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Description of document: Correspondence from the Commodity Futures Trading Commission (CFTC) to Congressional Committees, CY 2012 – CY 2013

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Source of document: Freedom of Information Act Request  
FOIA Compliance Office  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581  
[Online FOIA Request Form](#)

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FOIA Office

## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW, Washington, DC 20581  
Telephone: (202) 418-5105  
Facsimile: (202) 418-5124  
[www.cftc.gov](http://www.cftc.gov)

July 11, 2013

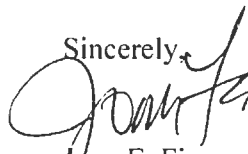
RE: 13-00085-FOIA

This is in response to your request dated April 19, 2013 under the Freedom of Information Act seeking access to correspondence from the CFTC to Congressional Committees from calendar year 2012 and 2013. In accordance with the FOIA and agency policy, we have searched our records, as of June 12, 2013, the date we received your request in our FOIA office.

We have located 23 pages of responsive records. You are granted full access to the responsive records, which are enclosed.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8<sup>th</sup> Floor, 1155 21st Street, N.W., Washington, D.C. 20581, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Linda J. Mauldin at 202-418-5497.

Sincerely,  
  
Joan E. Fina  
Counsel



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1165 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cfta.gov](http://www.cfta.gov)

LEB 6

Office of the  
General Counsel

March 16, 2012

Honorable Spencer Bachus  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

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OFFICE  
2012 MAR 23 11:49 AM  
OFFICE OF THE  
SECRETARY

Dear Chairman Bachus:

This letter is in further response to your December 13, 2011 request for documents concerning MF Global, as described in the November 28, 2011 letter from the Subcommittee on Oversight and Investigations of the House Committee on Financial Services and subsequent verbal request for documents related to John Corzine. In this response we are producing to the Committee certain responsive documents contained on the enclosed CD [CONGR-SOI-08356 – CONGR-SOI-34332].

A number of the documents contain information that ordinarily is exempt from public disclosure under the Freedom of Information Act ("FOIA"). The Commission has not made these documents or information publicly available, and we request that the Committee not publicly disclose such documents or portions thereof that contain information that is exempt from public disclosure under the FOIA as follows:

Exemption 3. Some responsive records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), pursuant to a statutory prohibition. Specifically, Section 8(a)(1) of the Commodity Exchange Act prohibits the release of data or information which would disclose business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person under the FOIA. 7 U.S.C. § 12(a)(1).

Exemption 4. Portions of the requested material that are marked "confidential and proprietary business information" ordinarily are exempt from disclosure under FOIA Exemption 4, which protects confidential commercial or financial information. 5 U.S.C. § 552(b)(4). See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

Exemption 6. Portions of some records contain personal identifying information that is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public interest in seeing personal identifying information. See

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Honorable Spencer Bachus

March 16, 2012

Page 2

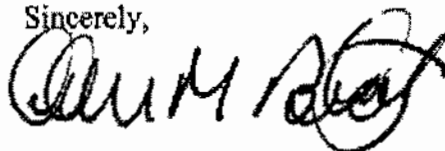
*Lakin Law Firm v. FTC*, 352 F.3d 1122 (7<sup>th</sup> Cir. 2003). To protect the privacy interests of the individuals concerned, we have redacted personal information such as home addresses from a number of the documents provided.

Exemption 7. Some records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission's law enforcement activities. See *Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978).

In addition, some of the documents responsive to your request have been withheld from the production on grounds that they were obtained from a foreign authority pursuant to one or more Memoranda of Understanding ("MOU"), which cover certain information exchanged by and among foreign regulators. The MOUs require the Commission, among other items, to notify the foreign authority prior to complying with a legally enforceable demand for information covered by the MOU. The MOU does not prevent the Commission from disclosing the documents, and we anticipate producing them after notification has been afforded. We have included a list of the documents withheld from the production on these grounds at this time.

Pursuant to previous discussions with Subcommittee staff, the Commission currently is further evaluating a small subset of documents deemed crucial to its investigation of MF Global. Pursuant to this process, we may decide to release additional documents early next week. To the extent such documents are not produced, we will prepare a log detailing the nature of these documents. In addition, next week we will provide: (a) a small number of redacted documents; (b) further written responses to the Committee's questions; and (c) a summary of our document production efforts and protocol to date. In the meantime, if you have any questions please do not hesitate to contact me.

Sincerely,



Dan M. Berkovitz  
General Counsel

Encl.



