Description of document:	Commodity Futures Trading Commission (CFTC) Transition Document 2016-2017 Prepared for Change in Administration
Requested date:	December 2016
Release date:	2017
Posted date:	20-July-2020
Note:	No release letter provided
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 CTFC FOIA Online Request Form

Transition 2016-2017

U.S. Commodity Futures Trading Commission

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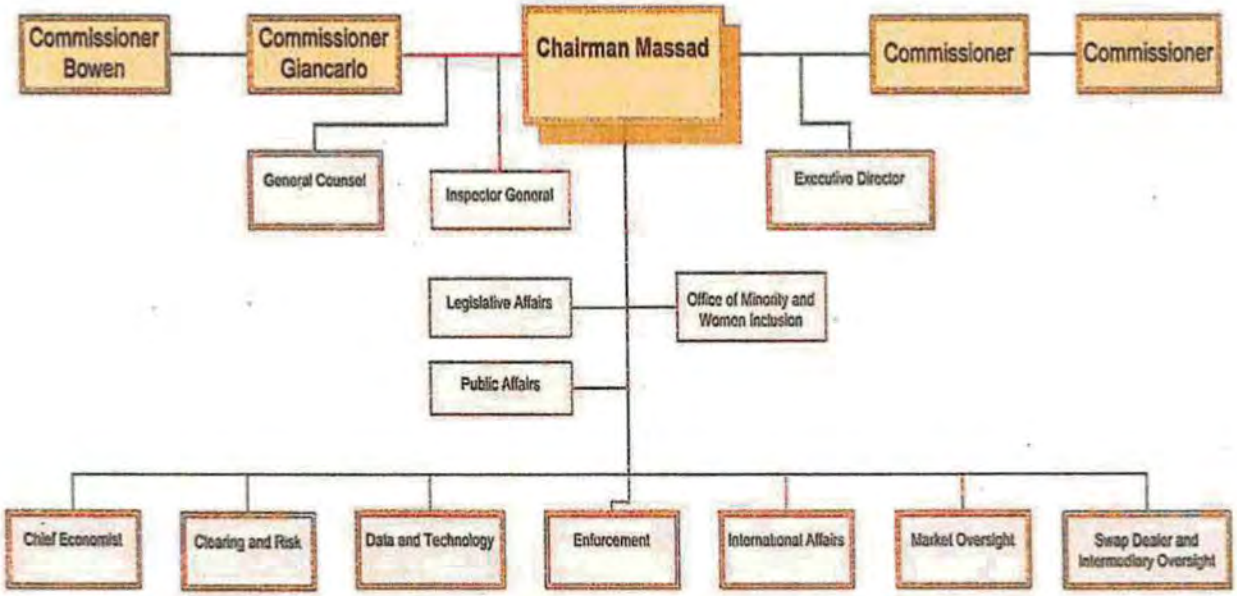

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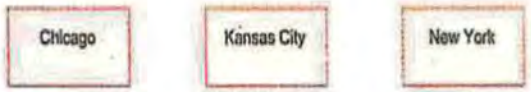

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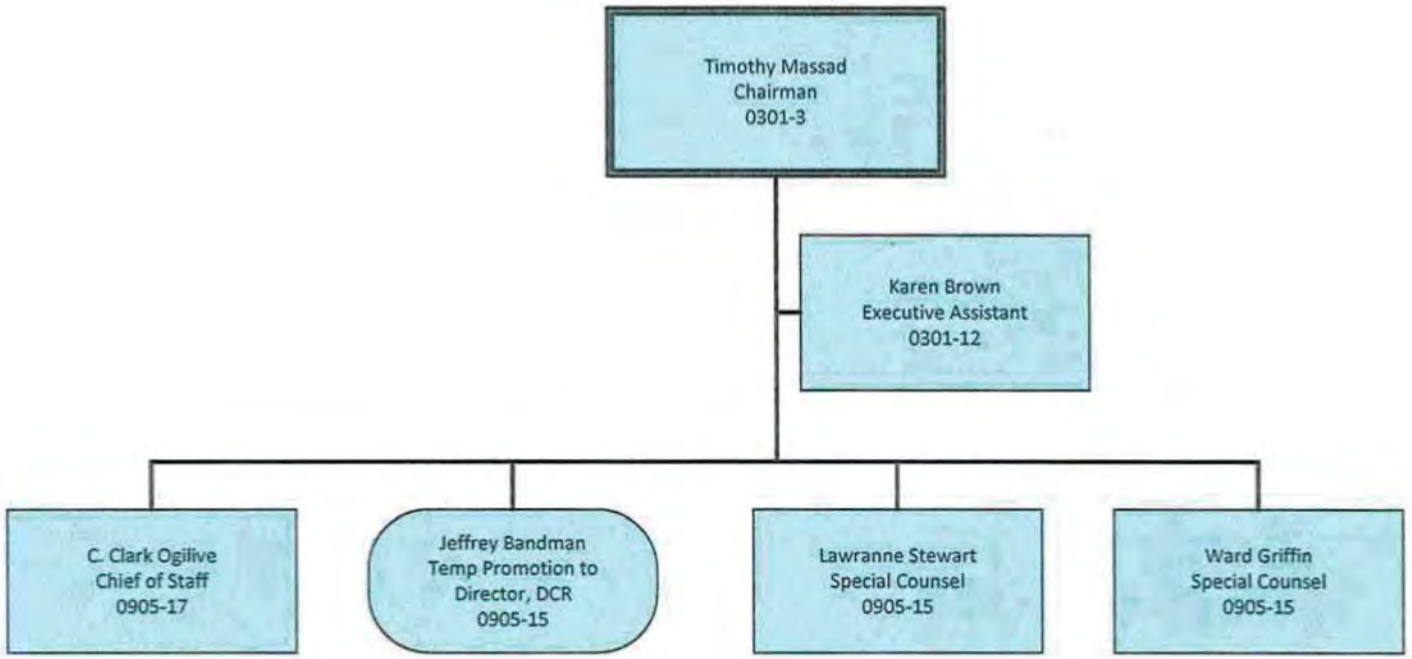

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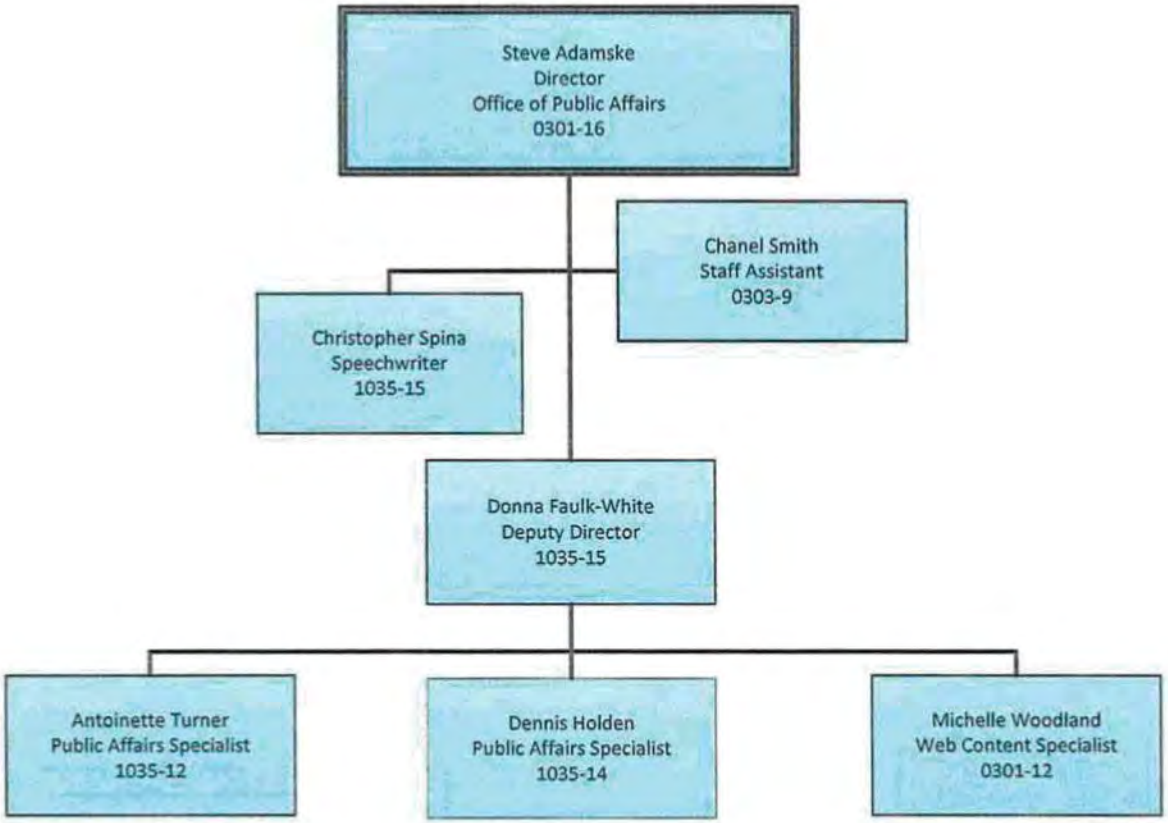

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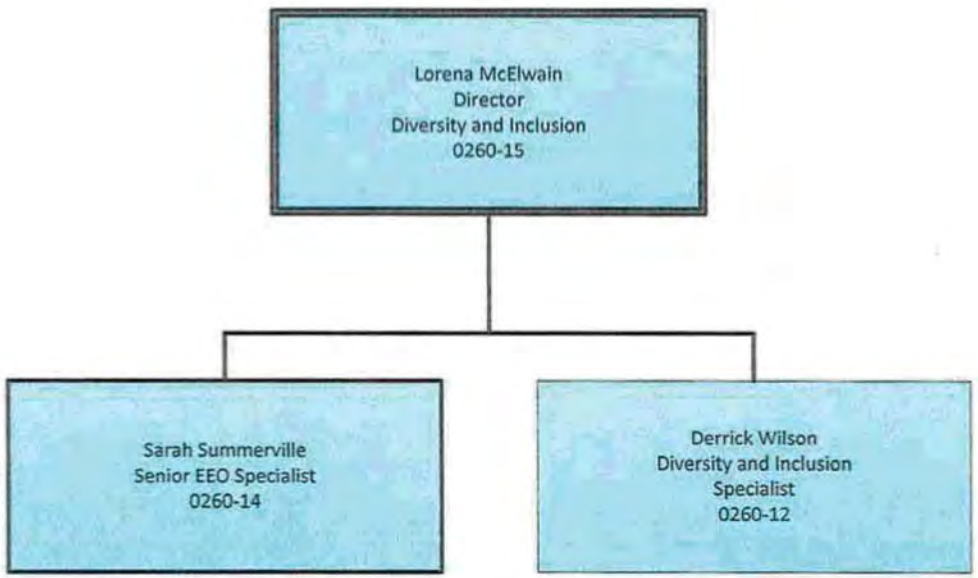

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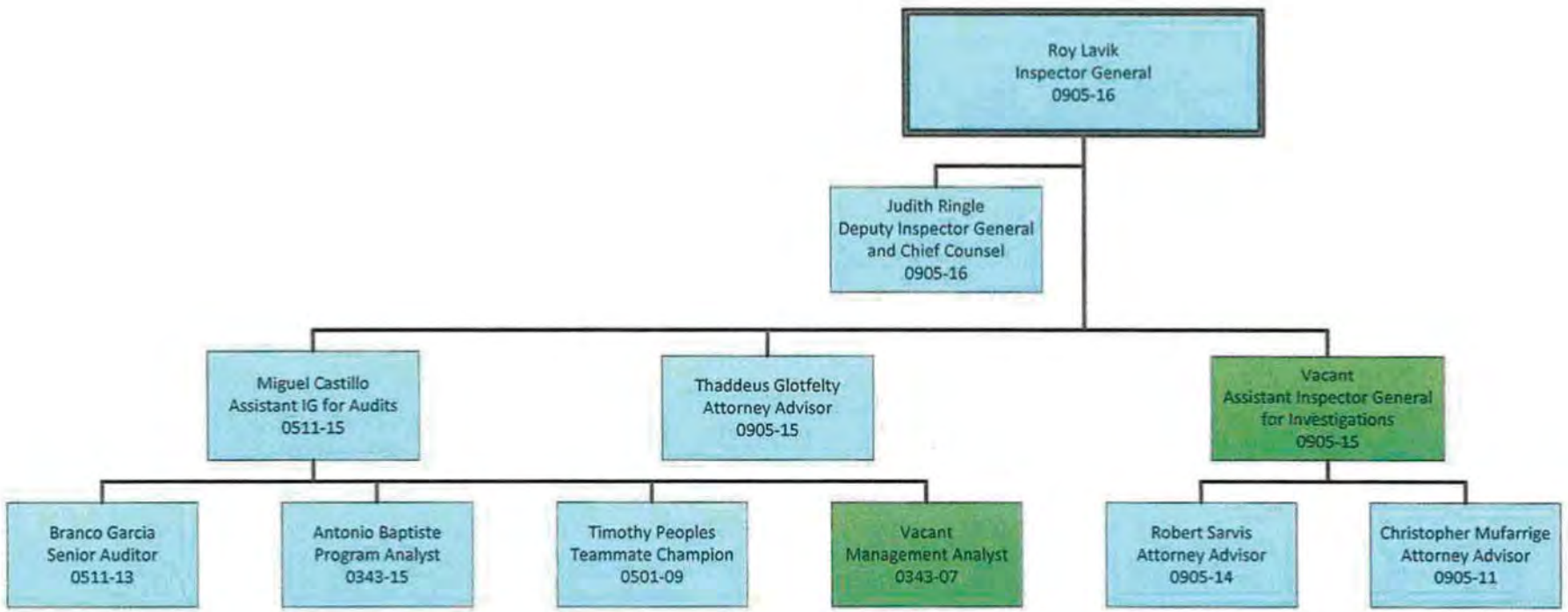
Office of the Inspector General

9 Employees



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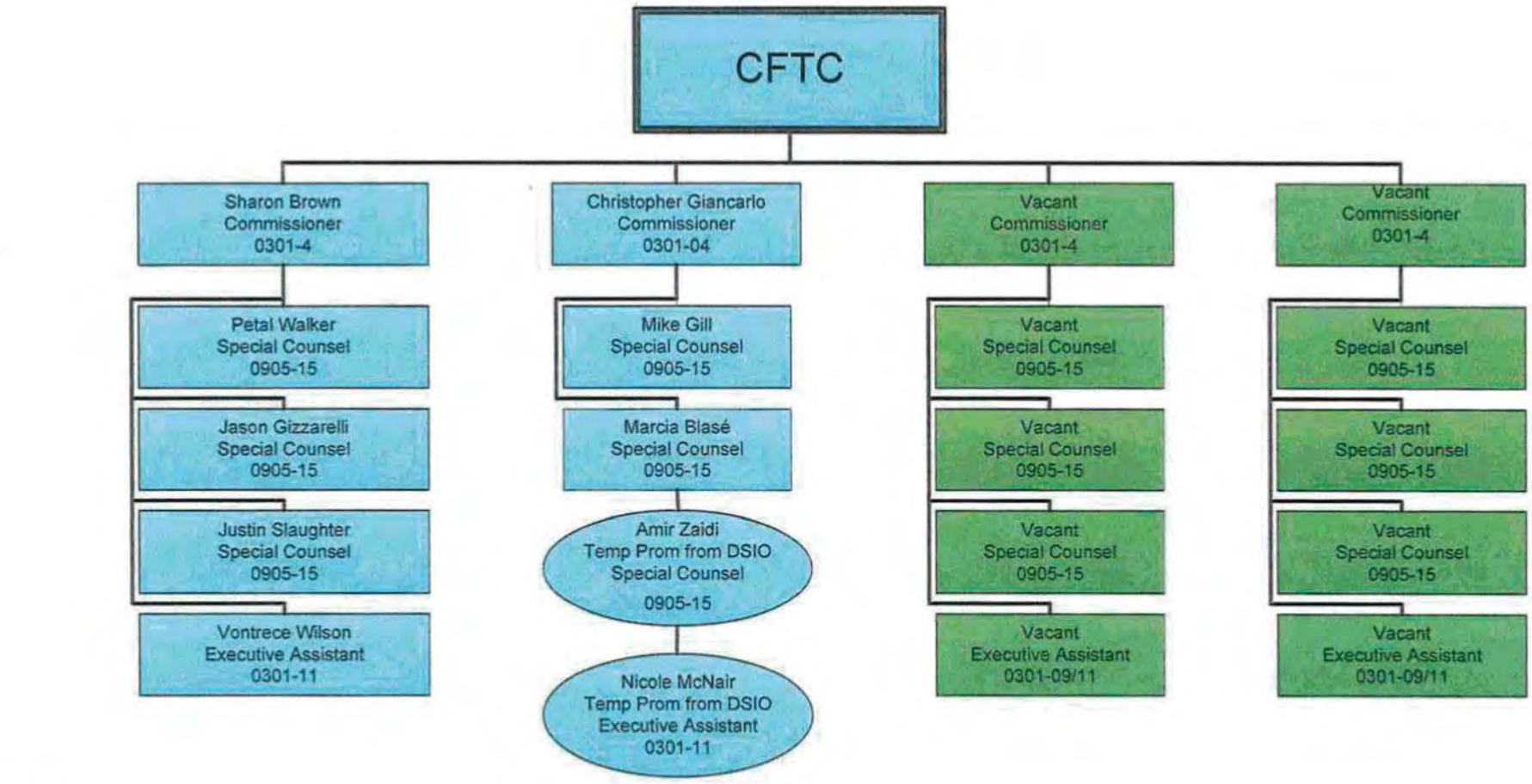

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Employee Detail to

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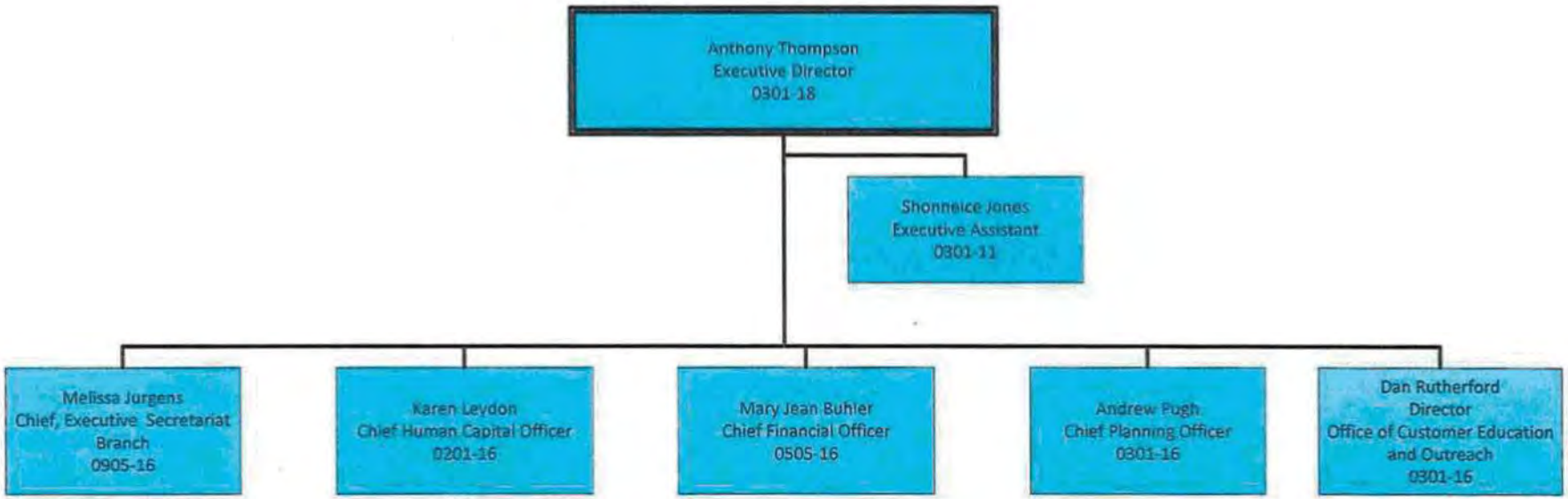
Office of the Executive Director

83 Employees



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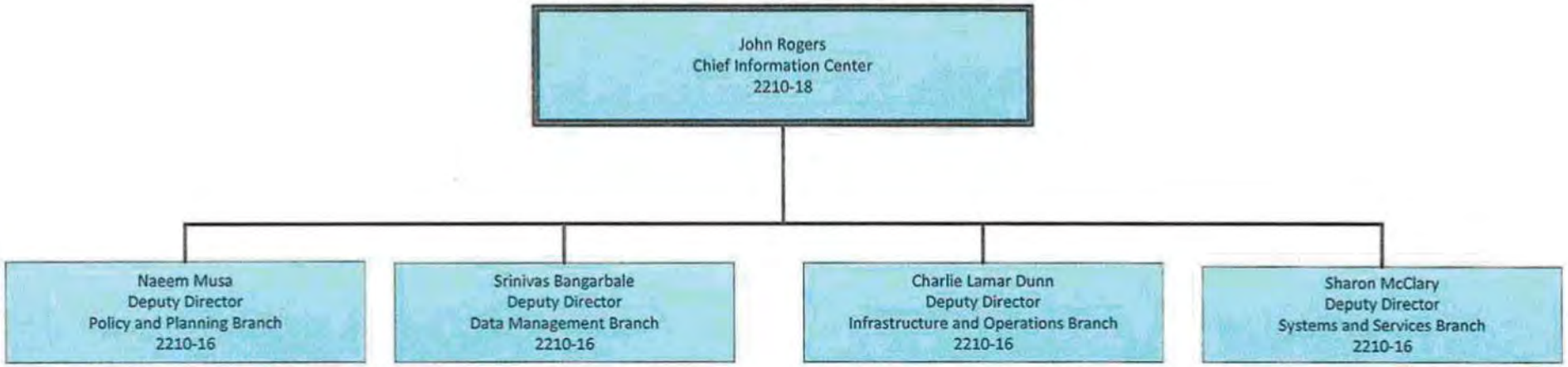
92 Employees



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Current Employee

Vacancy

Authorized Hire

Employee Detail to

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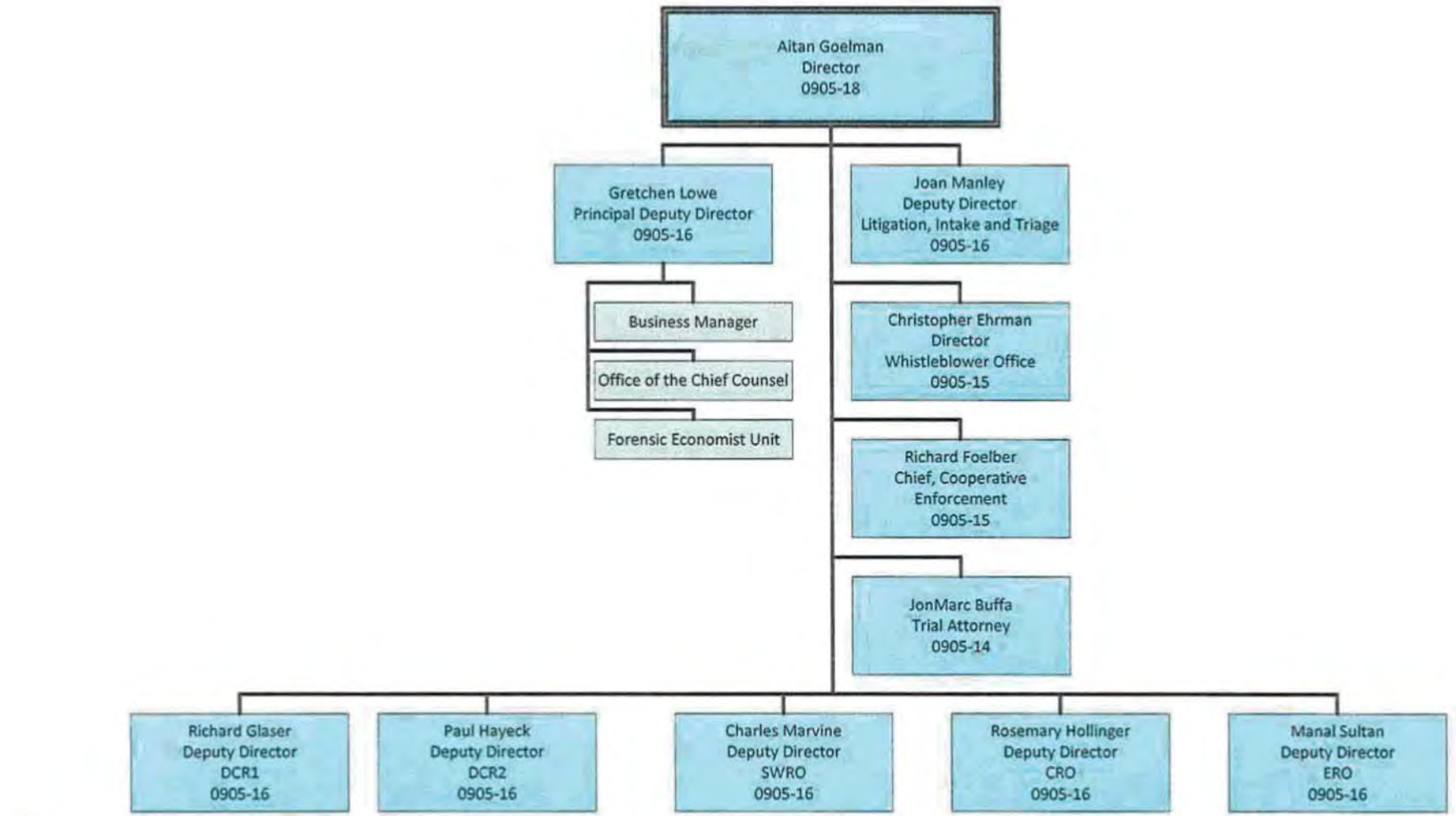
166 Employees



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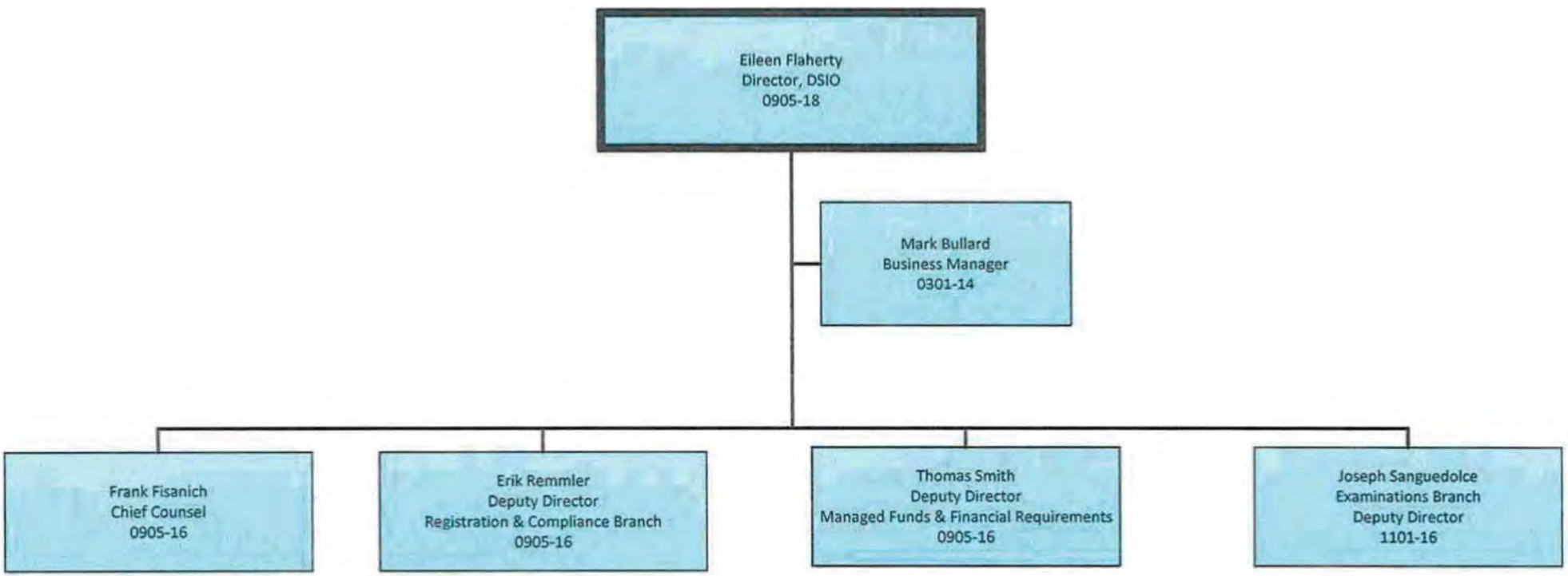
Division of Swap Dealer and Intermediary Oversight

