

*Commodity Futures Trading Commission*



PERFORMANCE AND  
ACCOUNTABILITY REPORT

*Fiscal Year 2009*



## COMMODITY FUTURES TRADING COMMISSION

Gary Gensler  
*Chairman*

Madge Bolinger Gazzola  
*Executive Director*

Mark Carney  
*Chief Financial Officer*

November 2009

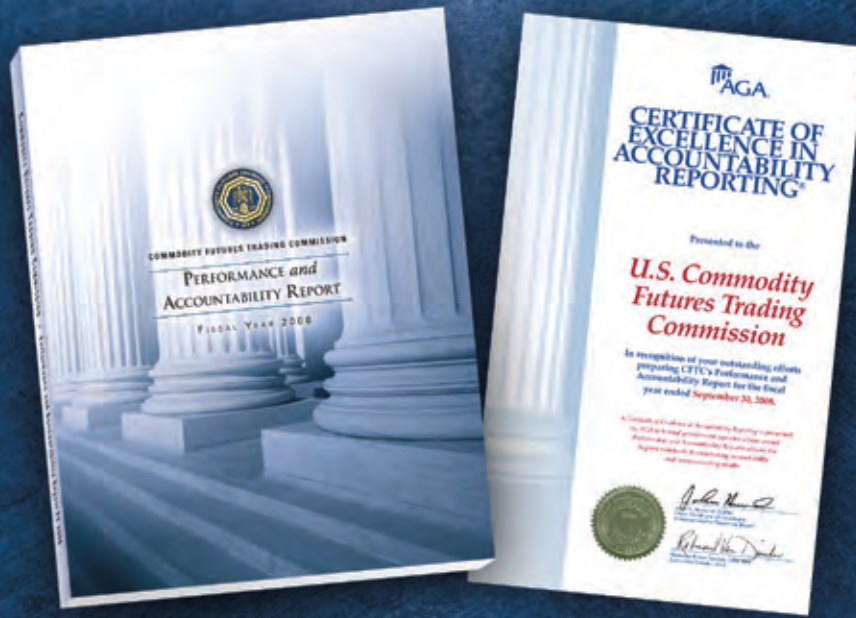
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The Best Places to Work  
IN THE FEDERAL GOVERNMENT 2009



# COMMODITY FUTURES TRADING COMMISSION



*Association of Government Accountants (AGA) Awards the*

## CERTIFICATE OF EXCELLENCE IN ACCOUNTABILITY REPORTING

*In recognition of your outstanding efforts in preparing the  
Commodity Futures Trading Commission Performance and  
Accountability Report for the fiscal year ended September 30, 2008*



*League of American Communications Professionals (LACP) Awards the*

## GOLD 2008 VISION AWARDS

*In recognition of your outstanding efforts  
in preparing the Commodity Futures  
Trading Commission Performance and  
Accountability Report for the fiscal year  
ended September 30, 2008. Awarded  
GOLD in the Government classification,  
and received overall ranking of 70 out of  
over 3,500 total entries.*



# FISCAL YEAR 2009 COMMISSIONERS



Back row from left; **Jill E. Sommers**, *Commissioner*; **Bart Chilton**, *Commissioner*

Front row from left; **Michael V. Dunn**, *Commissioner*; **Gary Gensler**, *Chairman*

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*U.S. Commodity Futures Trading  
Commission Chairman Gary Gensler  
testifies on Capitol Hill in Washington,  
Monday, June 22, 2009, before the  
Senate Banking Committee hearing on  
over-the-counter derivatives.*

*(AP Photo/Susan Walsh)*



*In the Tradition of Quality Reporting,  
the Commodity Futures Trading  
Commission Proudly Presents the FY 2009  
Performance and Accountability Report*



## A MESSAGE FROM THE CHAIRMAN

One year ago, the financial system and our financial regulatory system failed the American public. There were gaps in our regulatory structure that left the Nation unprepared and unable to respond quickly to changing market environments. The last 12 months have taught us much about the new realities of our financial markets. We have learned the limits of foresight and the need for candor about the risks we face. We have learned that transparency and accountability are essential. Only through strong, intelligent regulation—coupled with aggressive enforcement mechanisms—can we fully protect the American people and keep our economy strong.

The need for reform of our financial system today has many similarities to the situation facing the country in the 1930s. In 1934, President Roosevelt boldly proposed to the Congress “the enactment of legislation providing for the regulation by the Federal Government of the operation of exchanges dealing in securities and commodities for the protection of investors, for the safeguarding of values, and so far as it may be possible, for the elimination of unnecessary, unwise, and destructive speculation.” The Congress swiftly responded to the clear need for reform by enacting the Securities Act of 1933, the Securities Exchange Act of 1934 and the Commodity Exchange Act of 1936.

It is clear that we need the same type of comprehensive regulatory reform today. That is why the Obama Administration is working closely with the Congress to close the gaps in our laws to bring much-needed transparency and regulation to

the over-the-counter (OTC) derivatives market to promote transparency, lower risks, strengthen market integrity and protect investors. This is vital for the future of our economy and the welfare of the American people.

The Commodity Futures Trading Commission's (CFTC or Commission) mission is to protect market users and the public from fraud, manipulation and abusive practices related to the sale of commodity and financial futures and options, and to foster open, competitive and financially sound futures and options markets.

Specifically, the CFTC is working with Congress on comprehensive regulatory reform of the OTC derivatives marketplace. Last year's crisis highlighted all too well how opaque markets can threaten the financial system and the American public. There has neither been transparency to the public



*Gary Gensler, chairman of the Commodity Futures Trading Commission, conducts a hearing on energy speculators and whether they influence fluctuations in the energy market that could affect the price of oil and natural gas in an adverse or destabilizing way, at the CFTC headquarters in Washington, Wednesday, Aug. 5, 2009. (AP Photo/J. Scott Applewhite)*

nor to the regulators in these markets. Only through addressing the lack of transparency can we reduce information deficits for regulators, market users, and the public. Further, we also are working with Congress on lowering risk to the system created by OTC derivative transactions by requiring standardized products to be centrally cleared. Lastly, we must ensure that entities that deal in derivatives are required to register and come under comprehensive regulation. This includes capital standards, margin requirements, business conduct standards and record-keeping and reporting requirements. The CFTC also should have the authority to set aggregate position limits in the OTC derivatives marketplace.

While regulatory reforms are underway, the CFTC remains steadfast in using existing authorities to achieve our mission. As such, the CFTC is vigorously using every tool available to protect the American people from fraud, manipulation and other abuses.

In the past few months, the CFTC has conducted a number of substantive public hearings and meetings on a number of critical initiatives. The Commission held three days of hearings into whether concentration position limits should be set in the energy futures markets similarly to how they are currently set in many agriculture markets. We continue to review public comments on this issue and seriously consider proposing a rule to set position limits in the energy markets.

The CFTC and the Securities and Exchange Commission (SEC) held unprecedented joint meetings on regulatory harmonization in September. The agencies jointly made 20 recommendations where we can change our statutes and regulations to enhance both agencies' enforcement powers,



*U.S. President Barack Obama, left, shakes hands with Gary Gensler, chairman of the Commodity Futures Trading Commission, after making remarks on financial regulatory reform in the East Room of the White House in Washington, D.C., U.S., on Wednesday, June 17, 2009. Obama said his plan to refashion supervision of the U.S. financial system is needed to fix lapses in oversight and excessive risk taking that helped push the economy into a prolonged recession.*

*(Photo by Brendan Smialowski/Bloomberg via Getty Images)*

strengthen market and intermediary oversight, and facilitate greater operational coordination. We are committed to working with the SEC to implement these recommendations and will work with Congress to secure necessary changes in statute to best protect the American public.

A core mission of the CFTC is to promote market transparency. As such, we have recently taken a number of initiatives to promote transparency in the futures markets. The Commission has for decades provided the public with weekly Commitments of Traders (COT) reports consisting of aggregated data on large-trader positions. Historically, the CFTC reported the trades of commercial entities and noncommercial entities. These data categorizations became less relevant as the markets continued to evolve. In September, the Commission began disaggregating swap dealers and managed money (*i.e.* hedge funds) to more accurately reflect the makeup of the American futures

markets. This has given market participants, regulators and the public a better idea of who is participating in risk management markets. The CFTC also has begun releasing data on index investment in the commodity futures markets. This data informs market participants, regulators and the public about how much involvement index investors have in the derivatives markets. These two steps are part of an ongoing process of looking for ways to best improve transparency in the commodities markets.

Our surveillance staff are keeping a close eye for signs of manipulation or congestion. In the past year, the Commission filed 50 enforcement actions and enforcement staff opened 251 investigations of potential violations of the Act and Commission regulations. Through these and existing cases previously filed by the Commission, the Commission imposed monetary penalties of more than \$183 million in restitution and disgorgement and \$97 million in civil monetary penalties.



*Gary Gensler (R), chairman of the Commodity Futures Trading Commission, and Mary Schapiro (L), chairman of the Securities and Exchange Commission, testify before the House Financial Services Committee July 22, 2009 in Washington, DC. The full committee met to hear testimony on 'Regulatory Perspectives on the Obama Administration's Financial Regulatory Reform Proposals.'*

*(Photo by Win McNamee/Getty Images)*





*U.S. Secretary of the Treasury Timothy Geithner (3rd L) speaks as Commodity Futures Trading Commission Chairman Gary Gensler, Federal Deposit Insurance Corporation Chairman Sheila Bair, Securities and Exchange Commission Chairman Mary Shapiro, Director of the National Economic Council Larry Summers, and other members look on as he convenes the President's Working Group on Financial Markets (PWG) at the Department of the Treasury June 25, 2009 in Washington, DC. The PWG will help coordinate the Administration's plan for regulatory reform. (Photo by Alex Wong/Getty Images)*

The CFTC is highly engaged with our foreign partners. We have recently jointly signed a Memorandum of Understanding with the U.K. Financial Services Authority (FSA) to enhance cooperation and the exchange of information relating to the supervision of cross-border clearing organizations and strengthen cross-border supervision of energy futures markets. We also are working with our foreign partners to implement consistent regulatory reform of the OTC derivatives marketplace.

As we begin the new fiscal year (FY), the Commission continues to be under-resourced. With about 580 staff, we have just now returned to our staffing levels 10 years ago. In the last decade, futures trading volume went up nearly five fold. The number of actively traded futures and options contracts went up seven fold, and many of these are consid-

erably more complex in nature. We also moved from an environment with open-outcry pit trading to highly sophisticated electronic markets. What was once a group of regional domestic markets is now a global marketplace. I am pleased that Congress has given the CFTC a 16 percent budget increase for FY 2010. We are currently working with the Office of Management and Budget (OMB) and Congress to address the CFTC's significant further resource needs in the 2011 budget.

For example, the Commission requires additional resources to replace legacy surveillance equipment with 21st Century computers. Significant changes in the markets demand new systems capable of efficiently receiving and managing massive amounts of raw data and converting it to useful market information for analysis by skilled market experts, economists and technologists. Should Congress enact regulatory reform of the OTC derivatives markets, the CFTC would need additional resources to effectively monitor the markets.

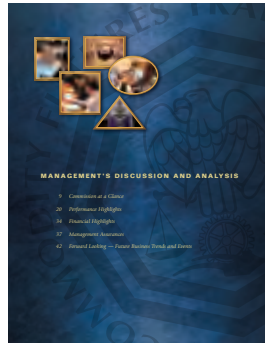
In closing, in FY 2009, we received for the fifth consecutive year an unqualified opinion on our financial statements. As was the case for three consecutive years, the auditors disclosed no material instances of noncompliance with laws and regulations. I am also proud to report we had no material internal control weaknesses and that our financial and performance data in this report are reliable and complete under OMB's guidance.

Gary Gensler

November 13, 2009

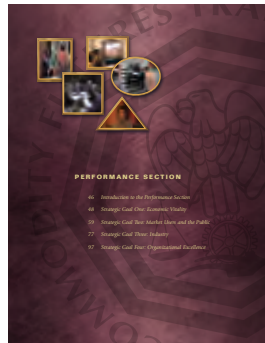
# HOW THIS REPORT IS ORGANIZED

This document consists of three primary sections and supplemental sections:



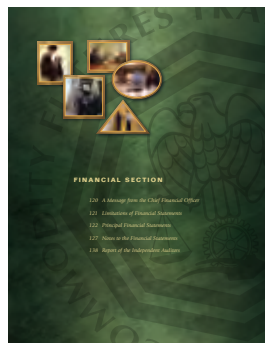
## Management's Discussion and Analysis

The Management's Discussion and Analysis (MDA) section is an overview of the entire report. The MDA presents performance and financial highlights for FY 2009 and discusses compliance with legal and regulatory requirements, business trends and events, and management issues. For more information on this section, please contact Mark Carney, Chief Financial Officer, at 202-418-5477.



## Performance Section

The Performance Section compares the Commission's performance to the annual goals in the 2007–2012 CFIC Strategic Plan. For more information on this section, please contact Emory Beville, Deputy Director for Budget and Planning, at 202-418-5187.



## Financial Section

The Financial Section includes the Commission's financial statements and the Independent Auditors' report. For more information on this section, please contact Keith Ingram, Deputy Director for Accounting and Financial Systems, at 202-418-5612.

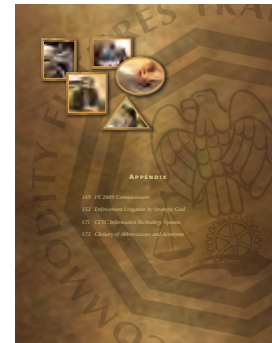
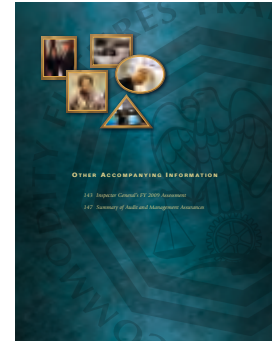
## Other Accompanying Information

Other Accompanying Information contains the Inspector General's FY 2009 assessment of management challenges facing the Commission and the Commission's summary of audit and management assurances. For more information on this section, please contact Mark Carney, Chief Financial Officer, at 202-418-5477.

## Appendix

The Appendix contains the FY 2009 Commissioner's biographies, summaries of filed Enforcement actions, descriptions of CFTC Information Technology systems, and a glossary of abbreviations and acronyms used throughout the report. For more information on this section, please contact Lisa Malone, Budget Analyst, Budget and Planning, at 202-418-5184.

An electronic version of the CFTC FY 2009 *Performance and Accountability Report* is available on the Internet at <http://www.cftc.gov/aboutthecftc/cftcreports.html>. The 2007-2012 CFTC Strategic Plan, *Keeping Pace with Change*, is also available at this Web site.





## MANAGEMENT'S DISCUSSION AND ANALYSIS

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## COMMISSION AT A GLANCE

### Mission Statement

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.

### Commodity Futures Industry

Futures contracts on agricultural commodities have been traded in the United States for more than 150 years, and have been under Federal regulation since the 1920s. At the time the Commission was established in 1974, the vast majority of futures trading took place on commodities in the agricultural sector. These contracts gave farmers, ranchers, distributors, and end users of everything from corn to cattle, an efficient and effective set of tools to hedge against price movements.

Over the years, the futures industry has become increasingly diversified. While farmers and ranchers continue to use the futures markets actively to lock in prices for their crops and livestock, highly complex financial contracts based on interest rates, foreign currencies, Treasury bonds, securities indexes, and other products have far exceeded agricultural contracts in trading volume. The latest statistics show that approximately eight percent of on-exchange commodity futures and option trading activity occurs in the agricultural sector, while financial commodity futures and option contracts make up approximately 79 percent of trading activity, and other contracts, such as those on metals and energy products, make up about 13 percent.

The increase in trading activity, number of participants, and complexity and number of contracts available, has transformed the futures markets into a trillion dollar industry with massive economic force. In addition, the rapid evolution in trading technologies, cross-border activities, product innovation, and greater competition have made the futures markets an integral and significant part of the global economy.

Moreover, the electronic integration of cross-border markets and firms, as well as cross-border alliances, mergers, and other business activities continue to transform the futures markets and the firms involved in these markets into a global industry.

### How the CFTC is Organized and Functions

The President appoints and the Senate confirms the CFTC Commissioners to serve staggered five-year terms. No more than three sitting Commissioners may be from the same political party. With the advice and consent of the Senate, the President designates one of the Commissioners to serve as Chairman.

The Office of the Chairman oversees the Commission's principal divisions and offices that administer the policies, regulations, and guidance regarding the CEA, as amended. The Office of the Executive Director (OED), by delegation of the Chairman, directs the internal management of the Commission, ensuring that funds are responsibly accounted for and that program performance is measured and improved effectively.

Attorneys at the Commission work on complex and novel legal issues in areas such as litigation, regulation, and policy development. Among other things, they represent the Commission in administrative and civil proceedings; assist U.S. Attorneys in criminal proceedings involving futures law violations; develop regulations governing clearinghouses, exchanges, and intermediaries; provide a wide range of analysis, technical assistance, and guidance on regulatory, legislative, and supervisory issues; and provide legal advice to the Commission on policy and adjudicatory matters. In response to the globalization of the futures markets, attorneys represent the CFTC internationally in multilateral regulatory organizations, bilaterally with individual foreign regulators, and participate in country dialogues organized by the U.S. Department of the Treasury (Treasury).

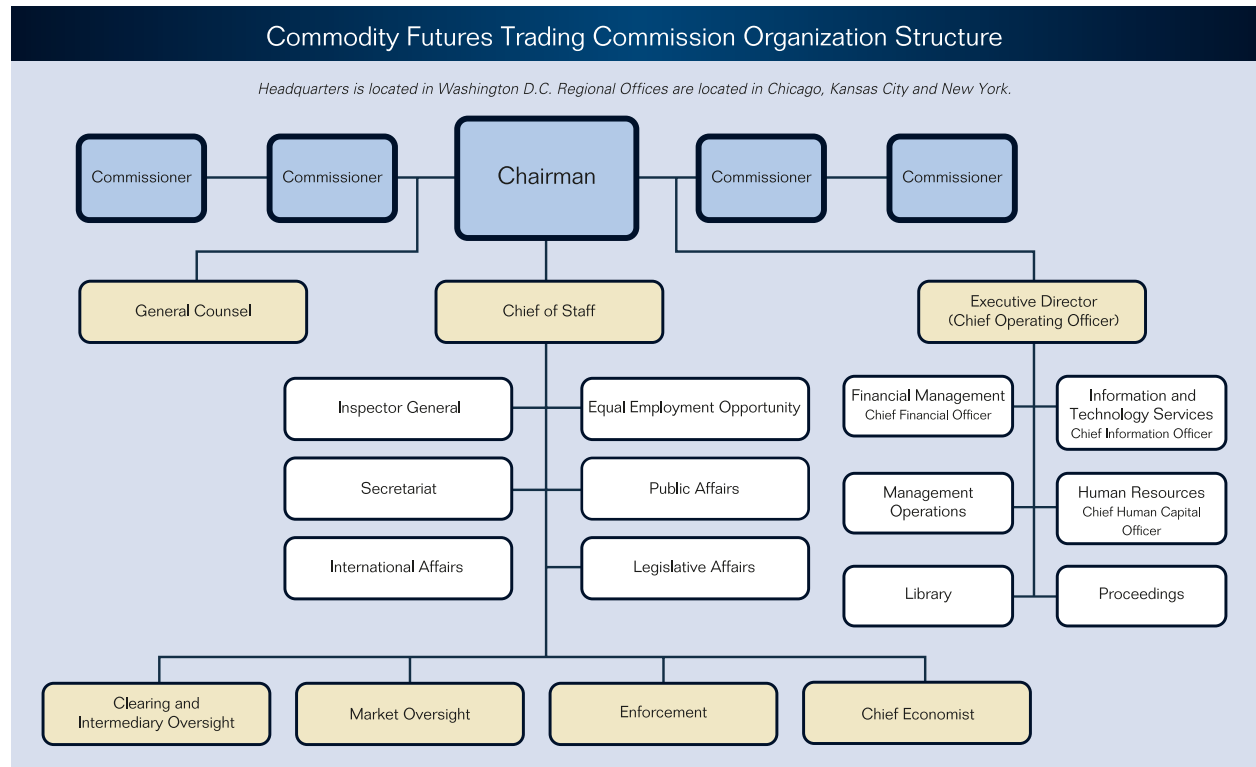
Auditors, risk analysts, and attorneys examine records and operations of futures exchanges, clearinghouses, and firms for compliance with the provisions of the CEA and the Commission's regulations, while futures trading investigators and specialists perform regulatory and compliance oversight to detect potential fraud, market manipulations, and trade practice violations. Risk analysts also perform analyses, which includes stress testing, to evaluate financial risk at the trader, firm, and clearinghouse levels.

Economists monitor trading activity and price relationships in futures markets to detect and deter price manipulation and other potential market disruptions and they monitor compliance with speculative position limits. Economists evaluate filings for new futures and option contracts and amendments to existing contracts to ensure they meet the Commission's regulatory standards. Economists also analyze the economic effect of various Commission and industry actions and events, and advise the Commission accordingly.

The CFTC is headquartered in Washington, D.C. Regional offices are located in Chicago, Kansas City, and New York.

Additional information about the Commission and its history can be obtained from the Commission's Office of Public Affairs or through its Web site, <http://www.cftc.gov>.

## Organization and Locations



## CFTC Programs

The Commission is charged with a significant responsibility to ensure the fair, open, and efficient functioning of futures markets. These regulatory responsibilities, expressed and measured through three strategic goals, are administered by the CFTC programs: Market Oversight; Clearing and Intermediary Oversight; and Enforcement. The fulfillment of the Commission's mission and the achievement of the strategic goals are tied to a foundation of sound management and organizational excellence expressed in the agency's fourth strategic goal.

### ■ Market Oversight

The Market Oversight program fosters markets that accurately reflect the forces of supply and demand for the underlying commodities and are free of disruptive activity. In order to achieve this goal, program staff, oversee trade execution facilities and perform market surveillance, market compliance, and market and product review functions.

### ■ Clearing and Intermediary Oversight

The Clearing and Intermediary Oversight program oversees the compliance activities of derivatives clearing organizations (DCOs), intermediaries, and the futures industry self-regulatory organizations (SROs), which include the U.S. commodity exchanges and National Futures Association (NFA). Program staff develop regulations concerning registration, fitness, financial adequacy, sales practices, protection of customer funds, clearance and settlement activities, cross-border transactions, systemic risk, and anti-money laundering programs, in addition to, policies for coordination with foreign market authorities and emergency procedures to address market-related events.

### ■ Enforcement

The Enforcement program investigates and prosecutes alleged violations of the CEA and Commission regulations. Violations may involve commodity futures or option trading on U.S. futures exchanges, or the improper marketing and sales of commodity futures products to the general public.

### ■ International Affairs

The Office of International Affairs (OIA) coordinates the Commission's non-enforcement related international activities; represents the Commission in international organizations, such as the International Organization of Securities Commissions (IOSCO); coordinates Commission policy as it relates to Treasury global initiatives; and provides technical assistance to foreign market authorities.

### ■ Chief Economist

The Chief Economist provides economic support and advice to the Commission, conducts research on policy issues facing the agency, and provides education and training for Commission staff.

### ■ General Counsel

The General Counsel serves the Commission as its legal advisor representing the Commission in appellate litigation and certain trial-level cases, including bankruptcy proceedings involving futures industry professionals, and advising the Commission on the application and interpretation of the CEA and other administrative statutes.

### ■ Proceedings

The Office of Proceedings manages the agency's reparations program, which provides an inexpensive, expeditious, fair, and impartial forum to handle customer complaints and resolve disputes between futures customers and commodity futures trading professionals. The Office of Proceedings also provides a forum for the adjudication of administrative enforcement cases brought by the Commission against persons or firms responsible for violating the CEA or Commission regulations.

### ■ Agency Direction

The Office of the Chairman and the Commissioners provide executive direction and leadership to the Commission, particularly on policies that implement and enforce the CEA and amendments to that Act, including the Commodity Futures Modernization Act of 2000 (CFMA). The Offices of the Chairman include:

Public Affairs, Legislative Affairs, the Secretariat, the Inspector General, and Equal Employment Opportunity.

#### ■ Administrative Management and Support

The Executive Director serves as the Chief Operating Officer (COO) directing the effective and efficient allocation and use of resources, and developing the management and administrative policy and programs of the Commission. The Offices of the Executive Director include: Human Resources, Financial Management, Information and Technology Services, Management Operations, and the Library.

## Evolving Mission and Responsibilities

Congress created the CFTC in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The Commission's mandate was renewed and/or expanded in 1978, 1982, 1986, 1992, and 1995. In December 2000, the Commission was reauthorized through FY 2005 with passage of the CFMA. The CFMA repealed the ban on futures contracts based on individual securities and narrow-based security indexes, and instituted a regulatory framework for such products to be administered jointly by the CFTC and the SEC. The legislation also placed bilateral, OTC derivatives transactions largely outside the CFTC's jurisdiction and addressed CFTC anti-fraud authority over retail, off-exchange foreign currency (forex) transactions.

In FY 2008, the Commission was reauthorized as part of that year's Food, Conservation, and Energy Act of 2008 (Farm Bill). The Farm Bill included other amendments to the CEA as well—primarily to increase the Commission's regulatory oversight role with respect to forex transactions and significant price discovery contracts (SPDCs) traded on electronic trading facilities known as exempt commercial markets (ECMs). The Commission has adopted a rule to implement the new statutory responsibilities for SPDCs and is conducting evaluations for ECM contracts consistent with those regulatory provisions.

Although Congress changed the Commission's approach to regulation over time, the Commission's mission remains the same. The CFTC continues to be responsible for fostering the economic vitality of the regulated futures

markets by encouraging their competitiveness and efficiency; ensuring their integrity; and protecting market participants against manipulation, abusive trading practices, and fraud. Through its oversight regulation, the CFTC enables the commodity futures and option markets to serve their vital function in the Nation's economy, providing a mechanism for price discovery and a means of offsetting price risks.

During the past two years, Congress and Federal financial regulators began to re-examine the financial regulatory structure. The recent economic stress has resulted in heightened congressional scrutiny of Federal financial regulation, which is expected to continue in the year ahead. The Commission continues to undertake its own evaluation of its regulatory structure. For example, to address concerns about the growth of nontraditional participants in the futures markets and concerns about excessive speculation, the Commission is evaluating whether to adopt speculative position limits for commodities with limited supplies, such as energy contracts. The Commission recently held a series of hearings on this subject.

## Keeping Pace with Change

The CFTC Mission Statement, Strategic Goals and their related outcome objectives and performance metrics, as well as its multi-year Strategic Plans, create a template that allows management to articulate priorities, measure results, and conduct long-range planning while ensuring the flexibility to adapt its program to address market and financial emergencies and new regulatory concerns.

In 2007, the Commission issued *Keeping Pace with Change*, its Strategic Plan for FY 2007 through FY 2012. With the 2007 Strategic Plan, the Commission adopted a fourth strategic goal that assesses and measures organizational and management excellence. Establishing this fourth strategic goal allows the Commission to establish and measure its progress in achieving outcome objectives and strategic goals in a broad performance and management framework, evaluating not only program performance but the overall performance and management of the organization.

The following table is an overview of the Commission's strategic mission, statement, strategic goals, and outcome objectives.



### Mission Statement

**T**HE 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.

#### **STRATEGIC GOAL ONE**

**Ensure the economic vitality of the commodity futures and option markets.**

##### OUTCOME OBJECTIVES

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.

#### **STRATEGIC GOAL TWO**

**Protect market users and the public.**

##### OUTCOME OBJECTIVES

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 CEA are handled effectively and expeditiously.

#### **STRATEGIC GOAL THREE**

**Ensure market integrity in order to foster open, competitive, and financially sound markets.**

##### OUTCOME OBJECTIVES

1. Clearing organizations and firms holding customer funds have sound financial practices.
2. Commodity futures and option markets are effectively self-regulated.
3. Markets are free of trade practice abuses.
4. Regulatory environment is responsive to evolving market conditions.

#### **STRATEGIC GOAL FOUR**

**Facilitate Commission performance through organizational and management excellence, efficient use of resources, and effective mission support.**

##### OUTCOME OBJECTIVES

1. Productive, technically competent, competitively compensated, and diverse workforce that takes into account current and future technical and professional needs of the Commission.
2. Modern and secure information system that reflects the strategic priorities of the Commission.
3. Organizational infrastructure that efficiently and effectively responds to and anticipates both the routine and emergency business needs of the Commission.
4. Financial resources are allocated, managed, and accounted for in accordance with the strategic priorities of the Commission.
5. Commission's mission is fulfilled and goals are achieved through sound management and organizational excellence provided by executive leadership.

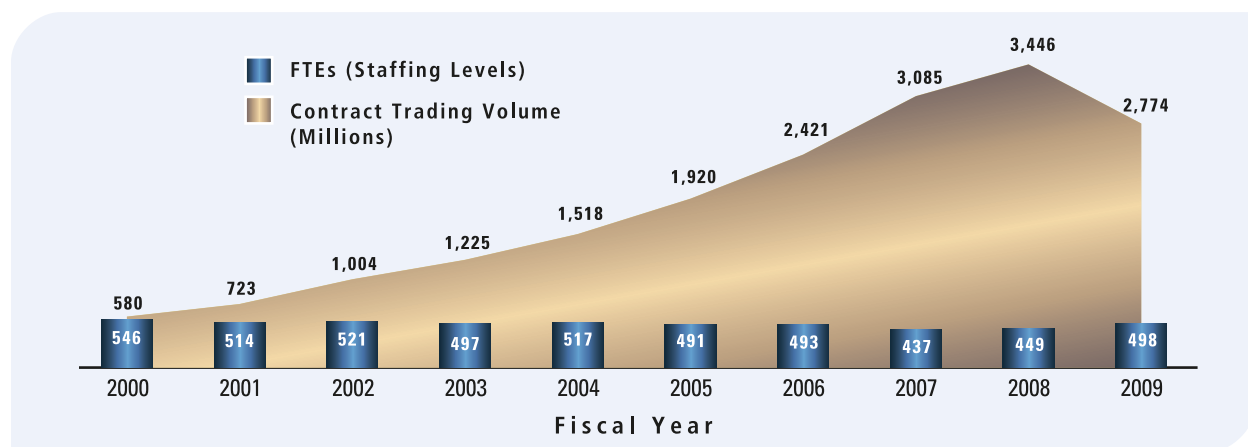
## CFTC and Industry Trends

In a marketplace driven by change, it may be helpful to look back at industry and CFTC trends over the past few years. The charts that follow reflect many of those changes affecting the CFTC:

- Industry growth versus staff growth;
- Growth in actively traded futures and option contracts;
- Enforcement actions to preserve market integrity and protection of market users;
- Number of registrants;
- Contract markets designated by the CFTC;
- Number of derivatives clearing organizations (DCOs) registered with the CFTC;
- Exempt commercial markets (ECMs);
- Exempt boards of trade (EBOTs); and
- Amount of customer funds held at futures commission merchants (FCMs).

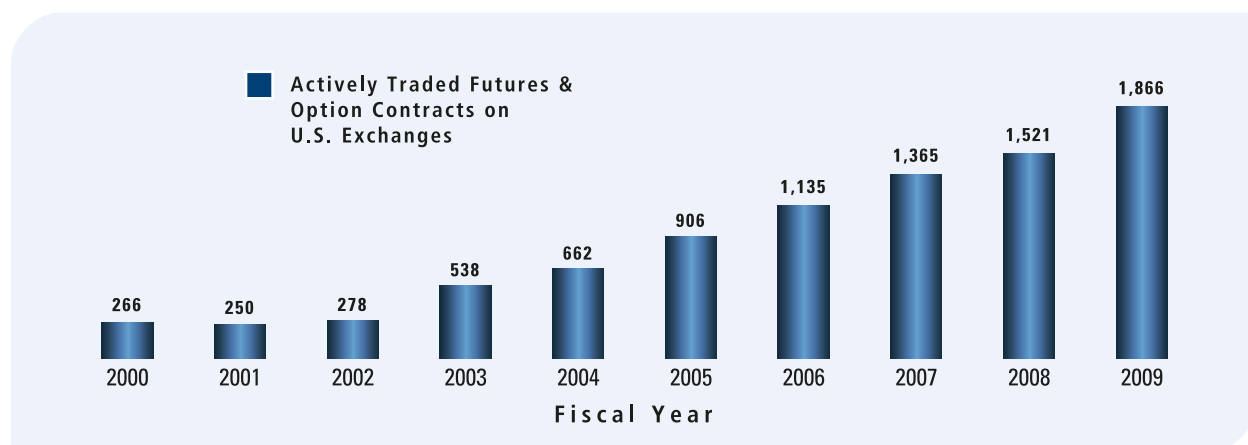
### Growth in Volume of Futures & Option Contracts Traded & CFTC Full-time Equivalents (FTEs), 2000–2009

Trading volume has increased almost five-fold in the last decade (2000–2009), while staffing levels at the Commission have trended downward.<sup>1</sup>



### Actively Traded Futures & Option Contracts, 2000–2009

The number of actively traded contracts on U.S. exchanges has increased seven-fold in the last decade (2000–2009).



<sup>1</sup> Volume started decreasing at the end of FY 2008 and has continued at about a 20 percent decline for FY 2009.

## Enforcement Actions to Preserve Market Integrity and Protection of Market Users

### *Manipulation, Attempted Manipulation, and False Reporting*

The CFTC uses every tool at its disposal to detect and deter illegitimate market forces. Through enforcement action, the Commission preserves market integrity and protects market users, demonstrating that the Commission has significant authority and intends to use it.

For example, CFTC enforcement efforts in the energy arena from December 2001 through September 2009 resulted in 47 enforcement actions, charging 80 companies and individuals and assessing approximately \$458 million in penalties.

Actions Taken Since December 2001 in Energy Markets	Energy Markets
Number of Cases Filed or Enforcement Actions	47
Number of Entities/Persons Charged	80
Number of Dollars in Civil Monetary Penalties Assessed	\$458,525,000

### *Commodity Pools, Hedge Funds, Commodity Pool Operators (CPOs), and Commodity Trading Advisors (CTAs)*

Investors continue to fall prey to unscrupulous CPOs and CTAs, including CPOs and CTAs operating hedge funds. The majority of the Commission's pool/hedge fund fraud cases are brought against unregistered CPOs and/or CTAs. These cases tend to involve Ponzi schemes or outright misappropriation, rather than legitimate hedge fund operations. From October 2000 through September 2009, the Commission filed a total of 95 enforcement actions alleging misconduct in connection with commodity pools and hedge funds.

Actions Taken Since October 2000	Pools/Hedge Funds
Number of Cases Filed or Enforcement Actions	95
Cases/Actions Charging Commission Registrants	33
Number of Dollars in Penalties Assessed	\$618,666,128

### *Forex Fraud*

The Commission vigorously uses its enforcement authority to combat the problem of forex fraud. Since passage of the CFMA in December 2000 through September 2009, the Commission, on behalf of more than 26,000 customers, has filed 114 cases. Those efforts have thus far resulted in approximately \$476 million in restitution and \$576 million in civil monetary penalties.

Actions Taken Since Passage of the CFMA in December 2000	Foreign Currency Markets
Number of Cases Filed or Enforcement Actions	114
Number of Entities/Persons Charged	437
Number of Customers Affected	26,865
Number of Dollars in Civil Monetary Penalties Assessed	\$576,119,521
Number of Dollars in Restitution Assessed	\$476,599,896

## Number of Registrants

Companies and individuals who handle customer funds, solicit or accept orders, or give trading advice must apply for CFTC registration through the NFA, an SRO with delegated oversight authority from the Commission.

The Commission regulates the activities of over 66,000 registrants:

Registration Category <sup>2</sup>	Number as of September 30, 2009
Associated Persons (APs) (Salespersons)	51,921
Commodity Pool Operators (CPOs)	1,277
Commodity Trading Advisors (CTAs)	2,568
Floor Brokers (FBs)	7,114
Floor Traders (FTs)	1,447
Futures Commission Merchants (FCMs)	166 <sup>3</sup>
Introducing Brokers (IBs)	1,694 <sup>4</sup>
<b>TOTAL</b>	<b>66,187</b>

## Contract Markets Designated by the CFTC, 2004–2009

The following designated contract markets (DCMs) are boards of trade or exchanges that meet the CFTC criteria and CFTC Core Principles for trading futures or options by both institutional and retail participants. Currently, 14 DCMs meet CFTC criteria and CFTC Core Principles for trading futures and options.

DCMs <sup>5</sup>	2004	2005	2006	2007	2008	2009
CBOT	●	●	●	●	●	●
CCFE	●	●	●	●	●	●
CFE	●	●	●	●	●	●
CME	●	●	●	●	●	●
CSCE	●					
EPFE	●					
ELX						●
ICE US (NYBOT)	●	●	●	●	●	●
KCBT	●	●	●	●	●	●
ME	●					
MGE	●	●	●	●	●	●
Nadex (HedgeStreet)	●	●	●	●	●	●
NFX (PBOT)	●	●	●	●	●	●
NQLX	●	●				
NYCE	●					
NYFE	●					

(continued on next page)

<sup>2</sup> A person who is registered in more than one registration category is counted in each category.

<sup>3</sup> Includes 15 notice-registered FCMs.

<sup>4</sup> Includes 44 notice-registered IBs.

<sup>5</sup> Refer to the CFTC Glossary in the Appendix for full names of organizations.

DCMs <sup>5</sup> (continued)	2004	2005	2006	2007	2008	2009
NYMEX (incl. COMEX)	●	●	●	●	●	●
NYSE LIFFE					●	●
OCX	●	●	●	●	●	●
USFE	●	●	●	●	●	●
<b>TOTAL</b>	<b>18</b>	<b>13</b>	<b>12</b>	<b>12</b>	<b>13</b>	<b>14</b>

## Number of Derivatives Clearing Organizations Registered with the CFTC, 2004–2009

Clearinghouses that provide clearing services for CFTC-regulated exchanges must register as DCOs. Currently, 12 DCOs are registered with the Commission.

DCOs <sup>6</sup>	2004	2005	2006	2007	2008	2009
AE Clearinghouse		●	●	●		
CBOT	●	●	●	●	●	●
CCorp	●	●	●	●	●	●
CME	●	●	●	●	●	●
ICE Clear US	●	●	●	●	●	●
IDC						●
KCBT	●	●	●	●	●	●
LCH	●	●	●	●	●	●
MGE	●	●	●	●	●	●
NADEX	●	●	●	●	●	●
NGX						●
NYMEX	●	●	●	●	●	●
OCC	●	●	●	●	●	●
<b>TOTAL</b>	<b>10</b>	<b>11</b>	<b>11</b>	<b>11</b>	<b>10</b>	<b>12</b>

## Exempt Commercial Markets, 2004–2009

Electronic trading facilities providing for the execution of principal-to-principal transactions between eligible commercial entities in exempt commodities may operate as ECMs, as set forth under the CEA and the Commission's regulations. An ECM is subject to anti-fraud and anti-manipulation provisions and a requirement that, if performing a significant price discovery function, must provide pricing information to the public. A facility that elects to operate as an ECM must give notice to the Commission and comply with certain information, record-keeping, and other requirements. An ECM is prohibited from claiming that the facility is registered with, or recognized, designated, licensed or approved by, the Commission. A total of 31 ECMs have filed notices with the Commission. In FY 2009, 27 ECMs were in business for at least part of the year; four however, withdrew their ECM notifications during the fiscal year.

<sup>5</sup> Refer to the CFTC Glossary in the Appendix for full names of organizations.

<sup>6</sup> Refer to the CFTC Glossary in the Appendix for full names of organizations.

<b>ECMs<sup>7</sup></b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Agora-X						● <sup>8</sup>
CCX	●	●	●	●	●	●
CDXchange	●	●	●			
ChemConnect			●	●		
DFox						● <sup>8</sup>
EnergyCross.com						●
EOXLIVE					●	●
FCRM						●
Flett				●	●	● <sup>8</sup>
GFI				●	●	●
HSE	●	●	●	●	●	●
ICAP			●	●	●	●
ICAPture			●	●	●	●
ICAP Shipping			●	●	●	●
ICE	●	●	●	●	●	●
IMAREX	●	●	●	●	●	●
LiquidityPort				●	●	●
NGX	●	●	●	●	●	●
Nodal				●	●	●
NTP			●	●	●	●
OILX						●
OPEX	●	●	●	●	●	● <sup>8</sup>
Parity					●	●
SL	●	●	●	●		
TCX		●	●	●	●	●
TFSWeather	●	●	●	●	●	●
tpENERGYTRADE						● <sup>8</sup>
Tradition Coal.Com					●	●
Trading Optx						●
TS	●	●	●			
WORLDPULP	●	●	●	●	●	●
<b>TOTAL</b>	<b>11</b>	<b>12</b>	<b>17</b>	<b>19</b>	<b>20</b>	<b>27</b>

<sup>7</sup> Refer to the CFTC Glossary in the Appendix for full names of organizations.

<sup>8</sup> These ECMs withdrew their ECM notifications during FY 2009.

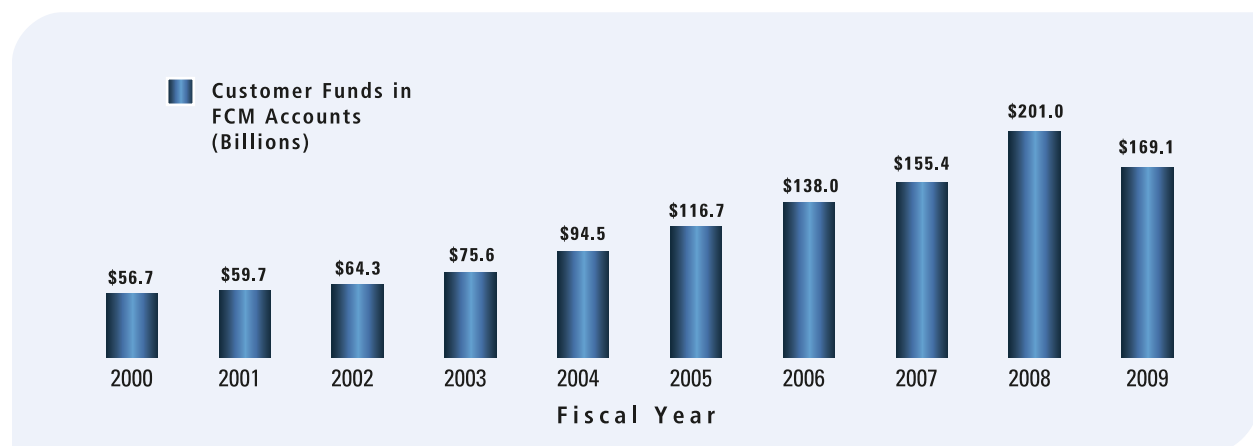
## Exempt Boards of Trade, 2004–2009

Transactions by eligible contract participants in selected commodities may be conducted on an EBOT as set forth under the CEA and the Commission's regulations. EBOTs are subject only to the CEA's anti-fraud and anti-manipulation provisions. An EBOT is prohibited from claiming that the facility is registered with, or recognized, designated, licensed, or approved by the Commission. Also, if it is performing a price discovery function, the EBOT must provide certain pricing information to the public. To date, 15 EBOTs filed notices with the Commission. In FY 2009, 10 EBOTs were in business for at least part of the year; one however, withdrew its EBOT notification during the fiscal year.

EBOTs <sup>9</sup>	2004	2005	2006	2007	2008	2009
AE	●	●	●	●	●	● <sup>10</sup>
CME AM		●	●	●	●	●
Derivatives Bridge					●	●
GFI ForexMatch				●	●	●
Intrade		●	●	●	●	●
IRESE					●	●
LiquidityPort				●	●	
Longitude				●	●	●
MATCHBOXX ATS			●			
Storm			●	●	●	●
Swapstream			●	●	●	●
TACE						●
WBOT	●	●	●			
WXL	●	●	●			
Yellow Jacket				●		
<b>TOTAL</b>	<b>3</b>	<b>5</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>10</b>

## Customer Funds Held in Futures Commission Merchant Accounts, 2000–2009

The amount of customer funds held at FCMs decreased in the past year after having nearly quadrupled since 2000.



<sup>9</sup> Refer to the CFTC Glossary in the Appendix for full names of organizations.

<sup>10</sup> This EBOT withdrew its EBOT notification during FY 2009.



## PERFORMANCE HIGHLIGHTS

Growth continued in the futures industry, as the CFTC continued to meet the challenges of regulating the increasingly global and complex commodities markets.

### FY 2009 Highlights

- Adopted new regulations, pursuant to new authority granted by the Farm Bill, to extend the Commission's oversight to previously unregulated SPDCs, in particular energy contracts, and in addition, conducted three open hearings on speculative trading in the energy markets to assess the feasibility of adopting energy contract position limits.
- Enhanced market transparency of the publicly-available COT<sup>11</sup> reports by disaggregating Commercial and Noncommercial positions into four categories and by

including position data of foreign contracts linked to the settlement price of domestic contracts and contracts determined to perform a significant price discovery function.

- The CFTC and SEC issued a joint harmonization report<sup>12</sup> to bring greater consistency, where appropriate, to the agencies' regulatory approaches. The report includes 20 recommendations to enhance enforcement powers, strengthen market and intermediary oversight, and facilitate operational coordination.
- Filed 50 Enforcement actions and opened 251 investigations of potential violations of the Act and Commission regulations. Obtained \$183 million in restitution and disgorgement and \$97 million in civil monetary penalties in previously filed or existing cases.

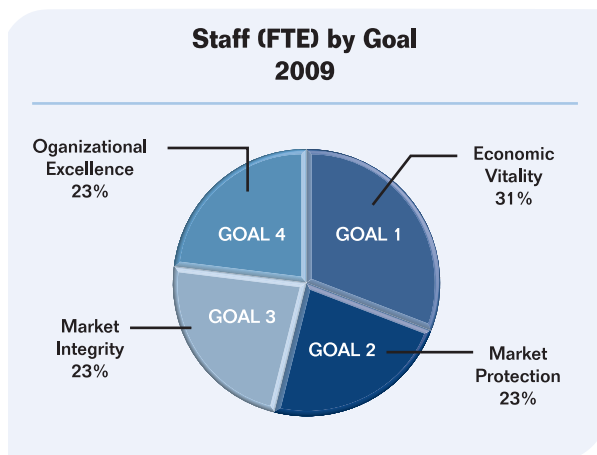
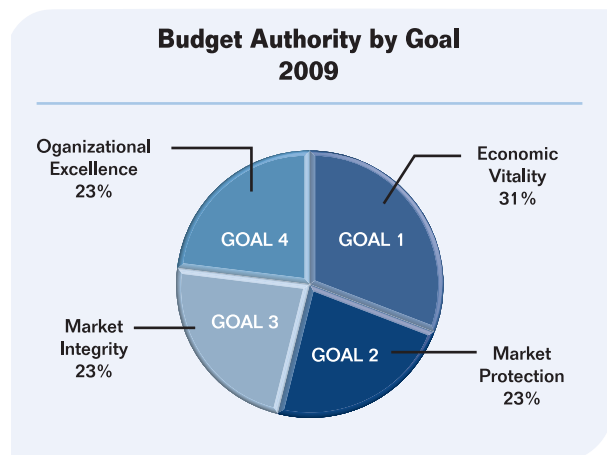
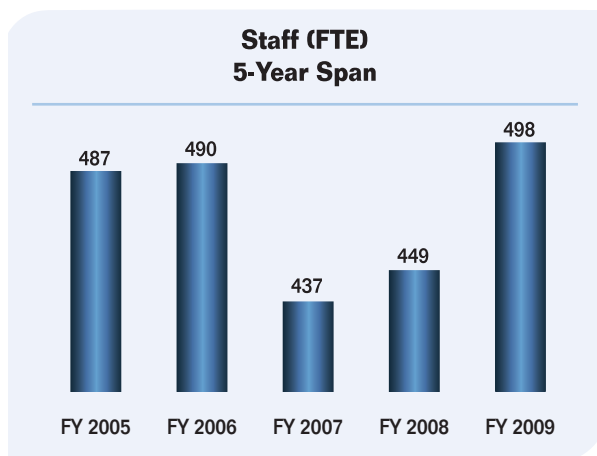
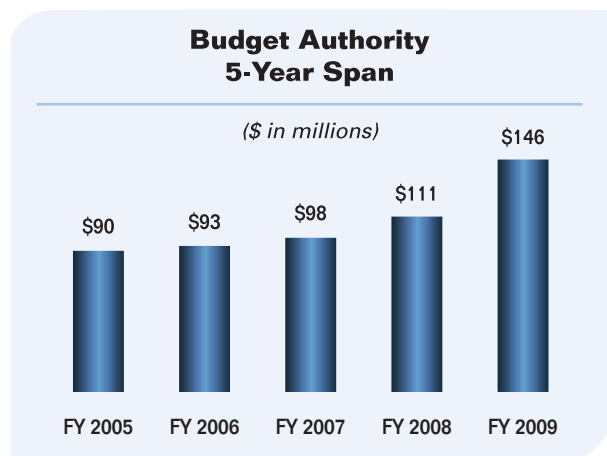
<sup>11</sup> The COT report is an important tool for market participants and the public to track the positions of important groups of market participants. The COT report is available at <http://www.CFTC.gov>.

<sup>12</sup> The report is available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/opacftc-secfinaljointreport101.pdf>



### FY 2009 Resources at a Glance

In 2009, Congress invested \$146 million in the CFTC to ensure that the Nation's futures markets operate without disruption. The agency focused these increases on critical technology modernization and hiring and retaining highly-trained staff with mission-critical skills.



## Program Evaluations

The Inspector General (IG) conducted a FY 2009 Assessment addressing the Commission's Most Serious Management Issues. The IG's 2009 Assessment is located in the Other Accompanying Information section of this report.

In FY 2009, two external evaluations involving the CFTC were conducted by the U.S. Government Accountability Office (GAO):

- **Issues Involving the Use of the Futures Markets to Invest in Commodity Indexes, GAO-09-285R, January 30, 2009**

GAO conducted this study at the request of the House Committee on Agriculture. In summary, until mid-2008, prices for a broad range of physical commodities, from crude oil to crops such as wheat, had increased dramatically for several years—leading to concerns and debate over the possible causes. The GAO was asked to address the following: 1) whether the Federal law governing futures trading prohibits investors from using the futures markets to gain an exposure to commodity indexes; 2) whether the Federal law governing pension plans prohibits them from investing in commodities through the futures markets; 3) how margins have affected the ability of investors to obtain exposures to commodity indexes; and 4) how position limits have affected the ability of investors to obtain exposures to commodity indexes.

GAO's findings and conclusion are available on its Web site at <http://www.gao.gov>.

- **Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts, GAO-09-227, February 12, 2009**

GAO conducted this study of the Bank Secrecy Act (BSA) enforcement program administered by the Financial Crimes Enforcement Network (FinCEN),

a bureau of Treasury, in which the CFTC has been delegated compliance examination authority. The goal of the study was to identify opportunities that exist to improve FinCEN's interagency coordination with the Federal banking regulators, SROs, and state agencies.

Two recommendations were made involving the CFTC. The first recommendation was that CFTC should direct the appropriate staff to consider developing or using an existing process to share and discuss regularly information on BSA/ anti-money laundering examination procedures and general trends in a nonpublic setting. In response to the GAO's recommendation, CFTC has been included in Federal Financial Institutions Examination Council (FFIEC) working group meetings with the Federal banking regulators and the FinCEN. CFTC now also participates in a number of other interagency groups, including the Data Management Council and the Bank Fraud Working Group, which CFTC believes allows for significant information sharing, including information regarding examination procedures.

The second recommendation was that CFTC should consider including the SROs that conduct BSA examinations in interagency meetings. This recommendation was not implemented. SROs have not been included in interagency meetings because concerns have been raised about whether the involvement of the private sector SROs would cause the meetings to fall under the Federal Advisory Committee Act. Moreover, discussions of specific suspicious activity report (SAR) details have occurred in past interagency meetings that would cause the SROs to have access to SARs that was not envisioned in the BSA and other applicable laws.

GAO's findings and conclusion are available on its Web site at <http://www.gao.gov>.

# INTRODUCTION TO STRATEGIC GOAL ONE

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

## Performance Results for Goal One

Monitoring market activity represents one of the ways the Commission seeks to protect the economic function 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.

### ■ Market Volume and New Products

In preparing the estimates of expected growth in futures trading activity for FY 2009, the Commission considers historical growth in activity over several prior years. However, in 2008, the United States and world economies suffered a severe downturn that had a material effect on futures trading on the U.S. regulated exchanges. This financial crisis and its effect on futures trading was

not anticipated when the estimates of future growth were prepared. In particular, the demise of several large financial firms and the consolidation of others into a reduced number of entities meant that a smaller number of financial firms participated in the futures markets, which significantly reduced the volume of futures contracts traded. With decreased demand for products traded on the exchanges, overall trading volume dipped to 2.8 billion in FY 2009, as shown in the figure, *Growth in Volume of Futures & Option Contracts Traded & CFTC FTEs*, on page 14.

Even though overall trading volume decreased in FY 2009, the percentage of new products offered on the exchanges, in FY 2009, increased above projections as shown in the figure, *Actively Traded Futures and Option Contracts*, on page 14. This growth in the number of new products occurred despite the severe downturn in the economy. In response to the financial crisis and to accommodate firms' hedging needs, exchanges remained innovative and rolled out many new contracts, most of which most were either slight variations of existing contracts or were attempts to duplicate existing products traded in the OTC market. The increased number of new products, above earlier projections, was not foreseeable.

The following table summarizes the FY 2009 investment and overall performance results for Strategic Goal One. In addition, FY 2009 performance results are compared against the FY 2009 targets and FY 2008 actual results.

## STRATEGIC GOAL ONE

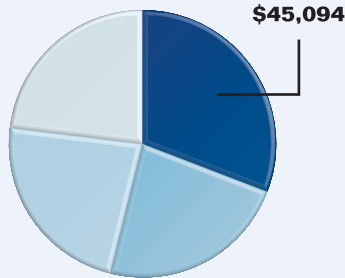
Ensure the economic vitality of the commodity futures and option markets.