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5621  
[www.cftc.gov](http://www.cftc.gov)

LEG 6

**Office of the  
General Counsel**

April 19, 2012

The Honorable Tim Johnson, Chairman  
The Honorable Richard C. Shelby, Ranking Member  
Committee on Banking, Housing and Urban Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Shelby:

This letter is in response to your April 18, 2012 request for documents concerning MF Global that were provided (or are in the future provided) in response to the December 13, 2011 request of the House Financial Services Committee and subsequent verbal request for documents related to John Corzine. Enclosed is a CD containing all documents produced to date [CONGR-SOI-00001 - CONGR-SOI-351110].

The CD contains a folder with all of the responsive documents (pdf files), as well as a Master Excel Spreadsheet, sortable by date and custodian, with hyper-links to the corresponding documents. In addition to being sortable, the documents may also be filtered by, for example, timeframe and multiple custodians. Instructions for both unzipping the files, and also using the Excel spreadsheet are enclosed.

A number of these documents contain information that the Commission is prohibited from disclosing under section 8(a)(1) of the Commodity Exchange Act. These documents are also exempt from public disclosure under the Freedom of Information Act ("FOIA"). The Commission has not made these documents or information publicly available, and we request that the Committee not publicly disclose these and other documents or portions thereof that contain information that is exempt from public disclosure under the FOIA as follows:

Exemption 3. Some responsive records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), pursuant to a statutory prohibition. Specifically, Section 8(a)(1) of the Commodity Exchange Act prohibits the release of data or information which would disclose business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person. 7 U.S.C. § 12(a)(1).

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The Honorable Tim Johnson

April 19, 2012

Page 2


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As previously discussed with the House and Senate Committee staff, the Commission is continuing to further evaluate a subset of documents deemed crucial to its investigation of MF Global. Pursuant to this process, we may release additional documents within the near future. To the extent such documents are not produced, we will prepare a log detailing the nature of these documents. We will also provide a detailed summary of our production efforts at that time. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan M. Berkovitz", written over a circular stamp or seal.

Dan M. Berkovitz  
General Counsel

Encl.



LEG 6

**U.S. Commodity Futures Trading Commission**  
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Gary Gensler  
Chairman

(202) 418-3050

February 6, 2012

The Honorable Frank D. Lucas  
Chairman  
Committee on Agriculture  
U.S. House of Representatives  
Washington, DC

The Honorable Lamar Smith  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC

Office of the  
Secretariat

2012 FEB -6 PM 3:41

Received  
CFTC

Dear Chairman Lucas and Chairman Smith:

Thank you for your letter of October 24, 2011, regarding the civil enforcement practices and procedures of the Commodity Futures Trading Commission concerning the evaluation of cooperation by companies and "Wells Notices." Your recommendations are appreciated and will be kept under advisement as the agency reviews its procedures.

The Commission has longstanding guidance that is closely related to the practices you mention that the Securities and Exchange Commission employs with respect to the evaluation of cooperation by companies and Wells Notices.

In November 1994, the Commission published a Policy Statement that provides as guidelines a list of factors that have influenced the Commission in its civil monetary penalty assessments. In that Policy Statement, the Commission made it known that, among other factors, it may give credit for cooperative conduct by respondents and defendants when determining the appropriate level of sanctions to impose. Subsequently, public advisories have identified and discussed cooperation factors that the Division of Enforcement (DOE) may take into account when recommending to the Commission enforcement sanctions for violations of the Commodity Exchange Act (CEA). In addition, these advisories provided additional clarification to encourage cooperation from parties in enforcement discussions without eroding the protections of attorney-

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client or work product privileges. These public advisories also refer to the Commission's 1994 Policy Statement.

On May 26, 1987, the Commission published in the Federal Register its Informal Procedure Relating to the Recommendation of Enforcement Proceedings, which is known as the "Wells Process." The Federal Register release informed the public that DOE will review written information submitted by persons who may be named in proposed enforcement proceedings. DOE staff provides a summary of the Commission's Wells Process to each person who is subpoenaed to testify or produce documents or who testifies voluntarily, as well as to registrants directed to supply information pursuant to section 4g of the CEA. The Commission's Wells Process makes information available to assist in the DOE's determination whether to recommend an enforcement proceeding and in the Commission's determination whether and in what manner to commence an enforcement proceeding. DOE has internal guidance for DOE staff regarding the Wells Process including how and when to exercise discretion to provide Wells notices.

Thank you for your interest in the Commission's enforcement program and your suggestions for improving its procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Gensler", with a horizontal line drawn underneath the name.