87 Employees



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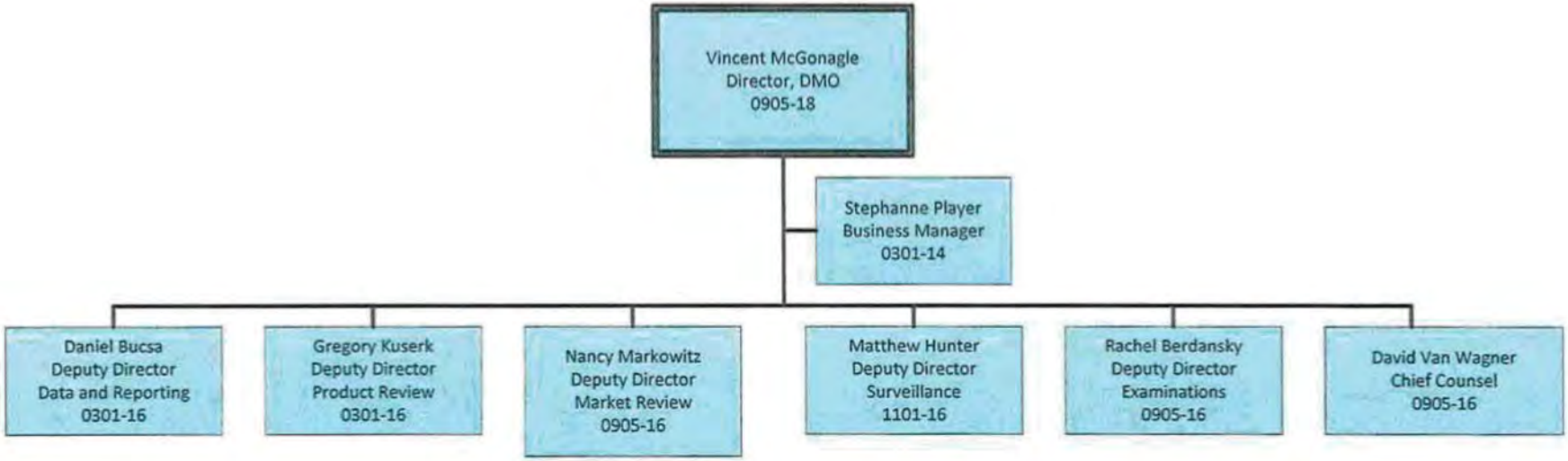
Division of Market Oversight

117 Employees



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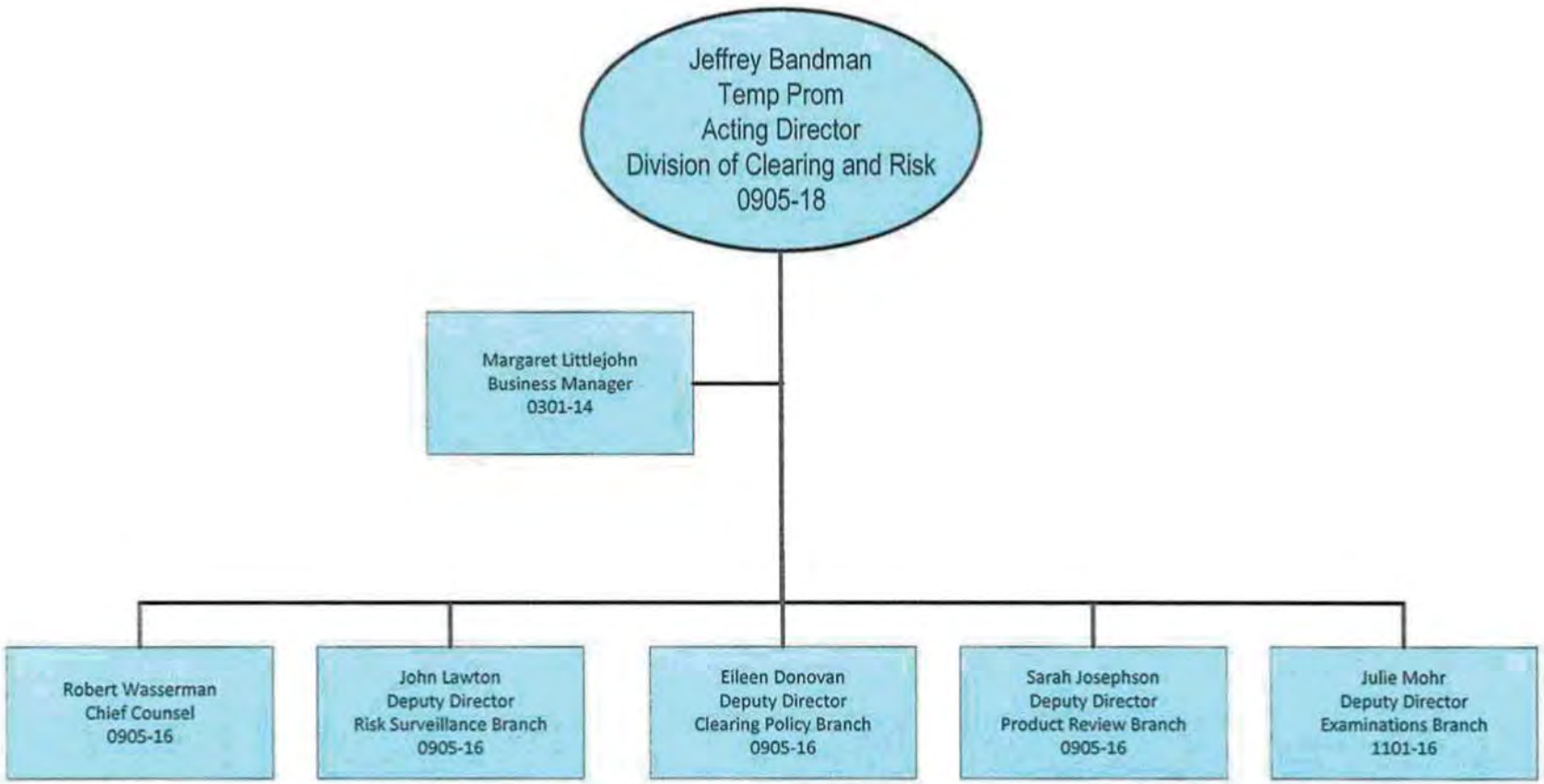
Division of Clearing and Risk

68 Employees



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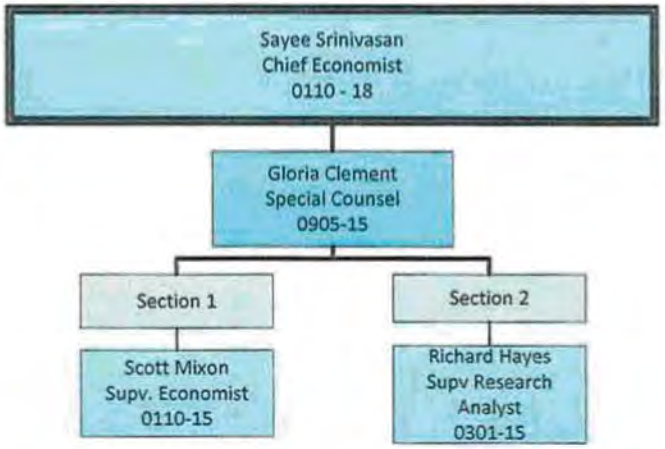
Office of the Chief Economist

16 Employees



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Employee Detail to

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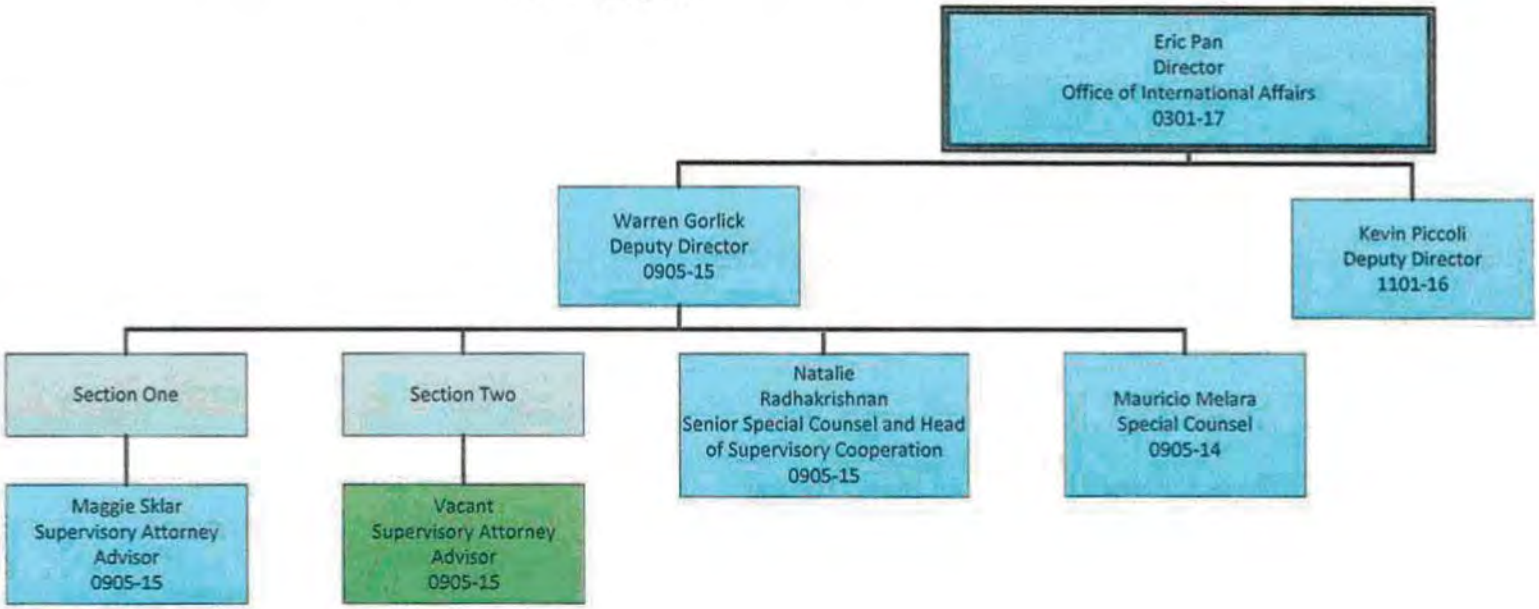
Office of International Affairs

12 Employees



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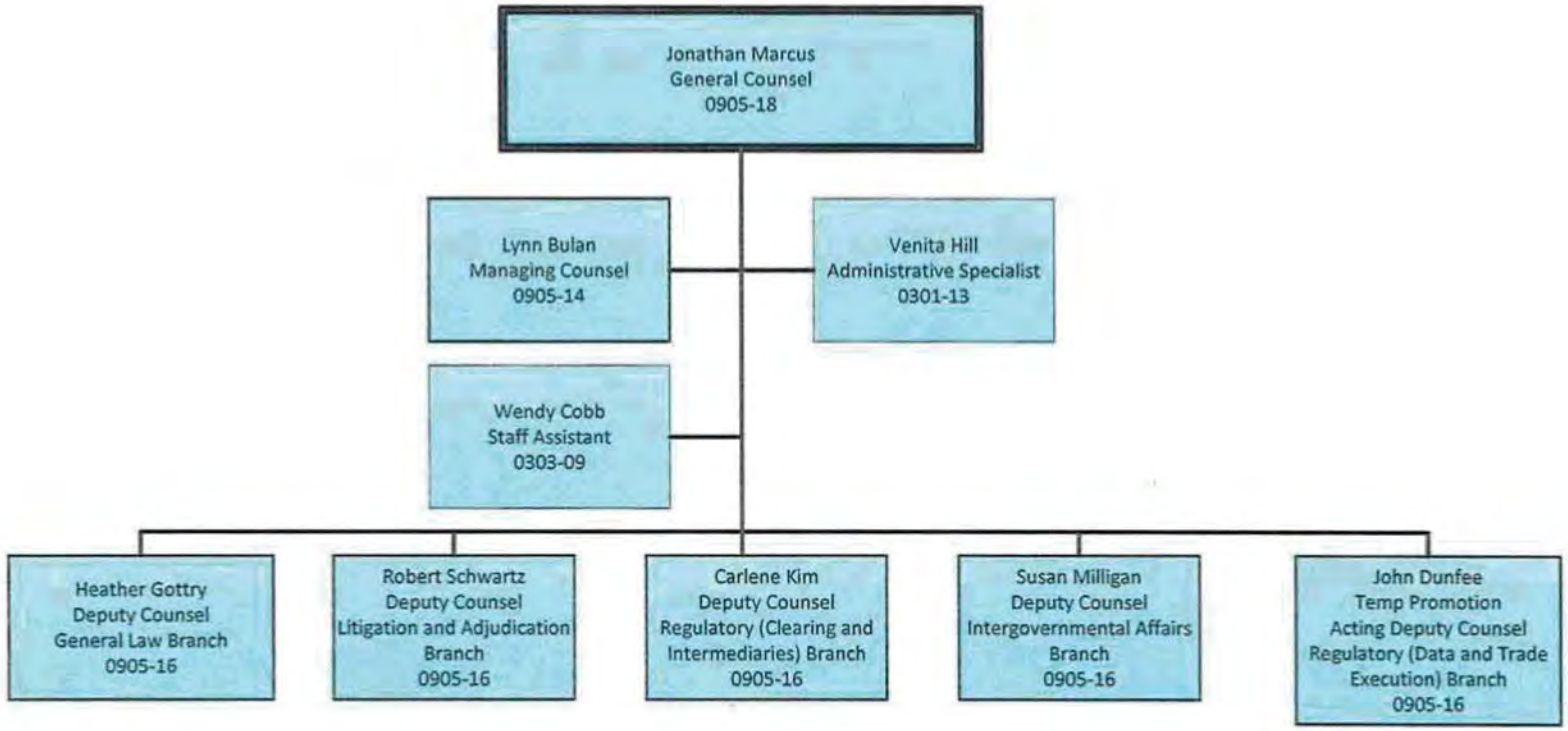
Office of General Counsel

47 Employees



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The CFTC Office of Legislative Affairs (OLA)

- Cory Claussen is the Director of OLA. Ann Wright is Deputy Director of OLA. Susan Milligan, Deputy General Counsel and her team in the Office of General Counsel provide technical and legal support to OLA. The Office of Public Affairs shares administrative services of one employee with OLA. OLA is part of the "Office of the Chairman."

- Cory Claussen is a Schedule C appointment. Ann Wright is career staff.

- OLA is responsible for:
  - Communications with Congress, the Congressional Budget Office, General Accounting Office and other federal regulators in all matters connected to Congress. OLA coordinates Commission responses to oversight requests from Congress, and manages the nomination process for CFTC nominees.
  - OLA prepares CFTC personnel for testimony before Congressional Committees as well briefings and meetings with Congressional staff.
  - Outreach to stakeholder groups that interact with Congress regarding CFTC-related matters

OLA Critical issues – First months

- Agency funding expires on December 9, 2016 with the CR. A full-year FY 2017 funding bill is expected to be passed in lame duck session in December 2016. The CFTC has been flat funded for two years. Another year of flat funding will create significant hardship because of increased expenses in FY17, including increased rent costs, additional Commissioners coming on board, and union negotiations for both FY16 (still ongoing) and FY17.

- The President's budget for the CFTC for FY2017 seeks $330 million. Current funding is $250 million. The House Appropriations Committee (carried in the Agriculture Appropriations bill) has proposed that the Commission be funded at $250 million. Senate Appropriations (carried in the Financial Services and General Government bill) also proposed $250 million.

- There are currently two CFTC nominees waiting to be confirmed by the full Senate - Chris Brummer (Dem) and Brian Quintenz (Rep). They had a confirmation hearing and passed out of the Senate Ag Committee on a voice vote in September 2016.

- Agency is due for reauthorization
  - Authorization for appropriations expired at end of FY 2013
  - The agency can continue operating as an unauthorized appropriation.
  - The House passed their reauthorization bill, HR 2289 (*Commodity End User Relief Act*) 246-171 in June 2015. The Chairman wrote a letter opposing this bill. The White House issued Statement of Administration Policy recommending a veto. The report is filed online.
  - In May 2016, the Senate Agriculture Committee passed their reauthorization bill, S.2917 (*Commodity End-User Relief Act*), out of Committee along party lines. A report was not filed. The Senate Ag Committee Democrats pushed an amendment during markup that would fee-fund the agency.

Congressional Actors of note *(subject to change based on election)*

Appropriations[1]

Subcommittee on Agriculture, Rural Development, FDA and Related Agencies of the House Committee on Appropriations

Chairman: Robert Aderholt (R - Alabama, 4th Congressional District)
Key Staff: Andrew Cooper
Ranking Democrat: Sam Farr (D-California, 20th District)
Key Staff: Martha Foley

Subcommittee on Financial Services and General Government of the Senate Committee on Appropriations

Chairman: John Boozman (R - Arkansas)
Key Staff: Dale Cabaniss and Andrew Newton
Ranking Democrat: Christopher Coons (D - Delaware)
Key Staff: Marianne Upton

Authorizers - Agriculture Committees

House Committee on Agriculture
Chairman: Rep. Michael Conaway (R - Texas, 11th Congressional District)
Key Staff: Paul Balzano, Jackie Barber, Emily Wong, Caleb Holifield
Ranking: Rep. Collin C. Peterson (D - Minnesota, 7th Congressional District)
Key Staff: Matt Mackenzie

Subcommittee on General Farm Commodities and Risk Management
Chairman: Rep. Austin Scott (R - Georgia, 8th Congressional District)
Key Staff: Mary Dee Beal
Ranking: Rep. David Scott (D - Georgia, 13th Congressional District)
Key Staff: Ashley Osterkamp

Senate Committee on Agriculture, Nutrition and Forestry
Chairman: Senator Pat Roberts (R-Kansas)
Key Staff: Charlie Thornton, Andrew Rezendes, Danita Murray
Ranking: Senator Debbie Stabenow (D-Michigan)
Key Staff: Rostin Behnam

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[1]Among the things that make the CFTC special is that it is the only agency in government that is under one subcommittee's jurisdiction in House Appropriations (Agriculture) and a different subcommittee's jurisdiction in Senate Appropriations (Financial Services). It is also the only federal financial regulator not self-funded or funded through fees.

Other Congressional Committees and Staff

[Though the Agriculture Committees have direct jurisdiction over the CFTC, the Commodity Exchange Act, and any related matter, the **House Financial Services and Senate Banking Committees** have become increasingly interested in CFTC policies over the years.]

House Committee on Financial Services
- Chairman: Rep. Jeb Hensarling (R. Texas, 5th Congressional District)
  - *Key Staff: Kevin Edgar*
- Ranking: Rep. Maxine Waters (D, 43rd Congressional District)
  - *Key Staff: Katelynn Bradley, Kris Erickson, Amanda Fischer*

Senate Committee on Banking, Housing and Urban Affairs
- Chairman: Senator Richard Shelby (R-AL)
  - *Key Staff: Jay Dunn*
- Ranking: Senator Sherrod Brown (D-OH)
  - *Key Staff: Elisha Tuku, Graham Steele*

House Committee on Oversight and Government Reform
- Chairman: Rep. Jason Chaffetz
  - *Key Staff: Christina Aizcorbe*
- Ranking: Rep. Elijah Cummings
  - *Key Staff: Todd Phillips*

Senate Committee on Homeland Security and Governmental Affairs
- Chairman: Sen. Ron Johnson (R-WI)
  - *Key Staff: Michael Lueptow*
- Ranking: Sen. Carper (D-DE)
  - *Key Staff: Rebecca Maddox*

Senate Committee on Energy and Natural Resources
- Chairman: Sen. Lisa Murkowski (R-AK)
  - *Key Staff: Kellie Donnelly*
- Ranking: Sen. Maria Cantwell (D-WA)
  - *Key Staff: David Gillers*

Frequent Congressional Correspondents:

Senate

Debbie Stabenow	(D-MI)	Pat Roberts	(R- KS)
Sherrod Brown	(D-OH)	John Boozman	(R-AR)
Heidi Heitkamp	(D-ND)	Chuck Grassley	(R-IA)
Joe Donnelly	(D-IN)	Bob Corker	(R-TN)
Elizabeth Warren	(D-MA)	Richard Shelby	(R-AL)
Maria Cantwell	(D-WA)	Jerry Moran	(R-KS)
Dianne Feinstein	(D-CA)	James Lankford	(R-OK)
Jeff Merkley	(D-OR)	Mike Crapo	(R-ID)
Bernie Sanders	(D-VT)	Cory Booker	(D-NJ)
Jack Reed	(D-RI)	Mark Warner	(D-VA)

House

Collin Peterson	(D-MN)	Chellie Pingree	(D-ME)
Rosa DeLauro	(D-CT)	Vicky Hartzler	(R-MO)
Maxine Waters	(D-CA)	Rodney Davis	(R-IL)
Carolyn Maloney	(D-NY)	Mike Conaway	(R-TX)
David Scott	(D-GA)	Austin Scott	(R-GA)
Bill Foster	(D-IL)	Randy Neugebauer	(R-TX)
Jared Polis	(D-CO)	Rodney Davis	(R-IL)
Frank Pallone	(D-NJ)	Scott Garrett	(D-NJ)
Elijah Cummings	(D-MD)	Vicki Hartzler	(D-MO)
Sean Maloney	(D-NY)	Jason Chaffetz	(R-UT)
Jeb Hensarling	(R-TX)	Fred Upton	(R-MI)
Sean Duffy	(R-WI)		

Issues of Interest to Hill

- De minimis threshold level
- Cybersecurity
- Harmonization – International and Domestic
- Extraterritorial application of rules
- Cost-Benefit Analysis
- Electronic Communications Privacy Act (ECPA)
- Whistleblower Office general operations and use of resources
- "Bad Actor" Waivers
- Source Code and Regulation Automated Trading (RegAT)
- Data and Transparency-related matters
- Automated/High-Frequency/Electronic Trading
- Position Limits and Bona Fide Hedge Exemptions
- Credit Risk Transfers
- End-User related concerns
- Live Cattle Futures
- Other Specific issues of OLA interest: Senators Warren and Warner introduced S.3118, the Derivatives Oversight and Taxpayer Protection Act in June 2016. Rep. Cummings offered a companion bill in the House, HR 5592. The CFTC was not consulted on technical matters. The agency provided a short briefing to the staff of Senator Warren, Warner, and Rep. Cummings, although has yet to send up suggested edits.

Other OLA duties

Congressional hearings

- OLA is point of contact when Committees are planning hearings at which CFTC witnesses are to testify; responsible for negotiating date and time
- OLA works with Committee staff and personal office staff to identify key issues to be raised during hearing
- OLA plans and runs "murder board" sessions to prepare witnesses. Panels for these sessions are frequently composed of Division Directors, Chairman or Commissioners' counsels and subject matter experts where appropriate
- OLA assists Commission witnesses and manages process of securing responses to any questions for the record that may be submitted after conclusion of a hearing.

Congressional correspondence

- OLA works with Chairman's office and Divisions to route letters appropriately and prepare response when called for. This can include constituent requests.

CFTC Staff technical assistance for Congressional offices

- OLA is point of contact for Congressional offices seeking technical assistance related to:
  - Legislation
    - OLA works closely with the Office of the General Counsel to provide legislative technical assistance
    - Practice of OLA has been to provide technical assistance regardless of whether the legislative effort is supported by the Commission
    - Priority is accorded to the Agriculture and Appropriations Committees, then to other Committees, then to individual Congressional offices
  - Responses to non-routine information requests regarding the agency – often related to Commission-related budget actions
    - OLA works closely with OED on the budget matters throughout the year. The Appropriations process takes up a significant amount of time.

OLA also is responsible for coordinating:

- Briefings for Congressional staff
- Meetings between the Chairman and Members of the House and Senate
- OLA assists Commissioners on an as-needed basis, although generally the Commissioners manage their own relationships with Congress
- Commission nominations
  - Practice has been for White House to hand off nominees to OLA for purposes of navigating the Senate confirmation process
- Interagency matters as they pertain to Congress.

December 21, 2013

Memorandum for CFTC Commissioners

From: Steve Adamske
Director, Office of Public Affairs

Subject: Transition Memorandum Regarding the Office of Public Affairs

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Overview:

The Office of Public Affairs supports the Commission as the gateway to public information with our website, our reports and through "push" notifications, such as press releases and updating social media sites. We are responsible for getting the Chairman's and the Commission's message out to the press and the general public, and we are also tasked with managing the CFTC's reputation and standing. We also take incoming press inquiries and questions from the general public. Because of Dodd-Frank, the work of the Office has grown significantly compared to when the Commission only regulated the futures industry. The Office has a staff of six that includes one political appointee and five career staff.

The Office traditionally (and mainly) supports the Chairman in his efforts to set the agenda of the Commission, and because approximately 90 percent of the press generated and incoming calls are for and about the Chairman. We do, however, support the other commissioners by providing assistance and advice. We also post statements, speeches and testimonies on the website as soon as possible. However, because of the party split and because of the independence of the commissioners, commissioners and their staff normally handle their own press calls, speeches and interviews. We do offer to facilitate in any way per a commissioner's request.

The Office also maintains the Commission's website, and it is filled with reams of information. The website is not without its challenges and navigating the site can (at times) prove to be a struggle.

OPA staff knows that we are the public face of the Commission and are trained to carry their conversations with the public and press with care. Further, all staff work with the knowledge that anything they say could end up on the front page of the Wall Street Journal. Further, we seek clearance by the General Counsel, Chairman's office, Division Directors and responsible staff for any press release or update to the website. While this process at times can be cumbersome, we are the last line of defense to ensure that material is not published until it is properly cleared.

Staff:

Donna Faulk-White – Deputy Director (career deputy)

Donna serves as the career deputy to help manage the day-to-day operation of the office, assist the director in managing staff and handling the daily flow of the office. She also fields calls from reporters and track down various information or arranges staff to talk to reporters in a not-for-attribution manner.

Dennis Holden - Associate Deputy Director

Dennis is a long-time employee of the Commission who mainly handles enforcement releases. With almost 100 cases per year, that amounts to about two releases a week. It is a time consuming job to go through the cases, draft a release and handle general enforcement-related press. It is Dennis' job to work with the staff attorneys, prosecutors, and others in advance of the filing of a case in order to put out the release. Because these cases often involve areas outside of Washington, DC, New York and Chicago, Dennis ensures that appropriate local media are notified in order to better inform the public of fraudulent activity. The rest of the staff doesn't generally assist unless the case is so high profile (i.e. MF Global, Libor, etc.) that additional resources and or oversight are necessary.

Michelle Woodland - Web Content Specialist

Michelle's job is to run and maintain the website. She has grown into this role from a staff associate to being our main point person for updating and maintaining the website. She also supports the office by putting out releases and ensuring that commissioners have priority when they need their statements, etc., put on the website.

Antoinette Turner - Associate

Antoinette (also called "Nikki") supports the Commission and the office by providing a daily snapshot of the day's news involving the Commission, our fellow regulators and the industries we regulate. She is responsible for wading through the various news outlets to inform the Commission and the staff of what is happening in the media. Nikki also is able to put out releases, update the website and update our social media outlets.

Chanel Smith - Special Assistant

Chanel works for both the Office of Public Affairs and the Office of Legislative Affairs. In this capacity, she is responsible for all administrative duties such as time and attendance, travel, procurement, etc. She is learning how to put out press releases and update the website in order to have yet a further backup person who can support the office when staffing is thin.

Press:

The Commission is covered by a small, but hardworking press corps that largely tracks everything we do and when we do it. With the passage of Dodd-Frank, the press corps has grown commensurate with the Commission's new responsibilities, and the seriousness of their reporting should not be understated.

The wire reporters have covered just about everything the Commission does, but the bigger papers are more selective. Here is a list of the names you will get to know as you take over the Commission.

Newspapers:

New York Times:	Ben Protess, Editorial: Theresa Tritch
Wall Street Journal:	Andrew Ackerman, Dave Michaels, Katy Burne, Aleander Osipovich, Editorial: James Freeman
Financial Times:	Greg Meyer (Commodities), Joe Rennison
Washington Post:	Dina ElBoghady, Danielle Douglas (*Note: the Post only covers the CFTC on fairly big issues such as MFGlobal, Libor and cross-border derivatives regulation.*)

Wires:

Bloomberg:	Ben Bain, Matt Leising (NY)
Politico:	Zach Warmbrodt, Patrick Temple-West
Reuters:	Lisa Lambert, Sarah Lynch, Patrick Rucker (energy)

Speciality:

MarketVoice:	Will Acworth, Joanne Morrison (FM is the in-house publication of the FIA, but we treat them like regular reporters per their request)
Platts:	Maya Weber
Argus Media:	John Heltman
MLex	Neil Roland
Risk:	Peter Madigan

TV:

CNBC:	Kate Kelly (NY), Mary Thompson (NY), Eamon Javers (DC)
Bloomberg:	N/A – No dedicated correspondent at this time.
Fox Business:	Peter Barnes, Rich Edson

Occasionally, we will get called by CNN, NPR and the major networks, but this is rare and usually on the big ticket items (case against Corzine, for example).

Social Media:

We regularly update the CFTCs Twitter (@cftc) and Facebook pages when we put out releases or we are informing the public of some news. Rarely do we engage or interact or get into "conversations" with people on Twitter using the @cftc handle.

Website - CFTC.gov:

OPA updates and manages content for the website, though the site is technically maintained by the Office of Data and Technology (ODT). As said earlier, the website is full of information, but getting to that information at time can be a challenge. We have, over the past few years, improved the search function and related content so that information is more easily found.

Under the direction of Chairman Massad, we are in the middle of an update of the website. The design has been chosen, and we are currently in a two-step phase for implementing the new design.

In phase one, around the first of the year we will launch the new redesign of the website using "old technology," meaning we will retrofit our old website content into the new design using an antiquated Content Management System (CMS). The CMS is the underlying technology platform that allows us to make updates, posts and changes. It is an old system that needs to be replaced, and we are on track to replace it by next summer.

As mentioned, around next summer or phase two, we will launch the new CMS with a content refresh. The CMS is vital for us to more easily post to the website and make changes. The content refresh is equally as vital. We will be working with each division and office to review their content on the website and to make changes as needed, archiving items that are out of date, and to overall review their content. This content refresh will significantly help people find things on the website and will allow metadata to be tagged, which will help the search function.

