and records, and appointing a temporary receiver. *CFTC and State of Oregon v. Orion International, Inc., et al.*, No. CV 03 603 (filed May 7, 2003).

- *In re Reliant Global Markets, LLC, et al.* On June 6, 2003, the Commission simultaneously filed and settled an administrative action against Reliant Global Markets, LLC (RGM) and its owner and operator Maria Cecille Maristela, neither of whom have ever been registered with the Commission. The Order found that, between December 2000 and October 2001, the defendants solicited retail customers to trade illegal, off-exchange foreign currency futures contracts. Specifically, the Order found that the defendants deposited customer funds into an omnibus trading account maintained in RGM’s name at an FCM to trade forex futures contracts without disclosing either to FCM that they were trading customer funds in the omnibus account or to their customers that their funds would be traded through an FCM. The Order further found that RGM, while not an acceptable counterparty under the CEA, acted as a counterparty to retail customers in forex transactions. Finally, the Order found that the respondents did not execute the foreign currency futures contract on a contract market or derivatives transaction facility that had been registered or designated as a board of trade by the CFTC. Without admitting or denying its findings, the respondents consented to the entry of the Order that: 1) ordered them to cease and desist from further violations; 2) imposed a two year trading ban; and 3) ordered them to comply with certain undertakings, including their undertakings to not seek registration with the Commission for two years and to supervise diligently the handling of all commodity futures and options trading by RGM. *In re Reliant Global Markets, LLC, et al.*, CFTC Docket No. 03-12 (CFTC filed June 6, 2003).
- *In re Pate, et al.* On June 6, 2003, the Commission simultaneously filed and settled an administrative action against Michael Gene Pate and his company, American FX, LLC. (AFX), neither of whom have ever been registered with the Commission. The order found that between April and July 2002 the respondents used an Internet website to fraudulently solicit customers to invest in illegal foreign currency futures contracts. Specifically, the order found that the respondents claimed that customer funds would be invested in the E-FX Fund, and falsely represented that this fund had a track record including a 62 percent annual return, when the fund in fact never traded. The order further found that the respondents falsely told customers that their funds would be maintained in a separate account when, in fact, the respondents mixed these funds with AFX operating funds. Without admitting or denying its findings, the respondents consented to the entry of the Order that: 1) ordered them to cease and desist from further violations; 2) imposed a \$15,000 civil monetary penalty; and 3) ordered them to comply with their undertaking to neither act in a capacity requiring registration nor apply for registration for a period of five years. *In re Pate, et al.*, CFTC Docket No. 03-13.

- *CFTC v. Thomas Dooley, Inc., et al.* On June 11, 2003, the Commission filed a civil injunctive action against Thomas Dooley, Inc., a/k/a Thomas Dooley Investments (TDI), Michael O’Keefe (TDI’s vice president and telemarketer) and Natasha LaBruce (TDI’s director and CEO). None of the defendants have ever been registered with the Commission. The complaint alleged that, since November 2002, the defendants a) fraudulently solicited retail customers to trade illegal, off-exchange options on foreign currency contracts and b) misappropriated nearly all of the \$178,000 solicited for personal and business uses. Specifically, the complaint alleged that the defendants fraudulently solicited customers through telemarketing cold calls in which they misrepresented that customer funds would be used to purchase option contracts and that customers would realize extraordinary profits by trading in these contracts through the firm. On the same day the action was filed, the court entered a statutory restraining order freezing assets, and prohibiting the destruction of documents. *CFTC v. Thomas Dooley, Inc., et al.*, No. 03-80526 CIV-HURLEY (S.D.Fla. filed June 11, 2003).
- *CFTC v. Moore, et al.* On June 19, 2003, the Commission filed a civil injunctive action against James Darren Moore and his firm, JDM Investments, neither of whom have been registered with the Commission. The complaint alleged that the defendants fraudulently solicited retail customers to trade illegal, off-exchange futures contracts as part of a group. Specifically, the complaint alleged that the defendants solicited almost \$1.2 million from approximately 50 retail customers and that Moore lost approximately \$500,000 of these funds in his personal accounts at FCMs, to whom he represented that no one else had a financial interest in the account. The complaint further alleged that despite the defendants’ knowledge of its trading losses, they issued via the e-mail false account statements showing profits, and solicited new participants to the group with oral and written representations of this profitability. Finally, the complaint alleged that in or around January 2003, Moore sent an e-mail to the customers admitting his misrepresentations regarding profitability and trading results. On July 1, 2003, the court entered a consent order of preliminary injunction prohibiting further violations and ordering defendants to immediately allow the Commission to inspect their books and records. *CFTC v. Moore, et al.*, No. 1:03-CV-149 (M.D.N.C. filed June 19, 2003).
- *CFTC v. Fleury, et al.* On June 20, 2003, the Commission filed a civil injunctive action against Giovanni Fleury and his company Giovanni Fleury Investments, Inc., neither of whom have ever been registered with the Commission. The complaint alleged that from December 21, 2000, the defendants fraudulently solicited customers through their Internet website to trade in illegal, off-exchange foreign currency contracts. Specifically, the complaint alleged that the defendants claimed to have a highly profitable trading system when, in fact, the defendants trading resulted in enormous losses. Further, the complaint alleged that the defendants claimed to be offering contracts in “spot” and “cash” foreign currency to retail customers that were actually illegal commodity futures contracts. On the same day that the complaint was filed, the court issued a restraining order freezing the defendants’ assets and preserving books and records. *CFTC v. Fleury, et al.*, No. 03-61199 (S.D.Fla. filed June 30, 2003).
- *CFTC v. Zelener, et al.* On June 24, 2003, the Commission filed a civil injunctive complaint against two companies doing business as British Capital Group, Amigine, Inc.(Amigine) and Markham & Co. (Markham) (collectively referred to as BCG), BCG’s president, Michael Zelener (a.k.a Mikhail Zelener), and the purported foreign currency dealer that held the customer funds, AlaronFX (AFX). While Zelener is not currently registered with the Commission, he had been registered as an AP of both Amigine (between April 25, 2001 and September 8, 2002) and Markham (December 11, 2001 to April 28, 2002). Also, while neither

Amigine, Markham, nor AFX is currently registered with the Commission, Amigine was registered as a CTA (April 25, 2001 to September 8, 2002), CPO (April 25, 2001 to September 8, 2002) and IB (May 22, 2001 to July 5, 2002), and Markham was registered as an IB (December 11, 2001 to April 28, 2002). The complaint alleged that, since April 2001, BCG fraudulently solicited \$4 million in customer funds to trade foreign currency futures contracts through the firm's "Managed Currency Trading Accounts" program. Specifically, the complaint alleged that Zelener operated BCG as a "boiler room" sales operation that used high-pressure sales tactics that promised large profits – as much as 120 percent annually – with limited risk. Contrary to their claims that the forex trading program was a stable, high-yield, low-risk investment program with round-the-clock professional supervision, BCG customers lost virtually all of their funds, often within a few months of investing. The complaint further alleged that approximately \$4 million in BCG customer funds were deposited and traded at AFX, an affiliate of registered FCM Alaron Trading Corporation. It is alleged that, through a possibly exclusive IB business relationship in which BCG acted as AFX's agent, AFX paid BCG in excess of \$1.4 million in compensation and fees in connection with the introduced customer accounts. This compensation arrangement was not disclosed to BCG customers; rather, customers were led to believe that BCG would not make money unless the customers' accounts were profitable, according to the complaint. On the same day that the complaint was filed, the court issued a statutory restraining order freezing BCG's and Zelener's assets, and prohibiting all defendants from destroying documents. *CFTC v. Zelener, et al.*, No. 03C 4346 (N.D.Ill. filed June 24, 2003).

- *CFTC v. International Foreign Currency, Inc., et al.* On July 23, 2003, the Commission filed a civil injunctive complaint against International Foreign Currency, Inc. (d/b/a International Currency Exchange and I.F.C. Trading, Inc.) (IFC), IFC's president (Michael Kourmolis), and account executive (Thomas Qualls). None of the defendants have ever been registered with the Commission. The complaint alleged that, from November 27, 2001, the defendants fraudulently solicited retail customers to trade illegal, off-exchange foreign currency futures contracts. Specifically, the complaint alleged that the defendants misleadingly implied that customer funds would be deposited in personal accounts when in fact customer funds were commingled in an IFC corporate account, and falsely represented that the Chase Manhattan Bank insured customer funds up to \$25 million. On the same day that the complaint was filed, the court issued a restraining order freezing the defendants' assets and preserving books and records. *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.* On September 12, 2003, the Commission filed a civil injunctive complaint against Sun Platinum Group LLC (Sun Platinum) and Eduard Dmanskiy aka Edward Dumankys, neither of whom has ever been registered. The complaint alleged that the defendants fraudulently solicited retail customers to purchase illegal, off-exchange foreign currency futures contracts. Specifically, the complaint alleged that, since at least February 2003, the defendants solicited more than \$7 million from at least 373 customers and misrepresented that the funds deposited would be used for trading. In fact, the complaint alleged, none of the \$7 million has actually been traded and the defendants instead misappropriated most of the funds by sending the money offshore to banks located in Latvia, Costa Rica and elsewhere. On the same day that the complaint was filed, the court issued a restraining order freezing the defendants' assets and preserving books and records. *CFTC v. Sun Platinum Group LLC, et al.*, No. 03 CV 7112 (S.D.N.Y. filed Sept. 12, 2003).
- *CFTC v. International Funding Association, Inc., et al.* On September 18, 2003, the Commission filed a civil injunctive complaint against International Funding



Association, Inc. (IFA), Cambridge Global Group, Inc., Global Management Group, and IFA's purported manager, Ronald Stephen Holt. None of the defendants have ever been registered with the Commission. The complaint alleged that, since 1997, the defendants fraudulently solicited as much as \$25 million from retail customers by offering illegal, off-exchange futures contracts. Specifically, the defendants marketed the investment as a form of asset protection plan providing a "high return, low risk" investment opportunity with returns of seven to ten percent per month. In fact, the complaint alleged, the defendants misappropriated most customer funds, diverting them to various trust accounts and then moving the funds offshore. On September 30, 2003, the court issued a preliminary injunction: enjoining further violations; freezing the defendants' assets; preserving books and records; and ordering the defendants to comply with the court's September 18, 2003 order appointing a receiver. *CFTC v. International Funding Association, Inc., et al.*, No. CIV 03 1826 PHXPGR (D.Az. filed Sept. 18, 2003).

During FY 2003, the Commission also achieved the following significant litigation results in actions filed in this practice area during previous fiscal years:

- *CFTC v. Garbe, et al.*, No. 01-8328-CIV-RYSKAMP/Vitunac, Default Judgment Order Of Restitution And Civil Monetary Penalty (S.D.Fla. entered Jan. 10, 2003). On January 3, 2003, the court entered a default judgment order against Ulrich Garbe, formerly the chief investment officer for SunState FX, Inc., in this civil injunctive action filed April 18, 2001. The court had previously entered a default judgment against Garbe on November 27, 2001, finding that Garbe had defrauded customers he solicited to trade illegal foreign currency futures and enjoining him from broth further violations and trading commodity foreign currency futures or options. The current order ordered Garbe to pay restitution (\$16,436,213), and, after he had paid the restitution, to pay a civil monetary penalty (\$580,000).
- *CFTC v. Infinite Trading Group, L.L.C., et al.*, No. 1:01-CV-1107-CAP, Order of Default Judgment (N.D.Ga. entered March 27, 2003). On March 27, 2003, the court entered a default judgment against Infinite Trading Group (ITG) and its former president, Anthony Garcia, in this civil injunctive action filed April 30, 2001. The order found that ITG and Garcia fraudulently solicited customers to trade foreign currency options using high-pressured sales tactics and misrepresentations regarding potential profits. ITC and Garcia were further found to have misappropriated customer funds for personal expenses in the manner of a Ponzi scheme. As sanctions, the order: 1) permanently enjoins ITG and Garcia from further violations; 2) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 3) ordered them to pay \$219,250 in restitution; and 4) ordered them to pay a \$660,000 civil monetary penalty.
- *CFTC v. Advent Capital Partners, Ltd., et al.*, No. 1:02-CV-1381, Order For Entry Of Default Judgment (N.D.Ga. entered April 2, 2003). On April 2, 2003, the court entered a default judgment against Advent Capital Partners, Ltd. and Samuel Daley in this civil injunctive action filed May 21, 2002. The order found that the defendants solicited customers to trade what were purported to be "spot" foreign currency contracts, but were in fact illegal, off-exchange futures contracts. As sanctions, the order: 1) permanently enjoins them from further violations; 2) orders the payment of restitution pursuant to plans \$662,955, jointly and severally; 3) imposes permanent trading bans; and 4) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration.

- *CFTC v. Clairmont Capital Corp., et al.*, No. 99-RB-1874, Consent Order (D.Colo. entered May 1, 2003). On May 1, 2003, the court entered a consent order of permanent injunction against Clairmont Capital Corp., Geoffrey L. Mann, and Charles W. Trench, in this civil injunctive action filed September 27, 1999. The complaint alleged that the defendants fraudulently solicited customers to trade illegal foreign currency options contracts. As sanctions, the order: 1) ordered the dissolution of Clairmont; 2) permanently prohibits Trench and Mann from seeking registration with the Commission or engaging in any activity that requires such registration; and 3) ordered Trench and Mann to pay, jointly and severally a civil monetary penalty of \$50,000.
- *CFTC v. FX Advisors LLC, et al.*, No. SACV 02-173-DOC(ANX), Consent Orders Of Permanent Injunction (C.D.Calif. entered March 24, and June 3, 2003). On March 24, 2003 (Brian Moore, Dennis Heyburn, Don Lakin, Ron Rozillio, and Farzad Nafeiy) and June 3, 2003 (Christian Weber), the court entered consent orders in this civil injunctive action filed February 20, 2002. The orders found that the defendants fraudulently solicited customers to trade illegal, off-exchange foreign currency contracts. Without admitting or denying the findings, the defendants consented to the entry of the orders that: 1) permanently enjoined them from further violations; 2) ordered the payment of restitution to customers pursuant to payment plans by Moore (\$2,259,403), Heyburn (\$480,998, jointly and severally as part of Moore's restitution amount), Lakin & Nafeiy (\$1,097,466 jointly and severally); 3) ordered the payment of contingent civil monetary penalties pursuant to payment plans by Moore (\$490,047), Heyburn (\$251,370), Lakin (\$240,000), Nafeiy (\$181,000); ordered the payment of disgorgement pursuant to a payment plan by Roxillio (\$239,000); 4) imposed permanent (Lakin, Nafeiy) and three-year (Rozillo) trading bans; 5) imposed a permanent (Moore, Heyburn, Lakin, and Nafeiy) and three year (Rozillo) bans on engaging in customer-related commodity activity; 6) imposed permanent (Moore, Heyburn, Lakin, and Nafeiy) and three year (Rozillo) bans on seeking registration with the Commission or engaging in any activity that requires such registration.
- *CFTC v. Rego Gainer Financial, Inc., et al.*, No. CV 02-1417 DT (MCx), Order Of Default Judgment (C.D.Cal. entered June 19, 2003). On June 19, 2003, the court entered a default judgment against Rego Gainer Financial, Inc., Rego Gainer, Inc. and Kwok Lun Lam, in this civil injunctive action filed February 19, 2002. The complaint alleged that the defendants solicited retail customers to trade illegal foreign currency futures contracts by running employment ads in a local Korean newspaper and at www.hotjobs.com seeking persons interested in profiting in the international currency markets. As sanctions, the order: 1) permanently enjoins defendants from further violations; 2) orders them to pay, jointly and severally, restitution of \$497,258; and 3) orders them, after full payment of restitution, to pay a \$262,698 civil monetary penalty.
- *CFTC v. International Financial Services (New York), Inc., et al.*, No. 02 CIV 5497, Order Of Default Judgment (S.D.N.Y. entered June 24, 2003). On June 24, 2003, the court entered a default judgment against International Financial Services, Inc. (IFS) in this civil injunctive action filed July 17, 2002, which alleged that the defendants fraudulently solicited and obtained more than \$15 million dollars from as many as 400 retail customers to invest in illegal off-exchange foreign currency futures contracts. The order: 1) permanently enjoins IFS from further violations; 2) orders IFS to make a full accounting of all customer funds, and to transfer all foreign-held assets to the United States; and 3) orders IFS to pay \$25,428,840 in restitution and disgorgement; and 4) orders IFS to pay a \$76,286,520 civil monetary penalty.