### ANNUAL PERFORMANCE GOAL ONE

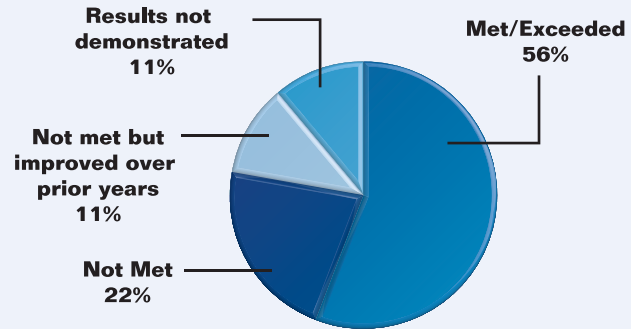
No price manipulation or other disruptive activities that would cause loss of confidence or negatively affect price discovery or risk shifting.

#### Budget Authority

(\$ in millions)



#### Performance Results



Outcome Objectives and Performance Measures	2009 Performance Results		
	Met/Not Met	Change (+/-) from 2009 Target	Change (+/-) from 2008 Actual
1.1 Markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.			
1.1.1. Percentage growth in market volume.	Not Met	-43.5%	-19.5%
1.1.2. Percentage of novel or innovative market proposals or requests for CFTC action addressed within six months to accommodate new approaches to, or the expansion in, derivatives trading, enhance the price discovery process, or increase available risk management tools.	Met	0%	-25%
1.1.3. Percentage increase in number of products traded.	Exceeded	+12.7%	+11.3%
1.1.4.a. Percentage of new exchange applications completed within expedited review period.	Results Not Demonstrated	-75%	-100%
1.1.4.b. Percentage of new clearinghouse organization applications completed within expedited review period.	Results Not Demonstrated	-100%	-100%
1.1.5. Percentage of new contract certification reviews completed within three months to identify and correct deficiencies in contract terms that make contracts susceptible to manipulation.	Not Met	-11%	-11%
1.1.6. Percentage of rule change certification reviews completed within three months, to identify and correct deficiencies in exchange rules that make contracts susceptible to manipulation or trading abuses or result in violations of law.	Not Met	-13%	-13%
1.2 Markets that are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality.			
1.2.1. Percentage of derivatives clearing organization applications demonstrating compliance with CFTC Core Principles.	Met	0%	+100%
1.2.2. Ratio of markets surveilled per economist.	Exceeded	+2	0%
1.2.3. Percentage of contract expirations without manipulation.	Met	0%	0%

# INTRODUCTION TO STRATEGIC GOAL TWO

The explosive growth in the futures industry provides many benefits to the U.S. economy, but the risk of fraud and manipulation is always present. The trend toward electronic trading platforms and the expanding complexity of trading instruments have challenged the Commission to reconfigure its ability to identify, investigate, and take action against parties involved in violating applicable laws and regulations. If evidence of criminal activity is found, matters are referred to state or Federal authorities for criminal prosecution.

Over the years, the Commission has taken action in a number of cases involving manipulation or attempted manipulation of commodity prices. A variety of administrative sanctions, such as bans on futures trading, civil monetary penalties, and restitution orders, are available to the Commission. The Commission may also seek Federal court injunctions, asset freezes, and orders to disgorge ill-gotten gains.

## Performance Results for Goal Two

An increasing segment of the population has money at risk in the futures markets, either directly or indirectly through pension funds, or ownership of shares in publicly held companies that participate in the markets.

Commission staff work to protect market users and the public by promoting compliance with, and deterring violations of, the CEA and Commission regulations. The Division of Enforcement (DOE) investigates potential misconduct, brings administrative and civil injunctive enforcement actions to prosecute such misconduct, seeks sanctions against wrongdoers, and publicly reports the outcome of those enforcement actions. The majority of the work in this area involves investigating and prosecuting manipulation, attempted manipulation, and fraud. The Commission's enforcement actions send a message to

industry professionals and participants about the kinds of conduct that will not be tolerated.

### ■ Enforcement Investigation and Litigation

In FY 2009, the Commission filed 50 enforcement actions and DOE staff opened 251 investigations of potential violations of the Act and Commission regulations. Through these and existing cases previously filed by the Commission, monetary penalties imposed during FY 2009 included more than \$183 million in restitution and disgorgement, and \$97 million in civil monetary penalties.

Energy markets and the financial downturn have resulted in increased investigative and litigation activity. In FY 2008, the Commission made an unprecedented announcement that it would conduct a nationwide crude oil investigation into practices surrounding the purchase, transportation, storage, and trading of crude oil and related derivative contracts. This investigation continues and has been extremely resource intensive. The financial downturn has revealed a number of fraudulent schemes, including Ponzi schemes that could stay afloat only during periods of rising asset values. DOE staff have been actively investigating and prosecuting these schemes. The increased DOE activity to address potential energy market misconduct and ongoing fraud has created a challenge for DOE to ensure it effectively and efficiently investigates potential violations, including staff-intensive manipulation investigations. During FY 2009, unprecedented market activity caused the DOE to shift resources to investigations. DOE continues to perform at a high level while striving to meet its goals.

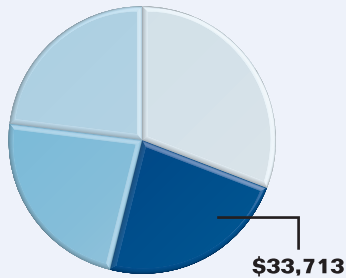
The following table summarizes the FY 2009 investment and overall performance results for Strategic Goal Two. In addition, FY 2009 performance results are compared against the FY 2009 targets and FY 2008 actual results.

**STRATEGIC GOAL TWO**  
Protect market users and the public.

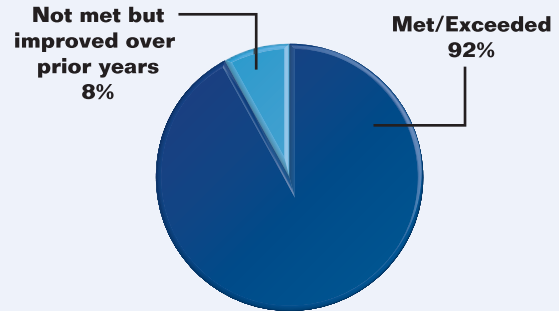
**ANNUAL PERFORMANCE GOAL TWO**  
To have an effective and efficient market surveillance program.

**Budget Authority**

(\$ in millions)



**Performance Results**



Outcome Objectives and Performance Measures	2009 Performance Results		
	Met/Not Met	Change (+/-) from 2009 Target	Change (+/-) from 2008 Actual
<b>2.1 Violations of Federal commodities laws are detected and prevented.</b>			
2.1.1. Number of enforcement investigations opened during the fiscal year.	Exceeded	+109%	+36%
2.1.2. Number of enforcement cases filed during the fiscal year.	Met	0	+10%
2.1.3. 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).	Met	0%	+1%
2.1.4. Cases filed by other criminal and civil law enforcement authorities during the fiscal year that included cooperative assistance from the Commission.	Exceeded	+20%	+13%
<b>2.2 Commodity professionals meet high standards.</b>			
2.2.1. Percentage of self-regulatory organizations that comply with CFTC Core Principles.	Met	0%	0%
2.2.2. Percentage of derivatives clearing organizations that comply with CFTC Core Principles.	Met	0%	0%
2.2.3. Percentage of professionals compliant with standards regarding testing, licensing, and ethics training.	Met	0%	0%
2.2.4. Percentage of self-regulatory organizations that comply with requirement to enforce their rules.	Met	0%	0%
2.2.5. Percentage of total requests for guidance and advice receiving CFTC response.	Met	0%	+15%

(continued on next page)

<b>STRATEGIC GOAL TWO (continued)</b>			
<b>Outcome Objectives and Performance Measures</b>	<b>2009 Performance Results</b>		
	<b>Met/Not Met</b>	<b>Change (+/-) from 2009 Target</b>	<b>Change (+/-) from 2008 Actual</b>
2.3 Customer complaints against persons or firms registered under the Act are handled effectively and expeditiously.			
2.3.1.a Percentage of filed complaints resolved within one year of the filing date for Voluntary Proceedings.	Not Met	-17%	+16%
2.3.1.b Percentage of filed complaints resolved within one year and six months of the filing date for Summary Proceedings.	Exceeded	+20%	+23%
2.3.1.c Percentage of filed complaints resolved within one year and six months of the filing date for Formal Proceedings.	Exceeded	+3%	+20%
2.3.2 Percentage of appeals resolved within six months.	Exceeded	+30%	-16%

# INTRODUCTION TO STRATEGIC GOAL THREE

The Commission focuses on issues of market integrity, seeking to protect: 1) the economic integrity of the markets so that markets may operate free from manipulation; 2) the financial integrity of the markets so that the insolvency of a single participant does not become a systemic problem affecting other market participants; and 3) the operational integrity of the markets so that transactions are executed fairly and proper disclosures to existing and prospective customers are made.

## Performance Results for Goal Three

In fostering open, competitive, and financially sound markets, the Commission's two main priorities are to avoid disruptions to the system for clearing and settling contract obligations and to protect the funds that customers entrust to FCMs. Clearing organizations and FCMs are the backbone of the clearing and settlement system; together, they protect against the possibility that the financial difficulties of one trader may become a systemic problem for other traders.

Commission staff members also work with the SROs and NFA to monitor closely the financial condition of FCMs through review of various monthly and annual financial reports and notices of reportable events. The SROs and NFA also conduct audits and daily financial surveillance of their respective member FCMs, reviewing and assessing each FCM's exposure to losses from large customer positions that it carries. As an oversight regulator, the Commission not only reviews the audit and financial surveillance

work of the SROs and NFA, but also monitors the financial strength of FCMs directly, as appropriate. In addition, the Commission periodically reviews clearing organization procedures for monitoring risks and protecting customer funds.

### ■ Protecting Customer Funds

Staff members monitor the operations of registrants in possession of customer funds through a number of financial oversight and risk surveillance activities. One of the oversight activities involves the review of regulatory notices that FCMs are required to file with the Commission. These notices disclose predefined reportable events that may indicate a financial issue with the firm (*e.g.*, under-segregation or undercapitalization), which warrant further staff analysis. Staff also review monthly financial reports submitted by FCMs, review annual reports of FCMs certified by independent public accountants, and conduct on-site examinations of FCMs. In FY 2009, staff processed monthly and annual financial reports filed by approximately 140 FCMs, and performed examinations and on-site reviews of several FCMs to assess their compliance with the Commission's financial requirements, including the Commission's minimum capital and customer fund protection requirements.

The financial and risk surveillance activities performed by staff continue to take on greater importance due to the ongoing market volatility and its impact on market intermediaries and the clearing system. During FY 2009,



staff engaged in frequent contact with traders, firms, and clearinghouses to monitor the potential for, and instances of, market volatility, market disruptions, or emergencies that had the potential to impact: 1) the proper capitalization of firms; 2) the proper segregation of customer funds; and 3) the ability of financial intermediaries to make payments to a DCO in a timely manner. Staff also evaluated systemic risk.

As a result of these and other ongoing financial oversight and risk surveillance activities in FY 2009, there were no losses of regulated customer funds as a result of an FCM failure or the inability of customers to transfer their funds from a failing FCM to a financially sound FCM. The performance result indicates that the program's objectives of ensuring sound financial practices of clearing organizations and firms holding customer funds, and the protection of customer funds are being met.

#### ■ Oversight of SROs and DCOs

As a key aspect of assuring effective self-regulation, the Commission oversees futures industry SROs, which include exchanges and NFA, to ensure that they fulfill their responsibilities for monitoring and ensuring the financial integrity of market intermediaries and for protecting customer funds. Commission staff oversee, review and report to the Commission on SRO and DCO programs for monitoring and enforcing compliance with applicable provisions of the Act and Commission regulations, including the CFTC Core Principles, and with the SRO's or DCO's rules. The Commission employs a risk-based approach to its examination cycles of SROs and DCOs, *i.e.*, both the scheduling and scope of the risk-based reviews are based on an analysis of the underlying risks to which an institution is exposed and the controls that it has in place to address those risks.

In FY 2009, the agency committed substantial staff resources to the examination of selected SROs. Division of Clearing and Intermediary Oversight (DCIO) staff completed two reviews to assess the financial surveillance programs of SROs and a review to assess an SRO's arbitration program. In one examination DCIO staff focused on an SRO's staffing levels, including the appropriate training of SRO staff, and the SRO's review of FCM financial statements and regulatory notices filed by FCMs. The second examination focused on the SRO's staffing levels, review of financial statements and regulatory notices, and FCM examination program. The staff's review of the arbitration program focused on the SRO's program for the resolution of disputes involving commodity futures and option contracts among public customers and market intermediaries. Staff are in the process of conducting a third review of an SRO's financial surveillance program that will not be completed until FY 2010 and are finalizing a review of an SRO's registration program that also will be completed in FY 2010.

In addition to reviews of SROs, DCIO staff completed three reviews of DCOs, one of them a joint review with the Division of Market Oversight (DMO), to assess the DCOs' programs for compliance with certain CFTC Core Principles. Based on its reviews, staff determined that the SROs' and DCOs' programs were meeting the applicable requirements of the Act and Commission regulations. The performance results indicate that the Commission's oversight program objectives of ensuring the financial integrity of market intermediaries and the protection of customer funds are being met.

The following table summarizes the FY 2009 investment and overall performance results for Strategic Goal Three. In addition, FY 2009 performance results are compared against the FY 2009 targets and FY 2008 actual results.

## STRATEGIC GOAL THREE

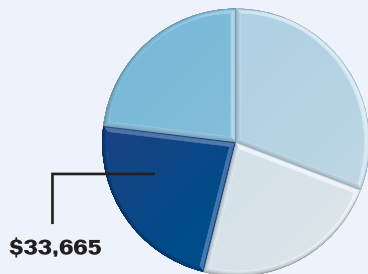
Ensure market integrity in order to foster open, competitive, and financially sound markets.

### ANNUAL PERFORMANCE GOAL THREE

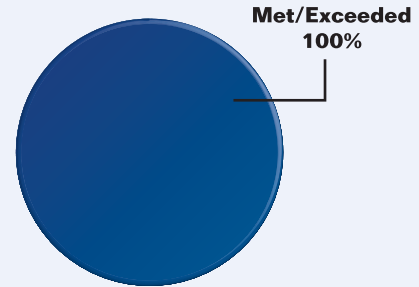
No loss of customer funds as a result of firms' failure to adhere to regulations.  
No customers prevented from transferring funds from failing firms to sound firms.

#### Budget Authority

(\$ in millions)



#### Performance Results



Outcome Objectives and Performance Measures	2009 Performance Results		
	Met/Not Met	Change (+/-) from 2009 Target	Change (+/-) from 2008 Actual
<b>3.1 Clearing organizations and firms holding customer funds have sound financial practices.</b>			
3.1.1. Lost funds:			
a) Number of customers who lost funds.	Met	0	0
b) Amount of funds lost.	Met	\$0	\$0
3.1.2. Number of rulemakings to ensure market integrity and financially sound markets.	Exceeded	+1%	+4%
3.1.3. Percentage of clearing organizations that comply with requirement to enforce their rules.	Met	0%	0%
<b>3.2 Commodity futures and option markets are effectively self-regulated.</b>			
3.2.1. Percentage of intermediaries who meet risk-based capital requirements.	Met	0%	0%
3.2.2. Percentage of self-regulatory organizations that comply with requirement to enforce their rules.	Met	0%	0%
<b>3.3 Markets are free of trade practice abuses.</b>			
3.3.1. Percentage of exchanges deemed to have adequate systems for detecting trade practice abuses.	Met	0%	0%
3.3.2. Percentage of exchanges that comply with requirement to enforce their rules.	Met	0%	0%
<b>3.4 Regulatory environment is flexible and responsive to evolving market conditions.</b>			
3.4.1. Percentage of CFMA Section 126(b) objectives addressed.	Met	0%	0%
3.4.2. Number of rulemakings, studies, interpretations, and statements of guidance to ensure market integrity and exchanges' compliance with regulatory requirements.	Exceeded	+27	+22
3.4.3. 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.	Met	0%	0%
3.4.4. Percentage of total requests for guidance and advice receiving CFTC response.	Exceeded	+6%	+18%

# INTRODUCTION TO STRATEGIC GOAL FOUR

The Commission's ability to meet its strategic program goals depends on excellent management of its human capital, technology, and financial resources. Management excellence means hiring, retaining, and developing a professionally competent and driven workforce with the technical skills and resources to achieve mission success. In addition, management excellence provides the executive leadership required to accomplish the agency's strategic goals and to continue agency function under emergency condition.

## Performance Results of Goal Four

Skilled management of human capital, technology, and financial resources provides the foundation for achievement of all strategic goals. Resources are always limited, and the process of allocating and managing those resources in a way that provides the best return to the public are critical.

### ■ Human Capital Management

The management of human capital has been challenging over the last several years. At the beginning of FY 2009, the agency had experienced years of reduced appropriations, exacerbated by a wave of retirements in FY 2006. By the end of FY 2007, the agency's staff level fell to 437 FTE, the lowest level it has ever experienced in spite of the enormous growth of the regulated markets and additional regulatory responsibilities passed by Congress. Fortunately, Congress provided the agency with funding to hire in FY 2009, but with the promise that the agency would, in a period of six months, increase to a staff of at least 580 by the end of the fiscal year. To accomplish this goal, the agency reviewed its internal hiring procedures and made improvements to streamline processes, trained all

managers on the hiring process, and worked with managers to use all available recruitment strategies to attract the candidates who can best support the agency's mission. The Commission exceeded its Congressional promise of a staff of 580, ending FY 2009 at a level of 583. The Commission is also in the process of improving its on-boarding process, ensuring that employees have a smooth transition to their new job and that they receive the information and training they need to succeed.

### ■ Facilities Management

To accommodate this growth in staff, the agency has begun a long-range space plan to expand available seats in Chicago and Washington D.C. and to upgrade the audiovisual tools that will allow the agency to communicate effectively across regions. Anticipated growth in the coming years will continue to challenge the agency's management of its space.

### ■ Financial Management

Management of financial resources is also critical to the success of the agency in meeting its strategic goals. In FY 2009, Congress appropriated significant funds to allow the agency to upgrade agency technology and improve agency services. The Commission was able to obligate all funds successfully by the end of the fiscal year, and it received a clean audit report from its external auditors.

### ■ Information Technology Management

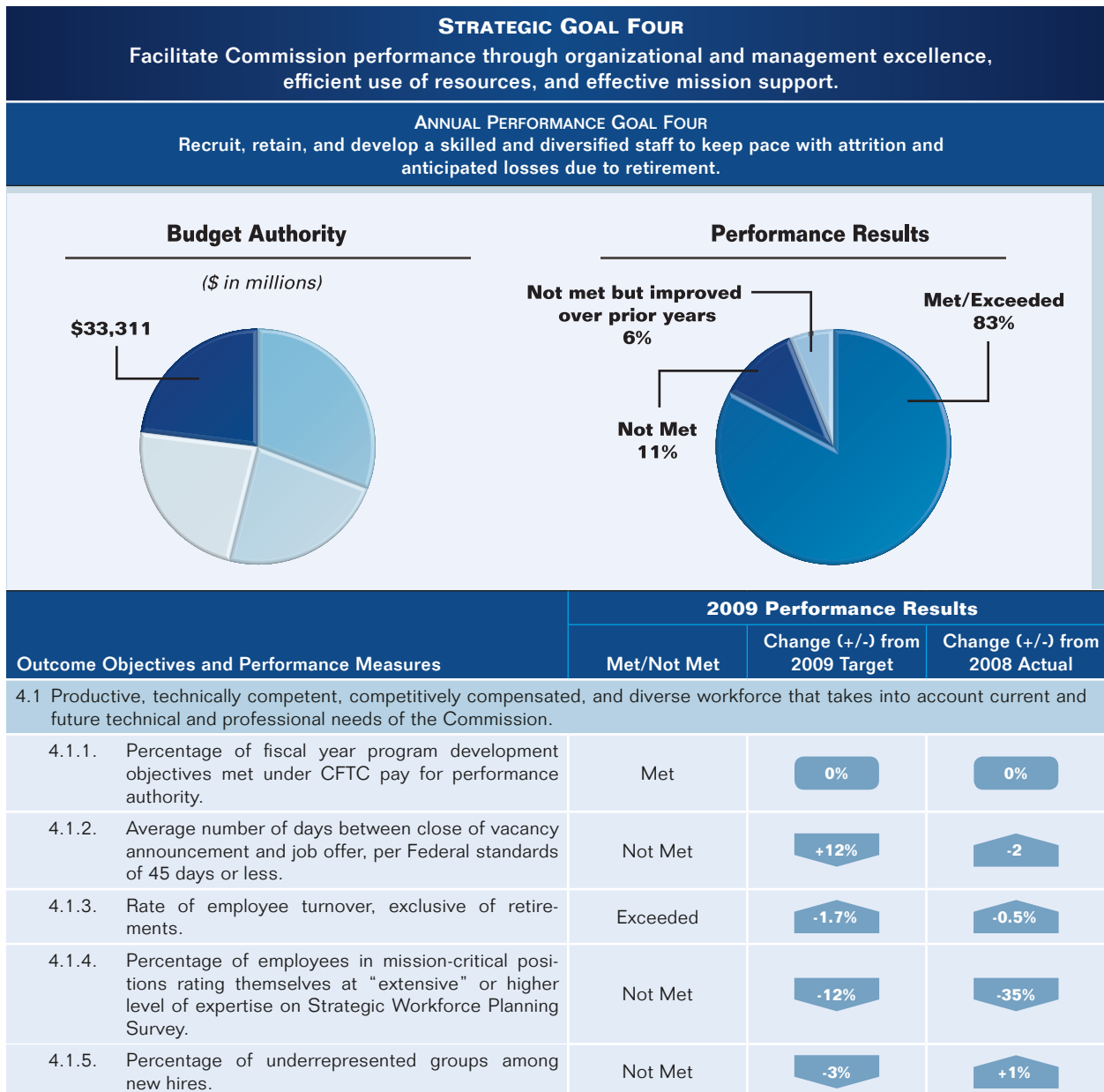
Effective performance in the technology area is the highest priority items under Goal Four. Technology investments are effectively aligned with the strategic plan and are supporting performance improvement across all goals.

■ **Continuity of Operations Readiness**

The Commission continued to ensure its readiness to deploy to its alternate worksite, and tested this capability through its participation in Eagle Horizon 09, a national level exercise coordinated by Federal Emergency Management Agency (FEMA). The Commission also enhanced its readiness by establishing a Small Agency Council Continuity of Operations Committee, establishing collaborative continuity teams with its financial regulatory partners on the President’s Working Group, and the agencies that support the

National Essential Function on the continuity of the Nation’s financial structure. In addition, the agency upgraded its remote access capabilities and implemented a regularly recurring telework program to ensure that employees have the capability to work from home or other locations as needed.

The following table summarizes the FY 2009 investment and overall performance results for Strategic Goal Four. In addition, FY 2009 performance results are compared against the FY 2009 targets and FY 2008 actual results.



(continued on next page)

STRATEGIC GOAL FOUR (continued)			
Outcome Objectives and Performance Measures	2009 Performance Results		
	Met/Not Met	Change (+/-) from 2009 Target	Change (+/-) from 2008 Actual
4.2 Modern and secure information system that reflects the strategic priorities of the Commission.			
4.2.1. Percentage of CFTC information technology resources directly tied to Commission resource priorities as stated in the Strategic Plan.	Met	0%	0%
4.2.2. Percentage of major information technology investments having undergone an investment review within the last three years.	Met	0%	0%
4.2.3. Percentage of Customer Support Center inquiries resolved within established performance metrics.	Exceeded	+20%	+16%
4.2.4. Percentage of employees with network availability.	Met	0%	0%
4.2.5. Percentage of employees who require remote network availability that have it.	Met	0%	0%
4.2.6. Percentage of major systems and networks certified and accredited in accordance with National Institute of Standards and Technology (NIST) guidance.	Met	0%	0%
4.2.7. Percentage of information technology E-Government initiatives on target for compliance with implementation schedule.	Met	0%	0%
4.2.8. Percentage of network users who have completed annual security and privacy training.	Exceeded	+1%	0%
4.3 Organizational infrastructure that efficiently and effectively responds to and anticipates both the routine and emergency business needs of the Commission.			
4.3.1. Number of hours required to deploy staff and begin mission essential functions at the Continuity of Operations Plan (COOP) site.	Met	0	-12
4.4 Financial resources are allocated, managed, and accounted for in accordance with the strategic priorities of the Commission.			
4.4.1. Audit opinion of the Commission's annual financial statements as reported by the CFTC's external auditors.	Met	No Change	No Change
4.4.2. Number of material internal control weaknesses reported in the Performance and Accountability Report.	Met	0	0
4.4.3. Number of non-compliance disclosures in the audit report.	Met	0	0
4.5 Commission's mission is fulfilled and goals are achieved through sound management and organizational excellence provided by executive leadership.			
4.5.1. Percentage of 18 Strategic Plan priorities that are on track to completion by FY 2012.	Met	0%	-75%



## FINANCIAL HIGHLIGHTS

The following chart is an overview of the Commission's financial position, preceding a discussion of the agency's financial highlights for FY 2009.

	2009	2008
<b>CONDENSED BALANCE SHEET DATA</b>		
Fund Balance with Treasury	\$ 43,961,950	\$ 27,666,831
Property, Equipment, and Software, Net	10,346,721	2,810,441
Accounts Receivable	18,207	11,534
Prepayments	558,081	461,552
Other (Custodial)	1,703,220	1,721,526
<b>TOTAL ASSETS</b>	<b>\$ 56,588,179</b>	<b>\$ 32,671,884</b>
FECA Liabilities	\$ (207,532)	\$ (218,888)
Payroll, Benefits and Annual Leave	(11,529,246)	(8,029,377)
Deposit Fund Liabilities	(142,279)	—
Other Deferred Lease Liabilities	(3,226,161)	(3,294,324)
Accounts Payable	(4,081,180)	(2,496,958)
Custodial Liabilities	(1,703,220)	(1,721,526)
Other	(7,513)	(9,957)
<b>Total Liabilities</b>	<b>(20,897,131)</b>	<b>(15,771,030)</b>
Cumulative Results of Operations	(491,751)	5,224,895
Unexpended Appropriations	(35,199,297)	(22,125,749)
<b>Total Net Position</b>	<b>(35,691,048)</b>	<b>(16,900,854)</b>
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>\$ (56,588,179)</b>	<b>\$ (32,671,884)</b>
<b>CONDENSED STATEMENTS OF NET COST</b>		
Total Cost	\$ 131,435,739	\$ 105,583,743
Net Revenue	(101,965)	(67,479)
<b>TOTAL NET COST OF OPERATIONS</b>	<b>\$ 131,333,774</b>	<b>\$ 105,516,264</b>
<b>NET COST BY STRATEGIC GOAL</b>		
Goal One - Economic Vitality	\$ 40,713,470	\$ 31,654,879
Goal Two - Market User and Public	30,206,768	25,323,903
Goal Three - Industry	30,206,768	24,268,741
Goal Four - Organizational Excellence	30,206,768	24,268,741
	<b>\$ 131,333,774</b>	<b>\$ 105,516,264</b>

## Financial Discussion and Analysis

The CFTC prepares annual financial statements in accordance with GAAP for Federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance.

Management recognizes the need for performance and accountability reporting, and fully supports assessments of risk factors that can have an impact on its ability to do so. Improved reporting enables managers to be accountable and supports the concepts of the Government Performance and Results Act (GPRA), which requires the Commission to: 1) establish a strategic plan with programmatic goals and objectives; 2) develop appropriate measurement indicators; and 3) measure performance in achieving those goals.

The financial summary as shown on the preceding page highlights changes in financial position between September 30, 2009 and September 30, 2008. This overview is supplemented with brief descriptions of the nature of each required financial statement and its relevance. Certain significant balances or conditions featured in the graphic presentation are explained in these sections to help clarify their relationship to Commission operations. Readers are encouraged to gain a deeper understanding by reviewing the Commission's financial statements and notes to the accompanying audit report presented in the Financial Section of this report.

## Understanding the Financial Statements

The CFTC presents financial statements and notes in the format required for the current year by OMB Circular A-136, *Financial Reporting Requirements*, which is revised annually by OMB in coordination with the U.S. Chief Financial Officers Council. The CFTC's current year and prior year financial statements and notes are presented in a comparative format.

### Balance Sheet

The Balance Sheet presents, as of a specific point in time, the economic value of assets and liabilities retained or managed by the Commission. The difference between assets and liabilities represents the net position of the Commission.

For the year ended September 30, 2009, the Balance Sheet reflects total assets of \$56.6 million. This reflects a 73 percent increase from FY 2008. The Commission's Fund Balance with Treasury was \$16.3 million more in FY 2009 than it was at the end of FY 2008. A majority of the increase was attributable to obligated but unexpended contract funding for technology modernization and space renovations. For example, major upgrades in market surveillance systems are underway and market watch rooms are being implemented in Chicago and Washington, D.C. Moreover, budget increases received in FY 2009 and anticipated in FY 2010 allows the CFTC to increase staffing by approximately 200 new positions. Accordingly, existing space in Chicago and Washington, D.C. is being renovated to increase seating capacity and addition space has been acquired. Construction is scheduled to begin in FY 2010.

In FY 2009, the net book value of general property, plant, and equipment increased by \$7.5 million. This is attributed to increases of \$4.6 million, \$2.3 million, and \$600 thousand for equipment, software and leasehold improvements, respectively.

The CFTC litigates against defendants for alleged violations of the CEA and Commission regulations. Violators may be subject to a variety of sanctions including civil monetary penalties, injunctive orders, trading and registration bars and suspensions, and orders to pay disgorgement and restitution to customers. When collectible custodial receivables (non-entity assets) are high, the civil monetary sanctions that have been assessed and levied against businesses or individuals for violations of law or regulations dominate the balance sheet.

As should be expected from a small regulatory agency; payroll, benefits, and annual leave make up the majority of CFTC liabilities.

### Statement of Net Cost

This statement is designed to present the components of the Commission's net cost of operations. Net cost is the gross cost incurred less any revenues earned from Commission activities. The Statement of Net Cost is categorized by the Commission's strategic goals.

The Commission experienced a 24.5 percent increase in the total net cost of operations during FY 2009. This is consistent with the 30.3 percent budget increase the Commission received for its appropriation.

Strategic Goal One, which tracks activities related to market oversight, continues to require a significant share of Commission resources at 31 percent of net cost of operations in FY 2009. The \$40.7 million reflects a continuation of management's effort to address market volatility.

Strategic Goal Two is representative of efforts to protect market users and the public. In FY 2009, the net cost of operations for this goal was \$30.2 million or 23 percent. The funding for this goal is primarily to support DOE with new and ongoing investigations in response to market activity. Investigations into crude oil and related derivative contracts, and suspected Ponzi schemes have been extremely resource intensive.

Strategic Goal Three is representative of efforts to ensure market integrity. In FY 2009, the net cost of operations for this goal was \$30.2 million or 23 percent. Productivity improvements continued to be achieved through the use of automated audit and reporting tools. Commission staff completed two reviews of financial surveillance programs of SROs, and a review of an SRO's arbitration program. In addition, staff completed three compliance reviews of DCOs' programs.

Strategic Goal Four is representative of efforts to achieve organizational excellence and accountability. Included in this goal are the efforts of the Chairman, Commissioners, and related staff to ensure more transparency in the commodity markets, address globalization, and lay the groundwork for the future. Additionally, these costs are reflective of the planning and execution of human capital, financial management, and technology initiatives. In FY 2009, the net cost of operations for this goal was \$30.2 million or 23 percent.

## Statement of Budgetary Resources

This statement provides information about the provision of budgetary resources and its status as of the end of the year. Information in this statement is consistent with budget execution information and the information reported in the *Budget of the U.S. Government, FY 2009*.

The \$146.0 million appropriation level received in FY 2009 represented a 30.3 percent increase for the Commission. This permitted the Commission to continue to fund benefits and compensation, lease expenses, printing, services to support systems users, telecommunications, operations, and maintenance of IT equipment. In FY 2009, gross outlays were in line with the gross costs of operations due to increased hiring and technology spending.

## Statement of Custodial Activity

This statement provides information about the sources and disposition of non-exchange revenues. Non-exchange revenue at the CFTC is primarily represented by fines, penalties, and forfeitures assessed and levied against businesses and individuals for violations of the CEA or Commission regulations. Other non-exchange revenues include registration, filing, appeal fees, and general receipts. The Statement of Custodial Activity reflects total non-exchange revenue collected (cash collections) in the amount of \$17.9 million and a transfer of the collections to Treasury in the same amount. This amount represents a decrease of \$123.9 million from FY 2008, during which the Commission collected \$125 million assessed against British Petroleum (BP) Products North America.

Historical experience has indicated that a high percentage of custodial receivables prove uncollectible. The methodology used to estimate the allowance for uncollectible amounts related to custodial accounts is that custodial receivables are considered 100 percent uncollectible unless deemed otherwise. An allowance for uncollectible accounts has been established and included in the accounts receivable on the Balance Sheet. The allowance is based on past experience in the collection of accounts receivables and an analysis of outstanding balances. Accounts are re-estimated quarterly based on account reviews and a determination that changes to the net realizable value are needed.





# MANAGEMENT ASSURANCES

## Management Overview

The CFTC is committed to management excellence and recognizes the importance of strong financial systems and internal controls to ensure accountability, integrity, and reliability. This operating philosophy has permitted the Commission to make significant progress in documenting and testing its internal controls over financial reporting for next year, as prescribed in OMB Circular A-123, *Management's Responsibility for Internal Control*. The graph below depicts all five components of the internal control process that must be present in an organization to ensure an effective internal control process.

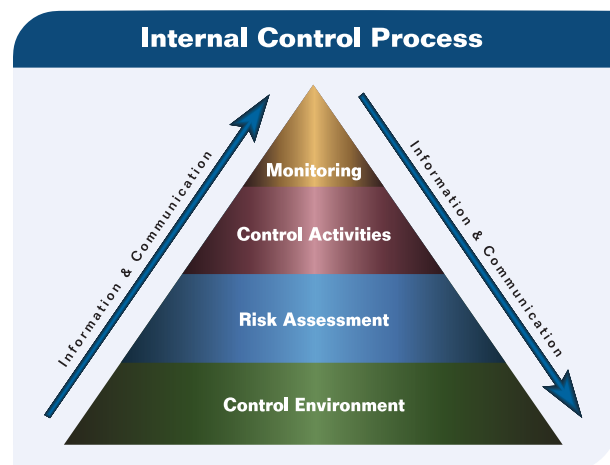
**Control Environment** is the commitment to encourage the highest level of integrity and personal and professional standards, and promotes internal control through leadership philosophy and operation style.

**Risk Assessment** is the identification and analysis of risks associated with business processes, financial reporting, technology systems, and controls and legal compliance in the pursuit of agency goals and objectives.

**Control Activities** are the actions supported by management policies and procedures to address risk, *e.g.*, performance reviews, status of funds reporting, and asset management reviews.

**Monitoring** is the assessment of internal control performance to ensure the internal control processes are properly executed and effective.

**Information and Communication** ensures the agency's control environment, risks, control activities, and performance results are communicated throughout the agency.



The Commission relies on its performance management and internal control framework to:

- Ensure that its divisions and mission support offices achieve their intended results efficiently and effectively; and
- Ensure the maintenance and use of reliable, complete, and timely data for decision-making at all levels.

The Commission strongly believes that the rapid implementation of audit recommendations is essential to improving its operations. Integration of Commission strategic, budget, and performance data permits management to make individual assurance statements with confidence. Moreover, data-driven reporting provides the foundation for Commission staff to monitor and improve its control environment.

## Statement of Assurances

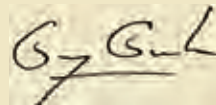
The Statement of Assurance is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*. The assurance is for internal controls over operational effectiveness (we do the right things to accomplish our mission) and operational efficiency (we do things right).

### Statement of Assurance

*"CFTC management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The CFTC conducted its assessment of the internal control over effectiveness and efficiency of operations, and compliance with applicable laws and regulations, in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the CFTC can provide reasonable assurance that its internal control over operations, and compliance with applicable laws and regulations, as of September 30, 2009 was operating effectively and no material weaknesses were found in the design or operation of the internal controls.*

*The CFTC also conducts reviews of its financial management systems in accordance with OMB Circular A-127, Financial Management Systems. Based on the results of these reviews, the CFTC can provide reasonable assurance that its financial management systems are in compliance with applicable provisions of FMFIA as of September 30, 2009.*

*In addition, the CFTC conducted its assessment of the effectiveness of internal control over financial reporting, which includes safeguarding of assets and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a material effect on the financial statements, in accordance with the requirements of Appendix A of OMB Circular A-123. Based on the results of this evaluation, the CFTC can provide reasonable assurance that its internal control over financial reporting as of June 30, 2009 was operating effectively and no material weaknesses were found in the design or operation of the internal control over financial reporting".*



Gary Gensler  
Chairman

During FY 2009, in accordance with FMFIA, and using the guidelines of OMB, the Commission reviewed key components of its management and internal control system.

The objectives of the Commission's internal controls are to provide reasonable assurance that:

- Obligations and costs are in compliance with applicable laws;
- Assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

- Revenues and expenditures applicable to Commission operations are properly recorded and accounted for to permit the preparation of accounts and reliable to financial and statistical reports, and to maintain accountability over assets; and
- All programs are efficiently and effectively carried out in accordance with applicable laws and management policy.

The efficiency of the Commission's operations is evaluated using information obtained from reviews conducted by GAO and the Office of Inspector General (OIG), specifically requested studies, or observations of daily operations.

These reviews ensure that the Commission's systems and controls comply with the standards established by FMFIA. Moreover, managers throughout the Commission are responsible for ensuring that effective controls are implemented in their areas of responsibility. Individual assurance statements from division and office heads serve as a primary basis for the Chairman's assurance that management controls are adequate. The assurance statements are based upon each office's evaluation of progress made in correcting any previously reported problems, as well as new problems identified by the OIG, GAO, other management reports, and the management environment within each office. The items presented below are illustrative of the work performed during FY 2009:

- Pay and benefits assessment based on the authority of Section 10702 of the Public Law 107-171, Farm Security and Rural Invest Act of 2002 (FSRIA);
- Remediation of management letter matters identified in the FY 2008 audit of the agency's financial statements and related internal controls;
- Management control reviews conducted with the express purpose of assessing internal controls;
- Management control reviews conducted with the express purpose of assessing compliance with applicable laws, regulations, government-wide policies, and laws identified by OMB in Memorandum M-09-33 Technical Amendments to OMB Bulletin No. 07-04 Audit Requirements for Federal Financial Statements;
- Information security as required by the Federal Information Security Management Act (FISMA);
- Implementation of the CFTC's Property Inventory Management System to maintain an inventory and monitor the agency's accountable assets; and
- U.S. Department of Transportation (DOT), Report on Controls Placed in Operation and Tests of Operating Effectiveness, General, Application, and Operations Controls Related to the Enterprise Service Center, conducted in compliance with the American Institute of Certified Public Accountants' Statement on Auditing Standards (SAS) 70.

## FMFIA Section 2, Management Control

The Commission has no declared material weakness under FMFIA for FY 2009 and FY 2008 in the area of financial reporting that hinders preparation of timely and accurate financial statements.

## FMFIA Section 4, Financial Management Systems.

The Commission declared no systems nonconformance under FMFIA during FY 2009 and FY 2008. The independent auditors' reports for FY 2009 and FY 2008 disclosed no instances of noncompliance or other matters that were required to be reported under Government Audit Standards and OMB Bulletin 07-04, *Audit Standards for Federal Financial Statements*.

## 2009 Management Initiatives

In the *CFTC's 2008 Performance and Accountability Report*, the Inspector General identified two of the agency's most serious management challenges in its 2008 Assessment of the Commission. Due to an increasingly rapid move towards highly sophisticated electronic markets, and especially, in light of the recent economic events in the financial system the Commission recognizes the consequence of operating without next generation surveillance systems and new staff competencies and skill sets. In 2009, the Commission took strategic action in addressing these two high priority issues as described below:

### Modernization of Electronic Market Surveillance:

The Commission is committed to further developing its Trade Surveillance System (TSS). TSS includes new database technologies as well as integrated commercial software products that when fully deployed will allow staff to keep pace with the ever-changing industry in an adaptive and responsive manner. When fully developed and implemented, TSS will provide CFTC staff with greatly enhanced access to trade data and the tools to analyze that data.

As part of this effort, the Office of Information Technology Services (OITS) and the DMO are executing a multi-year plan. Together, they have modernized the computer environment that processes trade level data and awarded a contract to Actimize. Actimize delivered a wash trading model and data analysis tool in the last quarter of 2008 and staff are developing business solutions for additional models. As part of this effort, the Commission awarded contracts to two vendors to supplement and support the current CFTC TSS development and implementation efforts. The contractors will work directly with business users and CFTC technical staff to develop business requirement documents, technical specifications, project plans, testing plans, and other project artifacts used to support the CFTC's Trade Practice Surveillance Program.

The Commission is actively working with all of the exchanges to ensure standardized data submission in the Financial Information Exchange Mark-up Language (FIXML). All exchanges will be submitting trade data in FIXML by mid-2010. Currently, the Commission is receiving trade data for CME and CBOT in FIXML and is in the process of working with other exchanges to receive their trade data in FIXML.

As part of its effort to modernize its electronic surveillance capabilities, the Commission issued an Advanced Notice of Proposed Rulemaking to collect account ownership and control information for all trading accounts from the exchanges (passed on from firms) on a regular basis. Once the Commission adopts a final rule and is collecting the information, the ownership and control data will be incorporated into TSS and Integrated Surveillance System (ISS), the Commission's market surveillance large trader database.

Expenditures to develop a state-of-the-art, sophisticated trade surveillance system directly support CFTC's responsibility to ensure market integrity in order to foster open, competitive, and financial sound markets. Upgrades to TSS will allow staff to better detect novel and complex abusive practices in today's high-speed, high-volume global trading environment. Moreover, TSS will fill a vacuum in inter-market surveillance that only the Commission can address.

## Efficient Acquisition and Integration of Skilled Human Capital

During FY 2009, the long-standing Commission focus on strategic human resource initiatives yielded notable advances in both program development and operational success. The Commission met its ambitious hiring commitments while instituting numerous new programs to enhance its ability to attract, retain, and develop employees. Key to this effort is the governance committee of senior managers that draws on frequent employee input to develop programs that will support long-term mission goals with knowledgeable, diverse, and productive human capital. This transparent, participative process helps assure that employees value and understand each human resource management initiative. The goal is a workforce that reacts and adapts quickly in terms of size, skills, and composition to meet changes in the industry, technology and/or statutory or regulatory developments. The governance process has contributed to annual successes in the development and implementation of a comprehensive pay and benefits program mandated by FSRIA. Due to this process of employee involvement, the Commission has matched its statutory compensation benchmark in ways that employees accept and in ways that recognize employee accountability for results. For example, the CFTC is in its second full year of measuring performance under a merit pay system to foster a performance culture. By basing compensation on a performance management system that addressed employee interest in greater two-way communication about goals and results, the Commission has advanced its ability to set and reach mission goals.

This process results in the engagement of all employees and managers in the continuous improvement in the agency's capacity to manage its human capital strategically. Several important programmatic and operational advances demonstrated the success of this approach during FY 2009. In addition to completing the second annual merit pay cycle in July, the agency brought the benefits portion of its total compensation to the level at the statutory benchmark agencies. These benefits changes were designed based on employee input to the effect that the total package needed to accommodate individual needs to the extent possible.

In response, CFTC increased the agency health insurance premium contribution from 72-75 percent to a full 85 percent on July 19 and initiated an annual Life Cycle payment (\$400 in 2009) in September that reimburses employee expenses related to health and wellness.

The Office of Human Resources (OHR) also completed its first comprehensive Professional Development and Succession Management Program policy document, to better support effective use by employees and managers of the many online and on-the-job knowledge management resources and opportunities available at CFTC. Most importantly, the total impact of these efforts to support agency programs and mission is clearly demonstrated by the fact CFTC met its goals to hire new and replacement employees on time and with hiring managers commenting on the excellent quality of the candidates.

By publicly committing in this manner to a serious, ongoing strategic management of human capital initiative, the agency is improving its ability to: 1) plan for anticipated change in workforce composition; 2) target and recruit employees to fill critical skill deficiencies; 3) support employee development; 4) identify and justify staff resources needed to perform statutory mandates; and 5) implement the Title V-exempt CT pay plan envisioned by FSRIA.

In FY 2009, OHR helped build agency capacity to meet this commitment through several operational improvements. These included a review of its business processes that identified areas for improvement that streamlined hiring,

including providing training to hiring officials and obtaining their input. OHR assured that the agency was aware of and used all available flexibilities to attract applications and assure acceptance of offers from top candidates, such as paid advertising, varied appointment authorities, recruitment bonuses, and salaries above the minimum of the grade for superior qualifications. Senior managers supported this targeting of recruitment in the areas of greatest mission need by developing detailed business cases for their FTE requests, which describe how each position would support priority mission-critical functions. OHR then worked with selecting officials to further review precise position requirements and recruitment criteria for each approved vacancy, to help assure assembly of the best possible candidate pool to meet the exact mission support needs. The result of these operational improvements was on-time completion of the FY 2009 hiring program.

Next steps in this process include completion of the ongoing review of the agency's position classification program, to assure it adequately describes and compensates the competencies, including supervisory and executive-level skills, needed in each position in order to meet its mission. The CFTC is also preparing an improved process to orient new hires to the agency and their job responsibilities, to better support their rapid contribution to program results. These efforts will continue building agency capacity to acquire, integrate, and engage the human capital essential to meeting the goals of the CFTC strategic plan.



## FORWARD LOOKING – FUTURE BUSINESS TRENDS AND EVENTS

The futures industry has undergone enormous growth and change during the last 20 years—in both the products that are traded and the platforms on which they are traded. As the Commission looks ahead, it expects that technology, globalization, and innovation will continue to drive growth in the markets it regulates. As a result of the recent financial crises, Congress is examining the existing regulatory structures of the financial services sector. Legislative movement toward strengthening regulatory oversight and bringing OTC markets into a regulated environment presents the potential for the Commission to acquire significant new responsibilities with attendant demands on its financial and human resources. Similarly, as innovative products cut across regulators' traditional jurisdictions and pose difficult questions regarding who should be responsible for oversight, the Commission will need to devote resources to the harmonization of its regulations with those of other regulators, such as the SEC.

In FY 2006, the Commission experienced a wave of retirements, losing many experienced staff. The Commission has, since then, struggled to operate at the level needed to do the job required by statute. The Commission has repeatedly found itself making difficult choices about how to use its limited resources to fulfill its statutory mission. During FY 2008 and FY 2009, the Commission was able for the first time in several years, to begin rebuilding its staff. The Commission needs to continue to increase

staffing levels to counter attrition and to have staff necessary to effectively oversee today's ever growing and more complex markets.

As noted in the discussion of the net cost of operations, the Commission attempts to balance its investment in four strategic goals, each focusing on vital areas of regulatory responsibility. To continue to be an effective regulator, the Commission will need to place greater reliance on risk management. It will also need to continue to leverage systems and data maintained by other Federal agencies and, where possible, by SROs. The Commission will need to confront the jurisdictional challenges created by innovation and the expansion of futures and option markets on a worldwide basis. These challenges, coupled with a wide array of new surveillance issues, are expected to significantly change the way the Commission uses and allocates resources across its performance goals.

### Technology

- Technology makes it possible for market participants to trade globally 24 hours a day on a multitude of newly designed platforms. As the markets continue to change and grow, the Commission must evolve to meet new information collection and analysis needs. Electronic trading, in particular, will require the development of staff skills to oversee technologically driven markets and self-regulatory systems.

- The Commission will need to upgrade its own technology and infrastructure in order to deter manipulation attempts and other disruptions to the integrity of the markets the Commission regulates.
- Electronic trading, combined with the increase in the number of trading platforms and contracts, will require CFTC to increase its processing and storage capacity and improve computational performance. For example, to improve data quality, the CFTC will collect transactional trade data using FIXML, a worldwide standard. In addition, the agency will continue to implement the new TSS<sup>13</sup>. TSS enhances the staff's ability to effectively detect a range of trade practice violations in a rapidly changing electronic trading environment by performing sophisticated pattern recognition and data mining. TSS will also provide Commission staff with enhanced access to a range of exchange-provided data, allowing staff to generate ad hoc data requests and investigations more quickly.
- The Commission will also begin an information governance effort, which will involve several projects, including the redesign of the Commission's external Web site and intranet and an electronic records and document management project. These tools will support the Commission's external and internal communication needs as it grows to new levels and takes on new responsibilities, facilitating collaboration and knowledge transfer. In addition, these efforts will support the Commission's response to eDiscovery and Federal records requirements.
- The Commission continues to upgrade its information technology management capabilities in the areas of analytics, statistical processing and market research. This ongoing initiative involves acquiring and implementing new and emerging software technologies that enhance and leverage its current information assets. The Commission is concentrating on technology that can be applied throughout the organization and especially in the regional offices that are responsible for Market Surveillance and Compliance. The Commission

will also use this new capability to conduct market research that impacts policy decisions and provides the interpretive analysis necessary for Congressional inquiries and inter-agency programs.

#### Globalization

- The financial crisis has heightened global concerns with regard to systemic risk, OTC derivatives, and cross-border transactions. Moreover, global concern has been growing with regard to volatility and possible abusive practices in strategically important energy and agricultural commodity markets. In an integrated electronically-linked global marketplace, market disruptions or abusive practices in one jurisdiction could result in global market systemic concerns. Moreover, the trading of economically linked contracts in different jurisdictions raises significant surveillance issues. The Commission will need to remain engaged internationally in seeking solutions to these problems and promote coordinated global responses that reduce the possibility of regulatory arbitrage or gaps. As a result, the agency will need to attract experienced staff to meet these increasing demands. Such international cooperation is built on relationships established and maintained by professional regulatory staff over time. Moreover, as the Commission works to promote greater transparency of global commodity markets, which requires greater data collection, sharing, and analysis—it will be critical for the Commission to have up-to-date technology and expert surveillance staff resources to evaluate this data.

#### Marketplace

- Development and growth of renewable energy sources (*i.e.*, biofuels) could impact existing energy markets.
- Disruption of oil exports to the United States may disrupt energy markets.
- Significant portions of the electrical power grids may be disabled for an extended period of time, crippling markets.

<sup>13</sup> Refer to CFTC Information Technology Systems in the Appendix for a description of functionality.

- Convergence of products and markets and new congressional grants of anti-manipulation authority require increased interagency coordination with the SEC, Federal Trade Commission, and the Federal Energy Regulatory Commission. This coordination can address areas of mutual interest related to cross-jurisdictional issues, such as those presented by credit event products, commodity exchange-traded funds, and potential manipulation in the energy markets.
- Expansion of the markets results in demand for employees with the skills required to meet Commission goals, continually challenging the agency to offer competitive compensation.

## Government

- Congress enacted the Farm Bill, which clarified and strengthened the Commission's jurisdiction over off-exchange foreign currency transactions involving retail participants. The Commission will need to devote staff to reviewing developments and monitoring participants in the retail off-exchange foreign currency marketplace.
- Congress is considering significant regulatory changes that could impact the markets and add to the role of the Commission.
- Prompt implementation of enhanced E-Government business processes is a continual challenge with limited staff and financial resources.





## **PERFORMANCE SECTION**

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# INTRODUCTION TO THE PERFORMANCE SECTION

This section details the Commission’s efforts to meet its strategic and performance goals. The Commission scrutinizes performance measures to ensure that the metrics adequately challenge the programs to reach the desired results and ensure accountability.

## Success for CFTC:

Public has confidence in futures markets and markets are open, competitive, and financially healthy.

## The Mission: Why we do what we do

- 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.

Most Americans have a direct stake in the trillion dollar futures market through personal investments in securities, mutual funds, or pension funds tied to these markets. All Americans have an indirect stake, since these markets are critical to establishing prices from Wall Street to Main Street.

As the only entity with regulatory oversight across all U.S. commodity futures and option markets, the CFTC is committed to its mission of protecting the integrity of the futures markets.



## The Strategy: How we measure what we accomplish

The mission of the CFTC is accomplished through four strategic goals, each focusing on a vital area of regulatory responsibility to: 1) ensure the economic vitality of the commodity futures and option markets; 2) protect market users and the public; 3) ensure market integrity in order to foster open, competitive, and financially sound markets; and 4) facilitate Commission performance through organizational and management excellence, efficient use of resources, and effective mission support.

Under each of these strategic goals, the Commission has identified several desirable outcome objectives. To more accurately assess progress towards these outcome objectives, the Commission sets performance targets for various measures under each desired outcome objective.

Commission staff members perform key business processes and strategies that provide the means for producing the desired outcomes and achieving the Commission’s mission. The following diagram defines specific concepts of the Commission’s strategic planning process:

CFTC STRATEGIC PLANNING PROCESS	
<b>Strategic Goals</b>	The Commission’s long-term desired results; each focuses on a vital area of regulatory responsibility. In 2008, the Commission adopted a fourth goal assessing and measuring organizational and management excellence.
<b>Annual Performance Goals</b>	The Commission’s short-term level of performance expected of the CFTC programs to accomplish the strategic goals.
<b>Outcome Objectives</b>	The intended effect or outcome that results from the CFTC program’s activities and strategies.
<b>Business Processes<sup>14</sup></b>	A collection of activities and strategies that the CFTC staff perform to produce the desired outcomes and achieve the strategic goals.
<b>Performance Measures</b>	Key indicators, statistics and metrics that the CFTC uses to measure its effectiveness as an oversight regulator.

Annually, the agency analyzes the performance metrics to determine the measure of success the programs’ activities have achieved in accomplishing the Commission’s overall strategic mission.