U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre

1155 21st Street, NW, Washington, DC 20581

Telephone: (202) 418-5000

Office of Minority and Women Inclusion

TO: Agency Review Team for CFTC

FROM: Lorena McElwain, OMWI Director

DATE: October 31, 2016

SUBJECT: Office of Minority and Women Inclusion (OMWI)

I INTRODUCTION

The Office of Minority and Women Inclusion (OMWI) advances the mission of the CFTC by:

- Sustaining confidence in equal employment opportunity, diversity, and inclusion programs;
- Being a proactive, neutral, and transparent resource for conflict management and resolution;
- Having a leadership presence throughout the Commission and the Federal EEO/civil rights community.

The OMWI priorities are aligned with the Management Objectives section of the 2014-2018 CFTC Strategic Plan: a high-performing, diverse, and engaged workforce. The OMWI is responsible for Objective 5.1(f) - number of diversity-related partnerships and alliances. To date, OMWI has established 10 minority partnerships, meeting this strategic objective two years ahead of schedule.

The OMWI has a total of three full-time staff members:

- Lorena McElwain, OMWI Director (CT-0260/15), sserves as the Commission's Principal EEO Officer and leading authority on EEO matters. The duties of the EEO officer, the independent/neutral nature of the position, the authorities vested in the position, and the agency EEO program requirements are described in 29 C.F.R. § 1614.102. The OMWI Director reports directly to the CFTC Chair, as required by this provision.

- Sarah Summerville, Senior EEO Specialist (CT-0260/14), serves as the Commission's EEO complaint manager and policy expert. The EEO complaint process and related program components are described in 29 C.F.R. § 1614.102 and Equal Employment Opportunity Commission (EEOC) Management Directive 110.

- Derrick Wilson, Diversity Program Manager (CT-0260/12), serves as special emphasis program manager and implements proactive diversity and inclusion programs in compliance with 5 C.F.R 720 SUBPART B — Federal Equal Opportunity Recruitment Program (§§ 720.201 - 720.207), and EEOC Management Directive 715 (MD-715).

As the head of an agency, the CFTC Chair has a few EEO responsibilities in compliance with 29 CFR 1614 and EEOC regulations:

- Issue an EEO policy and anti-harassment statement within 6-months of appointment and annually thereafter.
- Appoint Resolving Officials to settle EEO matters as needed.
- Sign, or appoint designee to sign, the annual EEOC MD-715 Report by January 31st of each year.

II EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Key EEO Trends

In Fiscal Year 2016 (FY16), the OMWI managed a total of 16 cases at various stages in the EEO complaint process. Eleven (11) of the 16 cases were initiated in FY16:

- The issues raised were non-sexual harassment (55%), promotion (27%), appointment (9%), awards (9%), terms/conditions of employment (9%), and removal (9%).
- The bases cited were reprisal/retaliation (91%), race (72%), national origin (45%), sex (45%), age (36%), color (27%), disability (18%), and religion (9%).
- The average time for completing traditional counseling was 16 days (14 days below the 30-day limit established by EEOC MD-110).
- Alternate dispute resolution (ADR) cases were closed within 80 days (10 days below the 90-day limit established by EEOC MD-110).
- The average time for conducting investigations was 144 days, 36 days below the 180-day limit (MD-110). The FY16 average days (144) was also lower than FY15 (175).
- The average cost for counseling was $1,913, and the average cost for investigations was $2,967. Counseling, investigation and mediation services are provided on a contract basis as needed.

Key EEO Accomplishments

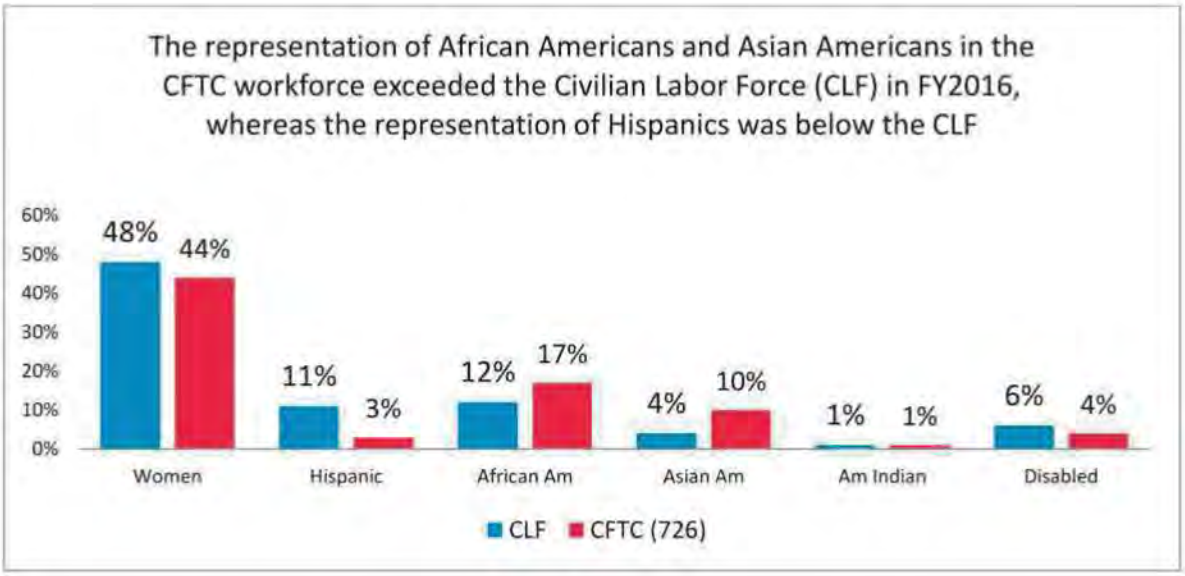
- Trained 91% of supervisors in compliance with the Notification and Federal Employee Antidiscrimination and Retaliation (NoFEAR) Act.
- Established a Resolving Official Program. According to EEOC MD-110, a neutral individual must serve as settlement official when resolving EEO complaint matters.
- EEOC highlighted CFTC's efforts to decrease investigation timeframes in the EEOC Annual Report to Congress submitted in the spring of 2016. The CFTC OMWI decreased the timeframe for conducting investigations by 37% to 178 days in FY13, which is below the timeframe required by EEOC MD-110 (180 days) and below the Federal Government average (451 days). In FY16, the CFTC OMWI further reduced the timeframe to 144 days.

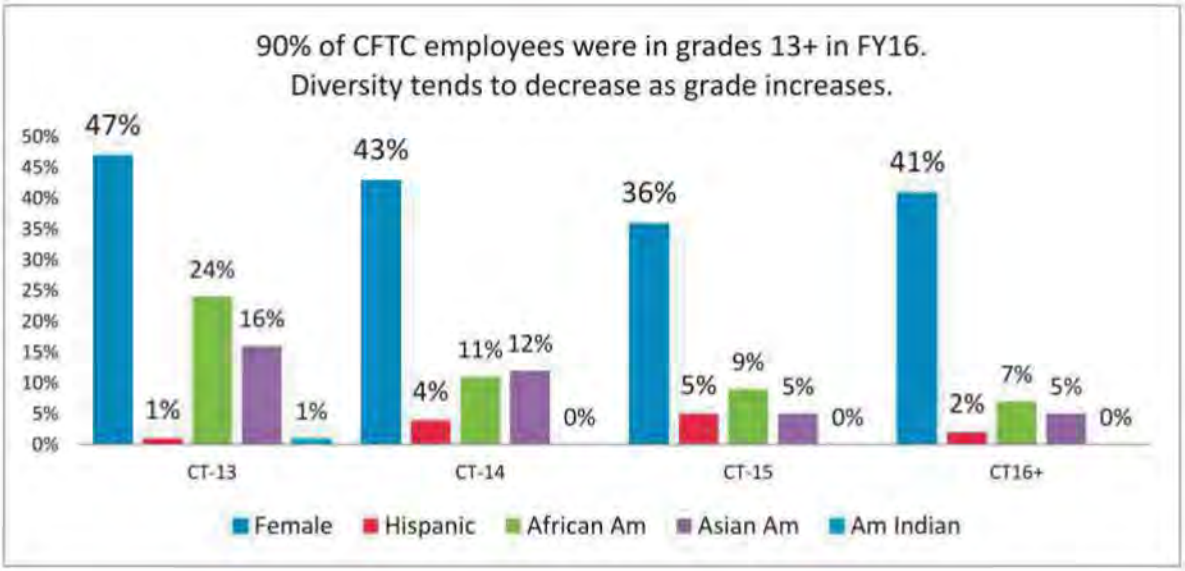
Select EEO Goals

- Provide EEO training to employees in compliance with the Notification and Federal Employee Antidiscrimination and Retaliation (NoFEAR) Act.
- The EEOC conducted a preliminary review of CFTC EEO functions in March of 2016, and identified the following human resources functions as needing enhancement: reasonable accommodation policy and procedures, utilizing Schedule A Hiring Authority for persons with disabilities, Anti-Harassment Program separate from EEO, and low representation of women in executive-level (CT16-CT18) positions.

III DIVERSITY & INCLUSION

Diversity Trends





The overall CFTC workforce profile is comparable to select Federal financial regulators

	Total WF	Female	Hispanic	African American	Asian American	American Indian
CFTC	765	44%	3%	17%	10%	0.5%
CFPB	1,354	46%	5%	17%	10%	0.0%
SEC	4,235	67%	5%	17%	11%	0.0%
NCUA	1,191	45%	4%	15%	6%	0.5%
OCC	3,837	45%	7%	17%	8%	0.0%

Inclusion Trends

The New Inclusion Quotient is a factor analysis of 22 Employee Viewpoint Survey (EVS) questions grouped into five behaviors (fair, open, cooperative, supportive, and empowering environment) with a high degree of correlation with inclusion in the workplace. Consistent with the Federal Government, the CFTC scored lowest in the fairness category in FY14 (34), FY15 (37), and FY16 (42). While these scores do not necessarily mean Federal or CFTC managers *are* unfair, the scores suggest employees *perceive* the organizational environment of some Federal agencies has an opportunity to improve in this category.

FY2016 New Inclusion Quotient (New IQ)

	New IQ	Fair	Open	Cooperative	Supportive	Empowering
CFTC	57	42	57	45	84	57
Fed Gov	58	45	57	54	75	58

Key Diversity & Inclusion Accomplishments

- Established 10 minority partnerships, meeting goal 5.1(f) of the 2014-2018 CFTC Strategic Plan two years ahead of schedule.
- Established diversity workgroup to engage employee affinity group leaders and division representatives in diversity matters.

Select Diversity & Inclusion Goals

- Provide unconscious bias training using OPM's New Inclusion Quotient curriculum (no cost).
- Conduct listening sessions to identify employee perceptions with regard to fairness (travel cost absorbed by OMWI operational budget).
- Encourage divisions to provide volunteer internship opportunities to Gallaudet University students (no cost).
- Encourage women to participate in the CFTC coaching program and implement a no-cost mentoring program for supervisory positions.

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Division of Clearing and Risk

MEMORANDUM

TO: Timothy G. Massad, Chairman

FROM: Jeffrey M. Bandman
Acting Director, Division of Clearing and Risk (DCR)

DATE: November 16, 2016

SUBJECT: Transition Memorandum: FY 2017 Core Activities and Priorities

A. Background

1. DCR's Mission, Responsibilities, and Activities

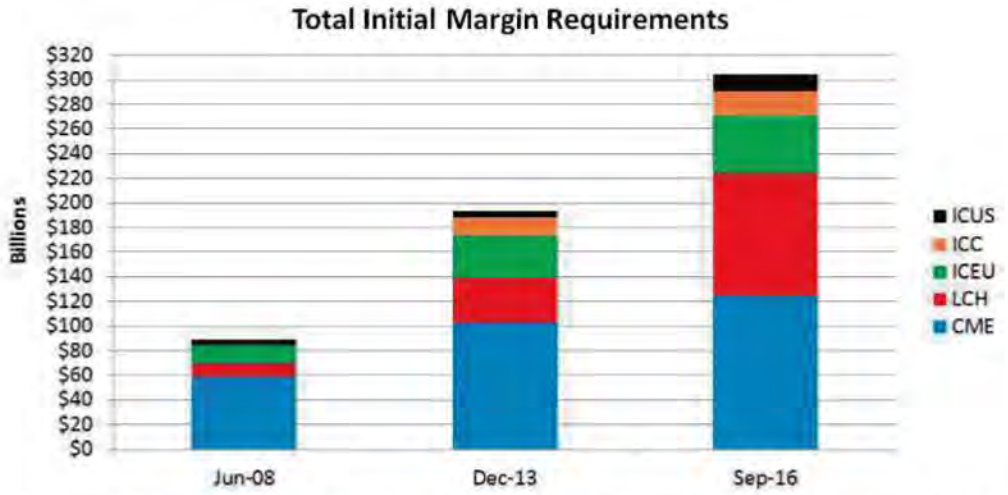
DCR's mission is to enable the Commission to meet its statutory responsibility to ensure the financial integrity of all transactions subject to the Commodity Exchange Act ("CEA") and, more generally, the avoidance of systemic risk. To that end, DCR oversees central counterparty clearinghouses (referred to as derivatives clearing organizations, or "DCOs"), the members of DCOs (generally regulated by the Commission as futures commission merchants, or "FCMs"), and other market participants that may pose risk to the clearing process, and the clearing of swaps, futures, and options. DCR oversees the safety and soundness of DCOs, the risks that DCO's incur from – and pose to — their members, and its compliance with the CEA and Commission regulations, including those requirements imposed by the Dodd-Frank Act.

Resilience of clearinghouses has become the focus of intense attention, both within the Commission and across regulatory authorities domestically and internationally. New swaps clearing requirements have intensified this focus. While the Commission has explicitly regulated DCOs since the enactment of the Commodity Futures Modernization Act of 2000, the financial crisis of 2008 – and the links between unregulated bilateral swaps and that crisis – led the G20 Leaders to state in 2009 a framework by which standardized swaps should be required to be cleared by central counterparty clearinghouses. In the U.S., the Dodd-Frank Act amended the CEA to authorize the CFTC to require that certain swaps be cleared through registered DCOs; other jurisdictions are adopting clearing requirements of their own.

As central counterparties, CCPs are intimately connected to their members, and vice-versa. The largest clearing members are, or are affiliated with, globally systemically important banks (GSIBs). Exposures to CCPs may be among the largest counterparty exposures GSIBs have.

The systemic importance of clearinghouses is enhanced by their centerpolar position as financial market infrastructures, the dependence of their members on the prompt and continuous functioning of their clearing systems, and the fact that market participants are now legally required to use their services. These developments have strengthened expectations regarding a special responsibility undertaken by regulators to ensure that clearinghouses are safe, sound and resilient. The CFTC, other US regulators represented on the Financial Stability Oversight Council ("FSOC"), and, internationally, market regulators, bank regulators, and systemic risk regulators, are all keenly focused on both this enhanced systemic importance and this special responsibility.

The size and importance of cleared markets in futures and swaps has grown enormously. The Commission's first swaps clearing mandates, in the areas of interest rate swaps and credit default swaps, were issued in late 2012. Subsequently, the amount of risk cleared by DCOs has risen quickly. For example, as shown in the chart below, as of September 30, 2016, the five largest DCOs registered with the CFTC held approximately $305 billion in initial margin for cleared swaps and futures, compared to approximately $193 billion at the end of 2013 and $89 billion on June 30, 2008. Global implementation of new rules for bilateral margin (for uncleared swaps) in early 2017 can be expected to drive further growth in central clearing.



DCR is the group within the CFTC responsible for regulation and supervision of DCOs. DCR is also responsible for conducting "risk surveillance" by identifying, quantifying, and monitoring the risks posed by and to DCOs, clearing participants, and other market participants that may pose risk to the clearing process. Finally, DCR is responsible for the oversight of positions in futures, options on futures, and swaps that are cleared by DCOs.

DCR currently has staff of 68 full time equivalents (FTEs). The President's FY 2017 budget request for the CFTC requested 95 FTEs for DCR. DCR is therefore operating at a staffing deficiency of 27 FTEs compared to the President's budget request, more than 28%. These 27 FTEs would be assigned primarily to DCR's Examinations and Risk Surveillance Branches.

DCR has five program branches - Chief Counsel, Clearing Policy, Examinations, Product Review, and Risk Surveillance. They are responsible for:

- Preparing regulations, orders, guidelines, and other regulatory work product on issues pertaining to DCOs, including issues surrounding the protection of customers in the bankruptcy or insolvency of an FCM or DCO;
- Reviewing DCO applications for registration, petitions for regulatory relief or exemption, and rule submissions, and making recommendations to the Commission;
- Examining DCOs for compliance with all relevant requirements of the CEA and Commission regulations - this includes examining systemically important DCOs (SIDCOs) at least once a year;
- Reviewing financial resource and other reports periodically submitted by DCOs to ensure compliance with CFTC regulations;
- Analyzing notifications submitted by DCOs regarding hardware or software malfunctions, cyber-security intrusions, or threats that have (or may have) a material impact on clearing;
- Making determinations and recommendations to the Commission as to which types of swaps should be required to be cleared;
- Making determinations and recommendations to the Commission as to the initial eligibility or continuing qualification of a DCO to clear swaps; and
- Conducting regular risk assessments and surveillance of the risks posed by and to DCOs, clearing participants, and other market participants including swap dealers, major swap participants, and large traders.

In addition, DCR staff participates in or leads several domestic and international regulatory initiatives (including those in the CCP Workplan) to establish standards affecting clearinghouses and their participants, and to coordinate and harmonize regulatory activities.

2. Industry Background

a. Number of registered DCOs, including SIDCOs and exempt DCOs

The CEA requires a DCO to register with the Commission if it seeks to clear futures or swaps. There are currently 15 registered DCOs. Two DCOs for which the CFTC is the primary regulator (or "Supervisory Agency") have been designated pursuant to Title VIII of Dodd-Frank as systemically important by the FSOC. These SIDCOs are Chicago Mercantile Exchange Inc. (CME) and ICE Clear Credit LLC (ICC).[1]

DCR also considers two U.K.-based registered DCOs to be systemically important to the United States even though they have not been designated as such by FSOC. They are LCH.Clearnet Ltd. (LCH Ltd.) and ICE Clear Europe (ICEU).

SIDCOs must comply with additional Commission regulations, found in Subpart C of Part 39, that were adopted so that SIDCOs would be subject to a regulatory regime consistent with the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs). Other DCOs have been permitted to elect to be held to the additional Subpart C regulations in order for their clearing

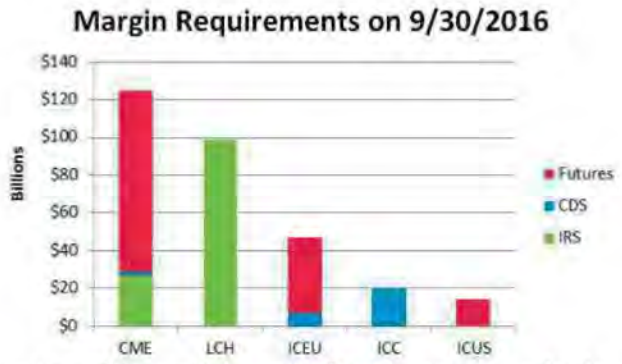
[1] The Options Clearing Corporation is a registered DCO that has been designated as systemically important by FSOC. However, because most of its activity is connected with its status as a securities clearing agency, its Supervisory Agency is the SEC rather than the CFTC.

members to qualify for lower capital requirements. These DCOs, referred to as Subpart C DCOs, are ICE Clear US (ICUS), Nodal Clear LLC, and Minneapolis Grain Exchange Inc.

The CEA permits the Commission to exempt a non-U.S. DCO from registration for the clearing of swaps if the DCO is subject to comparable, comprehensive supervision by its home country regulator. There are currently four exempt DCOs, based in Australia, Hong Kong, Japan, and Korea. Exempt DCOs may clear proprietary swaps for U.S. persons who are clearing members (or their affiliates) but may not clear swaps for U.S. customers.

b. Margin requirements at the largest DCOs as of September 30, 2016

DCOs currently hold over $300 billion dollars in initial margin for cleared positions in futures, options, and swaps. Approximately 98% of this is held by the five largest DCOs: CME, LCH, ICEU, ICC, and ICUS. The following graph shows how this amount is apportioned among these DCOs and among futures, CDS and IRS.



- CME clears a wide variety of financial, agricultural, energy and other futures and options on futures, as well as interest rate swaps, credit default swaps, and other swaps. The total margin requirement at CME is approximately $122 billion.

- LCH Ltd. is dually regulated by the CFTC and the Bank of England. LCH Ltd.'s DCO license primarily applies to its activities clearing interest rate swaps. (It also clears other instruments traded outside the jurisdiction of the CFTC.) It has a total margin requirement of approximately $96 billion (for CFTC products).

- ICE Clear Europe is also dually regulated by the CFTC and the Bank of England. ICE Clear Europe's DCO license primarily applies to its activities clearing credit default swaps and energy products. (It also clears other instruments traded outside the jurisdiction of the CFTC.) It has a total margin requirement of approximately $48 billion (for CFTC products).

- ICE Clear Credit only clears credit default swaps. It has a total margin requirement of approximately $19 billion.

- ICE Clear U.S. clears futures and options in equity indexes, soft commodities, and currencies. It has a total margin requirement of approximately $15 billion.

B. Core Activities and Top Priorities for FY 2017

1. Examinations

Examinations are one of DCR's most effective tools for overseeing a DCO's compliance with its statutory and regulatory obligations. Each DCO must be in compliance with 17 statutory core principles and implementing regulations at all times; however, each DCO has some discretion as to how it meets the core principles. Each DCO is unique in its approach. The core principles touch all aspects of the clearing process and include, but are not limited to, financial resources, risk management, systems safeguards, and default management.

Annual examinations of all SIDCOs are required by statute, so CME and ICE Clear Credit will be examined in FY 2017. For these examinations, the CFTC must consult with the Federal Reserve on scope and methodology. Pursuant to Title VIII, the CFTC measures compliance using heightened risk management processes and procedures and prudential standards concerning payment, clearing, and settlement, supervision and the resources and capabilities of the SIDCOs to monitor and control such risks. These examinations are resource intensive. The Federal Reserve is permitted under Title VIII to participate in SIDCO examinations and regularly does so.

While it is DCR's objective to examine each of the DCOs for which the CFTC is the home country regulator annually, DCR has been unable to do so, and cannot do so in FY 2017, due to resource constraints. In FY 2017, DCR expects to perform examinations of three non-SIDCO DCOs. Selection of such DCOs for examination is risk based.

During each examination, DCR typically reviews over 1,000 documents ranging from banking materials, to quantitative risk management results and methodologies, to cybersecurity testing results. DCR may also perform independent backtesting and stress testing. After documents are reviewed, DCR spends up to several weeks doing fieldwork; less time is spent at foreign DCOs due to travel costs. Once fieldwork and analysis is complete, DCR prepares a report presenting its findings to the Commission and provides the report to the DCO. A critical part of the Examination process occurs after the report has been completed and delivered. DCR works actively with the DCO to monitor its remediation of the findings in an iterative process that can last months, or longer.

In addition to examinations, DCR monitors DCO compliance with the CEA and the relevant CFTC regulations and conducts ongoing oversight of DCO safety and soundness by reviewing various quarterly and annual financial resource reporting and other reports that CFTC regulations require DCOs to submit. In FY2016 and 2017 DCR has made a "collateral sweep" a priority to confirm customer and member collateral at DCOs matches what is reported.

2. Cybersecurity, Cyber resilience, Information Security and Systems Safeguards

Cyber threats are among the greatest risks to financial stability and to critical market infrastructure such as CCPs. DCOs must submit reports when certain systems events occur (e.g.,

a cybersecurity incident, hardware or software malfunction, or threat). DCR reviews the reports (and engages where needed with DCO personnel) to ensure appropriate measures to fix the incident are designed, tested and timely placed into production.

In FY 2016 the Commission adopted new systems safeguards rules for cybersecurity for DCOs. In FY 2017 requirements for DCO compliance with the new rules begins phasing in. A major FY 2017 priority will be incorporating compliance with the new rules into the DCR examination program and continuing to develop and maintain the necessary staff expertise.

DCR also participates in governmental and private groups that pertain to information security. DCR participates in monthly FBIIC meetings, attends ChicagoFirst meetings, and participates in drills with other regulators and also with DCOs. DCR also participates in CPMI-IOSCO work on cyber resilence and sharing of information regarding to cyber events.

3. Risk Surveillance of Futures, Options, and Cleared Swaps

DCR has the responsibility to conduct "risk surveillance" of futures, options, and swaps, a critical component of DCO oversight. DCR's pioneering risk surveillance program, based on extensive information submitted by DCOs and large traders on a daily basis, is unparalleled among regulators worldwide.

Risk surveillance differs from market surveillance by focusing on financial integrity as compared to market integrity. Risk surveillance addresses whether market participants can meet their financial obligations. Market surveillance addresses whether they are engaging in anticompetitive or manipulative behavior.

Risk surveillance is carried out using various tools to evaluate financial risk at DCOs, clearing FCMs, non-FCM clearing participants, and other market participants. On a daily basis, staff use data to (1) identify positions in cleared products that pose significant financial risk and (2) confirm that these risks are being appropriately managed. This process identifies customers that pose risks to clearing members and clearing members that pose risks to DCOs. The program attempts to be proactive rather than reactive -- to identify who might pose risk before market volatility occurs.

After identifying potential risks at customers or clearing members, staff estimates the magnitude of the risk and compares the calculated risk to available financial resources. Staff also apply stress testing to estimate losses circumstances such as extreme market moves. Staff engages with customers, clearing members and DCOs to follow up on issues of concern.

Risk Surveillance has also implemented a program to review risk management procedures of clearing FCMs and swap dealers for compliance with applicable CFTC regulations.

FY 2017 major challenges and priorities include:

- Completion and publication of a public report on the CFTC's first "supervisory stress test" to assess the impact of a set of hypothetical market conditions across multiple DCOs, with a focus on firms that hold clearing memberships at multiple DCOs.

- Data management and integration – because the Risk Surveillance program is among the most intensive and sophisticated data users in the Commission, FY 2017 priorities include A) continuing to develop and to refine tools to sort and filter the enormous amount of data; and B) working to improve quality of Swap Data Repository data. DCR is the business sponsor of the current phase of ODT's "Transitional Swaps Database" project.
- Integrating uncleared positions – integrating surveillance of cleared products with surveillance of uncleared products in order to evaluate systemic risk across DCOs and across cleared and uncleared markets. Market participants manage their risks across cleared and uncleared markets. Cleared and uncleared positions often have offsetting risk characteristics. Therefore, to obtain an accurate assessment of overall risk, it is necessary to integrate them.

4. Recovery and Resolution Planning; Scenario Exercises

Planning for clearinghouse "recovery" refers to preparation for a situation where stresses such as member defaults may result in exhaustion of a clearinghouse's prefunded financial resources, and the clearinghouse seeks to use tools established in its rulebook to hedge losses, transfer defaulting member positions and portfolios, reestablish a matched book and replenish its financial resources. DCOs are required to have viable written plans for recovery and winddown as well as rules in their rulebooks to address such eventualities. In July 2016, DCR issued detailed guidance regarding DCO recovery and wind-down plans and rules. Resolution planning involves planning for situations, however unlikely, where a recovery has been unsuccessful or threatens financial stability, and where a public authority may thus determine to exercise resolution powers.

Recovery and resolution planning form a major DCR priority for FY 2017, with several key milestones. DCR is seeking to complete its review of the SIDCOs' recovery rules by the end of calendar 2016. This process involves consultation with the Federal Reserve for both SIDCOs; in addition changes to ICE Clear Credit's rules require SEC approval as well. DCR has been working with CME, ICE Clear Credit and ICE Clear U.S. on their recovery and winddown plans, and these are also expected to be completed by the end of calendar 2016. DCR will focus on rules and plans of other DCOs in calendar 2017.

Under Dodd-Frank the FDIC would be the "resolution authority" for a SIDCO. DCR is actively working with the FDIC in the preparation of resolution plans for the SIDCOs. DCR is also working with the FDIC in the establishment of international Crisis Management Groups (CMGs) for the SIDCOs.[2] DCR is also participating in CMGs that have been established for LCH Ltd. and LCH.Clearnet SA.

Further, DCR has engaged in several interagency exercises with other regulators regarding recovery and resolution planning. DCR initiated and led a staff-level tabletop exercise regarding SIDCO recovery and resolution planning with staff from U.S. regulators in March 2016.[3] Planning has begun for a follow-up 2017 exercise. DCR has also been engaged in drafting a multi-agency Memorandum of Understanding (MOU) that would govern the exchange of

[2] CMGs are being formed for central counterparties (CCPs) that are systemically important in more than one jurisdiction, pursuant to the FSB's Key Attributes of Effective Resolution Regimes. CMGs have the objective of enhancing preparedness for, and facilitating the management and resolution of, a financial crisis involving a particular financial institution.

[3] The U.S. authorities included the Federal Reserve Board, Department of Treasury, FDIC, SEC, OCC and FSOC.

confidential information in resolution to supplement the Commission's existing bilateral MOU with FDIC.

DCR has also been working with DMO and DSIO to complete a staff "Market Disruption Contingency Plan" (MDCP) documenting CFTC procedures and authorities for certain market disruption scenarios that could lead to potential DCO recovery or resolution measures being invoked. Planning for internal DCR and interdivisional MDCP tabletop exercises in FY 2017 has commenced. DCR is also working with authorities in the UK and Germany with regard to coordinating one or more clearinghouse fire drills in FY 2017 for IRS and other products.