- *CFTC v. Acro Information Service, Inc.*, No. 01-06926 JFW (RZx), Consent Orders Of Permanent Injunction (C.D.Cal. entered July 1, 2003). On July 1, 2003, the court entered a consent order against Acro Information Service, Inc. (Acro), Pakco Holdings Limited (Pakco), Dr. Florentius Chan (former owner of Acro), Sandy Chan (former president of Acro), and Andrew Tai Wai (current president of Acro and Pakco) in this civil injunctive action filed August 9, 2001. The complaint alleged that, since March 2000, the defendants fraudulently solicited customers to trade illegal, off-exchange foreign currency futures contracts. Without admitting or denying its findings, the defendants consented to entry of the order that: 1) permanently enjoins them from further violations; 2) imposes permanent trading bans; 3) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 4) orders the payment of restitution pursuant to plans; and 5) orders the payment of civil monetary penalties pursuant to payment plans by the Chans (\$225,000 jointly and severally), Wai (\$110,000).
  
- *CFTC v. First Bristol Group, Inc.*, No. 02-61160-CIV-LENARD/SIMONTON, On March 24, 2003, the Court entered a default judgment order against Michael Desmond Biggs and Centurion Financial Group, L.C. The default order against Biggs: (1) permanently enjoins him from further violations of the Act;(2) permanently prohibits them from engaging in Commodities interest related activity and from seeking registration in any capacity; (3) requires him to pay restitution of \$362,533; and (4) requires him to pay a civil monetary penalty of \$480,000. The default judgment order against Centurion: (1) permanently enjoins the company from further violations of the Act; (2) permanently prohibits the Company from engaging in commodity interest related activity and from seeking registration with the Commission; (3) requires restitution to be paid of \$105,587 and (4) requires a civil monetary penalty of \$480,00 to be paid. Consent Orders Of Permanent Injunction (S.D.Fla. entered July 2, 2003). On July 2, 2003, the court entered consent orders against Bernard Sevilla and his two companies, Alliance Equity Group (AEG) and the Great Minister Group, Inc. (GMG); Staci Petok and her company, First Bristol Group, Inc. (First Bristol), and Jack Pomeroy in this civil injunctive action filed August 20, 2002. The orders found that the defendants fraudulently solicited customers to trade illegal, off-exchange foreign currency contracts. Without admitting or denying the findings, the defendants consented to the entry of the orders that: 1) permanently enjoins them from further violations; 2) imposes permanent trading bans; 3) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 4) orders the payment of restitution pursuant to plans by Sevilla (\$350,721), AEG (\$194,997), GMG (\$51,778), Petok (\$103,945), First Bristol (\$103,945), and Pomeroy (\$65,495); and 5) orders the payment of contingent civil monetary penalties by Sevilla (\$480,000), AEG (\$480,000), GMG (\$240,000), Petok (\$240,000), First Bristol (\$240,000), and Pomeroy (\$240,000).
  
- *CFTC v. Offshore Financial Consultants, et al.*, No. 02-60769, Consent Order Of Permanent Injunction (S.D. Fla. filed June 4, 2002). On August 14, 2003, the court entered a consent order of permanent injunction against Daniel Fasciana, Anthony Russo and four companies they owned (Offshore Financial Consultants (Florida and Georgia), Global Financial Consultants, and International Currency Merchants) in this civil injunctive action filed February 20, 2002. The order found that the defendants fraudulently solicited customers to trade illegal, off-exchange foreign currency options. Without admitting or denying the findings, the defendants consented to entry of the order that: 1) permanently enjoined them from further violations; 2) ordered the payment, jointly and severally of \$1,964,478 in restitution to customers pursuant to a payment plan; 3) ordered the payment of contingent civil monetary penalties pursuant to payment plans by Fasciana (\$3,000,000), and Russo (\$3,000,000); 4) imposed permanent trading

bans; 5) imposed permanent bans on engaging in customer-related commodity activity; 6) imposed permanent bans on seeking registration with the Commission or engaging in any activity that requires such registration.

#### Commodity Pools

During FY 2003, the Commission filed the following enforcement actions in this program area:

- *CFTC v. Dias, et al.* On April 16, 2003, the Commission filed a civil injunctive action against Paulino Rene Dias, Jr., Victor Smith and Krute Corporation. While Krute has never been registered, Dias was registered as an AP with various IBs intermittently from 1993 until October 2002, when NFA suspended his registration for lying in the course of their investigation of Krute and Smith had been registered as an AP of various IBs and a CPO since 1996. The complaint alleged that, between at least November 2001 and October 2002, the defendants solicited in excess of \$2 million from retail customers to participate in, among other things, an unregistered commodity pool. The complaint further alleged that the defendants misappropriated approximately \$530,000 of the pool's funds, and transferred \$150,000 to Iceland Management Services, Inc. (IMS) and others who no legitimate entitlement to those funds. IMS was named as a relief defendant. On July 27, 2003, the Court entered a consent preliminary injunction order against defendants Dias and Krute corporation preliminarily restraining them from further violations of the Act during the pendency of the litigation. *CFTC v. Dias, et al.*, No. 03-2659 (C.D.Calif. filed April 16, 2003).

During FY 2003, the Commission also achieved the following significant litigation results in actions filed in this practice area during previous fiscal years:

- *CFTC v. O'Herron, et al.*, No. 1:00-CV-913, Consent Order Of Permanent Injunction (W.D.Mich. entered Oct. 2, 2003). On October 2, 2002, the court entered a consent order of permanent injunction against John O'Herron and his company, O'Herron Asset Management, in this civil injunctive action filed December 14, 2000. The order found that the defendants fraudulently solicited customers for the purpose of pooling the funds to trade in commodity futures contracts., and misappropriated \$467,144 of customer funds. As sanctions, the order: 1) permanently enjoins defendants from further violations; 2) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 3) imposes permanent trading bans; 4) orders O'Herron to pay restitution of \$1,420,359 pursuant to a payment plan.
- *CFTC v. Rothlin & Windsor Capital Management, Inc., et al.*, No. AMD-01-CV 2320, Supplemental Consent Order (D.Md. entered Dec. 17, 2002). On December 17, 2002, the court entered a supplemental consent order against Peter Scott and Rothlin & Windsor Capital Management in this civil injunctive action filed August 6, 2001. The complaint alleged that the defendants fraudulently solicited customers to participate in a commodity pool for the purpose of trading commodity futures and options. The court had previously, on June 6, 2002, entered a consent order permanently enjoining them from committing further violations, from trading futures or options and from seeking registration or engaging in any activity requiring registration. The current consent order: orders defendants to pay, pursuant to a payment plan, restitution of \$5,276,863; and orders them, after full payment of restitution, to pay a \$7,131,865 civil monetary penalty.
- *CFTC v. Ferguson, et al.*, No. 1:00 CV 0300, Consent Orders Of Permanent Injunction (N.D.Ind. entered Feb. 12 and Aug. 29, 2003). The court entered consent orders of permanent injunction on February 12, 2003 (David G. Johnson, Thomas T. Miller and Geoffrey M. Eltzroth) and August 29, 2003 (James Wilson

and JNW Management, Inc. (JNW)) in this civil injunctive action filed July 11, 2000, which alleged unregistered commodity pool fraud. Without admitting or denying the findings, the defendants consented to the entry of the orders that: 1) permanently enjoins them from further violations; 2) orders the payment of restitution by Eltzroth (\$75,000), and further payments of restitution jointly and severally with Ferguson pursuant to a payment plan by Miller (\$8,000,000) and Johnson (\$1,200,000); 3) orders the payment of civil monetary penalties by Eltzroth (\$25,000) and Wilson and JNW (\$110,000, jointly and severally), and further ordered contingent civil monetary penalties payable pursuant to a plan by Miller (\$780,000) and Johnson (\$150,000); ordered disgorgement by Miller (\$780,000) with payments of restitution decreasing this amount dollar for dollar, and lump sum payments of disgorgement by Johnson (\$150,000) and Wilson and JNW (\$100,183); 5) imposes permanent trading bans; and 6) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration.

- *CFTC v. Weinberg*, No. 02-02084 RSWL (RNBx) (C.D. Cal. entered June 18, 2003). On June 18, 2003, the court entered a default judgment against Mark Weinberg in this civil injunctive action filed March 12, 2002. The order found that Weinberg fraudulently solicited and misappropriated \$421,000 in customer funds, including commodity pool funds, that were purportedly to be used to trade commodity futures contracts. The further found that Weinberg's conduct violated a 1994 Commission Order directing Weinberg to cease and desist from such fraudulent conduct. The order: 1) permanently enjoins the defendant from further violations; 2) orders him to pay restitution of \$570,199; and 3) orders him to pay a \$1,264,500 civil monetary penalty.

#### Commodity Trading Advisors, Managed Accounts, And Trading Systems

The Commission filed the following enforcement actions in this program area during FY 2003:

- *In re Stenberg*. On November 7, 2002, the Commission simultaneously filed and settled an administrative enforcement action against John R. Stenberg, who was last registered as an AP in 1992. The Order found that Stenberg fraudulently solicited customers for his commodity trading software. Specifically, the Order found that, between the fall of 1988 and the summer of 2000, Stenberg misrepresented his trading success and, in promotional materials that were hyperlinked to a web page he controlled, he falsely claimed that his profitable trading enabled him to purchase luxuries such as a 70-foot motor yacht. The Order found, in fact, that the accounts Stenberg controlled closed with net trading losses and Stenberg admitted that the yacht was purchased for him by his wife with her own funds. Stenberg consented to the entry of the Order that: ordered him to cease and desist from further violations; imposed a \$25,000 civil monetary penalty; and required him to comply with his undertakings to, among other things, not misrepresent the profitability and risk associated with trading pursuant to any commodity futures or options trading system or advisory notice. *In re Stenberg*, CFTC Docket No. 03-01 (CFTC filed Nov. 7, 2002).
- *CFTC v. Varner*. On December 11, 2002, the Commission filed a civil injunctive action against Stanley E. Varner, who has never been registered. The complaint alleged that Varner fraudulently solicited over \$1.5 million for trading in commodity futures contracts. Specifically, the complaint alleged that, from at least August 1999, Varner misrepresented the profitability of his trading, guaranteeing a 20 percent profit, and further misrepresented that there was no risk of loss. The complaint further alleged that Varner lost approximately \$925,000 of the investors' funds trading futures, and misappropriated the remaining \$575,000, and that he also provided a false account statement concerning trading to at least one

investor. On the same date that the complaint was filed, the court entered a consent order of preliminary injunction enjoining Varner from further violations, freezing his assets, and prohibiting him from destroying his books and records. Also on this date, the Utah Attorney General's Office filed state criminal charges against Varner for the same underlying conduct. *CFTC v. Varner*, No. 2:02CV 1373 (CFTC Dec. 11 2002).

- *In re Cox*. On December 24, 2002, the Commission filed and simultaneously settled an administrative action against Stephen C. Cox, who is a registered CTA. The Order found that Cox fraudulently solicited customers for his commodity trading method. Specifically, the Order found that, from January 2001 through August 2002, Cox fraudulently misrepresented in magazine advertisements that: he earned a successful living trading commodity futures contracts using his method and certain hypothetical trades were actual profitable trades he had made. Without admitting or denying the findings, Cox consented to the entry of the Order that: 1) ordered him to cease and desist from further violations; 2) imposed a \$25,000 civil monetary penalty; and 3) ordered him to comply with his undertakings, which include not making unsubstantiated claims of profits or risk in connection with the use of a commodity trading system. *In re Cox*, CFTC Docket No. 03-04 (CFTC Dec. 24, 2002).
- *In re Elliot, et al.* On January 21, 2003, the Commission filed an administrative action against Gregory W. Elliot, individually and doing business as SofTrade, Inc. and Sofradeinc.com. On March 28, 2003, the ALJ entered an initial decision against Elliot, and this decision became a Final Order of the Commission on April 28, 2003. The complaint alleged, and the ALJ found, that from approximately March 2001 to September 2002, Elliot fraudulently marketed to the public a commodity futures trading system called the QuantumLevel S&P DayTrading System through advertisements on his Internet website, SofTradeinc.com. Specifically, the ALJ found that Elliot misrepresented hypothetical trades as actual trades, and that he overstated the profit potential of his trading system not only on his website but also in e-mail messages he sent to financial chat rooms and Internet newsgroups. The Final Order imposed sanctions including a cease and desist order and a \$25,000 civil monetary penalty. *In re Elliot, et al.*, CFTC Docket No. 03-07 (CFTC filed Jan. 21, 2003).
- *CFTC v. Wall Street Underground, Inc., et al.* On April 22, 2003, the Commission filed a civil injunctive action against Derek Abrahams, Frank Asaro and Nicholas A. Guarino, Jr., and the two firms they formed, Wall Street Underground, Inc. and Web Fulfillment Centre, Inc., none of whom have been registered with the Commission. The complaint alleges that, from at least January 1999 to the present, the defendants fraudulently solicited \$5 million from at least 1,000 customers for a variety of commodity futures and options trading systems. Specifically, the complaint alleged that the defendants overstated the profit potential of their trading systems – including, among others the *Samurai Forecaster*, *Nick's Guerilla Trading Hotline*, and the *Electronic Wall Street Underground* – misstated the risks involved with trading futures and options, and issued false guarantees, including not only a money-back guarantee but also a guarantee in promotional statements that customers would make \$1 million when trading. The complaint also alleged that Guarino authored the *Wall Street Underground* political and investment newsletter, but failed to disclose to customers that he had been convicted of wire fraud in connection with a 1980's scheme to sell gold and silver to the public, was sentenced to 24 months in prison and failed to pay \$1,250,678 in criminal restitution. On April 23, 2003, the court issued a statutory restraining order freezing the defendants' assets and preventing the destruction of their books and records. On July 18, the Court entered an order of preliminary injunction that included the following conclusions of law: (1) Nicholas Guarino and Wall Street Underground, Inc. were CTAs and that they

committed fraud in that capacity; (2) Web Fulfillment Centre, Inc. was part of a common enterprise with Wall Street Underground; and (3) Frank Asaro was a controlling person of Web Fulfillment Centre, Inc. *CFTC v. Wall Street Underground, Inc., et al.*, No. 03-2193 CM (D.Kan. filed April 22, 2003).

