TESTIMONY OF GARY GENSLER
CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION
BEFORE THE
U.S. HOUSE APPROPRIATIONS SUBCOMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION,
AND RELATED AGENCIES
WASHINGTON, DC
March 22, 2012

Good morning Chairman Kingston, Ranking Member Farr and members of the Subcommittee. Thank you for inviting me to today's hearing on the Commodity Futures Trading Commission's (CFTC) fiscal year (FY) 2013 budget request.

It is critical that the derivatives markets – both futures and swaps – work for hedgers, the farmers, ranchers, producers and commercial companies in the real economy. Futures and swaps markets allow them to lock in a price and focus on what they do best – servicing customers, producing products and investing in our country's future. As it's the hedgers in the real economy – the non-financial side – that provide 94 percent of private sector jobs, it's all the more important that these markets work for America's job providers.

The derivatives markets that the CFTC oversees are where hedgers across the country meet financial firms, and others generally called speculators. Over time, the makeup of these markets has shifted dramatically. Financial firms and speculators now make up the vast majority of these markets. For instance, producers, merchants, processors and other end-users make up approximately 15 percent of the crude oil futures market. Swap dealers, managed money accounts and other financial actors make up the remaining 85 percent. In Chicago Board of Trade wheat contracts, end-users make up nine percent of the long and 29 percent of the short positions, meaning that over 70 percent of this market consists of financial interests.

The CFTC is not a price-setting agency. Our critical mission is to ensure that derivatives markets are transparent, and free of fraud, manipulation and other abuses. Our mission is particularly important considering hedgers, America's job creators, use these markets to lock in a price and make their investments. Given the dominance of financial actors and speculators in these markets, it's that much more crucial that the CFTC is well funded so that we can ensure these markets work for hedgers. The need for adequate funding is highlighted by rising gas prices at the pump.

In 2008, the financial system and the financial regulatory system failed America. The unregulated swaps market helped concentrate risk in the financial system that spilled over to the real economy, leading to eight million jobs lost, millions of families losing their homes, and thousands of small businesses closing their doors. In 2010, Congress and the President came together to pass the historic Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Beyond swaps market reform, Congress benefited commercial hedgers by closing gaps in the CFTC's oversight, including the so-called "Enron Loophole" and "London Loophole," as well as strengthening the agency's anti-manipulation authorities. But effectively overseeing these markets depends on adequate funding for the agency's expanded mission.

At its FY 2012 staffing level of 710 FTEs, the agency is but 10 percent larger than our peak in the 1990s. But since then the futures market has grown to approximately $37 trillion notional, and Congress added oversight of the $300 trillion swaps market, which is far more complex than the futures market. This growth is highlighted on pages 148-149 of the CFTC's budget submission

It is as if all of a sudden the National Football League (NFL) expanded eight times to play more than 100 games in a weekend. I think we'd all agree that the same number of referees could not monitor all those games. And referees on the field do more than call penalties and watch for violations of the rules. They also protect the players, promote fair competition and ultimately ensure the integrity of the game.

Thus, just as in my NFL analogy, the CFTC needs more referees. The CFTC is requesting significantly more resources to oversee a much expanded field of play. The request is for an appropriation of $308 million and 1,015 FTEs. The CFTC's budget request strikes a balance between important investments in technology and human capital, both of which are essential to carrying out the agency's mandate. This approximately 50 percent increase in funding includes a 56 percent increase in IT services, but only a 43 percent increase in staff. Though these percentages might seem striking, let me use the football analogy – we're being asked to oversee the swaps markets, which is eight times the size of the futures markets. And we need more referees to protect the players, promote fair competition and ultimately ensure the integrity of the markets.

The CFTC is dedicated to using taxpayer dollars efficiently – nearly a fourth of our overall budget request, $70 million, is for outside IT services. When the CFTC's dedicated IT staff is included, we're requesting $96.2 million for IT, or nearly a third of the overall budget. But it still takes human beings to watch for market manipulation and abuses that affect hedgers, farmers, ranchers, producers, and commercial companies, as well as the public buying gas at the pump.