Due to the broad economic functions that the Commission oversees, it is not easy to identify detailed objectives and performance metrics that will be accomplished each year. While some measures do reflect specific performance (e.g., the number of days to process a reparations complaint), other measures identify conditions that, if present, are indicators that the Commission’s activities are contributing successfully to the health of the industry it regulates (e.g., the increase in the number of products traded). The metrics

that measure the health and dynamics of the markets determine the Commission’s actions or decision-making.

In addition, external influences affect many performance measures so metrics alone cannot fully disclose as to the success of the performance result. The Commission, therefore, further analyzes the progress of each performance metric using a rating tool to help program managers evaluate performance results more effectively.

The analytical tool provides program managers with the ability to apply adjectival ratings to the performance measures, as defined below, and identified in the subsequent performance details:

SUMMARY OUTLINE OF ADJECTIVAL RATINGS	
<b>Effective</b>	Significantly exceeds the standards of performance and achieves noteworthy results.
<b>Moderately Effective</b>	Exceeds the standards of performance; although there may be room for improvement in some elements, better performance in all other elements more than offsets this.
<b>Adequate</b>	Meets the standard of performance; deficiencies do not substantially affect performance.
<b>Marginal</b>	Below the standard of performance; deficiencies require attention and corrective action.
<b>Unsatisfactory</b>	Significantly below the standard of performance; deficiencies are serious, may affect overall results, urgently require senior management attention, and prompt corrective action.
<b>Results Not Demonstrated</b>	Data is not available to evaluate the performance.

<sup>14</sup>Business processes are detailed in the CFTC’s 2007-2012 Strategic Plan available on the Internet at <http://www.cftc.gov/reports/strategicplan/2012>.

A photograph showing three business professionals (two men and one woman) sitting around a table in a meeting room, looking at documents. The room has large windows and other people in the background.

## STRATEGIC GOAL ONE: ECONOMIC VITALITY

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

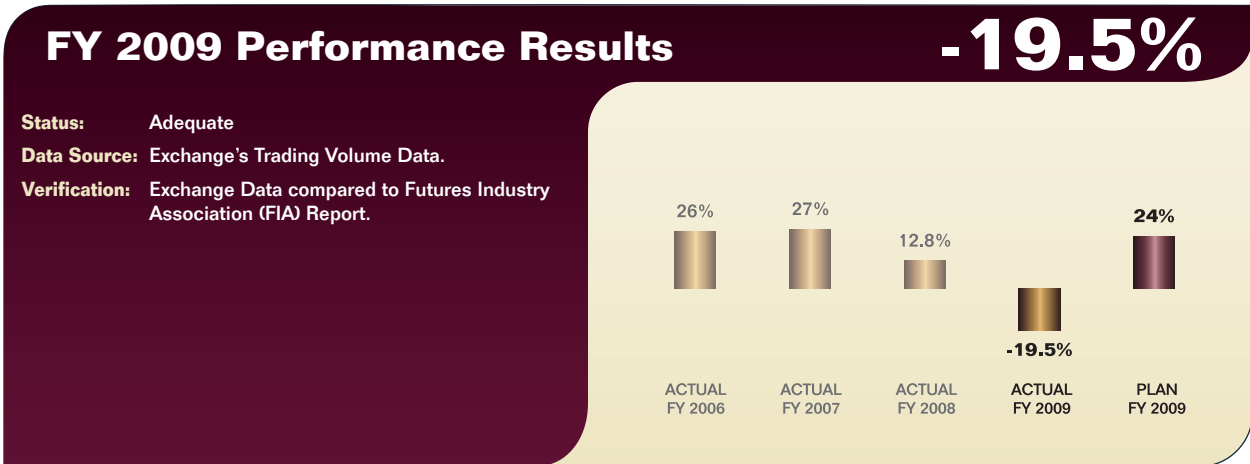
**Outcome Objective 1.1:** Futures and option markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.

- **Annual Performance Goal 1.1:** No price manipulation or other disruptive activities that would cause loss of confidence or negatively affect price discovery or risk shifting.

**Outcome Objective 1.2:** Markets are effectively and efficiently monitored to ensure early warning of potential problems or issues that could adversely affect their economic vitality.

- **Annual Performance Goal 1.2:** To have an effective and efficient market surveillance program.

**PERFORMANCE MEASURE 1.1.1** Percentage growth in market volume.



**Lead Program Office**

Division of Market Oversight

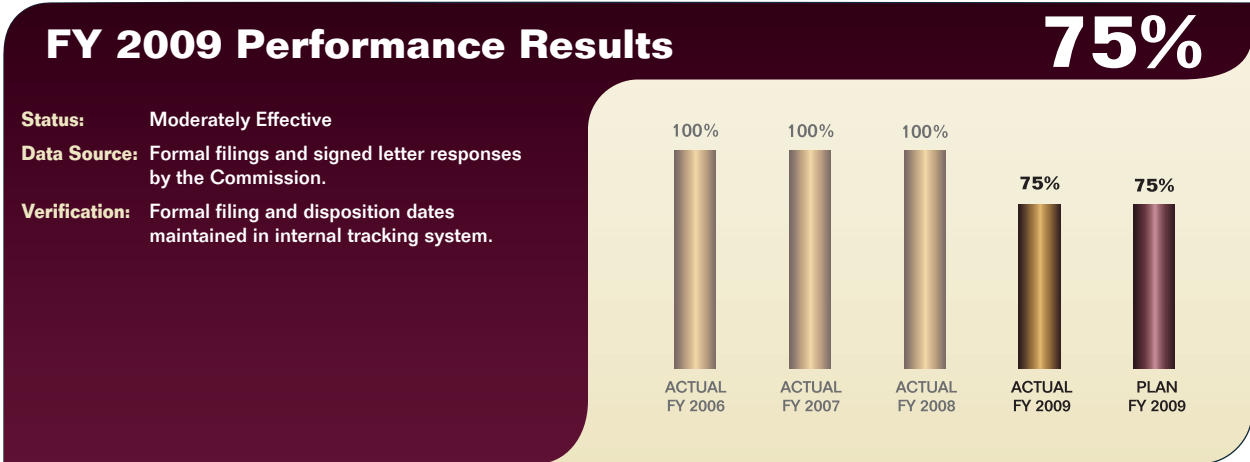
**Performance Highlights**

None to report.

**Performance Analysis & Review**

The percentage growth in the market volume decreased 19.5 percent, in FY 2009, due to the severe downturn in the economy. Although many new products were introduced by the exchanges, the low trading volume for these products did not make up for the heavy decrease in the trading of the major existing contracts. The FY 2009 plan was based upon historical trends. These trends were disrupted by the economy and not by any policy changes of the CFTC. No attempt was made to predict the growth rate of the economy which was a huge factor in FY 2009 trading activity.

**PERFORMANCE MEASURE 1.1.2** Percentage of novel or innovative market proposals or requests for CFTC action addressed within six months to accommodate new approaches to, or the expansion in, derivatives trading, enhance the price discovery process, or increase available risk management tools.



## Lead Program Office

Division of Market Oversight

## Performance Analysis & Review

DMO handled a number of formal and informal proposals or requests for Commission action during the fiscal year that included newer approaches to formal and informal derivatives trading or enhancements to the price-discovery process. The items, which included innovative products and exchange processes, were all addressed within six months of formal receipt.

## Performance Highlights

DMO issued a December 5, 2008, no-action letter to BNP Paribas confirming that the Division would not recommend that the Commission initiate enforcement action against BNP Paribas or Fortis Bank, for violation of Commission or exchange speculative position limits in connection with BNP Paribas' acquisition of Fortis Bank. The no-action relief applied only to aggregated positions created by the acquisition and was subject to a sunset provision under which the relief lapsed on January 15, 2009.

In connection with its administration of the foreign board of trade no-action regime, DMO reviewed and processed the proposed listing of 30 new contracts to ensure that the

submitting exchange had appropriate market surveillance and additional information sharing measures in place. The 30 contracts were submitted by seven different exchanges: MexDer (20-Year Fixed Interest Rate Government Development Bonds futures contract), the Sydney Futures Exchange (30 Day Interbank Cash Rate option contract, Thermal Coal futures and option contracts, New Zealand Electricity futures and option contracts, and Victorian Wholesale Gas futures and option contracts), BM&F Bovespa (Corn futures contract, Corn Price Basis futures contract, Put and Call options on Corn futures, Structured Transactions Products based on Arabica Coffee Rollover and U.S. Dollar Rollover, and Forward Rate Agreements on the General Market Price Index and on the Extended Consumer Price Index), Eurex Deutschland (Gold futures and option contracts, IPD Annual All Property Index futures contract, Silver futures and option contracts, European Processing Potatoes futures contract, London Potatoes futures contract, Hogs futures contract and Piglets futures contract) LIFFE (Two Year Mid-Curve option on the three Month Sterling (Short Sterling) Interest Rate futures contract and Two Year Mid-Curve option on the Three Month Euro (EURIBOR) Interest Rate futures contract), ICE Futures Europe (globalCOAL Newcastle Coal futures contract, ECX EUA Daily futures contract and ECX CER Daily futures contract) and Nord Pool ASA (Nordic Power option contract).

**PERFORMANCE MEASURE 1.1.3** Percentage increase in number of products traded.

**FY 2009 Performance Results**

**22.7%**

**Status:** Effective

**Data Source:** Exchanges submit data on trading volume, open interest, delivery notices, exchange of futures and prices for all products traded.

**Verification:** Data is validated by internal program edits and quality checks in central database.



**Lead Program Office**

Division of Market Oversight

**Performance Analysis & Review**

The number of products traded grew by approximately 22.7 percent, in FY 2009. Despite the severe economic downturn, the growth in the number of new products offered on the exchanges, in FY 2009, continued because

exchanges remained innovative and rolled out many new contracts, most of which were either slight variations of existing contracts or attempts to duplicate existing products in the OTC arena. Futures innovation in energy products and the introduction of a large number of new security futures products (SFPs) drove the increase.

**Performance Highlights**

None to report.

**PERFORMANCE MEASURE 1.1.4(a)** Percentage of new exchange or clearinghouse organization applications completed within expedited review period: New Exchange Applications.

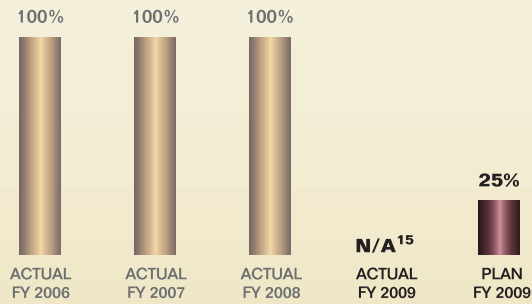
## FY 2009 Performance Results

**N/A<sup>15</sup>**

**Status:** Effective

**Data Source:** New exchange application(s).

**Verification:** *Filings and Actions* automated database tracks and calculates processing time from receipt date through to date of designation or registration. Agency files containing applications, staff reviews, memoranda to the Commission, and proposed Orders.



**PERFORMANCE MEASURE 1.1.4(b)** Percentage of new exchange or clearinghouse organization applications completed within expedited review period: New Clearinghouse Organization Applications.

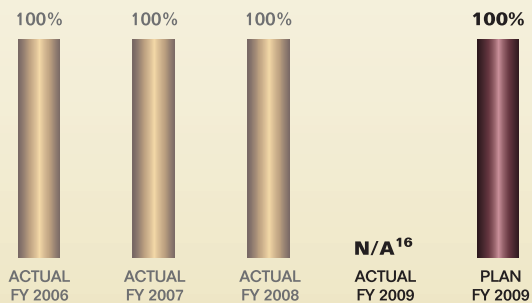
## FY 2009 Performance Results

**N/A<sup>16</sup>**

**Status:** Effective

**Data Source:** New DCO application(s).

**Verification:** *Filings and Actions* automated database tracks and calculates processing time from receipt date through to date of designation or registration. Agency files containing applications, staff reviews, memoranda to the Commission, and proposed Orders.



## Lead Program Offices

Division of Clearing and Intermediary Oversight

Division of Market Oversight

## Performance Analysis & Review

The expedited processing time for an application is 90 days.

*Division of Clearing and Intermediary Oversight:* Two DCO applications submitted under the fast track mode (90 days) were removed upon the request of the applicants. As such, DCIO reviewed these two DCO applications in approximately 120 days. Another DCO application submitted in FY 2009 was taken off the fast track as non-qualifying and

<sup>15</sup> The applicants of two fast track submissions were taken off the fast track review.

<sup>16</sup> The applicants of two fast track submissions voluntarily requested to be taken off the fast track for review. A third application did not qualify for fast track review.



placed on the 180 day track, the normal processing time for an application. This application was subsequently stayed. A fourth DCO application was filed in the fourth quarter of FY 2009, and staff review of this DCO application will not be completed until FY 2010.

*Division of Market Oversight:* During FY 2009, DMO staff reviewed two formal DCM applications. Both applications were removed from expedited review due to incomplete applications as well as novel issues requiring extra staff

time. One market was designated within the statutory time period. One application is still under review waiting for the market to respond to staff concerns in light of novel issues and questions as well as the need for staff to utilize more time to complete its review of materials provided.

## Performance Highlights

None to report.

**PERFORMANCE MEASURE 1.1.5** Percentage of new contract certification reviews completed within three months to identify and correct deficiencies in contract terms that make contracts susceptible to manipulation.

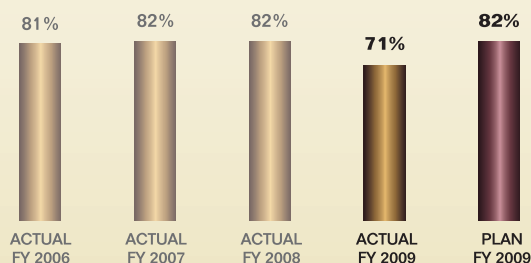
## FY 2009 Performance Results

# 71%

**Status:** Effective

**Data Source:** Exchange certification filings, certified rule amendments, and agency memoranda.

**Verification:** *Filings and Actions* automated database tracks and calculates processing time from receipt date through to date of designation or registration.



## Lead Program Office

Division of Market Oversight

## Performance Analysis & Review

In FY 2009, as in the previous fiscal year, an unusually large proportion of new contract certifications concerned weather indexes and SFPs. Those contracts typically are easier to review than other contracts. However, there also were a high number of niche energy and power contracts that raised significant regulatory concerns, and a number of environmental contracts that appeared to suffer contract design flaws. Coupled with an increasing backlog of new product certifications, and added responsibilities to review contracts traded on ECMs to determine whether each contract perform a significant price discovery function, the percentage of completed reviews declined in FY 2009 and, thus, the percentage was significantly lower than anticipated.

U.S. exchanges continued to innovate in FY 2009. The NYMEX and CCFE expanded their product lines of pollution allowances, including additional contracts based on the Regional Greenhouse Gas Initiative (RGGI) and NO<sub>x</sub> and SO<sub>2</sub> allowances. RGGI is a cap-and-trade program among 10 Northeastern and Mid-Atlantic States designed to reduce greenhouse gas emissions from power plants. The CCFE also introduced futures contracts based on the California Climate Action Registry allowance, and various state renewable energy certificates (RECs). RECs are tradable certificates

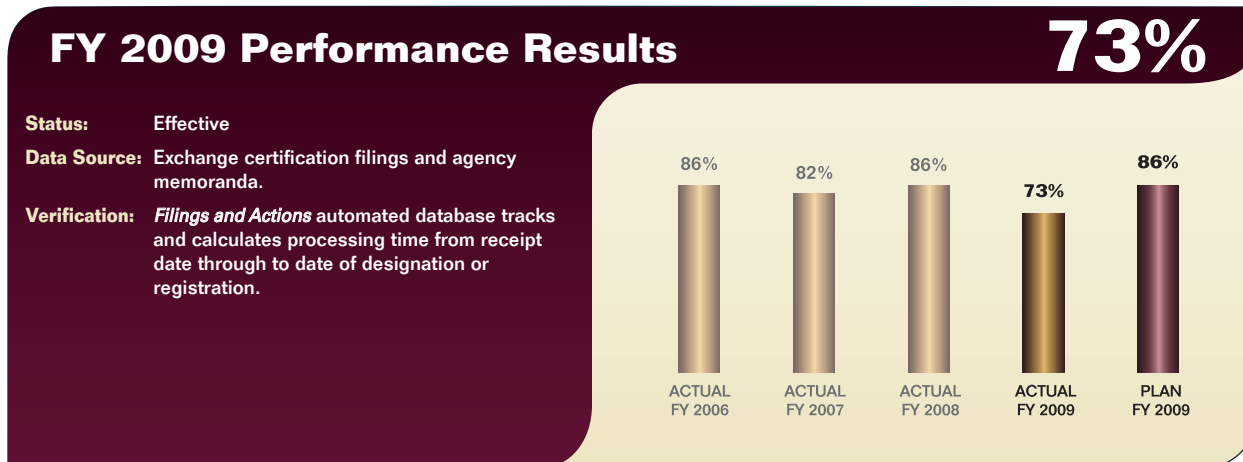
that represent electricity generated by wind, solar, or other renewable energy source. The Nasdaq OMX certified a futures contract based on the three-month US Dollar Libor Swap that is designed to closely replicate OTC swap contracts. It is reasonable to expect that exchanges will continue to introduce novel and complex products in the future.

## Performance Highlights

Commission staff completed reviews of over 681 new contract certifications, identified several exchange-certified SFPs that were based on securities that failed to meet listing standards, and identified contract design flaws in several other contracts. In addition, Commission staff completed economic reviews of 11 foreign stock index futures contracts to ensure that the contracts meet the Commission's cash-settlement price standards, are not readily susceptible to manipulation, and are based on broad-based security indexes.

Commission staff implemented rules, adopted by the Commission in FY 2009, under which the Commission determines whether contracts listed for trading on an ECM perform a significant price discovery function. Commission staff have identified one such SPDC and another 41 possible SPDCs that have been, or will be, published for comment. ECMs that list SPDCs are subject to increased regulatory oversight by the CFTC.

**PERFORMANCE MEASURE 1.1.6** Percentage of rule change certification reviews completed within three months, to identify and correct deficiencies in exchange rules that make contracts susceptible to manipulation or trading abuses or result in violations of law.



### Lead Program Office

Division of Market Oversight

### Performance Analysis & Review

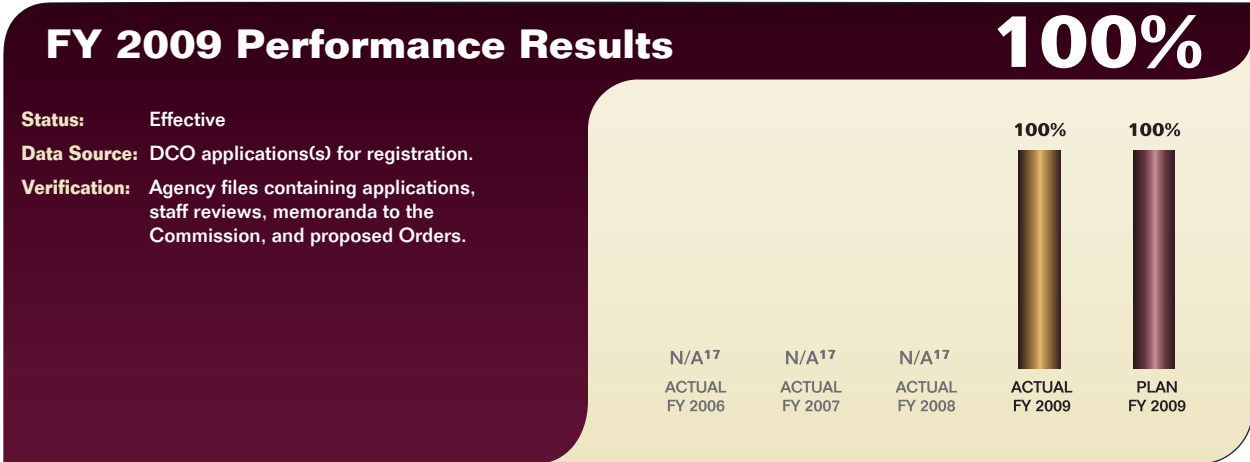
The percentage of trading rule amendment certification reviews completed within three months of receipt by the Commission decreased over last year. This decrease in performance is due to the fact that DMO did not have sufficient staff to keep up with the influx of submissions and added responsibilities resulting from the Farm Bill, in spite of the support this year of several temporary interns.

For much of FY 2009, the Division was understaffed relative to the volume of reviews it is required to accomplish. At times completion of certain rule amendment reviews, for example, those regarding contracts with very low trading volume or changes to trading rules that did not seem to make a large change, were delayed to allow staff to focus on more important matters, such as rule changes that might create risk to the markets. It is unlikely, given the submission of complex contracts and multifaceted trading rule submissions, and in light of the additional review responsibilities included in the Farm Bill, that performance will improve in the absence of increased staffing.

### Performance Highlights

Commission staff completed reviews of 71 substantive product rule amendments and 214 substantive trading rule amendments.

**PERFORMANCE MEASURE 1.2.1** Percentage of derivatives clearing organization applications demonstrating compliance with CFTC Core Principles.



### Lead Program Office

Division of Clearing and Intermediary Oversight

### Performance Highlights

None to report.

### Performance Analysis & Review

DCIO met the performance target for FY 2009. Four DCO applications were subject to DCIO staff review during FY 2009. Two DCO applications were reviewed in approximately 120 days; DCIO staff determined that the applications met compliance with CFTC Core Principles and the applicants were granted registration as DCOs. Another DCO application was subsequently stayed pursuant to Section 6 of the Act until the application is materially complete. A fourth DCO application was filed in the fourth quarter of FY 2009, and staff review of this application will not be completed until FY 2010.

<sup>17</sup> No applications for registration as a DCO were received in FY 2006, FY 2007, and FY 2008.

**PERFORMANCE MEASURE 1.2.2** Ratio of contracts surveilled per economist.

**FY 2009 Performance Results**

**14**

**Status:** Adequate

**Data Source:** Exchanges submit data to the Commission on all traded contracts, which are maintained in the Commission's database.

**Verification:** Data is validated by internal program edits and quality checks in central database.



**Lead Program Office**

Division of Market Oversight

**Performance Analysis & Review**

The target ratio of contracts surveilled per economist is above ideal levels. For this reason, an "Adequate" status of Performance Result has been selected in spite of the fact that the actual number of contracts surveilled per economist met expectations. To increase the efficiency of the surveillance efforts of DMO, similar contracts on the same underlying commodity are generally analyzed together. Even though the number of contracts increased during the year, the increase was mostly due to additional products on existing commodities. These additional products may not materially add to the economists' surveillance burden. Thus, they were not counted as distinct contracts for the purpose of arriving at the relevant ratio.

**Performance Highlights**

The ratio of contracts surveilled per economist is too high to ensure full surveillance coverage of all futures markets. The efficiency and productivity of surveillance economists are very high, but they are being stretched too thin, with consequential effects on the adequacy of surveillance coverage for some markets.

**PERFORMANCE MEASURE 1.2.3** Percentage of contract expirations without manipulation.

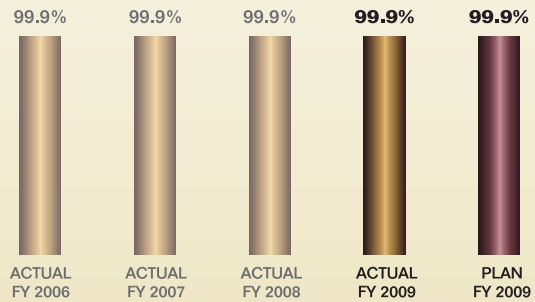
## FY 2009 Performance Results

# 99.9%

**Status:** Effective

**Data Source:** Surveillance reports and large trader position reports.

**Verification:** Economists daily track and monitor futures expirations and economic fundamentals.



### Lead Program Office

Division of Market Oversight

### Performance Analysis & Review

This measurement examines the number of contract expirations without manipulation compared to the total number of futures and option expirations. The total number of expirations may vary throughout the year as different contracts enter and exit the market.

### Performance Highlights

Surveillance of energy markets has been the greatest challenge during FY 2009. During this year, DMO has enhanced its data collection, information processing, and surveillance analyses to keep pace with the rapidly growing and changing energy markets. Special calls were issued to IntercontinentalExchange to obtain daily large trader reports on this OTC market. DMO started to receive and analyze daily NYMEX transaction data to detect possible manipulative schemes. Software enhancements were made to ISS<sup>18</sup> to better display and analyze positions in deferred futures months.

<sup>18</sup> Refer to the CFTC Information Technology Systems in the Appendix for a description of functionality.



## STRATEGIC GOAL TWO: MARKET USERS AND THE PUBLIC

**Goal Two:** *Protect market users and the public.*

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

- **Annual Performance Goal 2.1:** Violators have a strong probability of being detected and sanctioned.

**Outcome Objective 2.2:** Commodity professionals meet high standards.

- **Annual Performance Goal 2.2:** No unregistered, untested, or unlicensed commodity professionals.

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

- **Annual Performance Goal 2.3:** Customer complaints are resolved within one year from the date filed and appeals are resolved within six months.

**PERFORMANCE MEASURE 2.1.1** Number of enforcement investigations opened during the fiscal year.

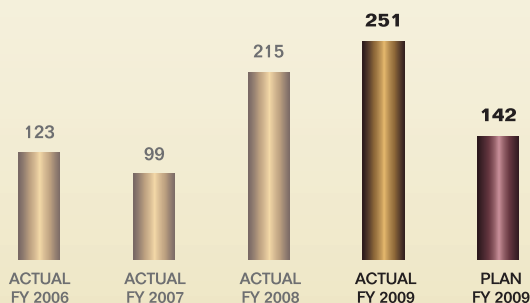
## FY 2009 Performance Results

# 251

**Status:** Effective

**Data Source:** Agency documentation and reports maintained in the Practice Manager litigation management system.

**Verification:** Internal reports on investigations and litigation documented and maintained in internal Enforcement systems.



### Lead Program Office

Division of Enforcement

### Performance Analysis & Review

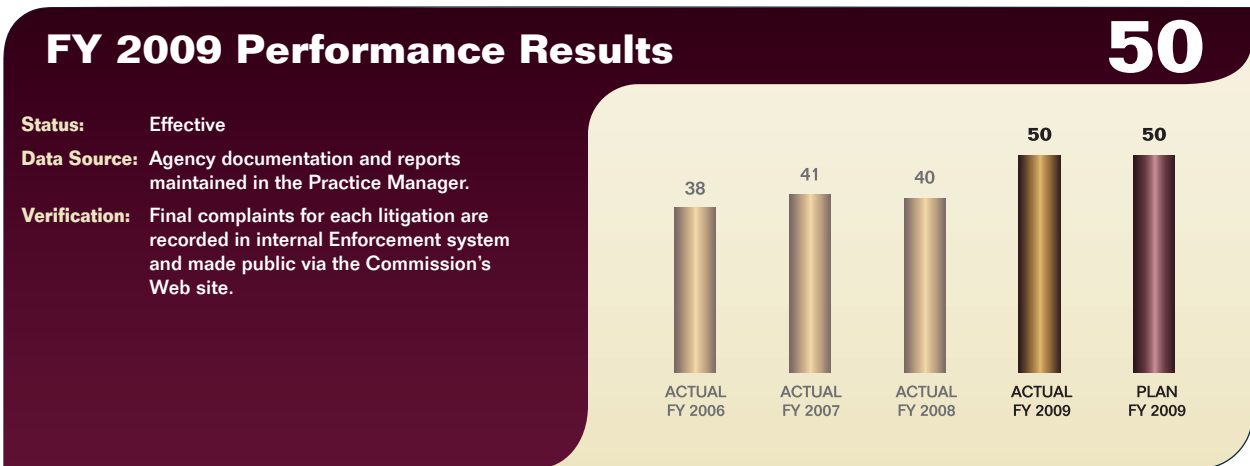
DOE met the performance target for FY 2009. Commencing in 2002, the complexity of Commission's investigations has increased substantially over prior fiscal years (e.g., the Commission's investigation of alleged energy market manipulation). As a result of these investigations, the complexity of the Commission's cases filed and litigated also has increased substantially since FY 2002. The Commission's FY 2009 Plan target for this performance measure took into account these factors, and historical performance and staffing constraints of DOE. Despite these factors and constraints, the Commission exceeded its target for this performance measure, in part due to the unprecedented market conditions during FY 2008 – FY 2009.

### Performance Highlights

Although the Commission ordinarily conducts enforcement investigations on a confidential basis, in light of the unprecedented market conditions during FY 2008 – FY 2009, the Commission took the unusual step of publicly disclosing the existence of several ongoing investigations of market misconduct, including its National Crude Oil Investigation (NCI). Through the NCI, DOE is investigating practices surrounding the purchase, transportation, storage, and trading of crude oil and related derivative contracts. While the specifics of all ongoing Commission investigations remains confidential; the DOE remains focused on ensuring that the markets are properly policed for manipulation and abusive practices.



**PERFORMANCE MEASURE 2.1.2** Number of enforcement cases filed during the fiscal year.



**Lead Program Office**

Division of Enforcement

**Performance Analysis & Review**

DOE met the performance target for FY 2009. Commencing in 2002, the complexity of Commission investigations has increased substantially over prior fiscal years (e.g., the Commission's investigation of alleged energy market manipulation). As a result of these investigations, the complexity of the Commission's cases filed and litigated also has increased substantially since FY 2002. The Commission's FY 2009 Plan target for this performance measure took into account these factors, DOE's historical performance, and DOE's staffing constraints.

**Performance Highlights**

Among the significant enforcement actions filed by the Commission during FY 2009 are the following:

- *In re Dairy Farmers of America, Inc., et al.*  
 On December 16, 2008, the Commission simultaneously filed and settled an administrative enforcement action against the dairy marketing cooperative Dairy Farmers of America, Inc. (DFA), its former Chief Executive Officer Gary Hanman, and its former Chief Financial Officer Gerald Bos finding that they tried to

manipulate the Class III milk futures contract and exceeded speculative position limits in that contract. *In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (CFTC filed Dec. 16, 2008);

■ *CFTC v. Lee, et al.*

On November 18, 2008, the Commission filed a civil enforcement action against David P. Lee, a former trader for the Bank of Montreal (BMO), charging him with fraud for mis-marking and mis-valuing the bank's natural gas options book and deceiving the bank. The complaint also charges Optionable, Inc., and its former senior executives Kevin Cassidy and Edward O'Connor, with deceiving BMO. Robert B. Moore Jr., Lee's former supervisor, is also named as a defendant. *CFTC v. Lee, et al.*, No. 08 CIV 9962 (S.D.N.Y. filed Nov. 18, 2008);

■ *CFTC v. Agape World, Inc.*

On January 27, 2009, the Commission filed a civil injunctive action against Nicholas Cosmo, Agape World, Inc., and Agape Merchant Advance LLC, charging them with defrauding customers of tens of millions of dollars that were solicited for the stated purpose of investing in bridge loans and merchant advances, but instead defendants misappropriated a significant portion of those funds to engage in unauthorized commodity futures trading. *CFTC v. Agape World, Inc., et al.*, No. 09 0351 (E.D.N.Y. filed Jan. 27, 2009);

■ *CFTC v. Walsh, et al.*

On February 25, 2009, the Commission filed a civil injunctive action against Stephen Walsh and Paul Greenwood, charging them with misappropriating at least \$553 million from commodity pool participants in connection with entities they owned and controlled, defendants Westridge Capital Management, Inc., WG Trading Investors, LP, and WGIA, LLC. *CFTC v. Walsh, et al.*, No. 09 CV 1749 (S.D.N.Y. filed Feb. 25, 2009);

■ *CFTC v. Billion Coupons, Inc., et al.*

On February 18, 2009, the Commission filed a civil injunctive action against Marvin Cooper and his company Billion Coupons, Inc., charging them with operating a Ponzi scheme that involved fraudulently soliciting approximately \$4.4 million from more than 125 customers—all of whom are deaf—for the sole purported purpose of trading forex. *CFTC v. Billion Coupons, Inc., et al.*, No. CV09-00069 JMS LEK (D. Haw. filed Feb. 18, 2009);

■ *CFTC v. Barki LLC, et al.*

On March 17, 2009, the Commission filed a civil enforcement action against Barki, LLC and Bruce C. Kramer, charging them with fraudulently soliciting, since at least June 2004 through February 2009, at least \$40 million from at least 70 customers to trade forex, misappropriating at least \$30 million of customer funds to pay purported profits, return principal to customers, and for personal expenses, including the purchase of a horse farm for more than \$1 million, a Maserati sports car and other luxury cars, artwork, and extravagant parties. *CFTC v. Barki LLC, et al.*, No. 3:09-cv-00106-GCM (W.D.N.C. filed March 17, 2009);

■ *CFTC v. SNC Asset Management, Inc., et al.*

On June 9, 2009, the CFTC filed a civil injunctive action against SNC Asset Management, Inc., SNC Investments, Inc., Chief Executive Officer (CEO) Peter Son, and Chief Financial Officer (CFO) Jin K. Chung, charging them with operating an \$85 million fraudulent forex Ponzi scam involving approximately 500 customers, who were primarily solicited from the Korean community of the San Francisco Bay area, *CFTC v. SNC Asset Management, Inc., et al.*, No. 09-2555PJH (N.D. Cal. filed June 9, 2009);

■ *In re Interbank FX, LLC*

On June 29, 2009, the Commission simultaneously filed and settled an administrative enforcement action against registered FCM Interbank FX, LLC (Interbank), finding that it violated rules designed to protect the confidential personal information of consumers. *In re Interbank FX, LLC*, CFTC Docket No. 09-11 (CFTC filed June 29, 2009);

■ *In re Keane*

On October 6, 2008, the Commission simultaneously filed and settled an administrative enforcement action against Brian Keane, a former NYMEX clerk, for fraudulently allocating favorable trades that had been filled for customers to an account from which he benefited. *In re Keane*, CFTC Docket No. 09-01 (CFTC filed Oct. 6, 2008);

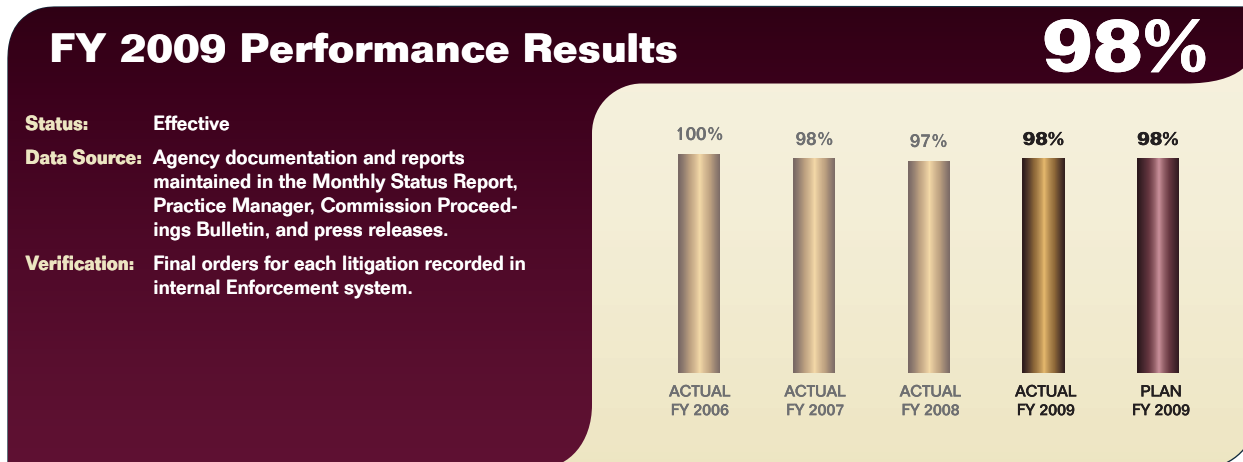
■ *In re Otis, et al.*

On December 16, 2008, the Commission simultaneously filed and settled an administrative enforcement action against Frank Otis, former President and CEO of a DFA subsidiary, and Glenn Millar, former Executive Vice President of the subsidiary, finding that they aided and abetted DFA's speculative position violation by directing trading of Class III milk futures in an internal sub-account designated for the DFA subsidiary. (See discussion, above, of the related enforcement action, *In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (CFTC filed Dec. 16, 2008).) The Commission assessed sanctions, including civil monetary penalties (Otis \$60,000 and Millar \$90,000). *In re Otis, et al.*, CFTC Docket No. 09-03 (CFTC filed Dec. 16, 2008); and

■ *In re Moster*

On February 11, 2009, the Commission simultaneously filed and settled an administrative enforcement action against Michael Moster, a former proprietary trader with the Bank of America (BOA), finding that he committed fraud by submitting false reports to BOA. The Commission assessed sanctions including: a cease and desist order; permanent trading and registration bans; and a \$360,000 civil monetary penalty. *In re Moster*, CFTC Docket No. 09-08 (CFTC filed Feb. 11, 2009).

**PERFORMANCE MEASURE 2.1.3** 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).



### Lead Program Office

Division of Enforcement

### Performance Analysis & Review

Performance target was almost met for FY 2009. During the FY 2009, DOE closed a total of 32 enforcement cases. In all but two of these closed cases, the Commission obtained sanctions (e.g., civil monetary penalties, restitution and disgorgement, cease and desist orders, permanent injunctions, trading bans, and registration restrictions) against one or more of the respondents/defendants.

Staff are required to submit all final orders for each litigation as part of closing activities for their files. These orders are recorded in internal Enforcement systems (Practice Manager).

### Performance Highlights

Among the significant enforcement actions closed by the Commission during FY 2009 are the following:

- *In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (CFTC filed Dec. 16, 2008) (attempted manipulation and speculative limits violations: sanctions assessed include a \$12 million civil monetary penalty; a five-year futures trading bar against Hanman and Bos; two-year speculative trading bar against DFA; and order that DFA comply with certain undertakings, including: 1) retaining a monitor to ensure that DFA does not engage in speculative trading and that DFA's Cheese Spot Call market cheese purchases are made for legitimate business purposes; 2) implementing a compliance and ethics program; and 3) providing future cooperation to the CFTC).
- *In re Interbank FX, LLC*, CFTC Docket No. 09-11 (CFTC filed June 29, 2009) (violations arising from disclosure of non-public customer information: sanctions assessed include a cease and desist order; \$200,000 civil monetary penalty; and an order that Interbank comply with its undertaking to establish, implement, and maintain a documented comprehensive security program that addresses the protection of consumer information, and to obtain an assessment of that program from a certified security professional).

- *In re Keane*, CFTC Docket No. 09-01 (CFTC filed Oct. 6, 2008) (fraudulent trade allocation: sanctions assessed include a permanent trading ban and a \$90,000 civil monetary penalty).
- *CFTC v. Heierle, et al.*, No. 07-22396 CIV-LENARD/TORRES, Default Judgments (S.D. Fla. entered Dec. 19, 2008) (commodity pool fraud: sanctions assessed include permanent injunctions, approximately \$3.5 million in restitution, and \$6 million in total civil monetary penalties).
- *CFTC v. Hudgins*, No. 608CV187, Consent Order (E.D. Tex. entered April 2, 2008) (commodity pool fraud: sanctions assessed include permanent injunction, approximately \$71 million in restitution, and a \$15 million civil monetary penalty).
- *In re ADM Investor Services, Inc.*, CFTC Docket No. 09-10 (CFTC filed March 26, 2009) (FCM failure to supervise: sanctions assessed include a cease and desist order; \$200,000 civil monetary penalty; and an order to comply with certain undertakings, including ADMIS's agreement to implement enhanced procedures to assure adherence to rules governing post execution allocation of trades).
- *CFTC v. Renaissance Asset Management, LLC, et al.*, No. 1:07-CV-0200, Consent Orders (N.D. Ga. entered Feb. 13, 2009) (commodity pool fraud: sanctions assessed include permanent injunctions, \$21.2 million in restitution, and a \$5.8 million civil monetary penalty).

**PERFORMANCE MEASURE 2.1.4** Cases filed by other criminal and civil law enforcement authorities during the fiscal year that included cooperative assistance from the Commission.

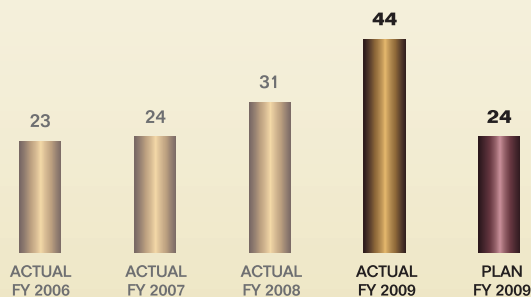
## FY 2009 Performance Results

# 44

**Status:** Effective

**Data Source:** Cooperating authorities provide notice to DOE of related civil complaints, criminal information, and indictments. Cooperative enforcement matters are noted in Practice Manager.

**Verification:** Internal Enforcement system and the U.S. Judiciary Public Access to Court Electronic Records Services Center.



### Lead Program Office

Division of Enforcement

### Performance Analysis & Review

Performance target was met for FY 2009. The Commission believes that its performance in cooperative criminal and civil enforcement was effective. During the rating period, the Commission continued to devote significant resources to cooperative enforcement with other criminal and civil law enforcement authorities. The performance of DOE, during FY 2009, was influenced by the recent and current financial downturn, which has revealed a number of fraudulent schemes, including Ponzi schemes that could stay afloat only during periods of rising asset values.

### Performance Highlights

Among the significant enforcement actions filed by the Commission during FY 2009, that included related action by other civil and/or criminal authorities, are the following:

#### ■ *CFTC v. Lee, et al.*

On November 18, 2008, the Commission filed a civil enforcement action against David P. Lee, a former trader for the BMO, charging him with fraud for mis-marking and mis-valuing the bank's natural gas options book and deceiving the bank. The complaint also charges Optionable, Inc., and its former senior executives Kevin Cassidy and Edward O'Connor, with deceiving BMO. Robert B. Moore Jr., Lee's former supervisor, is also named as a defendant. On the same day the Commission filed its enforcement action, the Manhattan District Attorney Office and the United States Attorney for the Southern District of New York also filed a criminal indictment against Cassidy. The Federal Reserve Board and the SEC also filed related actions. *CFTC v. Lee, et al.*, No. 08 CIV 9962 (S.D.N.Y. filed Nov. 18, 2008);

#### ■ *In re Keane*

In an extensive cooperative law enforcement effort, the Commission and the New York County District Attorney's Office, conducted an investigation of abusive trading practices on the NYMEX resulting in a series of related civil and criminal actions. During FY 2009, this cooperative effort resulted in a Commission action against Brian Keane finding fraudulent trade alloca-

tions. In the related criminal matter, Keane pled guilty on March 20, 2008 to the felony state crime of violating the anti-fraud provision of New York's General Business Law for the same underlying conduct and received a four-month jail sentence. *In re Keane*, CFTC Docket No. 09-01, Speaking Order (CFTC filed Oct. 6, 2008);

■ *In re Moster*

On February 11, 2009, the Commission simultaneously filed and settled an administrative enforcement action against Michael Moster, a former proprietary trader with BOA, finding that he committed fraud by submitting false reports to BOA. Based upon the same conduct, Moster pled guilty on September 18, 2008, to a one-count violation of making false entry into the books and records of a bank in the Southern District of New York and was ordered to pay \$10 million in restitution to BOA. The CFTC's order recognizes the restitution made in the context of the criminal case, and provides that Moster must pay and satisfy any criminal restitution obligation before his payment of the CFTC civil monetary penalty. *In re Moster*, CFTC Docket No. 09-08, Speaking Order (CFTC filed Feb. 11, 2009);

■ *CFTC v. Parish, et al.*

On February 2, 2009, the Commission settled a civil injunctive action against Albert E. Parish and Parish Economics LLC, finding that they fraudulently solicited approximately \$40 million in investments for their commodity futures pool. Parish is currently serving a sentence of more than 24 years in Federal prison for related criminal violations. In lieu of an award of restitution, the order recognizes that Parish will be subject to a criminal judgment restitution obligation in excess of \$40 million. *CFTC v. Parish, et al.*, No. 2:07-CV-01044-DCN, Consent Order (D.S.C. filed Feb. 2, 2009);

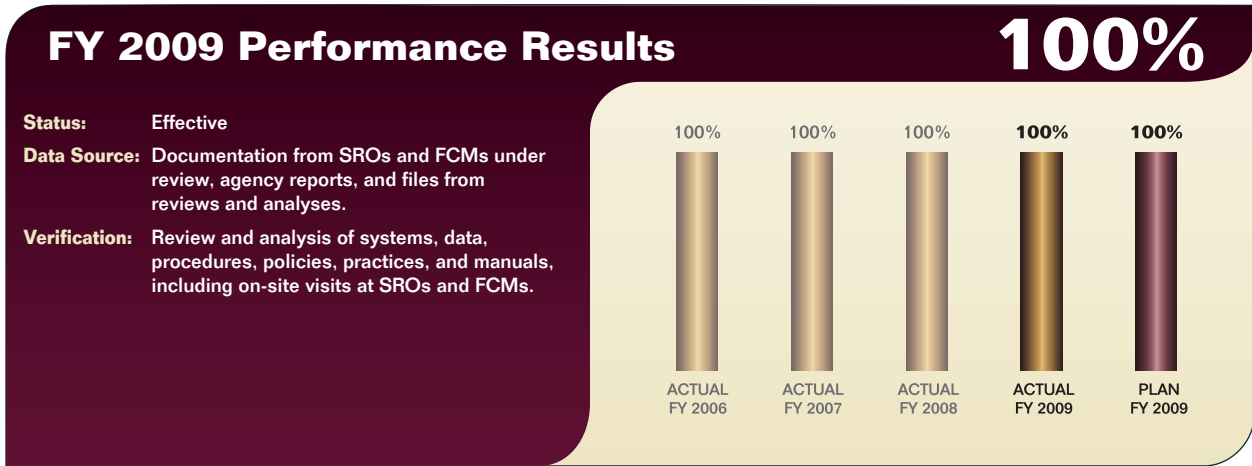
■ *CFTC v. Hudgins*

On March 13, 2008, the Commission filed a civil injunctive action against George D. Hudgins, charging him with fraudulently inducing members of the public to invest approximately \$88 million in a commodity pool that traded on-exchange commodity futures and options contracts. The Commission settled its enforcement action in April 2009 (see discussion, above). In a related criminal action, Hudgins pleaded guilty on September 9, 2008, to wire fraud, embezzlement, and money laundering. He was sentenced by U.S. District Court Judge Thad Heartfield on March 13, 2009, to 121 months in Federal prison. *CFTC v. Hudgins*, No. 608CV187 (E.D. Tex. filed May 13, 2008); and

■ *CFTC v. Crossfire Trading, LLC, et al.*

On February 5, 2009, the Commission filed a civil injunctive action against Charles "Chuck" E. Hays and his company, Crossfire Trading, LLC, charging them with fraud and misappropriation in connection with a commodity pool Ponzi scheme. Hays was arrested by Federal authorities on the same day the Commission's complaint was filed. *CFTC v. Crossfire Trading, LLC, et al.*, No. 09 CIV 259 DWF/AJB (D. Minn. filed Feb. 5, 2009).

**PERFORMANCE MEASURE 2.2.1** Percentage of self-regulatory organizations that comply with CFTC Core Principles.



**Lead Program Office**

Division of Clearing and Intermediary Oversight

**Performance Analysis & Review**

DCIO met the performance target for FY 2009. DCIO completed two SRO reviews during FY 2009. Based on these reviews, staff determined that the SROs’ programs met the applicable requirements of the Act and Commission regulations.

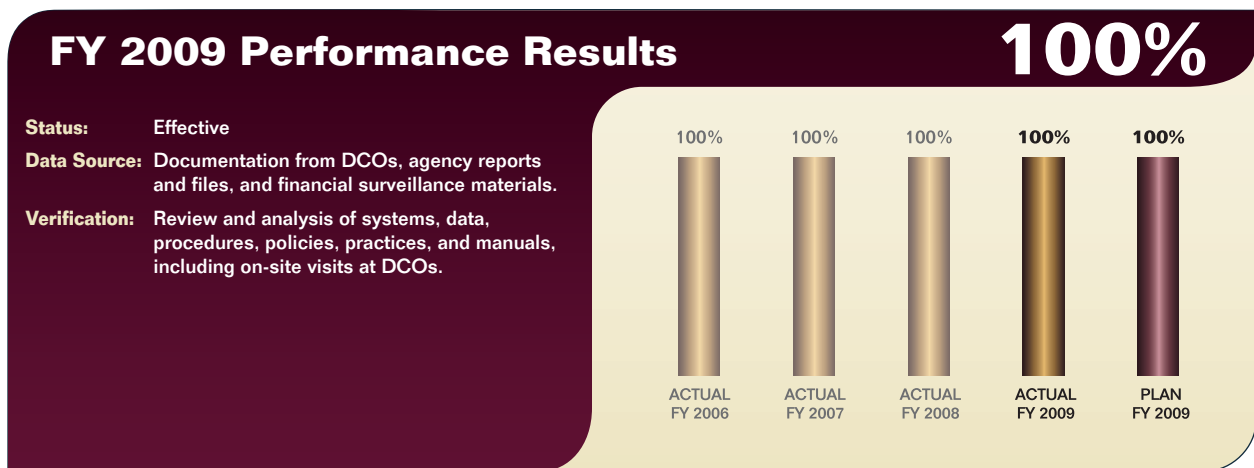
CFTC Core Principles require, in relevant part, boards of trade to establish and enforce rules to ensure the financial integrity of FCMs and the protection of customer funds. As part of its oversight program, DCIO conducts periodic, routine examinations of the financial and sales practice programs of the SROs for the purposes of reviewing the effectiveness of such programs, and assessing the compliance of SROs with applicable CFTC Core Principles, Commission regulations, and staff interpretations.

Examinations by DCIO of SROs generally involve an assessment of some or all of the following areas: the level of staffing dedicated by the SRO to conduct financial and sales practice review of FCMs; the conduct of infield examinations of FCMs; the review of financial statements and regulatory notices submitted by FCMs; the review of the FCM’s maintenance of required books and records; and the review of the SRO’s disciplinary program.

**Performance Highlights**

DCIO completed reviews of two SROs’ financial surveillance programs during FY 2009. Staff concluded that the SROs conducted their financial and sales practice programs in compliance with applicable provisions of the Act and Commission regulations and staff interpretations. DCIO also is in the process of conducting a third review of an SRO’s financial surveillance program that will not be completed until FY 2010.

**PERFORMANCE MEASURE 2.2.2** Percentage of derivatives clearing organizations that comply with CFTC Core Principles.



**Lead Program Office**

Division of Clearing and Intermediary Oversight

**Performance Analysis & Review**

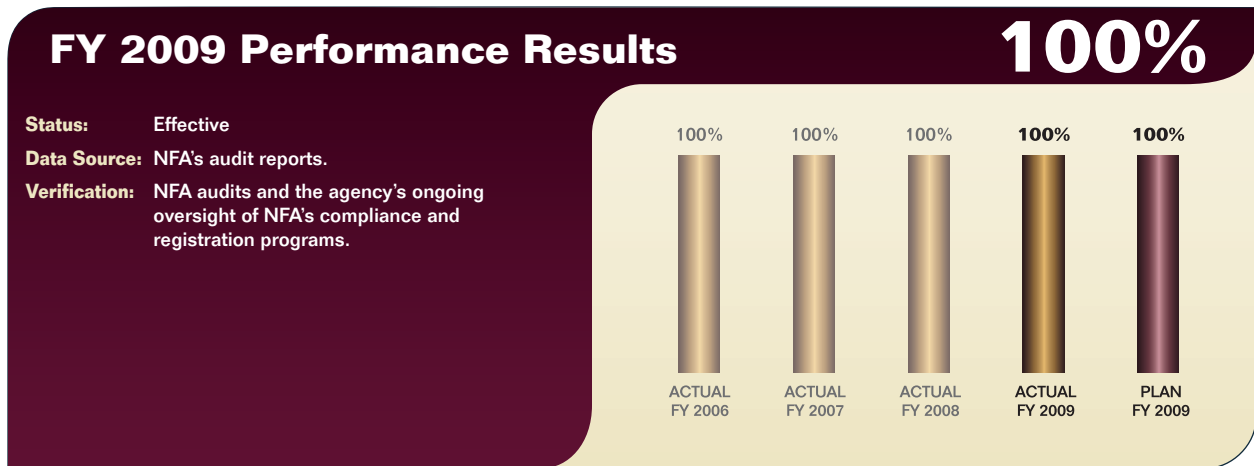
DCIO met the performance target for FY 2009. Three reviews to assess compliance with certain CFTC Core Principles were completed during FY 2009. Based on its reviews, staff determined that the DCO programs met the applicable requirements of the Act and Commission regulations. In addition to conducting these reviews, DCIO staff conduct financial and risk surveillance of DCOs and clearing members on a daily basis, a central element of DCIO’s ongoing oversight. Staff have identified no instances of noncompliance. Another component of DCO oversight is the review of rules and rule changes of DCOs. During the past fiscal year, 68 rule submissions, many containing multiple rules, were filed by DCOs under the self-certification provisions of the Act. Staff reviewed each of the submissions and found none that violated CFTC Core Principles.

**Performance Highlights**

One review of a DCO focused on CFTC Core Principle of financial resources, and another review of several DCOs focused on CFTC Core Principle of default procedures. A third review, conducted jointly with DMO, focused on CFTC Core Principle of system safeguards of several DCOs. Based on its reviews, staff determined that the DCO programs met the applicable requirements of the Act and Commission regulations.



**PERFORMANCE MEASURE 2.2.3** Percentage of professionals compliant with standards regarding testing, licensing, and ethics training.



**Lead Program Office**

Division of Clearing and Intermediary Oversight

**Performance Analysis & Review**

DCIO met the performance target for FY 2009: 100 percent of professionals were compliant with standards regarding testing, licensing, and ethics training.

