STATEMENT OF DISSENT BY COMMISSIONER JILL E. SOMMERS AND COMMISSIONER SCOTT D. O'MALIA
FISCAL YEAR 2011 ANNUAL PERFORMANCE REPORT

FEBRUARY 3, 2012

We respectfully dissent from the fiscal year 2011 Annual Performance Report (the "Report"). While we don't disagree with the stated performance criteria goals, we must protest the fact that funds and priorities have been withdrawn from critical futures market oversight and rule enforcement reviews to focus on the Dodd-Frank rules. This document is filled with statements that make it clear that Dodd-Frank rulemaking is a priority and will be pursued at the expense of other critical goals and priorities. We hope the Commission will work to rebalance its funding and focus from those areas that have exceeded expectations and goals to those that are critically underfunded, in particular the Division of Market Oversight and the Office of Data and Technology.

Despite claims in this Report with regard to the Dodd-Frank rulemakings, that, "With all the rules, the CFTC has taken and will take a thoughtful and balanced approach – the clock will not be the driver,"[1] the budget and staffing priorities embodied in this document and the evidence in the FY'2012 spending plan (that will be submitted to Congress separately) clearly imply otherwise.

Without a doubt, the Dodd-Frank rulemakings have been a top priority of this Commission, and, as a result, the Commission has missed 43 percent of its stated priorities. Some of the most notable goals which have been missed are in the areas of technology and critical rule enforcement reviews conducted by the Division of Market Oversight in the futures market. For example, the Commission was only able to achieve 70 percent of goal 1.1.1.2, which is to implement automated surveillance alerts.[2] Goal 1.1.1.3, achieved only 20 percent of the Commission's objectives with the development of only one of five proposed automated trade violation alerts.[3] Goals 1.1.2.1 and 1.1.3.1 both targeted the automation of forms to enhance data integrity and automation and reduce the staff requirement to re-enter market data. Each only achieved 50 percent of their goals.[4] Technology, especially through automated surveillance, offers the greatest opportunity to expand the Commission's oversight with the fewest number of staff. Due to the massive growth in the speed and volume of trades the Commission must embrace technology or risk being unable to effectively monitor futures, options and swaps markets.

In light of the MF Global insolvency, the Commission must remain vigilant in its oversight of the futures markets for both systemic and operational risks. Unfortunately, resources have been redirected to Dodd-Frank-related rulemakings and reduced the Commission's capacity to appropriately oversee these markets. Two performance measures that deserve special attention and concern are 1.2.1.1 and 1.2.1.2. Both performance measures focus

[1] *See* Commodity Futures Trading Commission FY 2011 Annual Performance Report ("Report") at 18 (Feb. 2012).
[2] Report at 20.
[3] Report at 21.
[4] Report at 22-23.

on the essential rule enforcement reviews of core principles of major designated contract markets ("DCMs") (1.2.1.1) and non-major DCMs (1.2.1.2). Respectively the Commission only achieved a 40 percent and 20 percent of successful completion of these Commission-set priorities.[5] The report states that, "If major exchanges are not reviewed annually, it is difficult to provide any assurance to the public or other regulators of the exchanges' ongoing core principle compliance."[6] The report notes that three major exchanges were not reviewed, including CME, CBT and ICE Futures U.S. The report goes on to justify the 40 percent success rate of goal 1.2.1.1 by stating that, "As the Commission remains determined to complete its Dodd-Frank Act rulemaking during the upcoming FY 2012, Division and Offices can expect to face similar challenges and a prolonged environment of budget and human resource constraints."[7] With regard to goal 1.3.1.1, the report noted that while "non-major exchanges do not pose the same systemic risks as major exchanges, there are serious consequences of not performing reviews at least every two or three years."[8] However the report explains that, "Due to insufficient staff resources, none these reviews were completed during 2011 fiscal year."[9]

We do not want to diminish the hard work of the Commission and the staff, to meet or exceed the Commission's goals in many other areas. However, the Commission cannot afford to ignore mission-critical responsibilities either. The Commission originally voted to establish these goals and to make every effort to achieve them. Therefore, the Commission must use this report to review its shortcomings and make adjustments to both its budget and surveillance priorities to ensure that critical futures market oversight is not neglected. Failure to make these adjustments expose futures markets to both systemic and operational risk and could cost customers hundreds of millions of dollars. MF Global provides a startling wake up call for the Commission to review its existing rules and regulations for flaws and to ensure that the Commission's current obsession with the Dodd-Frank rules do not compromise its existing mission.

[5] Report at 27-28.
[6] Report at 27.
[7] Report at 27.
[8] Report at 28
[9] Report at 28.