- *CFTC v. Goldman*. On May 9, 2003, the Commission filed a civil injunctive action against Oscar Goldman, who was never registered with the Commission. The complaint alleged that Goldman, acting as an unregistered CTA, fraudulently solicited 98 retail customers for the purpose of trading commodity futures in accounts directed by Goldman using his trading program. While his customers generally lost money, the complaint alleged that Goldman: 1) misrepresented his past trading success and the success of other traders; and 2) made false statements regarding both the risk and profit potential from trading. *CFTC v. Goldman*, No. 03-3265 JFW (RCx) (C.D.Calif. filed May 9, 2003).
- *In re Jones*. On June 30, 2003, the Commission simultaneously filed and settled an administrative action against Thomas Edward Jones, who has never been registered with the Commission. The Order found that, between November 2000 and August 2001, the respondent solicited 16 customers to open commodity trading accounts that he managed in exchange for a portion of any trading profits realized by his clients. In fact, the Order found that Jones did not receive any payment for his services, because Jones' trading resulted in losses for each of his clients. The Order further found that marketed his services in an advertisement in Investor's Business Daily, in which he presented hypothetical trading results without the required disclosure concerning the inherent risks of hypothetical trading results. Without admitting or denying its findings, the respondent consented to the entry of the Order that: 1) ordered him to cease and desist from further violations; 2) imposed a two year trading ban; and 3) ordered him to comply with certain undertakings, including his undertakings to not seek registration with the Commission for two years. *In re Jones*, CFTC Docket No. 03-15 (CFTC June 30, 2003).
- *In re Ebaugh* and *In re Guidino*. On June 30, 2003, the Commission simultaneously filed and settled separate administrative actions against Curtis M. Ebaugh, a registered CTA, and Robert Guidino, who has never been registered with the Commission. The Orders found that both Ebaugh (between December 2001 and July 2002) and Guidino (between July and November 2001) fraudulently solicited customers to purchase a commodity futures trading method called PinPoint through advertisements they placed on the Internet auction website eBay. Specifically, the Orders found that the respondents' eBay advertisements created the false impression that they made their livings from trading and did so profitably using the PinPoint method when, in fact, neither made their living trader, successfully traded commodities, or even maintained a commodity futures trading account. The Orders further found that the respondents also led customers to believe that hypothetical trades were actual, profitable trades made using their trading method. Without admitting or denying its findings, the respondents consented to the entry of the Orders that: 1) ordered them to cease and desist from further violations; 2) imposed \$15,000 (Ebaugh) and \$6,000 (Gudino) civil monetary penalties; 3) ordered them to comply with their undertaking to not make unsubstantiated claims of profits or risk in connection with the use of a commodity trading system or method; and 4) suspended Ebaugh's CTA registration for three months. *In re Ebaugh*, CFTC Docket No. 03-16 (CFTC filed June 30, 2003), and *In re Guidino*, CFTC Docket No. 03-17 (CFTC filed June 30, 2003).
- *In re Sidewitz, et al.* On June 30, 2003, the Commission filed an administrative action against Roy M. Sidewitz and his Internet-based commodity trading busi-

ness, Qi2 Technologies, Inc., neither of whom has been registered with the Commission. The complaint alleged that the defendants fraudulently solicited customers to purchase commodity futures products and services through an Internet website Sidewitz created and controlled. Specifically, the complaint alleged that between late 1998 and January 2003 Sidewitz made false and misleading statements on this website to market his trading manual (*How I Double My Money Annually In The Market*) and subscription-based options advisory. Among Sidewitz's misstatements were his presentation of hypothetical trades as actual trades, and overstatements of the profit potential of his commodity trading system and advisory service. *In re Sidewitz, et al.*, CFTC Docket No. 03-18 (CFTC filed June 30, 2003).

- *In re Ingwerson.* On July 11, 2003, the Commission simultaneously filed and settled an administrative action against Michael Ingwerson, who has never been registered with the Commission. The Order found, that from at least January 2000 through March 2003, the respondent fraudulently solicited customers for his commodity-based advisory business through which he offered and sold, among other things, a trading manual called the "Magic Money Manual" (the Manual), containing a system for trading commodity futures. Specifically, the Order found that the respondent made misrepresentations, both on an Internet website he operated and in direct mail promotional letter he sent to thousands of people, as to the profit potential and associated risk of trading commodity futures. For example, the Order found that the respondent claimed that the Manual would explain how one could make \$10,000 a month working less than 20 minutes a day, and that through this trading system he had "perfected a wealth formula that generates money fast and easy." Ingwerson ultimately sold the Manual to approximately 3702 customers, collecting approximately \$277,464.90 in revenue, as found in the Order. Without admitting or denying its findings, Ingwerson consented to the entry of the Order that: 1) ordered him to cease and desist from further violations; 2) imposed a \$59,000 civil monetary penalty; and 3) ordered him to comply with certain undertakings, including never to seek registration with the Commission in any capacity. *In re Ingwerson*, CFTC Docket No. 03-19 (CFTC filed July 11, 2003).
- *CFTC v. Ownbey.* On September 17, 2003, the Commission filed a civil injunctive complaint against Cameron Ownbey (individually and d/b/a Ultimus and First National Investments), who is not currently registered, but had previously been registered as an AP of various registered CTAs. The complaint alleged that, from at least January 2001, Ownbey fraudulently solicited customers to purchase his directed trading services. Specifically, the complaint alleged that Ownbey misrepresented the success rate of his trading system and failed to disclose that, in January 2003, a Commission ALJ found in an Initial Decision that Ownbey had violated several anti-fraud provisions of the Act in connection with a prior CTA firm that he owned and operated. On September 18, 2003, the court entered a consent order of preliminary injunction, freezing the defendant's assets and prohibiting further violations. *CFTC v. Ownbey*, No. 03C 6592 (N.D.Ill. filed Sept. 17, 2003).
- *CFTC v. Allegheny Gulf Investments, Inc., et al.* On September 30, 2003, the Commission filed a civil injunctive complaint against Allegheny Gulf Investments, Inc. (Allegheny), and Allegheny's vice-president, neither of whom have ever been registered with the Commission. The complaint alleged that, between approximately November 1998 and January 1999, the defendants entered into separate joint trading agreements for the purpose of trading natural gas futures and options on futures contracts, but that the defendants misappropriated customer funds and failed to inform them that their trading accounts would be cross-marginalized with Allegheny's master trading account. Specifically, the complaint alleged that, between July 1999 and October 1999, Hale traded the Al-



legheny master account into a deficit of approximately \$2 million, causing two customers to lose approximately \$1 million of their investments to cover these losses. *CFTC v. Allegheny Gulf Investments, Inc., et al.*, No. H-03-3526 (S.D.Tex. filed Sept. 30, 2003).

During FY 2003, the Commission also achieved the following significant litigation results in actions filed in this practice area during previous fiscal years:

- *In re Pierce*, CFTC Docket No. 02-15 (CFTC entered Jan. 21, 2003). On January 21, 2003, the Commission entered an order accepting the offer of settlement of registered CTA Stephen Alan Pierce in this administrative action filed July 30, 2002. The order found that Pierce, from approximately March 2000 through July 2002 fraudulently solicited customers for his futures trading recommendation services, which he marketed through various Internet websites. Specifically, Pierce overstated profit potential while understating risk, and touted his trading record without disclosing that it was based on hypothetical or simulated trading and not actual performance. Without admitting or denying the findings, Pierce consented to the entry of the order that: 1) orders him to cease and desist from further violations; 2) orders him to pay a \$25,000 civil monetary penalty; and 3) orders him to comply with certain undertakings regarding representations made on his website.
- *CFTC v. Wiles, et al.*, No. 3:02-CV-0952-K, Consent Order Of Permanent Injunction (N.D.Tex. entered April 11, 2003). On April 11, 2003, the court entered a consent order against Dewey V. Wiles in this civil injunctive action filed May 16, 2002. The complaint alleged that Wiles and Futures Exchange Company, Inc. (FEC) fraudulently solicited customers by falsely claiming that those customers would realize large profits from trading commodity futures contracts, while minimizing the risks of such trading and misrepresenting the performance record of a trading system. The complaint further alleged that the defendants guaranteed profits to many customers and fraudulently issued false monthly statements reflecting bogus profits. Without admitting or denying the findings in the order or allegations in the complaint, Wiles consented to the entry of the order that: The defendants, who did not contest the allegations in the complaint, consented to the entry of the order that: 1) permanently enjoins him from further violations; 2) permanently prohibits him from seeking registration with the Commission or engaging in any activity that requires such registration; 3) imposes permanent trading ban; 4) orders him to pay restitution of \$385,629 pursuant to a payment plan; and 5) orders him to pay a \$646,279 contingent civil monetary penalty pursuant to a payment plan. Previously, on October 16, 2002, the court entered a default judgment against FEC. On July 28, 2002, the court entered a supplemental order that: 1) orders FEC to pay restitution of \$379,302; and 2) further orders FEC to pay a \$646,279 civil monetary penalty.
- *CFTC v. Heffernan*, NO. CV101-141, Order Of Permanent Injunction (S.D.Ga. entered August 4, 2003). On August 4, 2003, the court entered an order of permanent injunction against George Heffernan in this civil injunctive action filed September 11, 2001. The court had previously (February 18, 2003) granted the Commission's motion for summary judgment finding that the defendant had fraudulently solicited customers for his trading systems and had violated a September 2000 Commission order prohibiting such conduct. The court: 1) ordered the payment of disgorgement (\$275,000) and a civil monetary penalty (\$125,000); and 2) ordered Heffernan to publish and disclose a statement summarizing the court's liability findings and sanctions imposed whenever he publishes any commodity- or securities-related "readable material."

### Introducing Brokers And Their Associated Persons

During FY 2003, as in past years, the Commission devoted time and attention to matters involving violations by introducing brokers (IBs) and their associated persons (APs). Such cases often involve fraudulent misrepresentations, usually to retail customers, to induce them to invest.

- *CFTC v. Risk Capital Trading Group, et al.* On September 3, 2003, the Commission filed a civil injunctive complaint against Risk Capital Trading Group (Risk Capital), a registered IB, and several of Risk Capital's registered APs, Deron Baugh, Tyrone Edwards, Stephen Margol, Rick Siegel, Richard Tillman, and Juan Valentin. The complaint alleged that, since at least January 2002, the defendants fraudulently solicited retail customers to open accounts through Risk Capital to trade commodity futures and options. Specifically, the complaint alleged that the defendants misrepresented both the likelihood of profits and the risks of trading. For example, the complaint alleged that the defendants told customers that events in the Middle East, including the (at that time) possibility of war with Iraq, made it likely that the customers' investments would be profitable. On the same day that the complaint was filed, the court issued a restraining order freezing the defendants' assets and preserving books and records. *CFTC v. Risk Capital Trading Group, et al.*, No. 1 03 CV-2633 (N.D.Ga. filed Sept. 3, 2003).

During FY 2003, the Commission achieved the following significant litigation results in actions filed in this practice area during previous fiscal years:

- *CFTC v. Snively, et al.*, No. 02-40041, Consent Order Of Permanent Injunction (E.D. Mich. entered March 11, 2003). On March 11, 2003, the court entered a consent order against Todd James Snively, Commodity Consultants International, Inc. (CCI) and Futurewise Trading Group, Inc. (Futurewise) in this civil injunctive action filed February 8, 2002. The complaint alleged that the defendants misappropriated customer funds and otherwise fraudulently operated an Internet-based trading platform that purportedly permitted customers to place orders for commodity futures contracts through CCI and FutureWise. The defendants, who did not contest the allegations in the complaint, consented to the entry of the order that: 1) permanently enjoins defendants from further violations; 2) permanently prohibits them from seeking registration with the Commission or engaging in any activity that requires such registration; 3) imposes permanent trading bans; 4) orders defendants to pay, jointly and severally, restitution of \$6,274,987 pursuant to a payment plan; and 5) orders Snively to pay a \$360,000 contingent civil monetary penalty pursuant to a payment plan.
- *In re Madison Financial Group LLC, et al.*, CFTC Docket No. 01-09 (CFTC entered May 19, 2003). On May 19, 2003, the Commission issued an order accepting the offer of settlement of Ronald G. Scott, a principal and registered AP of IB Madison Financial Group LLC (Madison), in this administrative action filed June 6, 2001. The order found that, from April 1998 to March 2001, Madison's employees, under the direction and encouragement of Scott, fraudulently solicited customers to trade commodity options. The order further found that Scott failed to supervise diligently the solicitation and handling of customer accounts in violation of CFTC regulations. Without admitting or denying the findings, Scott consented to the entry of the order that: 1) orders him to cease and desist from further violations; 2) revoked his registration as a Madison AP; 3) imposed a permanent trading ban; 4) orders him to pay \$890,000 in restitution pursuant to a payment plan; 5) orders him to pay a contingent civil monetary penalty of \$110,000 pursuant to a payment plan; and 6) and orders him to comply with certain undertakings, including his undertaking to never seek registration with the Commission or engage in any activity that requires such registration.

- *In re Miller, et al.*, CFTC Docket No. 02-14 (CFTC entered June 6, 2003). On June 6, 2003, the Commission entered an order accepting the offers of settlement of Deirdre Anderson, George Lamborn, and Richard Lani Sr. in this administrative action filed July 15, 2002. The order found that that, during 1997 and 1998, Anderson and others at the now defunct IB, Lamborn Securities Futures (LSI), placed orders with clerks working for certain coffee floor brokers without providing sufficient customer account identification. The order further found that after the orders were executed, Anderson was able to determine which trades were profitable, and then allocated the winning trades to preferred customers and the losing trades to other customers. According to the order, Lamborn and Lani failed to detect this fraudulent allocation scheme because, among other things, they failed to take adequate measures to investigate suspicious trading activity by Anderson's customers, and they failed to review adequately office order tickets prepared by Anderson and her staff. The order found that these supervisory failures helped facilitate the fraudulent allocation scheme. Without admitting or denying its findings, the respondents consented to entry of the order that: 1) orders them to cease and desist from further violations; 2) imposed a permanent trading ban on Anderson; 3) orders the payment of a civil monetary penalty by Lani (\$25,000), and further civil monetary penalties pursuant to a payment plan by Anderson (\$110,000), and Lamborn (\$25,000); and 4) orders them to comply with certain undertakings. The Commission had previously, on October 25, 2002, entered an order accepting Daniel Lipton's offer of settlement in which he neither admitted nor denied the charges but consented to the entry of the order that orders him to cease and desist from further violations, pay a \$7,500 civil monetary penalty, and restricted his registration for two years.

#### Violation Of Prior Commission Orders

During FY 2003, the Commission filed the following enforcement action alleging violation of a previous Commission Order:

- *CFTC v. Swannell*. On April 29, 2003, the Commission filed a civil injunctive action against Richard Swannell. The complaint alleged that Swannell used hypothetical trading results to sell his trading software programs and seminars without disclosing that the trading results were not the result of actual trading in violation of a September 6, 2000 Commission order finding Swannell had previously engaged in similar misconduct. See *In re Trading Systems, Ltd., et al.*, CFTC Docket No. 00-28, Order Instituting Proceedings, Making Findings, and Imposing Sanctions (CFTC filed Sept. 6, 2000). The Commission received assistance in this enforcement action from the Australian Securities & Investments Commission. *CFTC v. Swannell*, No. 03-2979 TJH (RZx) (C.D.Calif. filed April 29, 2003).

The Commission also achieved the following significant result in an action filed in this practice area during previous fiscal years:

- *In re Varner*, CFTC Docket No. 01-18 (CFTC entered June 30, 2003). On June 30, 2003, the Commission entered an order accepting the offer of settlement of former NYBOT floor broker Michael H. Varner in this administrative action filed June 1, 2001. On April 5, 2002, Varner's floor broker registration was revoked in a related SD action arising out of the same set of facts. (See discussion of statutory disqualification actions, below.) The June order found that Varner had violated a June 1999 Commission order settling a previous statutory disqualification action that imposed certain restrictions on his registration. The order further found that, in violating the Commission's June 1999 order, Varner had violated section 6(c) of the CEA. Without admitting or denying the findings, Varner consented to entry of the order that: 1) orders him to cease and desist from further violations; 2) prohibits him from trading for any customer account for a period of

five years; 3) orders him to comply with his undertaking to not apply for registration for a period of five years; and 4) orders him to pay a \$50,000 civil monetary penalty.