Gary Gensler  
Chairman



Received  
CFTC

2012 MAY 15 AM 11:30

Office of the  
Secretariat



**U.S. Commodity Futures Trading Commission**  
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Gary Gensler  
Chairman

(202) 418-5050

May 14, 2012

LEG 6

The Honorable Tim Johnson, Chairman  
Committee on Banking, Housing, and  
Urban Affairs  
U.S. Senate  
Washington, D. C.

Dear Mr. Chairman:

Thank you for the opportunity to inform you regarding the regulatory approach of the Commodity Futures Trading Commission (CFTC) in implementation of derivatives markets reforms.

In 2008, the financial system and the financial regulatory system failed the American public. Swaps – developed to help manage and lower risk for commercial companies – also concentrated and heightened risk in financial institutions. In response, Congress and the President came together and passed the historic Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Title VII of the Act amended the Commodity Exchange Act (CEA) to establish a comprehensive new regulatory framework for the previously unregulated swaps market. The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system. It does so by providing for the registration and comprehensive regulation of swap dealers and major swap participants; imposing clearing and trade execution requirements for standardized swaps; creating robust recordkeeping and real-time reporting regimes; and enhancing the Commission's rulemaking and enforcement authorities.

To date, the CFTC has completed 32 reforms to bring oversight to the swaps market. The Commission is on track to complete the approximately 20 remaining reforms this year.

The Commission will continue looking at appropriate timing for compliance, balancing the direction to protect the public with providing adequate time for market participants to comply with new requirements. For instance, in the Commission's finalized rules, registered clearinghouses will have up to a year to come into compliance with certain provisions.

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Two principles have guided the Commission throughout the rule-writing process. First is the statute itself. Second, we are consulting closely with other regulators and taking input from the public. We are working very closely with the Securities and Exchange Commission, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and other prudential regulators, which includes sharing many of our memos, term sheets and draft work product. CFTC staff and Commissioners have had substantial consultation with other regulators on implementation of the Dodd-Frank Act.

In addition to working with our domestic counterparts, we have reached out to and are actively consulting with international regulators to harmonize our approach to swaps oversight. We also share many of our memos, term sheets and draft work product with international regulators. Our discussions have focused on clearing and trading requirements, clearinghouses more generally and swaps data reporting issues, among many other topics.

In order to implement the Dodd-Frank Act, the CFTC established 30 rulemaking teams at the time of enactment. Several additional rulemaking teams have been established as further needs have been identified. The Commission sought to ensure ample opportunities for the public to inform the Commission on rulemakings -- even before official public comment periods commenced. For each rulemaking team, a web page was established that allowed for initial input from interested members of the public. Commission staff have also held 16 public roundtables -- often jointly with fellow regulators -- to hear ideas from the public either prior to or during official comment periods.

Throughout the rulemaking process CFTC Commissioners and staff have held over 1,600 meetings with the public and have received nearly 30,000 comments. This Commission's rulemaking process has greatly benefitted from this public input.

As the Commission was approaching the completion of the proposal phase of rulemaking and turning towards final rules, a detailed ordering of such rules for consideration was posted on the Commission's website in order to give guidance to the public. In May 2011, the Commission reopened many of its comment periods that had closed and extended some existing comment periods so that the public could comment in the context of the entire mosaic of proposed rules. This opportunity was available with respect to all relevant proposed rules, giving the public and market participants the opportunity to comment on compliance costs and to make recommendations regarding the schedule of implementation. That extended comment period closed on June 3, 2011. In addition, in May 2011, CFTC and SEC staff held roundtable sessions to obtain views of the public with regard to implementation dates of the various rulemakings. Prior to the roundtable, CFTC staff released a document that set forth concepts that the Commission may consider with regard to the effective dates of final rules for swaps under the Dodd-Frank Act. The Commission also received written comments from the public regarding the consideration of final rules and appropriate phasing of implementation. A CFTC Staff Concepts and Questions document was published for the public to provide additional feedback over a 60-day comment period.

On September 8, 2011, the Commission sought public comment on proposed rules specifically to establish schedules to phase in compliance requirements for the swap clearing and

trade execution requirement provisions of the Dodd-Frank Act. At that meeting, the Commission also approved a proposed rule to phase in compliance with previously proposed requirements, including the swap trading relationship documentation requirement and the margin requirements for uncleared swaps. The proposal is designed to provide greater clarity to swap dealers and major swap participants regarding the timeframe for bringing their swap transactions into compliance with new documentation and margining rules.