5. Registration of DCOs, Exemption of DCOs from Registration, and DCO Rule Filings.

To be registered with the Commission, a DCO must first file an application for registration, and DCR reviews, evaluates, and make recommendations to the Commission on such applications. In FY 2017, DCR expects to receive and begin processing the application of LME Clear, the clearinghouse for the London Metal Exchange. Other clearinghouses have indicated interest in applying for registration as well.

To be exempt from registration, a non-US based DCO must file with the Commission a petition for exemption, and DCR reviews, evaluates, and make recommendations to the Commission on such petitions. In FY 2017, DCR expects to complete the processing of petitions from Clearing Corporation of India Ltd. and Shanghai Clearing House and may receive a new petition from Asigna (Mexico).

Registered DCOs must submit rule changes to the Commission for review, and DCR reviews the rule changes for compliance with the CEA and Commission regulations. Certain rule changes for CME and ICE Clear Credit are subject to enhanced standards of review and consultation with the Federal Reserve. Among the notable rule filings that DCR will review in FY 2017 is one from CME that would create a new class of direct funding participants that would clear trades for their own accounts, provided the trades are guaranteed by an FCM clearing member guarantor.

6. Clearing Requirement for Swaps.

The Dodd-Frank Act requires the CFTC to make determinations, on an ongoing basis, concerning whether a swap or class of swaps should be required to be cleared as well as evaluate the initial and continuing eligibility of a DCO to clear swaps.

In November 2012, the Commission determined to require clearing for four classes of interest rate swaps and two classes of credit default swaps. In September 2016, the Commission expanded the clearing requirement for interest rate swaps. As a result, the Commission's clearing requirement is, or will be, consistent with those issued by several non-U.S. jurisdictions. The expansion will be phased in over the next two years in line with those jurisdictions.

Going forward, DCR will review market data, as well as the effect of the imposition of new margin requirements for uncleared swaps, to determine whether to recommend to the Commission that it propose further expanding the clearing requirement to include other swaps. DCR will also continue its efforts to ensure that all parties required to clear swaps under

Commission regulations are in fact doing so and those market participants that elect not to clear their swaps by reliance on rule or staff action are doing so properly.

7. FSOC Committee Participation

DCR staff participates in the FSOC's Regulation and Resolution Committee (RRC) and the Financial Market Utilities and Payment, Clearing, and Settlement Activities Committee (FMU Committee). The goal of the RRC is to identify potential gaps in regulation that could pose risks to the financial stability of the United States. DCR staff participate in and prepare materials for RRC working groups, including one focused on the resolution of financial market utilities. The FMU Committee largely focuses on issues involving Title VIII of the Dodd-Frank Act and DFMUs. As the CFTC is a Supervisory Agency for two DFMUs, DCR staff work for the FMU committee is quite extensive.

8. Legal Analysis

a. Interpretation and guidance

DCR is responsible for providing interpretations and other guidance regarding the Commission's regulations affecting DCOs. For example, DCR is currently considering, in conjunction with the Division of Swap Dealer and Intermediate Oversight, requests from market participants for relief from Regulation 1.49 (which governs the deposit of customer funds in foreign jurisdictions and the ability to convert customer funds into alternative currencies) with regards to the use of Central Securities Depositories and sub-custodians.

b. Proposed rulemakings

i. Updating Subparts A and B of Part 39 of the Commission's Regulations

In 2011, the Commission adopted Subparts A and B of the Part 39 regulations, which implement the CEA's core principles applicable to DCOs. With subsequent experience DCR has identified provisions that would benefit from clarification or interpretation, and plans to draft a proposed rulemaking recommending to the Commission appropriate amendments to the regulations.

ii. Updating Subpart C of Part 39 of the Commission's Regulations

In 2013, the Commission issued final rules (Subpart C of Part 39), which together with the existing DCO rules in Part 39, established the CFTC's regulatory regime for DCOs that is consistent with the PFMIs. CPMI and IOSCO, the relevant international standard setting bodies (see Section 9 below) are actively considering more granular guidance with regards to several areas addressed in the PFMIs. A consultative document was issued in August 2016, and with the issuance of a final guidance document expected by April 2017. In order to implement this guidance, which will likely be necessary for SIDCOs and Subpart C DCOs to maintain their status as QCCPs, staff expects to assess the Guidance and draft proposed rulemaking to revise the Subpart C rules or, where appropriate, Commission-issued interpretations.

9. International Work

DCR staff actively participates in, and in some cases leads, a number of international bodies responsible for setting standards that CCPs (including DCOs) and their participants are or will be required to meet in order to operate internationally. These include:

- The CPMI-IOSCO Policy Standing Group on Standards for Financial Market Infrastructures and sub-groups thereunder,
- The CPMI-IOSCO Implementation Monitoring Standing Group,
- The CPMI-IOSCO Cyber-resilience Working Group
- The CPMI-IOSCO Steering Group
- The FSB's Resolution Steering Group, and a sub-group thereunder, the Financial Market Infrastructure Cross-Border Crisis Management Group, and
- The Ad Hoc Interdependencies Study Group.

DCR takes the opportunity to participate in/lead these international standard setting bodies in order to promote standards for clearinghouses that are consistent with U.S. law and Commission priorities, that are sensitive to the balancing of costs and benefits, and that promote a level playing field for U.S. entities.

10. Emerging technologies.

DCR is monitoring the emergence of new technologies such as distributed ledger technology (DLT), blockchain implementations and virtual currency that may impact clearing or the clearing process, including settlement, reporting, recordkeeping or collateral. DCR has met with potential DCO registrants that are planning to use DLT, although none have formally applied for registration to date, as well as others that may seek to clear products based on virtual currency derivatives. DCR is participating in the CPMI-IOSCO Joint Working Group on Digital Innovation, which is preparing a report on potential use cases in clearing and settlement due by April 2017. DCR also chairs an internal CFTC staff-level interdivisional working group that meets periodically with clearinghouses, exchanges, market participants, technology innovators and other regulators to keep abreast of developments and promote coordination across agency staff on emerging issues.

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Division of Enforcement

MEMORANDUM

TO: Agency Review Team

FROM: Aitan Goelman, Director, Division of Enforcement

DATE: November 10, 2016

SUBJECT: Transition Information

This memorandum sets forth the general mission, structure, and resources of the Division of Enforcement ("DOE" or "Division"), outlines the substantive focus of the program, highlights significant litigations, and identifies critical issues and challenges. As detailed below, DOE's greatest challenge remains being able to progress investigations in a timely and efficient manner and, at the same time, litigate the Commission's cases fully to meet its mandate to protect customers from harm and ensure market integrity, given the lack of resources, its continuing loss of staff and the lack of ability to grow.

I. DOE Mission and Structure

DOE is charged with investigating and prosecuting alleged violations of the Commodity Exchange Act ("CEA") and Commission regulations. Potential violations include fraud, manipulation, disruptive trading (including spoofing), reporting and recordkeeping violations, capitalization and segregation deficiencies, supervisory violations, and other abuses concerning commodity derivatives and swaps that threaten market integrity, market participants, and the general public.

DOE's Office of the Director oversees the operation and management of DOE. The Office of the Director consists of the following:

- Director, Aitan Goelman;
- Principal Deputy Director and Chief Counsel, Gretchen Lowe, who advises the Director and staff on legal and policy issues arising out of enforcement actions, and liaises with the other offices of the Commission as well as domestic and foreign authorities, and oversees the offices of Chief Counsel, the Forensic Economist Unit and the Business Management Unit;
- Forensic Economist Unit, which has 6 economists and provides trading and market analysis for all investigation and litigation units and is headed by Principal Forensic Economist, Jordon Grimm;

- Litigation, Intake and Triage Unit, which processes intake of referrals and complaints and triages those cases that merit investigation, and is run by Deputy Director Joan Manley;

- Business Management Unit which oversees the operations and administration of the DOE and is headed by Michael Pollard;

- Office of Cooperative Enforcement, which facilitates coordination on investigations and litigations with other domestic civil and criminal authorities at the federal and state level and is headed by Richard Foelber; and

- Whistleblower Office ("WBO"), which receives and processes whistleblower complaints and potential awards and is headed by Chris Ehrman.[1]

Five Deputy Directors - two located in D.C. (Paul Hayeck and Rick Glaser), and one each in the regional offices, Chicago (Rosemary Hollinger), Kansas City (Chuck Marvine), and New York (Manal Sultan) - directly supervise assigned attorneys and investigators who conduct the investigations and litigations of possible violations of the CEA and Commission regulations.

DOE has 161 staff members, consisting of[2] 120 attorneys, 23 investigators, 7 economists, 5 paralegals, 5 management professionals, and 1 support staff.[3] In FY 2015, after Congress provided the agency $35 million in additional funding, DOE was authorized to hire significantly more new staff and back fill existing positions with the result that we reached staff numbers of 171 as of July 2015, before we declined to our current numbers. DOE's current FTE ceiling imposed under FY 2016 spending plan is 164.

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[1] Although housed in DOE, the Whistleblower Office operates independently under authority delegated directly by the Commission and is not technically subject to supervision or direction from DOE, other than for administrative tasks of approving time off, etc. As a practical matter, however, the Director of the WBO works collaboratively with DOE. Recently, the Commission has issued a proposed rulemaking that would, *inter alia*, assign overall responsibility for administering the whistleblower program to the Director of the DOE. 81 Fed. Reg. 59,551, 59,560 (proposed Aug. 30, 2016) (to be codified at 17 C.F.R. § 165.15). This would be consistent with the practice of the Securities & Exchange Commission, which operates a whistleblower program under a parallel provision of the Dodd-Frank Act. Note that the Whistleblower Office budget is separate from the DOE budget, and its employees have been excluded from the staffing numbers reported for DOE.

[2] DOE loses staff to the Commission's other divisions, private practice or other agencies often due to Division's lack of the ability to offer staff promotion to a higher level of responsibility or pay.

[3] These numbers do not include contractors and interns through whom DOE augments staffing needs.

The vast majority of DOE's resources are dedicated to investigation and litigation functions. DOE's investigations and litigations generally sound in the practice areas described below, although matters often have multiple aspects to them. Certain matters require significant DOE resources to investigate and prosecute, such as: matters involving potential manipulation, spoofing or other disruptive trading; matters involving novel issues; and matters that attract significant attention due to the gravity of the offenses or market impact, *e.g.*, the amount of customer harm or potential effect on critical markets and/or entities under Commission jurisdiction as well an impact on the global financial markets. DOE matters also may require significant resources because they involve substantial coordination with the Department of Justice or other domestic or international authorities. For example, the Commission made a significant commitment of resources to its actions against banks for manipulation, attempted manipulation of, and false reporting in the Foreign Currency, International Swaps and Derivatives Association Fix ("ISDAFix"), and London Interbank Offered Rate ("LIBOR") benchmarks, cases that garnered national and international attention due to the potential market impact on U.S. and foreign markets, the scale of the conduct, going back years in some instances, the leading financial institutions involved, and the extensive cross-border coordination among authorities.

Following the expansion of the Commission's jurisdiction pursuant to the Dodd-Frank Act, DOE has dedicated significant staff and resources to enforcing its provisions and the Commission's implementing regulations. The Commission has already brought actions under its new authority prohibiting manipulation and spoofing in markets regulated by the Commission, including the swaps markets, as well as actions upholding the new reporting, risk management and business conduct requirements. DOE further expects that the Commission's other operating divisions and offices will continue to refer matters relating to the compliance, reporting, recordkeeping, and internal controls requirements of the Dodd-Frank Act and implementing regulations.

A. Significant Practice Areas

DOE investigation and litigation matters are broadly categorized into four areas: (1) manipulation and disruptive trading, including spoofing, (2) other trade practice violations,[4] (3) fraud, and (4) supervision, reporting and other regulatory violations. Overall, DOE has approximately 104 litigation matters pending in United States District Courts throughout the U.S., approximately 392 pending investigations, and 60 preliminary inquiries. During FY 2016, DOE opened 258 new investigations while closing 246 investigations. Over the past several years, DOE has significantly more litigations that are being actively defended and involve increasingly more complex subject matter, which requires dedicating more resources to litigation than in the past, including staff time, expert fees, and discovery costs.

[4] Other trade practice violations generally include disruptive trading, wash sales, and other activities that interfere with the competitive trading of exchange-traded contracts.

The Commission litigates enforcement actions primarily in federal court, although it has authority to litigate administrative actions before the Commission. Since approximately 2002, the Commission has almost exclusively used the administrative process for enforcement actions that are filed and simultaneously settled. In those instances, the Commission issues an order typically setting out findings, conclusions of law, and imposing sanctions. The Commission also brings administratively statutory disqualification actions at times where the Commission seeks to revoke, restrict or condition an existing registration for certain statutory reasons. Such authority only resides with the Commission and thus those actions must be brought administratively.[5]

The Commission filed 68 actions in FY 2016, which is generally the level of new actions filed for each of the last three years.[6] Over half of the new actions involve fraud or offering of illegal, off-exchange contracts,[7] with the other cases involving charges of manipulation, attempted manipulation, reckless use of a manipulative device, disruptive trading, such as spoofing, false reporting of market information, other trade practice violations, such as fictitious sales or speculative position limits violations, under-capitalization and under-segregation violations, charges of making false and misleading statements to the Commission, and registration violations or statutory disqualification from registration.

In FY 2016, through resolution of new and pending enforcement actions, the Commission issued or obtained orders imposing over $740 million in civil monetary penalties and over $540 million in restitution and disgorgement. Over the last four fiscal years, the Division has collected over five billion dollars in civil monetary penalties, or more than 20 times the Commission's FY 2016 budget.

Several of the Division's significant pending litigations are set forth below:

CFTC v. Wilson, et al.: Filed in November 2013, and pending in the Southern District of New York, the complaint charges DRW Investments, LLC ("DRW") and its principal, Donald R. Wilson, with manipulating interest rate swap futures contracts on numerous occasions between January 2011 and August 2013. The complaint alleges that DRW and Wilson manipulated the prices of the IDEX USD Three-Month Interest Rate Swap Futures Contract in order to increase the value of DRW's open positions in that contract. Defendants used a manipulative scheme commonly known as "banging the close" in which a defendant places market inputs, during the settlement period, in an attempt to affect or influence the closing price of a futures contract. DOE prevailed on a motion to dismiss, and the Court denied both parties' motions for summary judgment in September 2016. The case is set for trial commencing on December 1, 2016.

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[5] The Commission no longer employs its own Administrative Law Judges ("ALJs") and the Commission has to "borrow" an ALJ, through the Office of Personnel Management, each time it needs one.

[6] In FY 2014, the Commission filed 67 new enforcement actions and in FY 2015 69 new actions.

[7] These cases generally have involved precious metals, forex and/or binary options.

CFTC v. Kraft Foods Group, Inc.: Filed in April 2015, and pending in the Northern District of Illinois, the complaint charges Kraft and its spin-off, Mondelēz Global LLC, with manipulation and attempted manipulation of the of the prices of cash wheat and wheat futures. In December 2015, the Court denied defendants' motion to dismiss, finding that DOE had adequately alleged manipulation under both the standard for Section 9(a)(2) price manipulation and the standard for new Section 6(c)(1) and Regulation 180.1, with the latter provisions requiring that the alleged manipulation contain an element of fraud. Defendants moved to certify this decision for an interlocutory appeal, which request the Court denied in July 2016. The parties have begun the discovery phase of the litigation, which is set to close June 8, 2017; the Judge has set no other dates in this matter.

LIBOR: Since June 2012, the Commission has brought and settled nine brought actions against banks and interdealer brokers for manipulation or attempted manipulation and the making of false reports concerning global benchmark interest rates, including LIBOR. Those actions were against Barclays, Citibank, Deutsche Bank, Lloyds, UBS, RBS, Rabobank, RP Martin and ICAP and included civil monetary penalties totaling nearly $3 billion and significant undertakings designed to ensure the integrity of the benchmark interest rate setting process. The Division has investigated in coordination with several other domestic and foreign regulators and agencies, which has an impact on completion of these investigations and timing of any recommended enforcement actions.

ISDAFix: The Commission has brought and settled actions against financial institutions for attempted manipulation of and false reporting relating to a benchmark for interest rate swaps, the ICAP ISDAFix. ISDAFix is the leading benchmark for annual swap rates for swap transactions worldwide, is used as a reference rate in connection with early termination of swap transactions and by both the Chicago Mercantile Exchange and the Chicago Board of Trade as the settlement price in their swap futures contracts. To date, two cases have been filed and settled against Citibank and Barclays, with penalties in excess of $350 million imposed.

Currency FX Benchmark: The Commission has brought six actions against financial institutions for attempted manipulation of certain exchange rate benchmarks (also called "fixes"), including the ECB Fix and WM/Reuters Fix. These fixes in the more liquid currencies are typically created from a snapshot of actual trades during a narrow window. The Commission has brought and settled actions against Barclays, Citibank, JPMorgan, RBS, UBS, and HSBC, obtaining almost $2 billion in civil monetary penalties and significant undertakings. A notable achievement of the FX cases is that the first five actions were brought and resolved on the same day and in coordination with U.K. Financial Conduct Authority. The DOE also worked in coordination with the Department of Justice and other foreign regulators.

CFTC v. Sarao: In April 2015, the Commission filed charges against Navinder Singh Sarao and his company Nav Sarao Futures Limited PLC for spoofing and manipulation in the S&P e-mini futures contract from April 2010 to April 2015 (including on May 6, 2010—the day of the "Flash Crash"). DOE moved for, and successfully obtained, an *ex parte* Statutory Restraining Order freezing Sarao's funds worldwide and has frozen approximately $8 million in

the United States. On April 21, 2015, Sarao was arrested in London by U.K. authorities pursuant to a criminal complaint filed under seal by the U.S. Department of Justice in the N.D. Illinois. On June 26, 2015, the court entered a consent Preliminary Injunction whereby Sarao agreed to continued restraint of his worldwide assets and to refrain from trading in any U.S. futures or commodities markets for the pendency of the civil litigation. In June 2016, Sarao was ordered by a U.K. court to be extradited to the United States on the criminal charges. Sarao's final appeal of this order was denied on October 14, 2016 and he was remanded to the United States. On November 9, 2016, Sarao pled guilty in a U.S. federal district court to spoofing and wire fraud charges, and the Division filed a proposed consent order settling its action against Sarao, which includes permanent trading and registration bans, a disgorgement of over $12.8 million in ill-gotten gains and a civil monetary penalty of over $25 million. Upon the court entering the proposed consent order, the Commission's case against Sarao will be resolved and the Division will move for a default judgment against Sarao's company.

CFTC v. Byrnes: Filed in February 2013, and pending in the Southern District of New York, the complaint charges two former employees of the New York Mercantile Exchange, Inc., which is owned and operated by the CME Group, with unlawfully disclosing material nonpublic customer information over two and a half years to an outside commodity broker who was not authorized to receive the information. The complaint further charges that the CME Group is liable for the actions of its employees pursuant to Section 2(a)(1)(B) of the Act. The information unlawfully disclosed by the individual defendants included, among other things, details of recently executed trades, the identities of the parties to specific trades, the buy or sell side of each party to specific trades, the identities of the brokers involved in certain trades, the number of contracts traded, the prices paid, the structure of particular transactions, and the trading strategies of market participants. Discovery has been completed in the case and summary judgment briefing must be completed by March 2017.

CFTC v. MF Global Inc.: Filed in June 2013, and pending in the Southern District of New York, the complaint charges MF Global Inc., MF Global Holdings Ltd., former Chief Executive Officer Jon S. Corzine, and former Assistant Treasurer of MF Global Edith O'Brien with unlawful use of customer funds. On November 8, 2013, the Court entered a Consent Order against MF Global, requiring it to pay $1.212 billion in restitution to customers of MF Global, and also imposed a $100 million civil monetary penalty on MF Global, to be paid after MF Global has fully paid customers and certain other creditors entitled to priority under bankruptcy law. MF Global Holdings Ltd. entered into a similar Consent Order on December 23, 2014, which imposed joint and several restitution in the same amount, as well as an additional $100 million civil monetary penalty. The restitution obligation has been paid, and all customers were compensated for their losses. The pending action against Corzine and O'Brien is scheduled for trial on June 5, 2017.

CFTC v. Deutsche Bank AG: Filed in August 2016, and pending in the Southern District of New York, the complaint charges Deutsche Bank AG with failures in its reporting of swaps data. The alleged reporting problems were based at least in part on disaster recovery and supervisory failures. On October 20, 2016, the Court entered an Order granting the CFTC

injunctive relief, including the appointment of a third-party monitor to supervise Deutsche Bank's swaps reporting going forward.

CFTC v. FXCM, LLC: Filed in August 2016, and pending in the Southern District of New York, the complaint charges Forex Capital Markets, LLC ("FXCM"), a retail foreign exchange dealer ("RFED"), with violation of net capital requirements. On or about January 15, 2015, the Swiss National Bank unpegged the Swiss Franc to the Euro, resulting in a sudden jump in the Swiss Franc's value. Later that day, in response to an inquiry from the National Futures Association ("NFA"), FXCM belatedly reported that the resulting volatility had caused FXCM to have a shortfall of approximately $175 million in adjusted net capital, in violation of Commission Regulation 5.7. FXCM allegedly violated other Commission regulations by failing to immediately notify the Commission that it was undercapitalized, and guaranteeing customer accounts against losses.

B. Office of Chief Counsel

The Office of Chief Counsel ("OCC") fulfills five distinct functions within the Division in connection with its domestic and international enforcement activities:

- Advisor to the Director on high profile investigations and litigation;

- International Cooperation—OCC's International Operations Unit supports DOE's trial teams by obtaining information, assistance or cooperation when a matter involves a foreign person or entity; negotiating enforcement MOUs to facilitate information sharing; responding to the requests for assistance from foreign futures authorities. The International Operations Unit is also called upon to lend advice and expertise in connection with several multi-lateral initiatives. Some of these initiatives include: the IOSCO Committee on Enforcement and Information Sharing (Committee 4) which addresses issues relating to sharing foreign-based evidence for use in securities and futures investigations and enforcement actions; and G-7 initiatives on cross-border cooperation and information sharing in relation to financial crime and financial markets. In FY 2016, DOE issued approximately 200 requests for assistance to foreign regulators and received approximately 30 requests from foreign regulators. OCC's International work has also included taking a lead role in the development of an Enhanced MMoU and appropriate implementation approaches and in analyzing and negotiating with EU members concerning data protection and privacy;

- Legal and Policy Review and Liaison—The Chief Counsel takes the lead in discussing and formulating an approach to legal ambiguities that may create litigation risks; in appeals from enforcement proceedings, liaises with the Office of General Counsel reviews the briefs and participates in preparation for oral arguments to ensure consistency with programmatic goals; acts as the liaison between DOE and other Divisions with respect to issues arising in DOE investigations and litigations;

- Procedures—To maintain a consistent approach to the conduct of Division investigations and litigation, OCC develops the various procedures designed to guide staff in the performance of their duties. In addition, OCC consults with Division staff to interpret these procedures as they apply to specific fact situations and advises staff on their compliance with the various ancillary statutes that relate to the Division's investigations and litigation, such as the Right to Financial Privacy Act, the Electronic Communications Privacy Act, and the Privacy Act; and

- Regulatory and Legislative Review—OCC plays a critical role in evaluating the impact of proposed regulations and legislation on the enforcement program and participating in interdivisional teams to review registered entity applications, such as the incoming SEF applications for designation.

C. Office of Cooperative Enforcement

The Office of Cooperative Enforcement ("OCE") works routinely with other civil and criminal authorities at both the state and federal levels to enhance its effectiveness in pursuing violations of the Commodity Exchange Act and Commission regulations. This cooperation takes many forms, including information sharing, referrals, and providing subject matter expertise. In FY 2016, DOE had nearly 300 matters with some level of cooperation with other federal and state civil and criminal authorities. OCE is also sponsoring the 2016 CFTC Conference on Cooperative Enforcement, a forum for civil regulators and criminal prosecutors to discuss topical issues in enforcement.

D. Whistleblower Office

The Whistleblower Office continues its robust growth, issuing two awards in FY 2016, including an award for over $10 million, it's largest to date. The number of tips, complaints, and referrals received by the Whistleblower Office in FY 2016 increased over 15% from FY 2015, and the Office continued its outreach efforts, including launching a new website. As noted above, proposed regulatory changes should further strengthen and streamline the work of the Whistleblower Office. Unlike the rest of the Division, and the rest of the Commission, the Whistleblower Office is, by statute, funded from the collections obtained by the Division's recoveries.

E. Litigation, Intake and Triage Unit

In 2015, DOE established the Litigation, Intake and Triage Unit to improve efficiencies in allocating DOE's limited resources are focused on investigations with a greater likelihood of uncovering wrongdoing. The unit has the responsibility of processing all referrals and leads received by DOE and conducting an initial analysis of each to determine whether it merits closer scrutiny or, instead, raises issues outside the Commission's jurisdiction.

II. Critical Resource Issues

A. Short Term

The ever-growing complexity of enforcement cases along with the Commission's authority over swaps requires increasing resources for expert analysis of trading and markets. Since the Commission does not have sufficient expertise on staff that is available to DOE, expenditure of significant resources to retain outside experts has become a matter of course. For instance, in approximately the last calendar year, DOE has been required to expend almost $1 million in expert fees to support its litigation function and more than $1.5 million in additional funds to support its investigative functions.

DOE also has critical information technology needs. In order to manage a growing docket with limited numbers of personnel, DOE requires a state-of-the-art case management system. At present, DOE is managing its docket through a system implemented in 2006. The current system presents increasing challenges with its lack of vendor support to provide significant upgrades, limited docket management functions to manage and organize case filings and correspondence, and limited ability to interface with the Outlook email and calendar functions. These are just a few of the shortcomings when compared to currently available technology. As a result, DOE staff members are required to spend significant time on various work-around processes for managing their substantial dockets. Replacement of the case management system will result in substantial efficiency improvements.

These efficiency improvements are critical since DOE has not received significant additional FTEs in the FY2017 budget to manage its expanding docket. DOE continues to rely on substantial additional support through the eLaw program, which is funded through ODT contracts, assignment of additional contractors and FTEs, and purchases of major software and hardware systems such as the case management system to support DOE functions.

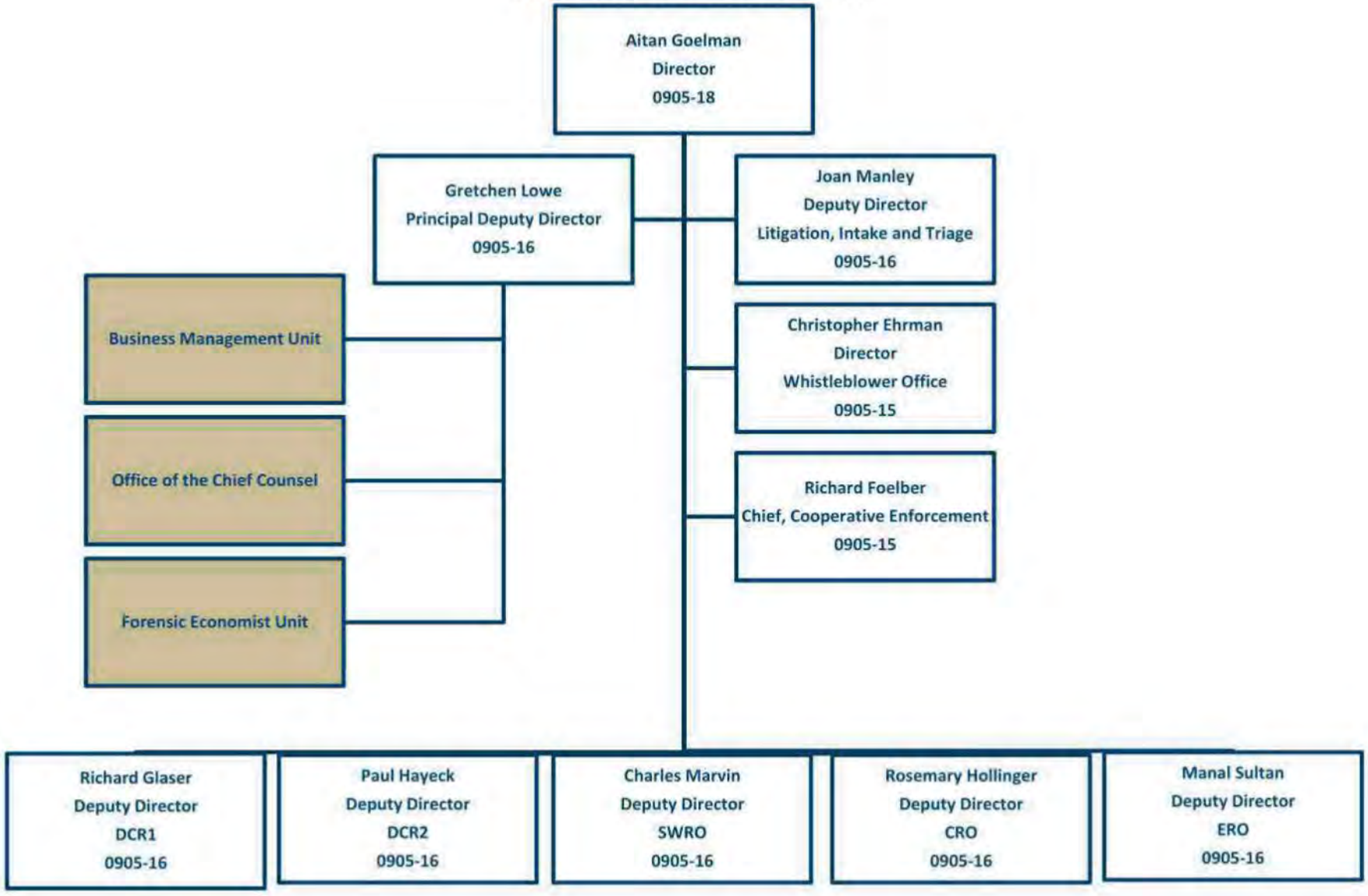
Finally, because of budgetary shortfalls, the Division and the Commission's other operating divisions and offices have been unable to invest in the software and human resources necessary to take a more proactive approach to detecting misconduct. Particularly since Dodd-Frank, the Commission has an enormous quantity of data being supplied to it. That data can be mined for leads suggesting CEA violations. Other government agencies, including the SEC, have done this for years. Currently, however, we are able to take far less advantage of the potential use of this information.