#### Statutory Disqualifications

During FY 2003, the Commission filed the following enforcement actions in this program area:

- *In re Beacon Hill Asset Management, LLC.* On January 7, 2003, the Commission filed, and simultaneously settled, a Notice of Intent to Suspend or Restrict Registration against Beacon Hill Asset Management, LLC (“Beacon Hill”), a registered CPO and CTA. This action followed the entry of a preliminary injunction in a civil injunctive action brought by the SEC that alleged that Beacon Hill had violated the anti-fraud provisions of the Investment Advisors Act of 1940. The SEC’s complaint alleged that Beacon Hill committed fraud by materially overstating the net asset values and materially understating the losses of certain hedge funds it managed. Beacon Hill consented to the entry of the Order that: 1) suspended its CPO and CTA registration for six months; and 2) ordered it to comply with its undertakings to neither act as a CPO or CTA, nor engage in any activity requiring registration as a CPO or CTA, until after final disposition of the action brought by the SEC. *In re Beacon Hill Asset Management, LLC*, CFTC Docket No. SD 03-01 (CFTC filed Jan. 7, 2003).
- *In re O’Herron.* On January 7, 2003, the Commission filed, and simultaneously settled, a Notice of Intent to Suspend or Restrict Registration against John F. O’Herron, who has been registered as a CTA and as an AP of his CTA. This action followed the entry of a consent order of permanent injunction in a civil injunctive action charging O’Herron, and O’Herron Asset Management, Inc. with unregistered commodity pool fraud. *See CFTC v. O’Herron, et al.*, No. 1:00-CV-913, Consent Order Of Permanent Injunction (W.D.Mich. entered Oct. 2, 2003) (discussed above). O’Herron consented to entry of the Order that revoked his CTA and AP registrations. *In re O’Herron*, CFTC Docket No. SD 03-02 (CFTC filed Jan. 7, 2003).
- *In re Johnson* and *In re Miller.* On May 2, 2003, the Commission filed, and simultaneously settled, Notices of Intent to Suspend or Restrict Registration against David G. Johnson, who had been registered as an IB and AP, and Thomas T. Miller, who had been registered as an AP. This action followed the entry of consent orders of permanent injunction in a civil injunctive action charging them, among others, with unregistered commodity pool fraud. Johnson and Miller, without admitting or denying the allegations, consented to the entry of the CFTC orders that revoked their registrations. *In re Johnson*, CFTC Docket No. SD 03-03 (CFTC filed May 2, 2003), and *In re Miller*, CFTC Docket No. SD 03-04 (CFTC filed May 2, 2003).
- *In re Snively, In re Futurewise Trading Group, Inc., and In re Commodity Consultants International, Inc.* On September 3, 2003, the Commission filed Notices of Intent to Suspend or Restrict Registration against Futurewise Trading Group, Inc. (Futurewise) (registered CPO, CTA and IB), and Commodity Consultants International, Inc. (CCI) (registered FCM), and Todd James Snively (registered AP of both Futurewise and CCI). These actions followed the entry of a consent order of permanent injunction in a civil injunctive action charging Snively, Futurewise, and CCI with cheating hundreds of investors out of millions of dollars by fraudulently operating a purported Internet-based trading platform. *See CFTC v. Snively, et al.*, No. 02-40041, Consent Order Of Permanent Injunction (E.D. Mich. entered March 11, 2003) (discussed above). *In re Snively*, CFTC Docket No. SD 03-05 (CFTC filed Sept. 3, 2003), *In re Futurewise Trading*

*Group, Inc.*, CFTC Docket No. SD 03-05 (CFTC filed Sept. 3, 2003), and *In re Commodity Consultants International, Inc.*, CFTC Docket No. SD 03-05 (CFTC filed Sept. 3, 2003).

#### Quick-Strike Cases

The Commission is committed to responding quickly to enforcement investigations that uncover ongoing fraud. Quick-strike cases are civil injunctive actions that generally are filed in Federal district courts within days or weeks of the discovery of the illegal activity, enabling the Commission to stop fraud at an early stage and to attempt to preserve customer funds. During FY 2003, the Commission filed the following nine quick-strike cases.

- *CFTC v. Sterling Forex LLC, et al.*, No. 02-2076 (W.D. Wash. Filed Oct. 3, 2002);
- *CFTC v. InterTrade Forex, Inc., et al.*, No. 6:03-CV-119 (M.D.Fla. filed Jan. 29, 2003);
- *CFTC v. Holston, Young, Parker & Associates, et al.*, No. 03 CV 1796 (S.D.N.Y. filed March 14, 2003);
- *CFTC v. Hawker, et al.*, No. 2:03CV-0260 (D.Utah filed March 12, 2003);
- *CFTC v. DBS Capital, Inc., et al.*, No. C 03-1379 VRW (N.D.Calif. filed under seal March 31, 2003);
- *CFTC v. U.S. Securities & Futures Corp.*, No. 03 CV 2258 (S.D.N.Y. filed April 2, 2003);
- *CFTC v. Thomas Dooley, Inc., et al.*, No. 03-80526 CIV-HURLEY (S.D.Fla. filed June 11, 2003);
- *CFTC v. Moore, et al.*, No. 1:03-CV-149 (M.D.N.C. filed June 19, 2003); and
- *CFTC v. International Funding Association, Inc., et al.*, No. CIV 03 1826 PHXPGR (D.Az. filed Sept. 18, 2003).

#### Domestic Cooperative Enforcement

The Commission's cooperative enforcement efforts are an important part of its ability to promote compliance with and deter violations of Federal commodities laws. Cooperative enforcement enables the Commission to maximize its ability to detect, deter, and impose sanctions against wrongdoers involving U.S. markets, registrants, and customers. The benefits of cooperative enforcement include: 1) the use of resources from other sources to support Commission enforcement actions; 2) coordination in filing actions with other authorities to further the impact of enforcement efforts; and 3) development of consistent and clear governmental responses and avoidance of duplication of efforts by multiple authorities.

As in the past, staff of the Enforcement program have coordinated with numerous Federal, state, and self-regulatory authorities. Historically, program staff have sought assistance from or provided assistance to various Federal agencies, such as the Department of Justice, Federal Bureau of Investigation, SEC, the U.S. Postal Inspection Service, and the Internal Revenue Service (IRS). Similarly, Enforcement program staff have provided assistance to and/or received assistance from state authorities, such as agencies responsible for the regulation of corporations, securities, and banking. The Commission also has provided Federal and local law enforcement authorities

with testimony or other assistance in connection with criminal investigations. Enforcement program staff have worked with the DOJ and various U.S. Attorney's offices throughout the Nation, the FBI, the offices of numerous state attorneys general, local police authorities, and task forces focusing on areas such as corporate fraud and foreign currency fraud.

Although the Commission cannot publicly describe the nature of the assistance obtained or given in connection with pending investigations, the following is a sampling of results in cooperative enforcement cases during the past year in which the Enforcement program coordinated its efforts with domestic authorities. These cooperative enforcement cases fall into three general categories: 1) criminal actions in which the Enforcement program provided testimony or other support; 2) matters in which the Commission worked with other criminal or civil authorities and they filed parallel actions; and 3) Commission enforcement actions for which the Commission received assistance from other authorities.

*Criminal Cooperative Enforcement Actions*

- *U.S. v. John Allen Wheeler*, No. 9:02 CR 34 (E.D. Texas entered October 15, 2002). On October 15, 2002, the Office of the United States Attorney for the Eastern District of Texas, charged John Allen Wheeler by Information with one count of wire fraud, which arose out of an investment scheme promising high rates of return on profitable business ventures, including investments in foreign currency futures transactions. In announcing the Information, the efforts of the CFTC were recognized. Thereafter, on February 10, 2003, Wheeler pleaded guilty to the Information, and on September 15, 2003, Wheeler was sentenced to 60 months in the penitentiary.
- *United States v. Belden*, No. CR-02-0313-MJJ (N.D. Calif. entered Oct. 17, 2002). On October 17, 2002, the Office of the United States Attorney for the Northern District of California announced that Timothy N. Belden, who was Enron's Chief Energy Trader, agreed to plead guilty to conspiracy to commit wire fraud, in a scheme with others at Enron, to manipulate California's energy market. Specifically, Belden admitted that beginning in approximately 1998, and continuing through 2001, he and others at Enron conspired to manipulate the energy markets in California by: 1) misrepresenting the nature and amount of electricity Enron proposed to supply in the California market, as well as the load it intended to serve; 2) creating false congestion and falsely relieving that congestion on California transmission lines, and otherwise manipulating fees it would receive for relieving congestion; 3) misrepresenting that energy was from out-of-state to avoid federally approved price caps, when in fact, the energy it was selling was from the State of California and had been exported and re-imported; and 4) falsely representing that Enron intended to supply energy and ancillary services it did not in fact have and did not intend to supply. In announcing the plea agreement, the efforts of the CFTC, Federal Energy Regulatory Commission (FERC) and Federal Bureau of Investigation (FBI) were recognized.
- *U.S. v. James Bottarini*, No. 2:00CR470S (D.Utah Nov. 2002). In November 2002, Division of Enforcement staff assisted the United States Attorney for the District of Utah in a trial against James Bottarini, who was accused of wire fraud by falsifying a life insurance claim after throwing his wife off of a cliff in a park in Utah. To prove the wire fraud charge, the government had to prove that the defendant had murdered his wife. With the staff's assistance, the government attempted to show that the defendant's unsuccessful commodity futures trading prior to his wife's death contributed to the defendant's motive for killing his wife and collecting insurance. Specifically, an Enforcement Investigator staff testified about commodity trading in general, discuss-

ing leverage and risk, and presented to the jury a chart summarizing the trading in the defendant's account. The jury acquitted Bottarini of all charges.

- *State of North Carolina v. James Darren Moore*, No. 03-20222 (N.C. entered December 1, 2002). On December 1, 2002, the State of North Carolina entered an indictment against James Darren Moore d/b/a JDM Investments. The indictment charged Moore with a total of 38 counts (19 counts each for securities and commodities laws violations) for the same conduct that is at issue in the related Commission enforcement action. See *CFTC v. Moore, et al.*, No. 1:03-CV-149 (M.D.N.C. filed June 19, 2003) (discussed above in Foreign Currency Cases).
- *U.S. v. Valencia*, (S.D.Texas entered Jan. 27, 2003). On January 27, 2003, the Office of the United States Attorney for the Southern District of Texas, Houston Division, unsealed a seven count federal indictment charging Michelle Valencia, a former Senior Trader at Dynegey, with three counts of false reporting under the CEA. Additionally, Valencia was charged with four counts of wire fraud. The indictment alleges that on three separate occasions in November 2000, January 2001 and February 2001, Valencia, who was responsible for trading natural gas through Dynegey's "West Desk," caused the transmission of a report which included price and volume data to certain publications knowing that the trades had not actually occurred. In announcing the indictment, the efforts of the CFTC and the FBI were recognized.
- *U.S. v. Geiger*, (S.D.Texas entered Jan. 27, 2003). On December 4, 2002, the Office of the United States Attorney for the Southern District of Texas, Houston Division, unsealed a two count federal indictment charging Todd Geiger, a former natural gas trader and former Vice President of El Paso Corporation (El Paso), with knowingly causing the transmission of a false trade report used to calculate the "index" price of natural gas under the CEA. Additionally, Geiger was charged with wire fraud. The indictment alleges that on November 30, 2001 Geiger, then an El Paso Vice President responsible for trading natural gas through El Paso's "Canada desk", caused the transmission of a report to Inside FERC Gas Market Report, a trade industry newsletter, that included volume and price data for forty-eight trades of natural gas by El Paso's Merchant Energy Group knowing that none of the forty-eight trades actually occurred. If convicted, Geiger faces up to 5 years in prison and a fine of \$500,000 on the false reporting count, and up to 5 years in prison and a fine of \$250,000 on the wire fraud count.
- *United States v. Richter*, No. CR-03-0026-MJJ (N.D.Calif. entered Feb. 4, 2003). On February 4, 2003, the Office of the United States Attorney for the Northern District of California announced that Jeffrey S. Richter, who was the head of Enron's Short-Term California energy trading desk, agreed to plead guilty to conspiracy to commit wire fraud in a scheme with others at Enron to manipulate California's energy markets and also to making false statements to investigators. Specifically, Richter admitted his participation on behalf of Enron in two fraudulent schemes devised by Enron traders, known internally within Enron as "Load Shift" and "Get Shorty." Enron's "Load Shift" trading scheme involved the filing of false power schedules to increase prices by creating the appearance of "congestion" on California's transmission lines, which permitted Enron to profit through its ownership of transmission rights on the lines and by offering to "relieve" the congestion through subsequent schedules. Enron's "Get Shorty" trading scheme involved the company's traders fabricating and selling emergency back-up power (known as ancillary services) to the California Independent Service Operator, receiving payment, then canceling the schedules and covering their

commitments by purchasing through a cheaper market closer to the time of delivery. In announcing the plea agreement, the efforts of the CFTC, FERC, FBI, and the Antitrust Division of the Department of Justice were recognized.

- *United States v. Charles Hoeffcker and Charles Myers*, (D.N.J. entered Feb. 19, 2003). On February 19, 2003, the U.S. Attorney for the District of New Jersey arrested and indicted Charles Paul “Chip” Hoeffcker and Charles Edward Myers on one count of conspiracy to commit mail and wire fraud, and six counts of mail fraud. According to the indictment, Hoeffcker and Myers defrauded investors in precious metals, heating oil and other commodities through Amitex Services, Ltd., Inc., a Bahamian corporation, and Global Investment Services, Inc., a domestic corporation with offices in Atlanta, Georgia. The CFTC’s Division of Enforcement provided significant assistance to the U.S. Attorney, the Federal Bureau of Investigation and the U.S. Postal Inspectors in the investigation leading to this indictment.
- *State of Utah v. Bryan Keith Hawker*, Case No. 31901485 (Third Judicial District, Salt Lake County, Utah entered March 3, 2003). On March 5, 2003, State of Utah Department of Commerce, Division of Securities arrested and charged Bryan Keith Hawker with five state law felonies deriving from the same conduct that is the subject of a simultaneously filed Division complaint, which remains pending. On September 5, 2003, Defendant Hawker was sentenced on a plea of guilty to two State of Utah felony counts for securities fraud and one State of Utah felony count of a Pattern of Unlawful Activity (Racketeering).
- *U.S. v. Geoffrey Thompson, et al.*, No. 03 CR 321-3 (N.D. Ill. entered March 27, 2003). On March 27, 2003, following a criminal referral by the Division to the United States Attorney for the Northern District of Illinois, Eastern Division, a Grand Jury issued a fifteen-count indictment charging Martin Brown with nine counts of wire fraud, Geoffrey Thompson with ten counts of wire fraud and one count of money laundering; and Ydiyell Howard with two counts of wire fraud. The Indictment also sought forfeiture of \$322,500 from all three, as well as Thompson’s residence because he purchased it with proceeds of the allocation scheme. Subsequently, Brown, Thompson and Howard each plead guilty to one count of wire fraud pursuant to written plea agreements.
- *CFTC v. Orion International, et al.*, No. CV 03-603-KI (D.Or. filed May 7, 2003). The CFTC and the State of Oregon filed an injunctive action against a foreign currency firm and its principals in connection with a \$28 million commodity pool scam. The action alleges violations of the antifraud, contract market, and registration provisions of the Commodity Exchange Act, as well as violations of the antifraud and registration provisions of the Oregon Securities Statutes. The action was also coordinated with the Office of the U.S. Attorney. The CFTC worked closely with the Office of the U.S. Attorney in connection with a criminal investigation and, in as part of the cooperative effort, the U.S. Attorney issued forfeiture warrants at the time the injunctive action was filed.
- *United States of America v. John Forney*, Criminal Complaint Case No. 30330210 (EDL) (N.D. Calif. May 30, 2003). On December 4, 2003, the United States Attorney’s Office for the Northern District of California and the Justice Department’s Enron Task Force announced that John M. Forney, one of Enron’s former top energy executives, was indicted on 11 counts of conspiracy and wire fraud based on Enron’s criminal manipulation of the western energy markets during the height of California’s energy crisis in 1999



through 2001. The indictment alleges that Forney submitted or caused to be submitted false and fraudulent schedules to the California Independent Services Operator, in order to manipulate the price of electricity during the energy crisis. Forney was first charged by criminal complaint on June 3, 2003. He was later indicted on one count of conspiracy. This latest indictment, which supersedes all other charges in the case, expands the charges faced by the defendant by adding 10 substantive counts of wire fraud based on transfers of money to and from Enron as a result of its illegal trading. The indictment specifically alleges that Enron and Mr. Forney were involved in seven separate trading schemes to manipulate the California energy market during the height of the crisis. The trading schemes were known within Enron as: Get Shorty, Death Star, Ricochet, the sale of non-firm energy as firm energy, non-firm export, Off-Line Hubs and Load Shift.