Since Section 15(a) was added to the Commodity Exchange Act in 2000, the CFTC has been required to consider the costs and benefits related to any rulemaking in light of: protection of market participants and the public; the efficiency, competitiveness and financial integrity of the markets; price discovery; sound risk management practices; and the public interest.

The CFTC's application of these statutory requirements is informed by its experience overseeing financial markets and examining the operations of exchanges, clearinghouses and financial intermediaries. These considerations of costs and benefits are presented not only in the cost-benefit section of each Dodd-Frank rulemaking release, but throughout other portions of the rule as well. Each proposed rule release specifically sought public comments with regard to the consideration of costs and benefits.

Through meetings with market participants and the public and through the receipt of public comments, the Commission obtained the views of informed parties to improve its understanding of costs and benefits of the CFTC's rulemakings. This has allowed us to mitigate compliance costs, to the extent consistent with the obligation of the CFTC to promote market integrity, reduce risk and increase transparency as directed by Congress in the Dodd-Frank Act.

On June 30, 2011, the CFTC published in the *Federal Register* its Plan for Retrospective Review of Agency Regulations. In undertaking the effort to conform existing rules to the changes required by the Dodd-Frank Act, the Commission had subjected many of its pre-existing rules to scrutiny. The Commission has reviewed and revised regulations interpreting and applying the Core Principles of Derivatives Clearing Organizations. The Commission has also reviewed, sought comment on, and issued new regulations clarifying its anti-manipulation authority while implementing new authorities provided under the Dodd-Frank Act. The Commission also modified substantially its position limits regime in the implementation of new Dodd-Frank Act requirements. The Commission has revised its regulations related to the investment of segregated customer funds, as well.

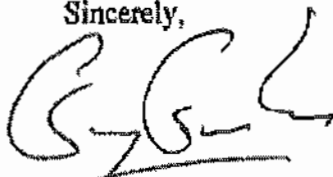
The Commission has also finalized rules updating the application of core principles for Designated Contract Markets, which is consistent with the core principles-based regime of the Commodity Exchange Act. In addition, the CFTC has proposed conforming rules that – when finalized and with the benefit of public comment – will help ensure that the Commission's pre-existing rules are broadly consistent with the rules implementing the Dodd-Frank Act.

Once the Commission has largely completed the Dodd-Frank rules, the CFTC intends to begin the process of the periodic retrospective review of the remainder of its regulations.

Enclosed with this letter is a list summarizing the status of the Dodd-Frank Act rulemaking process at the CFTC.

Thank you for the opportunity to address these matters and for your support of the work of the CFTC.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Gensler', written over a horizontal line.

Gary Gensler  
Chairman

## CFTC Dodd-Frank Update

### Final Rules & Guidance

- Agricultural Commodity Definition
- Agricultural Swaps
- Anti-Manipulation
- Business Affiliate Marketing and Disposal of Consumer Information
- Client Clearing Documentation, Straight Through Processing, Clearing Member Risk Management
- Commodity Options
- Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations
- Derivatives Clearing Organization - General Provisions and Core Principles
- Designated Contract Markets – Core Principles
- External Business Conduct Standards
- Foreign Boards of Trade - Registration
- Internal Business Conduct Standards (Risk Management, Recordkeeping, & CCOs)
- Investment Advisor Reporting on Form PF (Jt. with SEC)
- Investment of Customer Funds (Regulation 1.25)
- Large Trader Reporting for Physical Commodity Swaps
- Position Limits for Futures and Swaps
- Privacy of Consumer Financial Information
- Process for Review of Swaps for Mandatory Clearing
- Process for Rule Certifications for Registered Entities (Part 40)
- Real-Time Reporting for Swaps
- Removal of References to or Reliance on Credit Ratings
- Reporting Certain Post-Enactment Swap Transactions (IFR)
- Reporting Pre-Enactment Swap Transactions (IFR)
- Retail Commodity Transactions – Interpretive Guidance on “Actual Delivery”
- Retail Foreign Exchange Intermediaries – Regulations & Registration
- Retail Foreign Exchange Transactions – Conforming Amendments
- Segregation for Cleared Swaps
- Swap Data Recordkeeping and Reporting Requirements
- Swap Data Repositories – Core Principles, Duties & Registration
- Swap Dealers and Major Swap Participants - Registration
- Swap Dealers, Major Swap Participants, and Eligible Contract Participants - Further Definitions (Jt. with SEC)
- Whistleblowers