B. Long Term

Despite a significant expansion of the Commission's jurisdiction and the accompanying growth of markets and activities subject to possible enforcement activity, DOE has had to operate without a commensurate expansion of its FTEs. Due to budget constraints, DOE has been unable to back-fill an adequate number of positions. Furthermore, DOE is unable to offer promotions or pay raises to many highly experienced attorneys and investigators due to the current salary structure and budgetary constraints. This situation will result in further attrition, as DOE's skilled professionals command much higher salaries in the private sector.

Attachments: Organizational Charts
Enforcement Program Overview
Cases Filed By Fiscal Year
FTEs per Fiscal Year

Division of Enforcement



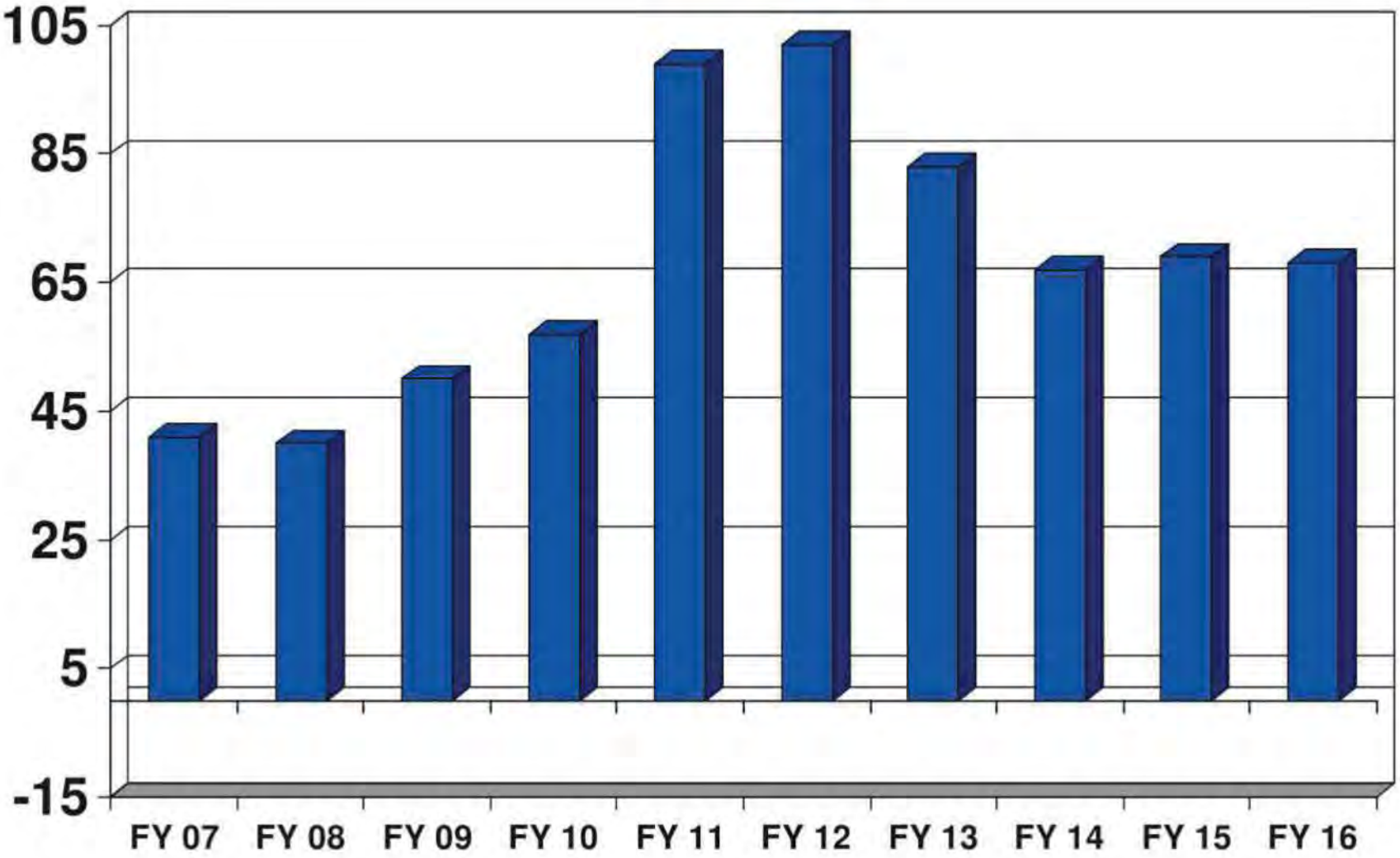
As of 11/10/2016

Enforcement Program Overview

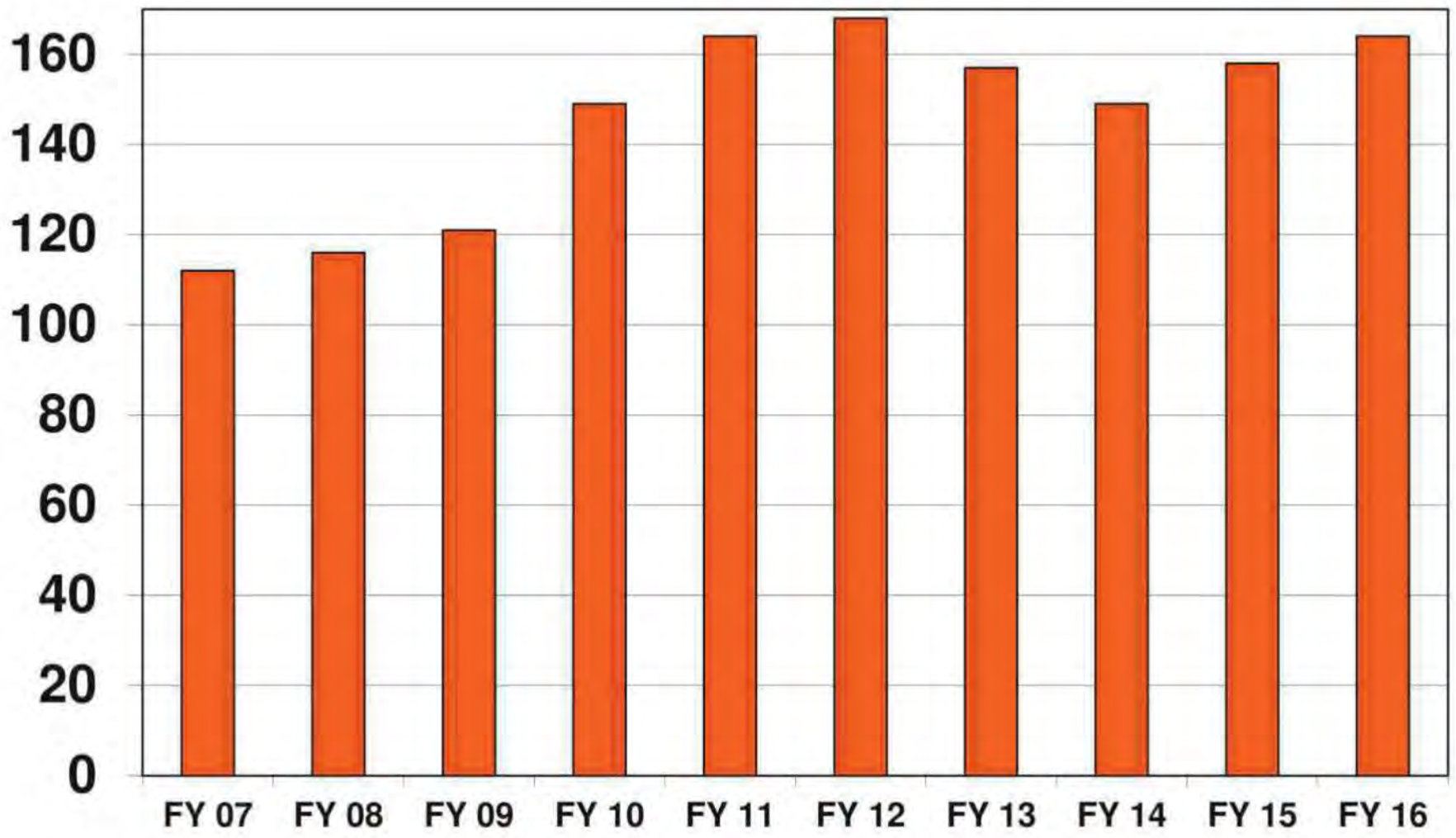
	FTEs*	Cases Filed	Restitution & Disgorgement	Civil Monetary Penalties	
			Assessed	Assessed	Collected
FY 00	152	53	$156,354,057	$179,811,562	$3,299,362
FY 01	150	44	$7,687,379	$16,876,335	$3,170,252
FY 02	143	40	$25,748,536	$9,942,382	$5,922,387
FY 03	146	64	$106,785,796	$110,264,932	$87,699,077
FY 04	144	83	$96,274,375	$302,049,939	$122,468,925
FY 05	135	69	$87,424,932	$76,672,758	$34,163,077
FY 06	131	38	$258,475,451	$192,921,794	$12,364,509
FY 07	112	41	$296,623,405	$345,614,139	$12,137,848
FY 08	116	40	$402,967,919	$234,835,121	$140,745,252
FY 09	121	50	$176,185,109	$99,489,609	$17,362,486
FY 10	149	57	$65,523,151	$136,040,764	$75,111,676
FY 11	164	99	$181,844,807	$316,682,679	$11,343,236
FY 12	168	102	$456,581,900	$475,360,925	$257,068,130
FY 13	157	82	$201,409,408	$1,570,700,568	$1,040,966,258
FY 14	149	67	$1,432,741,328	$1,840,237,619	$766,891,065
FY 15	158	69	$35,104,561	$2,509,333,755	$2,322,888,536
FY 16	164	68	$543,662,773	$748,647,755	$484,899,195
Total	N/A	1,066	$4,531,394,887	$9,165,482,636	$5,398,501,271

*FTEs per budget allocation.

Cases Filed Per Fiscal Year



Division of Enforcement FTEs Per Fiscal Year



DIVISION OF MARKET OVERSIGHT
PRESIDENTIAL TRANSITION BRIEFING MATERIALS

Wednesday, November 2, 2016

OVERVIEW

The Division of Market Oversight ("DMO") has compiled these briefing materials for the 2016 Presidential Transition Teams. This document provides the following information:

I. Mission

II. Division Organization, Leadership, and Primary Responsibilities

III. Major Matters Currently Under Review

IV. Appendix A : Designated/Registered Entities

ABOUT THE DIVISION OF MARKET OVERSIGHT

I. MISSION

DMO advances derivatives markets that accurately reflect the forces of supply and demand and are free of disruptive activity. It oversees trade execution facilities and data repositories, conducts surveillance, reviews new exchange applications and examines existing exchanges to ensure compliance with applicable core principles and regulatory requirements. DMO also evaluates new products to ensure they are not susceptible to manipulation as well as rule filings by exchanges to ensure compliance with applicable regulations. DMO is responsible for promoting market integrity through a transparent price discovery process.

Currently, DMO oversees 46 registrants comprised of designated contract markets ("DCMs"), swap execution facilities ("SEFs"), swap data repositories ("SDRs"), and foreign boards of trade ("FBOTs").[1]

In addition to the division's mission activities referenced above, DMO is working on several regulatory initiatives including automated trading, position limits, several SEF initiatives(including equivalence determination by the EU, exempt SEF process, changes and updates to SEF operational rules and the trade execution requirement), and updates to certain data reporting requirements

[1] *See* Section IV - Appendix A: Designated/Registered Entities for a complete list of entities registered with the Commission.

DMO STRUCTURE

II. DIVISION ORGANIZATION, LEADERSHIP, AND PRIMARY RESPONSIBILITIES

DMO maintains a staff of 116 full-time equivalent employees ("FTEs") in Washington, D.C. and in each of the three regional offices.

DMO consists of the following offices and branches:

A. Office of the Director
B. Office of Chief Counsel
C. Market Review Branch
D. Product Review Branch
E. Data and Reporting Branch
F. Market Compliance Branch
G. Surveillance Branch
H. Business Management and Planning Unit

A. Office of the Director

Division Director: **Vincent McGonagle**

Vincent "Vince" McGonagle became Director of DMO on October 7, 2013 following 16 years of service with the Commission's Division of Enforcement ("DOE"), serving most recently as DOE's Principal Deputy Director.

B. Office of Chief Counsel

Chief Counsel: **David Van Wagner**

The Office of the Chief Counsel advises DMO's director, senior management, and staff on legal and policy issues. In addition to this primary responsibility, this office also:

- issues no-action letters and interpretive guidance;
- recommends Commission rulemakings;
- analyzes and recommends proposed legislation which impacts the Division's mission; and
- considers and signs off on legal documents originating in other divisions.

C. Market Review Branch

Deputy Director: Nancy Markowitz

The Market Review Branch conducts the designation/registration process for DCMs, SEFs, and FBOTs. In addition to this primary responsibility, this branch also:

- analyzes all rule certifications and amendments of DCM, SEFs, and SDRs for compliance with Commodity Exchange Act ("CEA") and regulatory requirements; and
- drafts and implements Commission rulemakings to ensure appropriate and effective oversight.
- For registered FBOTs, the Market Review Branch may conduct on-site visits for the purpose of overseeing ongoing compliance of the FBOT and its clearing organization with registration requirements and conditions of registration. The Market Review Branch also reviews FBOTs to ensure ongoing compliance with registration requirements and conditions and, in conjunction with the Product Review Branch, reviews the terms and conditions of FBOT contracts proposed to be made available for trading by direct access by U.S. persons.

D. Product Review Branch

Deputy Director: Gregory Kuserk

The Product Review Branch consists of two sections: (1) the Market and Contract Analysis Section, and (2) the Market Research and Policy Review Section. The work of this branch generally deals with the exchange listings of derivatives contracts and includes:

- review of new contract offerings and amendments to existing contracts for regulatory compliance;
- review of exchange and Commission position limit levels;
- determining appropriate minimum block trading sizes for swap contracts; and
- conducting economic analysis of proposed rulemakings and marketplace developments as related to product offerings.

E. Data and Reporting Branch

Deputy Director: Daniel Bucsa

The Data and Reporting Branch has direct oversight of SDRs and the mandated data reporting requirements for swap dealers, SEFs, DCOs, and other market participants. This branch:

- reviews pending SDR applications for registration;
- provides compliance oversight of SDRs and all reporting counterparties, including data recordkeeping and reporting requirements;

- analyzes all submissions for compliance with CEA and regulatory requirements, and drafts and implements Commission rulemakings to ensure appropriate and effective oversight; and
- drafts swap reporting rules including Parts 43, 45, and 49 of the Commission regulations.

F. Market Compliance Branch

Deputy Director: **Rachel Berdansky**

The Market Compliance Branch ensures that designated and registered entities maintain appropriate robust compliance and systems safeguard programs by conducting periodic enforcement reviews and examinations in support of DMO's market oversight function. The essential responsibilities of this branch include:

- conducting rule enforcement reviews ("RERs") of self-regulatory programs at DCMs, SDRs and SEFs, which assess compliance with Core Principles and Commission regulations, examine areas that include the audit trail, trade practice surveillance, market surveillance, and disciplinary and dispute resolution programs; and
- conducting system safeguard examinations, reviewing automated systems and business continuity and disaster recovery programs to ensure they are secure and resilient, and have adequate functionality and capacity.

Upon completion, all RERs are made public to ensure market participant knowledge and to incentivize compliant behavior by review subjects.

G. Surveillance Branch

Deputy Director: **Matthew Hunter**

The Surveillance Branch is the largest group within the division comprising approximately 50 of DMO's 116 FTEs. This Branch is tasked with analyzing compliance with the economic functions of the futures, options, and swaps markets covering all traded commodity classes and swaps within the Commission's jurisdiction. The Surveillance Branch's primary mission is to identify potentially manipulative or disruptive trading activity and take appropriate responsive measures.

Currently, there are four sections within the surveillance branch: (1) Policy Review and Systems Support, (2) Energy and Metals, (3) Agricultural and Softs, and (4) Finance. This branch:

- conducts market analysis in order to confirm market integrity, and where instances of potential manipulation, fraud or abusive trading practices have been identified to refer those matters to the Division of Enforcement for further handling;
- briefs the Commission and senior staff on significant market developments; and

- coordinates with the Commission's Office of the Chief Economist ("OCE") and Office of Data and Technology ("ODT") concerning surveillance analytics needs.

H. Business Management and Planning Unit

Business Manager: **Stephanne Player**

The Business Management and Planning Unit directs DMO's strategic planning and financial management, human resource management, and administrative operations.

DMO PRIORITIES

III. MAJOR MATTERS CURRENTLY UNDER REVIEW

DMO is actively working on a number of regulatory matters in addition to core activities handled by the Division. Currently, staff is drafting rules and or substantive policy statements in connection with the following:

1. Position Limits for Commodity Derivatives Contracts
2. Regulation Automated Trading ("Reg AT")
3. Amendments to Certain Swap Execution Facility Requirements
4. The Made Available to Trade ("MAT") Process for Swaps Trading on Swap Execution Facilities
5. Amendments to Part 49 – Data Quality and Accuracy Rulemaking
6. Amendments to Part 49 – Requirements for Sharing SDR Data with Other Regulators
7. Exempt SEFs Policy Statement
8. Potential Revisions to Part 43 Real-Time Public Reporting and Part 45 Swap Data Recordkeeping and Reporting

1. Rulemaking to Amend Position Limits for Commodity Derivatives Contracts

a. Dodd-Frank Act ("DFA") Requires Position Limits

- CFTC has speculative position limits on nine agricultural commodity futures contracts (17 CFR 150.2), the earliest of which were imposed in the 1930's. Exchanges have imposed their own position limits with respect to many other commodities.
- Position limits set a maximum size for large speculative positions in commodity derivative contracts.
  - The DFA added CEA section 4a(a)(2), requiring CFTC to impose position limits on all physical commodity futures and economically equivalent swap contracts.
  - The DFA added CEA section 4a(a)(3), providing the Congressional policy that limits should, to the maximum extent practicable:
    - Diminish, eliminate, or prevent excessive speculation
    - Deter and prevent market manipulation
    - Ensure sufficient market liquidity for bona fide hedgers
    - Ensure that price discovery is not disrupted

b. Proposed Rules Amending Position Limits

- CFTC published proposed rules providing for a phased implementation of position limits on physical commodity futures contracts and economically equivalent futures and swaps (collectively, referenced contracts) on December 12, 2013.
- CFTC's proposed rules initially would apply to 28 physical commodity referenced contracts.
- CFTC reopened the comment period a number of times and supplemented its proposal on June 13, 2016.

c. Final Rules Amending Position Limits

- CFTC is considering input from commenters on the proposed rules, and from participants in a staff roundtable and four CFTC advisory committee meetings.
- CFTC Chairman has targeted a December 2016 final rulemaking.
- Final rulemaking expected to coordinate compliance date with EU position limit target date of January 3, 2018.

CFTC has published a proposed rulemaking (discussed separately in these materials) to amend the exemptions to the aggregation policy, which generally requires positions under common control or ownership to be aggregated for purposes of position limits.

2. Rulemaking to Establish Regulation Automated Trading ("Reg AT")

a. Notice of Proposed Rulemaking (NPRM) and Supplemental NPRM

- The Commission published an NPRM for Regulation AT in December 2015 that proposed a series of risk controls, transparency measures, and other safeguards to enhance the safety and soundness of automated trading on all DCMs.
- After considering comment letters and views expressed at a staff Roundtable in June, the Commission approved a Supplemental NPRM for Regulation AT that proposes to modify certain rules set forth in the NPRM.

b. Specific Measures Proposed in the NPRM

- Registration of certain entities not otherwise registered with the Commission. The NPRM proposes to require the registration of trading firms engaged in (1) proprietary; (2) Algorithmic Trading; (3) on DCMs (4) via Direct Electronic Access (DEA).
- New algorithmic trading procedures for trading firms and FCMs, including pre-trade and other risk controls; testing, monitoring, and supervision requirements (including retention and production of source code); and requirements that certain AT Persons and FCMs submit compliance reports to DCMs regarding their algorithmic trading systems.
- Requirements for DCMs, including new risk controls for DEA provided by DCMs; transparency in DCM electronic trade matching platforms; and new risk control procedures, including pre-trade risk controls, compliance report review standards, self-trade prevention tool requirements, and market-maker and trading incentive program disclosure and related requirements.

c. Revised Measures that may be Proposed in the Supplemental NPRM

- The Supplemental NPRM moves from a three-level risk control structure to a modified two-level structure, with risk controls set at the levels of (1) the AT Person or its FCM; and (2) the DCM. In addition, the Supplemental NPRM provides that risk controls at the FCM and DCM levels should apply to electronic trading (rather than be limited to Algorithmic Trading).
- The NPRM proposed to require the registration of trading firms engaged in (1) proprietary; (2) Algorithmic Trading; (3) on DCMs (4) via DEA. The Supplemental NPRM retains factors but also incorporates a Volume-Based Quantitative Test for registration as a new Floor Trader.
- The Supplemental NPRM eliminates the requirement that AT Persons and FCMs provide DCMs with annual reports on compliance with risk control requirements. The Supplemental NPRM also modifies requirements as to the DCM program for review and evaluation of AT Person and FCM compliance with risk control requirements.
- As to source code, the Supplemental NPRM proposes that the Commission only would have access to source code via a subpoena or a special call approved by the Commission itself, not by staff, and that any such access would be subject to policies and procedures to protect confidentiality.

3. Proposed Rulemaking to Amend Certain Swap Execution Facility Requirements and Real-Time Reporting Requirements

a. Background

Regulatory History: Part 37 – Swap Execution Facilities & Part 43 – Real-Time Public Reporting

- Dodd-Frank Act amended the CEA to establish various requirements for swaps on SEFs and DCMs. and established a regulatory framework for the real-time reporting of , among other things, swap block trades. The Commission promulgated regulations under Parts 37 for SEFs and 43 for reporting swap transactions.

- The Commission published final rules for SEF registration and core principles in June 2013 and final rules for real-time public reporting in March 2012 and May 2013.
- During full registration SEF review, Commission staff provided no-action relief : relating to swap trade confirmations; market participants ability to correct errors on SEF executed trades; and from the requirement to execute block trades away from the SEF platform

b. Commission Response: Anticipated Proposed Rulemaking to Amend Part 37 and Part 43

- The Commission is considering amending part 37 to codify the no-relief provided above.
- The Commission may also consider additional amendments to part 37.

c. Recommended approach going forward

- Publish a notice of proposed rulemaking to solicit public comment on these amendments.

4. The Made Available to Trade ("MAT") Process

a. Background

- The Dodd-Frank Act added CEA section 2(h)(8) which requires transactions involving swaps subject to the CEA section 2(h)(1) clearing requirement be executed on a DCM or SEF, unless no DCM or SEF makes such swap available to trade ("MAT")or such swap transactions qualify for the clearing exception under CEA section 2(h)(7) "trade execution requirement"). The Commission adopted rules in parts 37 and 38 to implement 2(h)(8).
- Once a swap is subject to the trade execution requirement, transactions on a DCM must be executed competitively "pursuant to subpart J of part 38 of the Commission's regulations. Transactions executed on SEF must be executed by either "(1) an Order Book, as defined in § 37.3(a)(3); or (2) a Request for Quote System, as defined in § 37.9(a)(3), that operates in conjunction with an Order Book."
- In 2013, the Commission received MAT determinations that certain credit default swaps ("CDS") and interest rate swap contracts ("IRS") were made available to trade. These initial determinations became effective at various dates in February and March of 2014.
- Only SEFs and DCMs may submit MAT determinations under current regulations Only 5 MAT filings have been submitted by industry participants to date and it appears there is little incentive from industry to MAT a product.

b. Draft Proposed Rules Amending the MAT Process

- Based on the feedback from public comments and a public roundtable, a proposed rulemaking which would amend the current MAT process has been proposed by staff. The changes in the amended MAT process include, in part:
    - Establishing a standalone regulatory structure for MAT, including establishing new part 36 of the Commission's regulations and creating a dedicated form MAT
    - Providing the Commission with the ability to determine that a swap has been made MAT on its own accord, along with SEFs and DCMs
    - Providing procedures for the amended MAT process including:
        - prerequisites before seeking a MAT determination;
        - petition process for SEFs and DCMs to initiate the MAT process;
        - public notice and comment within the MAT process;
        - factors or criteria that will be used in determining whether a swap has been made available to trade;
        - the compliance schedule for new MAT determinations; and removal of a MAT determination.
- The draft proposed rules would not affect the status of swaps previously determined to be MAT.

5. Proposed Rulemaking to Amend Part 49 – Data Quality and Accuracy

a. Regulatory Challenge

- The Commission is seeking to improve the quality and accuracy of swap transaction data reported to the Commission so as to increase the Commission's ability to utilize the data for regulatory purposes.

b. Commission Response

- In 2014, the Commission announced the formation of an interdivisional staff working group to review the Commission's part 45 swap data reporting rules, and related provisions of the Commission's regulations.

- Based on the efforts of the interdivisional staff working group, the Commission requested public comment on a variety of swap data reporting and recordkeeping provisions. One of the subjects of the request for comment was how SDRs and reporting entities should ensure that complete and accurate information is reported to, and maintained by, SDRs.

c. Potential Further Revisions

- Staff is planning to recommend to the Commission additional proposed rule changes to Part 49. Such proposed part 49 rules would integrate existing staff guidance, clarify and amend certain provisions, and introduce additional requirements for swap data repositories. Specifically, the proposed part 49 rule changes would address ambiguities and fill gaps in the existing language of the Commission's regulations concerning existing obligations for SDRs to accept and confirm data accuracy.

6. Proposed Rulemaking to Amend Part 49 - Requirements for Sharing SDR Data with Other Regulators

a. Recent CEA Revisions

- Congress repealed the portion of CEA Section 21(d)(2) that required domestic and foreign regulators to enter into indemnification agreements prior to accessing swaps data at SDRs.

b. Background

- The DFA amended the CEA to require that regulators indemnify SDRs and the CFTC prior to accessing swaps data at SDRs.

- Domestic regulators voiced concern that compliance with this indemnification requirement was difficult due to various laws and regulations potentially prohibiting such arrangements.

- Congress responded to regulators' access concerns by repealing the indemnification requirement of CEA section 21(d)(2) in the FAST Act of December 2015.

c. Commission Response

- Staff is considering recommending to the Commission proposed rule changes to Parts 49 that would: (i) implement the statutory changes mandated by the FAST Act, (ii) revise the process by which the Commission determines which foreign regulators would be granted access to swaps data at SDRs; and (iii) clarify the standards to be used by the Commission in granting SDR data access to foreign regulators.

7. Exempt SEFs Policy Statement

a. Background

- CEA Section 5h(g) authorizes the Commission to grant Exempt SEF status to foreign-based swaps trading platforms that are regulated in a comparable and comprehensive manner in comparison to the Commission's regulation of SEFs.

b. Commission Response

- Staff intends to recommend to the Commission that it adopt a Policy Statement establishing a framework of standards and procedures that it would use to exempt foreign-based trading platforms from the SEF registration requirements (i.e., Exempt SEFs).

- The Policy Statement would include a list of review standards derived from a blend of SEF core principles and elements of the part 37 SEF regulations that DMO believes are essential in achieving a level of oversight and supervision that: (i) is comparable with that for SEFs, and (ii) ensures that there is a consistent and robust level of market integrity for swaps trading by US persons and US-located persons no matter what the regulated platform on which they trade. This approach would enable the Commission to follow an outcomes-based approach towards determining whether foreign requirements are "comparable" to SEF regulatory requirements.".

- The Policy Statement would announce the Commission's intention to process exemption requests on a case-by-case basis. The Policy Statement, along with implementation experience, could eventually be used to promulgate a rulemaking with standard procedures and requirements for Exempt SEF applications.