- *State of Utah v. Allen Andersen*, No 031904282; *State of Utah v. John Garrett*, No 031904283 and *State of Utah v. Robert Heninger*, No 031904284 (Utah entered June 30, 2003). On June 30, 2003, the State of Utah Department of Commerce, Division of Securities filed a series of criminal informations against three individuals charged by the Division in August 2002 with fraudulently operating a commodity pool. The State alleged multiple counts of securities fraud and sales of an unregistered security, sales by an unlicensed broker-dealer or agent and employing an unlicensed agent based, in part, on the conduct charged in the CFTC complaint, which remains pending. See *CFTC v. Gahma Corp., et al.*, No. 1:02 CV 00101 PGC (D.Utah Aug. 13, 2002).
- *U.S. v. Donald O'Neill*, No. 03-20403 (S.D. Fla. filed May 2003). In September 2003, the United States Attorney for the Southern District of Florida unsealed an indictment that charged Donald C. O'Neill with multiple counts of wire fraud, mail fraud and money laundering in connection with a fraudulent foreign currency scheme O'Neill allegedly carried out through several purported hedge funds that raised approximately \$13.7 million from over 38 investors throughout the United States. The same underlying facts were the basis of a September 2002 Commission enforcement action, which remains pending. See *CFTC v. O'Neill, et al.*, No. 02-61307-Civ-Gold (S.D. Fla. filed September 17, 2002). O'Neill, whose current whereabouts are unknown, faces a maximum of twenty years incarceration and a fine of \$250,000 on each of the fraud counts, and between ten and twenty years incarceration and additional fines on each of the money laundering charges.
- *CFTC v. First Bristol, et al.*, No. 02-61160-CIV-LENARD (S.D.Fla. filed Aug. 20, 2002). The CFTC filed an injunctive action against 4 foreign currency firms and their principals alleging fraud and misappropriation of approximately \$500,000. The CFTC worked closely with the Office of the Broward County Florida State's Attorney in its efforts to bring criminal charges against the principals. As a result the principals were arrested shortly after the filing of the injunctive action. The criminal authorities used evidence obtained by the CFTC during its case and were able to obtain plea agreements against the principals for fraud, money laundering, and racketeering.
- *State of Utah v. Donald Joseph Purser*, No. 031906412 (Utah entered Sept. 23, 2003). On September 23, 2003, the State of Utah Department of Commerce, Division of Securities filed a criminal information against a Utah attorney charged by the Division with fraudulently soliciting his law clients and others to invest in a commodity pool whose CPO the CFTC had sued in August 2000. The State alleged multiple counts of securities fraud, offer and sales of an unregistered security, sales by an unlicensed broker-dealer or

agent and employing an unlicensed agent based, in part, on the conduct charged in the CFTC's amended complaint, which remains pending. See *CFTC v. BIRMA, Ltd., et al.*, Civil Action No. 2:00CV00622ST (D. Utah Jan. 16, 2003).

*Cooperative Enforcement Resulting In Parallel Actions*

The following cases instituted by the Commission during this fiscal year were accompanied by related cases filed by another agency at or near the same time as the Commission's action. The cases, which are identified below with the name of the other agency, are described in detail in the program performance results section, below: *In the Matter of Dynegy Marketing & Trade and West Coast Power, LLC* (U.S. Attorney for the Southern District of Texas); *In the Matter of El Paso Merchant Energy, L.P.* (U.S. Attorney for the Southern District of Texas); *CFTC v. Varner* (Utah Attorney General); *CFTC v. Wheeler, et al.* (U.S. Attorney for the Eastern District of Texas); *CFTC v. Hawker, et al.* (Utah Department of Commerce, Division of Securities); *CFTC v. U.S. Securities & Futures Corp.* (Hamburg, Germany Police); *CFTC v. Dias, et al.* (NFA); *CFTC v. Orion International, Inc., et al.* (State of Oregon Department of Consumer and Business Services; U.S. Attorney for the District of Oregon); *CFTC v. Oscar Goldman* (California Department of Corporations); *CFTC v Moore, et al.* (North Carolina Secretary of State); *In re Beacon Hill Asset Management, LLC* (Securities and Exchange Commission); *In re O'Herron* (U.S. Attorney for the Eastern District of Michigan); *CFTC v. Int'l Funding Association, et al.* (SEC); and *CFTC v. Donald C. O'Neill, et al.* (U.S. Attorney for the Southern District of Florida).

*Commission Enforcement Actions Benefiting From Cooperative Assistance*

In addition, the following cases - also described in the program performance results section, below - instituted by the Commission during this fiscal year benefited from the cooperative assistance of other federal or state civil or criminal authorities who did not file cases themselves. *In re Robbins Futures, Inc.* (National Futures Association); *In re Professional Market Brokerage* (NFA); *In re Chandler, et al.* (NYMEX); *In re \$K's Forex International, Inc., et al.* (Florida Department of Financial Services); *In re Chapman* (NYMEX, Manhattan District Attorney); *In re Reliant Global Markets, et al.* (California Department of Corporations); *CFTC v. Orion International, et al.* (State of Oregon; U.S. Attorney's office); *CFTC v. Sterling Forex* (U.S. Attorney for the District of Washington); *CFTC v. Investors Freedom Club, L.C., et al.* (Florida Department of Financial Services); *CFTC v. EuroBancorp, et al.* (Federal Bureau of Investigation; Texas Securities Department; and California Department of Corporations); *CFTC v. DBS Capital, Inc., et al.* (San Francisco District Attorney); *CFTC v. Wall Street Underground, Inc., et al.* (Office of the Attorney General in Kansas); *CFTC v. Thomas Dooley Investments* (Florida Department of Financial Services); *CFTC v. Fleury* (Florida Department of Financial Services); and *In re Duke Energy Trading and Marketing, L.L.C.* (President's Corporate Fraud Task Force; and NFA).

*Other Cooperative Enforcement Efforts*

In addition to direct cooperation with domestic law enforcement and regulatory authorities, the Enforcement program also represents the Commission in a variety of domestic and international efforts, including task forces and working groups designed to keep market participants abreast of new developments in financial crimes and to coordinate governmental responses to common issues. Several examples of the efforts of the Enforcement program in this area follow:

- ***Corporate Fraud Task Force.*** By Executive Order signed by President Bush on July 9, 2002, the CFTC was named as a member of the Corporate Fraud Task Force. This task force was established with the objective of strengthening the efforts of DOJ, Federal, state, and local agencies to investigate and prosecute significant financial crimes, recover the proceeds of such crimes, and ensure just and effective punishment of those who perpetrate financial crimes. Recent efforts

of this inter-agency cooperative task force have included an investigation of the alleged manipulation of the energy markets during the power crisis of 2000 to 2001.

- *National Futures Association Assistance.* During FY 2003, the National Futures Association (NFA) provided invaluable assistance to Commission's Enforcement program in two of its most important program areas: its investigation into the alleged misconduct in the energy markets and its investigation of foreign currency trading fraud. NFA's assistance included detailing a number of its employees to work shoulder-to-shoulder with Enforcement program staff on these matters. The detailees' expertise, enthusiasm and hard work were an invaluable asset to the Enforcement program and are a proud reflection of the NFA's professionalism and commitment.
- *Anti-Money Laundering.* The Commission participates in domestic and international anti-money laundering cooperative enforcement efforts. On the domestic front, the Commission is a member of the Money Laundering Strategy Working Group and the U.S. Treasury Department's Bank Secrecy Act Advisory Group, and Commission staff are consulting with staff of the U.S. Treasury Department in developing regulations as required by the USA PATRIOT Act enacted in response to the terrorist attacks of September 11, 2001. Internationally, the Commission has aided the U.S. delegation to the Financial Action Task Force (FATF), including its efforts to combat global terrorist financing.
- *Telemarketing and Internet Fraud Working Group.* The Telemarketing and Internet Fraud Working Group consists of representatives from state, Federal, and international regulatory and criminal authorities. At the working group's quarterly meetings, members discuss all aspects of telemarketing and Internet fraud, including issues such as new scams, new uses of technology, geographical hotspots for certain types of fraudulent activity, effective enforcement techniques, and recent cases that establish relevant precedent in this area.
- *Consumer Protection Initiatives Committee.* The Consumer Protection Initiatives Committee was created by the Attorney General's Council on White-Collar Crime to coordinate activities of various agencies' consumer protection programs. Goals of the committee include: 1) minimizing duplication of consumer protection efforts by sharing information on various fraud prevention and enforcement initiatives; 2) developing interagency consumer protection initiatives focusing on enforcement, deterrence, and public awareness; and 3) facilitating referrals of cases with strong criminal implications to the DOJ and U.S. Attorney's Offices in order to better address consumer fraud issues.

*Securities and Commodities Fraud Working Group.* The Securities and Commodities Fraud Working Group is a vehicle for public and private sector participants to discuss current trends in financial crime in the securities, futures, and option industries and to exchange ideas about enforcement techniques. The group, organized by the Fraud section of the Criminal Division of the DOJ, meets on a quarterly basis, and its members include criminal and regulatory authorities from state and Federal agencies and representatives from various exchanges and other SROs.

## Office of Proceedings

The Office of Proceedings provides a forum for effectively and expeditiously handling customer complaints against persons or firms registered with the Commission at the time of the alleged wrongdoing or at the time the complaint is filed.

During FY 2003, the Office of Proceedings met its goal of resolving most customer complaints within one year from the date the complaint was filed. In FY 2003, 50

percent of the reparations complaints were disposed of within one year from the date the complaint was filed. The remaining 50 percent of the complaints not resolved within one year are the result of issues beyond the Commission's control. For example, parties requested additional time for one or more of the following reasons: 1) to submit supplementation to their cases; 2) to prepare pleadings; 3) to complete extensive discovery documents; or 4) to deal with personal or professional responsibilities.

The Office of Proceedings' administrative law judges (ALJs) are responsible for hearing and rendering decisions in administrative enforcement cases brought by the Commission against alleged violators of the CEA or related regulations. The Office of Proceedings decided 15 administrative enforcement cases in FY 2003.

## Office of the General Counsel

### Opinions and Review

Through its Opinions Program, OGC assists the Commission in the performance of its adjudicatory functions. In fulfilling this role, OGC drafts opinions and orders in matters appealed to the Commission. The Commission's jurisdiction in adjudicatory matters includes:

- Administrative cases prosecuted by the Enforcement program against alleged violators of the CEA or related regulations;
- Reparations cases brought by customers to recover money damages from industry registrants; and
- Adjudicatory actions taken by industry SROs.

The Commission issued numerous adjudicatory opinions during FY 2003. Examples include opinions that: 1) decided issues of first impression relating to the circumstances under which a customer's failure to pay a margin call relieves an FCM of its duties under Commission Rule 166.2; 2) resolved a conflict between two presiding officers regarding the reliability of testimony offered by complainants who opened independent accounts after separate but similar solicitations; and 3) clarified the Commission's approach to determining the number of violations at issue in an enforcement proceeding for purposes of the CEA's limitation of certain civil money penalties to \$100,000 per proven violation.

In FY 2003, OGC assisted with the resolution of appeals from initial decisions in administrative enforcement matters, appeals from initial decisions in reparations matters, and appeals arising out of SRO disciplinary actions.

### Litigation

Through the litigation program, OGC represents the Commission in the U.S. District Courts and the U.S. Courts of Appeals and assists the Solicitor General in representing the Commission before the U.S. Supreme Court. OGC also monitors litigation of interest to accomplishing the Commission's mission, including the Commission's cooperation with other Federal financial regulators through the President's Working Group on Financial Markets 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.). OGC 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 Nino and about the limited risk of loss in trading commodity option contracts. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321 (11th Cir.).

OGC successfully defended the Commission in 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). OGC also obtained 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, OGC defended a challenge to the Commission's primary jurisdiction to review a self-regulatory organization's discipline of a registrant in *Hirschberg v. CFTC and NFA*, No. 02C 6483 (N.D. Ill.). OGC also assisted 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, OGC represented the Commission in personnel cases before the district courts and before administrative agencies, such as the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB). OGC also represented the Commission in contract disputes, including a matter pending before the General Services Board of Contract Appeals, which adjudicates such disputes by agreement of the Commission.

OGC 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, OGC 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, OGC supports the Commission in assisting 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, OGC actively considered participating as *amicus curiae* in seven cases, including *Cary Oil Co. Inc. v. MG Refining*, 1:99cv1725 (S.D.N.Y.).

#### Regulatory

In FY 2003, OGC continued to advise the Commission concerning the implementation of rules and regulations issued pursuant to the CFMA. OGC coordinated the Commission's work with the SEC to accomplish the joint rulemakings required by that legislation with respect to security futures products. For example, OGC assisted the Commission in the implementation of joint rules for security futures product margin and financial responsibility requirements. OGC also provided an unprecedented number of legal advisory memoranda to the Commission regarding changes in the futures industry and the Commission's regulatory structure, involving issues such as globalization, competition, and exchange demutualization. OGC assisted the Commission in new regulatory initiatives to further carry out CFMA mandates, including providing regulatory relief to market intermediaries as contemplated by the CFMA, such as the adoption of a core principle for CTAs' presentation of performance of partially funded accounts and amendments to Part 4 of the Commission's regulations governing the registration and activities of CPOs and CTAs.

OGC, working in conjunction with the operating programs of the Commission, consulted with staff of the U.S. Treasury Department and various Federal financial regulators to develop regulations required under the USA PATRIOT Act. During FY 2003,

these included final rules requiring FCMs and IBs to report suspicious transactions and to establish customer identification and verification programs. OGC also coordinated the Commission's continuing work with Treasury regarding a number of other regulations required by the USA PATRIOT Act that will impact the futures industry, including: 1) proposed rules requiring CTAs and securities investment advisers to establish anti-money laundering compliance programs; 2) proposed rules involving correspondent and private banking accounts for non-U.S. institutions and individuals; 3) implementation of final rules regarding information sharing with law enforcement and between financial institutions; and 4) a report to Congress on recommendations for effective regulations to apply anti-money laundering requirements to investment companies.

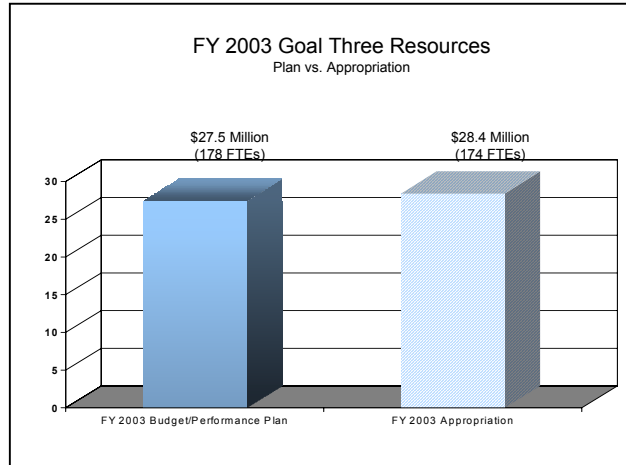
The status of many hedge funds as registered CPOs and CTAs has enabled OGC to provide certain hedge fund information to the SEC in connection with its ongoing study of that industry. This included the General Counsel's presentation of extensive hedge fund statistical data and related materials as part of the "Enforcement and Fraud Concerns" panel at the SEC's public Hedge Fund Roundtable.

## Strategic Goal Three: Foster open, competitive, and financially sound markets.

The third goal focuses on several important outcomes—effective self-regulation; firms and financial intermediaries with sound business, financial and sales practices; and responsive and flexible regulatory oversight.

### Resources

In FY 2003, the Commission requested and the Annual Performance Plan was based on a budget of \$27.5 million and 178 FTEs. The Commission was appropriated \$28.4 million and 174 FTEs (see chart, right).



### Outcomes

For Strategic Goal Three, in FY 2003 the Commission aimed to achieve these “intermediate” outcomes:

- Ensure sound financial practices of clearing organizations and firms holding customer funds.
- Promote and enhance effective self-regulation of the commodity futures and option markets.
- Facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions.
- Promote markets free of trade practice abuses.

The Commission also worked toward these “initial” outcomes:

- No loss of customer funds as a result of failure of firms to adhere to regulations.
- No customer prevented from transferring funds from a failing firm to a sound firm.
- No customer funds lost as a result of failure of an SRO to ensure compliance with its rules.
- Regulatory reform that is responsive to evolving markets conditions.
- Prevention and mitigation of trade practice abuses in the market.