**Performance Highlights**

In May 2008, the Farm Bill became effective. Within the Farm Bill are several amendments to the Act concerning off-exchange retail forex transactions. Among other things, the legislation: creates a new category of Commission registrant eligible to act as a counterparty in these transactions, known as a retail foreign exchange dealer

(RFED); provides financial requirements for FCMs, FCM affiliates, and RFEDs, who act as counterparties in retail forex transactions; and permits the intermediation of such transactions by registrants. In general, the Farm Bill establishes that those involved in offering forex products to retail customers should be registered with the Commission, unless they are otherwise regulated. DCIO staff have drafted, but not yet released, proposed regulations for Commission consideration that address off-exchange retail forex transactions, and require the registration of all intermediaries and RFEDs, and that will establish financial requirements for the new entities. Staff have also drafted proposed amendments to the Commission's existing regulations regarding registration, maintenance of books and records, anti-fraud, risk-disclosure, and supervisory requirements as necessary to incorporate the new categories of registrants, and unique structure of OTC retail forex markets into existing regulations.

**PERFORMANCE MEASURE 2.2.4** Percentage of self-regulatory organizations that comply with requirement to enforce their rules.

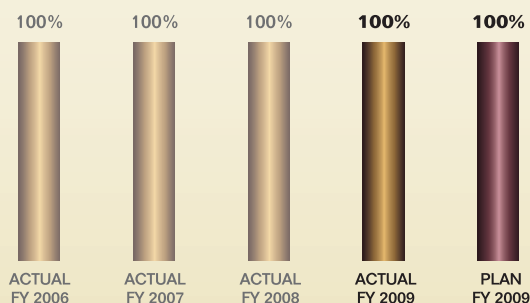
## FY 2009 Performance Results

**100%**

**Status:** Effective

**Data Source:** Documentation from SROs, agency reports, and files from reviews and analyses.

**Verification:** Review and analysis of systems, data, procedures, policies, practices, and manuals, including on-site visits at SROs.



### Lead Program Office

Division of Clearing and Intermediary Oversight

### Performance Analysis & Review

DCIO met the performance target for FY 2009. Two reviews to assess the financial surveillance programs of SROs, and one review to assess an SRO's arbitration program were completed in FY 2009.

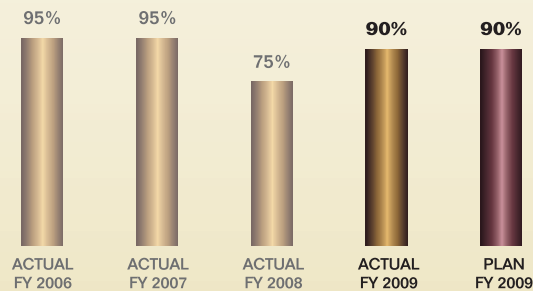
CFTC Core Principle 11 provides, in relevant part, that a DCM shall establish and enforce rules to ensure the financial integrity of FCMs and the protection of customer funds. DCMs, in their capacity as SROs, receive and review monthly financial reports submitted by FCMs for the purpose of assessing whether the FCMs are in compliance with the Commission's and the SRO's minimum financial requirements, including requirements related to the safeguarding of customer funds. Commission regulations further require, and SRO rules require, an FCM to file a notification with the Commission and the FCM's designated SRO whenever the SRO fails to meet capital and segregation requirements.

DCIO conducts periodic, routine examinations of the financial and sales practice programs of the SROs for the purposes of reviewing the effectiveness of such programs, and assessing the SROs' compliance with applicable CFTC Core Principles, Commission regulations, and staff interpretations. DCIO also reviews the programs of registered futures associations

for compliance with Section 17 of the Act. DCIO's examinations of SROs generally involve an assessment of some or all of the following areas: the level of staffing dedicated by the SRO to conduct financial and sales practice review of FCMs; the conduct of infield examinations of FCMs; the review of financial statements and regulatory notices; the review of the FCM's maintenance of required books and records; and the review of the SRO's disciplinary program.

### Performance Highlights

DCIO completed reviews of two SRO's financial surveillance programs that focused on the SRO's oversight of member FCMs compliance with the CFTC, and SRO minimum financial and related reporting requirements. Staff concluded that the SROs conducted their financial and sales practice programs in compliance with applicable provisions of the Act and Commission regulations and staff interpretations. DCIO also completed a review of an SRO's arbitration program for the settlement of customers' claims or grievances against any member or employee of a registered futures association. DCIO determined that the SRO's arbitration program was in compliance with applicable provisions of the Act and Commission regulations. DCIO is in the process of conducting a third review of an SRO's financial surveillance program that will not be completed until FY 2010, and is finalizing a review of an SRO's registration program that also will be completed in FY 2010.

**PERFORMANCE MEASURE 2.2.5** Percentage of total requests for guidance and advice receiving CFTC responses.**FY 2009 Performance Results****90%****Status:** Effective**Data Source:** Signed letters (formal) and email and telephone responses (informal).**Verification:** Agency files maintained in chronological files and responses to formal requests published on the Commission's Web site.

## Lead Program Office

Division of Clearing and Intermediary Oversight

## Performance Analysis & Review

DCIO met the performance target for FY 2009. DCIO staff respond to numerous requests for guidance and advice on the CEA and Commission regulations each year. Requests are received from members of the public, market participants, intermediaries, SROs, foreign entities, and others. These requests may be formal, such as written requests for no-action, interpretative, or exemption letters. DCIO also receives numerous informal requests for guidance and advice via e-mail and phone calls.

Although DCIO responds to all requests it receives, it is not always possible for DCIO to respond within the fiscal year that it receives a request. DCIO estimates that up to 10 percent of requests may fall in this category. Some requests that raise novel or complex issues, or requests in the form of no-action letters, interpretations, or exemptions, take more time to research and to prepare a response. It should be noted, however, the statistics on numbers of letters issued or e-mail responded to may not reflect the complexity of any particular matter, or the resources necessary to address one issue versus another issue. In addition, matters commenced in one fiscal year may overlap, and be completed during the subsequent fiscal year, resulting in some imprecision in statistical measures for a given year. DCIO makes every

effort to respond to requests as quickly as possible, but the timeliness of a response also is affected by the speed with which a requester provided additional information sought by staff, and the length of time required by other Commission divisions or offices to review a draft response, factors outside the control of DCIO.

## Performance Highlights

In FY 2009, DCIO responded to numerous requests, both formal and informal, for interpretations of the Commission's registration requirements, and issued exemptive and no-action letters addressing various issues, including the circumstances under which general partners of commodity pools may be relieved from CPO registration requirements when a registered designee serves as the pool's operator. Additionally, DCIO issued an exemptive letter granting relief from certain record-keeping and disclosure requirements to a registered CPO of a publicly offered commodity pool. The relief is predicated on substituted compliance with parallel requirements under securities laws.

DCIO also issued a letter, in FY 2009, providing guidance to CPOs on complying with the financial reporting requirements set forth in Part 4 of the Commission's regulations. The letter assisted CPOs in meeting their regulatory requirements by highlighting recent regulatory changes affecting the financial filings required of CPOs, and identified common deficiencies observed in prior year financial filings.

**PERFORMANCE MEASURE 2.3.1(a)** Percentage of filed complaints resolved within one year of the filing date for Voluntary Proceedings.

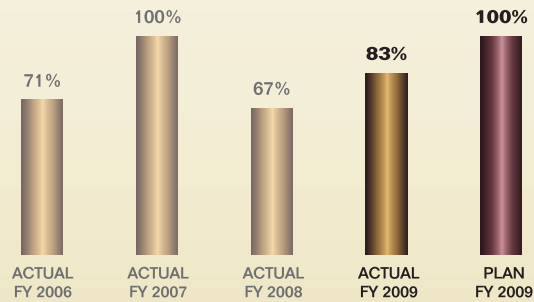
## FY 2009 Performance Results

**83%**

**Status:** Moderately Effective

**Data Source:** Reparations case tracking system and Judgment Officer Disposition report.

**Verification:** Weekly and monthly reports and statistics submitted by Judgment Officer.



### Lead Program Office

Office of Proceedings

### Performance Analysis & Review

A claim of any size can be adjudicated through the voluntary proceeding if all complainants and respondents consent to use this approach, and if the complainant submits the required \$50 filing fee. All evidence is submitted in writing and there is no oral hearing. The decision issued by the Judgment Officer (JO) is final and is not appealable.

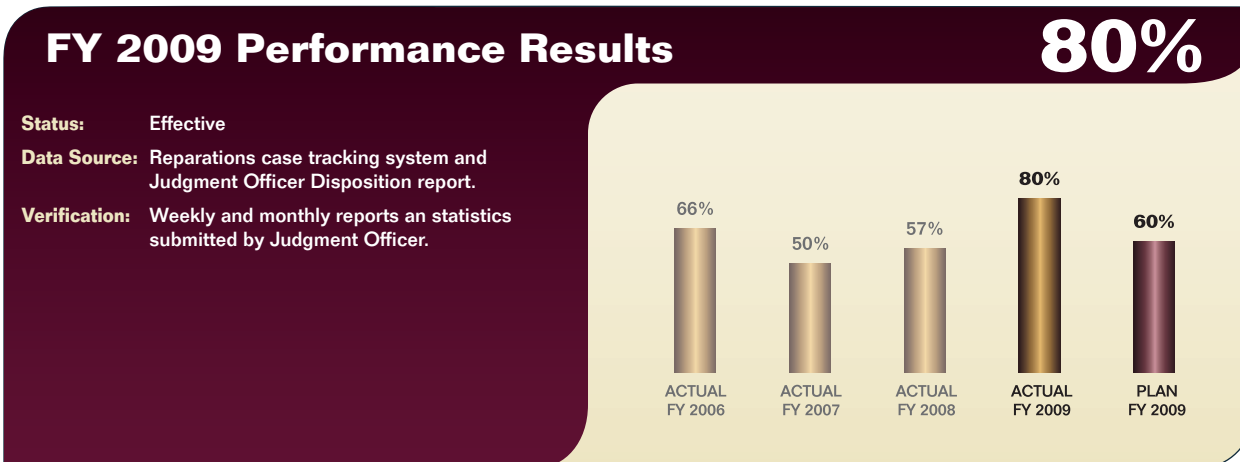
The voluntary proceedings tend to take less time because, given the non-appealable nature of the proceedings and the more informal nature of the resolution process, the parties are more inclined to settle, and the proceeding is completed through a review of written documentation.

The summary and formal proceedings take more time because of the evidentiary and hearing requirements of the proceedings; the summary tend to take slightly longer, in part, because more parties are *pro se*. A variety of other factors can affect the length of the proceeding, including motions for extensions of time, and stays pending payment of penalties agreed to in settlement.

### Performance Highlights

In FY 2009, 83 percent of the voluntary proceedings complaints were decided in one year or less. The JO issued six decisions in voluntary cases. Of those, five were completed in less than one year, and the sixth case was completed in just over one year and two months (420 days). Therefore, the resolution of voluntary proceedings complaints is moderately effective, supporting the outcome measure, objective, and goal.

**PERFORMANCE MEASURE 2.3.1(b)** Percentage of filed complaints resolved within one year and six months of the filing data for Summary Proceedings.



### Lead Program Office

Office of Proceedings

### Performance Highlights

None to report.

### Performance Analysis & Review

If the complainant does not select the voluntary proceeding and the claim amount is \$30,000 or less, the complainant must select the summary proceeding and submit a \$125 filing fee. In the summary proceeding process, evidence is submitted in writing, and an oral hearing may be held by telephone. The decision by the JO is appealable to the Commission and, ultimately, to the U.S. Court of Appeals.

In FY 2009, the Performance Measure goal was to dispose of 60 percent of the cases within one year and six months. The agency exceeded this goal, resolving 80 percent of the summary proceedings cases in less than one year and six months. The Office of Proceedings undertook a number of actions to improve the speed of resolution, including resolving deficiencies more quickly during the complaint phase and allowing electronic filing of documents, the factors affecting this outcome can vary from case to case. Often external factors, including complaint deficiencies, requests for extension of time, and discovery issues, may impact the ability to resolve the complaint in a speedy manner.

**PERFORMANCE MEASURE 2.3.1(c)** Percentage of filed complaints resolved within one year and six months of the filing date for Formal Proceedings.

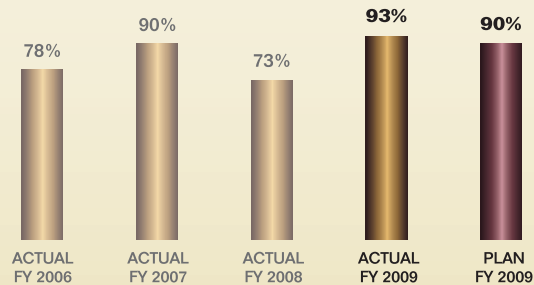
## FY 2009 Performance Results

**93%**

**Status:** Effective

**Data Source:** Reparations case tracking system and Administrative Law Judge's Disposition reports.

**Verification:** Weekly and monthly reports an statistics submitted by Administrative Law Judges.



### Lead Program Office

Office of Proceedings

### Performance Analysis & Review

The formal proceeding can be selected if the complainant does not select the voluntary proceeding and if the claim amount is more than \$30,000. The complainant must submit a \$250 filing fee. In addition to the submission of documentary evidence, an oral hearing may be held in a location that is, to the extent possible, convenient to the parties. The decision is appealable to the Commission and ultimately to the U.S. Court of Appeals.

In FY 2009, the agency resolved 93 percent of the formal proceeding complaints in one year and six months, exceeding the goal of 90 percent. The Office of Proceedings undertook a number of actions to improve the speed of resolution, including resolving deficiencies more quickly during the complaint phase and allowing electronic filing of docu-

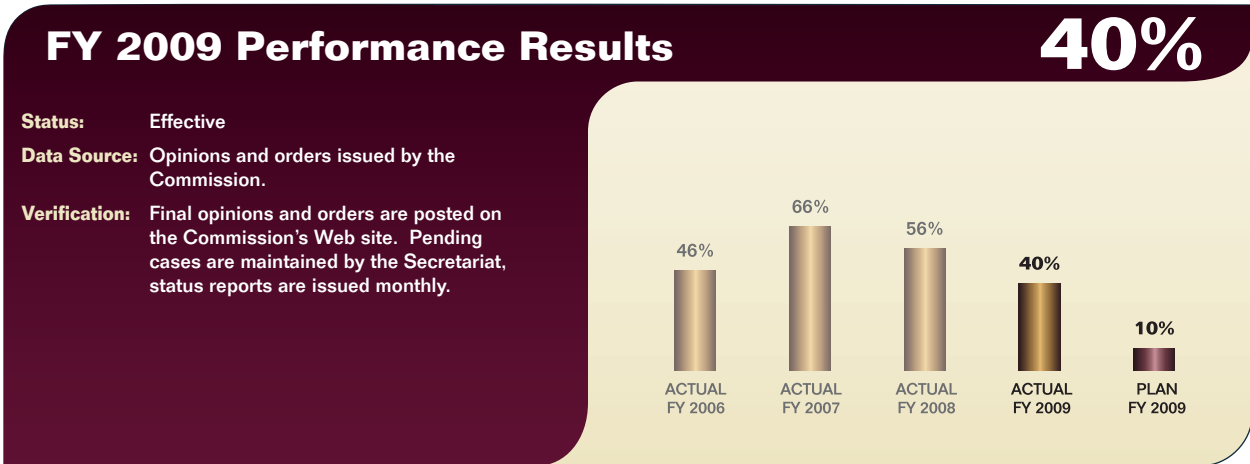
ments, the factors affecting this outcome can vary from case to case. Various external factors affect the timely processing and resolution of complaints, including: the facts and complexity of the case, whether the parties are cooperative in discovery and prepare and submit their evidence quickly, whether any procedural disputes arise, and whether an oral hearing is required (and, if so, when it can be scheduled.) *Pro se* complainants and inexperienced attorneys also impact the amount of time it takes to process this type of case.

For example, the Administrative Law Judges (ALJ) resolved a total of 14 formal complaints during FY 2009. All of these were resolved within one year and six months, except on one case that took a total of 666 days to resolve due to numerous orders and notices involving the default of some of the respondents.

### Performance Highlights

None to report.

**PERFORMANCE MEASURE 2.3.2** Percentage of appeals resolved within six months.



**Lead Program Office**

Office of General Counsel (OGC)

**Performance Analysis & Review**

The effectiveness goal for this OGC program is 50 percent of appeals resolved within six months and OGC began FY 2009 planning to meet or exceed that goal. Mid-year, OGC lowered its expectations based on a dearth of new reparation appeals filed in FY 2009, coupled with the age of the cases on the Commission's docket at the beginning of the year. At the start of FY 2009, the Commission had 12 reparations appeals on its docket,<sup>19</sup> many of which were then more than six months old. At the end of the first two quarters, two new appeals had been filed and six appeals had been resolved (one within the six month goal, a dismissal by delegated authority). In these circumstances, OGC submitted a revised plan figure. During the last two quarters, seven new appeals and miscellaneous post-judgment matters came before the Commission, a number of which were resolved within six months. At year end, 40 percent of matters completed during FY 2009 were closed within six months, bringing the program substantially closer to its effectiveness target.

**Performance Highlights**

During FY 2009, the Commission issued its decision in a case involving manipulation, *In re DiPlacido*, CFTC Docket No. 01-23 (Nov. 5, 2008). The Commission held that respondent Anthony J. DiPlacido (DiPlacido) manipulated the settlement prices of electricity futures contracts traded on NYMEX on four occasions in 1998. Significantly, the case alleged manipulation based on trading floor practices rather than a classic corner or squeeze. Applying its customary four-part test for manipulation, the Commission found that DiPlacido had the ability to influence prices because his trading activity accounted for 28 percent to 52 percent of the trading volume during the closes at issue and that he had the intent to do so in order to enhance the value of over-the-counter positions held by his customer. Third, the Commission found that an artificial price was in fact established and that DiPlacido caused it by bidding through offers and otherwise engaging in disruptive trading practices, paying more than he had to, or selling for less, depending on which way his customer wanted to move the market. The Commission applied the manipulation theory adopted by the JO of the U.S. Department of Agriculture in *In re Henner*, 30 Agric. Dec. 1151 (1971), a case brought by the CFTC's predecessor agency, the Commodity Exchange Authority. In that case, the JO, whose decision was the final decision of the agency, concluded that the respondent,

<sup>19</sup>This includes 15 related, identical petitions for interlocutory review counted as one case.

through his trading activity on the trading floor of the CME, paid more than he had to in order to raise the closing price.

The Commission imposed a cease and desist order, a \$1 million civil monetary penalty, a 20-year trading ban, and revoked DiPlacido's registration. The case was appealed to the U.S. Court of Appeals for the Second Circuit. The Court issued its decision on October 16, 2009, reducing the civil monetary penalties by \$320,000 and otherwise affirming the Commission's decision and sanctions. *DiPlacido v. CFTC*, No.08-5559-ag, 2009 WL 3226624 (2<sup>nd</sup> Cir.) (Oct. 16, 2009).

In *Rubini Vargas v. FX Solutions, LLC*, CFTC Docket No. 07-R025 (Feb. 24, 2009), the Commission modified the showing required for a non-U.S. resident complainant to file a reparations claim without posting the bond required by CEA Section 14(c). Under that provision, a non-resident claimant in the reparations forum must post a bond in double the amount of the claim, but may obtain a waiver if the complainant's country of residence permits U.S. resi-

dents to file in that country's courts without a bond. Complainants, residents of Peru, sought a waiver, relying on the absence of a bond requirement for U.S. residents in Peru's constitution, various procedural statutes and Peru's Administrative Code. In proceedings before the ALJ, their showing was deemed insufficient under Commission precedent requiring an affirmative statement that no bond was required of nonresident litigants and the complaint was dismissed without prejudice. On appeal, the Commission addressed the showing required by Section 14(c) "in light of the principle that our legal system rarely requires a party to prove a negative." Recognizing "the inherent difficulty that may attend establishing a waiver claim," the Commission held that if a diligent search revealed no relevant authority, it would treat "the absence of authority as compelling proof that no bond is required." The Commission vacated the order of dismissal and remanded the case. On remand, the complaint was dismissed on unrelated grounds.





## STRATEGIC GOAL THREE: INDUSTRY

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

**Outcome Objective 3.1:** Clearing organizations and firms holding customer funds have sound financial practices.

- **Annual Performance Goal 3.1:** 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.

**Outcome Objective 3.2:** Commodity futures and option markets are effectively self-regulated.

- **Annual Performance Goal 3.2:** No loss of funds resulting from failure of self-regulated organizations to ensure compliance with their rules.

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

- **Annual Performance Goal 3.3:** Minimize trade practice abuses.

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

- **Annual Performance Goal 3.4:** Rulemakings issued and requests responded to reflect the evolution of the markets and protect the interests of the public.

**PERFORMANCE MEASURE 3.1.1(a)** Lost Funds: Number of customers who lost funds.

**FY 2009 Performance Results**

**0**

**Status:** Effective

**Data Source:** Agency database of financial information from 1-FR-FCM and FOCUS reports, and related regulatory notices.

**Verification:** Exchanges' daily trading data and FCMs' financial filings are maintained in Stressing Positions at Risk (SPARK<sup>20</sup>) and 1-FR data systems.

0	0	0	0	0
ACTUAL FY 2006	ACTUAL FY 2007	ACTUAL FY 2008	ACTUAL FY 2009	PLAN FY 2009

**PERFORMANCE MEASURE 3.1.1(b)** Lost Funds: Amount of funds lost.

**FY 2009 Performance Results**

**\$0**

**Status:** Effective

**Data Source:** Agency database of financial information from 1-FR-FCM and FOCUS reports, and related regulatory notices.

**Verification:** Exchanges' daily trading data and FCMs' financial filings are maintained in SPARK and 1-FR data systems.

\$0	\$0	\$0	\$0	\$0
ACTUAL FY 2006	ACTUAL FY 2007	ACTUAL FY 2008	ACTUAL FY 2009	PLAN FY 2009

**Lead Program Office**

Division of Clearing and Intermediary Oversight

is continuing to monitor the FCM's bankruptcy proceedings and, as of September 30, 2009, no customers trading on DCMs have lost funds due to the FCM's bankruptcy.

**Performance Analysis & Review**

Performance target was met for FY 2009. During FY 2009, no customers who deposited funds with FCMs for trading on DCMs experienced any losses as a result of the FCM's failure to adhere to Commission regulations. However, a registered FCM filed for bankruptcy protection in August 2007. DCIO

FCMs are required to segregate their own assets from all customer funds deposited for trading on DCMs in designated accounts with a bank, trust company, clearing organization, or other FCM. FCMs holding funds for customers trading on non-U.S. contract markets are required to comply with Part 30 of the Commission's regulations with respect to the custody of the customers' funds.

<sup>20</sup> Refer to CFTC Information Technology Systems in the Appendix for a description of functionality.

FCMs also are required to prepare daily calculations demonstrating compliance with the customer funds custody requirements. These calculations must be prepared by 12:00 noon and must demonstrate compliance as of the end of business on the previous business day.

DCIO conducts financial and risk surveillance activities to closely monitor the operations of FCMs in possession of customer funds. These surveillance activities include DCIO's

SPARK system, combined with required financial warning notices from the FCMs and constant market monitoring.

## Performance Highlights

The Commission was successful in ensuring that no losses of regulated customer funds occurred due to firm failures or the inability of customers to transfer their funds from a failing firm to a sound firm in FY 2009.

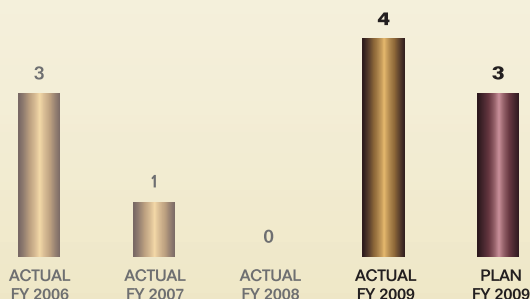
## FY 2009 Performance Results

4

**Status:** Moderately Effective

**Data Source:** Code of Federal Regulations; proposed and final amendments to regulations.

**Verification:** Proposed and final regulations are published in the *Federal Register* and posted on the Commission's Web site.



### Lead Program Office

Division of Clearing and Intermediary Oversight

### Performance Analysis & Review

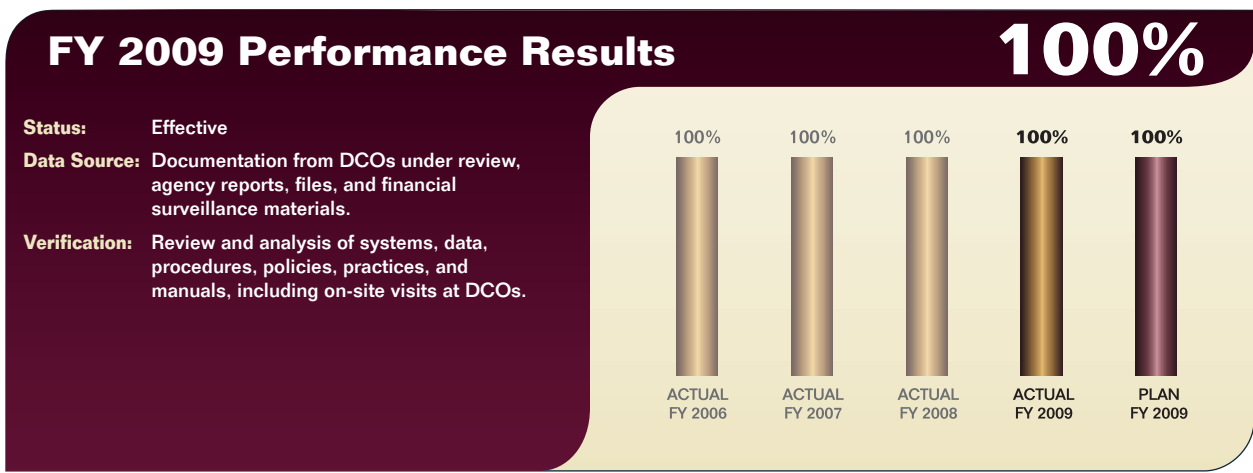
Performance target was exceeded for FY 2009. The number of rulemakings to ensure market integrity and financial soundness is not a number that can be precisely predetermined. The final number of rulemakings is driven, in part, by changes in the marketplace, or in the structure of exchanges, clearing organizations, and intermediaries that operate within that marketplace. The number can be a function of what is needed to allow appropriate market interrelationships to be maintained and to allow registered entities to operate in the most efficient manner possible. These factors may not be foreseeable at the time the performance estimate is prepared. In addition, the need for a rulemaking may not be known, or may not have reached a decision-making point until further analysis, study, and other actions or events take place. This

also can account for a difference between the fiscal year plan and the actual outcome.

### Performance Highlights

The Commission has adopted a risk-based capital regulation for FCMs (*i.e.*, an FCM's minimum capital requirement is determined based upon the relative risk associated with customer and non-customer futures positions carried by the FCM). The Commission recently proposed amendments to the minimum capital requirements that FCMs and IBs must maintain. The proposed amendments would increase capital requirements by: 1) increasing the required minimum dollar amounts to \$45,000 for IBs and \$1 million for FCMs; 2) requiring risk-based (*i.e.*, margin-based) calculations in the regulation to include all customer and noncustomer over-the-counter contracts that are submitted for clearing by the FCM to U.S. or foreign clearing organizations; and 3) increasing the applicable percentages specified in the regulation for such margin-based calculations.

**PERFORMANCE MEASURE 3.1.3** Percentage of clearing organizations that comply with requirement to enforce their rules.



**Lead Program Office**

Division of Clearing and Intermediary Oversight

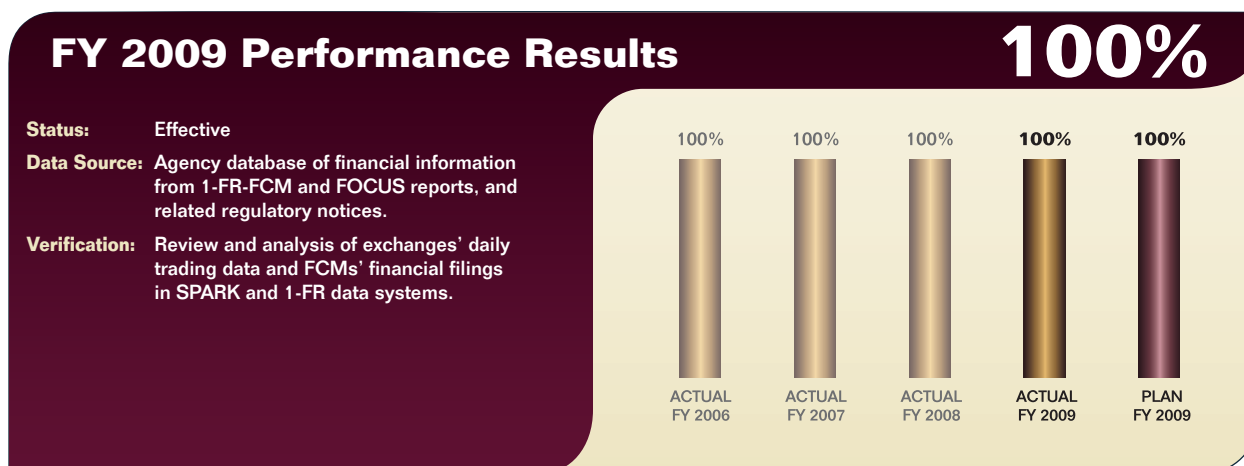
**Performance Analysis & Review**

Performance target was met for FY 2009. Three reviews to assess compliance with certain CFTC Core Principles were completed during FY 2009. Based on its reviews, staff determined that the DCO programs met the applicable requirements of the Act and Commission regulations. In addition to conducting these reviews, DCIO staff conduct financial and risk surveillance of DCOs and clearing members on a daily basis, a central element of DCIO’s ongoing oversight. Staff have identified no instances of noncompliance. Another component of DCO oversight is the review of rules and rule changes of DCOs. During the past fiscal year, 68 rule submissions, many containing multiple rules, were filed by DCOs under the self-certification provisions of the Act. Staff reviewed each of the submissions and found none that violated CFTC Core Principles.

**Performance Highlights**

One review of a DCO focused on CFTC Core Principle of financial resources, and another review of several DCOs focused on CFTC Core Principle of default procedures. A third review, conducted jointly with DMO, focused on CFTC Core Principle of system safeguards of several DCOs. Based on its reviews, staff determined that the DCO programs met the applicable requirements of the Act and Commission regulations.

**PERFORMANCE MEASURE 3.2.1** Percentage of intermediaries who meet risk-based capital requirements.



### Lead Program Office

Division of Clearing and Intermediary Oversight

SPARK system, combined with required financial warning notices and market monitoring, to closely monitor the financial condition of FCMs.

### Performance Analysis & Review

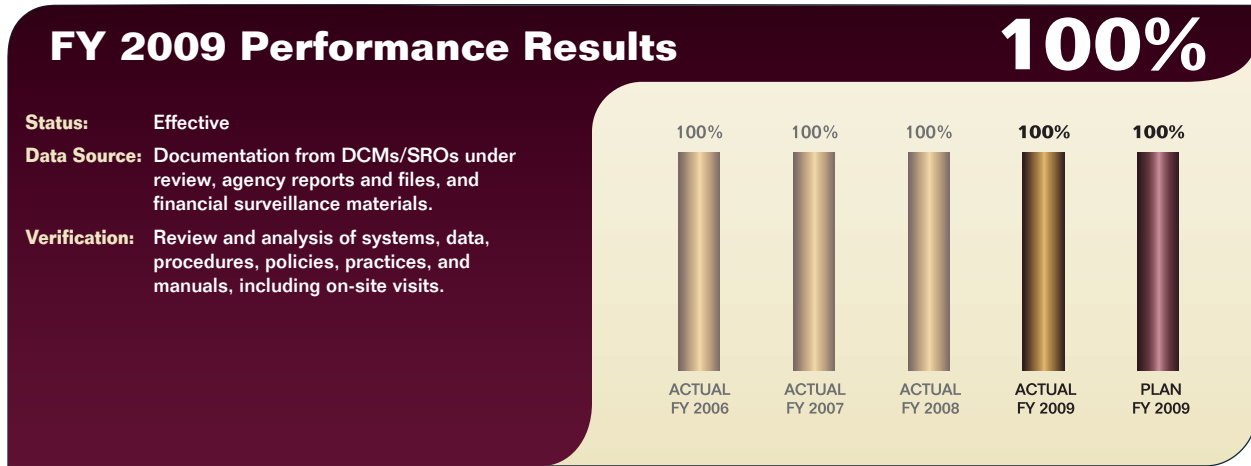
Performance target was met for FY 2009. The Act, Commission regulations, and SRO rules require FCMs to comply with minimum financial requirements and related reporting requirements at all times. Included in the minimum financial requirements is the Commission's and SROs' risk-based capital requirement. Any FCM failing to meet the risk-based capital requirement must provide immediate notice to the Commission and to the firm's designated SRO. Furthermore, Commission regulations provide that any FCM that fails to meet minimum capital requirements, including the risk-based capital requirement, and cannot timely come back into compliance with these requirements must transfer all customer accounts and immediately cease operating as an FCM until it can demonstrate compliance.

The Commission and SROs monitor FCMs' compliance with the risk-based capital requirement through review of monthly financial reports, regulatory notices, and the conduct of in-field examinations. DCIO also uses the

### Performance Highlights

DCIO staff reviewed all regulatory notices received from FCMs during FY 2009. This review included assessing each firm's actions to ensure that all firms that reported a failure to maintain the minimum capital requirement either took the necessary steps to bring themselves back into compliance or properly transferred their customers' accounts to other, adequately capitalized FCMs. DCIO staff reviewed financial reports submitted by every registered FCM on a monthly basis to assess compliance with the minimum financial requirements. DCIO staff also reviewed audited annual financial reports for every FCM during FY 2009. Finally, DCIO staff conducted examinations of several FCMs during FY 2009 to assess the firms' compliance with Commission and SRO capital requirements.

**PERFORMANCE MEASURE 3.2.2** Percentage of self-regulatory organizations that comply with requirement to enforce their rules.



**Lead Program Offices**

Division of Clearing and Intermediary Oversight

Division of Market Oversight

**Performance Analysis & Review**

*Division of Clearing and Intermediary Oversight:* Performance target was met for FY 2009. Two reviews to assess the financial surveillance programs of SROs and one review to assess an SRO’s arbitration program were completed in FY 2009.

CFTC Core Principle 11 provides, in relevant part, that a DCM shall establish and enforce rules to ensure the financial integrity of FCMs and the protection of customer funds. DCMs, in their capacity as SROs, receive and review monthly financial reports submitted by FCMs for the purpose of assessing whether the FCMs are in compliance with the Commission’s and the SRO’s minimum financial requirements, including requirements related to the safeguarding of customer funds. In addition, Commission regulations and SRO rules require an FCM to file a notification with the Commission and the FCM’s designated SRO whenever the SRO fails to meet capital and segregation requirement.

DCIO conducts periodic, routine examinations of the financial and sales practice programs of the SROs for the purposes of reviewing the effectiveness of such programs; in addition, DCIO accesses the SROs’ compliance with applicable CFTC Core Principles, Commission regulations, and staff interpretations. DCIO also reviews the programs of registered futures associations for compliance with Section 17 of the Act. DCIO’s examinations of SROs generally involve an assessment of some or all of the following areas: the level of staffing dedicated by the SRO to conduct financial and sales practice review of FCMs; the conduct of infield examinations of FCMs; the review of financial statements and regulatory notices; the review of the FCM’s maintenance of required books and records; and the review of the SRO’s disciplinary program.

*Division of Market Oversight:* DMO staff conduct rule enforcement reviews (RERs) of DCMs on a regular cycle to ensure that exchanges enforce their rules. CEA Core Principle 2 specifically requires that exchanges monitor and enforce compliance with their rules. DMO reviews exchange compliance with CEA Core Principle 2 when it conducts an RER of an exchange’s trade practice surveillance program. RERs also examine the adequacy of an exchange’s market surveillance, audit trail, disciplinary, and dispute resolution

programs. When DMO examines these programs, its review includes an analysis to ensure that an exchange is enforcing its rules that relate to the particular program under review. In FY 2009, DMO found in its RER report for the MGE that the exchange maintains an adequate open outcry audit trail and trade practice surveillance program to detect trading abuses. The MGE uses an automated trade surveillance system to identify and investigate potential trading violations. However, DMO recommended that the MGE increase the staffing level of its compliance group, examine the underlying reasons for the large number of compliance staff turnover during the review period, and augment its audit trail compliance program for electronic trading. DMO also found that the MGE maintains an effective market surveillance program that includes daily surveillance to identify possible manipulation, and to ensure orderly liquidation of expiring contracts. During FY 2009, DMO also was working on two additional RERs that will be completed in FY 2010. These reviews include a joint RER of the CME and the CBOT and an RER of ICE US.

DMO also conducts ongoing daily surveillance of all exchanges to ensure that exchanges are enforcing their rules.

## Performance Highlights

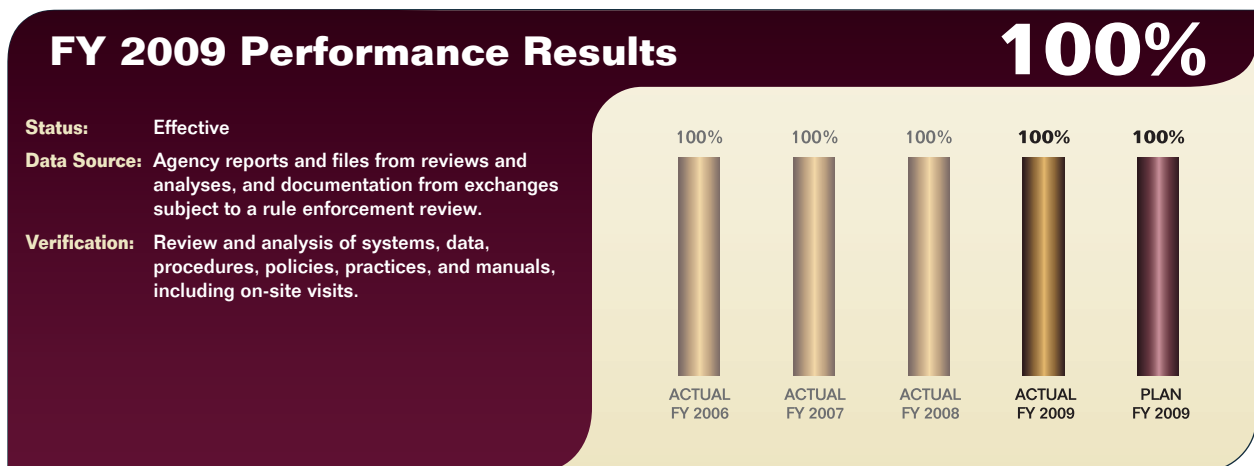
*Division of Clearing and Intermediary Oversight:* DCIO completed reviews of two SROs' financial surveillance programs that focused on the SROs' oversight of member

FCMs' compliance with the CFTC and SRO minimum financial and related reporting requirements. Staff concluded that the SROs conducted their financial and sales practice programs in compliance with applicable provisions of the Act and Commission regulations and staff interpretations. DCIO also completed a review of an SRO's arbitration program for the settlement of customers' claims or grievances against any member or employee of a registered futures association. DCIO determined that the SRO's arbitration program was in compliance with applicable provisions of the Act and Commission regulations. DCIO is in the process of conducting a third review of an SRO's financial surveillance program that will not be completed until FY 2010, and is finalizing a review of an SRO's registration program that also will be completed in FY 2010.

*Division of Market Oversight:* DMO found in its RER report for the MGE that the exchange maintains an adequate open outcry audit trail and trade practice surveillance program to detect trading abuses. The MGE uses an automated trade surveillance system to identify and investigate potential trading violations. However, DMO recommended that the MGE increase the staffing level of its compliance group, examine the underlying reasons for the large number of compliance staff turnover during the review period, and augment its audit trail compliance program for electronic trading. DMO also found that the MGE maintains an effective market surveillance program that includes daily surveillance to identify possible manipulation, and to ensure orderly liquidation of expiring contracts.



**PERFORMANCE MEASURE 3.3.1** Percentage of exchanges deemed to have adequate systems for detecting trade practice abuses.



**Lead Program Office**

Division of Market Oversight

**Performance Analysis & Review**

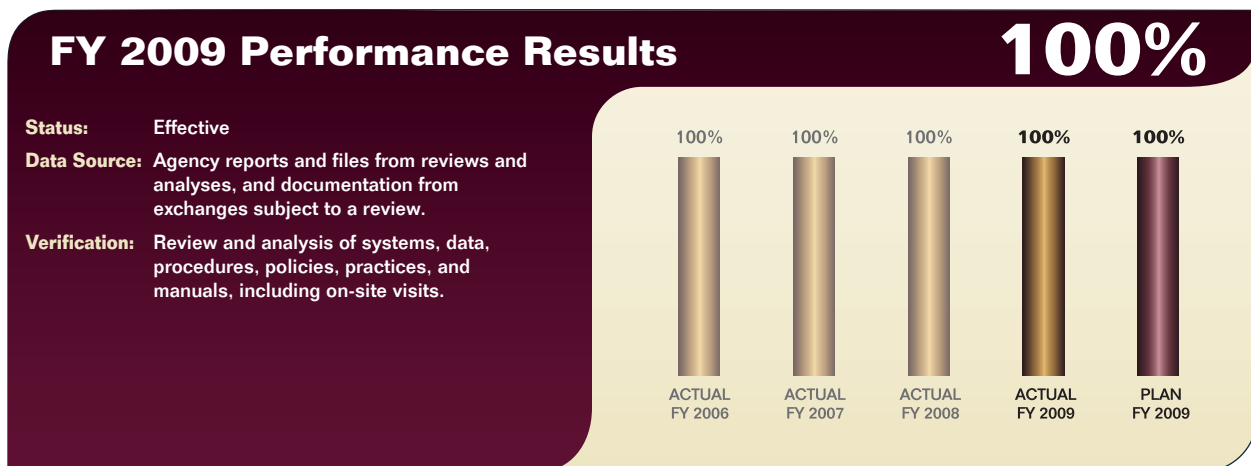
DMO staff conduct RERs of DCMs on a regular cycle that includes review and analysis of exchange programs for detecting trading abuses and violations of exchange rules. In FY 2009, DMO completed an RER of the MGE and was working to complete a RER of ICE US. In addition, DMO initiated a joint RER of the CME and CBOT that is expected to be completed in FY 2010. In the course of conducting RERs and daily surveillance of all futures exchanges, DMO has not found any exchange to have inadequate systems in place for detecting trade practice abuses.

DMO also conducts ongoing daily surveillance of all exchanges to ensure that exchanges are enforcing their rules.

**Performance Highlights**

DMO found in its RER report for the MGE that the exchange maintains an adequate open outcry audit trail and trade practice surveillance program to detect trading abuses. The MGE uses an automated trade surveillance system to identify and investigate potential trading violations. DMO recommended, however, that the MGE increase the staffing level of its compliance group, examine the underlying reasons for the large number of compliance staff turnover during the review period, and augment its audit trail compliance program for electronic trading. DMO also found that the MGE maintains an effective market surveillance program that includes daily surveillance to identify possible manipulation, and to ensure orderly liquidation of expiring contracts.

**PERFORMANCE MEASURE 3.3.2** Percentage of exchanges that comply with requirement to enforce their rules.



### Lead Program Offices

Division of Clearing and Intermediary Oversight

Division of Market Oversight

### Performance Analysis & Review

*Division of Clearing and Intermediary Oversight:* Performance target was met for FY 2009. Two reviews to assess the financial surveillance programs of SROs and one review to assess an SRO’s arbitration program were completed in FY 2009.

CFTC Core Principle 11 provides, in relevant part, that a DCM shall establish and enforce rules to ensure the financial integrity of FCMs and the protection of customer funds. DCMs, in their capacity as SROs, receive and review monthly financial reports submitted by FCMs for the purpose of assessing whether the FCMs are in compliance with the Commission’s and the SRO’s minimum financial requirements, including requirements related to the safeguarding of customer funds. In addition, Commission regulations and SRO rules require an FCM to file a notification with the Commission and the FCM’s designated SRO whenever the SRO fails to meet capital and segregation requirement.

DCIO conducts periodic, routine examinations of the financial and sales practice programs of the SROs for the purposes

of reviewing the effectiveness of such programs; in addition, DCIO accesses the SROs’ compliance with applicable CFTC Core Principles, Commission regulations, and staff interpretations. DCIO also reviews the programs of registered futures associations for compliance with Section 17 of the Act. DCIO’s examinations of SROs generally involve an assessment of some or all of the following areas: the level of staffing dedicated by the SRO to conduct financial and sales practice review of FCMs; the conduct of infield examinations of FCMs; the review of financial statements and regulatory notices; the review of the FCM’s maintenance of required books and records; and the review of the SRO’s disciplinary program.

*Division of Market Oversight:* DMO staff conduct RERs of DCMs on a regular cycle to ensure that exchanges monitor and enforce compliance with their rules, as required by CFTC Core Principle 2. Such reviews may examine some or all of a DCMs audit trail, market surveillance, trade practice surveillance, disciplinary, and dispute resolution programs. When DMO examines any of these programs, its review includes an analysis designed to ensure that the DCM is enforcing its rules that relate to the particular program under review. In FY 2009, DMO completed an RER of the MGE that thoroughly examined the Exchange’s market surveillance, audit trail, trade practice surveillance, disciplinary, and dispute resolution programs. DMO was working to complete a

review of the self-regulatory programs at ICE US futures and initiated joint a RER of the CME and the CBOT. The ICE US, CME, and CBOT reviews are expected to be complete in FY 2010.

DMO also conducts ongoing daily surveillance of all exchanges to ensure that exchanges are enforcing their rules. DMO has not identified any material deficiencies at either exchange.

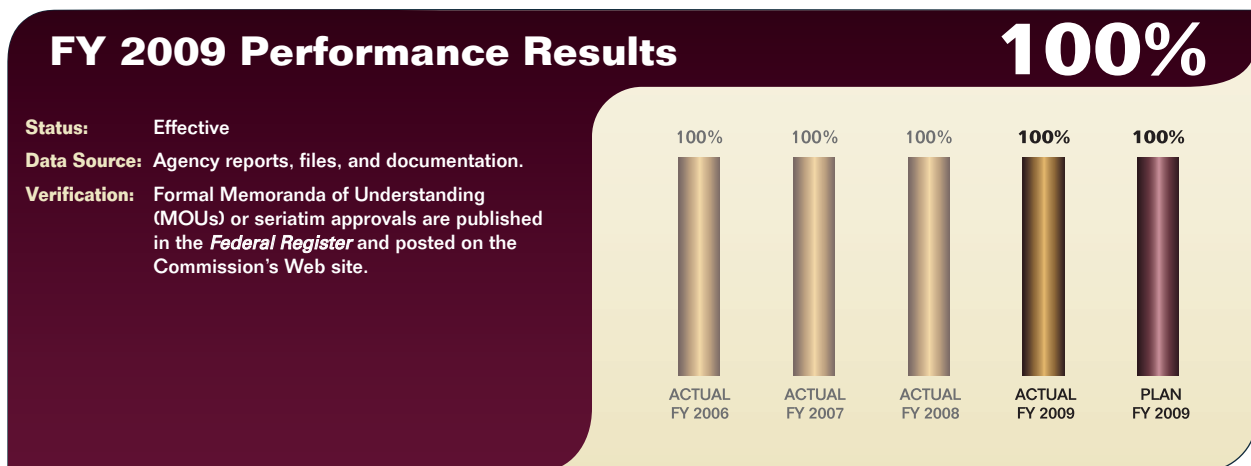
## Performance Highlights

*Division of Clearing and Intermediary Oversight:* DCIO completed reviews of two SROs' financial surveillance programs that focused on the SROs' oversight of member FCMs' compliance with the CFTC and SRO minimum financial and related reporting requirements. Staff concluded that the SROs conducted their financial and sales practice programs in compliance with applicable provisions of the Act and Commission regulations and staff interpretations. DCIO also completed a review of an SRO's arbitration program for the settlement of customers' claims or grievances against any member or employee of a registered futures

association. DCIO determined that the SRO's arbitration program was in compliance with applicable provisions of the Act and Commission regulations. DCIO is in the process of conducting a third review of an SRO's financial surveillance program that will not be completed until FY 2010, and is finalizing a review of an SRO's registration program that also will be completed in FY 2010.

*Division of Market Oversight:* DMO found in its RER report for the MGE that the exchange maintains an adequate open outcry audit trail and trade practice surveillance program to detect trading abuses. The MGE uses an automated trade surveillance system to identify and investigate potential trading violations. DMO recommended, however, that the MGE increase the staffing level of its compliance group, examine the underlying reasons for the large number of compliance staff turnover during the review period, and augment its audit trail compliance program for electronic trading. DMO also found that the MGE maintains an effective market surveillance program that includes daily surveillance to identify possible manipulation, and to ensure orderly liquidation of expiring contracts.

**PERFORMANCE MEASURE 3.4.1** Percentage of CFMA Section 126(b) objectives addressed.



**Lead Program Office**

Office of International Affairs

**Performance Analysis & Review**

This performance measure has been met by: 1) engaging in discussions with foreign regulators, both on a bilateral basis and within Treasury's country dialogues, on an "as needed" basis to address regulatory issues, as well as by carrying forward discussions with the Committee of European Securities Regulators (CESR); 2) participating in Task Forces, meetings and working groups organized by multi-lateral organizations such as IOSCO, and the Council of Securities Regulators of the Americas (COSRA); 3) organizing the annual Commission training symposium and international regulators meeting; and 4) coordinating technical assistance missions to foreign market authorities.

The recurring activities of OIA include participating in the IOSCO Technical Committee and its constituent working groups, participating in Treasury's country dialogues, and organizing the annual training seminar and international regulators' meeting. Other international matters are event-driven, such as the need to engage in bilateral discussions with a foreign regulator to negotiate a market surveillance arrangement, or ad hoc in nature, such as requests for technical assistance.

Recently, OIA's activities have focused on the international community's response to the global financial crisis and to heightened concerns with respect to volatility in energy and agricultural commodities. As discussed below, this focus has required OIA to staff a variety of international working groups, communicate with the European Commission on OTC initiatives, coordinate oil market surveillance policies with the U.K. FSA and coordinate with Treasury to develop a U.S. position on financial crisis responses within the G20 and G8 structure.

These varied activities reflect that no one regulator alone can successfully address global activities in the absence of coordinated global action. For example, efforts to close gaps in the regulation of OTC derivatives or the trading of energy futures will be less effective if there are material differences in the policies of other jurisdictions that lead to regulatory arbitrage.

International coordination work is expected to increase due to issues that arise in the course of the ongoing electronic integration of global markets, cross-border mergers, market alliances and requests by foreign entities (such as clearing organizations) for regulated status under the CEA, as well as from increasing calls on the CFTC to participate in Treasury-organized dialogues with commercially important jurisdictions such as India and China.

To date, OIA has been able, within the limits of its staff resources, to provide international coordination, representation and technical assistance at acceptable levels as approved by the Chairman. Although we anticipate for the near term that these demands can be met by the additional staff resources that were allocated to OIA for FY 2009-2010, the failure to fund these resources will make it unlikely that OIA will be able to address the increasing demands resulting from the globalization of U.S. futures markets.

## Performance Highlights

### Response to Volatility in Energy and Agricultural Markets

- OIA has continued to coordinate policy with the U.K. FSA, with a view to improve the MOU (2006), which established a framework for the CFTC and FSA to share information that the respective authorities need to detect potential abusive or manipulative trading practices that involve trading in related contracts on U.K. and U.S. derivatives exchanges. In order to address increased concerns as to the role of speculation in linked commodity markets, in 2008 OIA negotiated revisions to the MOU that require coordinated position limits and reporting requirements in linked contracts trading on U.S. and U.K. exchanges. In 2009 OIA continued to coordinate with FSA to enhance surveillance over linked oil markets.
- OIA represented the CFTC as co-chair with the U.K. FSA of the IOSCO Task Force on Commodity Future Markets (Task Force), which was formed in 2008 by IOSCO in response to concerns raised around the price rises and volatility in agricultural and energy commodities in 2008 and focused on whether futures market regulators' supervisory approaches were appropriate in light of recent market developments. The Task Force made recommendations to improve transparency in energy commodity markets—futures, cash and OTC—in order to enhance the ability of futures market regulators to access all of the information that may be needed to understand fully price formation in a particular futures contract. Moreover, because manipulative schemes are often complex and may involve futures, OTC and cash markets in one or more jurisdictions, the Task Force called for measures to improve regulators' supervisory and enforcement powers and the enhancement of global cooperation.
- Consistent with the G-20 calls for further work addressing commodity markets, IOSCO renewed the mandate of the Commodity Futures Markets Task Force. The Task Force has initiated discussions with an expanded membership to advance progress on enhancing commodity market transparency.
- The co-chairs of the Commodity Futures Markets Task Force requested to work with the Bank for International Settlements to enhance BIS OTC derivatives data by disaggregating oil market data. Additional work to enhance commodity market transparency is planned.
- In connection with the CFTC's ongoing "special call" request for data from swap dealers and index traders in the United States, OIA coordinated with foreign regulators in order to resolve various issues that potentially could inhibit access to data from foreign large traders.
- Working with other parts of the U.S. government, OIA has put forward on behalf of the CFTC various proposals for presentation within the G8 and G20 that are aimed at enhancing the transparency of commodity futures markets, with an emphasis on energy commodity markets.
- OIA joined a newly created Task Force within IOSCO that will focus on enhancing coordinated global surveillance of securities and derivatives markets and intermediaries.

### Response to the Global Financial Crisis

- OIA participated in two chair-level IOSCO task forces—one on unregulated entities (hedge funds) and the other on unregulated markets and products. The unregulated entities task force report recommended that hedge fund operators should be required to register and encouraged regulators to support non-public reporting by systemically important hedge funds. The unregulated markets and products task force is close to finalizing a report that recommends improvements in

the securitization market and encourages the standardization and clearing of OTC derivatives.