### Proposed Rules & Guidance

- Block Rule
- Capital for Swap Dealers & Major Swap Participants

- Conforming Rules
- DCMs – Core Principle 9
- Disruptive Trade Practices
- End-User Exception
- Exemptive Order – Effective Date for Swaps Regulation
- Governance and Conflict of Interest (DCM, DCO, & SEF)
- Harmonization of CPO/CTA Reporting
- Identify Theft (Jt. with SEC)
- Implementation Phasing for Clearing & Trading Mandates
- Internal Business Conduct (Documentation, Confirmation, & Portfolio Reconciliation)
- Margin for Uncleared Swaps
- Process for “Made Available to Trade” Determinations
- Product Further Definitions (Jt. with SEC)
- Reporting of Historical Swaps
- Segregation for Uncleared Swaps
- Swap Data Repository Indemnification Interpretation
- Swap Execution Facilities – Core Principles & Registration
- Systemically Important Clearing Organizations – Additional Provisions
- Volcker Rule

### **Yet to be Proposed Rules & Guidance**

- Cross-Border Application
- Inter-Affiliate Clearing
- Qualified Financial Contract Recordkeeping (Jt. With Prudential Regulators and SEC)
- Stress Testing under Section 165

### **Final Orders**

- Delegation to National Futures Association (NFA) – Certain exemptions for Commodity Pool Operators
- Delegation to NFA - Foreign Exchange Intermediary Registration function
- Delegation to NFA - Swap Dealer & MSP Registration function
- Exemptive orders -- Effective Date for Swaps Regulation
- Treatment of Grandfather Relief Petitions - Exempt Boards of Trade & Exempt Commercial Markets
- Treatment of Grandfather Relief Petitions – Transactions done in Reliance on 2(h)

### **Studies & Reports**

- Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives (Jt. with SEC)
- International Swap Regulation (Jt. with SEC)
- Risk Management Supervision of Designated Clearing Entities (Jt. With Board of Governors of the Federal Reserve System and the SEC)
- Study on Oversight of Carbon Markets (Jt. with various other Agencies)



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LEG 6

Office of the  
General Counsel

June 11, 2012

Honorable Spencer Bachus  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Office of the  
Secretary

2012 JUN 12 AM 10:14

Received  
CFTC

Dear Chairman Bachus:

This letter is a final response to your December 13, 2011 request for documents concerning MF Global, as described in the November 28, 2011 letter from the Subcommittee on Oversight and Investigations of the House Committee on Financial Services and subsequent verbal request for documents related to Mr. John Corzine. In this response we are producing (a) additionally responsive documents identified in connection with an internal audit that we conducted of all search and review efforts to date pursuant to the Committee's December 13, 2011 request; and (b) documents previously under evaluation because of their relation to the Commission's investigation of MF Global. The documents are contained on the enclosed CD [CONGR-SOI-35111-44384].

Consistent with prior productions, the CD contains a folder with all of the responsive documents (pdf files), as well as a Master Excel Spreadsheet, sortable by date and custodian, with hyper-links to the corresponding documents produced to date. In addition to being sortable, you can also filter the documents by, for example, timeframe and multiple custodians. I have enclosed instructions for both unzipping the files and also using the Excel spreadsheet.

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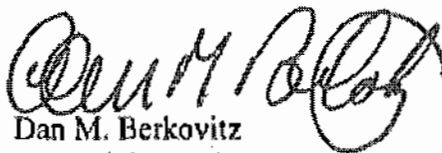
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As previously discussed with Subcommittee staff, the Commission has withheld from production thirty-six documents deemed crucial to its investigation of MF Global. We have enclosed a privilege log detailing the nature of these documents.

This response concludes our production efforts and fully satisfies your December 13, 2011 request. If you have any questions please do not hesitate to contact me.

Sincerely,



Dan M. Berkovitz  
General Counsel

Encl.





U.S. COMMODITY FUTURES TRADING COMMISSION

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www.cftc.gov

LEGB

Office of the  
General Counsel

June 11, 2012

Honorable Tim Johnson  
Chairman  
Committee on Banking, Housing, and Urban Affairs  
U.S. Senate  
Washington, DC 20510-6075

2012 JUN 12 AM 10:14  
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Secretariat

Received  
CFTC

Dear Chairman Johnson:

This letter is a final response to your April 18, 2012 request for documents concerning MF Global, as described in the November 28, 2011 letter from the Subcommittee on Oversight and Investigations of the House Committee on Financial Services and subsequent verbal request for documents related to Mr. John Corzine. In this response we are producing (a) additionally responsive documents identified in connection with an internal audit that we conducted of all search and review efforts to date pursuant to the House Committee's December 13, 2011 request; and (b) documents previously under evaluation because of their relation to the Commission's investigation of MF Global. The documents are contained on the enclosed CD [CONGR-SOI-35111-44384].