## Goal Three Program Performance Results

### Market Oversight

In FY 2003, Market Oversight's Market Compliance subprogram staff completed four rule enforcement reviews of SRO compliance programs. Periodic review of self-regulated organization compliance programs is a component of the program's oversight activity to promote and enhance effective self-regulation and ensure that SROs enforce compliance with their rules.

One of the rule enforcement reviews completed during FY 2003 was a review of the Kansas City Board of Trade's (KCBT) audit trail, trade practice surveillance, disciplinary, dispute resolution, and governance programs. Market Compliance staff found that KCBT maintains adequate programs with respect to the areas reviewed, but made recommendations to further improve KCBT's trade practice surveillance program. Market Compliance staff also conducted a review of the New York Mercantile Exchange's market surveillance program. In its review, staff found that NYMEX maintains an adequate market surveillance program and made recommendations to further improve certain aspects of that program. In addition, staff conducted a review of the market surveillance program at the Chicago Mercantile Exchange (CME). Similarly, staff found that the CME maintains an adequate market surveillance program and made recommendations for further improvement. Lastly, Market Compliance staff conducted a rule enforcement review of the BrokerTec Futures Exchange (BTEX). Staff reviewed BTEX's audit trail, market surveillance, trade practice surveillance, disciplinary, and dispute resolution programs. Staff found that BTEX maintains adequate programs in each of these areas and set forth recommendations to further improve certain aspects of those programs.

The Commission's review of exchange rules is a key aspect of the statutory framework for self-regulation. Market and Product Review subprogram staff review exchange rule submissions with the goals of: 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 the Commission's statutory mandates. To these ends, the Market and Product Review staff reviewed 285 exchange rule submission packages and, within those packages, staff reviewed 1,392 new rules and rule amendments.

Market and Product Review subprogram staff also work to facilitate industry innovations and new trading methods and market structures, thereby meeting the Commission's objective of promoting and enhancing effective self-regulation and competition. During FY 2003, staff were involved in a number of significant matters including issues related to non-competitive trading procedures, exchange demutualization, and new automated trading systems.

### Issuing Exemptive, Interpretive, and No-Action Relief

The Market and Product Review subprogram is responsible for providing exemptive, interpretive, or other relief to facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions. The Commission continued the 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. In FY 2003, the Market and Product Review subprogram issued amended no-action relief letters to the Sydney Futures Exchange and the New Zealand Futures and Options Exchange. Also during FY 2003, three different amended no-action relief letters were issued to the International Petroleum Exchange to permit the migration of various of their products to the Intercontinental Exchange trading platform.



## Clearing and Intermediary Oversight

### Fostering Sound Business Practices: Oversight of SROs, Market Intermediaries, and DCOs

A key aspect of assuring effective self-regulation is oversight by the Commission of SRO programs to assure compliance by their members with customer and market protection standards. Toward this end, the Clearing and Intermediary Oversight program oversees, reviews, and reports to the Commission concerning statutorily required self-regulatory programs directed at maintaining the financial integrity of the markets and deterring improper sales practices and other wrongful conduct.

The Clearing and Intermediary Oversight program staff conduct a financial surveillance and audit program that buttresses periodic audit, daily financial surveillance, and other self-policing programs administered by the exchanges and NFA to promote and enhance effective self-regulation of the commodity futures and option markets. The objective of this program is to assure sound financial practices of clearing organizations and firms holding customer funds. The effort includes oversight of financial compliance programs of SROs and direct quality control audits to assess the efficacy of their programs. The oversight of SRO programs is necessary to ensure that SRO member firms are properly capitalized, maintain appropriate risk management capabilities, and that customer funds are held in segregation by appropriate custodians and are protected from misappropriation. In FY 2003, the Clearing and Intermediary Oversight staff revised its SRO oversight review program and developed and implemented a risk-based oversight program to review SROs' compliance activities. The staff began its first review in FY 2003 using the new program and it was completed in early FY 2004.

The Clearing and Intermediary Oversight program staff completed 19 audits (three exchange clearinghouses and 16 FCMs) in FY 2003 to test compliance with the Commission's financial requirements for the safekeeping of customer funds. In addition, program staff processed 4,400 financial reports filed by registrants. As a result of ongoing program efforts such as these, no regulated customer funds were lost in FY 2003, thereby meeting the program's objective of ensuring sound financial practices of clearing organizations and firms holding customer funds.

This oversight function of the Clearing and Intermediary Oversight program has taken on increased importance under the Commission's new regulatory framework under the CFMA. The CFMA defined a new category of registered entity, DCOs, and set forth certain core principles governing such entities. Staff have developed a program for conducting oversight of DCO compliance and have met separately with each DCO to discuss the nature and content of the oversight program before commencing with the first DCO review this fiscal year.

### Ensuring a Flexible and Responsive Regulatory Environment

In FY 2003, the Clearing and Intermediary Oversight program supported the Commission's ongoing regulatory reform program, as well as actions required by or appropriate to the implementation of the CFMA. 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 permits an FCM or DCO generally to hold customer funds consisting of any currency in the U.S. or any money center country. In June 2003, the Commission adopted rule amendments to Commission Rule 1.35(a-1)(5), permitting certain account managers to bunch customer orders together for execution and 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. In August 2003, the Commission amended Rule 4.5 to remove any trading limits and amended other Part 4 rules to expand existing exemptions and to add several new exemptions from registration requirements for CPOs and CTAs. CPOs may now be exempt from registration where their trading in the futures markets is minimal or where their pool participants are highly sophisticated.

*Exemptive, Interpretive, and No-Action Relief*

The Clearing and Intermediary Oversight program is responsible for providing exemptive, interpretive, or other relief to facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions. The Clearing and Intermediary Oversight program responded to a high number of formal and informal requests for guidance concerning the application of regulatory requirements to specific transactions, new products, and market circumstances. Staff issued 455 responses to written requests, including electronic responses, from members of the public and the regulated industry to provide guidance concerning the application of Commission rules and to provide exemptions. The average response time was five weeks. Staff also responded to more than 4,300 telephone inquiries concerning the application of Commission requirements to commodity professionals. These responses aided market participants and the public by providing guidance concerning the manner in which they may conduct their activities to comply with relevant requirements and by granting relief from requirements where application of the rules would not serve the public interest.

The Commission also furthered the development of the foreign futures and option transactions (U.S. customers trading on non-U.S. markets) in FY 2003. The Commission issued an order exempting certain firms that are members of ASX Futures Exchange Proprietary Limited, a subsidiary of the Australian Stock Exchange, from registration under the CEA if they solicit or accept orders from persons located in the U.S. for trading on that market based upon substituted compliance with home country regulation.

*Security Futures Products and Cooperation with the SEC*

The CFMA also directs the Commission and the SEC to implement a joint regulatory framework for security futures products and narrow-based stock index futures. During FY 2002, the Commission and the SEC promulgated numerous rules to facilitate the commencement of security futures product trading in November 2002. As part of the ongoing security futures product supervisory and oversight process, the Commission and the SEC worked throughout FY 2003 to develop an MOU to clarify the ability of each agency to conduct inspections of notice-registered intermediaries, exchanges, and limited purpose national securities associations.

## Enforcement

### Financial, Supervision, Compliance, and Recordkeeping

During FY 2003, the Commission filed the following enforcement actions in this program area:

- *In re Robbins Futures Inc., et al.* On December 30, 2002, the Commission filed an administrative action against Robbins Futures Inc. (“RFI”), a registered FCM, and its president, Joel Robbins, and on May 30, 2003, the Commission entered an order accepting the respondents’ offer of settlement. The order found that, from January 1999 through August 2001, the respondents failed to supervise the handling of several accounts either owned or managed by an individual, Andrew Duncan, and doing business as the Aurum Society, and repeatedly failed to recognize or ignore warning signs of Duncan’s illegal activities in these

accounts. Specifically, the order found that RFI's wire handling procedures did not include determining whether the remitter was also the RFI accountholder. Because of its inadequate procedures, RFI accepted deposits in excess of \$2.4 million from third-party individuals and entities other than the accountholder and failed to detect that these deposits indicated pooled customer funds. The order further found that RFI failed to investigate a suspicious pattern of large deposits followed by prompt withdrawals of funds in the Aurum accounts. Without admitting or denying the findings, the defendants consented to entry to the order that: 1) orders them to cease and desist from further violations; and 2) orders them to pay, jointly and severally, a \$120,000 civil monetary penalty. *In re Robbins Futures Inc.*, CFTC Docket No. 03-05 (CFTC filed Dec. 30, 2002).

- *CFTC v. U.S. Securities & Futures Corp.* On April 2, 2003, the Commission filed a civil injunctive action against U.S. Securities & Futures Corp. (USSFC), a registered FCM. The complaint alleged that USSFC had fallen below the net capital requirements it must meet to continue doing business as an FCM. The complaint further alleged that the net capital violations followed several instances during the past year when USSFC triggered the Commission's "early warning" requirements and dangerously depleted its required assets. On the same day that the action was filed, the court issued a statutory restraining order freezing the defendant's assets and preventing the destruction of its books and records. *CFTC v. U.S. Securities & Futures Corp.*, No. 03 CV 2258 (S.D.N.Y. filed April 2, 2003).
- *In re Carr Futures, Inc.* On April 22, 2003, the Commission simultaneously filed and settled an administrative action against Carr Futures, Inc. (Carr), a registered FCM. The Order found that Carr failed to produce certain trading records that it was required retain and produce for inspection as required by Commission representatives. Specifically, the Order found that Carr failed to produce certain of its cancelled and unfilled order tickets for its customers' futures orders in the CME's S&P 500 Stock Index futures contract, in response to Division of Enforcement's request, and that Carr's failure to produce these records impaired the Division's ability to fully investigate a floor broker's order-filling activities. Without admitting or denying its findings, Carr consented to the entry of the Orders that: 1) ordered it to cease and desist from further violations; and 2) imposed a \$75,000 civil monetary penalty. *In re Carr Futures, Inc.*, CFTC Docket No. 03-10 (CFTC filed April 22, 2003).
- *In re Professional Market Brokerage, Inc., et al.* On June 23, 2003, the Commission filed an administrative action against Professional Market Brokerage, Inc. (PMB), a registered non-clearing FCM, and PMB's chairman, Huaya Lu Tung, who had filed an application to be a principal for PMB, but had never been registered with the Commission. The complaint alleged that the respondents failed to maintain required records and produce them in response to requests made by representatives of the Commission. Specifically, the complaint alleged that on or about December 1, 2001, PMB transferred to Refco, Inc. its open and active customer accounts and customer account balances, but that it failed to maintain its remaining records (such as closed customer accounts, account statements, trading tickets, etc.), and in fact abandoned these records when it ceased operations and vacated its office space on or about January 2002. *In re Professional Market Brokerage, Inc., et al.*, CFTC Docket No. 03-14 (CFTC filed June 23, 2003).

The Commission also achieved the following significant result in an action filed in this practice area during previous fiscal years:

- *In re Prudential Securities Incorporated, et al.*, CFTC Docket No. 97-8 (CFTC entered Oct. 9, 2002). On October 9, 2002, the Commission entered an order accepting the offer of settlement of registered FCM Prudential Securities Incorporated (PSI) in this administrative action filed May 20, 1997. The order found that, from May 1993 through March 1994, certain registered PSI APs accepted customer orders involving frozen concentrated orange juice without immediately recording on the order tickets the account identification information and the times the orders were received. The Order further found that the APs failed to retain and produce certain canceled and unfilled customer order tickets. Without admitting or denying the findings, PSI consented to the entry of the order that orders PSI: 1) to cease and desist from further violations; 2) to pay a \$65,000 civil monetary penalty; and 3) to comply with certain undertakings, including cooperating in any further investigations and proceedings related to the conduct at issue. In addition, on September 25, 2003, the Commission accepted offers of settlement submitted by individual respondents Kathleen Chiappone and Kathryn Sarabasa for their part in accepting orders without appropriate account identification.

#### Trade Practice

During FY 2003, the Commission filed the following enforcement actions in this program area:

- *In re Chandler, et al.* On December 12, 2002, the Commission simultaneously filed and settled an administrative enforcement action against seven registered floor brokers, Henry Chandler, Robert Feraoli, Michael Hammer, Ernest Penny, Tacho Sandoval, Stephen Seelenfreund, and William Wosnack, for conduct arising from their trading of gold options on the COMEX from September 27, 1999 through October 8, 1999, a period during which gold trading and volatility increased and gold options brokers received an unprecedented number of mostly small-lot retail customer orders. The Order found that the respondents, all of whom, except for Sandoval and Wosnack, were dual traders, engaged in noncompetitive trading. Specifically, the Order found that: a) Penny traded ahead of executable customer orders and illegally offset customer orders; b) Penny and Chandler fraudulently changed prices on their customers' executed gold options orders, thereby creating false reports; c) Hammer and Feraoli falsely recorded trades as having occurred during the one-minute closing period, when each of those transactions actually occurred after the close of trading, and Sandoval and Wosnack, trading for their own account, took the opposite side of these noncompetitive trades; and d) Seelenfreund entered into COMEX's On Line Trade Entry System for clearing as if they had been executed on September 27, 1999, although they actually were executed on September 28, 1999. The Order further found that Sandoval committed a recordkeeping violation by failing to maintain and/or produce his September 28, 1999 trading records to the Commission. Without admitting or denying the findings, the respondents consented to the entry of the Order that: 1) ordered them to cease and desist from further violations; 2) imposed civil monetary penalties of \$20,000 (Chandler, Penny and Sandoval) and \$15,000 (Feraoli, Hammer, Seelenfreund and Wosnack); 3) ordered Chandler and Penny to pay restitution of \$1,200 and \$7,600, respectively; 4) imposed dual trading prohibitions of one year; 5) suspended Chandler's and Penny's registrations for six months; 6) imposed registration restrictions, including requiring them to have a sponsor if they act as floor brokers or floor traders, of two years (Chandler and Penny) and one year (the other respondents); and imposed a six-month trading ban against Chandler and Penny, which allows them to trade off the COMEX floor for their own accounts after three months. *In re Chandler, et al.*, CFTC Docket No. 03-02 (CFTC filed Dec. 12, 2002).

- *In re Chapman.* On March 25, 2003, the Commission simultaneously filed and settled an administrative action against Christopher Chapman, who has never been registered in any capacity. The Order found that Chapman, a gas trader employed by PG&E Energy Trading-Gas Corporation, engaged in a fraudulent scheme from December 2001 to March 2002 involving natural gas futures contracts traded on NYMEX's American Computerized Commodity Exchange System and Services trading platform. Specifically, the Order found that Chapman wrongfully profited over \$700,000 by directing losing trades to his employer's proprietary account and profitable trades to another account he opened and controlled at a non-clearing FCM. According to the order, Chapman, operating in an illiquid market was able to control both the buy and sell positions and prices for both the initial trades (identical buy and sell limit orders, one on his employer's behalf, and the other on his behalf) and the offsetting trades, which resulted in two round-turn trades, one profitable and the other unprofitable. Without admitting or denying its findings, Chapman consented to the entry of the Order that: 1) ordered him to cease and desist from further violations; 2) imposed a \$240,000 civil monetary penalty; 3) imposed a lifetime trading ban; and 4) ordered him to comply with certain undertakings, including never to seek registration with the Commission in any capacity. The Commission appreciates the assistance the NYMEX staff provided in this investigation. *In re Chapman*, CFTC Docket No. 03-08 (CFTC filed March 25, 2003).
- *In re Ray.* On April 22, 2003, the Commission filed an administrative action against Brian W. Ray, a registered floor broker and member of the CME. The complaint alleged that in December 1997, a disciplinary committee of the CME found that on eight occasions during 1996, Ray had taken trades into his error account that he had executed on behalf of customers. In those instances, Ray had returned the customer orders as unable to be filled. The CME suspended Ray's membership privileges for six months, fined him \$500,000, and ordered him to pay \$61,175 in restitution to the affected customers. In May 1999, the NFA entered an order restricting Brian Ray's registration and prohibited him from trading for his personal account. According to the complaint, when Ray returned to the trading floor and resumed filling customer orders, he nevertheless traded for his personal account in violation of the NFA order. The complaint also alleged that Ray cheated and defrauded the customers whose orders he filled. *In re Ray*, CFTC Docket No. 03-11 (CFTC filed April 22, 2003).
- *In re Casas Sendas Comercio E Industria S.A., et al.* On August 18, 2003, the Commission simultaneously instituted and settled an administrative action against Casas Sendas Comercio E Industria S.A. (Sendas), a Brazillian corporation, and Café Nord Corporation (Nord), a British Virgin Islands corporation, neither of whom are registered with the Commission. The Order found that the defendants executed at least nine non-*bona fide* Exchange of Futures for Physicals (EFPs) that were posted on the CSCE, and involved the alleged transfer of coffee futures and physical coffee. Specifically, the Order found that the trading in both accounts was under common control, none of the EFPs involved the actual transfer of physical coffee, and the transactions were simply non-competitive transfers of futures at agreed-upon prices, which had the intended result of a profit for one party and a loss for the other. The Order therefore found that the EFPs were illegal non-competitive trades that constituted wash sales and resulted in the reporting of non-*bona fide* prices. Without admitting or denying its findings, the respondents consented to the entry of the Order that: 1) ordered them to cease and desist from further violations; 2) imposed \$10,000 civil monetary penalties upon each of them; and 3) ordered them to comply with certain undertakings, including their undertaking to not engage in any EFP in which the physical commodity coffee is actually transferred or reported as being transferred from Nord to Sendas. *In re Casas Sendas Comercio E Industria S.A., et al.*, CFTC Docket No. 03-23 (CFTC Aug. 18, 2003).