8. Potential Revisions to Part 43 Real-Time Reporting and Part 45 Swap Data Reporting

a. Regulatory Challenge

- Information regarding each swap transaction is generally required to be reported both to the public Part 43 Real-Time Public Reporting rules and also to the Commission under Part 45 Swap Data Recordkeeping and Reporting rules. Since these rules were finalized in 2012 pursuant to the requirements of the Dodd-Frank Act, numerous issues and ambiguities have been identified. During the last four years, Staff has issued guidance and no-action relief in response to industry requests for clarification and relief from several provisions of Parts 43 and 45.
- The swap data elements that must be reported to the public pursuant to Part 43 and to the Commission pursuant to Part 45 are not sufficiently defined, both in terms of which data elements must be reported and the format, manner, and allowable values for the reported data elements. This circumstance results in incomplete and variable reporting of data elements by counterparties and swap data repositories.

b. Commission Response

- In 2014, the Commission announced the formation of an interdivisional staff working group to review the part 45 swap data reporting rules, and related provisions of the Commission's regulations.
- The Commission convened subject matter experts from each of the Commission's divisions in Fall 2015 to develop draft technical specifications – including descriptions, allowable values and formats – for certain swap data elements, which were issued for public comment in December 2015. Staff is continuing to review the public comments received, while concurrently participating in international working groups with other global financial regulators in order to harmonize how swap data elements are reported.
- In June 2016, the Commission approved a final rule that amended existing swaps reporting regulations in Part 45 in order to provide clarity to swap counterparties and registered entities regarding their reporting obligations for cleared swap transactions; and to improve the efficiency of data collection associated with the reporting of the swaps involved in a cleared swap transaction.

c. Potential Further Revisions

- Staff is considering recommending to the Commission additional proposed rule changes to Parts 43 and 45. The proposed Parts 43 and 45 rules would integrate existing staff guidance, clarify and amend certain provisions, and potentially introduce additional requirements for swap data recordkeeping and reporting.

As the draft technical specifications issued in December 2015 relates to only a subset of data elements and does not include data elements applicable to certain asset classes, Staff is considering further request(s) for comment for draft technical specifications for additional data elements.

IV. APPENDIX A: DESIGNATED/ REGISTERED ENTITIES

DESIGNATED CONTRACT MARKETS

1. Cantor Futures Exchange, L.P.
2. CBOE Futures Exchange, LLC
3. Chicago Board of Trade (Board of Trade of the City of Chicago, Inc.)
4. Chicago Mercantile Exchange, Inc.
5. Commodity Exchange, Inc.
6. ELX Futures, L.P.
7. Eris Exchange, LLC
8. ICE Futures U.S., Inc.
9. Minneapolis Grain Exchange, Inc.
10. NASDAQ Futures, Inc.
11. New York Mercantile Exchange, Inc.
12. Nodal Exchange, LLC
13. North American Derivatives Exchange, Inc.
14. OneChicago LLC
15. trueEX LLC

REGISTERED SWAP EXECUTION FACILITIES

1. 360 Trading Networks, Inc.
2. BGC Derivatives Markets, L.P.
3. Bloomberg SEF LLC
4. Chicago Mercantile Exchange, Inc.
5. Clear Markets North America, Inc.
6. DW SEF LLC
7. FTSEF LLC
8. GFI Swaps Exchange LLC
9. GTX SEF LLC
10. ICAP Global Derivatives Limited
11. ICAP SEF (US) LLC
12. ICE Swap Trade LLC
13. Javelin SEF, LLC
14. LatAm SEF, LLC
15. MarketAxess SEF Corporation
16. Seed SEF LLC
17. SwapEx LLC
18. TeraExchange, LLC

19. Thomson Reuters (SEF) LLC
20. tpSEF Inc.
21. Tradition SEF, Inc.
22. trueEX LLC
23. TW SEF LLC

REGISTERED SWAP DATA REPOSITORIES

(**Pending – Provisional Registration)*

1. BSDR LLC *
2. Chicago Mercantile Exchange Inc. *
3. DTCC Data Repository *
4. ICE Trade Vault *

REGISTERED FOREIGN BOARDS OF TRADE

1. BM&F Bovespa S.A. - Bolsa de Valores, Mercadorias & Futuros
2. Bursa Malaysia Derivatives Bhd
3. Cleartrade Exhange Pte. Limited
4. ICE Futures Canada, Inc.
5. Montreal Exchange, Inc.
6. Natural Gas Exchange Inc.
7. NZX Limited
8. Singapore Exchange Derivatives Trading Limited
9. Tokyo Commodity Exchange

Division of Swap Dealer & Intermediary Oversight

Division Overview

October 2016

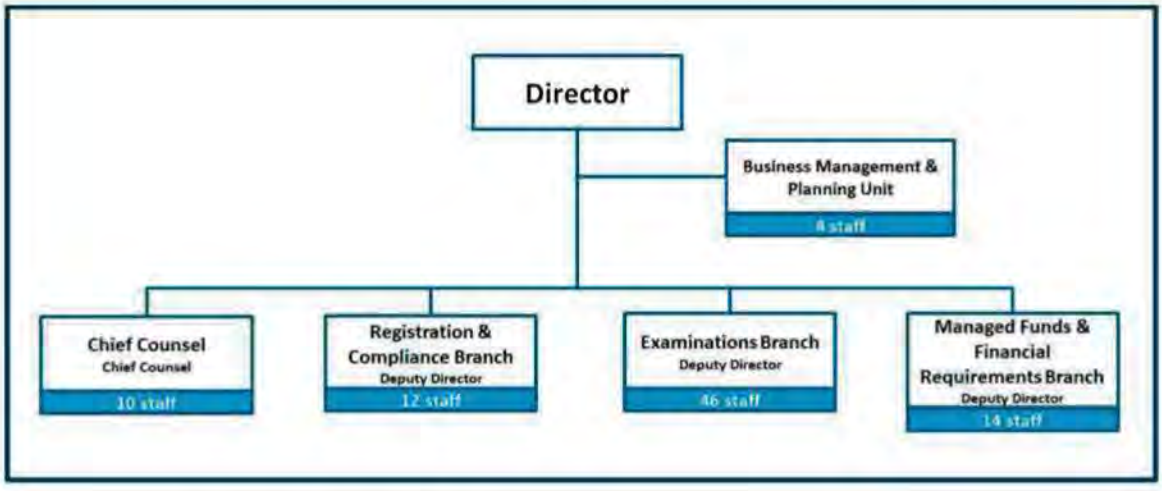
MISSION OF THE DIVISION OF SWAP DEALER AND INTERMEDIARY OVERSIGHT

The Division of Swap Dealer and Intermediary Oversight ("DSIO") oversees the registration and compliance of swap and futures market intermediaries and swap and futures industry self-regulatory organizations ("DSROs"), including Chicago Mercantile Exchange ("CME") and the National Futures Association ("NFA"). DSIO is responsible for developing, implementing, and interpreting regulations governing the activities of swap and futures market intermediaries including: registration; fitness; financial adequacy; sales practices; protection of customer funds; cross-border transactions; risk management; and anti-money laundering programs. Under Dodd-Frank, DSIO is also responsible for developing and monitoring compliance with regulations addressing registration, business conduct standards, capital adequacy, and margin requirements for swap dealers ("SD") and major swap participants ("MSP").

DSIO Overview

There are a significant number of registered intermediaries and SDs subject to CFTC Regulations. As of September 2016 there are 104 SDs, 72 futures commission merchants ("FCM"), 1,275 introducing brokers ("IB"), 1,700 commodity pool operators ("CPO"), 2,300 commodity trading advisors ("CTA"), and three retail foreign exchange dealers ("RFED").

The Division currently has 87 employees and is comprised of four branches: Chief Counsel Branch, Registration and Compliance Branch, Managed Funds and Financial Reporting Branch, and Examinations Branch. The following pages describe the overall organization and responsibilities of each Branch and some of each Branch's achievements over the past year.



*See Appendix for full description of DSIO staffing

CHIEF COUNSEL BRANCH

The Chief Counsel Branch provides legal counsel, performs legal research, and participates in legal policy development in connection with the regulatory oversight of swap and futures market intermediaries.

The Chief Counsel Branch staff develops regulations, orders, and interpretative statements; reviews requests for no-action; reviews the work product of other Commission Divisions and Offices that pertain to the oversight of swap and futures intermediaries; provides advice to other Divisions and Offices regarding issues involving swap and futures intermediaries; and participates in cross-divisional working groups to develop regulatory policy with respect to the derivatives markets. The Chief Counsel Branch prepares draft legislation, regulations, policies, guidelines and other regulatory approaches for specific aspects of the Division's oversight programs in coordination with the Division senior staff. The Chief Counsel Branch also provides technical guidance regarding the regulatory programs of other domestic and foreign financial regulators and conducts comparability analysis of foreign regulatory regimes.

Some of the Chief Counsel Branch's particular accomplishments over the last 12 months include the following:

- Comparability determination for Japan uncleared swap margin rules for substituted compliance purposes
- Order designating NFA as a recipient of certain data reported to swap data repositories
- Order to the Korea Exchange granting an exemption from FCM registration to designated members
- Proposed and/or final Commission Regulations relating to the following:
    - Amendments to swap portfolio reconciliation under Commission regulation 23.500
    - Amendments to recordkeeping requirements under Commission regulation 1.35
    - Alternative to the fingerprinting requirement for foreign natural persons under Part 3 of Commission regulations

Some of the upcoming items for fiscal 2017 include:

- Comparability determination for Europe for uncleared swap margin rules
- Comparability determination for Canada for uncleared swap margin rules
- Proposed rulemaking to modernize 1.31 (recordkeeping)
- Proposed rulemaking codifying pre-trade mid-market mark
- Finalize rulemaking for amendments to 3.10(c)

REGISTRATION AND COMPLIANCE BRANCH

The Registration and Compliance Branch ("R&C") provides legal and technical counsel and guidance on registration and compliance requirements applicable to intermediaries with a particular focus on swap dealers and the Volcker Rule. In addition, R&C oversees the Division's data analysis activities.

R&C provides both day-to-day guidance and strategic counsel in these areas to a variety of stake holders including the Division Director, the Commission, other Divisions, NFA, registrants, other market participants, and other federal, state and foreign agencies. R&C responds to market participants with swap market related registration and compliance questions, drafts new regulations, assists the Examinations Branch with legal questions, undertakes swap data repository and Volcker Rule data analysis and participates in the Volcker Rule working group with the other four financial regulatory agencies that also implement the Volcker Rule.

Since the adoption of the Volcker Rule with the other implementing agencies, R&C has been the principal unit responsible for Volcker Rule implementation for the CFTC. In that capacity, R&C responds to interpretative requests and participates in calls each week with the multi-agency Volcker Rule working group to develop and coordinate FAQs and other forms of interpretative guidance. R&C also assists the Examinations Branch with its Volcker examinations program.

The data and risk capability for DSIO was developed to fulfill the Division's responsibilities regarding new data received through the swap data repositories and in connection with the Volcker Rule metrics reporting.

Some of the R&C Branch's particular accomplishments over the last 12 months include the following:

- Advisories for SDs and FCMs on topics including: CCO reporting lines, CCO annual reports, risk management (with Examinations), swap data reporting by SDs, and Volcker policy and procedure assessment by swap dealers
- Preliminary and Final Staff Reports on the de minimis exception including extensive data analysis, and Commission Order extending the termination date for the de minimis exception phase-in period
- Commission Order delegating to NFA receipt and analysis of swap valuation dispute notices

Some of the upcoming items for fiscal 2017 include:

- Assisting Volcker examinations
- Finalizing amendments to Volcker metrics
- Amendments to Form 8R

- Continuing analysis of De Minimis data
- Finalize rulemaking for CCO annual report

MANAGED FUNDS AND FINANCIAL REPORTING BRANCH

The Managed Funds and Financial Reporting Branch provides legal counsel and policy development and implements the Division's legal interpretation of existing financial regulatory requirements in connection with registered intermediaries. These intermediaries have various and complex financial reporting and disclosure requirements (CPOs/CTAs) and various and complex financial reporting and capital adequacy requirements (FCMs, SDs, IBs, RFEDs, and MSPs). There are also highly technical and comprehensive customer funds segregation and protection regimes applicable to FCMs with regard to domestic and foreign futures and cleared swaps customer funds.

DSIO staff in this branch fall under two groups, those primarily working with CPO/CTA issues ("Managed Funds staff"), or those primarily working with SD, FCM, IB, and RFED capital margin and segregation issues ("CMS staff"). Managed Funds staff and CMS staff are both responsible for developing the regulations, orders, and interpretative statements on the financial reporting, capital adequacy, customer protection, and participant disclosure requirements applicable to these various entities.

Managed Funds Staff

Since the passage of Dodd-Frank, a large number of pool operators and advisors that were previously outside of the regulatory reach of the CFTC came within the registration requirements. As a result, there has been a significant increase in the number and variety of novel, unique, and complex issues related to CPOs and CTAs.

CMS Staff

CMS staff are responsible for the completion of Dodd-Frank rule-making imposing statutorily required margin for uncleared swap transactions and capital requirements for SDs and major swap participants. CMS staff are responsible for coordination with various other national and international financial regulators to develop consistent margin and capital requirements. CMS staff are also primarily responsible for interpretation of the FCM and IB capital adequacy, segregation and financial reporting regulations.

Some of the Managed Funds and Financial Reporting Branch's particular accomplishments over the last 12 months include the following:

- Issuance of more than 45 exemptive, no-action, and interpretative letters regarding CPO and CTA issues

- Dodd-Frank SD margin rulemaking and implementation of the margin requirements
- Roundtable on the residual interest deadline for FCMs and issuance of Report
- No-action regarding money market mutual funds for the investment of customer funds by FCMs

Some of the upcoming items for fiscal 2017 include:

- Finalize rulemaking 4.22 CPO annual reports
- Propose SD capital rules
- Implementation issues for variation margin for uncleared swaps

EXAMINATIONS BRANCH

The Examinations Branch provides the necessary oversight of swap and futures market intermediaries to help ensure customer funds are protected and that these firms remain in compliance with CFTC Regulations. The Examinations Branch focuses on monitoring the risks and controls at the intermediaries, principally focusing on FCMs that hold customer funds. Through its Major Review Unit, the Branch also oversees the financial surveillance and examination functions at the DSROs – NFA and CME.)

As of August 31, 2016, the Examinations Branch had oversight responsibility for 68 FCMs; of which 58 carry customer funds. These firms had aggregate capital of $142 billion and aggregate obligations to customers of $272 billion (includes five firms with retail forex obligations).

The primary activities of the Examinations Branch include:

- Monitoring FCMs to identify "red flags" that could jeopardize customer funds;
- Reviewing high risk notices and forward looking filings with the Commission;
- Reviewing key firm reports – Chief Compliance Officer Annual Report, Annual Risk Management and Quarterly Risk Exposure reports, public filings (10Ks, 10Qs, 8Ks, etc.), daily segregation computations, and monthly financial reports;
- Performing focused examinations;
- Performing oversight reviews of the DSROs regarding their delegated duties.

Some of the Examinations Branch's particular accomplishments over the last 12 months include the following:

- 989 monthly FCM financial statements processed
- 17,426 daily FCM Segregated, Secured and Cleared Swap computations processed

- 43 Risk Management Reports processed
- 705 Risk Exposure Reports processed
- 170 Chief Compliance Officer Reports reviewed
- 104 Cybersecurity Reviews conducted
- Review of NFA CPO Examinations
- Review of NFA 4s process

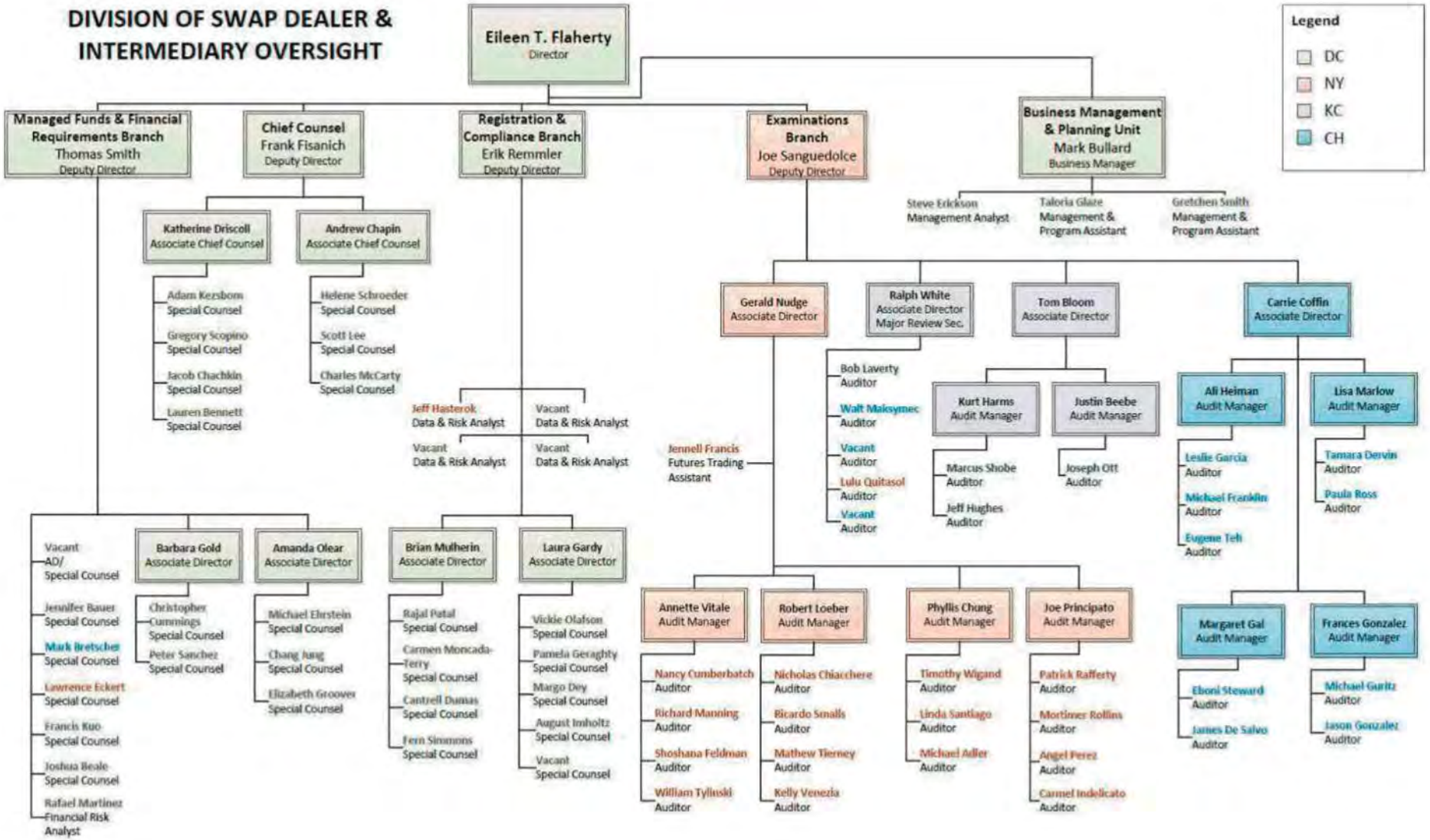
Some of the upcoming items for fiscal 2017 include:

- Volcker examinations
- Ongoing reviews, as described above, of FCM financial, segregation and cleared swaps computations, Risk Exposure Reports, Chief Compliance Officer Reports

BUSINESS MANAGEMENT & PLANNING UNIT

The Business Management & Planning Unit provides operational support to DSIO leadership in areas such as budget, strategic planning, performance management, human capital, acquisitions, records management, internal controls, administration, and logistics.

APPENDIX – DSIO Organization Overview



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the Chief Economist

MEMORANDUM

TO: Agency Review Team for CFTC

FROM: Sayee Srinivasan
Chief Economist, Office of the Chief Economist (OCE)

DATE: November 7, 2016

SUBJECT: Transition Information for Next Chairman--FY 2017
Priorities for the Office of the Chief Economist

A. OCE Today:

MISSION: OCE provides economic analysis, advice, and context to the Commission and to the public. It provides perspectives on both historical and current events, as well as long-term trends in the derivatives markets. In terms of issues that we focus on, traditional emphasis has been towards market structure issues, especially rules pertaining to trading, execution, order handling, and settlement. Post Dodd-Frank, the office covers issues related to both futures and swaps markets. OCE staff is in the process of developing analytical tools to measure liquidity, volatility, and risk in derivatives markets. The two core features of this capability are (a) integrating data across futures, swaps and the underlying cash markets, and (b) calculating risk metrics, both firm level as well as market-wide. OCE also represents the Commission in various work-streams initiated by FSOC (for example, Treasury market structure, systemic risk and shadow banking) and FSB (liquidity and data standards with). The focus is completely empirical with a strong bias on leveraging multiple data sources and collaborating with all other divisions and with other regulatory agencies to improve our data analytics capabilities.

TEAM

OCE is headed by the Chief Economist. The rest of the staff includes two Supervisory Economists, eleven staff economists and an attorney. In terms of educational background for economists, there are seven Ph.D.'s and Masters respectively. The office also collaborates actively with academic experts, with over ten such experts currently engaged as unpaid consultants.

ROLE & RESPONSIBILITIES:

a) ***Rulemaking***: A key responsibility of OCE is to help the Commission comply with the statutory requirement to consider the costs and benefits (CBC) of all new rules being proposed or finalized by the Commission. As a result the OCE team is involved in every rule making project. Increasingly, depending on the scope of a specific rulemaking project, OCE gets involved at the policy development stage actively seeking to leverage the growing base of data available to the Commission. Recent examples include

- Proposals pertaining to risk controls and registration for automated trading systems and participants,
- Draft proposal to modify commission rules for mandatory trade execution for swaps (also known as made available to trade swaps),
- Draft final rule for position limits,
- Various proposed and final rules pertaining to swap data reporting.

In other projects, OCE's role can be limited to developing the CBC, both qualitative and quantitative; recent examples include

- Final rule for margins for uncleared swaps,
- Draft proposal for capital requirements for swap dealers and major swap participants
- Final rule to expand clearing determinations for new interest rate swaps,
- Commission order for the *de minimis* exception for swap dealers
- Final rule for system safeguards.

Often, following the finalization of a rule, market participants will make submissions to the Commission seeking clarifications, extensions and relief. Given staffing constraints, OCE staff will selectively participate in discussions and deliberations related to such submissions (for example, package trades, portfolio compression and risk mitigation). Staff will also collaborate with relevant Divisions on implementation issues (for example, registration of Swap Execution Facilities, made available to trade determination).

b) ***Data Integration & Analysis***: Historically, any data analysis by OCE would have been typically associated with specific research projects. But the implementation of Swap Data Repositories, mandatory clearing of standardized swaps and, the growing emphasis on quantitative cost benefit considerations, has resulted in OCE playing an active, hands-on role in the design, development, and testing of data infrastructure. The team works closely with other offices and divisions within the agency, often leveraging its industry expertise and staff skill-set in economics and statistical analysis tools to ensure data quality, and integrity. There is deliberate process to develop capability among OCE staff to conduct economic analysis using data from all sources available to the Commission – futures trading and positions, swaps trading and positions, and margin and collateral for cleared swaps – and across all asset classes – commodities, equity, rates, foreign currency, and credit.

Weekly Swaps Report: Reflecting its cross-functional bias, OCE has been tasked with the responsibility of publishing the weekly Swaps Report (went live on November 20, 2013). Staff has worked closely with the then Chairman's office in the design of the Report, and in aggregating the data and publishing the Report. This in turn has caused OCE to take a pro-active role in all aspects of collecting data from the SDRs, validating them, trouble-shooting operational issues, and briefing Commissioners office on all aspects, specifically of the Reports as well as more generally of the SDR data.

Risk Report: Over the years, there has been growing awareness that total number of futures contracts traded, and notional size of swaps traded are not necessarily representative of economic risk transacted in the derivatives markets. OCE staff has been developing the building blocks to measure, analyze and monitor such risk. Initial focus has been on interest rate swaps and credit default swaps, with an integrated view of both cleared and uncleared transactions and exposures. In coming years, this capability will be expanded to improve the quality of risk estimates as well as to increase coverage to all asset classes and across futures and swaps markets.

SEF activity: The new regulatory regime for swaps requires certain platforms facilitating swap trades to register as Swap Execution Facilities (SEFs), and a subset of swaps subject to mandatory clearing to be transacted on a SEF or DCM (Designated Contract Market). Swaps market structure is materially different from that for futures. This past year, OCE economists have been systematically working with audit trail data from a small group of SEFs. This pilot study is expected to help us develop data standards for SEF platforms as well as provide early insights into swap market structure issues.

c) ***Economic Analyses and Research***: OCE staff provides economic and statistical analysis to the Offices of the Commissioners and the various Divisions on a broad spectrum of issues. It also collaborates with staff from other regulatory agencies to conduct joint studies.

Staff also conducts formal research leading to the publication of white papers, research papers (both hosted on the CFTC web site) and articles in peer-reviewed journals. Given limited resources, active collaboration with academic experts is critical in conducting such research.

Recent examples of such economic analysis and research include the following;

- The joint staff report on activities in the Treasury markets on October 15th, 2014.
- CFTC staff report on the *de minimis* exception for swap dealers
- White papers on different aspects of automated trading in futures markets
- Integrative analysis of commodity swaps positions held through futures and swaps contracts
- Research submitted to academic journals on speed of trading in futures markets, and cross market analysis of equity futures and swap activity
- Liquidity trends in benchmark futures contracts, including a classification system for market participants.

d) **Benchmark Reform**: OCE economists were closely involved in a support role in the various enforcement actions by the Commission pertaining to manipulation of financial benchmarks. There is now a global effort to reform such benchmarks; a core feature of this effort is the foster development of new, alternative benchmarks, with active support from the official sector. OCE represents the Commission on various work-streams under the FSB, especially in the context of the effort to develop risk-free reference rate alternatives for the US$ denominated LIBOR.

B. OCE in FY 2017

FOCUS AREAS:

1) CCP Risk: Due to severe staffing challenges, OCE has refrained from economic analysis of CCPs and the role of central clearing. With a recent hire, OCE has kicked off a multi-year effort to systematically build a strong research program on these issues.

2) Systemic Risk: CCPs have a critical role in mitigating systemic risk. While the Commission is not directly responsible for broad financial stability – this is part of the core mission of the bank regulatory agencies – CFTC has a complementary role to play in measuring, monitoring and studying various sources of potential risk to financial stability. While the various divisions in the agency tend to focus on risk factors directly under their respective jurisdictions, OCE aspires to study risk across different aspects of the derivatives markets – liquidity and price volatility, CCPs, swap dealers, clearing firms, and

operational (for example, flash crashes and rallies in exchange traded products). The plan is to develop a blue-print for a core group focused on developing an integrated, multi-dimensional dashboard of risk.

3) SEF Market Structure: The SEF Final Rules include a commitment by the Commission to conduct a study on Commission rules pertaining to the different execution methods within four years from the effective date of these rules. OCE will be leading this project, and anticipates working with DMO and OGC to ensure that the Commission has the legal authority to obtain relevant data from the SEFs. It will also be working with ODT and the SEFs to design and implement appropriate data standards and protocols for these data sets.

The analytical capabilities developed will be leveraged to conduct economic analysis and research into impact of

- Pre- and Post-Trade Transparency and Changing Market Structure of the Swaps Markets
- Mandatory Clearing and Margins for Uncleared Swaps
- Capital Requirements and Liquidity Trends

4) Inter-Agency Collaborating: Following major dislocations in the market place (for example, the May 2010 Flash Crash in the equity markets, October 15th, 2014 flash rally in Treasuries, August 24, 2015 disruptions in equity markets), OCE staff will take the lead role in collaborative analysis with staff from other agencies including the SEC, Fed, and Treasury. It is anticipated that such collaboration will continue to grow, and potentially, result in the formation of more formalized structures.

- A recent MOU signed with Treasury, Fed and SEC to facilitate active sharing of analytical findings related to Treasury markets
- Discussions under way with SEC and the Office of Financial Research (OFR) to collaborate on analysis of cross market activity in equity (cash and futures)

D. Staffing challenges

Numbers – Thanks to active support from the Chairman and Commissioners, OCE's staff strength has grown substantially since 2014 (from a low of 8 at one point in time to 15 today). But it lags substantially behind other financial regulatory agencies, and in particular, the SEC. Over the past decade, due to budgetary and other reasons, one could argue that there has been substantial underinvestment in quantitative economic analysis at the CFTC. Given the transformational increase in data available to the Commission, justified by the quantum growth in its responsibilities, the institution deserves a substantially larger Office of the Chief Economist.

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Office of Data & Technology

MEMORANDUM

TO: Chairman Massad

FROM: John L. Rogers, Chief Information Officer

DATE: November 16, 2016

SUBJECT: Transition Overview

Office of Data and Technology Organization

The mission of the Office of Data and Technology (ODT) is to provide data and technology to the Commission Divisions and Offices in a timely, efficient, and effective manner. ODT is led by the Chief Information Officer (CIO) and delivers services to CFTC through four branches: Infrastructure and Operations, Systems and Services, Data Management, and Policy and Planning.

The Infrastructure Branch manages the CFTC network, desktop computers, telecommunications, wireless devices, and help desk operations. This includes servers, storage, database management, secure industry data submissions, business continuity, videoconferencing, webcasting, and multimedia production. The Commission's infrastructure includes over 1500 Voice over IP endpoints, 100 physical servers, 600 virtual servers and 1.026 petabytes of data storage.

The Systems Branch conducts software development and implements systems for all Divisions/Offices at the Commission. The major systems implemented by the Systems and Services branch support Enforcement (eLaw), Market Surveillance (ISS), and Financial Risk Surveillance (RSR and SPARK). The software engineered loads millions of trade records, position records, and other data received by the Commission each night. The Branch also provides an internet-based market participant portal for forms submission from industry participants, and integrated data and system capabilities. The Branch also develops and implements systems to support management and administration functions for Divisions, and OED, and manages CFTC-wide software platforms such as SharePoint and SAS.