Consistent with prior productions, the CD contains a folder with all of the responsive documents (pdf files), as well as a Master Excel Spreadsheet, sortable by date and custodian, with hyper-links to the corresponding documents produced to date. In addition to being sortable, you can also filter the documents by, for example, timeframe and multiple custodians. I have enclosed instructions for both unzipping the files and also using the Excel spreadsheet.

As previously stated, a number of these documents contain information that ordinarily is exempt from public disclosure under the Freedom of Information Act ("FOIA"). The Commission has not made these documents or information publicly available, and we request that the Committee not publicly disclose such documents or portions thereof that contain information that is exempt from public disclosure under the FOIA as follows:

Exemption 3. Some responsive records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), pursuant to a statutory prohibition. Specifically, Section 8(a)(1) of the Commodity Exchange Act prohibits the release of data or information which would disclose business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person under the FOIA. 7 U.S.C. § 12(a)(1).

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Exemption 4. Portions of the requested material that are marked "confidential and proprietary business information" ordinarily are exempt from disclosure under FOIA Exemption 4, which protects confidential commercial or financial information. 5 U.S.C. §552(b)(4). See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

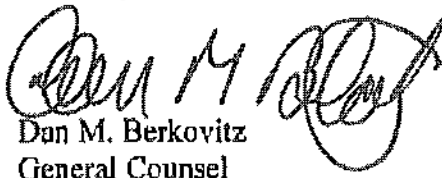
Exemption 6. Portions of some records contain personal identifying information that is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public interest in seeing personal identifying information. See *Lakin Law Firm v. FTC*, 352 F.3d 1122 (7<sup>th</sup> Cir. 2003). To protect the privacy interests of the individuals concerned, we have redacted personal information such as personal cell phone and home telephone numbers from a number of the documents provided.

Exemption 7. Some records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission's law enforcement activities. See *Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978).

As previously discussed with Committee staff, the Commission has withheld from production thirty-six documents deemed crucial to its investigation of MF Global. We have enclosed a privilege log detailing the nature of these documents.

This response concludes our production efforts and fully satisfies your April 18, 2012 request. If you have any questions please do not hesitate to contact me.

Sincerely,

  
Dan M. Berkovitz  
General Counsel

Encl.



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20561  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
www.cftc.gov

LEB 6

Office of the  
General Counsel

July 18, 2012

Honorable Randy Neugebauer  
Chairman  
Subcommittee on Oversight and Investigations  
House Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Neugebauer:

This letter is in response to your supplemental request for documents concerning Chairman Gensler's recusal from work conducted by the Commodity Futures Trading Commission relating to MF Global, as described in the June 6, 2012 letter from the Subcommittee on Oversight and Investigations of the House Committee on Financial Services. In addition, your staff has asked for: (1) information regarding the creation of the document dated March 2012 that discusses the chairman's relationships and contacts that led to the non-participation; (2) the final version of the "Order Designating Officers to Issue Subpoenas and to Take Testimony in a Private Investigation"; and (3) the final version of the seriatim electing Commissioner Sommers as Senior commissioner and the accompanying staff memorandum.

The draft documents dated in March 2012, were prepared initially using a standard Microsoft Word template, which automatically populates the date field on the date a document is opened. When these documents were processed in response to the Subcommittee's previous document request, the date of the document was automatically revised to reflect the date of processing. As a result, the previous production contains a subset of records that are dated in March 2012, although the documents were in fact created at an earlier date. The final signed version was previously produced as document CONGR-SO12- 01323.

Additionally, with respect to a number of draft documents that were responsive to the previous request, the processing software converted the native files to images and did not capture the red-line versions. After discovering this issue, we have reconfigured the software and are producing the original red-line versions of the documents. We have also configured the software so that the date on the document reflects the last date the document was modified. Finally, the software contained a bug that caused the time stamp on a small subset of documents (primarily email) to be off by one hour. This occurred following the change to day-light savings time. At this time, it is not feasible to identify and correct the time stamp on those records.

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Secretary

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Honorable Randy Neugebauer

July 18, 2012

Page 2

The final versions of the documents in the specifications 2 and 3 (the Seriatim and accompanying memo and the Order) are contained on the enclosed CD [CONGR-SO12-01338-01766].