- *In re Garber* and *In re Harmon*. On September 8, 2003, the Commission initiated administrative actions against Michael Alan Garber and Robert Benjamin Harmon, both of whom are registered floor brokers and members of NYMEX. The Commission simultaneously settled the action against Garber; the action against Harmon remains pending. The complaint alleged and Order found that, in July 2000, Garber and Harmon engaged in wash sales in crude oil futures trades in order to increase their pit card submission rate to meet NYMEX floor rules. Specifically, the complaint alleged and Order found that Garber and Harmon, trading for their own account, executed a series of trades opposite each other, through which they bought and futures contracts in the same quantities and contract months and at the same prices, which, when averaged at the end of the day, netted neither a profit nor a loss to either of them. The complaint alleged and Order further found that Garber and Harmon entered into the trades with the intent to avoid taking bona fide positions in the market. Without admitting or denying its findings, Garber consented to the entry of the Order that: 1) ordered him to cease and desist from further violations; and 2) imposed a \$7,500 civil monetary penalty. *In re Garber*, CFTC Docket No. 03-24 (CFTC filed Sept. 8, 2003); and *In re Harmon*, CFTC No. 03-25 (CFTC Sept. 8, 2003).

During FY 2003, the Commission also achieved the following significant litigation results in actions filed in this practice area during previous fiscal years:

- *In re Contrino, et al.*, CFTC Docket No. 02-13, Amended Order (CFTC entered Oct. 15, 2002). On October 15, 2003, the Commission entered an order accepting the offer of settlement from registered floor broker John Joyce in this administrative action filed July 16, 2002. The order found that, from January 4, 2000 through October 17, 2000, Joyce entered into wash sales in coffee futures on the CSCE to accommodate another broker in fraudulently changing the price on a previously executed trade to a worse price for his customer and a better price for Joyce. Without admitting or denying the findings, Joyce consented to the entry of the order that: 1) orders him to cease and desist from further violations; 2) orders him to pay a \$25,000 civil monetary penalty; and 3) suspends his registration for three months.
- *In re Schiller, et al.*, CFTC Docket No. 96-4 (CFTC entered April 29, 2003). On April 29, 2003, the Commission entered an order accepting the offer of settlement of registered floor brokers and CME members Ronald M. Schiller and Eugene J. Chesrow, Jr. in this administrative action filed April 18, 1996. The order found that, between 1991 and 1993, Schiller engaged in a variety of illegal trading practices in CME live cattle futures that cheated and defrauded customers and benefited his own account, such as taking profitable trades for his personal account that he originally executed on behalf of customers, assigning losing trades he originally executed for himself to customer accounts, indirectly bucketing and trading by indirect offset. The order further found that Chesrow and respondent Emmett Whealan aided and abetted Schiller's fraud and entered into trades accommodating Schiller's indirect bucketing and offsetting of customers' orders. Without admitting or denying the findings, Schiller and Chesrow consented to entry of the order that: 1) orders them to cease and desist from further violations; 2) orders Schiller to pay a \$150,000 civil monetary penalty and Chesrow to pay a \$50,000 civil monetary penalty; 3) imposes a permanent on-the-floor trading ban as to Schiller and a two-year on-the-floor ban as to Chesrow; and 4) revokes Schiller's registration.
- *In re DeFrancesco, et al.*, CFTC Docket No. 02-09 (CFTC entered July 23, 2003). On July 23, 2003, the Commission entered an order accepting the offers of settlement of registered floor brokers Joseph DeFrancesco and Marc Greenstein in

this administrative action filed March 20, 2002. The order found that on certain days, from February 2000 through November 2000, the respondents unlawfully executed coffee futures trades on the Coffee, Sugar & Cocoa Exchange (CSCE), a subsidiary of the New York Board of Trade. Specifically, the order found that Defrancesco fraudulently executed trades in the coffee futures ring of the CSCE by knowingly or recklessly trading ahead of executable customer orders on the same side of the market and allocating trades to his personal account at better prices than those received by his customers. The order also found that Defrancesco indirectly bucketed his customer orders by non-competitively trading for his own account indirectly opposite his customers' orders, and that, by engaging in noncompetitive trading, Defrancesco also reported prices on his trading cards, to his customers and to CSCE, that were not *bona fide*. The order also found that Defrancesco and Greenstein traded non-competitively and entered into illegal wash sales and accommodation trades by assisting other brokers in taking the opposite side of their customers' orders. Finally, the order found that Defrancesco failed to record required trading information on his trading cards. Without admitting or denying the allegations or findings, the respondents consented to entry of the order that: 1) ordered them to cease and desist further violations; 2) orders the payment of civil monetary penalties by Defrancesco (\$75,000) and Greenstein (\$35,000); 3) suspends Defrancesco's and Greenstein's registrations for six-months and three-months, respectively; and 4) orders that Defrancesco be prohibited from executing customer trades for a period of five years after his suspension is completed, and that Defrancesco's activities as a floor trader after his suspension is completed be subject to conditions, including the obtaining of a qualified sponsor.

#### International Cooperative Enforcement

The Commission continues to coordinate enforcement activities with foreign authorities. During FY 2003, the Commission made 91 requests for assistance to 35 foreign authorities, and it received 20 requests from authorities in foreign jurisdictions. In particular this year, the Commission was successful in freezing assets and obtaining bank records in several jurisdictions where we did not have prior cooperative relationships. Overall, during FY 2003 the Commission froze foreign assets totaling approximately \$6 million in six enforcement actions.

The Division also has devoted time and resources to matters involving allegations that persons or entities have committed fraud or other misconduct in their cross-border activities. Such misconduct can adversely affect U.S. firms as well as customers located in the United States and overseas. The Commission's efforts in this area during FY 2003 included the filing of the following enforcement actions: *CFTC v. Tambiev, et al.*, No. CV 03 177 (E.D.N.Y. filed Jan. 7, 2003); *CFTC v. Investors Freedom Club, L.C., et al.*, No. 8:03-CV-54-T-17TGW (M.D.Fla. filed Jan. 13, 2003); *CFTC v. Wheeler, et al.*, No. 6:03CV42 (E.D.Tex. filed January 30, 2003); *CFTC v. Ouyang, et al.*, No. 03-0833 (C.D.Calif. filed Feb. 5, 2003); *CFTC v. Holston, Young, Parker & Associates, et al.*, No. 03 CV 1796 (S.D.N.Y. filed March 14, 2003); *CFTC v. DBS Capital, Inc., et al.*, No. C 03-1379 VRW (N.D.Calif. filed under seal March 31, 2003); *CFTC v. U.S. Securities & Futures Corp.*, No. 03 CV 2258 (S.D.N.Y. filed April 2, 2003); *CFTC v. Wall Street Underground, Inc., et al.*, No. 03-2193 CM (D.Kan. filed April 22, 2003); *CFTC v. Swannell*, No. 03-2979 TJH (RZx) (C.D.Calif. filed April 29, 2003); *CFTC v. Orion International, et al.*, No. CV 03-603-KI (D.Or. filed May 7, 2003); *CFTC v. Fleury, et al.*, No. 03-61199 (S.D.Fla. filed June 30, 2003); *CFTC v. International Foreign Currency, Inc., et al.*, No. CV 03 3577 (E.D.N.Y. filed July 23, 2003); *In re Casas Sendas Comercio E Industria S.A., et al.*, CFTC Docket No. 03-23 (CFTC Aug. 18, 2003); and *CFTC v. Sun Platinum Group LLC, et al.*, No. 03 CV 7112 (S.D.N.Y. filed Sept. 12, 2003).

The Commission's international information-sharing arrangements enable the Commission and foreign authorities to engage in the bilateral sharing of information to assist each other in the investigation of potential wrongdoing that extends beyond their respective borders. During FY 2003, the Commission continued its work on the International Organization of Securities Commissions' (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information (MMOU). The MMOU is an important and meaningful undertaking for regulators to expand cooperation by establishing specific minimum standards for securities and futures regulators in the area of information sharing. There are 24 MMOU signatories, including six foreign authorities that the Commission did not have an information-sharing arrangement with previously.

- *Screening and Approving MOU Applicants.* Enforcement program staff along with three other foreign regulators as members of a MMOU Verification Team evaluated the applications of five IOSCO members to become signatories to the MMOU. The Commission also is a member of the Screening Group which makes recommendations to a decision making body of IOSCO concerning whether to accept or reject specific MMOU applications. In FY 2003, the Screening Group reviewed and approved 24 applicants for the MMOU.
- *Client Identification Task Force.* The Enforcement program staff participated in the IOSCO Task Force on Client Identification to determine a range of acceptable options for client identification in the securities and futures industry. The Task Force's work is ongoing.
- During FY 2003, Enforcement program staff also continued to participate in the Standing Committee on Enforcement and Information-Sharing (SC4) of the Technical Committee of IOSCO. SC4 considers issues and formulates recommendations relating to international assistance in the detection, investigation, and prosecution of securities and futures violations.

### Office of Proceedings

The Office of Proceedings continued to hear and decide administrative enforcement actions brought by the Commission.

### Office of the General Counsel

OGC 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.

### Executive Direction & Support

#### Agency Direction

The Agency Direction subprogram, specifically OIA, assists the Commission in the formulation of international policy by: 1) coordinating with foreign regulatory authorities; 2) participating in international regulatory organizations and forums; and 3) providing technical assistance to foreign governmental bodies. In FY 2003, OIA contributed to this effort by:

- Coordinating Commission activities within IOSCO and its Technical Committee and standing committees, with special focus on issues raised by index products,



short-selling, transparency, the Internet, clearing and settlement systems, and cross-border activities of intermediaries;

- Participating in several IOSCO Task Forces, including chairing the IOSCO Implementation Task Force that completed drafting an assessment methodology for the *IOSCO Objectives and Principles of Securities Regulation*, assisting the Internet Task Force in arranging and moderating a North American Round Table, and participating in the IOSCO-CPSS Task Force on Central Counterparties that is developing risk management and default procedure recommendations for central counterparties;
- Coordinating Commission representation in the Council of Securities Commissions of the Americas;
- Coordinating the Commission's representations to Swiss and Australian regulatory authorities that supported the recognition of two U.S. futures exchanges electronic trading systems;
- Coordinating the Commission's comments to the U.S. Treasury Department on various position papers including U.S.-E.U., U.S.-Japan and U.S.-India dialogue;
- Coordinating the Commission's representation to Hague Convention briefing and representing IOSCO at the adoption ceremony;
- Organizing the annual meeting for international regulators during the Futures Industry Association conference, focusing on the Commission's new management team, practical approaches to organizing effective supervision of cross-border business;
- Responding to requests from domestic and international financial regulators for information on the Commission's program and commenting on various reports;
- Obtaining fitness information from foreign regulators to support the NFA's registration program and responding to requests from foreign regulators for fitness information on Commission registrants;
- Assisting NFA in designing its Regulatory Alert System, which provides regulatory information on Commission registrants to participating regulators;
- Providing technical assistance to foreign regulators in FY2003 through 20 in-house meetings with staff at the Commission, six on-site visits by Commission staff to foreign jurisdictions, and a week-long seminar in Chicago that examined the techniques used to promote market, firm, and customer protections. Sharing this information enhances the knowledge of other regulators and facilitates the development of high levels of global regulatory protections. In FY 2003, over 55 persons representing more than 35 regulatory and market authorities from 28 jurisdictions attended the seminar.

#### Administrative Management & Support

In late 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 across the Commission in their investigative, trial, and appellate work. The OIRM provided detailed planning and careful execution of contract solicitations as well as coordinated the necessary collaboration across the Commission to ensure all internal stakeholders had an opportunity to articulate their needs in this effort. The contract for Project eLaw will begin at the beginning of FY 2004.

## Methodology for Collecting, Maintaining, and Analyzing Performance Data

### Market Oversight

Statistics concerning the large trader and exchange data collection systems are computer-generated based on the number of actual reports processed. Similarly, counts on numbers of markets trading, reports prepared, and new contract and rule change filings analyzed and completed are derived from computer records. Performance data from regional offices and headquarters are collected quarterly and combined into an overall report reflecting performance data included in the Annual Performance Plan. Trends in volume, open interest, and number of contracts approved are used to project workload statistics for future periods. Compliance factors, such as audits and letters to traders and reporting firms, are reviewed in the context of total reports processed for anomalous relationships. The number of market surveillance reports and special reports are viewed in the context of the number of markets trading and analyses that are presented at Commission meetings. These reports and comparisons with indicators from previous periods are used to verify data accuracy.

The Market and Product Review subprogram calculates the performance data included in the Commission's Annual Performance Report and Annual Performance Plan by querying its automated database, the Designation and Rule Tracking (DART) system. Among other pieces of data, the DART system records for each new product and new rule submission information on the date received, the submission's ultimate disposition, the date of disposition, and the processing time.

The Market Compliance subprogram's performance data are continuously collected from regional and headquarters staff and are maintained at headquarters for each performance category. The adequacy of self-regulated organizations' sanctions and a comparison of sanctions across all exchanges is conducted quarterly by regional staff and is also maintained at headquarters.

### Clearing & Intermediary Oversight

*Compliance and Registration.* The Compliance and Registration subprogram compiles data on discrete events, such as letters written, rules promulgated or revised, and RWG meetings held. It should be noted that statistics on numbers of letters issued or rules promulgated may not reflect the complexity of any particular matter or the resources necessary to address one issue versus another issue.

*Audit and Financial Review.* Each branch of the Audit and Financial Review subprogram prepares a monthly report that includes statistics for those projects that can be reported on a numerical basis and also describes special projects, enforcement support, and all other noteworthy matters that staff have worked on during the month. Statistical summaries are also prepared on a quarterly basis.

### Enforcement

The performance data reported by the Enforcement program come from a variety of sources. For example, certain basic information—such as the numbers of investigations and cases opened, closed, and pending—is collected and tabulated on a routine basis by staff in the headquarters office. Case status information is then cross-checked on a monthly basis against status reports submitted by staff to the Office of the Director of the Enforcement program. This information is adapted for use in per-

formance reporting (i.e., individual matters are identified by the goals and activities under which they most reasonably fall).

Other data that are routinely tracked and then adapted for use in performance reporting include sanctions assessed in enforcement matters. In enforcement cases, sanctions can be assessed and/or affirmed by: 1) Commission ALJs; 2) the Commission in settlement or on appeal of an ALJ's decision; 3) Federal district courts hearing injunctive matters; 4) Federal circuit courts of appeal on appeals of district court or Commission decisions; and 5) the U.S. Supreme Court on appeals of decisions by circuit courts of appeal. Commission staff in the Enforcement program regularly track these results and monitor them in order to determine when sanctions become final and effective. Program staff receive notice of sanctions assessed either from the Office of Proceedings in administrative actions, from the team conducting the litigation in injunctive actions, or from OGC in actions before circuit courts of appeal.