The Data Management Branch facilitates data reporting standards with industry, supports rulemaking that affects the Commission's data acquisition efforts, conducts data analysis for Divisions needing technical assistance and manages data operations to acquire high quality data. Data operations activities include facilitating timely and accurate receipt of large trader position

data from Futures Commission Merchants (FCMs) and Designated Contract Markets (DCMs) in accordance with Parts 16 and 17 of the CFR and Part 45 data into the Swap Data Repositories (SDRs). The data standards and architecture activities include defining standards for data submissions for futures and swaps under multiple Parts of the CFR (e.g., Parts 16, 17, 20, 39, 45, 75), ongoing data harmonization efforts with the four registered Swaps Data Repositories (SDRs), and development of plans for effective organization, access and management of data Commission-wide. Data analysis activities are focused on the implementation of a Commission-wide Swaps Data Mart, the production of the CFTC Weekly Swaps Report, development of analytical capabilities for the Commission and data analysis support for Divisions (Enforcement, DSIO, etc.) by embedding data analysts in the Divisions.

The Policy and Planning Branch manages core functions that are essential to reducing risk and increasing the return on investment of the CFTC's IT portfolio in accordance with the applicable policies, principles, standards, regulations and laws, including but not limited to the following: Federal Information Security Management Act (FISMA), Cybersecurity Act of 2015, Clinger-Cohen Act, OMB A-130, Managing Information as a Strategic Resource, Department of Homeland Security (DHS) directives and memoranda, and Americans with Disabilities Act Section 508. Major programs include IT security and compliance, security operations and digital forensics, Communications Security (COMSEC), IT strategic planning, capital planning and investment control (CPIC), ODT budget management, and IT resource management. Additional functional responsibility includes the ODT Project Management Life Cycle (PMLC), which incorporates IT security, IT-related policy, principles, and standards, configuration management, enterprise and data architecture, and internal controls into each ODT project.

Immediate Challenges

From an IT perspective for 2017, addressing the insufficient IT budget set for operating and staffing levels, data quality and standardization and IT security are the three greatest challenges facing the Commission. Lack of budget resources has hamstrung CFTC for many years, with the most recent flat budgets having placed IT in an unsustainable maintenance-only mode, at a time when investments in skills and technology are vital. CFTC's mission requires access to high-quality data, driven by the use of standards and a strict data quality management regime. In addition, different regulatory functions require different types of data such as positions, transactions and order messages. Managing such data sets requires the Commission to invest in the right scale, size of investments in staff skills and technology. These data and systems need to be protected against malicious and unintentional acts. The protection of confidentiality, integrity and availability of critical information is essential for CFTC to operate, requiring a sustained focus on risk management throughout the design, development, operations and oversight of resilient information systems.

IT Budget Challenges – Like in many other areas, the Commission is highly underfunded when it comes to IT investments. This underfunding is seen in the limited ability of ODT to develop new solutions to meet mission objectives (e.g., OCR, SDR data analysis and integration) within

the IT budget, and also in hiring key CFTC IT staff to oversee critical IT functions. To be most effective, ODT needs to maintain a cadre of FTEs with industry, technical, and contract oversight expertise who ensure that IT investments are managed effectively, ultimately lowering IT ownership costs, reducing the risk inherent in complex IT projects, and providing a pool of expertise that increases operational flexibility.

With an FY 2016 IT budget of $50m, the Commission's budget is barely sufficient to keep operations and maintenance of existing services, albeit at reduced levels from the previous year. This is a budget is 37% lower than the $79m request made in the FY 2016 President's Budget (or the $79m requested in the FY 2017 President's Budget). Over the last two fiscal years the IT budget has been supplemented by additional S&E funds designated by the Chairman. Without this funding IT would not have had the ability to address security vulnerabilities, data harmonization, and data quality. This lack of funds may result in a loss or significant reduction of applications, platforms, services and tools that ensure that staff operates in an efficient manner toward fulfilling the CFTC's mission. Sustainment of existing IT services will degrade over time as older technology begins to reach end-of-life. **At a minimum the IT budget should not go below $55m for full operations and maintenance and modest technological improvements to address immediate challenges.**

Due to FY 2016 budget constraints, ODT was unable to replace departing federal IT staff performing in the areas of market and financial systems support, eLaw (enforcement technology), cybersecurity, enterprise systems support, and data management. This has reduced our ability to deliver services, manage projects, and oversee contracts. We are at a heightened risk of service outages, internal controls lapses, reduced contract performance, project delays, and even cybersecurity incidents. The following chart shows the funding levels requested for ODT for FY 2015 and FY 2016, broken down by the request for an IT services budget (i.e., hardware, software, contract services) and by full time federal staff. The chart also shows the actual funding received, and the IT S&E supplemental funding received for Chairman's priorities.

	FY 2015 President's Budget	FY 2015 Actual IT Budget	FY2015 IT Chairman's Funding	FY 2016 President's Budget	FY 2016 Budget	FY2016 IT Chairman's Funding
IT Services	$79M	$51.1M	$7.85M	$79M	$50M	$6.6M
IT FTE	$21.07M	$17.6M		$19.53M	$18.4M	

Because of the data-centricity and knowledge-driven nature of the Commission's work, IT solutions greatly increase the effectiveness of staff. However, these solutions cannot replace staff, either on the IT side or in mission areas. Mission staff that are invested heavily in data analysis, design and implementation of IT systems, infrastructure and security are a crucial component of creating effective IT solutions. In IT, investments need to be made in the areas of

hardware, software, and staff to build secure technology solutions for both present and future needs.

Data Quality and Standardization – High-quality and consistently reported data is an important prerequisite to effective execution of a number of regulatory functions that CFTC staff perform. Several key things contribute to data quality, including clearly defined and up-to-date data standards, and the implementation of effective data quality management programs for each data stream.

ODT has either led or championed several efforts to improve and institute the standardization of regulatory data at the CFTC. Such programs are in place for the futures data streams such as Large Trader Data for Part 17, even as it is being updated to keep up with market practices. The data standardization program also includes domestic harmonization efforts directed at the SDRs including supporting updates to Part 45 and 49, international swaps data harmonization under the sponsorship of the Financial Stability Board (FSB), Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO), which the CFTC (and ODT) co-chair. While these efforts are proceeding organically, as well as with some help from the Office of Financial Research (OFR), and with resources made available under the current budget constraints, ODT is unable to tackle several data harmonization efforts for some asset classes due to lack of resources and lack of requisite skills. Given the constrained budget, efforts to maintain and update the standards to be in line with market practices have tended to be episodic, thus creating high risk of standards being outdated and unable to keep up with market practices (as borne out by past events in areas of futures large trader reporting under Part 17), thus leading to a loss in the value of the data received. ODT intends to continue to improve its standards usage, within the constraints of the budget, but that work will continue to be reactive due to the said constraints.

ODT's data quality management initiatives focus on both data Quality Assurance (QA) and Quality Control (QC). Managing the quality of the data at source through standards and compliance enforcement are large parts of the QA program. While they are more stable for the futures data streams, they continue to be resource constrained both for the futures and the swaps data streams. QC includes proactively monitoring, validating data to pre-defined specifications, measuring the accuracy, completeness, integrity, timeliness, and consistency of the data, communicating data quality measures through dashboards and data submitter scorecards, and remediating known data quality problems. Such a QC program takes a significant amount of resources to implement and manage. Each data stream needs an optimum number of dedicated Data Quality Control resources for consistently high data quality. However, current funding only supports initiatives for one data stream – TCR. Without additional resources, ODT will not be able to proactively implement its data quality program in a timely manner.

IT Security - As a Federal regulator, it is essential to maintain the confidentiality, integrity and availability of data that is consumed, produced and disseminated. CFTC is facing the challenge of enhancing the IT security posture in a world of rapidly expanding threats and evolving complex regulatory requirements. The foundation of the CFTC's IT security program is built on

a balanced mix of policy and compliance activities that govern the use and protection of our data and systems in a manner that is practical, improves the resiliency of information systems, and maintains compliance with regulatory mandates. Cybersecurity related legislation, principles, standards, and regulations require a significant investment in people, process and technology to maintain compliance and effectiveness, including but not limited to the following: FISMA, Cybersecurity Act of 2015, OMB A-130, and DHS directives and memoranda. CFTC has and will continue to leverage government wide resources to improve our Cybersecurity posture, including DHS Continuous Diagnostics and Mitigation (CDM) and DHS Intrusion Detection and Prevention services (Einstein 3A), and while these shared services certainly help, efforts to meet all of the complex challenges require significant additional investments. To keep pace with the needs of the Commission, the ever evolving cyber threats targeting the CFTC, and growing Federal compliance requirements, expanding our risk management capability by investing in best of breed products and services will be required in FY17.

High Priority Focus Areas for FY 2017

ODT will focus on investments in infrastructure, systems, data management, IT Security and IT Portfolio Management by focusing on the following efforts in FY 2017:

Infrastructure and Operations

- Investing in and ensuring that there is a resilient environment by leveraging additional maintenance weekends to focus on advancing the vulnerability management program
- Investing in monitoring tools to audit and monitor CFTC systems
- Refreshing end-of-life equipment, including replacing desktop computers with laptop computers, video conferencing equipment, network switches and blade servers and expansion of data storage capacity and backup system capacity

Systems and Services

- Developing new data streams to meet the needs of the Commission's analysts
- Enhancing the data quality and performance of solutions provided to staff analysts
- Implementing a high performance computing system that reduces query time
- Redesigning CFTC.gov on a new technology platform
- Supporting two National Archives and Records Administration's (NARA) initiatives: Capstone, NARA's methodology for managing email records; and Controlled Unclassified Information marking
- Supporting CFTC Data Scientists by evaluating, acquiring, and implementing new capabilities and emergent toolsets for data analysis
- Supporting the implementation of the Ownership and Control Reporting rulemaking and the new Position Limits rulemaking
- Implementing an Auto-Load system to automate the ingestion of evidentiary documents
- Configuring and deploying a new tracking system for tracking all evidence, and a new case management system

- Completing the establishment of a centralized team to receive and log incoming evidence
- Implementing an enterprise learning management system
- Implementing an enterprise audit logging solution.

Data Management

- Developing architectural approaches to support improved collection, handling and storage of data, including Order Message data (1.25 Billion messages per day)
- Developing corporate hierarchy to enhance the Commission's ability to aggregate and measure risk through a centralized product repository
- Enhancing the Transitional Swaps Database (TSD) and enriching it with Entity reference data that identifies Legal Entity Identifier (LEI) relationships, roles, and alternate identifiers to assist in risk identification and assessment
- Expanding the embedded analyst program to supply program divisions with data scientist capabilities, including the development of analytic tools and reports
- Increasing the number of data audits being performed on Large Trader firms, focusing on increasing the transparency into the quality of data being submitted through development and publication of data metrics
- Continuing the development of appropriate data standards to improve the speed and quality of data availability
- Implementing a centralized product repository, which will allow the Commission to have a high quality products data set consistent with industry standards
- Developing internationally harmonized standards for critical swaps data elements, Universal Transaction Identifier (UTI) and Universal Product Identifier (UPI)
- Expanding TSD to include data that identifies all swaps open at end of day to support more complex compliance and risk reporting needs
- Designing and prototyping the Legal Entity Database to include the acquisition, design and load of reference data that identifies LEI relationships, roles, and alternate identifiers to assist in risk identification and assessment

Policy and Planning

- Investing in best of breed security products and services to keep pace with rapidly expanding threats and evolving complex regulatory requirements
- Institutionalizing risk-based security polices and ensure enterprise compliance
- Continuing implementation of the DHS Continuous Diagnostics and Mitigation (CDM) program and DHS intrusion detection and prevention service (Einstein 3A), to expand continuous monitoring capabilities
- Engaging with external groups, including the Financial and Banking Information Infrastructure Committee (FBIIC) and the National Institute of Standards and Technology (NIST), to address tactical and strategic issues related to critical infrastructure matters, including cybersecurity, within the financial services industry and across the Federal government
- Streamlining budget processes through automation and enhancements to gain efficiencies

- Building an integrated view of the Enterprise Architecture of CFTC to ensure future IT investments are appropriately aligned from the perspectives of mission strategy, performance, security, services, data and technology
- Strengthening the governance of IT projects and programs throughout the entire Project Management Lifecycle (PMLC) to reduce risk and increase the return on investment.
- Assessing and reporting on internal controls to achieve CFTC's objectives related to operations, reporting and compliance

IT Investment Approach

As outlined in the 2014-2018 CFTC IT Strategic Plan, the basic prioritization scheme applied to investing the CR level FY16 $50m IT funding continues to be:

1. *Availability of Infrastructure and Services* - The Commission will scale and enhance communication, processing, storage, and platform infrastructure to meet mission requirements. Without a stable, available, and well-functioning IT Infrastructure, other IT priorities would be difficult to achieve.
2. *Access to Data and Information* - In order to fulfill its mission, the CFTC depends heavily on its ability to quickly access and analyze large volumes of complex market data. A primary area of focus must be on data understanding and ingestion—particularly because CFTC has a unique imperative to aggregate various types of data from multiple industry sources across multiple market segments both domestic and international. Providing this access requires data transfer, data ingestion, data warehousing, data standards, and data quality activities. IT initiatives that provide staff with access to data are given priority over all other investments, with the exception of maintaining current infrastructure and services.
3. *Availability of Platforms for Data Analysis* - CFTC staff are expert market, financial, legal, and economic analysts that must have the ability to rapidly adjust their analytic activities and approaches to address changing market characteristics and economic conditions. IT initiatives that provide staff with flexible self-service analytics tools for their direct use are given priority over initiatives that take longer to implement and need greater investment in staff time as a prerequisite to successful development and implementation.
4. *Mission and Enterprise-focused Automation Services* - Automation services and solutions that support a diversity of roles and activities and increase data re-use across the Commission and allow CFTC to leverage limited resources. Examples include Business Process Management Tools, Enterprise Search Capabilities, Collaboration Tools, and Portal Technology. All implemented solutions, whether built or purchased, are integrated with enterprise data and enterprise services.

The result of this prioritization scheme as it is applied to the High Priorities identified above is that all CFTC mission areas receive benefit from the set of investments we can make with the

relatively small amount of ring-fenced funding that is not allocated to operations and maintenance. 'Infrastructure and Services' investments generally benefit all CFTC mission areas and staff. 'Access to Data and Information' and 'Availability of Platforms for Data Analysis' investments primarily benefits surveillance (market, financial, and risk), enforcement, and economic analysis. 'Mission and Enterprise-focused Automation Services' investments generally benefit all CFTC mission areas and staff. eLaw systems that were set up to primarily support enforcement are also leveraged to support general counsel programs, rule comments, surveillance, 18.05 Special Calls, Secretariat work, FOIA Office, OIG matters and administrative proceedings. Investments for management and administrative support systems will result in the Commission establishing a single authoritative source for administrative information about staff and mission support activities and sunset many FTE intensive manual processes.

Key Constituents

As a support organization, ODT's primary constituents are the Commission and staff. All IT funding is centralized and managed by ODT. Likewise, IT resources and services are managed and provisioned by ODT. However, in delivering IT services to staff, particularly in the area of receiving data from industry participants for regulatory reporting and maintaining it for staff use, ODT must cooperate extensively with industry participants. ODT also collaborates with technology staff of other financial industry regulators, including the other US regulators such as the US Treasury, the Federal Reserve Board, and the SEC; international regulators such as European Securities and Markets Authority (ESMA) and other national regulators; and, Self-Regulatory Organizations (SROs) such as the National Futures Association (NFA) and SDRs. The SDR harmonization effort requires extensive communication between technology staff.

Conclusion

The Office of Data and Technology provides a stable, secure and resilient technology environment for the Commission on a consistent basis. ODT provides hardware, software, and services that allow staff to work virtually anywhere and anytime in a secure manner. ODT also collects and processes data on a regular basis to serve a very data-centric organization, a capability that many other agencies do not possess. ODT's three main challenges are: 1) having a sufficient technology budget to provide Commission staff with the technology infrastructure, data, and systems to meet new and existing mission requirements; 2) ensuring that the CFTC receives high-quality and consistently reported data from industry; and 3) enhancing IT security posture in a world of rapidly expanding threats and evolving complex regulatory requirements. ODT is well-positioned to sustain the Commission's technology environment, but at current budget levels we are at risk for longer term sustainment of technology as it reaches end-of-life. In addition, resources on both the IT staff side and in the other Divisions (i.e., as technology partners) are needed to deliver new technology capabilities and drive the Commission toward even more effective technology utilization.

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Office of the
Executive Director

INFORMATION MEMORANDUM

TO: Agency Review Team for CFTC

FROM: Anthony C. Thompson, Executive Director

DATE: November 10, 2016

SUBJECT: Transition Information for the Next Presidential Administration – Office of the Executive Director

Background:

The Office of the Executive Director (OED) supports and promotes the Commission's continued success, continuity of operations, and adaptation to the ever-changing markets it is charged with regulating; directs the effective and efficient allocation of CFTC resources; develops and implements management and administrative policy; and measures and tracks program performance throughout the Commission. The Executive Director leads and oversees each of the programs within the OED, reports to the Chairman and Commission, and advises the Chairman and Executive Leadership on agency management, planning, operations, and support. The OED is comprised of the following branches:

Business Management and Planning: Responsible for lease administration, space management, security, transit subsidy administration, and operational support for CFTC headquarters and the three regional offices. Oversees development of the Commission's FY2018-2022 Strategic Plan and Annual Performance Report. Develops and distributes agency-wide internal communications and maintains CFTCnet, CFTC's internal website.

Customer Education and Outreach: Educates customers about U.S. futures markets, notifies the public about the types of fraud in the marketplace, and offers guidance on how to file complaints or send in tips regarding suspicious activities.

Executive Secretariat: Manages the Commission's voting and informational review processes and maintains the permanent records of official actions by, and submissions to, the Commission. Manages CFTC's reparations program and oversees agency-wide privacy, records management, and library programs.

Financial Management: Responsible for the conduct of all financial management activities of the Commission, including formulation of the President's Budget, execution of the enacted budget, the acquisition of goods and services, accounting operations, and travel services.

Human Resources: Provides effective human resource management services to CFTC and facilitates the attainment of the CFTC's strategic goals and program objectives. This is achieved by ensuring the agency attracts, retains, and continuously develops an exceptionally qualified, diverse, dedicated, capable, and product staff.

Immediate Challenges:

Labor Management Relations: The CFTC currently has two unions representing bargaining unit employees, who are primarily non-supervisory employees across the agency. The immediate staffs of the Commissioners are not included in the bargaining units. We have one unit covering bargaining unit employees in the New York office, represented by the American Federation of Government Employees (AFGE) since the late 1970's. The remaining three offices (DC, Chicago, and Kansas City) are represented by the National Treasury Employees Union (NTEU) since 2014. More detailed information about the labor relations programs is included in the Special Topics section.

***FY 2017 Budget*:** As of this writing, the CFTC is currently operating under a Continuing Resolution (CR) through December 9th, 2016, which holds our appropriated budget at $250.0 million, the same level as FY 2015 and FY 2016.

The FY 2017 President's Budget requested $330.0 million and 897 FTE for the CFTC. Additionally, the President – as has every previous President since Ronald Reagan – proposed implementation of user fees to fund the agency's budget. However, both the Senate and House marks indicated a third year at $250.0 million. Assuming that the Commission is held flat once again, the CFTC will be facing many challenges to accomplishing its mission. A hiring freeze would be likely, and many programs that the Commission has invested in in recent years will be delayed, put on hold, or cut altogether. Pending the outcome of an impasse panel reviewing the FY 2016 compensation structure for Commission, it is possible that the CFTC will have to both cut programs and administration significantly and possibly furlough staff to stay within a $250.0 million budget. Additional details on the CFTC's budget are provided in the Special Topics section.

FY 2018 President's Budget Request: The President's Budget is statutorily released on the first Monday in February. However, in previous transition periods between administrations, that date has not always been maintained. At this time, there is no specific guidance on the due date for the FY 2018 President's Budget. OMB issues a revised schedule for completion of final budget data from Agencies soon after the election. Once the CFTC receives this guidance, it will commence with preparing the final budget materials.

The CFTC's budget must be approved by the Commission via seriatim prior to its release. The Chairman usually is invited to testify at House and Senate appropriation committee hearings after the President's Budget is submitted. Historically, the House holds a hearing in February and the Senate hearing follows in May.

***Leasing and Financial Statement Audit*:** The CFTC currently has four current multiple-year leases for office space in Washington, D.C., Chicago, New York, and Kansas City. Under 7 U.S. Code

§16 the CFTC is authorized to enter into rental agreements for space that further the purposes of the Commodity Exchange Act. When the Commission entered into the multiple-year leases it recorded only the lease payments due each fiscal year rather than the full multiple-year obligation in the year the lease was initiated. On February 4, 2016, GAO issued Comptroller General Decision B-327242, *Commodity Futures Trading Commission – Recording of Obligations for Multiple-Year Leases* (Decision). This Decision concluded that CFTC's historical practice of recording multiple-year lease obligations on an annual basis violated the recording statute, 31 U.S.C. §1501(a)(1), which is a violation of the Anti-deficiency Act (ADA).

The FY 2015 CFTC financial statement audit resulted in a qualified opinion as a result of CFTC's historical leasing practices. KPMG, the former independent auditors, found that, "except for the Statement of Budgetary Resources (SBR), the financial statements were fairly presented, in all material respects, in conformity with US GAAP. To remediate the issue, the Commission consulted with GAO and OMB on reasonable approaches to report the lease obligations, to ensure due diligence in resolving this matter. In addition, as part of the remediation efforts, CFTC signed a Memorandum of Understanding (MOU) with the General Services Administration (GSA) whereby GSA will provide expertise on current leasing issues and assume responsibility for procuring future space on behalf of the Commission.

CFTC has altered its FY 2016 financial statements to properly reflect lease transactions and, upon completion of the FY 2016 audit, the CFTC intends to report an ADA violation in compliance with Office of Management and Budget Circular A-11.

The CFTC anticipates an additional GAO Opinion related to CFTC's leases regarding the following issues: CFTC's use of cash allowances (Tenant Improvement Allowance); open-ended indemnity and variable cost clauses; payments in advance of receiving services; application of the bona fide needs rule related to the purchase of furniture through the lease.

FY 2018 – 2022 CFTC Strategic Plan: The Government Performance Results Act and GPRA Modernization Act of 2010 require that a new 5-year strategic plan be developed by each agency by February of the year following a presidential inauguration. The Strategic Plan is reviewed and approved by the Commission through the seriatim process and, upon approval, will be provided to OMB and Congress and published on CFTC.gov, the Commission's public-facing website.

FY 2016 Annual Performance Report: The Annual Performance Report (APR) fulfills reporting requirements stemming from numerous laws and guidance described in OMB Circulars A-11 and A-136, and is due to OMB and Congress in February 2017. In the APR, the Commission evaluates and publishes its performance relative to the performance measures established in the then active Strategic Plan. CFTC's FY 2016 APR will be published in accordance with the measures set out in the FY 2014-2018 Strategic Plan.

Performance Management and Pay Reform: CFTC's performance management system is comprised of a 5-point rating scale used to assess employees against five generic performance elements (e.g., professional behavior) that are applied to all employees in the agency, with supervisors having two additional elements. The documentation of individual objectives is not mandatory and employees have expressed concern that their performance plans are not relevant to their work and, therefore, any final rating they receive does not reflect their actual performance. This results in a perception that meaningful performance distinctions cannot be made. In addition, ratings inflation has taken place as a result and over 90% of employees were rated as a 4.0 or higher and 60% were rated a 4.6 or higher.

CFTC's pay programs have been inconsistently funded primarily due to budget constraints and the workforce lacks clarity on what pay incentives they can expect in a given year (e.g., merit increases based on performance, across the board adjustments, awards, etc.). Further, divisions are given quite a bit of autonomy when setting pay for new hires which can result in inequitable salaries within a particular division or between divisions, and employees have the perception that inequities are rampant.

An overhaul of the performance management and pay system is under consideration. The objective is to implement changes in the short-term to address some of the challenges within limited resources while continuing to explore a longer-term solution. Currently it is envisioned that this effort would cover all CFTC employees.

Executive Reform: In calendar year 2012-13, the CFTC participated in a study of its executive corps resulting in a series of recommendations and opportunities for improvement. Due to budgetary constraints, implementation of many of these anticipated and necessary reforms have been delayed. The latest Employee Viewpoint Survey Results (released fall 2016) continues to highlight the CFTC's critical need for leadership and executive development.

- ***Executive Development:*** Currently there is no requirement for any of the individuals who hold an executive position in the Commission to participate in an executive development program either before ascending to a leadership position or while they are serving in one. CFTC culture traditionally has valued technical skills over leadership and managerial skills. The lack of effective leadership skills has and will continue to impede mission execution. As a start to addressing this need, the Commission launched a highly successful Executive Coaching Program that has 61 participants and is funded until August 2017. This program has helped the Commission identify and address long-term systemic leadership issues through one-on-one coaching sessions and the completion and review of a 360 assessment program. Though the Executive Coaching program is highly successful, it is not enough to meet current and anticipated leadership development needs. We are proposing that the Commission consider, and then deploy a corporate executive development program to ensure that CFTC leaders have, and will retain, the leadership skills necessary to provide effective oversight of the financial marketplace.

- ***Executive Performance and Pay Structure:*** The current executive position structure at the CFTC, unlike the SES program used by many agencies, does not clearly distinguish leaders from the lower graded staff positions, because all employee levels are covered by a single pay plan (CT-1 to 18) and performance management system. As a result, there is significant ambiguity between the executive corps and subordinate staff. Development of a CFTC executive performance management system and pay program separate from the CT programs may improve the performance, retention and leadership of CFTC's executive service.

- ***Executive Appointments:*** The top executives at the CT-18 level (i.e., Division Directors and Chairman's Direct Reports) are comprised of a mix of internal and external hires resulting from special appointment authority, merit and temporary promotion. External hires tend to be time limited with appointments varying from 13 months to 4 years. Internal hires may be permanent (no time limit) or be the result of temporary promotions from CT-16 positions (currently there are two described CT-17 positions). Due in part to the lack of consistency in status and authority of the positions within the executive corps, the establishment of a

cohesive executive leadership team with a unified operating vision for the Commission has proven elusive. Additionally, there have been difficulties over time in recruiting and retaining executives for certain key positions.

Records Management and CUI: The National Archives and Records Administration (NARA) recently finalized its rule on Controlled Unclassified Information (CUI). CUI is information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified. All agencies, including CFTC, must begin implementing a CUI program, starting with developing a policy and working through issues specific to the CFTC such as the handling of Section 8 material. NARA and OMB have set aggressive implementation milestones for agencies, beginning with the development of a CUI policy, followed by agency-wide training. The implementation of a CUI program will involve a culture change as currently, there is no marking requirement or protocol for the workforce, and a large portion of information handled by the CFTC workforce will require marking and dissemination control.

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Office of
General Counsel

CONFIDENTIAL

TO: Agency Review Team

FROM: Jonathan L. Marcus
General Counsel

SUBJECT: Overview of the Office of the General Counsel

Memorandum

Introduction to the Office of the General Counsel

By statute, 7 U.S.C. § 2(a)(4), the Office of the General Counsel (OGC) is the Commission's legal advisor. The head of OGC is the General Counsel, "who shall be appointed by the Commission and serve at the pleasure of the Commission." *Id.* The Commission appointed Jonathan Marcus as General Counsel in April 2013. Under the General Counsel, OGC attorneys, among other important responsibilities, "represent the Commission in courts of law." *Id.* Given this statutory provision and 7 U.S.C. § 13a-1, which authorizes the Commission to initiate enforcement actions in federal court, the Commission has independent litigation authority and thus may generally represent itself in federal court litigation.

OGC attorneys also "perform such other legal duties and functions as the Commission may direct." 7 U.S.C. § 2(a)(4). Another principal function of OGC attorneys is to support the operating divisions in writing rules, and OGC must determine that a rule is legally sufficient before the rule is circulated for Commission consideration. To most efficiently and effectively carry out its core responsibilities, OGC is comprised of five groups: Litigation and Adjudication, Trade Execution and Data, Clearing and Intermediaries, General Law, and Legislation and Intergovernmental Affairs. Their functions are addressed below.

Litigation and Adjudication (Robert Schwartz, Deputy)

The Litigation & Adjudication Group represents the Commission in a range of matters before federal courts and administrative bodies. These include challenges to regulations, derivatives-industry bankruptcies, labor and employment suits, appeals in enforcement actions and from CFTC adjudications, and as amicus curiae on issues of interest to the Commission. This group also advises the Commission and drafts opinions in adjudications, which primarily involve appeals arising from the reparations program and from certain decisions by self-regulatory organizations. OGC litigators also respond to third-party subpoenas, advise the Division of Enforcement (DoE) in their law-enforcement activities, and advise the Commission and operating divisions on legal risks of proposed actions.

Regulatory Group: Trade Execution and Data (John Dunfee, Acting Deputy)

The Trade Execution and Data Group advises the Commission and the Division of Market Oversight (DMO) and the Office of Data Technology on legal issues arising from the regulation of such entities as swap execution facilities, designated contract markets, swap data repositories and foreign boards of trade. The Group works closely with DMO staff, providing direction and counsel in analyzing legal, policy and procedural issues in connection with developing rulemakings and orders applicable to these entities. The Group offers guidance to DMO in assessing compliance by these entities with applicable statutory and regulatory provisions and advises as to the legal sufficiency, substantive accuracy and completeness of DMO-generated rulemakings, and no-action and interpretive letters. In recent months, the Group has contributed to a number of rulemakings, including rules on swap data reporting, modifications to rules on swap execution facilities (SEFs), a supplemental proposal on automated trading, a proposal on the made available to trade process, and draft final position limit rules.