- OIA has worked closely with Treasury to help formulate a coordinated U.S. response to the financial crisis within the G20 structure. Among other things, OIA has made recommendations for the various G20 working groups relating to enhancing sound regulation, strengthening transparency and international cooperation and promoting the integrity of financial markets. These efforts complement the CFTC's efforts to promote standardization of OTC derivatives and clearing by central counterparties.
- In response to concerns regarding bankruptcy protections accorded customer funds, OIA in consultation with DCIO proposed to the IOSCO Technical Committee a project that would examine customer asset protection under international insolvency schemes issues arising from the failure of Lehman Brothers.
- OIA is leading a cross-divisional staff task force to identify issues and to develop ideas for responding to recent financial market events.

#### International Financial Policy

- OIA coordinated with Treasury on various country dialogues, at which time OIA raised issues that relate to U.S. futures markets and firms. During the year, OIA worked with Treasury on dialogues with the European Union (EU) (regulation of OTC derivatives, including clearing); India and Japan.
- OIA represented the CFTC at the November North American Trade Agreement (NAFTA) dialogue with Canada and Mexico, where OIA promoted enhanced ability of U.S. intermediaries to solicit institutional customers and the recognition of electronic trading systems of U.S. exchanges, respectively.
- OIA also coordinates with Treasury with regard to the International Monetary Fund's (IMF) semi-annual Global Financial Stability Report on developments in international capital markets to ensure that derivatives developments accurately reflect CFTC activities.

- OIA continued its activities within working groups of IOSCO's Technical Committee. Of particular note is a joint Standing Committee 2 and Standing Committee 3 project that is developing international standards of best practice for direct electronic access to exchanges. A key component of this work focuses on the role that automated "filters" can play in reducing the risk of clearing firm defaults. Projects on point of sale disclosure, internal controls and liquidity risk management, structured products and dark pools of liquidity also were undertaken within these working groups. OIA also participates in the Task Force on Implementation of the IOSCO Objectives and Principles of Securities regulation, which has been reviewing the IOSCO Principles to determine whether revisions are needed in light of lessons earned during the financial crisis.
- Within COSRA, OIA contributed to projects addressing the development of self-regulatory organizations and regional integration through cross-border recognition schemes was discussed.
- Recognizing the growing importance of EU financial policy on U.S. firms and exchanges, OIA has used its added resources to increase its coverage of European Commission policy developments affecting derivatives.

#### International Regulatory Coordination

- OIA negotiated on behalf of the CFTC an enhanced cooperation and collaboration agreement with the Japan Ministry of Economy, Trade and Industry and the Japan Ministry of Agriculture, Forestry and Fisheries. These measures are designed to promote investor protection and market integrity, and to enhance the supervision of physical commodity futures trading occurring on a cross-border basis between Japan and the United States.
- OIA coordinated letters supporting the recognition of U.S. futures exchanges in foreign jurisdictions (Brazil, Germany, and Switzerland).

- In order to coordinate the supervision of clearing organizations that are registered both by the CFTC and another jurisdiction's regulator, OIA has worked with DCIO to develop a model MOU to address the supervision of such dually-regulated clearing organizations. The first such clearing oversight MOU was entered into by the CFTC and U.K. FSA in September 2009.
- OIA has coordinated with Treasury to plan for the IMF's Financial Sector Assessment of the U.S. financial regulatory system.
- The CFTC's annual International Regulators' Meeting took place in Boca Raton, Florida on in March 2009. The theme of the meeting was "lessons learned from recent financial market events." and included discussions focused on clearing credit default swaps, crisis management, hedge fund regulation and the detection and prosecution of market trading abuses.
- OIA organized and accompanied CFTC staff on a technical assistance mission to the Ethiopian Commodity Exchange Authority focusing on market oversight and surveillance, enforcement and clearing and settlement.

#### Technical Assistance

- OIA organized the CFTC's annual symposium and training seminar, where 67 participants from 31 countries representing 46 different organizations and more than 35 domestic and international panelists discussed market activities and supervisory techniques.
- OIA organized visits by foreign regulators to meet with CFTC operational staff to discuss regulatory techniques. Jurisdictions represented included, among others, staff from the Forward Markets Commission of India, the Securities Exchange Board of India, and the Ethiopia Commodities Exchange
- OIA organized internships within the CFTC for staff from the Financial Supervisory Service of Korea and the Japanese Ministry of Economics, Trade and Industry.

**PERFORMANCE MEASURE 3.4.2** Number of rulemakings, studies, interpretations, and statements of guidance to ensure market integrity and exchanges' compliance with regulatory requirements.

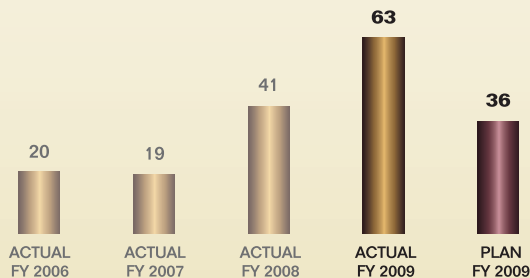
## FY 2009 Performance Results

**63**

**Status:** Effective

**Data Source:** *Federal Register*, proposed and final amendments to regulations, notices and orders, and staff statements of guidance.

**Verification:** Proposed and final regulations are published in the *Federal Register* and posted on the Commission's Web site.



### Lead Program Offices

Division of Clearing and Intermediary Oversight

Division of Market Oversight

### Performance Analysis & Review

**Division of Clearing and Intermediary Oversight:** DCIO completed a combined total of 24 rulemakings, interpretations, orders, and statements of guidance that addressed regulatory efforts to ensure market integrity and exchanges' compliance with regulatory requirements. The combined total of DCIO's and DMO's results in the amount of 63 exceeded the fiscal year plan of 36. The number of rulemakings, studies, orders, interpretations, and statements of guidance to ensure market integrity and exchanges' compliance with regulatory requirements is not a number that can be precisely predetermined. The final number of these combined statistics reported by DCIO is driven, in part, by changes in the marketplace, or in the structure of the exchanges, clearing organizations, and intermediaries that operate within that marketplace. The number can be a function of what is needed to allow appropriate market interrelationships to be maintained and to allow the exchanges, clearing organizations, and intermediaries to operate in the most efficient manner possible. These factors may not be foreseeable at the time the performance estimate

is prepared. In addition, the need for a rulemaking, study, interpretation, or guidance may not be known or may not have reached a decision-making point until further analysis and other actions or events have taken place. This also can account for a difference between the fiscal year plan and the actual outcome.

**Division of Market Oversight:** The number of rulemakings, studies, interpretations, and statements of guidance is not a number that can be forecasted precisely. The final number is driven, in part, by changes in the marketplace or in the operations of exchanges that may not be foreseeable at the time the performance estimate is prepared. DMO staff contributed to the Commission's publication of 39 Federal Register notices including notices of proposed and final rulemaking.

### Performance Highlights

**Division of Clearing and Intermediary Oversight:** The Commission amended Regulations 4.26 and 4.36 in order to require that CPOs and CTAs file Disclosure Documents electronically through NFA's electronic Disclosure Document filing system. This action was in response to a petition filed by NFA with the Commission. NFA explained that although it had developed a new Internet-based Disclosure Document electronic filing system that will be significantly less resource intensive while also streamlining and enhancing the filing

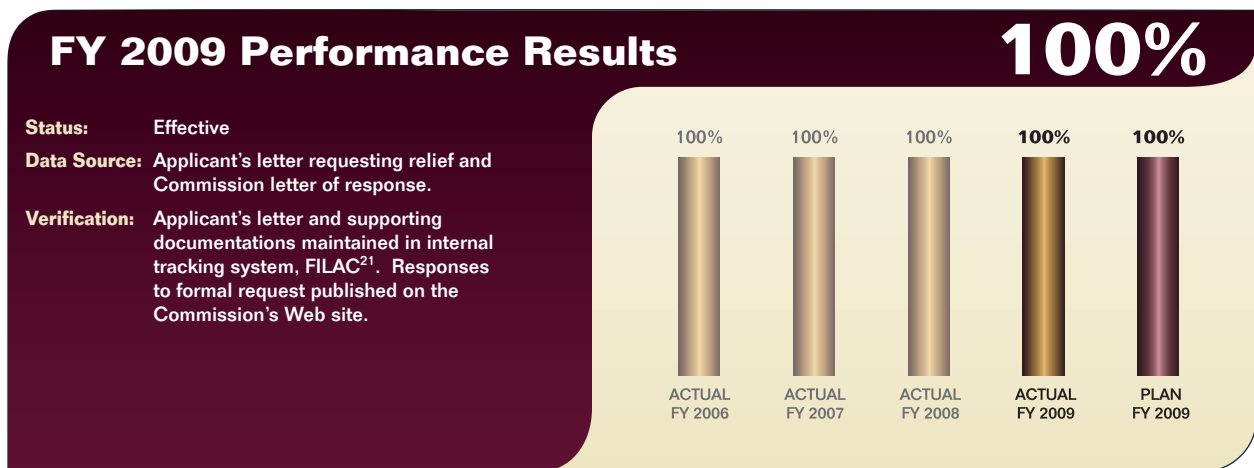


process for registrants, absent an electronic filing requirement, the proposed benefits would not be realized. DCIO prepared an interpretative statement issued by the Commission regarding the bankruptcy treatment of customer funds related to cleared-only contracts. The interpretation concluded that claims arising out of cleared-only contracts are properly included within the meaning of “net equity” for purposes of the U.S. Bankruptcy Code and Commission regulations.

***Division of Market Oversight:*** In FY 2009, the Commission approved final rules that increased the Commission’s oversight of ECMs. These markets have become prominent energy related contract trading forums. The rules implement the provisions of the 2008 Farm bill that apply new require-

ments to ECMs listing, and trades involving, contracts that perform a significant price discovery function. The rules provide guidance with respect to compliance with nine statutory core principles for ECMs with SPDCs, introduce new and amend prior information-submission requirements, and establish the procedures and standards by which the CFTC will determine that an ECM contract performs a significant price discovery function. In July of 2009, in its first final action under the new rules, the Commission determined that the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function under the material liquidity, price linkage and arbitrage criteria established in section 2(h)(7) of the CEA, as amended by the 2008 Farm Bill.

**PERFORMANCE MEASURE 3.4.3** 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.



## Lead Program Office

Division of Market Oversight

## Performance Analysis & Review

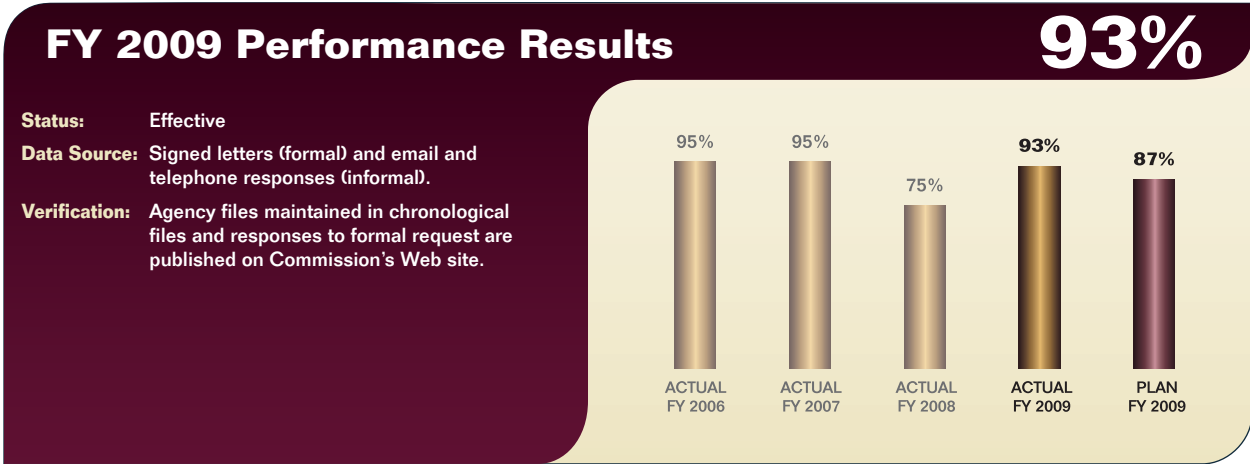
In FY 2009, DMO withdrew two no-action letters that allowed the letters' recipients to exceed Federal agricultural speculative position limits when acting as index traders. DMO also amended ICE Futures Europe's foreign terminal no-action letter to enhance the CFTC's ability to carry out its market surveillance responsibilities. ICE Futures Europe lists cash-settled contracts that settle to NYMEX contracts. DMO also responded to a BNP Paribas request for formal no-action relief from the Federal agricultural speculative position limits. DMO granted the requested relief within six months. The no-action relief is discussed further below.

## Performance Highlights

In FY 2009, DMO issued a no-action letter to BNP Paribas confirming that the division would not recommend that the Commission initiate an enforcement action against BNP Paribas or Fortis Bank S.A./N.V., or their respective affiliates, for violation of Commission or exchange speculative position limits, to the extent any such violation results from the application of the Commission's aggregation policy and rules to the acquisition by BNP Paribas of Fortis Bank. DMO granted this temporary relief in response to the credit crises and to facilitate BNP Paribas' acquisition of Fortis Bank, a large financial institution that experienced severe credit related difficulties. The relief required BNP Paribas and Fortis Bank to promptly implement any measures following the acquisition that may be necessary to ensure compliance prospectively with any applicable position limit.

<sup>21</sup> Refer to CFTC Information Technology Systems in the Appendix for a description in functionality.

**PERFORMANCE MEASURE 3.4.4** Percentage of total requests for guidance and advice receiving CFTC responses.



### Lead Program Offices

Division of Clearing and Intermediary Oversight

Division of Market Oversight

### Performance Analysis & Review

*Division of Clearing and Intermediary Oversight:* DCIO met its performance target for FY 2009. DCIO staff respond to numerous requests for guidance and advice on the CEA and Commission regulations each year. Requests are received from members of the public, market participants, intermediaries, SROs, foreign entities, and others. These requests may be formal, such as written requests for no-action, interpretative, or exemption letters. DCIO also receives numerous informal requests for guidance and advice via e-mail and phone calls.

Although DCIO responds to all requests that it receives, it is not always possible for DCIO to respond within the fiscal year that it receives a request. DCIO estimates that up to 10 percent of requests may fall in this category. Some requests that raise novel or complex issues, or requests in the form of no-action letters, interpretations, or exemptions, take more time to research and to prepare a response. It should be

noted, however, that the statistics on numbers of letters issued or e-mail responded to may not reflect the complexity of any particular matter or the resources necessary to address one issue versus another issue. In addition, matters commenced in one fiscal year may overlap, and be completed during a subsequent fiscal year, resulting in some imprecision in statistical measures for a given year. DCIO makes every effort to respond to requests as quickly as possible, but the timeliness of a response also is affected by the speed with which a requester provided additional information sought by staff, and the length of time required by other Commission divisions or offices to review a draft response, factors outside the control of DCIO.

*Division of Market Oversight:* DMO staff respond to numerous requests for guidance and advice on the CEA and Commission regulations each year. These requests may be informal, via email or phone calls, or formal in the form of requests for no-action, interpretative, or exemptive letters. Staff respond to informal guidance and advice requests in a very short period of time, usually no longer than a period of days. To the extent that staff are unable to provide an informal response to such requests, the requester is advised to submit a formal request for guidance. DMO staff strive to address such formal requests within six months of receipt.

## Performance Highlights

*Division of Clearing and Intermediary Oversight:* In FY 2009, DCIO responded to numerous requests, both formal and informal, for interpretations of the Commission's registration requirements and issued exemptive and no-action letters addressing various issues, including the circumstances under which general partners of commodity pools may be relieved from CPO registration requirements when a registered designee serves as the pool's operator. Additionally, DCIO issued an exemptive letter granting relief from certain record-keeping and disclosure requirements to a registered CPO of a publicly offered commodity pool. The relief is predicated on substituted compliance with parallel requirements under securities laws.

DCIO also issued a letter in FY 2009 providing guidance to CPOs on complying with the financial reporting requirements set forth in Part 4 of the Commission's regulations. The letter assisted CPOs in meeting their regulatory requirements by highlighting recent regulatory changes affecting the financial filings required of CPOs, and identified common deficiencies observed in prior year financial filings.



## STRATEGIC GOAL FOUR: ORGANIZATIONAL EXCELLENCE

**GOAL FOUR:** *Facilitate Commission performance through organizational and management excellence, efficient use of resources, and effective mission support.*

**Outcome Objective 4.1:** A productive, technically competent and diverse workforce that takes into account current and future technical and professional needs of the Commission.

- **Annual Performance Goal 4.1:** Recruit, retain, and develop a skilled and diversified staff to keep pace with attrition and anticipated losses due to retirement.

**Outcome Objective 4.2:** A modern and secure information system that reflect the strategic priorities of the Commission.

- **Annual Performance Goal 4.2:** Link business decisions on information technology resources to CFTC strategic goals by establishing a decision-making and review process for allocation of information technology resources.

**Outcome Objective 4.3:** An organizational infrastructure that efficiently and effectively responds to and anticipates both the routine and emergency business needs of the Commission.

- **Annual Performance Goal 4.3:** A fully operational Contingency Planning Program to ensure the CFTC is prepared for emergencies and is fully capable of recovery and reconstitution.

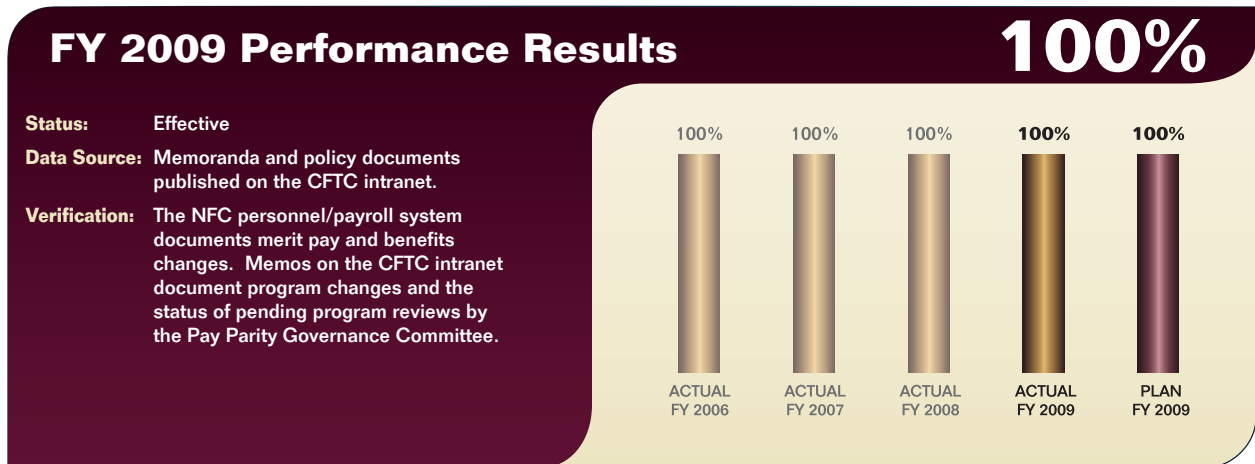
**Outcome Objective 4.4:** Financial resources are allocated, managed, and accounted for in accordance with the strategic priorities of the Commission.

- **Annual Performance Goal 4.4:** A clean audit opinion for CFTC.

**Outcome Objective 4.5:** The Commission's mission is fulfilled and goals are achieved through sound management and organizational excellence provided by executive leadership.

- **Annual Performance Goal 4.5:** Progress in completing the 18 priorities established in the Commission Strategic Plan for FY 2007 through FY 2012.

**PERFORMANCE MEASURE 4.1.1** Percentage of fiscal year program development objectives met under CFTC pay for performance authority.



## Lead Program Office

Office of Human Resources

## Performance Analysis & Review

The Commission met all objectives for FY 2009. These objectives largely completed the multi-year plan to implement a merit-based system of total compensation parity under the agency’s statutory compensation authority. All employees contributed to this goal by providing input to the development of the enhanced awards program and the selection of new benefits programs to close the total compensation gap with its benchmark pay parity agencies. The process of confirming and maintaining parity continued to rely on this participative, transparent approach, which included employee focus groups and the publication of statistics on awards and performance ratings. The CFTC efforts have resulted in meeting its goals to recruit and retain skilled employees and in its third consecutive biennial Best in Class ranking by the Partnership for Public Service in the area of Pay and Benefits, based on all-employee surveys on the CFTC work environment. The Pay Parity Governance Committee completed the first of several stages in its review of agency position classification practices, as part of what will be ongoing maintenance of merit pay parity.

## Performance Highlights

- The CFTC closed the significant remaining gaps between the benefits portion of its total compensation program

and the benefits provided by its parity benchmark Federal financial regulatory agencies. The new programs implemented during FY 2009 included: an increase in agency contributions to Federal Employee Health Benefits program premiums from 72-75 percent to a full 85 percent; and implementation of an annual Life Cycle payment (funded at \$400 in 2009) to support employee productivity by reimbursing health- and wellness-related expenses. Together, these programs respond to employee input on workplace needs and help to ensure that the agency environment supports and rewards shared accountability for meeting CFTC goals and objectives under its merit pay system. Support for that system was highlighted at the second Chairman’s honorary awards ceremony on September 17, 2009, with participation by all regions.

- The Pay Parity Governance Committee continued its review of compensation program options in the area of position classification, based on interviews with managers. The committee, which includes representatives from all segments of the CFTC, received a research report on a comprehensive review of career ladders/promotion potential of all agency job titles during July 2009. The goal is to refine, as needed, the system for determining the qualification requirements, titles, and pay rates for agency positions, to assure continued success in recruiting, and retaining a workforce possessing the skills needed over the period of the agency Strategic Plan.

**PERFORMANCE MEASURE 4.1.2** Average number of days between close of vacancy announcement and job offer, per Federal standards of 45 days or less.

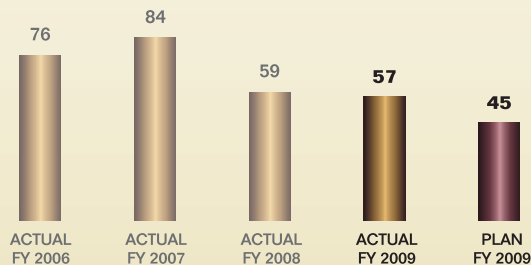
## FY 2009 Performance Results

**57**

**Status:** Moderately Effective

**Data Source:** Running account on status of the priority hiring initiative is updated and distributed weekly to agency offices and divisions.

**Verification:** Vacancy announcements with opening and closing dates are published on the Commission's Web site. Offer letters to candidates are filed in the candidate's official personnel folder and maintained in OHR.



### Lead Program Office

Office of Human Resources

### Performance Analysis & Review

The FY 2009 priority hiring initiative to fill 95 positions was a success that built on improvements made since last year by all participants in the hiring process. While OHR aims to meet the 45-day government-wide standard, the unusually heavy recruitment needs and the difficulty inherent in targeting highly-skilled professional positions make the 45 days a stretch goal. The results warrant an assessment of moderately effective because the combined efforts of hiring officials and OHR resulted in continued progress in reducing time to hire during a year of huge FTE growth.

Based on lessons learned in filling 65 positions during FY 2008, which was the first major recruitment effort by the agency in several years, OHR took steps to facilitate more rapid appointment of highly-qualified candidates. These efforts included seminars for selecting officials on their role

in the hiring process and enhanced weekly reporting on the anticipated and actual time spent on each step in the recruitment process. The reduction in the time required to fill many more positions than last year benefited from senior management support for this effort as a primary agency priority, despite continuing extraordinary demands on the agency to respond to market events. A job market very favorable to employers also resulted in a huge volume of applications, each of which required careful, substantive review.

The selecting officials and OHR staff continue to refine job requirements and recruitment strategies as well as streamline processes and improve use of automation to further reduce the time required in future years to efficiently process these enormous candidate pools. OHR has created a Hiring Roadmap for use in FY 2010 that describes the opportunities we will exploit to further build this agency capacity to bring on new employees quickly. In light of this context, actual results for this measure represent an effective outcome for an effort to increase agency headcount by an extraordinary percentage in a brief period.

## Performance Highlights

- Added expertise and enhanced reporting instruments to support the agency priority hiring team that effectively responded to ambitious recruitment goals with timely identification and appointment of high-quality candidates. Selecting officials participated in seminars that briefed them on how they could effectively fulfill their roles in the selection process. Ongoing actions include continued review and update of recruitment tools and processes, such as job analyses and crediting plans used to rate and rank candidates, and enhancement of targeted recruitment efforts to increase the diversity and overall strength of the applicant pools.
- In addition to the strenuous efforts to rapidly fill permanent positions, the Commission again dedicated significant resources to filling 45 paid and 15 volunteer summer positions. This major hiring effort matched that of last year and was again undertaken as a way to meet immediate workforce needs and as an investment in publicizing to entry level and other candidates the CFTC's mission and its appeal as a potential future employer. The program participants benefited from an enhanced program schedule that included five formal in-house training seminars, a visit to Capitol Hill, and optional events such as a day of community service.



**PERFORMANCE MEASURE 4.1.3** Rate of employee turnover, exclusive of retirements.

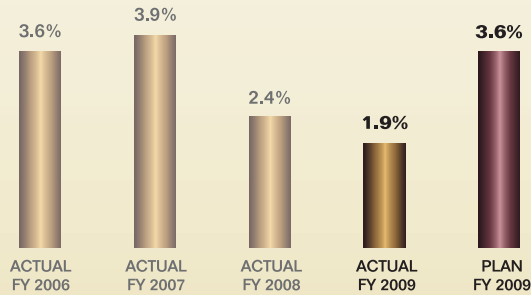
**FY 2009 Performance Results**

**1.9%**

**Status:** Effective

**Data Source:** Records entered in the NFC personnel/payroll system to effect each action, with crosscheck compilation and summary report by CFTC's Office of Financial Management (OFM).

**Verification:** Each turnover action is recorded in the NFC personnel/payroll system and is daily tracked by OFM to project the status for the fiscal year.



**Lead Program Office**

Office of Human Resources

**Performance Analysis & Review**

CFTC exceeded its goals for employee retention during FY 2009. This is a vital measure of Commission success in building and sustaining a work environment that makes it an employer of choice for a workforce with the mission-critical competencies that are in high demand in the labor market. Successful staff retention is important because it protects the Commission's knowledge base, optimizes the availability of trained staff to meet workload demands, and minimizes the costs of repeated recruitment and development of replacement hires. Over time, it has been a challenge to meet this goal in light of the compensation offered by competing employers. In response, the CFTC continues to use its pay parity authority to attract candidates with an attractive package of total compensation and retain them by maintaining an outstanding work environment offering professional growth opportunities.

**Performance Highlights**

- The Pay Parity Governance Committee took the lead in acting on input from surveys and focus groups to implement changes to the work environment that were most desirable to employees and hence would offer the greatest benefit in terms of retention and productivity. These included not only flexible benefits enhancements that could accommodate individual employee's needs at various stages in their career, such as Life Cycle accounts to support family wellness, but also the opportunity to elect the regular and recurring telework that is now offered by many employers with which the agency competes in the job market.
- Two pending initiatives will help assure continued success in this area. The first is a formal program to provide assistance online with the on-boarding of newly hired employees. This program is being designed to assure that new employees receive particular support in acclimating to the agency during their first year, in the form of reference materials, and training opportunities. The second is a resumption of on-site retirement and financial planning services for employees, designed to assure that those who are eligible to retire only do so after full, informed consideration of the financial and psychological implications. While the objective remains the support of prudent retirement planning, this service aids retention and recruitment efforts by demonstrating the supportive nature of the CFTC work environment.

**PERFORMANCE MEASURE 4.1.4** Percentage of employees in mission-critical positions rating themselves at “extensive” or higher level of expertise on Strategic Workforce Planning Survey.

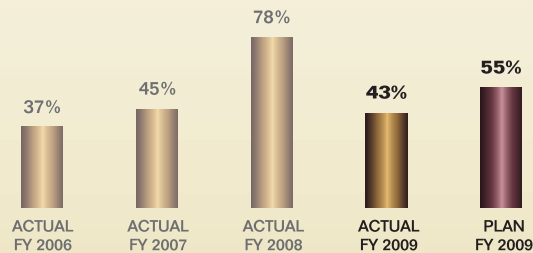
## FY 2009 Performance Results

**43%**

**Status:** Effective

**Data Source:** Self-assessments of over 95% of agency employees who completed the FY 2008 online Strategic Workforce Planning Survey.

**Verification:** The aggregate statistical results of this annual survey were presented to executive management January 2008. The data elements on the self-assessment of agency employees captured the percentage of total headcount rating themselves at the “extensive” or higher level of expertise.



### Lead Program Office

Office of Human Resources

### Performance Analysis & Review

While the CFTC-wide survey results did not meet the ambitious goal for this measure, they continue a positive trend—when plotted over several years—that is noteworthy considering the large number of senior experts who retired and the major influx of junior trainees during this period. Given the highly specific skill sets required by the CFTC mission, these departures and arrivals certainly affect the supply of talent, which in key areas must be developed, to a degree, in-house. This refreshing of Commission expertise is continual and a sign of healthy adaptation to changing market oversight needs, so we do not expect a linear expertise level increase during times of turnover and increasing headcount.

Since the overall objective of the strategic management of human capital is to have competent employees in each position, this measure indicates that the Commission continues on track with a successful set of training and other initiatives to recruit, develop, and retain the critical skills needed to meet mission requirements. Contributors to this trend include success in recruiting and training highly-competent staff and supporting them with ongoing career development resources, such as online courseware and in-house Industry/Legal/Technical seminars that capture and share the knowledge of agency experts. In addition, mandatory quarterly performance reviews heighten understanding

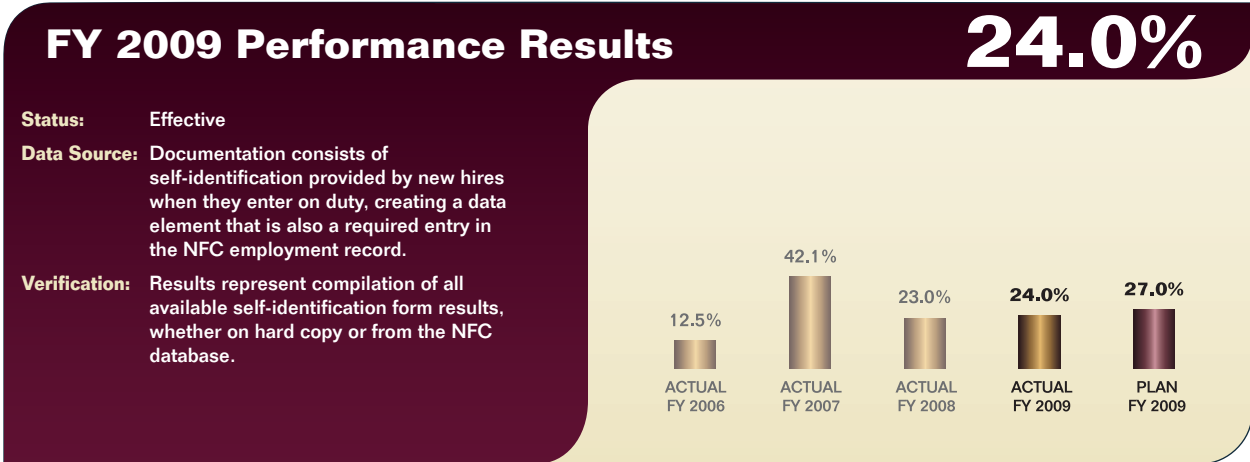
of the critical elements for success in meeting individual duties and responsibilities.

For the future, the imminent issuance of the Commission’s new Professional Development and Succession Management Program will help plan the targeted development of the specific skills needed by the agency. The goal is to have not only a significant core percentage of the workforce with the key skills it needs today, but a learning environment that helps its employees continually update their expertise, so they remain as flexible and innovative as the markets it oversees.

### Performance Highlights

- Division and office heads received their fourth annual Strategic Workforce Planning Survey reports during FY 2009. These reports provide objective, quantitative data to help them to assess pending workforce issues and to develop or acquire the critical employee competencies they need as employees retire or leave the agency or as the nature of their work changes.
- OHR completed the Professional Development and Succession Management policy document to encourage more effective use of the Commission’s extensive training and career development resources. The goal of the policy is to help individuals and organizations target the development of the major job competencies needed to meet the goals and objectives mapped to the CFTC Strategic Plan for 2007–2012.

**PERFORMANCE MEASURE 4.1.5** Percentage of underrepresented groups among new hires.



**Lead Program Office**

Office of Human Resources

**Performance Analysis & Review**

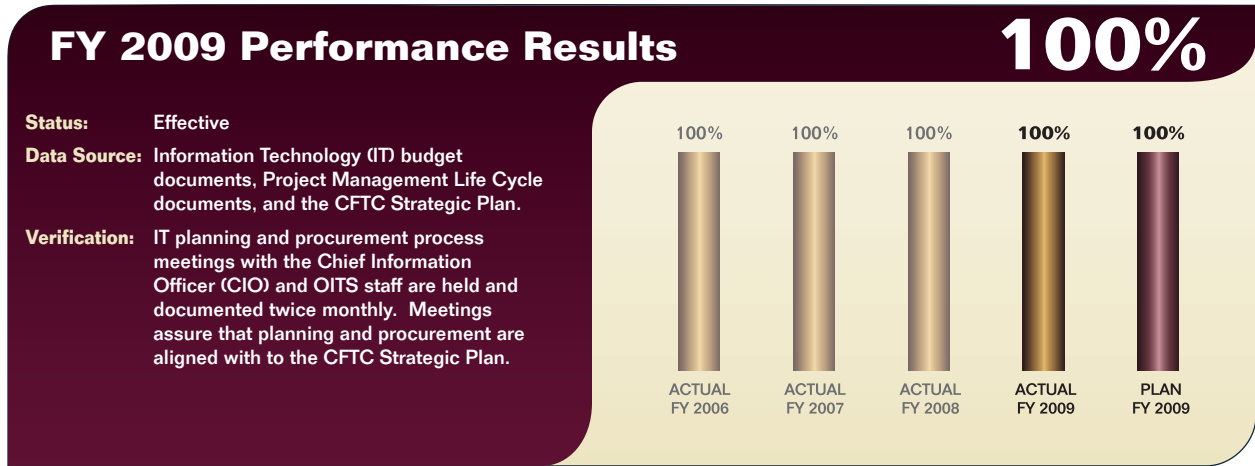
The agency improved its performance for this measure over last year. OHR consulted with the Office of Equal Employment Opportunity to set a 27 percent goal that approximates the diversity of the Nation’s workforce. Achieving an outcome near that level reflects the success of all agency participants in preparing for the major initiative to bring on over 95 permanent new hires, including paid advertisements and other targeted recruitment efforts. During FY 2009, CFTC continued to use its updated and expanded email contacts for the distribution of agency vacancy announcements, while continuing a very substantial summer employment program. Summer hiring increases its current and future visibility to a diverse pool of candidates, by encouraging a broad base of individuals to consider the Commission as a permanent employer when they complete their education. As in the past, the Commission’s offices and

divisions drew on a diverse pool of selecting officials to represent the Commission during the recruitment process. These ongoing efforts build on and reinforce one another, assuring CFTC can continue to secure the benefits of a diverse workforce.

**Performance Highlights**

- Exceeded last year’s performance in representative hiring when filling positions across the full range of Commission position types and grade levels.
- Achieved 40 percent minority representation rate when filling approximately 45 paid summer positions, increasing agency recruitment visibility for the future and securing a number of those hires for continuing internships during the school year.

**PERFORMANCE MEASURE 4.2.1** Percentage of CFTC information technology resources directly tied to Commission resource priorities as stated in the Strategic Plan.



### Lead Program Office

Office of Information and Technology Services

### Performance Analysis & Review

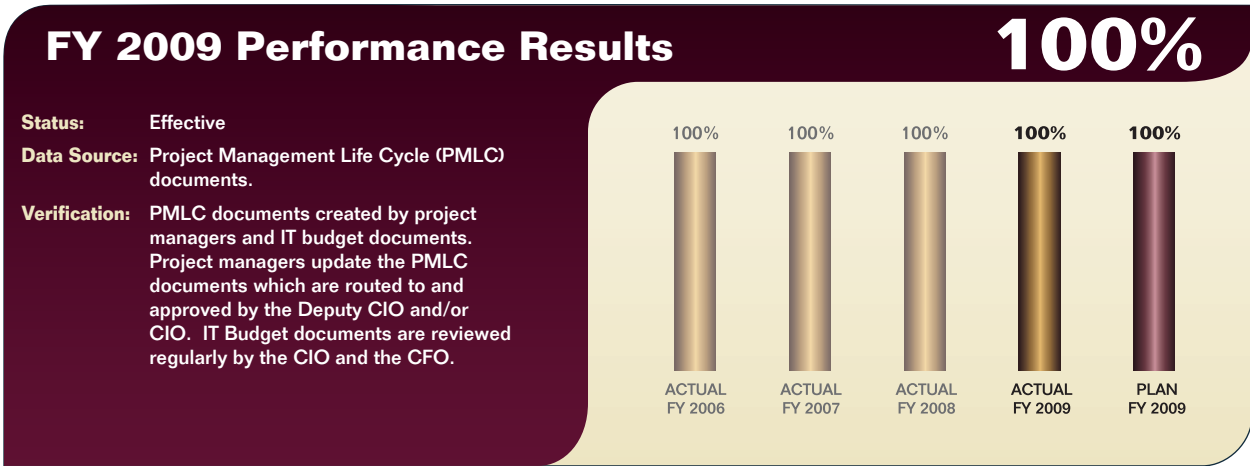
The CFTC establishes its IT resources through a planning and procurement process based on the strategic goals of the CFTC.

The CFTC holds IT planning and procurement process meetings twice a month to assure its alignment of IT resources with the strategic plan. These meetings review the planning and procurement documents to ensure that adequate resources are requested to support CFTC goals. The planning and procurement process tracks planned and actual budgets and aligns priorities as needed.

### Performance Highlights

The CFTC continues to fund IT initiatives in support of its strategic plan. As an example, the Strategic Plan’s Strategic Priority 1.1 is to “Enhance technology capability and data standards to recognize, understand, and adapt to market changes.” In support of this priority, the CFTC has funded key initiatives such as the TSS, which uses complex algorithms to find trade practice violations as well as provide a platform for improved access to exchange provided trade data for Commission staff. The CFTC is also aggressively pursuing data standardization for collecting data in support of the trade surveillance program. Over the past two years, the CFTC has been meeting with the futures industry to adopt FIXML, a world-wide standard that will improve data quality and flexibility for the CFTC and the futures industry. The CFTC is currently implementing FIXML for the CME Group exchanges, with additional exchanges to be added, in FY 2010.

**PERFORMANCE MEASURE 4.2.2** Percentage of major information technology investments having undergone an investment review within the last three years.



### Lead Program Office

Office of Information and Technology Services

### Performance Analysis & Review

The CFTC holds IT planning and procurement process meetings twice a month to review investments. In addition, the CFTC conducted IT investment reviews for all of CFTC’s major systems within the last three years. The major systems include TSS, eLaw<sup>22</sup>, ISS, and the CFTC network. The CFTC reviews its major systems to assure that technology is meeting the needs of the CFTC and is properly aligned with the strategic goals of the Commission. These thorough reviews include senior management, business users, IT professionals, and the CFO staff. The reviews found that CFTC’s major systems continue to exceed expectations and are within budget.

### Performance Highlights

The CFTC recently has completed its ISS investment review. ISS is at the heart of the CFTC’s market surveillance program. Its mission is to identify situations that could pose a threat of manipulation and to initiate appropriate preventive actions. Each day, for all active futures and option contract markets, the Commission’s market surveillance staff continuously monitor the daily activities of large traders, key price relationships, and relevant supply and demand factors for potential market problems. Market surveillance staff accomplish this by reviewing highly confidential information from exchanges, intermediaries, and large traders using the ISS. Exchanges electronically transmit to the CFTC the daily positions of each clearing member. Clearing members, FCMs, and foreign brokers (together called reporting firms) electronically file daily reports consisting of the futures and option positions of traders that hold positions above specific reporting levels set by CFTC regulations.

<sup>22</sup> Refer to CFTC Technology Systems in the Appendix for a description of functionality.

**PERFORMANCE MEASURE 4.2.3** Percentage of Customer Support Center inquiries resolved within established performance metrics.

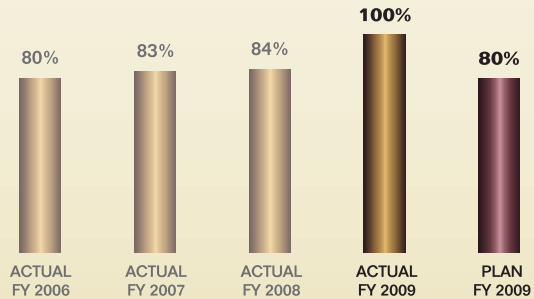
## FY 2009 Performance Results

# 100%

**Status:** Effective

**Data Source:** Customer support logs.

**Verification:** Customer support logs are recorded daily and reviewed periodically by the associate director for customer support.



### Lead Program Office

Office of Information and Technology Services

### Performance Analysis & Review

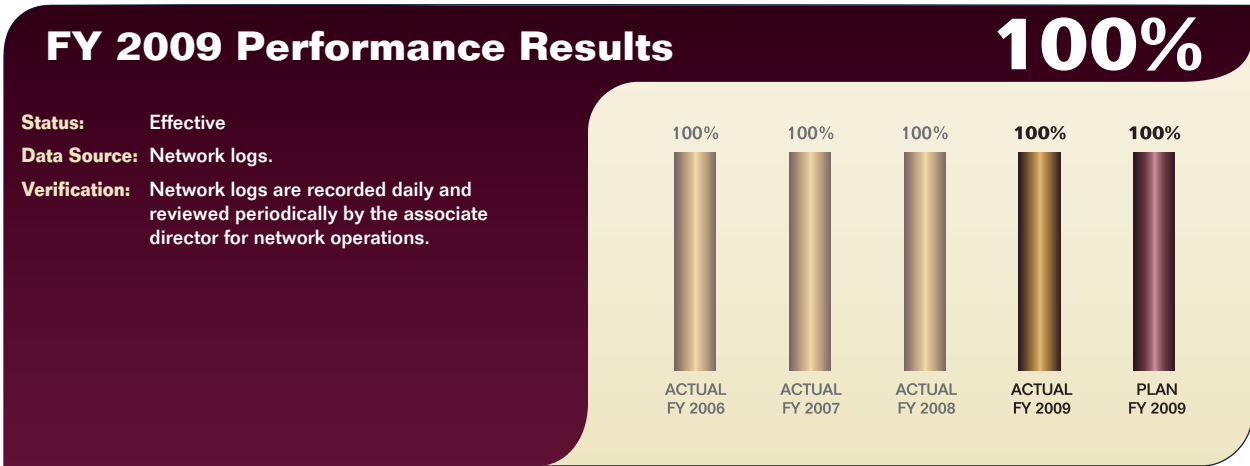
The CFTC exceeded its goal of resolving 80 percent of inquiries within tight performance metrics. The performance metrics apply to tickets identified as resolvable on the first contact and within one business day.

The CFTC tracks its customer support inquiries and their resolution through a sophisticated customer support system. The system also allows the CFTC to organize inquiries so that the CFTC can proactively make decisions to improve service and reduce issues.

### Performance Highlights

In FY 2009, the CFTC resolved 100 percent of its inquiries within established performance metrics, exceeding its goal of 80 percent.

**PERFORMANCE MEASURE 4.2.4** Percentage of employees with network availability.



**Lead Program Office**

Office of Information and Technology Services

**Performance Analysis & Review**

The CFTC maintains connectivity through redundant servers in Washington, D.C. and Chicago. The CFTC received additional funds to upgrade its aging network infrastructure to meet growing needs. The additional funds allowed the CFTC to continue to support its strategic goals by assuring network availability through refreshment of technology.

**Performance Highlights**

The CFTC is committed to providing the best possible IT support to its staff. As part of this commitment, the CFTC achieved 100 percent network conductivity by utilizing redundant circuits to avoid network outages that would have cost the CFTC time and productivity. In addition, the CFTC has invested in technology to assure the performance of the network is optimized, so there is negligible delay in accessing information.

**PERFORMANCE MEASURE 4.2.5** Percentage of employees who require remote network availability that have it.

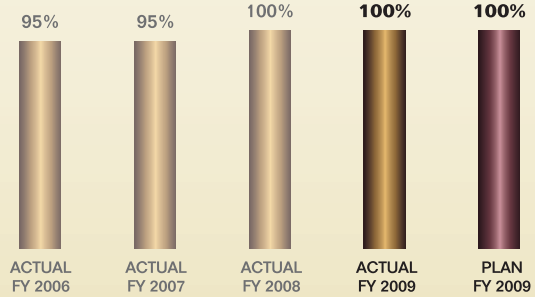
## FY 2009 Performance Results

# 100%

**Status:** Effective

**Data Source:** Employee Remote Access Policy and Customer Support Center service ticket logs.

**Verification:** All employees have remote access capability as advertised on the CFTC intranet via the Remote Access Policy. Customer Support Center service ticket logs document that those needing assistance with the available remote access service receive it in a timely manner.



### Lead Program Office

Office of Information and Technology Services

### Performance Highlights

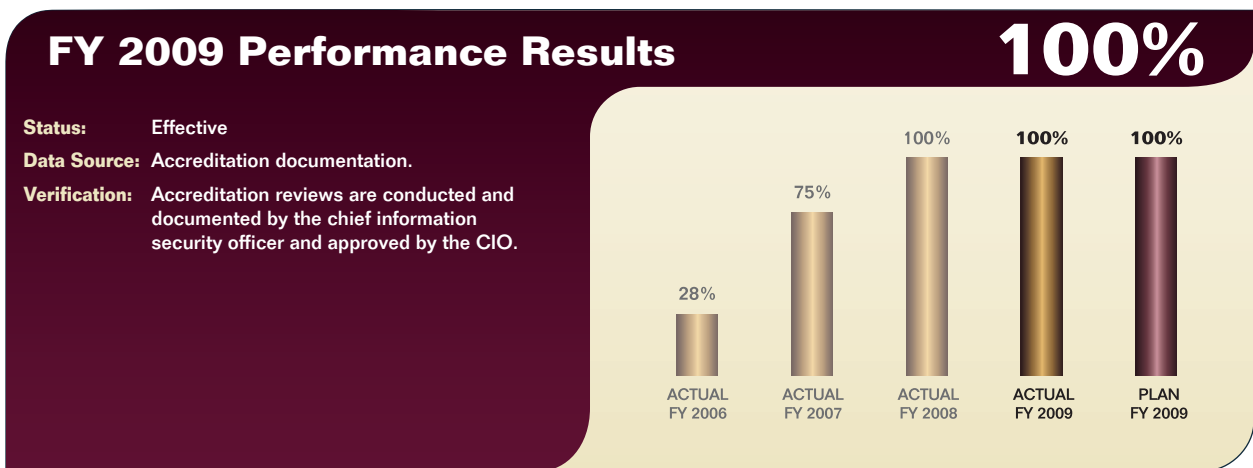
The CFTC is committed to supporting workplace flexibility and providing mobile computing support.

### Performance Analysis & Review

The CFTC provides employees with remote access to email, intranet resources, and duty station desktop computers.



**PERFORMANCE MEASURE 4.2.6** Percentage of major systems and networks certified and accredited in accordance with NIST guidance.



**Lead Program Office**

Office of Information and Technology Services

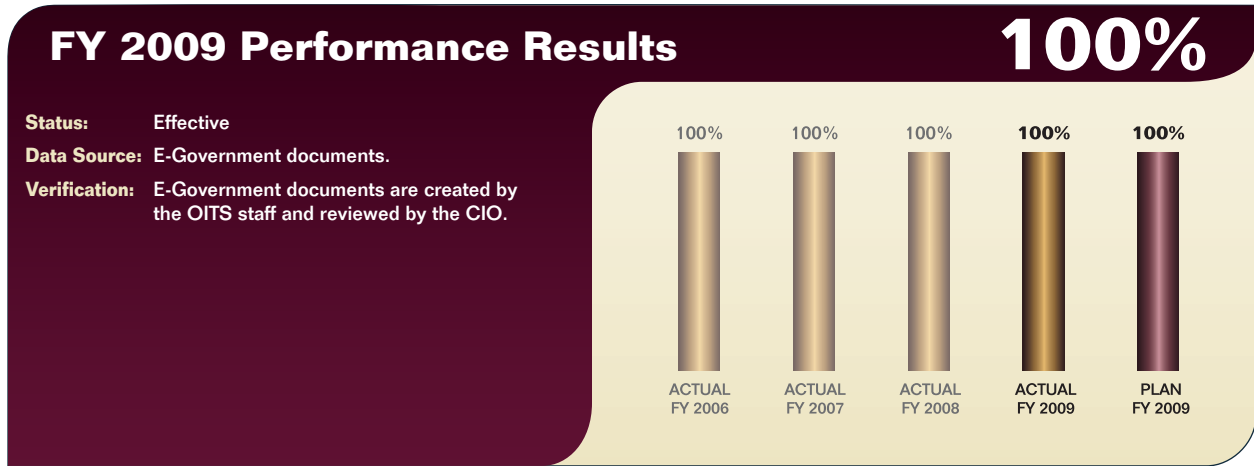
**Performance Analysis & Review**

All four major CFTC systems are accredited. The CFTC certified and accredited its major systems, TSS, eLaw, ISS, and the CFTC network, within the last three years. CFTC will continue to comply with FISMA and safeguard IT assets.

**Performance Highlights**

In addition to certifying and accrediting its own systems, the CFTC certified and accredited three systems owned by the independent NFA that maintain CFTC information.

**PERFORMANCE MEASURE 4.2.7** Percentage of information technology E-Government initiatives on target for compliance with implementation schedule.



### Lead Program Office

Office of Information and Technology Services

### Performance Analysis & Review

The CFTC met 100 percent of its E-Government initiatives. The CFTC oversees the futures industry, one of the world’s largest and fastest growing markets. The futures markets depend heavily on electronic trading. The CFTC must use technology effectively and efficiently to meet its mission of protecting market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and financial futures and options, and to foster open, competitive, and financially sound futures and option markets. Meeting the mandates of the E-Government Act in many cases provides direct support for the CFTC in fulfilling its mission. The CFTC has met its E-Government goals by enhancing its Web site, as described below.

### Performance Highlights

The CFTC has met its requirements for compliance with E-Government initiatives including Web site and records management.

Specifically, the CFTC Web site, <http://www.CFTC.gov>, continues to provide an example of an internal agency-specific E-Government initiative that is transforming agency operations. The Commission maintains close communication with its stakeholders to ascertain their needs and attempt to meet those needs through its Web site. In FY2009, the CFTC reinstated the ForeSee Survey to support the collection of information and reporting on customer behavior, customer requirements, and customer satisfaction. The ongoing collection of this information is essential as the agency continues to measure and evaluate the success of its Web site in meeting the needs of its stakeholders and customers and make improvements to the Web site based on the information collected.

As part of ongoing efforts to enhance market transparency, the CFTC published several new market reports to <http://www.CFTC.gov>. A new monthly report titled “*This Month in the Futures Markets*”, draws upon the COTs data and displays various market statistics for 22 actively-traded commodity markets. Additionally, the CFTC began refining the data in

its weekly COTs and began releasing on a quarterly basis, data collected from ongoing special swap dealers and index traders in the futures markets.

In FY 2009, the CFTC has added Real Simple Syndication (RSS) feeds to its Web site. These feeds allow users to stay informed by automatically retrieving the latest content from multiple Web sites. CFTC's Web site provides RSS feeds so that Press Releases, Speeches and Testimony can be immediately available to users without them having to come to the CFTC Web site.

During FY 2009, the CFTC continued the use of Webcasting to make meetings and other events more widely available and accessible to its stakeholders and members of the public. To date, advisory committee meetings and forums to discuss events affecting the agriculture markets have been Webcast and archived on <http://www.CFTC.gov>.

**PERFORMANCE MEASURE 4.2.8** Percentage of network users who have completed annual security and privacy training.

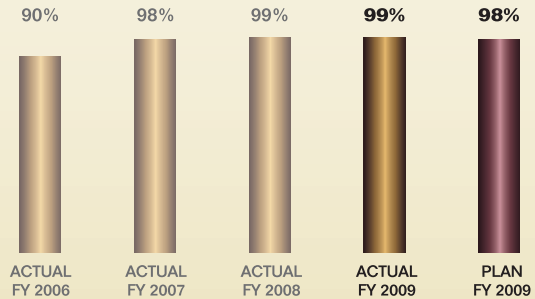
## FY 2009 Performance Results

**99%**

**Status:** Effective

**Data Source:** Annual security and privacy training documents and attendance sheets.

**Verification:** Annual security and privacy training is conducted and documented by the chief information security officer and reported in the agency's FISMA filing to OMB.



### Lead Program Office

Office of Information and Technology Services

### Performance Analysis & Review

The Commission exceeded its annual security and privacy training goal. FISMA requires that all Federal employees and contractors receive annual security and privacy training. The CFTC takes security and privacy training very seriously and is proud that 99 percent of the staff were trained in security and privacy training this year, exceeding the CFTC's goal of 98 percent.

### Performance Highlights

The CFTC exceeded its goal of 98 percent completion of its annual security and privacy training. Through multiple training sessions and multi-media presentations, the CFTC was able to accommodate the busy schedules of its employees. The CFTC was able to use its IT capabilities to conduct the training at its remote locations, assuring access to all employees.

**PERFORMANCE MEASURE 4.3.1** Number of hours required to deploy staff and begin mission essential functions at the COOP site.