Consistent with prior productions, the CD contains a folder with all of the responsive documents (pdf files), as well as a Master Excel Spreadsheet that provides a cross reference between the records produced today and the version originally produced. We have enclosed instructions for both unzipping the files and also using the Excel spreadsheet.

A number of these documents contain information that ordinarily is exempt from public disclosure under the Freedom of Information Act ("FOIA"). The Commission has not made these documents or information publicly available, and we request that the Committee not publicly disclose such documents or portions thereof that contain information that is exempt from public disclosure under the FOIA as follows:

Exemption 5. Some records are intra-agency documents that contain staff analyses, opinions, and recommendations. Those portions are pre-decisional deliberations and are an integral part of the agency's decision-making process. Accordingly, they are exempt from the FOIA's disclosure requirements under FOIA Exemption 5, 5 U.S.C. §552(b)(5). See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Additionally, some of the records are exempt from disclosure because they are attorney-client privileged communications. See *Upjohn Co. v United States*, 499 U.S. 383 (1981).

This fully responds to your supplemental request for documents. If you have any questions please do not hesitate to contact me.

Sincerely,



Dan M. Berkovitz  
General Counsel

Encl.



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
www.cftc.gov

LEG 6

Office of the  
General Counsel

June 18, 2012

Honorable Randy Neugebauer  
Chairman  
Subcommittee on Oversight and Investigations  
House Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Office of the  
Secretary

2012 JUN 19 AM 10:27

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CFTC

Dear Chairman Neugebauer:

This letter is in response to your request for documents concerning Chairman Gensler's recusal from work conducted by the Commodity Futures Trading Commission relating to MF Global, as described in the June 6, 2012 letter from the Subcommittee on Oversight and Investigations of the House Committee on Financial Services. In this response we are producing all responsive documents. The documents are contained on the enclosed CD [CONGR-SOI2-00001-01337].

Consistent with prior productions, the CD contains a folder with all of the responsive documents (pdf files), as well as a Master Excel Spreadsheet, sortable by date and custodian, with hyper-links to the corresponding documents produced to date. In addition to being sortable, you can also filter the documents by, for example, timeframe and multiple custodians. I have enclosed instructions for both unzipping the files and also using the Excel spreadsheet.

A number of these documents contain information that ordinarily is exempt from public disclosure under the Freedom of Information Act ("FOIA"). The Commission has not made these documents or information publicly available, and we request that the Committee not publicly disclose such documents or portions thereof that contain information that is exempt from public disclosure under the FOIA as follows:

Exemption 6. Portions of some records contain personal identifying information that is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public interest in seeing personal identifying information. See *Lakin Law Firm v. FTC*, 352 F.3d 1122 (7<sup>th</sup> Cir. 2003). To protect the privacy interests of the individuals concerned, we have redacted personal information such as personal cell phone and home telephone numbers from a number of the documents provided.

Exemption 5. Some records are intra-agency documents that contain staff analyses, opinions, and recommendations. Those portions are pre-decisional deliberations and are an integral part of the agency's decision-making process. Accordingly, they are exempt from the

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Honorable Randy Neugebauer

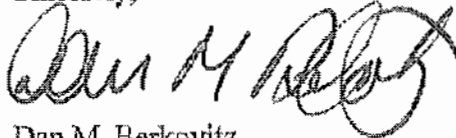
June 18, 2012

Page 2

FOIA's disclosure requirements under FOIA Exemption 5, 5 U.S.C. §552(b)(5). See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Additionally, some of the records are exempt from disclosure because they are attorney-client privileged communications. See *Upjohn Co. v United States*, 499 U.S. 383 (1981).

This production includes numerous draft documents. These documents were prepared using a standard Microsoft Word template, which automatically populates the date field on the date a document is opened. As a result, the production contains a subset of records that are dated in March 2012, that were created at an earlier date. The final version of the document is signed and saved in .pdf format. This response concludes our production efforts and fully satisfies your June 6, 2012 request. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan M. Berkovitz". The signature is stylized and cursive, with the first name "Dan" being the most prominent.

Dan M. Berkovitz  
General Counsel

Encl.

LFL 6



**U.S. Commodity Futures Trading Commission**  
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Gary Gensler  
Chairman

(202) 418-5050  
(202) 418-5533 Facsimile

January 18, 2013

The Honorable Richard Durbin  
Chairman  
Subcommittee on Financial Services  
and General Government  
Committee on Appropriations  
U.S. Senate  
Washington, D. C.

The Honorable Robert Aderholt  
Chairman  
Subcommittee on Agriculture, Rural  
Development, Food and Drug  
Administration, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D. C.