In the context of a constrained budget environment and the agency's dramatically expanded mission, the CFTC took three significant steps in the past year to prepare for implementation of financial reform. First, we developed a new strategic plan for fiscal years 2011-2015. This plan raises the bar on the agency's performance measures to more accurately evaluate our progress. But the agency's performance is affected by the challenges of limited resources. The CFTC's first performance report said the agency was only able to meet 57 percent of its performance targets. For example, the Commission examined fewer derivatives clearing organizations (DCOs) than called for in the strategic plan. In addition, fewer staff members were available to review new contracts for susceptibility to market manipulation, resulting in a backlog in such reviews.

Second, the CFTC put in place an organizational restructuring that went into effect in October 2011, which aligned the agency with our expanded mission. It created the Division of Swap Dealer and Intermediary Oversight and the Office of Data and Technology, as well as reorganized a number of other divisions. And third, the agency began presenting its budget request by the agency's mission activities, a change from our presentation approach in years past, which was by agency divisions. It offers Congress and the public a much clearer picture of what the CFTC does for the American people. In the chart attached to this testimony, you can see each of our missions and the associated funding request.

In my remaining testimony, I will review the five areas that make up over 90 percent of our requested budgeted staff increase: registrations, examinations, surveillance and data, enforcement, and economics and legal analysis.

Registration and Product Reviews

A significant task before us in FY 2013 will be the registration of an unprecedented number of new market participants, as well as reviews of new products for both the clearing mandate and the trading mandate.

We want to consider registration applications in a thoughtful and timely manner, be efficient in reviewing submissions, and be responsive to market participant inquiries, but this will require sufficient funding. We are seeking $36.8 million and 142 FTEs for these two mission areas, an increase of $18.2 million and 70 FTEs.

The more than 200 entities that may seek CFTC registration within the next year is a dramatic increase over any registration effort the agency has overseen in the past. The Commission needs staff to facilitate the registration of the following market participants:

- **Clearinghouses** – Entities that lower risk to the public by guaranteeing the obligations of both parties in a transaction. We are working with four new entities seeking to register as DCOs and have inquiries from others. These entities will join the 16 we currently oversee.

- **Designated contract markets (DCMs)** – U.S. trading platforms that list futures and options and likely will start listing swaps. The CFTC currently oversees 16 DCMs, and by 2013, staff expects another five to seek registration.

- **Foreign board of trade (FBOTs)** – Regulated trading platforms in other countries that are generally equivalent to DCMs. Since the FBOT rule became effective in February, two have filed formal applications to be registered with the CFTC. Another 20 FBOTs currently operate under staff no-action letters. By 2013, staff expects a total of 28 FBOTs to seek registration with the CFTC.

- **Swap data repositories (SDRs) –** Recordkeeping facilities created by Dodd-Frank to bring transparency to the swaps market. Four have already filed with the CFTC, and by 2013, an additional two SDRs are expected to seek registration.

- **Swap dealers –** Under Dodd-Frank, the CFTC is working to comprehensively regulate swap dealers to lower their risk to the economy. A rule finalized in January requires them to register with the National Futures Association (NFA). For planning purposes, Commission staff currently estimates somewhere between 100 and 150 swap dealers may request registration with the NFA, and we'll be overseeing their registration and related questions.

- **Swap execution facilities (SEFs)** – The new trading platform for swaps. Commission staff estimates that 20-30 entities may request to become SEFs.

While we will have a system for provisional registration in place, market participants will want the certainty of final registration. The Commission also is taking on a new resource intensive responsibility of reviewing which swaps will be subject to the clearing mandate. Full funding for the agency means that we will be best prepared to review the dramatic increase in requested registrations and to review swaps for the clearing mandate. A partial increase in funding means market participants will see a backlog in registrations, responses to their inquiries, and product review because we won't have personnel sufficient to review their submissions in a timely and complete manner. Flat funding will mean market participants will wait even longer. There will be significant backlogs for participants seeking to register with the CFTC, as well as for review of swaps for mandatory clearing.

Examinations

Another critical mission for FY 2013 will be more regular and more in-depth examinations of the major market participants the CFTC oversees. Examinations are the CFTC's tool to check for compliance with laws that protect the public. The agency is seeking $35 million and 161 FTEs for examinations, an increase of $19 million and 72 FTEs. The CFTC is asking for nearly double our resources for this mission because the number of entities we examine is expected to more than double.