Finally, additional data tracked by the Enforcement program—particularly data reflecting investigation and litigation tasks—come directly from the headquarters units and regional offices performing the work. Staff from each subprogram and regional office are required to submit monthly status reports on all pending matters. In conjunction with these monthly submissions, staff are required to fill out an electronic form that provides specific information for each matter. While every effort is made to ensure that the data obtained from the investigation and litigation teams is accurate, the integrity of this data is ultimately and primarily the responsibility of the reporting teams.

### Office of the Chief Economist

Assessment of the performance of the Office of the Chief Economist is based upon reports and consultations completed, which are maintained by OCE staff members themselves. The analysis of these performance data consider both the scale and the complexity of the assignments.

### Office of Proceedings

The Office of Proceedings uses “Repcase,” the integrated computerized case tracking system, to collect, maintain, and analyze performance information for each reparations case. The reparations case reports are separated into two sections—complaints and hearings. The data and information collected in the complaints section consists of the number of cases pending the first of the month, the number of cases received during the month, the number of cases disposed of in complaints, and the number of cases pending at the end of the month. The data and information collected for the hearings section consists of the number of cases pending with an ALJ or judgment officer (JO) at the beginning of the month, the number of cases assigned during the month (including remands, reassignments, and motions to vacate), the number and type of cases disposed of during the month, and the number of cases pending with each ALJ or JO at the end of the month.

A separate database, “Revelation,” is used to track administrative cases, i.e., administrative/enforcement, exchange, statutory disqualification, and Commission review cases. The administrative case tracking system tracks the number of cases received during the month, the number and type assigned during the month, and the number and type disposed of during the month. Case status information is checked on a monthly basis against status reports submitted by the judges, JOs, and proceedings clerk to the director of the Office of Proceedings. This information is adapted for use in performance reporting.

## Office of the General Counsel

OGC also uses Repcase to collect, maintain, and analyze performance information for each reparations, enforcement, exchange review, and NFA case on appeal to the Commission. Statistical data is collected and reported by the total number of: 1) cases resolved (e.g., final disposition, remand, interlocutory disposition, and miscellaneous disposition); 2) matters received (e.g., merits appeals, interlocutory appeals, and miscellaneous); 3) matters pending; and 4) drafts pending before the Commission.

OGC collects and maintains case data on a monthly, quarterly, and annual basis. A legal program assistant uses this information to prepare monthly, quarterly, and annual reports, which are used by management to monitor and analyze all cases on appeal to the Commission.

- *Bimonthly Report.* At the end of each bimonthly period, the legal program assistant prepares a bimonthly report for the General Counsel's signature for submission to the Chairman. The information reported includes all activity (i.e., legislative, regulatory, litigation-related, and opinions-related) in the office that occurred during that period.
- *Monthly Opinions Report.* At the end of each month, the legal program assistant prepares a monthly report for the General Counsel's signature. The information reported includes all activity (i.e., disposition of cases, matters received, and matters pending) in the Opinions Program that occurred during the month.
- *Annual Report.* At the end of each fiscal year, the legal program assistant prepares a statistical summary that shows activity in the program during the fiscal year. The report lists by category the number of matters received, Commission orders and opinions issued, and the number of cases pending at the end of the year. All issued opinions and orders are maintained in binders filed alphabetically, monthly, quarterly, and annually.

In preparing these reports, the legal program assistant reviews the statistical data provided by the Repcase tracking system as well as issued opinions and orders maintained in the binders. This staff person also maintains a separate tracking system of the cases on appeal, which serves as a check against the data provided by the automated tracking system. All reports are reviewed and approved by the General Counsel and/or Deputy General Counsel for the Opinions and Review section.

## Executive Direction & Support

*Office of International Affairs.* OIA enters all performance information into an automated database. All projects, including telephone requests to individual attorneys, are given a specific database identifying number when assigned and are designated as "open" until final action is completed. "Key word" reference information has been standardized for actions that correspond to certain of the performance indicators used in the performance measurement process. When a project is completed, staff members close out the file, record the action in the database, and file a paper copy of the project work product by year and file code number. As a result, the OIA database captures all work products and permits immediate computer-searchable access to the status of the project and to the paper copy. Management also uses the database to track the status of projects, and projects can be searched for all pending projects by date and by staff person. OIA maintains a separate record of arranged visits to the Commission and regional offices by numerous foreign.

Office of Information Resources Management. OIRM acts on the basis of the *CFTC Five-Year Plan for Information Resources Management* and direction from the Executive Management Council (EMC). Performance data is collected by comparing the products actually delivered against the products called for in the plan and the resources used to deliver those products as recorded in the Commission time and attendance data or equivalent OIRM internal records for internal FTEs and the Commission's financial management system or equivalent OIRM internal records for purchased resources. The five-year plan reflects Commission priorities, actual (as opposed to planned) project performance, and the resources that will be made available to OIRM to pursue projects. Analysis of performance data involves comparison of resources expended on projects with the planned expenditures to the products delivered with the products planned.

Appendix 1: Summary of FY 2003 Performance

<i>Goal One: Ensure the economic vitality of the commodity futures and option markets.</i>			
<b>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.</b>			
<b>Annual Performance Goal:</b> No price manipulation of other disruptive activities that would cause loss of confidence or negatively affect price discovery or risk shifting.			
<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Percentage growth in market volume ( <i>Growth in market volume</i> )	TBD	TBD	TBD
Increase in number of exchanges and clearinghouses ( <i>Expanding infrastructure</i> )	1 (DCO)	NA	1 (DCO)
Percentage increase in number of products traded ( <i>Expanding number of products</i> )	TBD	NA	TBD
Percentage of new exchange and clearinghouse applications completed within fast track review period	TBD	NA	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
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
<b>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.</b>			
<b>Annual Performance Goal:</b> To have an effective and efficient market surveillance program.			
<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Length of advance warning of significant economic trends and patterns that require CFTC intervention ( <i>Quick and efficient identification</i> )	TBD	NA	TBD
Measure of technological currency of surveillance tools, information, and technology baselined against other similar surveillance organizations	TBD	NA	TBD
Percentage of DCO applications demonstrating compliance with core principles	100%	100%	100%
Ratio of contracts surveilled per economist	TBD	TBD	TBD
Percentage of contract expenditure without manipulation	TBD	TBD	TBD

<i>Goal Two: Protect market users and the public.</i>			
<b>Outcome 2.1: Violations of Federal commodities laws are detected and prevented.</b>			
<b>Annual Performance Goal:</b> Violators have a strong probability of being detected and sanctioned.			
Performance Measures	FY 2002 Actual	FY 2003 Plan	FY 2003 Actual
Number of enforcement investigations opened during the fiscal year	127	NA	130
Number of enforcement cases filed during the fiscal year	40	55	55
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%
Cases filed by other criminal and civil law enforcement authorities during the fiscal year that included cooperative assistance from the Commission	NA	NA	19
Percentage of SROs and DCOs that comply with laws	100%	100%	100%
<b>Outcome 2.2: Commodity professionals meet high standards.</b>			
<b>Annual Performance Goal:</b> No unregistered, untested, or unlicensed commodity professionals.			
Performance Measures	FY 2002 Actual	FY 2003 Plan	FY 2003 Actual
Percentage of professionals compliant with standards regarding testing, licensing, and ethics training ( <i>Professional compliance</i> )	100%	100%	100%
Estimated percentage of unregistered, untested, or unlicensed professionals engaged in commodity trading activities ( <i>Detection of violators</i> )	0%	0%	0%
Percentage of self-regulatory organizations that comply with requirement to enforce their rules	100%	100%	100%
Percentage of derivatives clearing organizations that comply with core principles and other rules	100%	100%	100%
Percentage of total requests receiving CFTC responses for guidance and advice	92%	100%	93%
<b>Outcome 2.3: Customer complaints against persons or firms registered under the Act are handled effectively and expeditiously.</b>			
<b>Annual Performance Goal:</b> 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 Plan	FY 2003 Actual
Percentage of filed complaints resolved within one year of the filing date	52%	50%	50%
Percentage of appeals resolved within six months	3%	5%	5%

**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.

<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Lost funds:			
a) Percentage decrease in number of customers who lose funds	0	0	0
b) Amount of funds lost	\$0	\$0	\$0
Number of rulemakings to ensure market integrity and financially sound markets	2	2	2
Percentage of self-regulatory organizations that comply with requirement to enforce rules	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.

<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Percentage of intermediaries who meet risk-based capital requirements	100%	NA	100%
Percentage of clearing organizations that comply with requirement to enforce their rules	100%	100%	100%

**Outcome 3.3: Markets are free of trade practice abuses.**

**Annual Performance Goal:** Minimize trade practice abuses.

<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Percentage of exchanges deemed to have adequate systems for detecting trade practice abuses	TBD	NA	TBD
Percentage of exchanges that comply with requirement to enforce their rules	TBD	NA	TBD

**Outcome 3.4: Regulatory environment is flexible and responsive to evolving market conditions.**

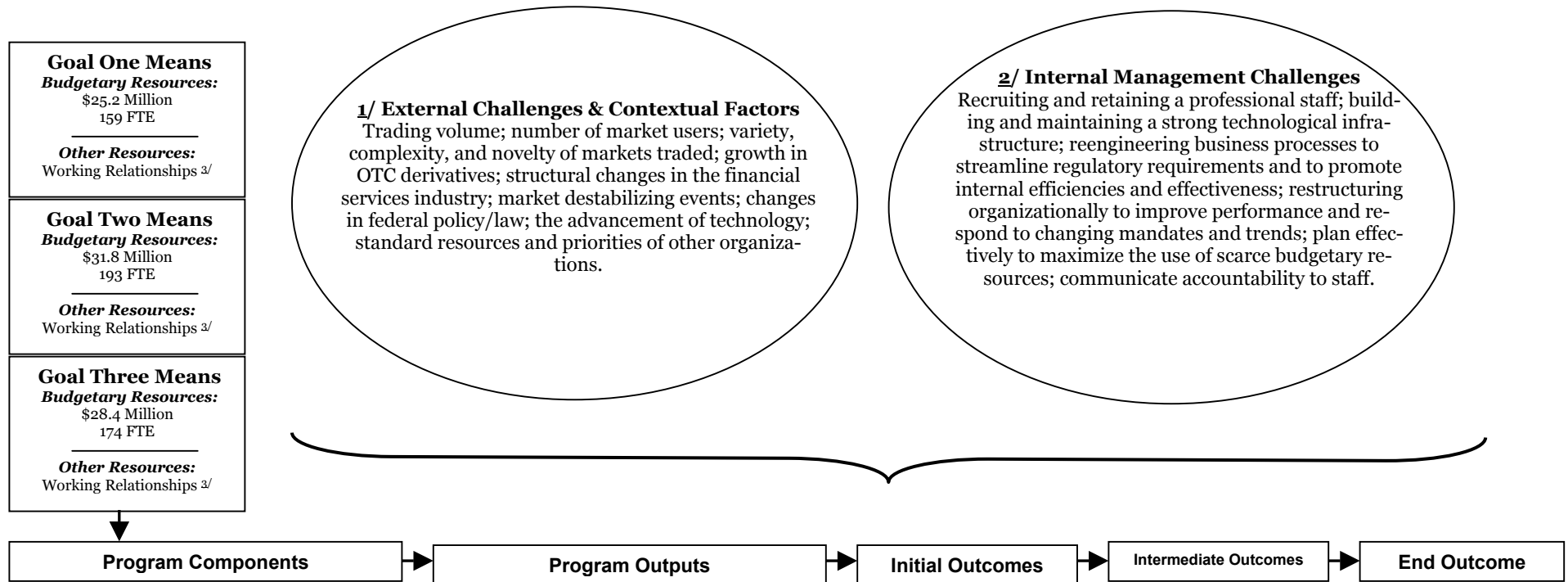
**Annual Performance Goal:** TBD

<b>Performance Measures</b>	<b>FY 2002 Actual</b>	<b>FY 2003 Plan</b>	<b>FY 2003 Actual</b>
Percentage of CFMA Section 126(b) objectives implemented	100%	100%	100%
Number of rulemakings, studies, interpretations, and guidances to ensure market integrity and exchanges' compliance with regulatory requirements	2	2	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	NA	TBD
Percentage of total requests receiving CFTC responses for guidance and advice	92%	100%	93%



## Appendix 2: External Challenges and Contextual Factors—Program Logic Model

### Internal Management Challenges, Means & Working Relationships



### 3/ Other Resources: Working Relationships

**Operational:** President’s Working Group on Financial Markets; other financial regulators and organizations (SEC, U.S. Treasury Department, Federal Reserve Board, FDIC, NEC, OCC, FDIC, Federal Bank of New York); USDA; DOE, NFA; on-site assistance to foreign authorities (Japan Ministry of Finance, Brazilian Securities Commission, Polish Securities and Exchange Commission); Agricultural Advisory Committee; Financial Products Advisory Committee; Global Markets Advisory Committee; memoranda of understanding/ international agreements; International Organisation of Securities Commissions; domestic enforcement cooperative partners (DOJ, FBI, SEC, USPIS, FRB, and various state regulatory and enforcement authorities); international regulatory authorities; G-7 Financial Crimes Working Group; U.S. Treasury (Money Laundering/Financial Crimes Strategy and Financial Stability Agenda); President’s Council on year 2000 Conversion; Securities Industry Association; Futures Industry Association; Telemarketing and Internet Fraud Working Group; Telemarketing Fraud Initiative; Securities and Commodities Fraud Working Group; Internet Surf Day (FTE, 30 state security regulators in North America, two national securities associations); Bank Secrecy Act Advisory Group.

**Support:** Small Agency Council; Small Agency Heads Meetings; Federal Women’s Program Initiative; Federal Financial Systems’ Users Group; Travel managers Interagency user Group; FTE 2000 Coordinators’ Group; Definity Users Group; Small and Independent Agency Personnel Directors Group; International Personnel Management Association; National Council of Hispanic Employment Program Managers; Interagency Alternative Dispute Resolution Working Group; USDA National Finance Center; Law Libraries Society of Washington, D.C.; Metropolitan Library Network; Federal Library and Information Center Network; National Academy of Public Administration; Department of the Interior (National Business Center); Office of Personnel Management.

**Appendix 3: Table of Acronyms**

ALJ	Administrative Law Judge
AP	Associated Person
APP	Annual Performance Plan
CBOT	Chicago Board of Trade
CCI	Commodity Consultants International, Inc.
CEA	Commodity Exchange Act
CFTC	Commodity Futures Trading Commission
CFMA	Commodity Futures Modernization Act of 2000
CME	Chicago Mercantile Exchange
CMF	Conseil des Marchés Financiers (France)
COMEX	Commodity Exchange Division of the New York Mercantile Exchange
CPO	Commodity Pool Operator
CSCB	Cotton, Sugar, and Cocoa Exchange
CTA	Commodity Trading Advisor
CTU	Cooper, Thomas, Unger, Inc.
DART	Designation and Rule Tracking System
DCO	Derivatives Clearing Organization
DOJ	Department of Justice
DTEF	Derivatives Transaction Execution Facility
EFP	Exchange for Physicals (Transactions)
EMC	Executive Management Council
FB	Floor Broker
FCM	Futures Commission Merchant
FEC	Futures Exchange Company
FIA	Futures Industry Association
FSAP	Financial Sector Assessment Program
FT	Floor Trader
FTE	Full-time Equivalent
FY	Fiscal Year
GPRA	Government Performance and Results Act
IB	Introducing Broker
IOSCO	International Organization of Securities Commissions
JO	Judgment Officer
NFA	National Futures Association
NYCE	New York Cotton Exchange
NYMEX	New York Mercantile Exchange
OIA	Office of International Affairs (CFTC)
OIRM	Office of Information Resources Management (CFTC)
RWG	Registration Working Group
SD	Statutory Disqualification Action
SEC	Securities and Exchange Commission