The Honorable Jerry Moran  
Ranking Member  
Subcommittee on Financial Services  
and General Government  
Committee on Appropriations  
U.S. Senate  
Washington, D. C.

The Honorable Sam Farr  
Ranking Member  
Subcommittee on Agriculture, Rural  
Development, Food and Drug  
Administration, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D. C.

Dear Chairman Durbin, Senator Moran, Chairman Aderholt and Representative Farr:

I am writing to notify you of a reprogramming and transfer of funds appropriated to the Commodity Futures Trading Commission (CFTC) under the Continuing Resolution (CR) (P.L. 112-175) for FY 2013.

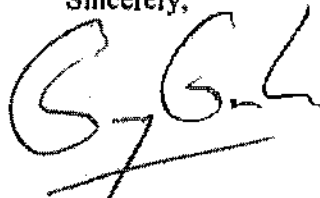
For FY 2012, Congress appropriated \$205.3 million for the agency, including \$55.0 million for technology investments. In order to continue the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act), in FY 2012 the agency transferred \$10.0 million from the Information Technology account to the Salaries and Expenses account using the transfer authority provided in section 744 of the Consolidated Appropriations Act of 2012 (P.L. 112-74). I appreciate the appropriations transfer authority that was granted to the CFTC last fiscal year and am using that authority again this fiscal year.

The CFTC now has a significantly expanded mission and scope. The CFTC's hardworking staff of 703 (on-board staff at the beginning of fiscal year 2013) is just 10 percent more than what we had in the 1990s though the futures market, which the agency has traditionally overseen, has grown fivefold. In addition, the CFTC now directly oversees the vast swaps market. Although the CFTC is taking all necessary action to reduce or defer non-personnel-related administrative expenses, the transfer of funds from Information Technology to Salaries and Expenses is required to avoid the furlough of employees.

Consistent with the provisions of section 744 of the Consolidated Appropriations Act of 2012 (P.L. 112-74) and section 730 of the Consolidated and Further Continuing Appropriations Act of 2012 (P.L. 112-55), I am notifying you of our intention to reprogram and transfer \$4.877 million from the Information Technology account to the Salaries and Expenses account to sustain current on-board staff and related expenses. This represents a proportionate six-month share of the \$10 million authorized for transfer under section 744 of the Consolidated Appropriations Act of 2012 (P.L. 112-74). The transferred funds will be used to ensure that the CFTC has adequate resources for personnel and other non-discretionary expenses in balance with sustaining our ongoing technology investments.

If you have any questions regarding this matter, I would be pleased to discuss them with you.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Gensler", with a horizontal line drawn across the bottom of the signature.

Gary Gensler  
Chairman





LEG 6

**U.S. Commodity Futures Trading Commission**  
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Gary Gensler  
Chairman

(202) 418-5050  
(202) 418-5533 Facsimile

April 15, 2013

The Honorable Frank Lautenberg  
Chairman  
Subcommittee on Financial Services  
and General Government  
Committee on Appropriations  
U.S. Senate  
Washington, D. C.

The Honorable Robert Aderholt  
Chairman  
Subcommittee on Agriculture, Rural  
Development, Food and Drug  
Administration, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D. C.

The Honorable Mike Johanns  
Ranking Member  
Subcommittee on Financial Services  
and General Government  
Committee on Appropriations  
U.S. Senate  
Washington, D. C.

The Honorable Sam Farr  
Ranking Member  
Subcommittee on Agriculture, Rural  
Development, Food and Drug  
Administration, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D. C.

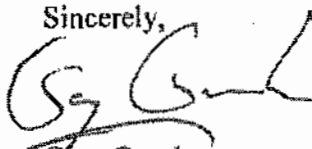
Dear Chairman Lautenberg, Senator Johanns, Chairman Aderholt and Representative Farr:

Consistent with section 730 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Act), I am writing to notify you of a reprogramming of fiscal year 2012 funds appropriated to the Commodity Futures Trading Commission (CFTC).

In FY2012, the Commission eliminated the positions of two administrative law judges (ALJs) and their associated support staff and terminated one of the ALJs through a reduction-in-force (RIF), which resulted in an estimated savings of \$755,109. It is our intention to reprogram these savings to the Division of Enforcement in order to facilitate the Division's work to protect market participants and other members of the public from fraud, manipulation and other abusive practices in the commodities, futures and swaps markets.

If you have any questions regarding this matter, I would be pleased to discuss them with you.

Sincerely,



Gary Gensler  
Chairman