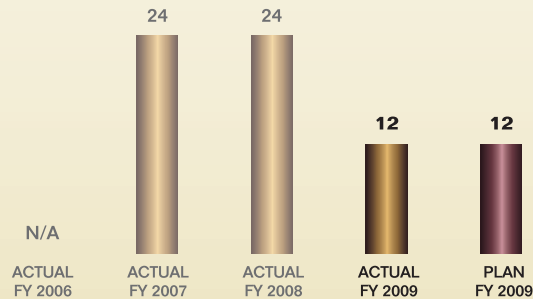
## FY 2009 Performance Results

12

**Status:** Effective

**Data Source:** DHS/FEMA National Level Exercise 2-08 Eagle Horizon 2008 Continuity Evaluation; EOP/OSTP National Communications Systems Directive 3-10 Compliance Report; EH-09 participation and after action report; and DHS/FEMA approval of CFTC MEF/PMEF Designations.

**Verification:** The Commission's DHS/FEMA-approved National Level Exercise 2-08 After Action Report; EOP/OSTP-approved NCSD 3-10 Compliance Report; White House-approved MEF/PMEF Designations issued June 2009; and CFTC internal EH-09 observations.



### Lead Program Offices

Office of the Executive Director (Chief, Security and Continuity Programs)

### Performance Analysis & Review

In FY 2009, the CFTC measured its continuity-related performance based on the agency's participation in Eagle Horizon 09 (EH-09). EH-09 was a mandatory, annual exercise for testing and evaluating the continuity capabilities of executive branch departments and agencies. EH-09 was internally evaluated; the exercise objectives as outlined by the U.S. Department of Homeland Security (DHS)/FEMA were to:

- Exercise the Federal executive branch continuity alert, notification, and deployment procedures;
- Implement interagency continuity communications;
- Exercise agency continuity implementation and operational procedures;
- Review and update the viable elements of the agency continuity capability; and
- Assess the agency's ability to identify and prioritize essential functions and conduct operations from pre-planned alternate locations.

The CFTC fully participated in EH-09. The agency deployed 12 members of its continuity team to its continuity facility and tested its COOP capabilities within two hours of EH-09 activation. The continuity team conducted day-to-day business functions that directly support the Commission's primary mission essential function (PMEF) from its alternate site and, through observations, provided recommendations for improvements or validated current capabilities and procedures.

In addition to the CFTC's participation in EH-09 program, the agency assessed and reported on its compliance with the Executive Office of the President's (EOP) Office of Science and Technology Policy (OSTP), National Communications System Directive 3-10, Minimum Requirements for Continuity Capabilities (NCSD 3-10). Of the 13 communications requirements assessed for headquarters, the CFTC identified requirements that provide meaningful communications capabilities at its headquarters facility and at its alternate facility for continuity missions.

The agency expects to procure and install the Homeland Security Data Network during FY 09. As outlined by the OSTP, CFTC will seek an exemption from requirements that the agency does not need for daily or contingency activities or that are already available to the CFTC through Federal partnerships at its shared continuity facility and other loca-

tions. The risk to CFTC from less than full and conventional compliance with NCS and FEMA Directive requirements is low and will not result in a significant impact on the agency's ability to effectively communicate or support its PMEF during emergencies.

## Performance Highlights

In June 2009, the White House validated the CFTC's Mission Essential and Primary Mission Essential Functions. Validation of the agency's functions formally provides both the foundation and the goal of CFTC continuity planning and preparedness for the remainder of FY 2009 and beyond. The CFTC's continuity program is poised for marked improvement through ongoing exercise participation, interagency coordination through the recently established "Small Agency Council Continuity Committee," and communications enhancement and cooperation. Other performance highlights include:

- Hiring a Chief of Security and Continuity Planning to oversee the physical security and continuity planning and preparedness program;
- Routinely visiting the continuity facility to ensure that it is operating effectively; upgrading the desktop technologies at each workstation at the continuity facility; and authorizing construction of an interagency secure room at the continuity facility from which several Federal partners can conduct secure activities as necessary and in compliance with NCSD 3-10;
- Testing and upgrading Blackberry capabilities for Emergency Management officials; testing of GETS and WPS capabilities routinely; pursuing Blackberry notification capability specific to continuity alert and activation;
- Drafting and vetting a Contingency Management Policy that outlines executive and staff level continuity, security, and emergency preparedness coordination across the CFTC;
- Testing the Virtual Private Network service that allows employees to securely access the CFTC network from telework or home computers; and
- Updating the CFTC Pandemic Continuity Plan to reconcile the human resource, telework, and continuity plans of the Commission.

**PERFORMANCE MEASURE 4.4.1** Audit opinion of the Commission's annual financial statements as reported by the CFTC's external auditors.

## FY 2009 Performance Results

# Unqualified

**Status:** Effective

**Data Source:** CFTC Performance and Accountability Report.

**Verification:** Audit Report of the Independent Auditors.

Unqualified	Unqualified	Unqualified	Unqualified
ACTUAL FY 2006	ACTUAL FY 2007	ACTUAL FY 2008	ACTUAL FY 2009

### Lead Program Office

Office of Financial Management

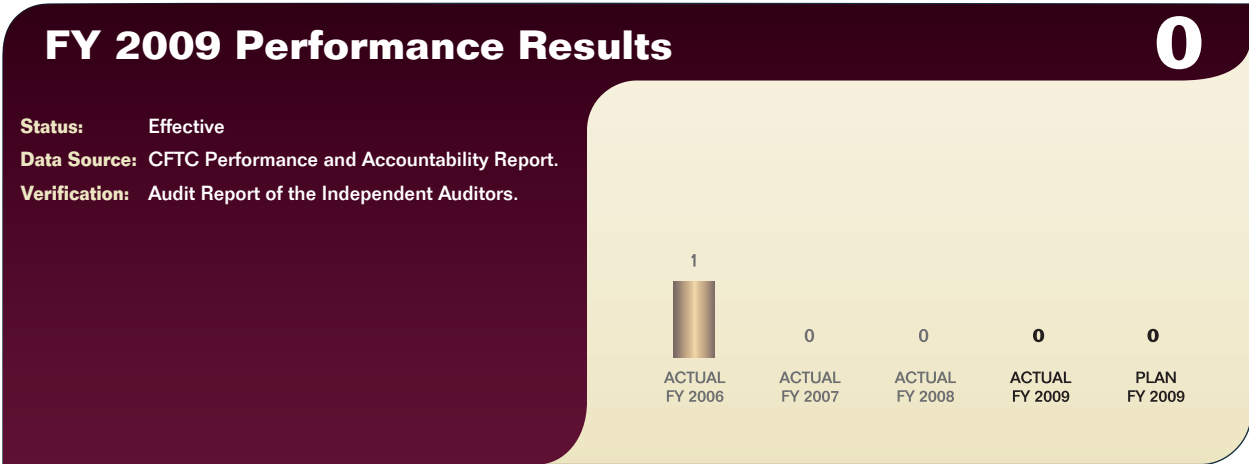
### Performance Highlights

The CFTC 2009 Financial Statements were presented fairly, in all material respects, and in conformity with the GAAP for Federal agencies.

### Performance Analysis & Review

The public accounting firm Clifton Gunderson LLP, on behalf of the Inspector General, reported that the Commission's financial statements were presented fairly, in all material respects, and were in conformity with the GAAP for Federal agencies.

**PERFORMANCE MEASURE 4.4.2** Number of material internal control weaknesses reported in the Performance and Accountability Report.



**Lead Program Office**

Office of Financial Management

**Performance Highlights**

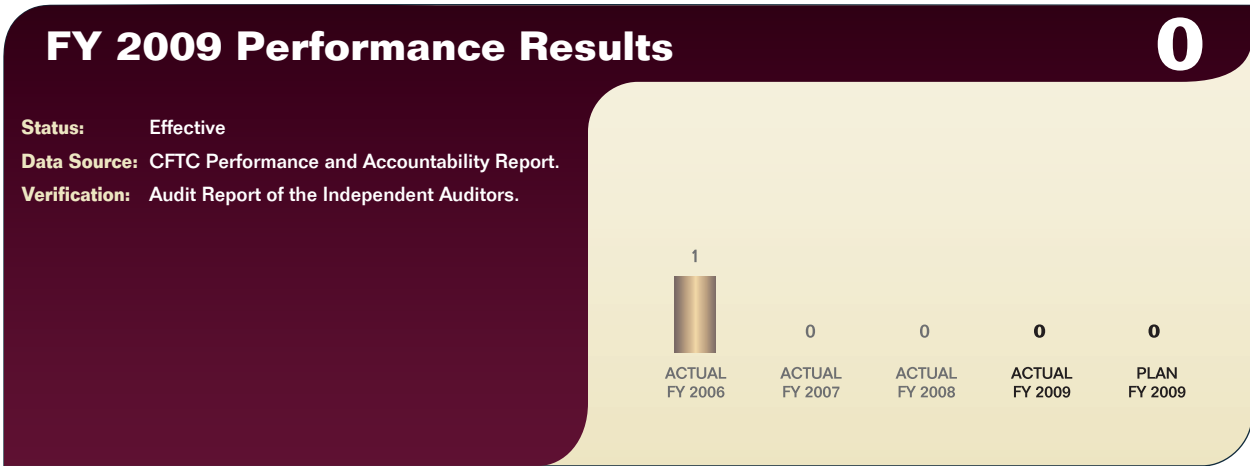
The CFTC had no material weaknesses in FY 2009.

**Performance Analysis & Review**

During FY 2006, Commission error and other deficiencies led KPMG to find that there were material weaknesses in the controls over financial reporting. The Commission took corrective actions in FY 2007 to remediate two of the three components of that material weakness finding. The areas of controls that were corrected were over leases and civil monetary sanctions. The last component of the material weakness, the process for estimating year-end accounts payable and accruals was repeated, however, it was downgraded to a significant deficiency. In FY 2008, the significant deficiency related to accruals was remediated.



**PERFORMANCE MEASURE 4.4.3** Number of non-compliance disclosures in the audit report.



**Lead Program Office**

Office of Financial Management

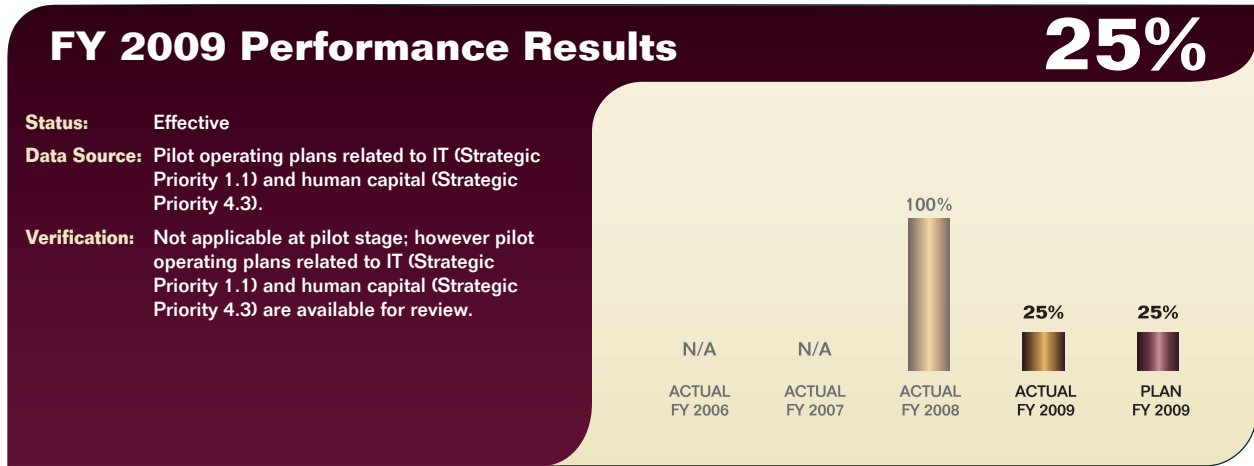
**Performance Highlights**

The CFTC was in substantial compliance with laws and regulations in FY 2009.

**Performance Analysis & Review**

The CFTC improved its audit results over previous years by coming into substantial compliance with laws and regulations in FY 2007. Moving to compliance was greatly facilitated by migrating to a financial management systems platform operated by the DOT Enterprise Service Center, an OMB-designated financial management line of business service provider. This business arrangement has enabled the CFTC to accumulate, analyze, and present reliable financial information, provide reliable, timely information for managing current operations, and achieve timely reporting of financial information to central agencies.

**PERFORMANCE MEASURE 4.5.1** Percentage of 18 Strategic Plan priorities that are on track to completion by FY 2012.



**Lead Program Office**

Office of Executive Director (OED)

**Performance Analysis & Review**

The Commission is on track for completion by the end of FY 2012 of the Strategic Priorities outlined in the Strategic Plan.

During FY 2009, OED developed operating plans for two Strategic Priorities that will serve as a model for the remaining strategic priorities. Additionally, OED, working with the Division of Market Oversight and external consultants, conducted a comprehensive overview of the CFTC market oversight and market surveillance program, which resulted in a modernization operating plan. The objectives of the operating plans are: to provide a blueprint to managers for developing effective, efficient approaches to structuring operating plans for programmatic (mission) or operational (mission support) priorities; and to assist managers in articulating short-term strategies for achieving

strategic priorities in the face of ongoing changes in both mission authorities and budgetary resources. Additionally, the plans assist managers in adopting business processes that address governance needs and provide streamlined documentation to measure progress in executing plans in order to ensure priorities are ultimately achieved.

**Performance Highlights**

Initially, the agency developed strategic operating plans for IT strategic priority 1.1 and human capital strategic priority 4.3.

CFTC then expanded its efforts to develop a modernization blueprint for market oversight and surveillance that covers Strategic Theme 1: CFTC must act in real time to address how the markets are functioning and evolving.

The CFTC introduced a Business Planning and Evaluation function in OED, and CFTC is recruiting business managers within its divisions and major offices to assist with business planning.



## **FINANCIAL SECTION**

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## A MESSAGE FROM THE CHIEF FINANCIAL OFFICER

*F*or the fifth consecutive year, a public accounting firm, on behalf of our Inspector General, reported that the financial statements included in this report were presented fairly, in all material respects, and in conformity with the U.S. generally accepted accounting principles (GAAP) for Federal agencies.

For the third consecutive year the Commission had no material weaknesses, and was compliant with laws and regulations. This includes substantial compliance with the Federal Information Security Management Act (FISMA). Last year, KPMG identified no significant deficiencies in the controls over financial reporting, nor did Clifton Gunderson, our new auditor for FY 2009.

The CFTC leverages a financial management systems platform operated by the U.S. Department of Transportation's (DOT) Enterprise Service Center, an Office of Management and Budget (OMB) designated financial

management service provider. As a consequence, the CFTC is able to accumulate, analyze, and present reliable financial information, or provide reliable, timely information for managing current operations and timely reporting of financial information to central agencies. Furthermore, our system is in substantial compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996 (although CFTC is not required to comply with FFMIA, it has elected to do so).

Mark Carney  
*Chief Financial Officer*

# LIMITATIONS OF FINANCIAL STATEMENTS

Management has prepared the accompanying financial statements to report the financial position and operational results for the CFTC for FY 2009 and FY 2008 pursuant to the requirements of Title 31 of the U.S. Code, section 3515 (b).

While these statements have been prepared from the books and records of the Commission in accordance with GAAP for Federal entities and the formats prescribed by OMB Circular A-136, *Financial Reporting Requirements*, these statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with the understanding that they represent a component of the U.S. government, a sovereign entity. One implication of this is that the liabilities presented herein cannot be liquidated without the enactment of appropriations, and ongoing operations are subject to the enactment of future appropriations.



# PRINCIPAL FINANCIAL STATEMENTS

Commodity Futures Trading Commission

## BALANCE SHEETS

As of September 30, 2009 and 2008

	2009	2008
<b>ASSETS</b>		
<b>INTRAGOVERNMENTAL:</b>		
Fund Balance with Treasury (Note 2)	\$ 43,961,950	\$ 27,666,831
Accounts Receivable (Note 3)	8,570	7,440
Prepayments (Note 1H)	15,138	47,279
<b>Total Intragovernmental</b>	<b>43,985,658</b>	<b>27,721,550</b>
Custodial Receivables, Net (Note 3)	1,703,220	1,721,526
Accounts Receivable (Note 3)	9,637	4,094
General Property, Plant and Equipment, Net (Note 4)	10,346,721	2,810,441
Prepayments (Note 1H)	542,943	414,273
<b>TOTAL ASSETS</b>	<b>\$ 56,588,179</b>	<b>\$ 32,671,884</b>
<b>LIABILITIES</b>		
<b>INTRAGOVERNMENTAL:</b>		
FECA Liabilities	\$ 37,362	\$ 41,092
Accounts Payable	450,004	366,651
<b>Total Intragovernmental</b>	<b>487,366</b>	<b>407,743</b>
Accounts Payable	3,631,176	2,130,307
Accrued Funded Payroll	5,101,251	3,504,048
Annual Leave	6,427,995	4,525,329
Actuarial FECA Liabilities (Note 7)	170,170	177,796
Custodial Liabilities	1,703,220	1,721,526
Deposit Fund Liabilities	142,279	-
Deferred Lease Liabilities (Note 8)	3,226,161	3,294,324
Other	7,513	9,957
<b>Total Liabilities</b>	<b>\$ 20,897,131</b>	<b>\$ 15,771,030</b>
<b>NET POSITION</b>		
Cumulative Results of Operations	\$ 491,751	\$ (5,224,895)
Unexpended Appropriations	35,199,297	22,125,749
<b>Total Net Position</b>	<b>35,691,048</b>	<b>16,900,854</b>
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>\$ 56,588,179</b>	<b>\$ 32,671,884</b>

The accompanying notes are an integral part of these financial statements.

Commodity Futures Trading Commission

**STATEMENTS OF NET COST**

For the Years Ended September 30, 2009 and 2008

<b>Net Cost by Goal (Note 14)</b>	<b>2009</b>	<b>2008</b>
<b>GOAL 1: ENSURE THE ECONOMIC VITALITY OF THE COMMODITY FUTURES AND OPTION MARKETS</b>		
Gross Costs	\$ 40,745,079	\$ 31,675,123
Less: Earned Revenue	(31,609)	(20,244)
<b>NET COST OF OPERATIONS – GOAL ONE</b>	<b>\$ 40,713,470</b>	<b>\$ 31,654,879</b>
<b>GOAL 2: PROTECT MARKET USERS AND THE PUBLIC</b>		
Gross Costs	\$ 30,230,220	\$ 25,340,098
Less: Earned Revenue	(23,452)	(16,195)
<b>NET COST OF OPERATIONS – GOAL TWO</b>	<b>\$ 30,206,768</b>	<b>\$ 25,323,903</b>
<b>GOAL 3: ENSURE MARKET INTEGRITY IN ORDER TO FOSTER OPEN, COMPETITIVE, AND FINANCIALLY SOUND MARKETS</b>		
Gross Costs	\$ 30,230,220	\$ 24,284,261
Less: Earned Revenue	(23,452)	(15,520)
<b>NET COST OF OPERATIONS – GOAL THREE</b>	<b>\$ 30,206,768</b>	<b>\$ 24,268,741</b>
<b>GOAL 4: FACILITATE COMMISSION PERFORMANCE THROUGH ORGANIZATIONAL AND MANAGEMENT EXCELLENCE, EFFICIENT USE OF RESOURCES, AND EFFECTIVE MISSION SUPPORT</b>		
Gross Costs	\$ 30,230,220	\$ 24,284,261
Less: Earned Revenue	(23,452)	(15,520)
<b>NET COST OF OPERATIONS – GOAL FOUR</b>	<b>\$ 30,206,768</b>	<b>\$ 24,268,741</b>
<b>GRAND TOTAL</b>		
Gross Costs	\$ 131,435,739	\$ 105,583,743
Less: Earned Revenue	(101,965)	(67,479)
<b>TOTAL NET COST OF OPERATIONS</b>	<b>\$ 131,333,774</b>	<b>\$ 105,516,264</b>

*The accompanying notes are an integral part of these financial statements.*

## STATEMENTS OF CHANGES IN NET POSITION

For the Years Ended September 30, 2009 and 2008

	2009	2008
<b>CUMULATIVE RESULTS OF OPERATIONS</b>		
BEGINNING BALANCES, OCTOBER 1	\$ (5,224,895)	\$ (5,700,823)
<b>BUDGETARY FINANCING SOURCES</b>		
Appropriations Used	131,635,050	102,111,763
<b>OTHER FINANCING SOURCES</b>		
Imputed Financing Sources	5,415,370	3,880,429
<b>Net Cost of Operations</b>	<b>(131,333,774)</b>	<b>(105,516,264)</b>
<b>Net Change</b>	<b>5,716,646</b>	<b>475,928</b>
<b>TOTAL CUMULATIVE RESULTS OF OPERATIONS, SEPTEMBER 30</b>	<b>\$ 491,751</b>	<b>\$ (5,224,895)</b>
<b>UNEXPENDED APPROPRIATIONS</b>		
BEGINNING BALANCES, OCTOBER 1	\$ 22,125,749	\$ 14,180,963
<b>BUDGETARY FINANCING SOURCES</b>		
Appropriations Received	146,000,000	111,265,650
Less: Canceled	(1,291,402)	(1,209,101)
Appropriations Used	(131,635,050)	(102,111,763)
Total Budgetary Financing Sources	13,073,548	7,944,786
<b>Total Unexpended Appropriations, September 30</b>	<b>\$ 35,199,297</b>	<b>\$ 22,125,749</b>
<b>NET POSITION</b>	<b>\$ 35,691,048</b>	<b>\$ 16,900,854</b>

*The accompanying notes are an integral part of these financial statements.*



Commodity Futures Trading Commission

**STATEMENTS OF BUDGETARY RESOURCES**

For the Years Ended September 30, 2009 and 2008

	2009	2008
<b>BUDGETARY RESOURCES</b>		
Unobligated Balance, October 1	\$ 4,746,653	\$ 6,986,081
Recoveries of Prior Year Unpaid Obligations	930,496	3,990,815
<b>Total Prior Resources</b>	<b>5,677,149</b>	<b>10,976,896</b>
<b>BUDGET AUTHORITY:</b>		
Appropriation	146,000,000	112,050,000
Spending Authority from Offsetting Collections		
Collected	184,243	708,068
Change in Receivables from Federal Sources	3,160	(66,027)
Change in Unfilled Customer Orders		
Advance Received	(2,446)	(44)
Without Advance from Federal Sources	12,380	7,244
<b>Total New Resources</b>	<b>\$ 146,197,337</b>	<b>\$ 112,699,241</b>
<b>PERMANENTLY NOT AVAILABLE:</b>		
Cancellation of Expired Accounts	(1,291,402)	(1,209,101)
Enacted Reduction	-	(784,350)
<b>TOTAL BUDGETARY RESOURCES</b>	<b>\$ 150,583,084</b>	<b>\$ 121,682,686</b>
<b>STATUS OF BUDGETARY RESOURCES</b>		
Obligations Incurred:		
Direct		
Obligations Incurred, Direct	147,582,499	116,771,039
Obligations Incurred, Reimbursable	\$ 106,982	\$ 164,994
<b>Total Obligations Incurred (Note 11)</b>	<b>147,689,481</b>	<b>116,936,033</b>
Unobligated Balance		
Apportioned:		
Unobligated Balance Apportioned	222,131	1,689,337
Unobligated Balance Not Available	2,671,472	3,057,316
<b>TOTAL STATUS OF BUDGETARY RESOURCES</b>	<b>\$ 150,583,084</b>	<b>\$ 121,682,686</b>
<b>CHANGE IN OBLIGATED BALANCES</b>		
<b>NET OBLIGATED BALANCE, OCTOBER 1</b>		
Unpaid Obligations	\$ 22,935,810	\$ 12,548,687
Uncollected Customer Payments from Federal Sources	(15,634)	(74,417)
<b>Net Obligated Balance, October 1</b>	<b>\$ 22,920,176</b>	<b>\$ 12,474,270</b>
Gross Obligations Incurred, Net	147,689,481	116,936,033
Gross Outlays	(128,737,555)	(102,558,095)
Recoveries of Prior Year Unpaid Obligations	(930,496)	(3,990,815)
Change in Receivables from Federal Sources	(15,540)	58,783
	<b>\$ 40,926,066</b>	<b>\$ 22,920,176</b>
<b>NET OBLIGATED BALANCE, SEPTEMBER 30</b>		
Unpaid Obligations	\$ 40,957,240	\$ 22,935,810
Uncollected Customer Payments from Federal Sources	(31,174)	(15,634)
<b>Net Obligated Balance, September 30</b>	<b>\$ 40,926,066</b>	<b>\$ 22,920,176</b>
<b>NET OUTLAYS</b>		
Gross Outlays	\$ 128,737,555	\$ 102,558,095
Offsetting Collections Received	(646,925)	(708,024)
Distributed Offsetting Receipts	(828)	(4,933)
<b>NET OUTLAYS</b>	<b>\$ 128,089,802</b>	<b>\$ 101,845,138</b>

The accompanying notes are an integral part of these financial statements.

**STATEMENTS OF CUSTODIAL ACTIVITY**

For the Years Ended September 30, 2009 and 2008

	2009	2008
<b>REVENUE ACTIVITY</b>		
<b>SOURCES OF CASH COLLECTIONS:</b>		
Registration and Filing Fees	\$ 513,858	\$ 906,326
Fines, Penalties, and Forfeitures	17,376,121	140,879,579
General Proprietary Receipts	828	4,933
<b>Total Cash Collections</b>	<b>17,890,807</b>	<b>141,790,838</b>
<b>Change in Custodial Receivables</b>	<b>(18,306)</b>	<b>1,101,215</b>
<b>Total Custodial Revenue</b>	<b>\$ 17,872,501</b>	<b>\$ 142,892,053</b>
<b>DISPOSITION OF COLLECTIONS</b>		
<b>TRANSFERRED TO OTHERS, BY RECIPIENT:</b>		
Transferred to Treasury	(17,890,807)	(141,790,838)
Change in Custodial Liabilities	(18,306)	(1,101,215)
<b>NET CUSTODIAL ACTIVITY</b>	<b>\$ -</b>	<b>\$ -</b>

*The accompanying notes are an integral part of these financial statements.*

# NOTES TO THE FINANCIAL STATEMENTS

As of and For the Fiscal Years Ended September 30, 2009 and 2008

## Note 1. Summary of Significant Accounting Policies

### A. Reporting Entity

The CFTC is an independent agency of the executive branch of the Federal government. Congress created the CFTC in 1974 under the authorization of the Commodity Exchange Act (CEA or Act) with the mandate to regulate commodity futures and option markets in the United States. The agency's mandate was renewed and expanded under the Futures Trading Acts of 1978, 1982, and 1986; under the Futures Trading Practices Act of 1992; and the CFTC Reauthorization Act of 1995, and under the Commodity Futures Modernization Act of 2000. Congress passed the Food, Conservation, and Energy Act of 2008 (Farm Bill), which reauthorized the Commission through FY 2013. Since its inception, the CFTC has continuously operated through authorized appropriations.

The CFTC is responsible for ensuring the economic utility of futures markets by encouraging their competitiveness and efficiency; ensuring their integrity; and protecting market participants against manipulation, abusive trade practices, and fraud.

### B. Basis of Presentation

The financial statements have been prepared to report the financial position and results of operations for the CFTC, as required by the Chief Financial Officers' (CFO) Act of 1990 along with the Accountability of Tax Dollars Act of 2002, and the Government Management Reform Act of 1994. They are presented in accordance with the form and content requirements contained in OMB Circular No. A-136, "Financial Reporting Requirements," dated June 10, 2009.

The principal financial statements have been prepared in all material respects from the agency's books and records in conformity with U.S. GAAP, as prescribed for the Federal government by the Federal Accounting Standards Advisory Board (FASAB). The application and methods for applying these principles are appropriate for presenting fairly the entity's assets, liabilities, net cost of operations, changes in net position, and budgetary resources.

The financial statements report on CFTC financial position, net cost of operations, changes in net position, budgetary resources, and custodial activities. The books and records of the agency served as the source of information for preparing the financial statements in the prescribed formats. All agency financial statements and reports used to monitor and control budgetary resources are prepared from the same books and records. The statements should be read with the understanding that they are for a component of the U.S. government, a sovereign entity.

The Balance Sheets present the financial position of the agency. The Statements of Net Cost present the agency's operating results; the Statements of Changes in Net Position display the changes in the agency's equity accounts. The Statements of Budgetary Resources present the sources, status, and uses of the agency's resources and follow the rules for the Budget of the United States Government. The Statements of Custodial Activity present the sources and disposition of collections for which the CFTC is the fiscal agent, or custodian, for the U.S. Treasury (Treasury) General Fund Miscellaneous Receipt accounts.

Throughout these financial statements, assets, liabilities, revenues and costs have been classified according to the type of entity with whom the transactions were made. Intragovernmental assets and liabilities are those from or to other Federal entities. Intragovernmental earned revenues are collections or accruals of revenue from other Federal entities, and intragovernmental costs are payments or accruals to other Federal entities. The CFTC does not transact business among its own operating units, and therefore, intra-entity eliminations were not needed.

Historically, the Commission treated restitution receivables as non-entity assets and related activities as custodial. However, the Commission is no longer named in civil injunctive and administrative proceedings as the collector of restitution sanctions. Accordingly, the Commission changed its method of accounting and reporting for restitution assets stemming from actions against violators of the CEA and Commission regulations. Beginning in FY 2009, the Commission no longer records restitution sanctions as

custodial receivables and now reports on these non-Federal assets in the Management's Discussion and Analysis section of its Performance and Accountability Report. Also, the Commission only includes in its Statement of Custodial Activity those collections it anticipates forwarding to the Treasury's general fund. Since the current presentation reflects a change from one that was acceptable to another that is preferred, prior year amounts in Note 3 "Accounts Receivable" are presented as previously reported.

Certain FY 2008 amounts have been reclassified to conform to the FY 2009 presentation.

### C. Budgetary Resources and Status

The CFTC is funded through congressionally approved appropriations. The CFTC is responsible for administering the salaries and expenses of the agency through the execution of these appropriations.

Congress annually enacts one-year appropriations that provide the CFTC with the authority to obligate funds within the respective fiscal year for necessary expenses to carry out mandated program activities. In addition, Congress enacted a permanent indefinite appropriation that is available until expended. All appropriations are subject to quarterly apportionment as well as congressional restrictions.

The CFTC budgetary resources for FY 2009 consist of:

- Unobligated balances of resources brought forward from the prior year;
- Recoveries of obligations in prior years; and
- New resources in the form of appropriations and spending authority from offsetting collections.

Unobligated balances associated with resources expiring at the end of the fiscal year remain available for five years after expiration only for upward adjustments of prior year obligations, after which they are canceled and may not be used. All unused monies related to canceled appropriations are returned to Treasury and the canceled authority is reported as a line item on the Statements of Budgetary Resources and the Statements of Changes in Net Position.

### D. Entity and Non-Entity Assets

Assets consist of entity and non-entity assets. Entity assets are those assets that the CFTC has authority to use for its operations. Non-entity assets are those held by the CFTC that are not available for use in its operations. Non-entity assets held by the CFTC include deposit fund balances, custodial fines, interest, penalties, and administrative fees receivable, net.

### E. Fund Balance with Treasury

Fund Balance with Treasury is the aggregate amount of CFTC funds with Treasury in expenditure, receipt, and deposit fund accounts. Appropriated funds recorded in expenditure accounts are available to pay current liabilities and finance authorized purchases. Custodial collections recorded in the deposit fund account and miscellaneous receipts accounts of the Treasury are not available for agency use. At fiscal year end, receipt account balances are cleared and returned to Treasury.

The CFTC does not maintain bank accounts of its own, has no disbursing authority, and does not maintain cash held outside of Treasury. Treasury disburses funds for the agency on demand. Spending authority from offsetting collections is recorded in the agency's expenditure account and is available for agency use subject to certain limitations.

### F. Accounts Receivable

Accounts receivable consists of amounts owed by other Federal agencies and the public to the CFTC and is valued net of an allowance for uncollectible amounts. The allowance is based on past experience in the collection of receivables and analysis of the outstanding balances. Accounts receivable arise from reimbursable operations, earned refunds or the Civil Monetary Sanctions program.

### G. Property, Equipment, and Software

Furniture, fixtures, equipment, information technology hardware and software, and leasehold improvements are capitalized and depreciated or amortized over their useful lives.

The CFTC capitalizes assets annually if they have useful lives of at least two years and an individual value of \$25,000 or more. Bulk or aggregate purchases are capitalized when the individual useful lives are at least two years and a value of \$25,000 or more. Property, equipment, and software that do not meet the capitalization criteria are expensed

when acquired. Depreciation for equipment and software is computed on a straight-line basis using a five-year life. Leasehold improvements are amortized over the remaining life of the lease. The Commission's assets are valued net of accumulated depreciation.

## H. Prepayments

Payments to Federal and non-Federal sources in advance of the receipt of goods and services are recorded as prepayments, and recognized as expenses when the related goods and services are received. Intragovernmental prepayments reported on the Balance Sheet were made primarily to DOT for transit subsidy services. Prepayments to the public were primarily for software and subscription services.

## I. Liabilities

CFTC liabilities consist of actual and estimated amounts that are likely to be paid as a result of transactions covered by budgetary resources for which Congress has appropriated funds or funding, or are otherwise available from reimbursable transactions to pay amounts due.

Liabilities include those covered by budgetary resources in existing legislation and those not yet covered by budgetary resources. The CFTC liabilities not covered by budgetary resources include:

- Intragovernmental Federal Employees' Compensation Act (FECA) liabilities;
- Annual leave benefits which will be funded by annual appropriations as leave is taken;
- Actuarial FECA liabilities;
- Custodial liabilities for custodial revenue transferred to Treasury at fiscal year end;
- Contingent liabilities;
- Deposit funds;
- Deferred lease liabilities; and
- Advances received for reimbursable services yet to be provided.

CFTC liabilities that are covered by budgetary resources are considered current liabilities..

## J. Accounts Payable

Accounts payable consists primarily of contracts for goods or services, such as leases, utilities, telecommunications, and consulting and support services.

## K. Accrued Payroll and Benefits and Annual Leave Liability

The accrued payroll liability represents amounts for salaries and benefits owed for the time since the payroll was last paid through the end of the reporting period. The annual leave liability is the amount owed employees for unused annual leave as of the end of the reporting period. At the end of each quarter, the balance in the accrued annual leave account is adjusted to reflect current balances and pay rates. Sick leave and other types of non-vested leave are expensed as taken.

The agency's employees participate in the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS.

For employees under FERS, the CFTC contributes an amount equal to one percent of the employee's basic pay to the tax deferred Thrift Savings Plan and matches employee contributions up to an additional four percent of pay. FERS and CSRS employees can contribute a portion of their gross earnings to the plan up to the Internal Revenue Service limits; however, CSRS employees receive no matching agency contribution.

## L. Leases

The CFTC does not have any capital lease liabilities. The operating leases consist of commercial property leases for the CFTC headquarters and regional offices. Lease expenses are recognized on a straight-line basis.

## M. Deposit Funds

Deposit funds are expenditure accounts used to record monies that do not belong to the Federal government. They are held awaiting distribution based on a legal determination or investigation. The CFTC deposit fund is used to record and later distribute collections of monetary awards to the appropriate

victims as restitution. The cash collections recorded in this fund are offset by a Deposit Liability. Activities in this fund are not fiduciary in nature because they are not legally enforceable against the government.

## N. Net Position

Net position consists of unexpended appropriations and cumulative results of operations. Unexpended appropriations are appropriations that have not yet been used to acquire goods and services or provide benefits. Appropriations are considered expended, or used, when goods and services have been acquired by the CFTC or benefits have been provided using the appropriation authority, regardless of whether monies have been paid or payables for the goods, services, or benefits have been established. Appropriations are used primarily to acquire goods and services to operate CFTC programs or to provide benefits.

Cumulative results of operations represent the excess of financing sources over expenses since inception. Cumulative results of operations are derived from the net effect of capitalized assets, expenses, exchange revenue, and unfunded liabilities.

## O. Revenues

The CFTC receives reimbursement and earns revenue for the following activities:

- Reimbursement for travel, subsistence, and related expenses from non-Federal sources for attendance at meetings or similar functions that an employee has been authorized to attend in an official capacity on behalf of the Commission.
- Reimbursement for Intergovernmental Personnel Act Mobility Program assignments from state and local governments, institutions of higher education, and other eligible organizations for basic pay, supplemental pay, fringe benefits, and travel and relocation expenses.
- Reimbursement from non-Federal sources for registration fees to cover the cost of expenses related to the CFTC's annual International Regulators Conference.

## P. Net Cost of Operations

Net cost of operations is the difference between CFTC expenses and earned revenue. The presentation of program results by strategic goals is based on the current CFTC Strategic Plan established pursuant to the Government Performance and Results Act (GPRA) of 1993.

The mission statement of the CFTC is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and financial futures and options, and to foster open, competitive, and financially sound futures and option markets. The mission is accomplished through four strategic goals, each focusing on a vital area of regulatory responsibility:

- Ensure the economic vitality of the commodity futures and option markets;
- Protect market users and the public;
- Ensure market integrity in order to foster open, competitive, and financially sound markets; and
- Facilitate Commission performance through organizational and management excellence, efficient use of resources, and effective mission support.

## Q. Custodial Activity

The CFTC collects penalties and fines levied against firms for violation of laws as described in the CEA as codified at 7 U.S.C. § 1, *et seq*, and the Commodities Futures Modernization Act of 2000, Appendix E of P.L. 106-554, 114 Stat. 2763. Unpaid fines, penalties and accrued interest are reported as custodial receivables, with an associated custodial liability. The receivables and the liability are reduced by amounts determined to be uncollectible. Revenues earned and the losses from bad debts are reported to Treasury.

Collections made by the CFTC during the year are deposited and reported into designated Treasury miscellaneous receipt accounts for:

- Registration and filing fees;
- Fines, penalties and forfeitures; and
- General proprietary receipts.

At fiscal year end, custodial collections made by the CFTC are returned to Treasury. The CFTC does not retain any amount for custodial activities including reimbursement of the cost of collection.

### R. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

### S. Reconciliation of Net Obligations and Net Cost of Operations

In accordance with OMB Circular No. A-136, the Commission reconciles its change in budgetary obligations with its net cost of operations.

## Note 2. Fund Balance with Treasury

### A. Reconciliation to Treasury

There are no differences between the Fund Balance reflected in the CFTC Balance Sheets and the balance in the Treasury accounts.

### B. Fund Balance with Treasury

Fund Balances with Treasury consist of entity assets such as appropriations and reimbursements for services rendered. Obligation of these funds is controlled by quarterly apportionments made by OMB. Work performed under reimbursable agreements is initially financed by the annual appropriation and is subsequently reimbursed. Other funds include non-entity deposit fund receipts.

Fund Balance with Treasury at September 30, 2009 and 2008 consisted of the following:

	2009	2008
<b>APPROPRIATED FUNDS</b>	\$ 43,819,671	\$ 27,666,831
Deposit Fund	142,279	-
<b>TOTAL APPROPRIATED FUND BALANCE WITH TREASURY</b>	<b>\$ 43,961,950</b>	<b>\$ 27,666,831</b>

### C. Status of Fund Balance with Treasury

Status of Fund Balance with Treasury at September 30, 2009 and 2008 consisted of the following:

	2009	2008
<b>APPROPRIATED FUNDS</b>		
Unobligated Fund Balance		
Available	\$ 222,131	\$ 1,589,552
Expired	-	84,151
Unavailable	2,640,300	3,057,318
Obligated Balance Not Yet Disbursed	40,957,240	22,935,810
<b>Total Appropriated Funds</b>	<b>43,819,671</b>	<b>27,666,831</b>
<b>Deposit Fund</b>	<b>142,279</b>	<b>-</b>
<b>TOTAL FUND BALANCE WITH TREASURY</b>	<b>\$ 43,961,950</b>	<b>\$ 27,666,831</b>

### Note 3. Accounts Receivable

Accounts receivable consist of amounts owed the CFTC by other Federal agencies and the public. Accounts receivable are valued at their net collectable values. Non-custodial accounts receivable are primarily for overpayments of expenses to other agencies, or vendors, and repayment of employee benefits. Historical experience has indicated that most of the non-custodial receivables are collectible and there are no material uncollectible amounts.

Custodial receivables (non-entity assets) are those for which fines and penalties have been assessed and levied against businesses or individuals for violations of the CEA or Commission regulations. Violators may be subject to a variety of sanctions including fines, injunctive orders, bars or suspensions, rescissions of illegal contracts, disgorgements, and restitutions to customers.

Historical experience has indicated that a high percentage of custodial receivables prove uncollectible. The Commission's methodology used to estimate the allowance for uncollectible amounts related to custodial accounts, considers all receivables to be 100 percent uncollectible unless deemed otherwise. An allowance for uncollectible accounts has been established and included in accounts receivable on the balance sheets. The allowance is based on past experience in the collection of accounts receivable and analysis of outstanding balances. Accounts are re-estimated quarterly based on account reviews and the agency determination that changes to the net realizable value are needed.

Beginning in FY 2009, the Commission no longer records restitution sanctions as custodial receivables. Prior year amounts are presented as previously reported.

Accounts receivable, as of September 30, 2009 and 2008, consisted of the following:

	2009	2008
Custodial Receivables, Net:		
Civil Monetary Penalty Interest	\$ 1,837,945	\$ 23,073,549
Civil Monetary Penalties, Fines, and Administrative Fees	224,068,663	1,431,481,645
Less: Allowance for Loss on Interest	(1,834,753)	(23,069,460)
Less: Allowance for Loss on Penalties, Fines, and Administrative Fees	(223,040,935)	(1,430,214,727)
Registration and Filing Fees	672,300	450,519
<b>NET CUSTODIAL RECEIVABLES</b>	<b>\$ 1,703,220</b>	<b>\$ 1,721,526</b>
<b>OTHER ACCOUNTS RECEIVABLE</b>	<b>\$ 18,207</b>	<b>\$ 11,534</b>
<b>ACCOUNTS RECEIVABLE, NET</b>	<b>\$ 1,721,427</b>	<b>\$ 1,733,060</b>

### Note 4. Property, Equipment, and Software, Net

Equipment and IT assets are capitalized annually if they have useful lives of at least two years and an individual value of \$25,000 or more. Bulk or aggregate purchases are capitalized when the individual useful lives are at least two years and a value of \$25,000 or more. Depreciation for equip-

ment and software is computed on a straight-line basis using a five-year life. Leasehold improvements are amortized over the remaining life of the lease. Property, Equipment and Software as of September 30, 2009 and 2008 consisted of the following:



2009				
Major Class	Service Life and Method	Cost	Accumulated Amortization/Depreciation	Net Book Value
Equipment	5 Years/Straight Line	\$ 7,327,516	\$ (1,552,199)	\$ 5,775,317
IT Software	5 Years/Straight Line	4,760,185	(2,087,920)	2,672,265
Software in Development	Not Applicable	1,293,029	-	1,293,029
Leasehold Improvements	Remaining Life of Lease/Straight Line	673,456	(67,346)	606,110
		<b>\$ 14,054,186</b>	<b>\$ (3,707,465)</b>	<b>\$ 10,346,721</b>

2008				
Major Class	Service Life and Method	Cost	Accumulated Amortization/Depreciation	Net Book Value
Equipment	5 Years/Straight Line	\$ 1,999,554	\$ (864,058)	\$ 1,135,496
IT Software	5 Years/Straight Line	2,966,169	(1,291,224)	1,674,945
		<b>\$ 4,965,723</b>	<b>\$ (2,155,282)</b>	<b>\$ 2,810,441</b>

## Note 5. Liabilities Not Covered by Budgetary Resources

As of September 30, 2009 and 2008, the following liabilities were not covered by budgetary resources:

	2009	2008
Intragovernmental – FECA Liabilities	\$ 37,362	\$ 41,092
Annual Leave	6,427,995	4,525,329
Actuarial FECA Liabilities	170,170	177,796
Custodial Liabilities	1,703,220	1,721,526
Deposit Fund Liabilities	142,279	-
Deferred Lease Liabilities	3,226,161	3,294,324
Other	7,513	9,957
<b>TOTAL LIABILITIES NOT COVERED BY BUDGETARY RESOURCES</b>	<b>\$ 11,714,700</b>	<b>\$ 9,770,024</b>

## Note 6. Retirement Plans and Other Employee Benefits

The CFTC imputes costs and the related financing sources for its share of retirement benefits accruing to its past and present employees that are in excess of the amount of contributions from the CFTC and its employees, which are mandated by law. The Office of Personnel Management (OPM), which administers Federal civilian retirement programs, provides the cost information to the CFTC. The CFTC recognizes the full cost of providing future pension and other retirement benefits (ORB) for current employees as required by Statement of Federal Financial Accounting Standards (SFFAS) No. 5, "Accounting for Liabilities of the Federal Government".

Full costs include pension and ORB contributions paid out of CFTC appropriations and costs financed by OPM. The amount financed by OPM is recognized as an imputed financing source. This amount was \$5,415,370 for the period ended September 30, 2009, and \$3,880,429 for the period ended September 30, 2008. Reporting amounts such as plan assets, accumulated plan benefits, or unfunded liabilities, if any, is the responsibility of OPM.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits Program and the Federal Employees Group Life Insurance Program are reported by OPM rather than CFTC.

## Note 7. Actuarial FECA Liabilities

FECA provides income and medical cost protections to covered Federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by the U.S. Department of Labor (DOL), which pays valid claims against the CFTC and subsequently seeks reimbursement from the CFTC for these paid claims. Accrued FECA liabilities represent amounts due to DOL for claims paid on behalf of the agency. Accrued FECA liabilities at September 30, 2009 and September 30, 2008 were \$37,362 and \$41,092, respectively.

Actuarial FECA liability represents the liability for future workers compensation (FWC) benefits, which includes the expected liability for death, disability, medical, and miscellaneous costs for approved cases. The liability is determined using a formula provided by DOL annually as of September 30th using a method that utilizes historical benefits payment patterns related to a specific incurred period to predict the ultimate payments related to that period. The projected annual benefits payments are discounted to present value using OMB's economic assumptions for ten-year Treasury notes and bonds. To provide more specifically for effects of inflation on liability for FWC benefits, wage inflation factors (Consumer Price Index-Medical) are applied to the calculation of projected future benefits. These factors are also used to adjust historical payments so benefits are stated in current-year constant dollars. Actuarial FECA liabilities at September 30, 2009 and September 30, 2008 were \$170,170 and \$177,796, respectively.

## Note 8. Leases

The CFTC leases office space in publicly owned buildings for its locations in Washington D.C., Chicago, New York, and Kansas City. The lease contracts for publicly-owned buildings are operating leases. The CFTC has no real property. Future estimated minimum lease payments are not accrued as liabilities and are expensed on a straight-line basis.

As of September 30, 2009, future estimated minimum lease payments through FY 2015 are as follows:

Fiscal Year	Dollars
2010	\$ 10,970,480
2011	11,268,766
2012	9,898,728
2013	8,147,303
2014	8,306,539
2015	8,283,441
Total Minimum lease payments	56,875,257
Add: Amount representing estimated executory costs (taxes, maintenance, and insurance)	11,943,803
<b>TOTAL MINIMUM LEASE PAYMENTS, INCLUDING ESTIMATED EXECUTORY COSTS</b>	<b>\$ 68,819,060</b>

Lease expense is recognized on a straight-line basis. Because the lease payment amounts vary, and in some cases, CFTC receives periods of up-front free rent, a deferred lease liability representing expense amounts in excess of payments to date has been recorded. The deferred lease liabilities at September 30, 2009 and September 30, 2008 were \$3,226,161 and \$3,294,324, respectively.

## Note 9. Contingent Liabilities

The CFTC records commitments and contingent liabilities for legal cases in which payment has been deemed probable and for which the amount of potential liability has been estimated, including certain judgments that have been issued against the agency and which have been appealed. There were no contingent liabilities as of September 2009 and 2008.

## Note 10. Undelivered Orders

The amounts of budgetary resources obligated for undelivered orders as of September 30, 2009 and 2008 were as follows:

	2009	2008
Undelivered Orders	\$ 32,332,889	\$ 17,450,966

The amount of undelivered orders represents the value of unpaid and paid obligations recorded during the current or a prior fiscal year, upward adjustments of obligations that were originally recorded in a prior fiscal year, and recoveries resulting from downward adjustments of obligations that were originally recorded in a prior fiscal year.

## Note 11. Apportionment Categories of Obligations Incurred

Obligations incurred and reported in the Statements of Budgetary Resources in 2009 and 2008 consisted of the following:

	2009	2008
Direct Obligations, Category A	\$ 147,582,499	\$ 116,771,039
Reimbursable Obligations, Category A	106,982	164,994
<b>TOTAL OBLIGATIONS INCURRED</b>	<b>\$ 147,689,481</b>	<b>\$ 116,936,033</b>

## Note 12. Permanent Indefinite Appropriations

CFTC permanent indefinite appropriation as authorized by Public Law 107-38 funds emergency expenses to respond to the terrorist attacks on the United States that occurred on September 11, 2001. The fund provides support to deal with consequences of the attacks and support national security.

## Note 13. Explanation of Differences between the Statement of Budgetary Resources and Budget of the U.S. Government

The CFTC had no material differences between the amounts reported in the Statement of Budgetary Resources and the actual amounts reported in the Budget of the U.S. government for FY 2008. The Budget of the U.S. Government with actual numbers for FY 2009 has not yet been published. The expected publication date is February 2010. A copy of the Budget can be obtained from OMB's Web site at <http://www.whitehouse.gov/omb/>.

## Note 14. Intra-governmental Cost and Exchange Revenue by Goal

As required by GPRA, the Commission's reporting has been aligned with the following major goals presented in the 2007 – 2012 CFTC Strategic Plan.

1. Ensure the Economic Vitality of the Commodity Futures and Option Markets;
2. Protect Market Users and the Public;
3. Ensure Market Integrity in Order to Foster Open, Competitive, and Financially Sound Markets; and
4. Facilitate Commission Performance Through Organizational and Management Excellence, Efficient Use of Resources, and Effective Mission Support.

The Net Cost of Operations is derived from transactions between the Commission and public entities, as well as with other Federal agencies. Certain FY 2008 amounts have been reclassified to conform to the FY 2009 presentation. The details of the intra-governmental costs and revenues, as well as those with the public, are as follows:

	2009		2008	
<b>GOAL 1: ENSURE THE ECONOMIC VITALITY OF THE COMMODITY FUTURES AND OPTION MARKETS</b>				
Intragovernmental Gross Costs	\$	7,061,197	\$	5,652,064
Less: Earned Revenue		(12,591)		(5,062)
<b>Intragovernmental Net Cost of Operations</b>	<b>\$</b>	<b>7,048,606</b>	<b>\$</b>	<b>5,647,002</b>
Gross Costs with the Public	\$	33,683,882	\$	26,023,059
Less: Earned Revenue		(19,018)		(15,182)
<b>Net Cost of Operations with the Public</b>	<b>\$</b>	<b>33,664,864</b>	<b>\$</b>	<b>26,007,877</b>
<b>TOTAL NET COST OF OPERATIONS – GOAL ONE</b>	<b>\$</b>	<b>40,713,470</b>	<b>\$</b>	<b>31,654,879</b>
<b>GOAL 2: PROTECT MARKET USERS AND THE PUBLIC</b>				
Intragovernmental Gross Costs	\$	5,238,953	\$	4,521,651
Less: Earned Revenue		(9,342)		(4,049)
<b>Intragovernmental Net Cost of Operations</b>	<b>\$</b>	<b>5,229,611</b>	<b>\$</b>	<b>4,517,602</b>
Gross Costs with the Public	\$	24,991,267	\$	20,818,447
Less: Earned Revenue		(14,110)		(12,146)
<b>Net Cost of Operations with the Public</b>	<b>\$</b>	<b>24,977,157</b>	<b>\$</b>	<b>20,806,301</b>
<b>TOTAL NET COST OF OPERATIONS – GOAL TWO</b>	<b>\$</b>	<b>30,206,768</b>	<b>\$</b>	<b>25,323,903</b>
<b>GOAL 3: ENSURE MARKET INTEGRITY IN ORDER TO FOSTER OPEN, COMPETITIVE, AND FINANCIALLY SOUND MARKETS</b>				
Intragovernmental Gross Costs	\$	5,238,953	\$	4,333,249
Less: Earned Revenue		(9,342)		(3,881)
<b>Intragovernmental Net Cost of Operations</b>	<b>\$</b>	<b>5,229,611</b>	<b>\$</b>	<b>4,329,368</b>
Gross Costs with the Public	\$	24,991,267	\$	19,951,012
Less: Earned Revenue		(14,110)		(11,639)
<b>Net Cost of Operations with the Public</b>	<b>\$</b>	<b>24,977,157</b>	<b>\$</b>	<b>19,939,373</b>
<b>TOTAL NET COST OF OPERATIONS – GOAL THREE</b>	<b>\$</b>	<b>30,206,768</b>	<b>\$</b>	<b>24,268,741</b>
<b>GOAL 4: FACILITATE COMMISSION PERFORMANCE THROUGH ORGANIZATIONAL AND MANAGEMENT EXCELLENCE, EFFICIENT USE OF RESOURCES, AND EFFECTIVE MISSION SUPPORT</b>				
Intragovernmental Gross Costs	\$	5,238,953	\$	4,333,249
Less: Earned Revenue		(9,342)		(3,881)
<b>Intragovernmental Net Cost of Operations</b>	<b>\$</b>	<b>5,229,611</b>	<b>\$</b>	<b>4,329,368</b>
Gross Costs with the Public	\$	24,991,267	\$	19,951,012
Less: Earned Revenue		(14,110)		(11,639)
<b>Net Cost of Operations with the Public</b>	<b>\$</b>	<b>24,977,157</b>	<b>\$</b>	<b>19,939,373</b>
<b>TOTAL NET COST OF OPERATIONS – GOAL FOUR</b>	<b>\$</b>	<b>30,206,768</b>	<b>\$</b>	<b>24,268,741</b>
<b>NET COST OF OPERATIONS</b>	<b>\$</b>	<b>131,333,774</b>	<b>\$</b>	<b>105,516,264</b>

## Note 15. Reconciliation of Net Obligations and Net Cost of Operations

The schedule presented in this footnote reconciles the net obligations with the Net Cost of Operations. Resources Used to Finance Activities reflects the budgetary resources obligated and other resources used to finance the activities of the agency. Resources Used to Finance Items Not Part of the Net Cost of Operations adjusts total resources used to finance the activities of the entity to account for items that were included in net obligations and other resources but were not part of the Net Cost of Operations. Components Requiring or Generating Resources in Future Periods identifies items that

are recognized as a component of the net cost of operations for the period but the budgetary resources (and related obligation) will not be provided (or incurred) until a subsequent period. Components Not Requiring or Generating Resources includes items recognized as part of the net cost of operations for the period but that will not generate or require the use of resources. Net Cost of Operations agrees with the Net Cost of Operations as reported on the Statements of Net Cost. Certain FY 2008 amounts have been reclassified to conform to the FY 2009 presentation.