This is an area where the agency fell short of our goals in the 2011 performance report. The CFTC directly reviews clearinghouses and trading platforms and will review SDRs. But while the agency reviews them directly, we don't have the resources to have full-time staff on site, unlike other regulatory agencies that do have on-the-ground staff at the significant firms they oversee. The CFTC also doesn't do annual reviews. Clearinghouses, for instance, currently are examined on a three-year cycle. For intermediaries such as futures commission merchants (FCMs) and swap dealers, the CFTC's funding situation requires us to rely on what are known as self-regulatory organizations (SROs) to be the primary examiners. Given our lack of resources, we're only able to double check the SROs' work on a limited number of FCMs each year, and the agency can spend little time onsite at the firms.

On top of the current lack of staff for examinations, our responsibilities in 2013 will expand to include reviews of many new market participants. For instance, there are currently 123 FCMs, and staff estimates a similar number of swap dealers will ultimately register. More frequent and in-depth examinations are necessary to assure the public that firms have adequate capital, as well as systems and procedures in place to protect customer money. The number of clearinghouses, trading platforms and data platforms is expected to triple. Reviews of these entities are critical to ensuring the financial soundness of clearinghouses, and ensuring transparency and competition in the trading markets.

Fully funding the increase for examinations means the Commission can move toward annual reviews of all significant clearinghouses and trading platforms and adequate reviews of other market participants. A partial increase for examinations means cutting back our monitoring plans for new market participants and more in-depth risk reviews. Flat funding means we will continue lacking the ability to assure the public that the CFTC's registrants are financially sound and in compliance with regulatory protections.

Surveillance and Data

Effective market surveillance is dependent on the CFTC's ability to acquire and analyze extremely large volumes of data to identify trends and events that warrant further investigation. The CFTC is seeking $65.6 million and 205 FTEs for surveillance, data acquisition, and analytics, an increase of $22.2 million and 65 FTEs. Of the $65.6 million request, 55 percent would be directed toward information technology.

The Dodd-Frank swaps market transparency rules mean a major increase in the amount of incoming data for the CFTC to aggregate and analyze. The agency is taking on the challenge of establishing connections with SDRs and aggregating the newly available swaps data with futures market data. This will require high performance hardware and software and the development of analytical alerts. But it also requires the corresponding personnel to manage this technology effectively for surveillance and enforcement.

In FY 2013, the CFTC also anticipates receiving ownership and control information for trading accounts. This means the Commission will have data to better detect intra-day position limit violations and analyze high frequency trading. The CFTC also will be monitoring for compliance with rules on aggregate position limits for both futures and swaps in energy and other physical commodities.

A full increase for surveillance means the CFTC will have the ability to analyze futures and swaps data to protect market participants and the public. A partial increase would limit the agency's investments in analysis-based surveillance tools. And flat funding will limit our capacity to effectively utilize and aggregate the new data we are beginning to receive.

Enforcement

The CFTC's enforcement arm protects market participants and other members of the public from fraud, manipulation and other abusive practices in the futures and swaps markets. Our efforts range from pursuing Ponzi schemers who defraud individuals across the country out of life savings; to abuses that threaten customer funds; to false reporting of prices; to schemes to manipulate prices, including of goods, such as oil, gas and agricultural products. The Commission has opened more than 900 investigations in the past two fiscal years, with a record number of new investigations in FY 2011. The CFTC is seeking $60.4 million and 225 FTEs for enforcement, an increase of $16.1 million and 50 FTEs.

In 2002, we had 154 people devoted to enforcement, and that number has grown just slightly to our current staff of 170. This staff has been called upon to enforce laws and rules that are new to our arsenal. The Dodd-Frank mandate closed a significant gap in the agency's enforcement authorities by extending the enforcement reach to swaps and prohibiting the reckless use of manipulative or deceptive schemes. In addition, the CFTC will be overseeing a host of new market participants.

A full increase for enforcement means more investigations and cases that the agency can pursue to protect the public. A less than full increase means that the CFTC will be faced with difficult choices. We could maintain the current volume and types of cases, but we would have to shift resources from futures cases to swaps cases or not cover all of the swaps market. Flat funding means not only that the Commission's enforcement volume likely would shrink, but parts of the markets would be left with little enforcement oversight.

Economics and Legal Analysis

For FY 2013, the CFTC is seeking $27.8 million and 88 FTEs to invest in robust economic analysis teams and Commission-wide legal analysis, an increase of $6.8 million and 24 FTEs. The CFTC's economists support all of the Commission's divisions, including surveillance and complex enforcement cases. They are currently working with Dodd-Frank rule teams to carefully consider the costs and benefits of each rule. In 2013, the CFTC's economists will be integral in developing tools to analyze automated surveillance data and determining whether new products are eligible for clearing. The economists also will be assessing the effect of position limits on futures and swaps markets. Flat funding or a partial increase means a strained ability to analyze the market and detect problems that could be negative for the economy.