	2009	2008
<b>RESOURCES USED TO FINANCE ACTIVITIES</b>		
<b>BUDGETARY RESOURCES OBLIGATED</b>		
Obligations Incurred	\$ 147,689,481	\$ 116,936,033
Less: Spending Authority from Offsetting Collections and Recoveries	(1,127,833)	(4,640,056)
Obligations Net of Offsetting Collections and Recoveries	146,561,648	112,295,977
Offsetting Receipts	(828)	(4,933)
Net Obligations After Offsetting Receipts	146,560,820	112,291,044
<b>OTHER RESOURCES</b>		
Imputed Financing from Cost Absorbed by Others	5,415,370	3,880,429
<b>Total Resources Used to Finance Activities</b>	<b>\$ 151,976,190</b>	<b>\$ 116,171,473</b>
<b>RESOURCES USED TO FINANCE ITEMS NOT PART OF THE NET COST OF OPERATIONS</b>		
Change in Budgetary Resources Obligated for Goods, Services, and Benefits Ordered but not yet Provided	(14,926,597)	(10,184,214)
Resources that Fund Expenses Recognized in Prior Periods (Decrease in Unfunded Liabilities)	(79,519)	(336,280)
Offsetting Receipts	828	4,933
Resources that Finance the Acquisition of Assets	(9,343,530)	(853,027)
<b>Total Resources Used to Finance Items Not Part of the Net Cost of Operations</b>	<b>\$ (24,348,818)</b>	<b>\$ (11,368,588)</b>
<b>COMPONENTS OF THE NET COST OF OPERATIONS THAT WILL NOT REQUIRE OR GENERATE RESOURCES IN THE CURRENT PERIOD</b>		
Increase/(Decrease) in Contingent Liabilities	-	(310,000)
Increase in Unfunded Liabilities	1,902,666	133,088
<b>Total Components of Net Cost of Operations that Will Require or Generate Resources in Future Periods</b>	<b>\$ 1,902,666</b>	<b>\$ (176,912)</b>
<b>COMPONENTS NOT REQUIRING OR GENERATING RESOURCES</b>		
Depreciation and Amortization	1,807,247	893,189
Other	(3,511)	(2,898)
<b>Total Components of Net Cost of Operations that Will Not Require or Generate Resources</b>	<b>\$ 1,803,736</b>	<b>\$ 890,291</b>
<b>Total Components of Net Cost of Operations that Will Not Require or Generate Resources in the Current Period</b>	<b>\$ 3,706,402</b>	<b>\$ 713,379</b>
<b>NET COST OF OPERATIONS</b>	<b>\$ 131,333,774</b>	<b>\$ 105,516,264</b>

# REPORT OF THE INDEPENDENT AUDITORS



## Independent Auditor's Report

Chairman and Inspector General of the  
United States Commodity Futures Trading Commission

We have audited the accompanying balance sheet of Commodity Futures Trading Commission (CFTC) as of September 30, 2009, and the related statements of net cost, changes in net position, budgetary resources, and custodial activity for the year then ended. The financial statements of CFTC as of September 30, 2008 were audited by other auditors whose report dated November 12, 2008, expressed an unqualified opinion on those financial statements. In our audits of CFTC for fiscal years 2009, we found:

- the CFTC financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America;
- no material weaknesses or significant deficiencies in internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations; and
- no reportable noncompliance with laws and regulations we tested.

The following sections discuss in more detail (1) these conclusions, (2) our conclusions on Management's Discussion and Analysis (MD&A) and other supplementary information, and (3) our objectives, scope and methodology.

### **OPINION ON FINANCIAL STATEMENTS**

In our opinion, the financial statements including the accompanying notes present fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America, CFTC's assets, liabilities and net position as of September 30, 2009, and its net costs; changes in net position; budgetary resources and custodial activity for the year then ended.

### **CONSIDERATION OF INTERNAL CONTROL**

In planning and performing our audit, we considered CFTC's internal control over financial reporting as a basis for designing our auditing procedures and to comply with the Office of Management and Budget (OMB) audit guidance for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on internal control and compliance or on management's assertion on internal control included in MD&A. Accordingly, we do not express an opinion on the effectiveness of the entity's internal control over financial reporting or on management's assertion on internal control included in the MD&A.

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Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily disclose all deficiencies in the internal control that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses or significant deficiencies, as defined above.

We noted other nonreportable matters involving internal control and its operation that we will communicate in a separate management letter to CFTC management.

### **SYSTEMS' COMPLIANCE WITH FFMA REQUIREMENTS**

Under the Federal Financial Management Improvement Act of 1996 (FFMIA), we are required to report whether the financial management systems used by CFTC substantially comply with the Federal financial management systems requirements, applicable Federal accounting standards, and the United States Standard General Ledger (SGL) at the transaction level. To meet this requirement, we performed tests of compliance with FFMIA Section 803(a) requirements.

The objective of our audit was not to provide an opinion on compliance with FFMIA. Accordingly, we do not express such an opinion. The results of our work disclosed no instances in which CFTC's financial management systems did not substantially comply with Federal financial management systems requirements, Federal accounting standards, or the SGL at the transaction level.

### **COMPLIANCE WITH LAWS AND REGULATIONS**

Our tests of CFTC's compliance with selected provisions of laws and regulations for fiscal 2009 disclosed no instances of noncompliance that would be reportable under United States Government Auditing Standards or OMB audit guidance. However, the objective of our audit was not to provide an opinion on overall compliance with laws and regulations. Accordingly, we do not express such an opinion.

## **CONSISTENCY OF OTHER INFORMATION**

The MD&A is not a required part of the financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

The introductory information, performance information and other accompanying information listed in the table of contents are presented for additional analysis and are not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

## **OBJECTIVES, SCOPE AND METHODOLOGY**

Management is responsible for (1) preparing the financial statements in conformity with accounting principles generally accepted in the United States of America, (2) establishing, maintaining, and assessing internal control to provide reasonable assurance that the broad control objectives of the Federal Managers' Financial Integrity Act (FMFIA) are met, and (3) ensuring that CFTC's financial management systems substantially comply with FFMA requirements, and (4) complying with other applicable laws and regulations.

We are responsible for obtaining reasonable assurance about whether the financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States. We are also responsible for: (1) obtaining a sufficient understanding of internal control over financial reporting and compliance to plan the audit, (2) testing whether CFTC's financial management systems substantially comply with the three FFMA requirements, (3) testing compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements and laws for which OMB audit guidance requires testing, and (4) performing limited procedures with respect to certain other information appearing in the Performance and Accountability Report.

In order to fulfill these responsibilities, we (1) examined on a test basis, evidence supporting the amounts and disclosures in the financial statements, (2) assessed the accounting principles used and significant estimates made by management, (3) evaluated the overall presentation of the financial statements, (4) obtained an understanding of CFTC and its operations, including its internal control related to financial reporting (including safeguarding of assets), and compliance with laws and regulations (including execution of transactions in accordance with budget authority), (5) tested relevant internal controls over financial reporting, and compliance, and evaluated the design and operating effectiveness of internal control, (6) considered the design of the process for evaluating and reporting on internal control and financial management systems under FMFIA, (7) tested whether CFTC's financial management systems substantially complied with the three FFMA requirements, and (8) tested compliance with selected provisions of certain laws and regulations.

We did not evaluate all internal controls relevant to operating objectives as broadly defined by the FMFIA, such as those controls relevant to preparing statistical reports and ensuring efficient operations. We limited our internal control testing to controls over financial reporting and compliance. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. We also caution



that projecting our evaluation to future periods is subject to risk that controls may become inadequate because of changes in conditions or that the degree of compliance with controls may deteriorate. In addition, we caution that our internal control testing may not be sufficient for other purposes.

We did not test compliance with all laws and regulations applicable to CFTC. We limited our tests of compliance to selected provisions of laws and regulations that have a direct and material effect on the financial statements and those required by OMB audit guidance that we deemed applicable to CFTC's financial statements for the fiscal year ended September 30, 2009. We caution that noncompliance with laws and regulations may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

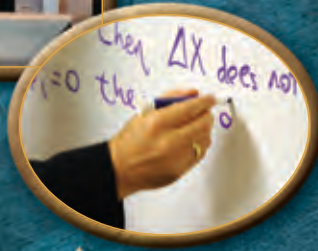
We performed our audit in accordance with auditing standards generally accepted in the United States; the standards applicable to the financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB guidance.

\*\*\*\*\*

This report is intended solely for the information and use of CFTC's management, CFTC's Office of Inspector General, OMB, the Government Accountability Office, and the U.S. Congress, and is not intended to be, and should not be, used by anyone other than these specified parties.

*Clifton Gunderson LLP*

Calverton, Maryland  
November 13, 2009



## **OTHER ACCOMPANYING INFORMATION**

*143 Inspector General's FY 2009 Assessment*

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# INSPECTOR GENERAL'S FY 2009 ASSESSMENT



Office of the  
Inspector General

## U.S. COMMODITY FUTURES TRADING COMMISSION

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### MEMORANDUM

**TO:** Gary Gensler  
Chairman

**FROM:** A. Roy Lavik *ARL*  
Inspector General

**DATE:** November 16, 2009

**SUBJECT:** Inspector General's Assessment Of The Most Serious Management Challenges Facing the Commodity Futures Trading Commission (CFTC)

#### Introduction

The *Reports Consolidation Act of 2000* (RCA) authorizes the CFTC to provide financial and performance information in a more meaningful and useful format for Congress, the President, and the public, through publication of the Performance and Accountability Report (PAR). The RCA requires the Inspector General to summarize the "most serious" management and performance challenges facing the Agency and to assess the Agency's progress in addressing those challenges, all for inclusion in the PAR. This memorandum fulfills our duties under the RCA.

In order to identify and describe the most serious management challenges, as well as the Agency's progress in addressing them, we have relied on data contained in the CFTC financial statement audit and PAR, as well as our knowledge of industry trends and CFTC operations. Since Congress left the determination and threshold of what constitutes a most serious challenge to the discretion of the Inspector General, we applied the following definition in preparing this statement:

Serious management challenges are mission critical areas or programs that have the potential for a perennial weakness or vulnerability that, without substantial management attention, would seriously impact Agency operations or strategic goals.

This memorandum summarizes the results of the CFTC's current financial statement audit, describes the Agency's progress on last year's management challenges, and finally discusses the most serious management challenges that we have identified:

1. Harmonization of CFTC and Securities and Exchange Commission (SEC) Overlapping Regulations;
2. CFTC's Regulatory Model for the Swaps Derivatives Market; and,
3. CFTC's Regulatory Responsibilities over the Potential Carbon Emission Trading Markets.

### **CFTC Financial Statement Audit Results**

In accordance with the *Accountability of Tax Dollars Act*, CFTC, along with numerous other federal entities, is required to submit to an annual independent financial statement audit by the Inspector General, or by an independent external auditor as determined by the Inspector General. The results of the fiscal year 2009 financial statement audit are discussed in the PAR, and the financial statement audit resulted in an unqualified audit opinion.

### **CFTC's Progress on Last Year's Challenges**

Last year we identified the two most serious management challenges as: Modernization of Electronic Market Surveillance and the Efficient Acquisition and Integration of Skilled Human Capital to address expanding Congressional mandates. During fiscal year 2009 the Agency has addressed both issues. Over the past year the Agency has upgraded its servers and trade analysis systems to modernize and improve its surveillance of exchange traded futures and options contracts. As the Agency acquires additional regulatory responsibilities, we hope that the Agency is able to scale up its market surveillance capabilities. Since the start of FY 2009 the Agency has increased its staff by 100 new employees (a 21% increase). This dramatic influx of manpower should assist the Agency in meeting its expanding regulatory mission. The OIG is conducting a review of the recent recruitment in order to evaluate the effect of the CT pay system on recruitment and retention, which review will examine the skill sets of this new talent pool.

### **Most Serious Management Challenges**

Three issues likely to challenge the CFTC in the coming year are: Congressional demand that the CFTC and SEC harmonize their regulation of overlapping financial products; a decision on the CFTC's regulatory model for the swaps derivatives market; and expansion of CFTC's regulatory responsibilities over the potential carbon emission trading markets.

### **Harmonization of CFTC and SEC Overlapping Regulations**

On June 17, 2009, the White House released a White Paper on Financial Regulatory Reform calling on the SEC and CFTC to "make recommendations to Congress for changes to statutes

and regulations that would harmonize regulation of futures and securities.”<sup>1</sup> Specifically, the White House recommended “that the CFTC and the SEC complete a report to Congress by Sept. 30, 2009, that identifies all existing conflicts in statutes and regulations with respect to similar types of financial instruments and either explains why those differences are essential to achieve underlying policy objectives with respect to investor protection, market integrity, and price transparency or makes recommendations for changes to statutes and regulations that would eliminate the differences.”<sup>2</sup>

In September 2009, the CFTC and SEC collaborated on an initial effort to begin implementation of the White House mandate, and released the required joint report on October 16, 2009. This effort identified numerous areas for operational coordination that will require substantial analysis and may yield a more efficient regulatory structure over the financial markets. The OIG looks forward to the resulting regulatory model that will define the future mission of this Agency.

### **CFTC’s Regulatory Model for the Swaps Derivatives Market and the Need for Additional Human Capital**

Congressional deliberations over how the CFTC will regulate the swaps markets will determine the Agency’s need for additional human capital to regulate these markets. The Congressional Budget Office estimates that up to 235 employees<sup>3</sup> may be needed by fiscal year 2011 to regulate central counterparty clearing of swaps. In our estimation, this would require a 40% increase over existing staffing levels—a considerable challenge for any organization. We believe both the intricacies of any forthcoming derivatives regulation and the acquisition of human capital to carry out the regulatory tasks will challenge the CFTC in the coming year.

### **CFTC’s Regulatory Responsibilities over the Potential Carbon Emission Trading Markets**

Congress may soon move forward on new legislation to regulate carbon emissions trading. A recent Congressional Budget Office study projected that trading in carbon offsets could be a \$60 billion market in 2012.<sup>4</sup> Presuming Congress assigns regulatory responsibility to the CFTC, the CFTC will require additional staffing increases in order to absorb this additional regulatory responsibility. We believe the increased responsibility will challenge the CFTC in the coming year.

### **Conclusion**

The past year has continued to witness dramatic movement in the financial markets and the commodity futures markets. While the Agency has addressed the most serious management challenges identified last year, Congressional initiatives to overhaul regulation of over-the-

<sup>1</sup> Financial Regulatory Reform: A New Foundation, p.14  
[http://www.financialstability.gov/docs/regs/FinalReport\\_web.pdf](http://www.financialstability.gov/docs/regs/FinalReport_web.pdf).

<sup>2</sup> *Id.*, pg. 50.

<sup>3</sup> H.R. 3795 Derivative Markets Transparency and Accountability Act of 2009 Congressional Budget Office Cost Estimate November 6, 2009 Page 3. <http://www.cbo.gov/ftpdocs/107xx/doc10703/hr3795hfs.pdf>.

<sup>4</sup> H.R. 2454 American Clean Energy and Security Act of 2009 Congressional Budget Office Cost Estimate June 5, 2009 Page 11. <http://www.cbo.gov/ftpdocs/102xx/doc10262/hr2454.pdf>.

counter derivatives and the carbon markets may provide a new set of challenges and greatly expand the work of the Agency. Our concern is that Congress adequately equip the Agency with sufficient resources to carry out all additional responsibilities efficiently and effectively, and that the Agency implement any new authority with skill and speed. During the coming year we will monitor the Agency's progress addressing the most serious management concerns, while continuing to identify new challenges. The OIG takes its mission and authority seriously, and remains committed to promoting integrity, accountability and transparency at the CFTC.

# SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

## Summary of FY 2009 Financial Statement Audit

Audit Opinion:	Unqualified				
Restatement:	No				
<b>MATERIAL WEAKNESS</b>	<b>BEGINNING BALANCE</b>	<b>NEW</b>	<b>RESOLVED</b>	<b>CONSOLIDATED</b>	<b>ENDING BALANCE</b>
	0	0			0

## Summary of Management Assurances

EFFECTIVENESS OF INTERNAL CONTROL OVER FINANCIAL REPORTING (FMFIA § 2)						
Statement of Assurance:	Unqualified					
<b>MATERIAL WEAKNESS</b>	<b>BEGINNING BALANCE</b>	<b>NEW</b>	<b>RESOLVED</b>	<b>CONSOLIDATED</b>	<b>REASSESSED</b>	<b>ENDING BALANCE</b>
	0	0				0
EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA § 2)						
Statement of Assurance:	Unqualified					
<b>MATERIAL WEAKNESS</b>	<b>BEGINNING BALANCE</b>	<b>NEW</b>	<b>RESOLVED</b>	<b>CONSOLIDATED</b>	<b>REASSESSED</b>	<b>ENDING BALANCE</b>
	0	0				0
CONFORMANCE WITH FINANCIAL MANAGEMENT SYSTEM REQUIREMENTS (FMFIA § 4)						
Statement of Assurance:	Systems conform to financial management system requirements					
<b>NON-CONFORMANCE</b>	<b>BEGINNING BALANCE</b>	<b>NEW</b>	<b>RESOLVED</b>	<b>CONSOLIDATED</b>	<b>REASSESSED</b>	<b>ENDING BALANCE</b>
Federal Information Security Act	0	0				0
COMPLIANCE WITH FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT (FFMIA)						
Overall Substantial Compliance	<b>AGENCY</b>			<b>AUDITOR</b>		
	Yes			Yes		
1. System Requirements				Yes		
2. Accounting Standards				Yes		
3. USSGL at Transaction Level				Yes		



## APPENDIX

- 149 *FY 2009 Commissioners*
- 152 *Enforcement Litigation by Strategic Goal*
- 171 *CFTC Information Technology Systems*
- 172 *Glossary of Abbreviations and Acronyms*

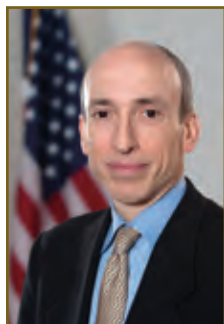




## FY 2009 COMMISSIONERS

### The Commissioners

#### Gary Gensler, Chairman



**G**ary Gensler was sworn in as the Chairman of the Commodity Futures Trading Commission on May 26, 2009.

Chairman Gensler previously served at the U.S. Department of Treasury as Under Secretary of Domestic Finance (1999-2001) and as Assistant Secretary of Financial Markets (1997-1999). He subsequently served as a Senior Advisor to the Chairman of the U.S. Senate Banking Committee, Senator Paul Sarbanes, on the Sarbanes-Oxley Act, reforming corporate responsibility, accounting and securities laws.

As Under Secretary of the Treasury, Chairman Gensler was the principal advisor to Treasury Secretary Robert Rubin and later to Secretary Lawrence Summers on all aspects of domestic finance. The office was responsible for formulating policy and legislation in the areas of U.S. financial

markets, public debt management, the banking system, financial services, fiscal affairs, Federal lending, Government Sponsored enterprises, and community development. In recognition of this service, he was awarded Treasury's highest honor, the Alexander Hamilton Award.

Prior to joining Treasury, Chairman Gensler worked for 18 years at Goldman Sachs, where he was selected as a partner; in his last role he was Co-head of Finance.

Chairman Gensler is the co-author of a book, *The Great Mutual Fund Trap*, which presents common sense investment advice for middle income Americans.

He is a summa cum laude graduate from the University of Pennsylvania's Wharton School in 1978, with a Bachelor of Science in Economics and received a Master of Business Administration from the Wharton School's graduate division in 1979. He lives with his three children outside of Baltimore, Maryland.

### Michael V. Dunn, Commissioner



Michael V. Dunn was confirmed by the U.S. Senate on November 21, 2004, as a Commissioner of the Commodity Futures Trading Commission. He was sworn in December 6, 2004, to a term expiring June 19, 2006. On June 16, 2006 Commissioner Dunn was nominated by President

Bush to a second term as Commissioner of the CFTC and confirmed by the Senate on August 3, 2006. In a ceremony on August 23, 2006 at the Federal Court House in Des Moines, Iowa, attended by Senator Tom Harkin (D-IA), Commissioner Dunn was sworn in. U.S. District Judge Robert Pratt administered the oath of office.

From January 20, 2009 – May 25, 2009, Commissioner Dunn served as Acting Chairman for the agency.

Commissioner Dunn additionally serves as Chairman and Designated Federal Official of the Commission's Agricultural Advisory Committee (AAC). The AAC was created to advise the Commission on agricultural issues surrounding the trading of commodity futures and options and to serve as a communications link with the agricultural community. Commissioner Dunn is also the Chairman of the Commission's Forex Task Force. The task force objective is to raise the public's awareness of fraudulent activity in the retail foreign currency (forex) futures and option markets and to highlight the Commission's enforcement activities in this area.

Prior to joining the CFTC, Mr. Dunn served as Director, Office of Policy and Analysis at the Farm Credit Administration (FCA) where he managed the two FCA divisions responsible for developing regulations and public policy positions for applicable statutes as well as promoted the safety and soundness of the Farm Credit System. Prior to this position, Mr. Dunn served briefly as a member of the FCA Board.

Mr. Dunn has also served as Under Secretary of Agriculture for Marketing and Regulatory Programs, Acting Under Secretary for Rural Economic Community Development, and as Administrator of the Farmers Home Administration (FmHA) at USDA.

Mr. Dunn has had a long involvement in agricultural credit dating back to the late 1970s, when he was the Midwest Area Director for the FmHA. He has been a loan officer and vice president of the Farm Credit Banks of Omaha and has served as a member of the Professional Staff of the Senate Agricultural Committee, specializing in agricultural credit. At the USDA, Mr. Dunn also served as a member of the Commodity Credit Corporation and Rural Telephone Bank Board. He is a past member of the Iowa Development Commission and has served as the Chairman of the State of Iowa's City Development Board.

A native of Keokuk, Iowa and a current resident of Harpers Ferry, West Virginia, Mr. Dunn received his B.A. and M.A. degrees from the University of New Mexico.

### Jill E. Sommers, Commissioner



Jill E. Sommers was sworn in as a Commissioner of the Commodity Futures Trading Commission on August 8, 2007 to a term that expired April 13, 2009. She was nominated on July 20, 2009 by President Barack Obama to serve a five-year second term.

On February 4, 2008 the Commission appointed Commissioner Sommers to serve as Chairman and Designated Federal Official of the Global Markets Advisory Committee, which meets periodically to discuss issues of concern to exchanges, firms, market users and the Commission regarding the regulatory challenges of a global marketplace. She also serves as the Commission designee to the Financial Literacy and Education Commission, which is chaired by the Secretary of Treasury and was established to improve the financial literacy and education of U.S. citizens.

Commissioner Sommers has worked in the commodity futures and options industry in a variety of capacities throughout her career. In 2005 she was the Policy Director and Head of Government Affairs for the International Swaps and Derivatives Association, where she worked on a number of over-the-counter derivatives issues.

Prior to that, Ms. Sommers worked in the Government Affairs Office of the Chicago Mercantile Exchange (CME), where she was instrumental in overseeing regulatory and legislative affairs for the exchange. During her tenure with the CME, she had the opportunity to work closely with congressional staff drafting the Commodity Futures Modernization Act of 2000.

Commissioner Sommers started her career in Washington in 1991 as an intern for Senator Robert J. Dole (R-KS), working in various capacities until 1995. She later worked as a legislative aide for two consulting firms specializing in agricultural issues, Clark & Muldoon, P.C. and Taggart and Associates.

A native of Fort Scott, Kansas, Ms. Sommers holds a Bachelor of Arts degree from the University of Kansas. She and her husband, Mike, currently reside in the Washington, DC area and have three children ages 7, 6, and 5.

#### Bart Chilton, Commissioner



**B**art Chilton was sworn in as CFTC Commissioner in August of 2007. He currently serves as the Chairman of the CFTC's Energy and Environmental Markets Advisory Committee. His career spans 25 years in government service—working on Capitol Hill in the House of Representatives and in the Senate, and serving the Executive Branch during the Clinton, Bush and Obama Administrations.

Prior to joining the CFTC, Mr. Chilton was the Chief of Staff and Vice President for Government Relations at the National Farmers Union where he represented average family farmers. In 2005, Mr. Chilton was a Schedule C political appointee of President Bush at the U.S. Farm Credit Administration where he served as an Executive Assistant to

the Board. From 2001 to 2005, Mr. Chilton was a Senior Advisor to Senator Tom Daschle, the Democrat Leader of the United States Senate, where he worked on myriad issues including, but not limited to, agriculture and transportation policy.

From 1995 to 2001, Mr. Chilton was a Schedule C political appointee of President Clinton where he rose to Deputy Chief of Staff to the U.S. Secretary of Agriculture Dan Glickman. In this role, Mr. Chilton became a member of the Senior Executive Service (SES)—government executives selected for their leadership qualifications to serve in the key positions just below the most senior Presidential appointees. As an SES member, Mr. Chilton served as a liaison between Secretary Glickman and the Federal work force at USDA.

From 1985 to 1995, Mr. Chilton worked in the U.S. House of Representatives where he served as Legislative Director for three different Members of Congress on Capitol Hill and as the Executive Director of the bipartisan Congressional Rural Caucus.

Mr. Chilton previously served on the Boards of Directors of Bion Environmental Technologies and the Association of Family Farms.

Mr. Chilton was born in Delaware and spent his youth in Indiana, where he attended Purdue University (1979–1982). He studied political science and communications and was a collegiate leader of several organizations. Mr. Chilton and his wife, Sherry Daggett Chilton, reside on the Western Shore of the Chesapeake Bay.



## ENFORCEMENT LITIGATION BY STRATEGIC GOAL

### Enforcement Litigation by Goal One

#### Manipulation, Attempted Manipulation & False Reporting

##### ■ *In re Dairy Farmers of America, Inc., et al.*

On December 16, 2008, the Commission simultaneously filed and settled an administrative enforcement action against the dairy marketing cooperative Dairy Farmers of America, Inc. (DFA), its former Chief Executive Officer Gary Hanman, and its former Chief Financial Officer, Gerald Bos, finding that they tried to manipulate the Class III milk futures contract and exceeding speculative position limits in that contract. Specifically, the Order finds that, from May 21 through June 23, 2004, DFA, Hanman, and Bos attempted to manipulate the price of the Chicago Mercantile Exchange's (CME) June, July, and August 2004 Class III milk futures contracts through purchases of block cheddar cheese on the CME Cheese Spot Call market. The order finds that the pricing relationship between the CME block cheese market and the Class III milk futures market is well known throughout the industry, and the CME block cheese market price plays a significant part in establishing Class III milk futures prices. Additionally, the DFA order finds that on several days in 2004, DFA's speculative Class III milk futures contracts exceeded the CME's speculative position limit, in violation of the Commodity Exchange Act. The Commission assessed sanctions, including: a \$12 million civil monetary penalty; a five-year futures trading bar against Hanman and Bos; two-year speculative trading

bar against DFA; and order that DFA comply with certain undertakings, including 1) retaining a monitor to ensure that DFA does not engage in speculative trading and that DFA's Cheese Spot Call market cheese purchases are made for legitimate business purposes, 2) implementing a compliance and ethics program, and 3) providing future cooperation to the CFTC. The Commission received cooperation from the U.S. Department of Agriculture and the CME Group's Market Regulation Department in connection with this matter. (See also discussion below, of a related enforcement action, *In re Otis, et al.*, CFTC Docket No. 09-03 (CFTC filed Dec. 16, 2008).) *In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (CFTC filed Dec. 16, 2008).

#### Other Energy Market Misconduct

##### ■ *CFTC v. Lee, et al.*

On November 18, 2008, the Commission filed a civil enforcement action against David P. Lee, a former trader for the Bank of Montreal (BMO), charging him with fraud for mis-marking and mis-valuing the bank's natural gas options book and deceiving the bank. The complaint also charges Optionable, Inc. (Optionable), and its former senior executives Kevin Cassidy and Edward O'Connor, with deceiving BMO. Robert B. Moore Jr., Lee's former supervisor, is also named as a defendant with the CFTC. The CFTC complaint alleges that Lee unlawfully mis-marked his natural gas options positions between at least May 2003 and May 2007 and mis-valued other natural

gas options positions from October 2006 until May 2007. The complaint alleges that Lee inflated the value of his book so that it would appear to BMO that his trading was more profitable than it was in reality. As a result of Lee's mis-marking, the BMO natural gas book was unlawfully inflated by approximately \$221,875,297 Canadian dollars as of January 31, 2007 and \$257,801,706 Canadian dollars as of March 30, 2007. By inflating the value of his book through both his mis-marking and mis-valuation activities, Lee generated a larger bonus for himself and his supervisor, Moore, while hiding losses he had incurred as a result of his unprofitable trading, the complaint alleges. The complaint also alleges that Moore failed to implement an adequate level of supervision over Lee by knowingly allowing Lee and others to violate BMO's ethical standards and disregarding salient facts that, if they had been investigated, could have led to the detection of Lee's fraud earlier.

Further, Lee and various brokers allegedly deceived BMO by fabricating purportedly independent broker quotes delivered to BMO's back office for price verification. BMO employed a process to ensure that trader prices used to value BMO's trading books were reasonably in line with market prices, and part of that process involved the collection of price quotes from market brokers. As alleged, beginning in at least 2003, Lee and several BMO brokers, including Cassidy and O'Connor—all of whom worked for Optionable—knowingly deceived and defrauded BMO employees, who verified the value of Lee's natural gas book. Since BMO personnel relied upon the independence of such broker quotes, they used these quotes to verify Lee's valuation of his natural gas book and therefore believed Lee's trading to be profitable.

On the same day, the Commission filed its enforcement action, the Manhattan District Attorney Office and the U.S. Attorney for the Southern District of New York also today filed a criminal indictment against Cassidy. The Federal Reserve Board and the SEC also filed related actions. The Commission received cooperation from the Manhattan District Attorney's Office, Federal Bureau of Investigation (FBI), U.S. Attorney's Office for the Southern District of New York, Federal Reserve Board, SEC, and the NYMEX in connection with this matter. *CFTC v. Lee, et al.*, No. 08 CIV 9962 (S.D.N.Y. filed Nov. 18, 2008).

## Enforcement Litigation by Goal Two

### Commodity Pools, Hedge Funds, Commodity Pool Operators, and Commodity Trading Advisors

#### ■ *CFTC v. Abad, et al.*

On December 1, 2008, the Commission filed a civil enforcement action against Paul Abad and his company, Thirteen Thirty-Two, Inc. (1332), charging them with misappropriating customer funds and concealing trading losses in connection with operating a fraudulent commodity pool. The CFTC complaint alleges that, from approximately February 2001 through early 2008, the defendants solicited at least \$400,000 from the general public to trade commodity futures contracts through a commodity pool operated by 1332 and through individual managed accounts, which Abad managed. The complaint also asserts that the defendants sustained approximately \$122,000 in trading losses, returned some funds to pool participants, and misappropriated approximately \$230,000. Throughout the period, as alleged, defendants routinely sent false statements to pool participants and clients, reflecting profitable returns from defendants' trading on their behalf. During 2008, as pool participants and clients demanded that Abad return their funds, Abad purportedly blamed 1332's introducing broker for causing delays and created fictitious emails from an employee of the introducing broker indicating a trading account balance of over \$180,000 in an account in 1332's name. In reality, as alleged, that particular account had a balance of \$110 and 1332's only other account with the introducing broker had a zero balance. On the same day the complaint was filed, the court entered a statutory restraining order that, in part, preserved books and records. The Commission received cooperation from the Orange County Sheriff's Department and the California Department of Corporations in connection with this matter. *CFTC v. Abad, et al.*, No. SACV 08-1352-AG(RNBx) (C.D. Cal. filed Dec. 1, 2008).

#### ■ *In re Innovative Capital Management, LLC, et al.*

On December 19, 2008, the Commission simultaneously filed and settled an administrative enforcement action against registered CPO and CTA Innovative Capital Management, LLC (Innovative), and its principal, registered AP, and sole owner, Yehuda Belsky (Belsky), finding they committed fraud in their operation of a

commodity pool. Specifically, the CFTC order finds that from approximately September 2006 through February 2008, Belsky and Innovative fraudulently obtained funds totaling \$1,250,000 from five commodity pool participants. Instead of using the solicited funds to purchase commodity futures and/or options contracts—as represented in solicitation materials—Belsky and Innovative misappropriated at least \$385,000 of those funds, created false commodity pool account statements misstating the net asset value and monthly rates of return of the pool and then delivered these fraudulent statements to pool participants. The order also finds that, during a routine audit by the NFA, Belsky and Innovative provided it with fraudulent account statements purportedly prepared by the futures commission merchant where the pool’s account was maintained and, fraudulent bank statements that falsely inflated the amount of pool funds on deposit at that bank. The Commission assessed sanctions including: a cease and desist order; permanent trading and registration bans; restitution (\$1,250,000, jointly and severally); and a civil monetary penalty (\$100,000, jointly and severally). The Commission received cooperation from the NFA in connection with this matter. *In re Innovative Capital Management, LLC, et al.*, CFTC Docket No. 09-04 (CFTC filed Dec. 19, 2008).

■ **CFTC v. Forte**

On January 7, 2009, the Commission filed a civil injunctive action against Joseph S. Forte charging him with operating a \$50 million Ponzi scheme in connection with the Joseph Forte, L.P. commodity futures pool. The CFTC’s complaint charges Forte with: 1) solicitation fraud; 2) misappropriation of pool funds; 3) sending customers false account statements; and 4) failing to register with the CFTC as a commodity pool operator. The CFTC complaint alleges that from at least February 1995, Forte fraudulently solicited approximately \$50 million from dozens of individuals and entities to participate in a commodity futures pool to trade, among other things, S&P 500 stock index futures, foreign currency futures, and metal futures. In soliciting prospective and existing participants, Forte claimed he was a successful commodity futures trader and that his pool had a successful track record. For example, in a solicitation memorandum directed to a church, Forte represented that the eight-year annual return on the fund ranged from 18.52 percent to 36.19 percent. To conceal his ongoing

fraud, Forte failed to register with the CFTC and provided quarterly account statements to pool participants showing consistently profitable returns of the pool and eventually reporting that as of late 2008, the pool had increased in value to over \$154 million. In reality, however, Forte was neither successfully trading nor making an effort to do so. When trading, Forte purportedly sustained net losses of at least \$3 million trading almost exclusively the S&P 500 futures contract on behalf of the pool. However, during a 34-month period from 2004 into 2007, Forte purportedly conducted little to no trading at all. Forte allegedly failed to deposit any funds into the trading account during a 53-month period from October 2002 to February 2007. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Fort Worth Regional Office of the SEC in connection with this matter. *CFTC v. Forte*, No. 09-0064PD (E.D. Pa. filed Jan. 7, 2009).

■ **CFTC v. Agape World, Inc., et al.**

On January 27, 2009, the Commission filed a civil injunctive action against Nicholas Cosmo, Agape World, Inc. (Agape World), and Agape Merchant Advance LLC (Agape Advance) charging them with defrauding customers of tens of millions of dollars. In its enforcement action, the CFTC alleges that defendants solicited tens of millions of dollars from customers for the stated purpose of investing in bridge loans and merchant advances. Defendants then misappropriated a significant portion of those funds to engage in unauthorized commodity futures trading. Defendants’ unauthorized commodity futures trading resulted in tens of millions of dollars in losses, none of which were ever disclosed to investors. In 1999, Cosmo, then a licensed stock broker and account executive, pleaded guilty to mail fraud after admitting to commingling funds, purposely misleading investors, and forging documents. Cosmo was sentenced to a 21-month prison term followed by three years of supervised release and payment of restitution. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the U.S. Attorney’s Office for the Eastern District of New York, the U.S. Postal Inspection Service, the FBI, and the SEC in connection with this matter. *CFTC v. Agape World, Inc., et al.*, No. 09 0351 (E.D.N.Y. filed Jan. 27, 2009).

■ *CFTC v. Crossfire Trading, LLC, et al.*

On February 5, 2009, the Commission filed a civil injunctive action against Charles “Chuck” E. Hays and his company, Crossfire Trading, LLC (Crossfire), charging them with fraud and misappropriation in connection with a commodity pool Ponzi scheme. The CFTC’s complaint alleges that, since January 2006, Hays and his company, Crossfire, a purported commodity pool, fraudulently solicited and accepted more than \$5.5 million from at least three individuals and a charitable foundation for the purpose of trading stock index and crude oil futures. Hays, according to the complaint, convinced at least one person to invest in Crossfire by representing verbally and in fabricated account statements—issued on Crossfire’s letterhead—that Crossfire earned consistent profits trading commodity futures with no losing months. However, as charged in the complaint, Crossfire has never had an active commodity futures trading account. Additionally, in an attempt to alleviate at least two investors’ suspicions as to what Hays was actually doing with their money, Hays provided an account statement for the Crossfire pool fabricated to appear as if it were issued by a legitimate brokerage company by using that brokerage’s letterhead. This false account statement indicated that Crossfire maintained a trading account at the brokerage with over \$37 million. As alleged, that account is nonexistent. Hays was arrested by Federal authorities on the same day the Commission’s complaint was filed. The Commission received cooperation from the U.S. Attorney’s Office for the District of Minnesota, the U.S. Department of Justice, the U.S. Postal Inspection Service, and the FBI in connection with this matter. *CFTC v. Crossfire Trading, LLC, et al.*, No. 09 CIV 259 DWF/AJB (D. Minn. filed Feb. 5, 2009).

■ *CFTC v. Trimble, et al.*

On February 9, 2009, the Commission filed a civil injunctive action against Mark S. Trimble and his company, Phidippides Capital Management LLC (PCM) charging them with operating a private hedge fund named Phidippides Capital LP (Phidippides Capital) as a Ponzi scheme. The CFTC’s complaint alleges that, from at least 2005, Trimble and PCM operated a \$34 million hedge fund with approximately 60 investors and traded partly in the name of Phidippides Capital. Since at least October 2007, defendants allegedly issued false account

statements, failed to disclose the fund’s actual multi-million trading losses, and operated the fund as a Ponzi scheme. Additionally, defendants allegedly received over \$1 million in management fees based on false reports of trading profits. According to the complaint, Trimble’s activities were exposed in late January 2009, after Trimble provided the FBI a fictitious 2008 year-end trading account showing millions of dollars in trading profits that did not square with actual trading statements issued by Trimble’s brokerage firm that disclosed millions of dollars in trading losses. Trimble subsequently stated in an email sent to his brokerage firm, and addressed to “Family, Friends, and Clients,” that he had not been “honest” about the hedge fund’s trading results, explaining: “The reason our balances are off is because I could not look myself in the mirror and face all of you and notify you that in the last quarter of 2008 we lost all the profits for the year and then some.” On March 6, 2009, the court entered a Consent Order of Preliminary injunction freezing assets and preserving books and records. The Commission received cooperation from the SEC and the Financial Crimes Enforcement Network in connection with this matter. *CFTC v. Trimble, et al.*, No. 5:09-cv-00154-D (W.D. Okla. filed Feb. 9, 2009).

■ *CFTC v. Brookshire Raw Materials Management, LLC, et al.*

On February 19, 2009, the Commission filed a civil injunctive action against commodity pool operator, Brookshire Raw Materials Management, LLC (BRM), and its principals John M. Marshall and Stephen Z. Adams, Brookshire Raw Materials Group, Inc. (BRMG) and Brookshire and Company, Ltd. (BCL) charging the defendants with misappropriating more than \$4.6 million of customer funds and destroying records, among other things. As alleged in the CFTC’s complaint, between September 2006 and December 2008, Marshall, Adams, and BRM accepted millions of dollars from customers for investment in a commodity pool known as the Trust and operated as a Ponzi scheme. The Trust is governed by a Private Placement Memorandum (PPM), which, among other things, states that each fund in the commodity pool will invest customer proceeds in a portfolio of commodity futures and forward contracts designed to approximately replicate the investment methodology of corresponding indices developed and managed by BRMG. However, as alleged, Marshall and Adams, as agents and officers of BRM, BRMG, and BCL withdrew more

than \$5 million from the Trust account and wired those funds to bank accounts in Canada, mostly in the care of Marshall. Under the PPM, the only authorized withdrawals from the Trust are fees, expenses, and participant redemptions. As alleged, management fees and expenses for the relevant time period totaled only \$401,708. Furthermore, the CFTC complaint charges that Marshall and Adams did not disclose their unauthorized withdrawal of more than \$4.6 million in customer funds from the commodity pool and issued false monthly pool statements overstating the value of the pool while hiding the withdrawals. According to the complaint, in December 2008, Marshall and Adams closed their offices, destroyed company data stored on computer servers, and failed to acknowledge redemption requests. BRM allegedly has failed to produce required financial documents regarding the operation of the commodity pool in response to recent CFTC requests. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Ontario Securities Commission, the NFA, and the Financial Crimes Enforcement Network in connection with this matter. *CFTC v. Brookshire Raw Materials Management, LLC, et al.*, No. 09CV1056 (N.D. Ill. filed Feb. 19, 2009).

#### ■ *CFTC v. Bloom, et al.*

On February 25, 2009, the Commission filed a civil injunctive action against fund manager Mark Evan Bloom and his firm, North Hills Management LLC (NHM) charging them with: misappropriating over \$13 million of the assets of a fund they managed, North Hills LP. (Fund), and investing Fund assets contrary to the represented investment strategy. Bloom and NHM are also charged with defrauding Fund participants in connection with distributions made in the name of the Fund in a 2005 CFTC anti-fraud action brought against another fund operator, the Philadelphia Alternative Asset Management Company (PAAM) and Paul Eustace. (See *CFTC v. Philadelphia Alternative Asset Management Company, et al.*, No. 05cv2973 (E.D. Pa. June 21, 2005).) According to the CFTC's complaint, Bloom originally formed the Fund and created NHM, with the purported design of an enhanced stock index fund, trading, among other things, commodity futures contracts and options. In 2001, Bloom converted the Fund into a "fund of funds" (an investment strategy of holding a portfolio of other investment funds). The CFTC's complaint alleges that

Bloom, instead of following the purported strategy of the Fund, misappropriated at least \$13 million from the Fund for the personal use of Bloom and his wife. The CFTC's complaint also alleges that after taking over \$13 million for his personal use, in 2004 and 2005, Bloom invested approximately \$17 million of Fund assets in a high risk commodity futures and options fund (PAAF) operated by PAAM. This investment represented at least half of the assets of Fund and was contrary to the moderate risk asset allocation strategy Bloom represented was the strategy for the Fund. Fund participants only learned of the concentrated PAAF investment after the CFTC sued and shut down PAAM and Eustace in late June 2005. Bloom also failed to inform Fund participants that he had received referral fees totaling \$1.6 million for referring prospective investors to PAAM, including Fund. Allegedly, Bloom also never informed Fund participants that a receiver appointed in the CFTC action had distributed approximately \$9 million in distributions in the name of Fund or that Bloom had compromised the North Hills' interest in the PAAF distributions through a third party agreement. Bloom also never disclosed that he had received approximately \$8 million in the name of the Fund pursuant to the third party agreement. Bloom has not accounted for those funds. The CFTC complaint further alleges that Bloom concealed his frauds from Fund participants by sending out monthly account statements showing profitable results and providing written updates on the progress of the CFTC's action against PAAM and receiver's efforts to recover assets. Based on Bloom's rosy statements and updates, Fund participants expected to receive distributions from the receivership estate. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC, U.S. Attorney's Office for the Southern District of New York and the NFA in connection with this matter. *CFTC v. Bloom, et al.*, No. 09 CV 1751 (S.D.N.Y. filed Feb. 25, 2009).

#### ■ *CFTC v. Walsh, et al.*

On February 25, 2009, the Commission filed a civil injunctive action against Stephen Walsh and Paul Greenwood charging them with misappropriating at least \$553 million from commodity pool participants in connection with entities they owned and controlled: defendants Westridge Capital Management, Inc.; WG Trading Investors, LP;



and WGIA, LLC. At the same time, the Office of the U.S. Attorney for the Southern District of New York filed a criminal complaint against Walsh and Greenwood. The CFTC complaint alleges that, from at least 1996, Walsh and Greenwood fraudulently solicited approximately \$1.3 billion from individuals and entities through Westridge Capital Management, WG Trading Investors, LP, and other entities. The complaint charges that the defendants defrauded victims by falsely depicting that all pool participants' funds would be employed in a single investment strategy that consisted of index arbitrage. However, pool participants' funds were transferred to another entity from which Walsh and Greenwood siphoned funds, according to the complaint. According to the complaint, to cover-up their misappropriation of pool participants' funds, Greenwood and Walsh manufactured promissory notes to present the appearance that pool participants' funds had been loaned to them. Walsh and Greenwood allegedly misappropriated approximately \$553 million in pool participants' funds. More than \$160 million was used for Walsh and Greenwood's personal expenses, including purchasing rare books, horses, Steiff teddy bears for as much as \$80,000, and a \$3 million residence for Walsh's ex-wife. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the NFA, the Office of the U.S. Attorney for the Southern District of New York, the FBI, and the SEC in connection with this matter. *CFTC v. Walsh, et al.*, No. 09 CV 1749 (S.D.N.Y. filed Feb. 25, 2009).

■ *CFTC v. Trigon Group, et al.*

On February 26, 2009, the Commission filed a civil injunctive action against Daren L. Palmer and the commodity futures pool he operated, Trigon Group, Inc., charging defendants with solicitation fraud and misappropriation of pool funds for personal use and for use in running a Ponzi scheme involving approximately \$40 million. In addition, Palmer is charged with sending customers false account statements and failing to register with the CFTC as a commodity pool operator. The CFTC complaint alleges that, from at least September 2000 through present, Palmer fraudulently solicited approximately \$40 million from dozens of individuals and entities to participate in a commodity futures pool to trade commodity futures or options on commodity futures contracts. In solic-

iting prospective and existing participants, Palmer allegedly claimed that he was a successful commodity futures trader, that his pool had a successful track record, and that the pool achieves positive returns of as much as seven percent monthly and 20 percent annually. The complaint alleges that, in reality, Palmer was neither successfully trading nor making an effort to do so. As alleged, despite taking in at least \$40 million in participant funds since September 2000, Palmer only placed \$4.5 million in his trading accounts. Moreover, Palmer admitted in sworn testimony that he used participants' funds to pay principal and purported profitable returns to existing pool participants in a manner typical of a Ponzi scheme. He also admitted that he misappropriated pool funds for his personal use for the construction of a new home, to pay credit card bills, and purchase snowmobiles. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Idaho Department of Finance and the SEC in connection with this matter. *CFTC v. Trigon Group, et al.*, No. CV-09-76-S-EJL (D. Idaho filed Feb. 26, 2009).

■ *CFTC v. Centurion Asset Management, Inc., et al.*

On March 3, 2009, the Commission filed a civil injunctive action against Dennis R. Bolze and his company, Centurion Asset Management, Inc. (CAM) charging them with fraudulently soliciting commodity pool participants, misappropriating participants' funds, and issuing false statements to participants in a \$20 million fraud involving at least 100 participants in the United States and Europe in a six-year-old scheme. The CFTC complaint alleges that, from at least spring 2002 through the date the complaint was filed, the defendants misappropriated pool participant funds and operated the commodity pool as a Ponzi scheme. Defendants allegedly misrepresented to prospective pool participants that Bolze's trading generated annual profits of between from 15 and 20 percent and issued false account statements to give credibility to these misrepresentations. According to the complaint, despite accepting over \$20 million, the defendants' actual commodity futures trading accounts never exceeded \$250,000 in equity, and Bolze's trading during the relevant time resulted in approximately \$800,000 of trading losses. According to the CFTC complaint, Bolze also failed to disclose to prospective pool participants that he plead guilty in 2001 to four counts of

failing to file sales tax returns and failing to pay sales tax, resulting in a six-year prison sentence. The prison sentence was ultimately suspended, and Bolze was placed on supervised probation and fined. The Commission received cooperation from the SEC and the Comisión Nacional del Mercado de Valores in connection with this matter. *CFTC v. Centurion Asset Management, Inc., et al.*, No. 3:09-CV-88 (VARLAN/SHIRLEY) (E.D. Tenn. Filed March 4, 2009).

■ *CFTC v. Donnelly, et al.*

On March 11, 2009, the Commission filed a civil injunctive action against John M. Donnelly and three legal entities he created, Tower Analysis Inc., Nasco Tang Corp., and Nadia Capital Corp., charging them with operating a Ponzi scheme involving more than \$10 million. The CFTC complaint alleges that Donnelly solicited individuals to invest in U.S. Treasury Note futures and S&P 500 futures. It further asserts that Donnelly operated three commodity pools for over seven years; however, neither Donnelly, nor any employee or agent of the other proposed defendants, actively traded the pools' funds. Indeed, despite representations that his trading strategy required daily trading of the accounts, Donnelly only executed seven trades over the course of seven years. Despite the absence of trading, the investors still lost their funds because Donnelly misappropriated at least \$1 million for himself and his wife. Donnelly may have received another \$1.7 million from pool funds to which he was not entitled. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC and the U.S. Attorney's Office for the Western District of Virginia in connection with this matter. *CFTC v. Donnelly, et al.*, No. 3:09-CV-00016 (W.D. Va. filed March 11, 2009).

■ *CFTC v. Driver, et al.*

On May 14, 2009, the Commission filed a civil injunctive action against Gordon A. Driver and his companies, Axxess Automation LLC (Axxess Automation) and Axxess Fund Management LLC (Axxess Fund Management), charging them with fraudulently soliciting commodity pool participants, misappropriating participants' funds, and issuing false statements to participants in a \$13.5 million fraud involving over 100 participants in the United States and

Canada. The Complaint alleges that the defendants in this Ponzi scheme, from at least February 2006, misrepresented to prospective pool participants that Driver's trading generated monthly profits of around 20 percent and issued false account statements to give credibility to these misrepresentations. According to the complaint, despite accepting over \$13.5 million, the defendants used only about \$3.7 million for trading during the relevant time period, and Driver's trading during that time resulted in approximately \$3.5 million of trading losses, or 95 percent of the funds invested. According to the complaint, the defendants never informed the pool participants that they had traded only a portion of their funds and never informed them of the trading losses. Moreover, Driver misappropriated pool funds for his personal expenses, including cash withdrawals at Las Vegas casinos. In addition, the complaint charges Driver and Axxess Automation each with illegally acting as an unregistered CPO and Axxess Fund Management, a registered CPO, with failing to keep and produce, upon request by the CFTC, required books and records. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC, the Ontario Securities Commission, and the U.S. Attorney's Office for the Central District of California in connection with this matter. *CFTC v. Driver, et al.*, No. SACV09-0578 (C.D. Cal. filed May 14, 2009).

■ *CFTC v. Strongbow Investments GP, LLC, et al.*

On July 1, 2009, the Commission filed a civil injunctive action against Patrick J. Dailey and his company Strongbow Investments GP, LLC (Strongbow) charging them with operating a multi-million dollar fraudulent commodity pool and failing to maintain appropriate recordkeeping. Specifically, the complaint alleges that Strongbow, a registered CPO, and Dailey solicited at least \$17 million from approximately 22 members of the general public for the purported purpose of investing in Strongbow and Strongbow Investments Fund II a commodity pool operated by Strongbow. The complaint further alleges that instead of using all investor money to trade commodity futures and options, Strongbow and Dailey commingled investor funds with funds in bank and trading accounts held in the names of Strongbow, Dailey, and third parties. The complaint also alleges that approximately \$2.1 million

in commingled funds are currently unaccounted for. Further, the complaint alleges that during a surprise audit by the NFA, defendants had only limited documentation to support their operations and were unable to produce other statutorily required records. For example, defendants could not provide documentation for: 1) the total amount of money invested in Strongbow or the pool; 2) how investor funds were allocated between Strongbow, the pool, investor distributions, redemptions, or agreements; or 3) any documentation of the funds that Dailey borrowed from the pool. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the NFA in connection with this matter. *CFTC v. Strongbow Investments GP, LLC, et al.*, No. A09CA 497SS (W.D. Tex. filed June 30, 2009).

■ *CFTC v. Ross, et al.*

On September 2, 2009, the Commission filed a civil injunctive action against Maize Capital Management, LLC (Maize Capital) and its chief operating officer, Scott M. Ross, charging them solicitation fraud and issuing false statements involving a \$6 million commodity pool. Another of Ross' companies, Maize Asset Management, LLC (Maize Asset), along with Maize Capital and Ross, was charged with improper handling of customer funds. According to the complaint, Maize Capital and Ross provided pool participants and prospective participants with written documents that contained false and misleading statements in soliciting funds for and/or operating the pool. Specifically, the complaint charges that Maize Capital and Ross, from at least June 18, 2008 through at least January 14, 2009, misrepresented facts regarding the qualifications of investors who would participate in the commodity pool and the minimum amount that would be accepted for investment in the pool. Additionally, they allegedly misrepresented Maize Capital's legal status as an "exempt" commodity pool operator under the CEA and the existence and identity of the pool's administrator and auditor. The complaint also alleges that Maize Capital and Ross caused periodic account statements to be sent to various pool participants that misrepresented the profitability of their accounts. *CFTC v. Ross, et al.*, No. 1:09-cv-05443 (N.D. Ill. filed Sept. 2, 2009).