The Commission's legal analysis requirements will increase in 2013 as a result of new market participant registrations, as well as new product reviews and the clearing mandate.
A less than whole funding increase means a more limited ability to give market participants timely responses to their questions and timely processing of their applications. Flat funding means the Commission's legal analysis team will be spread extremely thin, aggravating the delays in responding to market participants and processing applications and straining the support of enforcement efforts.

Conclusion

Market participants depend on the credibility and transparency of well-regulated U.S. futures and swaps markets. Without sufficient funding for the CFTC, their businesses – and the nation – cannot be assured that the agency can adequately oversee these markets.

Funding this requested budget increase for the CFTC is about ensuring hedgers in the real economy, the farmers, ranchers, producers, commercial companies and other end-users that use derivatives markets, can lock in a price and lower their risk.

We've been asked to oversee the swaps market, which is eight times the size of the futures market. Just as if the current number of NFL referees were called upon to monitor more than a hundred games in a weekend, we need the resources to protect the players, promote fair competition and ultimately ensure the integrity of the markets for the American people.

Overview of the FY 2013 Budget & Performance Estimate

Summary of Requested Increases of $102.7 Million by Activity

	FY 2012 Base		FY 2013 Request		FY 2013 Increase		Percent of $ Increase
	$ (000)	FTE	$ (000)	FTE	$ (000)	FTE	%
Total All Mission Activities	**$205,294**	**710**	**$308,000**	**1,015**	**$102,706**	**305**	**100%**
Registration and Registration Compliance	$11,073	34	$19,188	63	$8,115	29	8%
Reviews of Products and Rules of Operation	7,540	38	17,585	79	10,045	41	10%
Data Acquisition, Analytics and Surveillance	43,399	140	65,614	205	22,215	65	22%
Examinations	15,937	89	34,907	161	18,970	72	18%
Enforcement	44,293	175	60,394	225	16,101	50	16%
Commission-Wide Economic and Legal Analysis	20,947	64	27,787	88	6,840	24	7%
Commission-Wide International Policy Coordination	3,553	10	5,023	16	1,470	6	1%
Commission-Wide Data Infrastructure	31,214	41	48,449	52	17,235	11	17%
Commission-Wide Management and Administrative Support	26,204	114	27,674	120	1,470	6	1%
Inspector General	1,134	5	1,379	6	245	1	0%

Table 1: Summary of Requested Increases of $102.7 Million by Activity

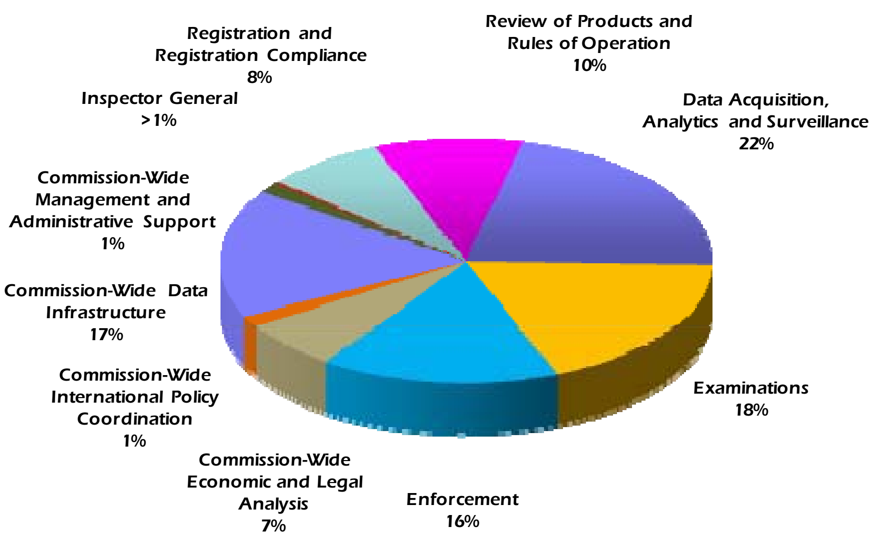

Figure 1: $102.7 Million Budget Increase by Activity