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

■ *CFTC v. Zurich Futures & Options, Inc., et al.*

On January 15, 2008 the Commission filed a civil injunctive action against Diego Mariano Rolando of Buenos Aires, Argentina (a/k/a Roclerman and ROC d/b/a IA Trading.com, Inc. (IA Trading)), charging Rolando with defrauding hundreds of customers worldwide in a \$43.8 million investment scheme. The complaint alleges that Rolando: 1) fraudulently traded customer funds in commodity futures and options contracts; 2) provided false account statements to customers; and 3) supplied false customer contact information to a U.S. clearing firm to hide his fraudulent scheme from customers. In all, the complaint alleges that Rolando solicited approximately \$43.8 million from more than 400 customers in South America, Europe, and the United States. Specifically, the complaint alleges that Rolando utilized the Web sites <http://www.IATrading.com> and <http://www.Roclerman.com> to solicit customers to open trading accounts. He allegedly told customers that he would trade securities on their behalf, however he traded tens of millions of dollars in customer funds in commodity futures and options contracts, without customer knowledge or authorization to trade in the commodity markets. Indeed, according to the complaint, it appears that some customers signed and completed account documents which limited the defendant's authority to trade securities. The complaint also charges that to further promote his scheme, Rolando allegedly provided false customer contact information and false trading advisor names to the U.S. clearing firm holding customers' accounts and clearing trades to circumvent customer protection policies and programs. Rolando provided false contact information on as many as 200 of the 420 customer accounts. Finally, Rolando is charged with providing his customers with written materials containing misrepresentations and omissions of material fact regarding their investments and IA Trading's role and business relationship with the U.S. clearing firm. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. *CFTC v. Rolando*, No. 3:08-cv-00064-MRK (D. Conn. filed Jan. 15, 2008).

■ *CFTC v. Guardian Futures, Inc., et al.*

On April 8, 2009, the Commission filed a civil injunctive action against Steven Leigh Shakespeare, and his company, Guardian Futures, Inc., charging them with fraud and unauthorized trading of customer accounts, resulting in combined customer trading losses of at least \$196,000. Specifically, the complaint alleges that Shakespeare engaged in a series of unauthorized transactions and fraudulent acts in the accounts of Plains Grain Company, Inc. and Evans Grain Marketing LLC. The complaint charges that Shakespeare, throughout the course of the unauthorized transactions, made misrepresentations and omitted material facts to customers and to Alaron Trading Corporation, the FCM to whom Shakespeare had introduced the customer accounts. On the same day the complaint was filed, the court entered a statutory restraining order preserving books and records. The Commission received cooperation from the Office of the U.S. Attorney for the Western District of Texas in connection with this matter. *CFTC v. Guardian Futures, Inc., et al.*, No. A09CA 260SS (W.D. Tex. filed April 8, 2009).

■ *CFTC v. Healy*

On July 12, 2009, the Commission filed a civil injunctive action against Sean Nathan Healy charging him with operating a fraudulent commodities scheme that defrauded at least 44 investors of approximately \$14 million. The complaint alleges that Healy defrauded investors by falsely claiming that he would invest their funds to trade commodity futures and options contracts. The complaint further alleges that Healy repeatedly told an investor that Healy's futures and options trading was earning excellent returns and that distributions of these tremendous trading profits would be made in February 2009. Contrary to Healy's claims, he allegedly did not use investors' funds to trade futures, options, or other instruments; rather, Healy misappropriated investors' funds. For example, the complaint alleges that Healy and his wife, relief defendant Shalese Rania Healy, also of Weston, Florida, used investor money to purchase numerous luxury vehicles (including a Porsche, Lamborghini, and several Ferraris), approximately \$1.4 million worth of jewelry, gold bullion, and a \$2.4 million home. The misappropriated investor funds were also allegedly used to fund approximately \$2 million

in home improvements and furnishings, including a \$500,000 home movie theater, and to lease 2,500 square feet of garage space to store the vehicles. The stolen investor funds also were allegedly used to lease a luxury suite at Miami's BankAtlantic Arena. On July 13, 2009, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC and the U.S. Attorney's Office for the Middle District of Pennsylvania in connection with this matter. *CFTC v. Healy*, No. 1:09-cv-01331-CCC (M.D. Penn. July 12, 2009).

### Fraud By Futures Commission Merchants, Introducing Brokers and Their Associated Persons

■ *CFTC v. First Capitol Futures Group, et al.*

On June 26, 2009, the Commission filed a civil injunctive action against David Michael Kogan and his company, registered IB First Capital Futures Group a/k/a and d/b/a First Capital Group (First Capital), charging them with operating a fraudulent commodity scheme involving 58 customers and causing more than \$3 million in customer losses. Specifically, the complaint alleges that the defendants fraudulently solicited members of the public to trade options on commodity futures contracts by misrepresenting and failing to disclose material facts concerning, among other things: 1) the likelihood that a customer would realize large profits from trading options; 2) the risk involved in trading options; 3) the existence of certain options positions in customer accounts; and 4) the dismal performance record of First Capital customers trading options. According to the complaint, Kogan and other First Capital brokers repeatedly told customers that they would make substantial amounts of money in a very short time by trading options, and routinely failed to disclose adequately the risk of loss inherent in trading options. Further, the complaint alleges that, despite mounting trading losses, Kogan, as well as other First Capital brokers, told customers that Kogan had "made millionaires out of several customers" and that many First Capital customers were making money. However, First Capital customers instead lost more than \$3 million, of which more than \$2.2 million was collected as commissions and fees. On June 30, 2009, the court entered a statutory restraining

order freezing assets and preserving books and records. *CFTC v. First Capitol Futures Group, et al.*, No. 09-0488-CV-W-DW (W.D. Mo. filed June 30, 2009).

## Forex Fraud

### ■ *CFTC v. CRE Capital Corp., et al.*

On January 15, 2009, the Commission filed a civil injunctive action against James Ossie and his company CRE Capital Corporation (CRE) charging them with operating a Ponzi scheme involving more than 100 people and approximately \$25 million in connection with forex transactions. Ossie is president and sole owner of CRE; neither has ever been registered with the CFTC. According to the CFTC's complaint, Ossie and CRE promised pool participants that they would earn a 10 percent return on their money within 30 days by trading U.S. and Japanese currency pairs. The complaint further alleges that since June 18, 2008, rather than making money for pool participants, Ossie and CRE lost approximately \$4.4 million trading forex. The Commission received cooperation from the SEC in connection with this matter. *CFTC v. CRE Capital Corp., et al.*, No. 1 09-CV-0115 (N.D. Ga. Filed Jan. 15, 2009).

### ■ *CFTC v. Atwood & James, Ltd., et al.*

On January 22, 2009, the Commission filed a civil injunctive action against Atwood & James, Ltd. and Atwood & James, S.A., Inc. (collectively, Atwood), and individuals, Michael A. Kardonick and Gary R. Shapoff charging them with forex options fraud. The complaint alleges that defendants fraudulently soliciting more than \$1 million from retail clients to trade forex options and misappropriated client funds. Specifically, the complaint alleges that, from at least 2001 to the date the complaint was filed, defendants fraudulently solicited funds from members of the general public worldwide, including the United States and the United Kingdom, to trade forex options. Through the Web site <http://www.atwoodjames.com> and other means, defendants allegedly made extraordinary and false claims regarding Atwood including that: profits are virtually guaranteed; Atwood is a sophisticated world-wide company with offices in New York, Amsterdam, London, and Rio de Janeiro; Atwood's traders are licensed and regulated in the United States with their main corporate offices located

in Rochester, New York; and Atwood and Kardonick have been successfully trading foreign currency options for the past 30 years. As alleged, Atwood and Kardonick are not successful traders. According to the complaint, the only known trading accounts are Kardonick's personal trading accounts, which from 2003 through September 2008, sustained net losses of approximately \$1.7 million trading commodity futures and options. According to the complaint, defendants do not operate out of Rochester, New York; rather, they operate out of Rio de Janeiro, Brazil. Moreover, defendants are not registered or licensed with any known financial regulatory authority. Kardonick and Shapoff also failed to disclose that they both have criminal convictions for mail and wire fraud and Shapoff, additionally, was the subject of two CFTC reparations actions involving misrepresentation, misuse of customer funds, nondisclosure, and order executions. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Comissão de Valores Mobiliarios and the British Financial Services Authority in connection with this matter. *CFTC v. Atwood & James, Ltd., et al.*, No. 09 CV 6032 CJS (W.D.N.Y. filed Jan. 22, 2009).

### ■ *CFTC v. Billion Coupons, Inc., et al.*

On February 18, 2009, the Commission filed a civil injunctive action against Marvin Cooper and his company Billion Coupons, Inc. (BCI) charging them with operating a Ponzi scheme that involved more than 125 customers—all of whom are Deaf—in connection with commodity futures trading and forex trading. The CFTC alleges that since at least September 2007, Cooper and BCI solicited approximately \$4.4 million from more than 125 Deaf American and Japanese individuals for the sole purported purpose of trading forex. Also, according to the complaint, while Cooper and BCI opened both forex and futures accounts with approximately \$1.7 million of customer money, Cooper misappropriated more than \$1.4 million of customer funds for personal use. Cooper allegedly used the misappropriated funds to purchase computer and electronic equipment, flying lessons, and a \$1 million home. He also allegedly returned approximately \$1.6 million to customers as purported "profits" and as commissions to

employees and agents. Cooper and BCI allegedly lured in customers with promises of 15 to 25 percent monthly returns, depending on the amount and size of the customer's investment, while representing that the investment would be low risk and that the promised return was produced by their successful trading. Finally, the complaint alleges that to conceal and perpetuate their fraud, Cooper and BCI provided customers with false account statements representing that their accounts were increasing by as much as 25 percent, when, in fact, the accounts were collectively losing money every month. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC and the State of Hawaii, Department of Commerce and Consumer Affairs, Office of the Commissioner of Securities in connection with this matter. *CFTC v. Billion Coupons, Inc., et al.*, No. CV09-00069 JMS LEK (D. Haw. filed Feb. 18, 2009).

■ *CFTC v. Capital Blu Management, LLC, et al.*

On March 23, 2009, the Commission filed under seal a civil enforcement action against Donovan Davis, Jr. (D. Davis), Blayne Davis (B. Davis), Damien Bromfield, Capital Blu Management, LLC (Capital Blu), and DD International Holdings, LLC (DDIH) charging them with operating a fraudulent commodity scheme involving about 100 investors and approximately \$17 million solicited purportedly to invest in forex futures and options. As alleged, defendants told prospective investors that their funds would be pooled in the CBM FX Fund, LP (FX Fund), a commodity pool established by Capital Blu. Rather than pool investor funds, the defendants split the funds into trading of both off-exchange and on-exchange forex futures and off-exchange forex options. In addition, the defendants allegedly deposited millions of dollars into multiple Capital Blu bank accounts, where funds were commingled and misappropriated for personal use, including luxury automobiles, private jet charters and, a two-night \$40,000 spree at a "gentlemen's club." Ultimately, as alleged, of the \$17 million solicited, \$7 million was lost in trading, and millions of dollars remain unaccounted for. To hide their fraud, the complaint alleges, D. Davis, B. Davis, and Bromfield provided investors with phony account state-

ments misrepresenting the earnings in their accounts by showing consistent monthly profits as high as seven percent for 12 straight months (September 2007 through August 2008). In fact, as alleged, defendants' actual trading resulted in net losses every month. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the NFA and the State of Florida Office of Financial Regulation in Orlando, Florida in connection with this matter. *CFTC v. Capital Blu Management, LLC, et al.*, No. 6:09-cv-00508-JA-DAB (M.D. Fla. filed March 23, 2009).

■ *CFTC v. CRW Management LP, et al.*

On March 4, 2009, the Commission filed a civil injunctive action against CRW Management, LP (CRW) and its president and general partner, Ray M. White and CRW, charging them with operating a Ponzi scheme involving the solicitation of at least \$10.9 million from more than 250 investors to trade off-exchange forex. The CFTC alleges that, rather than invest the funds, White and CRW stole millions of dollars, using investor money to fund a drag racing team, purchase real estate and multiple cars, and to purchase Dallas Stars hockey season tickets. Specifically, the CFTC charges that, as early as November 2006, White and CRW told prospective investors that CRW would pool their funds and trade forex on their behalf, claiming that CRW would generate tremendous returns for investors of between five and eight percent weekly, or an annual return equivalent of between 260 and 416 percent. As alleged, White and CRW lied to investors when they stated that CRW had achieved such returns, that investing with CRW involved very little risk, and that investor money was safe. The CFTC lawsuit further alleges that White and CRW failed to disclose to investors that of the at least \$10.9 million invested, at most only \$94,000 was ever used to trade forex and most of that was lost. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Fort Worth Regional Office of the SEC in connection with this matter. *CFTC v. CRW Management LP, et al.*, No. 3-09CV0408-L (N.D. Tex. filed March 4, 2009).

■ *CFTC v. Barki LLC, et al.*

On March 17, 2009, the Commission filed a civil enforcement action against Barki, LLC and Bruce C. Kramer charging them with fraudulently soliciting, since at least June 2004 through February 2009, at least \$40 million from at least 70 customers to trade leveraged forex contracts, misappropriating at least \$30 million of customer funds to pay purported profits, return principal to customers, and for personal expenses, including the purchase of a horse farm for more than \$1 million, a Maserati sports car and other luxury cars, artwork, and extravagant parties. Defendants claimed success in trading forex, promised little risk using Kramer's trading system, and lured customers with promises of monthly returns of at least three percent to four percent. The defendants concealed their fraud and trading losses through false account statements for over five years. Defendants also created fictitious trading records showing that the trading account held approximately \$59 million. In fact, the accounts held \$1 million or less, and, as of the date the complaint was filed, only \$575,000 remained in trading accounts. Defendants' fraud became known to customers on or around February 25, 2009, when Bruce Kramer committed suicide. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the FBI, Charlotte Division, and the NFA in connection with this matter. *CFTC v. Barki LLC, et al.*, No. 3:09-cv-00106-GCM (W.D.N.C. filed March 17, 2009).

■ *CFTC v. PrivateFX Global One Ltd., SA*

On May 21, 2009, the Commission filed a civil injunctive action against Robert D. Watson, Daniel J. Petroski, PrivateFX Global One Ltd., SA (Global One), and 36 Holdings Ltd. charging them with orchestrating a multi-million dollar fraudulent off-exchange forex scheme that, beginning in 2006, solicited approximately \$19.5 million from approximately 60 investors. The complaint alleges that to entice investors to purchase shares in Global One, defendants touted their supposedly extremely successful historical performance of forex trading. Defendants claimed forex trading returns that ranged from approximately six percent to 10 percent quarterly from January 1, 2000 through June 30, 2006, without ever having a losing

quarter. Further, the complaint alleges that defendants reported returns, purportedly generated almost exclusively through forex trading, to Global One investors of approximately 1.5 percent to three percent each month. In fact, Defendants claimed in monthly individual investor reports, Global One's financial statements, and on Global One's Web site, among other places that almost all of their individual forex trades since January 1, 2008, resulted in a profit. The complaint further alleges that to conceal their fraud from the CFTC, Defendants provided the CFTC with falsified account statements showing supposed profitable forex trades at an international brokerage house from January 1, 2009 to April 30, 2009, which purportedly included over \$2 million in allocated profits for Global One. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the Fort Worth Regional Office of the SEC in connection with this matter. *CFTC v. PrivateFX Global One Ltd., SA*, No. 09-1540 (S.D. Tex. filed May 21, 2009).

■ *CFTC v. Riolo, et al.*

On May 21, 2009, the Commission filed a civil injunctive action against Michael J. Riolo and two companies he controls and owns, LaSalle International Clearing Corporation and Sterling Wentworth Currency Group, Inc., charging them with fraudulently soliciting and receiving funds from members of the general public in an off-exchange forex scam and providing their customers with false account statements. Specifically, the complaint alleges that the defendants, from at least June 18, 2008, failed to disclose to customers that they were the counterparties in each forex transaction entered on behalf of their customers, that they owed millions of dollars to customers, and that they lacked the funds to make these payments as well as any payments for prospective profits. The complaint also alleges that the defendants sent monthly statements to customers depicting the month-end value for each customer's account, without disclosing to customers that defendants lacked sufficient cash to pay to customers the purported value of their accounts. The complaint further alleges that these account statements were false since the defendants expressly overstated the total cash available, in some instances by as much as \$24.5 million. The Commission received cooperation from the FBI, the

U.S. Attorney's Office for the Southern District of Florida, and the State of Florida Office of Financial Regulation in connection with this matter. *CFTC v. Riolo, et al.*, No. 09-80765 (S.D. Fla. filed May 21, 2009).

■ *CFTC v. SNC Asset Management, Inc., et al.*

On June 9, 2009, the CFTC filed a civil injunctive action against SNC Asset Management, Inc., SNC Investments, Inc. (SNC Investments), Chief Executive Officer Peter Son and Chief Financial Officer Jin K. Chung charging them with operating an \$85 million fraudulent forex scam involving approximately 500 customers. The complaint alleges that, since at least 2000, defendants: 1) fraudulently solicited members of the Korean community of the San Francisco Bay area, where defendants Son and Chung lived; 2) misappropriated customer funds to pay off other customers and to pay personal and business expenses; and 3) issued false statements to customers to conceal their misappropriation and lack of trading. As alleged, defendants abruptly closed operations, and Son and Chung disappeared. Defendants falsely claimed to be successful forex traders, touting a purported track record of 50 percent annual returns and guaranteeing monthly returns of two percent to three percent. Solicitation materials boasted that SNC was a leading forex firm in the industry. Each month, defendants allegedly provided account statements showing the promised steady returns, and they continued to solicit new funds. Defendants, however, appeared to have engaged in little trading on behalf of customers. What little trading they actually did was unprofitable. The complaint also charges SNC Investments, a FCM registered with the CFTC, with violating minimum net capital requirements and withholding notice of its undercapitalization. On June 10, 2009, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the SEC, FBI, U.S. Attorney's Office for the Northern District of California, NEA, Danish Financial Supervisory Authority (Finanstilsynet), and the Swedish Financial Supervisory Authority (Finansinspektionen) in connection with this matter. *CFTC v. SNC Asset Management, Inc., et al.*, No. 09-2555PJH (N.D. Cal. filed June 9, 2009).

■ *CFTC v. WeCorp, Inc., et al.*

On April 9, 2009, the Commission filed a civil injunctive action charging WeCorp, Inc. (WeCorp), its President and CEO, Stuart W. Jones, and its Senior Vice President and Trading Consultant, Payton Lowe, charging them with fraudulently soliciting approximately \$1.5 million from more than 20 people to trade off-exchange forex, but instead used the money to lease a lavish Honolulu home, luxurious cars, and other purchases. The complaint alleges that, since June 2008, Jones, Lowe, and WeCorp claimed to be experienced forex traders and promised to trade customer funds using an automated forex trading system that purportedly guaranteed monthly 100 percent returns with no risk of loss. In reality, the lawsuit alleges, Jones, Lowe, and WeCorp had no automated trading system, virtually no experience in trading forex, lost money trading, and stole investor funds for personal gain. The lawsuit further alleges that Jones, Lowe, and WeCorp provided investors with false statements showing consistent monthly profits when, in fact, nearly all customer funds had either been stolen by the defendants or lost in forex trading. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the State of Hawaii, Department of Commerce and Consumer Affairs, Office of the Commissioner of Securities and the Hilo Police Department in connection with this matter. *CFTC v. WeCorp, Inc., et al.*, No. CV09-00153 (D. Haw. filed April 7, 2009).

■ *CFTC v. Gresham*

On July 2, 2009, the Commission filed a civil injunctive action against Eldon A. Gresham, d/b/a The Gresham Company charging him with operating a multi-million dollar forex Ponzi scheme, specifically targeting persons of the Christian faith to invest in the scheme. The complaint alleges that, from at least January 2004, Gresham solicited more than \$15 million from more than 75 customers to trade off-exchange forex contracts. Gresham allegedly claimed to prospective customers that he was successful trading forex because the "Lord had blessed him." According to the complaint, Gresham lost money in the limited forex trading in which he engaged, and any purported profits paid to his customers came from either



existing Gresham customers' original investments or money invested by subsequent Gresham customers. Specifically, the complaint alleges that, at most, slightly over \$2 million of the more than \$15 million that Gresham solicited from customers was deposited into Gresham's forex trading accounts. Of this slightly over \$2 million amount, more than \$1.4 million was withdrawn by Gresham. At least \$14.4 million, therefore, was either misappropriated by Gresham or returned to his customers as part of the Ponzi scheme. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the U.S. Postal Inspection Service, Fort Worth Division, and the U.S. Attorney's Office for the Northern District of Georgia in connection with this matter. *CFTC v. Gresham*, No. 3:09-CV-75-JTC (N.D. Ga. filed July 2, 2009).

■ *CFTC v. Queen Shoals, LLC, et al.*

On August 4, 2009, the Commission filed a civil injunctive action against Sidney S. Hanson, Charlotte M. Hanson and their companies, Queen Shoals, LLC; Queen Shoals II, LLC; and Select Fund, LLC, charging them with operating a Ponzi scheme from at least June 18, 2009 involving more than \$22 million in connection with off-exchange forex futures trading. Specifically, the complaint alleges that in both their personal and Web site solicitations, the defendants falsely claimed success in trading forex, guaranteed customers profits through the use of silver and gold bullion-backed "non-depletion accounts" (which defendants' claimed guarantees that the customer will receive the return of invested principal and the promised "interest") and represented that there would be no risk to customers' principal investment. The complaint also alleges that the defendants lured prospective customers with promises of returns of eight percent to 24 percent through customers investing via promissory notes for terms of one to five years; customers who committed to the longest monthly terms were promised the greatest "profits." In reality, the complaint alleges, the defendants deposited little or no customer funds into forex trading accounts. Rather, the defendants misappropriated customer funds to finance the Hansons' personal expenses, including the purchase of an 88-acre farm, private plane rentals and luxury vacations. On the August 7, 2009, the court entered: a statutory

restraining order freezing assets and preserving books and records; and a consent order of permanent injunction that imposed a permanent injunction against further violations, as charged, permanent trading and registration bans, and an order that the defendants pay restitution, disgorgement and civil monetary penalties in amounts to be determined by the court at a later date. The Commission received cooperation from the State of North Carolina Department of the Secretary of State, Securities Division; FBI; and the Office of the U.S. Attorney, Western District of North Carolina in connection with this matter. *CFTC v. Queen Shoals, LLC, et al.*, No. 3:09-cv-335 (W.D.N.C. filed Aug. 4, 2009).

■ *CFTC, et al. v. MAK 1 Enterprises Group, LLC, et al.*

On August 17, 2009, the Commission and the Commissioner of Corporations for the State of California filed a civil injunctive action against MAK 1 Enterprises Group, LLC, (MAK 1) and its Chief Executive Officer, Mohit A. Khanna (Khanna), charging them with fraudulently soliciting at least \$16.4 million from at least 122 individuals purportedly to trade forex on their behalf, misusing client funds to pay off other clients (*i.e.*, operating a Ponzi scheme) and for personal use, and issuing false statements to conceal their fraud as they continued to solicit funds. Specifically, the complaint charges that defendants fraudulently solicited funds from individuals located primarily in southern California by: 1) guaranteeing returns of 40 percent to 50 percent; 2) reassuring clients that investments with MAK 1 were protected against loss by MAK 1 insurance policies; 3) claiming to have \$50 million in assets and at other times \$500 million or more in assets; 4) claiming to be experienced traders with a consistent six-year track record of double-digit returns; 5) failing to adequately disclose the risks of trading off-exchange leveraged foreign currency contracts; and 6) failing to disclose that, in 2004, Khanna was barred from associating with any member of National Association of Securities Dealers, now known as the Financial Industry Regulatory Authority, for allegedly luring investments from clients through alleged false misrepresentations. Defendants have not met redemption requests or returned funds to many MAK 1 clients. In late February, 2009, Khanna tried to reassure clients by claiming that MAK 1 has prospered for six years despite the negative market conditions. Khanna provided

a letter from a purported accountant for MAK 1 stating that MAK 1 records show \$50 million in assets. At that time, MAK 1 bank accounts had less than \$200,000. On the day after the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the State of California, Department of Corporations and the SEC in connection with this matter. *CFTC v. MAK 1 Enterprises Group, LLC, et al.*, No. 09-CV-1783 BEN (POR) (S.D. Cal. filed Aug. 17, 2009).

■ *CFTC v. Diamond, et al.*

On September 3, 2009, the Commission filed a civil injunctive action against Beau Diamond (Diamond) and his company, Diamond Ventures LLC (DVL) charging them with misappropriation and fraud in operating a forex Ponzi scheme in which they allegedly solicited approximately \$37 million from at least 200 investors. According to the complaint, the defendants falsely guaranteed the return of investors' principal and monthly returns ranging from 2.75 percent to five percent, purportedly paid from the defendants' successful forex trading. In reality, the defendants lost \$13.3 million trading forex. To conceal and perpetuate their alleged fraud, the defendants provided customers with false account statements misrepresenting that their accounts were increasing as promised, although the accounts were actually incurring substantial losses. The complaint further alleges that the defendants misappropriated at least \$850,000 of customer funds and used the money for gambling and luxury purchases, including jewelry, air fares and hotel accommodations. On September 22, 2009, the court entered an order of preliminary injunction that continues the court's September 3, 2009, asset freeze against Diamond and DV and prohibits them from further violations, as charged. In this matter, the Commission received cooperation from the FBI and the U.S. Attorney's Office for the Middle District of Florida, which filed a criminal complaint against Diamond. On September 2, 2009, Diamond was arrested in Florida by Federal authorities in connection with the related criminal complaint. On September 10, 2009, a Federal magistrate judge issued an order denying Diamond's request for bond and ordered him detained. *CFTC v. Diamond, et al.*, No. 8:09-cv-01811-EAK-AEP (M.D. Fla. filed Sept. 3, 2009).

■ *CFTC v. CapitalStreet Financial, LLC*

On September 9, 2009, the Commission filed a civil injunctive action against CapitalStreet Financial LLC (CSF) and Sean F. Mescall, charging them with operating a Ponzi scheme involving the fraudulent solicitation of at least \$1.3 million from at least 69 customers in connection with forex trading. Defendants are also charged with misappropriating approximately \$875,000 of customer funds. Specifically, the complaint charges that, since at least September 2006, defendants fraudulently operated a forex trading scheme, luring customers to trade managed or pooled forex accounts by claiming forex trading success and promising quick and large returns, such as 60 percent to 80 percent annually. Defendants created the false impression that CSF was a well-established forex firm, in operation since 1999 with more than 35 offices in New York and North Carolina. In reality, defendants were not successful forex traders, sustained about \$275,000 in trading losses, and opened CSF in or around August 2006 with four offices in the Charlotte area. Defendants provided customers with false monthly statements to conceal trading losses and their misuse of customer funds. On the same day the complaint was filed, in a related action, the Securities Division of the Office of the North Carolina Secretary of State arrested Mescall and executed search warrants at CSF and his home. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the North Carolina Secretary of State in connection with this matter. *CFTC v. CapitalStreet Financial, LLC*, No. 3:09-CV-387-RJC-DCK (W.D.N.C. filed Sept. 9, 2009).

■ *CFTC v. M25 Investments, Inc., et al.*

On September 29, 2009, the Commission filed a civil injunctive action against M25 Investments, Inc., M37 Investments, LLC, Scott P. Kear, Sr., Jeffrey L. Lyon, and David G. Seaman, charging them with fraudulently soliciting at least \$8 million from approximately 224 customers in connection with the trading of forex, forex options, and commodity futures contracts. Many of the defendants' customers were elderly and knew each other through churches in West Virginia, Mississippi, Texas, Maryland and other states, according to the complaint. The complaint further alleges that defendants fraudulently guaranteed

monthly returns of two percent and annual returns of 24 percent and falsely claimed to be successful forex traders. Defendants did not disclose to prospective and existing customers that a significant portion of their funds would not be used for trading. The defendants also did not disclose that as of at least March 31, 2009, they did not have sufficient assets to pay the promised monthly profits or return principal. The complaint also alleges that the defendants overall lost funds trading forex, forex options and commodity futures and subsequently concealed their trading losses, lack of trading and other uses of customer funds by sending monthly statements to their customers that falsely assured customers that they were earning two percent every month. On the same day the complaint was filed, the court entered a statutory restraining order freezing assets and preserving books and records. The Commission received cooperation from the U.S. Attorney for the Northern District of Texas and the NFA in connection with this matter. *CFTC v. M25 Investments, Inc., et al.*, No. 3-09CV1831-M (N.D. Tex. filed Sept. 29, 2009).

### Statutory Disqualification

#### ■ *In re Sklena*

On August 7, 2009, the Commission issued a Notice of Intent to Suspend or Modify Registration against registered floor broker David G. Sklena. The action is based upon a criminal indictment issued against Sklena in March 2009 by the U.S. Attorney for the Northern District of Illinois. According to the Notice, the indictment charges Sklena with 11 Federal felonies, including commodity fraud, noncompetitive futures contract trading and wire fraud. The Notice states that, because the indictment charges Sklena with violations of Federal law that would reflect on the honesty or the fitness of Sklena to be a fiduciary, Sklena's continued registration may pose a threat to the public interest or may threaten to impair public confidence in markets regulated by the Commission. Sklena is also a defendant in a Commission civil injunctive action filed in January 2008 that alleges Sklena willfully aided and abetted illegal trade practices in the CBOT Five-Year Treasury Note futures pit (see *CFTC v. Sarvey, et al.*, No. 08C0192 (N.D. Ill. filed Jan. 9, 2008)). *In re Sklena*, CFTC Docket No. SD 09-01 (CFTC Aug. 7, 2009).

#### ■ *In re Linuxor Asset Mgt. LLC, et al.*

On September 1, 2009, the Commission issued a Notice of Intent to Revoke Registrations against registered, Linuxor Asset Management LLC's (LAM[']s) CPO registration, Linuxor Capital Management LLC's (LCM[']s) CTA registration, and Abbas A. Shah's registration as an AP of LAM. The Notice alleges that Shah and LAM are subject to disqualification from registration based on a consent order of permanent injunction against them that resolved the Commission's commodity pool fraud charges. *CFTC v. Shah, et al.*, No. 05-CV-8091 (LAK) (S.D.N.Y. Dec. 17, 2008). The Notice also alleges that LCM is statutorily disqualified from registration because Shah is the principal and part-owner of LCM and Shah is disqualified from registration. *In re Linuxor Asset Mgt. LLC, et al.*, CFTC Docket No. SD 09-02 (CFTC filed Sept. 1, 2009).

## Enforcement Litigation by Goal Three

### Financial, Supervision, Compliance and Recordkeeping

#### ■ *In re Fortis Investment Management USA, Inc.; In re Spring Mountain Capital G.P., LLC, et al.; and In re UBS Fund Advisor, LLC*

On January 8, 2009, the Commission simultaneously filed and settled three separate administrative enforcement actions against the following four registered CPOs: Spring Mountain Capital G.P., LLC (Spring Mountain G.P.) and Spring Mountain Capital, LP (Spring Mountain Capital); Fortis Investment Management USA, Inc. (Fortis); and UBS Fund Advisor, LLC (UBS). The CFTC orders find that each of the four CPOs operated one or more commodity pools, including pools that operated as funds-of-funds. The Commission orders find that each of the CPOs failed to distribute to investors and file with the NFA one or more of their respective commodity pools' annual reports in a timely manner. While some of the CPOs had obtained extensions of the prescribed deadlines for various pools and reporting years, each nevertheless failed to timely comply with its obligations, in violation of CFTC regulations. The Commission assessed sanctions including: cease and desist orders against each of the CPOs; and civil monetary penalties (Spring Mountain Capital G.P., \$75,000; Spring

Mountain Capital, LP, \$75,000; Fortis, \$75,000; and UBS, \$50,000). *In re Fortis Investment Management USA, Inc.*, CFTC Docket No. 09-05 (CFTC filed Jan. 8, 2009); *In re Spring Mountain Capital G.P., LLC, et al.*, CFTC Docket No. 09-06 (CFTC filed Jan. 8, 2009); and *In re UBS Fund Advisor, LLC*, CFTC Docket No. 09-07 (CFTC filed Jan. 8, 2009).

■ ***In re Walsh Trading, Inc.***

On March 11, 2009, the Commission simultaneously filed and settled an administrative enforcement action against registered IB Walsh Trading Inc. finding that from at least March 2006 to April 2008, Walsh failed to diligently supervise an AP's handling of certain accounts managed by an unregistered CTA, and lacked procedures to detect unauthorized trading of these customer accounts. Specifically, the Commission found that the Walsh AP who managed Walsh's Arkansas branch office solicited customers, primarily from the farming community, for an unregistered CTA and introduced those customers to a registered FCM. During this time, the Walsh AP placed orders at the unregistered CTA's direction for at least five customer accounts. None of these accounts contained a power of attorney or a letter of direction authorizing the unregistered CTA, the Walsh AP, or anyone other than the customers to trade or manage their accounts. The CFTC order finds that none of the five accounts were properly reviewed by Walsh to determine how they were solicited and whether they were to be traded as discretionary or non-discretionary accounts. This initial failure to supervise was compounded by a continued failure to diligently monitor the Walsh AP's handling of customers' accounts. Furthermore, the lack of any supervisory procedures and adequate oversight of the Walsh AP's branch office enabled unauthorized trading by the unregistered CTA to continue undetected for two years. The Commission assessed sanctions, including: a \$50,000 civil monetary penalty; and an order that it comply with its undertaking to strengthen its supervisory oversight of APs, employees, and agents. The Commission received cooperation from the NFA in connection with this matter. *In re Walsh Trading, Inc.*, CFTC Docket No. 09-09 (CFTC filed Mar. 11, 2009).

■ ***In re ADM Investor Services, Inc.***

On March 26, 2008, the Commission simultaneously filed and settled an administrative enforcement action against registered FCM ADM Investor Services, Inc. (ADMIS) finding that during 2002 to 2004, it failed to diligently supervise its employees concerning post-execution allocations of bunched orders. According to the order, ADMIS had no written policy or procedures concerning post-execution allocations of bunched orders. To the extent ADMIS had unwritten procedures concerning such allocations, ADMIS on certain occasions failed to implement those procedures, the order finds. Additionally, ADMIS allowed an account manager to conduct post-execution allocations days after orders were originally executed and failed to maintain records that identify orders subject to the post-execution allocations. Finally, the order finds that ADMIS prepared, but failed to keep, forms related to such allocations. The Commission assessed sanctions including: a cease and desist order; \$200,000 civil monetary penalty; and an order to comply with certain undertakings, including ADMIS's agreement to implement enhanced procedures to assure adherence to rules governing post execution allocation of trades. Commission received cooperation from NFA in connection with this matter. *In re ADM Investor Services, Inc.*, CFTC Docket No. 09-10 (CFTC filed March 26, 2009).

■ ***In re Interbank FX, LLC***

On June 29, 2009, the Commission simultaneously filed and settled an administrative enforcement action against registered FCM Interbank FX, LLC (Interbank) finding that it violated rules designed to protect the confidential personal information of consumers. According to the order, in March 2008, an Interbank customer discovered that personal information about herself, such as her name, address, phone number, date of birth, social security number, driver's license number, and bank account numbers was accessible on the Internet through a Google search. Interbank began an immediate investigation and learned that one of its Information Technology employees had placed files containing the confidential personal consumer information of approximately 13,000 customers and prospective customers on a personal Web site that was accessible on the Internet for at least a year. This security breach was possible because Interbank did

not have policies or procedures directed to the protection of confidential consumer information at the time its employee uploaded the information to the Internet. Despite a lack of effective procedures, Interbank continuously issued a Privacy Notice to its customers as early as December 2004 that stated erroneously that Interbank maintained safeguards that complied with Federal standards to guard customer information. Interbank's lack of effective procedures and issuance of the erroneous Privacy Notice violated several provisions of the CFTC's regulations concerning the privacy of consumer financial information. The order recognizes that Interbank engaged in substantial remedial efforts after discovering the security breach and fully cooperated with the CFTC's investigation of the matter. The sanctions imposed on Interbank take into account those remedial efforts and cooperation, without which the CFTC would likely have imposed a more severe sanction. The Commission assessed sanctions including: a cease and desist order; \$200,000 civil monetary penalty; and an order that Interbank comply with its undertaking to establish, implement, and maintain a documented comprehensive security program that addresses administrative, technical, and physical safeguards for the protection of consumer information, and to obtain an assessment of that program from a certified security professional within 180 days of the entry of the order and annually for the next five years. The Commission received cooperation from the NFA in connection with this matter. *In re Interbank FX, LLC*, CFTC Docket No. 09-11 (CFTC filed June 29, 2009).

■ *In re J.P. Morgan Futures Inc.*

On September 9, 2009, the Commission simultaneously filed and settled an administrative enforcement action against registered FCM J.P. Morgan Futures, Inc. (JPMF), finding that it violated Commission rules governing segregation of customer funds, timely computation of its segregation obligations, timely reporting of under-segregation deficiency to the CFTC and diligent supervision of its employees. In 2007, JPMF maintained accounts for customer funds (segregated accounts) and kept its own funds in separate accounts. During this time, JPMF processed transactions related to the delivery of Treasury notes that resulted in JPMF's segregated accounts being insufficiently funded by approximately \$750 million. That is, JPMF drew upon customer segregated funds beyond its actual interest, which resulted in customer funds being

commingled with JPMF's funds. JPMF also failed to timely complete computing its segregation requirements and did not timely notify the CFTC that its segregated accounts had been insufficiently funded. JPMF did not have a process in place to determine the impact of expected withdrawals from the segregated accounts on the amount required to be kept in segregation. (JPMF has since enhanced existing procedures by implementing a segregation forecasting process to ensure that proper segregation is maintained.) The Commission imposed sanctions, including: a \$300,000 civil monetary penalty; and order to comply with its undertakings to implement enhanced procedures to assure adherence to rules governing segregation of customer funds. *In re J.P. Morgan Futures Inc.*, CFTC Docket No. 09-12 (CFTC Sept. 9, 2009).

■ *In re Cadent Financial Services LLC*

On September 30, 2009, the Commission simultaneously filed and settled an administrative enforcement action against registered FCM Cadent Financial Services LLC (Cadent), finding that it failed to diligently supervise its employees in the handling of a client's account. Specifically, the order finds that, from at least May 15, 2007 until April 1, 2008, Cadent failed to diligently supervise its employees and APs in their handling of the Idylic Solutions Pty. Ltd (Idylic) account. The order finds that funds held by Cadent in the Idylic account were commingled and not properly segregated from those of a different entity with a similar name: Idylic Solutions Ltd. This failure to properly segregate and account for Idylic's funds took place in connection with both the receipt and deposit of funds, and the transfer and distribution of funds into and from the Idylic account. According to the order, in each instance, Cadent failed to diligently supervise its APs to ensure that third-party funds were separately accounted for and not commingled with the funds already in the Idylic account. Cadent also failed to ensure that there was proper authorization from the account holder either to accept funds from a third party or to send funds to a third party. The Commission imposed sanctions, including: a \$120,000 civil monetary penalty; and an order that Cadent comply with its undertaking to strengthen its supervisory system for overseeing its APs', employees' and agents' sales solicitations and maintenance of customer accounts. *In re Cadent Financial Services LLC*, CFTC No. 09-13 (CFTC filed Sept. 30, 2009).

## Trade Practice

### ■ *In re Keane*

On October 6, 2008, the Commission simultaneously filed and settled an administrative enforcement action against Brian Keane, a former NYMEX clerk, for fraudulently allocating favorable trades to an account from which he benefited. The CFTC charged Keane, a former employee of a NYMEX member, with diverting profitable transactions that had been filled for customers to an account from which he benefited. In the related criminal matter, Keane pled guilty on March 20, 2008 to the felony state crime of violating the anti-fraud provision of New York's General Business Law for the same underlying conduct and received a four-month jail sentence, which he has already served. The Commission assessed sanctions, including a permanent trading ban and a \$90,000 civil monetary penalty. The Commission received cooperation from the New York County District Attorney's Office (NYCDA) and NYMEX in connection with this matter. *In re Keane*, CFTC Docket No. 09-01 (CFTC filed Oct. 6, 2008).

### ■ *In re Otis, et al.*

On December 16, 2008, the Commission simultaneously filed and settled an administrative enforcement action against Frank Otis, former President and CEO of a DFA subsidiary, and Glenn Millar, former Executive Vice President of the subsidiary, finding that they aided and abetted DFA's speculative position violation by directing trading of Class III milk futures in an internal sub-account designated for the DFA subsidiary. (See discussion, above, of the related enforcement action, *In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (CFTC filed Dec. 16, 2008).) The Commission assessed sanctions, including civil monetary penalties (Otis \$60,000 and Millar \$90,000). *In re Otis, et al.*, CFTC Docket No. 09-03 (CFTC filed Dec. 16, 2008).

### ■ *In re Moster*

On February 11, 2009, the Commission simultaneously filed and settled an administrative enforcement action against Michael Moster, a former proprietary trader with BOA, finding that he committed fraud by submitting false reports to BOA. Specifically, the Commission order finds that, during a three-day period in January 2004, Moster falsely reported to the bank that he purchased 4,000 Treasury futures contracts to conceal the risk associated with large unauthorized positions in Treasury bonds that he established over the same time period, by making it appear as if the long futures position hedged the Treasury bond risk. By the following week, the fictitious trades inflated the value of his trading book by over \$12 million, the order finds. The sale of Moster's unauthorized Treasury bond position resulted in a loss of approximately \$12.2 million to the BOA. Based upon the same conduct, Moster pled guilty on September 18, 2008, to a one-count violation of making false entry into the books and records of a bank in the Southern District of New York and was ordered to pay \$10 million in restitution to BOA. The CFTC's order recognizes the restitution made in the context of the criminal case and provides that Moster must pay and satisfy any criminal restitution obligation before his payment of the CFTC civil monetary penalty. The Commission assessed sanctions including: a cease and desist order; permanent trading and registration bans; and a \$360,000 civil monetary penalty. *In re Moster*, CFTC Docket No. 09-08 (CFTC filed Feb. 11, 2009).



# CFTC INFORMATION TECHNOLOGY SYSTEMS

## Integrated Surveillance System (ISS)

*User:* Market Oversight

*Functionality:* ISS collects futures and options end-of-day position data for large traders from reporting firms and open interest, volume, price, and clearing member data from exchanges. This data is used to monitor futures and options trading in order to detect any market anomalies that may occur.

## Regulatory Statement Review (RSR)

*User:* Clearing and Intermediary Oversight

*Functionality:* RSR Express is used to review monthly and annual 1-FR-FCM and Financial and Operational Combined Uniform Single (FOCUS) reports of futures commission merchants for reporting their net capital position and other financial information. RSR Express is also used to monitor the financial status of firms and the changes to that status over time.

## Stressing Positions at Risk (SPARK)

*Users:* Clearing and Intermediary Oversight and Market Oversight

*Functionality:* SPARK is a tool to look at all of an owner's holdings and project the effect of market moves on these holdings. By performing "what if" scenarios, staff can determine if the margin is sufficient.

## Filings and Actions (FILAC)

*Users:* Clearing and Intermediary Oversight and Market Oversight

*Functionality:* FILAC manages data associated with the approval organizations, products, rules, foreign filings, and actions.

## Exchange Database System (EDBS)

*Users:* Market Oversight, Enforcement, Chief Economist

*Functionality:* EDBS is used for trade practice surveillance, trading analyses, statistical studies, and research projects for the Commission.

## Trade Surveillance System (TSS)

*Users:* Market Oversight, Enforcement, Chief Economist

*Functionality:* TSS enables staff to conduct surveillance in the rapidly expanding area of electronic trading, both intra and inter-exchange and across side-by-side platforms. Details of all transactions are collected from exchanges and made available to the applications used for reporting, analysis, and profiling. TSS retains the important legacy data and functionality of EDBS, which it will gradually replace.

## Project eLaw

*Users:* Enforcement, General Counsel, and Proceedings

*Functionality:* The eLaw Program is an automated law office that seamlessly integrates technology and work processes to support staff in their investigative, trial, and appellate work. It allows staff to track and monitor all activities related to investigations, discoveries, and litigation plans.



# GLOSSARY OF ABBREVIATIONS AND ACRONYMS

## The CFTC Glossary A Guide to the Language of the Futures Industry

<http://www.cftc.gov/educationcenter/glossary/>

Because the acronyms of many words and phrases used throughout the futures industry are not readily available in standard references, the Commission’s Office of Public Affairs compiled a glossary to assist members of the public.

This glossary is not inclusive, nor are general definitions intended to state or suggest the views of the Commission concerning the legal significance, or meaning of any word or term. Moreover, no definition is intended to state or suggest the Commission’s views concerning any trading strategy or economic theory.

### Glossary of Acronyms

<b>AE</b> .....	The Actuarials Exchange, LLC
<b>AGORA-X</b> .....	Agora-X, LLC
<b>ALJ</b> .....	Administrative Law Judge
<b>AP</b> .....	Associated Person
<b>BM&amp;F</b> .....	Bovespa S.A._Bolsa de Valores, Mercadorias e Futuros
<b>BMO</b> .....	Bank of Montreal
<b>BOA</b> .....	Bank of America
<b>BP</b> .....	British Petroleum
<b>BSA</b> .....	Bank Secrecy Act
<b>CBOT</b> .....	Chicago Board of Trade



CCFE .....	Chicago Climate Futures Exchange
CCORP .....	The Clearing Corporation
CCX .....	Chicago Climate Exchange, Inc.
CDXCHANGE .....	Commodities Derivative Exchange, Inc.
CEA .....	Commodity Exchange Act
CEO .....	Chief Executive Officer
CESR .....	Committee of European Securities Regulators
CFE .....	CBOE Futures Exchange
CFMA .....	Commodity Futures Modernization Act of 2000
CFTC .....	Commodity Futures Trading Commission
CFO .....	Chief Financial Officer
CHEMCONNECT .....	ChemConnect, Inc.
CME .....	Chicago Mercantile Exchange
CME AM .....	CME Alternative Marketplace, Inc.
COMEX .....	Commodity Exchange Division
COO .....	Chief Operating Officer
COOP .....	Continuity of Operations Plan
COSRA .....	Council of Securities Regulators of the Americas
COT .....	Commitments of Traders
CPO .....	Commodity Pool Operator
CSCE .....	Coffee Sugar and Cocoa Exchange
CSRS .....	Civil Service Retirement System
CTA .....	Commodity Trading Advisor
DCIO .....	Division of Clearing and Intermediary Oversight (CFTC)
DCM .....	Designated Contract Market
DCO .....	Derivatives Clearing Organization
DFA .....	Dairy Farmers of American, Inc.
DFOX .....	DFOX
DHS .....	U.S. Department of Homeland Security
DMO .....	Division of Market Oversight (CFTC)
DOE .....	Division of Enforcement (CFTC)
DOL .....	U.S. Department of Labor
DOT .....	U.S. Department of Transportation
EBOT .....	Exempt Boards of Trade
ECM .....	Exempt Commercial Market

<b>EDBS</b>	Exchange Database System
<b>EH-09</b>	Eagle Horizon 09
<b>ELX</b>	ELX Futures, L.P.
<b>EOXLIVE</b>	Energy Options Exchange, LLC
<b>EPFE</b>	Exchange Place Futures, LLC
<b>EU</b>	European Union
<b>FARM BILL</b>	Food, Conservation, and Energy Act of 2008
<b>FASAB</b>	Federal Accounting Standards Advisory Board
<b>FB</b>	Floor Broker
<b>FBI</b>	Federal Bureau of Investigation
<b>FCA</b>	Farm Credit Administration
<b>FCM</b>	Futures Commission Merchant
<b>FCRM</b>	FCRM Electronics Markets, LLC
<b>FECA</b>	Federal Employees' Compensation Act
<b>FEMA</b>	Federal Emergency Management Agency
<b>FERS</b>	Federal Employees' Retirement System
<b>FFIEC</b>	Federal Financial Institutions Examination Council
<b>FFMIA</b>	Federal Financial Management Improvement Act
<b>FIA</b>	Futures Industry Association
<b>FILAC</b>	Filings and Actions
<b>FINCEN</b>	Financial Crimes Enforcement Network
<b>FISMA</b>	Federal Information Security Management Act
<b>FIXML</b>	Financial Information Exchange Markup Language
<b>FLETT</b>	Flett Exchange
<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>FMHA</b>	Farmers Home Administration
<b>FOREX</b>	Foreign Currency
<b>FSA</b>	Financial Services Authority
<b>FSRIA</b>	Farm Security and Rural Investment Act of 2002
<b>FT</b>	Floor Trader
<b>FTE</b>	Full-time Equivalent
<b>FWC</b>	Futures Workers Copensation
<b>FY</b>	Fiscal Year
<b>GAAP</b>	U.S. Generally Accepted Accounting Principles
<b>GAO</b>	Government Accountability Office

<b>GETS</b>	Government Emergency Telecommunications Service
<b>GFI</b>	GFI Group Inc.
<b>GFI FOREXMATCH</b>	GFI Group Inc., ForexMatch
<b>GPRA</b>	Government Performance and Results Act
<b>HSE</b>	HoustonStreet Exchange, Inc.
<b>IB</b>	Introducing Broker
<b>ICAP</b>	ICAP Commodity Derivatives Trading System
<b>ICAPTURE</b>	ICAP Electronic Trading Community
<b>ICAP SHIPPING</b>	ICAP Shipping Trading System
<b>ICE CLEAR US</b>	ICE Clear US (formerly, NYCC)
<b>ICE US</b>	ICE Futures U.S., Inc. (formerly, NYBOT)
<b>IDC</b>	International Derivatives Clearinghouse, LLC
<b>IG</b>	Inspector General (CFTC)
<b>IMAREX</b>	International Maritime Exchange
<b>INTERBANK</b>	FCM Interbank FX, LLC
<b>INTRADE</b>	INTRADE Board of Trade
<b>IOSCO</b>	International Organization of Securities Commissions
<b>IRESE</b>	IRESE, Inc.
<b>ISS</b>	Integrated Surveillance System
<b>IT</b>	Information Technology
<b>JO</b>	Judgment Officer
<b>KCBT</b>	Kansas City Board of Trade
<b>LCH</b>	London Clearing House
<b>LIQUIDITYPORT</b>	LiquidityPort, LLC
<b>LLC</b>	Limited Liability Corporation
<b>LONGITUDE</b>	Longitude, LLC
<b>MATCHBOX ATTS</b>	Matchboxx Alternate Trading System
<b>MD&amp;A</b>	Management's Discussion and Analysis
<b>ME</b>	Merchants Exchange
<b>MGE</b>	Minneapolis Grain Exchange
<b>NADEX</b>	North American Derivatives Exchange, Inc. (formerly, HedgeStreet, Inc.)
<b>NAFTA</b>	North American Free Trade Agreement
<b>NCI</b>	National Crude Oil Investigation
<b>NCS</b>	National Communications System

NFA	National Futures Association
NFX	NASDAQ OMX Futures Exchange, Inc. (formerly, PBOT)
NGX	Natural Gas Exchange
NLE	DHS/FEMA National Level Exercise
NODAL	Nodal Exchange, LLC
NQLX	NQLX LLC
NTP	NetThruPut
NYCDA	New York County District Attorney's Office
NYCE	New York Cotton Exchange
NYSE LIFFE	NYSE Liffe Futures Exchange, LLC
NYFE	New York Futures Exchange
NYMEX	New York Mercantile Exchange
OCC	The Options Clearing Corporation
OCX	OneChicago Futures Exchange
OED	Office of Executive Director (CFTC)
OFM	Office of Financial Management (CFTC)
OGC	Office of the General Counsel (CFTC)
OHR	Office of Human Resources (CFTC)
OIA	Office of International Affairs (CFTC)
OIG	Office of Inspector General (CFTC)
OILX	OILX
OITS	Office of Information and Technology Services (CFTC)
OMB	Office of Management and Budget
OPEX	Optionable, Inc.
OPM	Office of Personnel Management
ORB	Other Retirement Benefits
OSTP	Executive Office of the President's Office of Science and Technology Policy
OTC	Over-the-Counter
PAAM	Philadelphia Alternative Asset Management Company, LLC
PARITY	Parity Energy, Inc.
PMEF	Primary Mission Essential Function
REC	Renewable Energy Certificates

<b>RFED</b>	Retail Foreign Exchange Dealer
<b>RER</b>	Rule Enforcement Review
<b>RGGI</b>	Regional Greenhouse Gas Initiative
<b>RSR</b>	Regulatory Statement Review
<b>RSS</b>	Real Simple Syndication
<b>SAR</b>	Suspicious Activity Report
<b>SAS</b>	Statement on Auditing Standards
<b>SEC</b>	U.S. Securities and Exchange Commission
<b>SFP</b>	Security Futures Product
<b>SL</b>	Spectron Live.com Limited
<b>SPARK</b>	Stressing Positions at Risk
<b>SPDC</b>	Significant Price Discovery Contracts
<b>SRO</b>	Self-Regulatory Organization
<b>SFFAS</b>	Statement of Federal Financial Accounting Standards
<b>STORM</b>	Storm Exchange, Inc.
<b>SWAPSTREAM</b>	Swapstream Operating Services, Ltd.
<b>TACE</b>	The American Civics Exchange
<b>TCX</b>	Trade Capture Exchange
<b>TFSWEATHER</b>	TFSWeather.com
<b>TPENERGYTRADE</b>	tpENERGYTRADE
<b>TRADINGOPTX</b>	Trading OptX LLC
<b>TREASURY</b>	U.S. Department of the Treasury
<b>TS</b>	TradeSpark, LP
<b>TSS</b>	Trade Surveillance System
<b>UK</b>	United Kingdom
<b>WPS</b>	Wireless Priority Service
<b>US</b>	United States
<b>USDA</b>	U.S. Department of Agriculture
<b>USFE</b>	US Futures Exchange
<b>USSGL</b>	United States Standard General Ledger
<b>WBOT</b>	Weather Board of Trade
<b>WORLDPULP</b>	WorldPulp.com
<b>WXL</b>	WeatherXchange Limited
<b>YELLOW JACKET</b>	Yellow Jacket Software, Inc.

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