Regulatory Group: Clearing and Intermediaries (Carlene Kim, Deputy)

The Clearing and Intermediaries Group advises the Commission on a wide range of agency actions relating to the regulation of clearing and intermediaries (e.g., swap dealers, futures commission merchants, commodity pools, and commodity trading advisers). The Group works closely with the Division of Clearing and Risk (DCR) and the Division of Swap Dealer and Intermediary Oversight (DSIO) in connection with the drafting of rules and orders regarding clearing and intermediaries as well as staff no-action letters and interpretive guidance. The Group reviews these proposed agency and staff actions for legal sufficiency, substantive accuracy and completeness.

The Clearing and Intermediaries Group has taken a particularly active role in cross-border issues. Working closely with DCR, DSIO, and the Office of International Affairs (OIA), the Group played a substantial role in drafting the Commission's 2013 Cross-Border Guidance and the recent proposal on the cross-border application of certain swap provisions of the CEA. The Group expects to continue to provide counsel to the operating divisions and OIA regarding cross-border legal issues.

General Law (Heather Gottry, Deputy)

The General Law (GL) Group helps to ensure Commission compliance with such statutes and regulations as the Government in the Sunshine Act, the Freedom of Information Act, the Civil Service Reform Act, the Ethics in Government Act, the Federal Advisory Committee Act, and the Commission's supplemental rules and regulations.

The GL Group advises the Commission, individual Commissioners, and Commission Offices and Divisions on legal, programmatic, and policy issues related to Commission funding and use of appropriated funds, procurement, labor relations, equal employment opportunity law, employment, information governance, facilities, intellectual property, physical and data security, advisory councils and groups, interagency agreements, memoranda of understanding, and all other areas of general and administrative law. The GL Group also conducts or assists with briefings of Congressional staff members and prepares or assists in the preparation of testimony for Congressional hearings.

In addition to the above responsibilities, the GL Group oversees the Commission's ethics program. The GL Group provides advice to Commission management and individual employees about government ethics laws and the Commission's ethics regulations, provides training on ethics requirements and best practices, ensures the timely and accurate submission of financial disclosure reports, and consults with the Office of Government Ethics to issue appropriate ethics opinions and waivers.

The GL Group also provides legal counsel, direction, and guidance to all information governance initiatives, and guidance about information collection, sharing, and security. In addition, the GL Group runs the Commission's Freedom of Information Act program and oversees requests for access to nonpublic documents and requests for confidential treatment.

Legislative and Intergovernmental Affairs (Susan Milligan, Deputy)

The Legislative and Intergovernmental Affairs Group serves as the principal advisor for monitoring, reviewing, and evaluating proposed legislation, particularly with regard to the agency's reauthorization, but also for all other legislative issues involving the CEA and financial regulation. The Group works with the CFTC's Office of Legislative Affairs to respond to Congressional inquiries, brief Congressional representatives, and provide technical assistance to Congress, the Chairman, and Commissioners with regard to proposed legislation.

The Group coordinates program initiatives involving other domestic governmental agencies, including the Board of Governors of the Federal Reserve System, the Department of the Treasury, the Securities and Exchange Commission, the Financial Stability Oversight Council, the Financial Crimes Enforcement Network, the General Accounting Office, and the Congressional Budget Office.

The Group advises the Commission's Office of International Affairs regarding the Commission's international activities, including cooperative efforts with foreign regulatory and enforcement authorities through Memoranda of Understanding.

The Group provides advice to the Whistleblower Office on the Commission's whistleblower program. The Group also handles administrative appeals of FOIA decisions.

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Office of
International Affairs

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INFORMATIONAL MEMORANDUM

TO: Agency Review Team for CFTC

FROM: Eric J. Pan, Director
Office of International Affairs

RE: Transitional Memorandum – Office of International Affairs

DATE: October 18, 2016

I. OVERVIEW

A. Staff

The Office of International Affairs (OIA) currently consists of 12 full-time staff plus two vacancies. I have served as its Director since September 2015. Prior to that time, I was in charge of International Regulatory Policy at the Securities and Exchange Commission (SEC). OIA has two Deputy Directors (Warren Gorlick and Kevin Piccoli), one Associate Director (Maggie Sklar), and a Head of Supervisory Cooperation (Natalie Markman-Radhakrishnan). In addition, OIA has six attorney-advisors (Lily Chu, Nancy Doyle, Alex Khachaturian, Mauricio Melara, Chava Schwebel and Megan Wallace) and one staff assistant (Debbie Franklin). OIA is currently in the process of backfill hiring a second Associate Director. Many OIA staff previously worked in other CFTC divisions and offices or served as assistants to CFTC Commissioners.

B. Mission and Primary Functions

OIA's mission is three-fold: (i) to advance the interests, and maximize the influence, of the agency in bilateral and multilateral discussions with foreign regulatory counterparts and other governmental authorities; (ii) to develop and strengthen the CFTC's relationship with key foreign counterparts to facilitate information-sharing, cooperation and cross-border assistance; and (iii) to prepare the Commission to respond to regulatory developments outside of the United States. In carrying out this mission, OIA is responsible for understanding the international implications of Commission policies, ensuring there is a coordinated international policy by the CFTC, and assisting the operating divisions when needed.

As described below, OIA's primary functions include: (i) representing the Commission, or supporting the Chairman's representation in, various international fora; (ii) providing guidance to the Commission and the CFTC operating divisions on relevant international issues; (iii) coordinating the Commission's supervisory cooperation function, including the negotiation of memoranda of understanding (MOUs) and other arrangements; and (iv) providing technical assistance to foreign authorities.

II. OIA's Primary Functions

A. Representing the Commission in International Fora

1. Multilateral Fora

International Organization of Securities Commissions (IOSCO): The CFTC is a permanent member of the IOSCO Board, and OIA supports the Chairman at meetings of the Board as well at the IOSCO President's Committee, which is the IOSCO plenary body. OIA staff also represents the CFTC in most of the IOSCO policy committees and task forces. I chair the IOSCO Policy Committee on Commodity Derivatives Markets. Warren Gorlick co-chairs the IOSCO Task Force on OTC Derivatives. In addition, OIA is a member of the IOSCO Policy Committee on Regulation of Secondary Markets, Policy Committee on Regulation of Market Intermediaries, Policy Committee on Enforcement and the Exchange of Information, Policy Committee on Investment Management, Assessment Committee, Task Force on Financial Benchmarks, and Task Force on Market Conduct. Finally, OIA supports the Office of Chief Economist, which represents the CFTC in the IOSCO Committee on Emerging Risk, the Enforcement Division, which represents the CFTC in the IOSCO MMOU Monitoring Group and Policy Committee on Enforcement and the Exchange of Information, and the Office of Customer Education and Outreach which represents the CFTC in the Policy Committee on Retail Investors.

OTC Derivatives Regulators Group (ODRG): OIA serves as the Chairman's representative to the ODRG. The ODRG consists of the chairs of the authorities responsible for regulating the largest derivatives markets in the world. They are the over-the-counter (OTC) derivatives regulators of Australia, Brazil, the European Union, Hong Kong, Japan, Ontario, Quebec, Singapore, Switzerland, and the United States. Currently, the CFTC Chairman is the chair of the ODRG.

Financial Stability Board (FSB): Even though the CFTC is not a full member of the FSB, the CFTC is active in many FSB working groups and frequently participates in FSB workstreams, particularly with respect to OTC derivatives, central counterparties (CCPs), data aggregation, benchmarks regulation, and effects of reforms. The importance of the CFTC in many of these issues has led to the FSB Chair inviting the CFTC Chairman to attend select FSB Steering Committee and Plenary meetings. CFTC staff participates in Cross-border Crisis Management Group for FMIs (fmiCBCM) of the Resolution Steering Group (ReSG), Basel Committee on Banking Supervision (BCBS)-Committee on Payments and Market Infrastructures (CPMI)-FSB-

IOSCO Study Group on Central Clearing Interdependencies, and FSB OTC Derivatives Working Group. Finally, I co-Chair the FSB Working Group on UPI and UTI Governance (GUUG).

2. Bilateral Dialogues

a. European Union

OIA interfaces with the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) of the European Commission (EC), European Parliament, Council, and European Securities and Markets Authority (ESMA). OIA represents the CFTC in the Joint EU-U.S. Financial Regulatory Forum, formerly known as the U.S.-EU Financial Markers Regulatory Dialogue. The Forum consists of biannual meetings of staff from the CFTC, U.S. Treasury, SEC, Federal Reserve Board, Federal Deposit Insurance Corporation, and Public Company Accounting Oversight Board and staff from the DG FISMA, ESMA, European Banking Authority, and the Single Resolution Board. In addition, OIA represents the CFTC in meetings with the Financial Services Committee of the Council.

b. China

The CFTC participates in the U.S.-China Strategic and Economic Dialogue (S&ED) and the U.S.-China Joint Economic Committee (JEC). The S&ED is an official bilateral dialogue held annually in Washington and Beijing that attracts high-level participation from both the U.S. and Chinese government and promotes further regulatory and economic cooperation. The JEC is an official dialogue exclusively focused on financial regulation, also held annually in Washington and Beijing. The Chairman attends the S&ED, and OIA represents the CFTC at the JEC. OIA also participates in a staff dialogue with the China Securities Regulatory Commission (CSRC) focused on market surveillance issues.

c. India

OIA represents the CFTC in the U.S.-India Financial Regulatory Dialogue, held in Mumbai/New Delhi and Washington each year. The dialogue offers OIA an opportunity to discuss the CFTC's implementation of OTC derivatives reforms and developments in the OTC derivatives markets. In turn, OIA obtains updates on regulatory developments from the Reserve Bank of India and the Securities and Exchange Board of India.

d. North America

OIA represents the CFTC at the annual North American Free Trade Agreement Financial Services Dialogue, which rotates between Ottawa, Washington, DC, and Mexico City. OIA participates in the portion of the meeting related to Derivatives and Securities Market Issues and provides an update on the CFTC's progress on OTC derivatives reform. Counterparts from the Canadian and Mexican ministries of finance address relevant legal reforms in their jurisdictions, including on OTC derivatives reform, the Canadian Cooperative Capital Markets Regulatory System and the Latin American Integrated Market.

B. Working with CFTC Offices and Divisions

Division of Market Oversight (DMO): Furthermore, OIA is assisting DMO in discussions with the EC regarding the EC's consideration whether the CFTC SEF regime is equivalent to the new EU trading platform regime. In addition, OIA works with DMO on international efforts to remove legal barriers to trade reporting and to access to trade repository data by foreign authorities. Finally, OIA works with DMO on participating in international standards setting efforts regarding cross-border data standards.

Division of Clearing and Risk (DCR): OIA supports DCR's work on CCP recovery, resilience and resolution by monitoring international workstreams on these issues. Moreover, OIA drafts briefings in coordination with DCR regarding CCP resolution issues for the Chairman's meetings with foreign regulators. In addition, OIA negotiates MOUs with foreign authorities that are required for DCR's consideration of exempt derivatives clearing organization (DCO) registration applications and assists DCR with information requests made pursuant to such MOUs.

Division of Swap Dealer and Intermediary Oversight (DSIO): OIA works with DSIO in responding to good standing inquiries received from foreign regulators. In addition, OIA and DSIO staff discuss issues regarding Part 30 comparability relief. Recently, OIA has assisted DSIO in communicating with foreign counterparts about DSIO's substituted compliance determinations, and in monitoring implementation by foreign counterparts, of their margin requirements for uncleared swaps.

Office of Data and Technology (ODT): OIA staff coordinates with ODT on international data harmonization work. This includes providing coordination and vetting of technical issues that might have implications for our data reporting rules, providing guidance and support on international processes, and coordinating meetings between ODT and other CFTC stakeholders on matters of mutual interest. OIA also participates in the Data SteerCo, a cross-divisional committee to oversee and coordinate data policy.

Office of the Chief Economist (OCE): OIA and OCE work together on the semi-annual FSB OTC Derivatives Working Group Report, which is largely data driven and requires significant input from OCE. In addition, in preparing remarks for the Chairman and other senior staff, OIA and OCE often work together in reviewing key market developments in the derivatives area, as well as utilizing relevant data to illustrate key points in speeches and other remarks. Finally, OIA and OCE work closely together with respect to OCE's representation on the IOSCO Committee on Emerging Risk.

Office of the General Counsel (OGC): OIA staff works with OGC on information sharing and access issues, on issues pertaining to cross-border rulemaking, particularly with respect to the application of the Dodd-Frank Act, and in providing CFTC input to Treasury and the U.S. Trade Representative's Office regarding international trade agreements.

Division of Enforcement (ENF): OIA staff works with ENF staff on matters related to the IOSCO Policy Committee on Enforcement and the Exchange of Information. OIA also is

working on implementation options for the IOSCO Enhanced MMOU, which is being decided by the IOSCO Board.

C. Supervisory Cooperation and Information Sharing Arrangements

OIA is responsible for MOUs and other information sharing and cooperation arrangements with foreign authorities for the supervision of entities located outside the United States and regulated by the CFTC. In close coordination with the operating divisions and in consultation with OGC and ENF, OIA drafts, negotiates, and finalizes these arrangements and the related confidential side letters. In addition, OIA is responsible for responding to both internal and external inquiries related to supervisory arrangements. With respect to internal inquiries, Commission staff requests assistance in drafting formal and informal arrangements, asks about the existence and scope of arrangements, and raises questions about the interpretation of terms and provisions included in arrangements. Foreign authorities inquire about the Commission's existing arrangements and ask about the potential and process for entering into cooperative arrangements. OIA also routinely provides written comments on a wide range of internal and external documents that discuss supervisory cooperation, such as draft rulemakings or arrangements and memoranda to the Commission.

D. Technical Assistance

The CFTC is recognized in the international community as the leading authority in commodity and derivatives regulation. Accordingly, non-U.S. regulators frequently seek the expertise and experience of CFTC staff to understand market structure, futures and derivatives, market oversight, enforcement and governance issues. Leveraging senior CFTC staff and industry officials, OIA's technical assistance program provides training and support to non-U.S. regulators. To the extent possible, the training is done in coordination with other U.S. agencies such as the SEC, United States Agency for International Development, International Monetary Fund and World Bank.

As part of the CFTC's technical assistance program, OIA organizes an annual International Regulators Symposium. In September 2016, OIA hosted 76 officials from 24 countries for a four-day symposium at CFTC headquarters. OIA also organizes a one-day meeting of international regulators focused on discussing issues of current interest on the side of the Futures Industry Association's Annual Meeting in Boca Raton, Florida.

III. Critical Issues

A. Cross-border Issues

1. Equivalence and Substituted Compliance

Following the publication of the Commission's cross-border guidance in July 2013, the Commission issued comparability determinations for certain regulatory requirements in December 2013. Jurisdictions included in those determinations (Australia, Canada, European

Union, Hong Kong, Japan, and Switzerland) as well as other jurisdictions (Brazil, Singapore, and South Africa) have solicited the CFTC for additional comparability determinations. In addition, given the deferral of a comparability determination for swap data reporting requirements when the Commission made its initial comparability determinations in December 2013, it is anticipated that the Commission will be asked to issue comparability determinations for foreign reporting requirements. Other recent determinations include: (i) in March 2016, the Commission agreed on the availability of substituted compliance for certain EU standards applicable to CCPs/DCOs; and (ii) in September 2016, the Commission issued a comparability determination that will allow for substituted compliance under Japanese regulation for certain margin requirements for uncleared swaps.

Similarly, with regard to equivalence determinations from non-U.S. authorities, OIA has been involved in discussions with authorities in other jurisdictions regarding the availability and process for obtaining equivalence determinations. For example, OIA staff is engaging on a bilateral and multilateral basis with the authorities developing and implementing EU trading requirements, including the related equivalence assessments. The primary purpose of this engagement has been to achieve a common understanding of CFTC and EU standards applicable to trading platforms and the attendant execution requirements for counterparties, in order to facilitate the development of a related CFTC exemption regime for foreign trading requirements and the issuance of an EU equivalence decision regarding CFTC trading requirements.

2. Global Implementation of OTC Derivatives Reform

OIA supports the Commission's regulatory harmonization efforts, works directly with foreign counterparts to promote coordinated implementation of OTC derivatives reforms. Seven years after the G-20 Leaders in Pittsburgh made a commitment to implement certain OTC derivatives reforms, G-20 jurisdictions are continuing to complete their reforms. As the CFTC has been among the first to put into place the reforms, it is in the interests of the CFTC to support efforts to encourage other G-20 jurisdictions to meet their commitments and complete their implementation of the reforms.

One recent example is implementation of margin requirements for uncleared swaps. All members of the IOSCO Board and the Basel Committee agreed to implement margin requirements in accordance with a specific schedule of implementation dates. Only the United States, Japan and Canada met the initial deadline. It is critical that other jurisdictions implement their margin requirements in accordance with the internationally agreed timetable to avoid the potential for regulatory arbitrage and increased concentration of counterparty risk.

B. Data and Trade Reporting Issues

One of the key G-20 reforms is the reporting of swaps transactions to trade repositories. While many jurisdictions have put into place reporting requirements, much work continues to be needed to allow regulators to ensure the collection of trade data is complete, that it can be accessed, and that it can be understood.

In terms of trade reporting, the FSB peer review on OTC derivatives trade reporting noted that some jurisdictions have in place legal barriers that prevent the complete reporting of counterparty information to trade repositories. Such legal barriers have led some authorities, including the CFTC, to permit market participants to mask the identity of their counterparties, but the CFTC is supporting international efforts to have such legal barriers removed such that masking relief is no longer necessary.

Likewise, there are also barriers to the access of trade repository information in other jurisdictions. The repeal of the Dodd-Frank Act indemnification requirement in December 2015 opens the door to non-U.S. regulators obtaining data from U.S. trade repositories, and OIA is helping DMO in considering how to amend relevant CFTC rules to provide such access. But legal barriers continue to exist in Europe and other jurisdictions. To this end, OIA has been discussing with EC staff potential legal solutions to allow direct access to EU trade repository data by U.S. authorities. As so-called "direct access" solutions remain undetermined, OIA is also exploring arrangements with various jurisdictions to facilitate access to data by indirect means where access to trade repository data is available through regulator-to-regulator information sharing arrangements.

International regulators are working on harmonizing key data standards in the OTC derivatives market, which is critical to allowing regulators to better understand swaps information being reported to trade repositories. The FSB GUUG, which I co-chair with the European Central Bank, is developing governance recommendations to oversee these standards. Critical issues here include insuring that the governance model be as lean as possible and not expensive and cumbersome. For some data standards, such as the uniform product identifier (UPI), some central registry and maintenance authority will be needed. Another major issue is cost: the standards need to be issued and maintained in a way that is open source, is not unreasonable in cost, and is not unduly burdened by intellectual property issues. The GUUG has developed key criteria for any governance model that must meet these and similar governance concerns and will recommend governance arrangements for the uniform transaction identifier and UPI.

C. Supervisory Cooperation

1. Information Sharing

OIA works with staff from DCR, DSIO, OGC, and DOE in negotiating MOUs with various foreign regulatory counterparts. These MOUs establish information sharing frameworks for cooperation and assistance in the regulation of cross-border derivatives and clearing activity for supervisory, prudential, and risk-assessment purposes. OIA staff often leads negotiations receiving valuable input from other divisions and offices of MOU provisions and the parameters for information sharing, including the potential legal hurdles posed by secrecy, privacy, and other data protection restrictions. OIA staff is currently in the process of negotiating MOUs with several jurisdictions, including China, India, and Canada.

2. Data Protection

OIA staff, collaborating with staff from ENF and the Office of the Executive Director, has been tracking European data protection developments, including the passage of the General Data Protection Regulation (GDPR), which will supersede the existing European data protection regime when it comes into force in 2018. The CFTC has played a key role in voicing concerns, along with other U.S. financial regulators, to the EC, European Parliament, European Council, and our counterparts in EU Member States about possible unintended consequences of the GDPR on international data transfers used for supervisory and enforcement purposes. The two primary concerns pertain to: (i) direct access by U.S. financial regulators to registrant data located in Europe; and (ii) regulator-to-regulator information sharing. Ambiguity created by the GDPR regarding financial regulatory data transfers from Europe may create challenges in our ability to regulate, and bring enforcement actions against, firms located, and activities taking place, in Europe.

D. CCP Resiliency, Recovery and Resolution

In terms of global regulatory reform, in addition to working on margin, OIA supports DCR on CCP resiliency, recovery and resolution planning issues. The significance of CCPs in the global financial system is increasing alongside the growing volume of derivatives transactions being cleared.

E. Effects of Reform and Market Liquidity

The FSB has undertaken separate work to analyze, on a more comprehensive basis, the effects of all financial reforms, including in the derivatives area. Despite the long-standing G20 commitments to reform the derivatives markets, there is a risk that unsubstantiated concerns regarding fragmentation and liquidity might be used as a reason to delay the implementation of derivatives reforms in other jurisdictions. At the same time, the pursuit of some reforms may conflict with the effectiveness of other reforms. One example of this conflict is the supplemental leverage ratio proposal by BCBS and its negative effect on central clearing. CFTC participation in the global discussion of effects of reform and market liquidity is essential to ensure beneficial global regulatory reform continues unabated.

SPECIAL TOPICS

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Labor Management Relations

CFTC employees are represented by either one of two Federal Labor Unions: National Treasury Employees Union (NTEU) or the American Federation of Government Employees (AFGE). Specifically, approximately 384 employees in DC, Chicago and Kansas City are covered by NTEU and approximately 62 employees in NY are represented by AFGE.

AFGE has represented employees in the NY regional office since the late 1970's and NTEU was certified on November 7, 2014. Each Union covers both professional and non-professional employees in one bargaining unit (Until recently, AGFE consisted of two local bargaining units with one covering professional employees and the other covering non-professional employees). Professional employees consist of positions such as attorneys and auditors. Non-professional employees include positions such as futures trading investigators, risk analysts, and surveillance analysts. The employees in this unit are currently voting to decide whether they want to remain with AFGE, join NTEU, or not be represented by a union. We should have the results of this election in December 2016.

CFTC's authorizing legislation requires the Agency to operate under the Federal Labor-Management Statute, which includes the requirement to meet and negotiate with Unions in good faith for the purposes of arriving at a collective bargaining agreement. In broad terms, collective bargaining agreements tend to be in effect for three to five years and include work schedules, safety and health provisions, telework, and many other items affecting employees' conditions of work. In addition, because CFTC has the discretion to set pay, compensation provisions may also be bargained as part of the master agreement.

Currently, the Agency and AFGE are operating under the terms of a master bargaining agreement negotiated in the late 1970's. Since the initial agreement, the terms of such agreement have rolled over from year to year as opposed to the parties engaging in subsequent bargaining. The Agency and NTEU are currently operating under an interim agreement, which includes provisions for a grievance procedure, official time, notice requirements and timeline for bargaining, and union dues. However, the Agency and NTEU successfully negotiated ground rules for bargaining over a master collective bargaining agreement in July 2016.

As outlined in the ground rules, we began master agreement negotiations in August 2016, with bargaining sessions occurring every few weeks at agreed upon dates. We are bargaining over approximately 50 proposed articles covering the terms and conditions of employment for represented staff. The articles address areas such as leave approval, telework, work schedules, compensation, benefits, office assignments, merit promotion, health and wellness programs, and other areas.

Once the Agency and NTEU reach a tentative agreement, the execution of the agreement is conditional on ratification by NTEU's bargaining unit employees. In addition, an agreement between NTEU and the agency is subject to approval by the Agency head. Approval by the Agency head is required within a set number of days (this time frame is part of the current negotiations) of the agreement's execution. If the Agency head fails to approve or disapprove the agreement within the set time period window, it takes effect and becomes binding on the parties. If the Agency head disapproves any of the agreed-upon provisions, NTEU may file a negotiability petition with the FLRA, challenging the Agency head's determination that a provision is unlawful.

The Commission successfully negotiated its first compensation and benefits agreement with NTEU for FY 2015. CFTC and NTEU initiated bargaining over compensation and benefits for FY 2016, but were unable to reach agreement. After an unsuccessful attempt to mediate the dispute, the parties arrived at a formal impasse. Recognizing the budgetary implications should negotiations continue beyond the end of the fiscal year, the Commission strategically and unilaterally implemented a 1% increase in base pay for all employees and a $1,400 bonus for all employees performing at an acceptable level. The unilateral implementation also exposed the Commission to an unfair labor practice charge, although none has been filed at this time. Following the CFTC pay increase, NTEU requested the intervention of the Federal Service Impasses Panel, which resolves impasses between federal agencies and unions representing federal employees. The Commission is represented by the Office of General Counsel's litigation office in this matter. The negotiations with the AFGE union have not been as robust as those with NTEU and we have successfully consulted with AFGE regarding employee compensation and benefits for FY 2015 and FY 2016.

FY 2017 Budget

As of this writing, the CFTC is currently operating under a Continuing Resolution (CR) through December 9th, 2016, which holds our appropriated budget at $250.0 million, the level as in FY 2015 and FY 2016.

The FY 2017 President's Budget requested $330.0 million and 897 FTE for the CFTC. However, both the Senate and House marks indicated a third year at $250.0 million. Assuming that the Commission is held flat once again, whether by a CR or a new appropriation bill, the CFTC will be facing many challenges to accomplishing its mission. A hiring freeze would be likely, and many programs that the Commission has invested in in recent years will be delayed, put on hold, or cut altogether. Pending the outcome of an impasse panel reviewing the FY 2016 compensation structure for the Commission, it is possible that the CFTC will have to cut both programs and administration significantly and possibly furlough staff to stay within a $250.0 million budget.

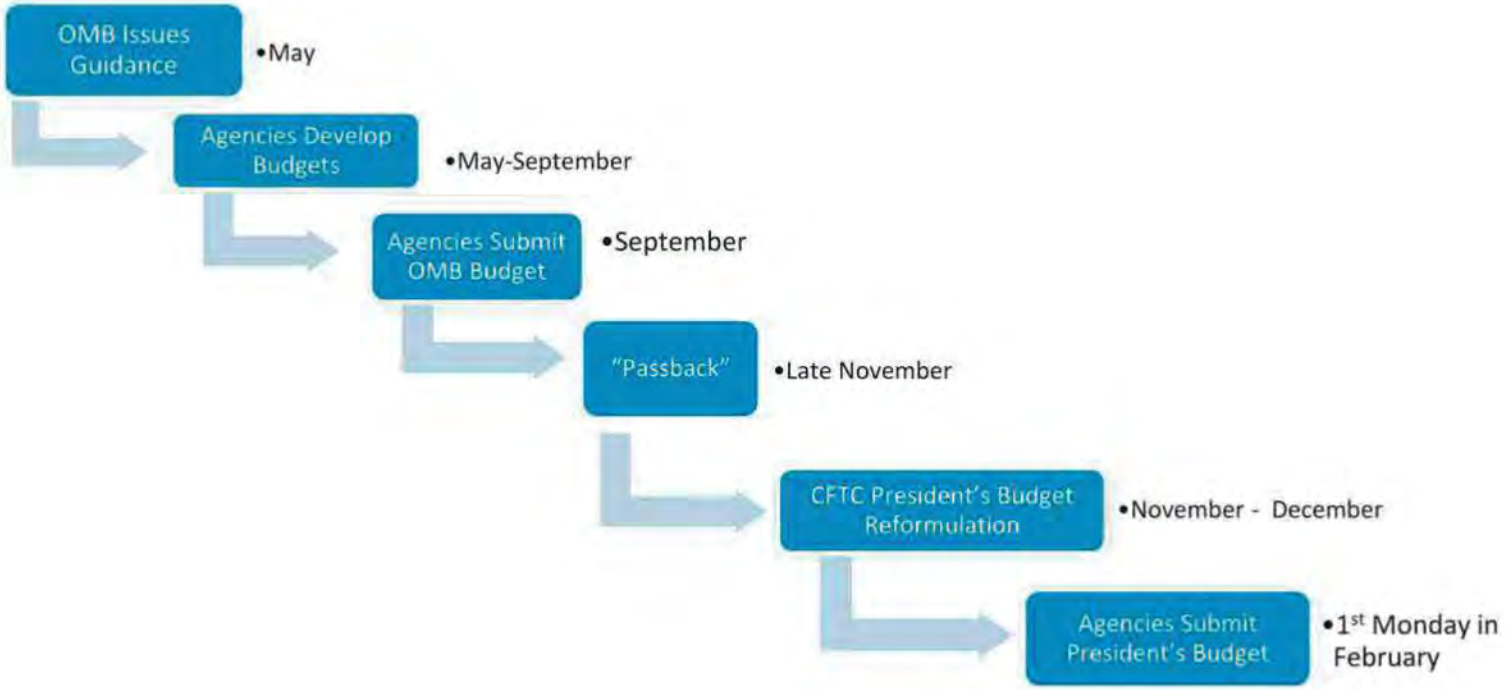
Attachment: CFTC 2017 budget exhibits

President's Transition Book

CFTC Budget Process

October 5, 2016

High-Level Federal Budget Process



High-Level Budget Process

Feb – Internal deliberations begin focusing on Information Technology requirements for next budget year.

March –May – Internal Agency discussions and decisions on budget year requirements commence with Chairman, resulting in Agency-specific guidance to Divisions.

April-July – Agency Budget Office and Divisions develop initial "OMB Budget" data and justification materials.

May - OMB issues general budget to all Agencies and may provide CFTC separate verbal guidance.

Sept – The "Agency Request" or "OMB Budget" is due in September to OMB. Consistent with the Commission's statutorily-based budgetary "bypass" authority, the Commission submits its budget estimate to the President/OMB and concurrently to both the House and Senate Appropriations and Agriculture and Finance committees.

Late Nov – OMB makes a preliminary decision on the level of funding for all Agencies based on Agencies Request to be included in the President's Budget. This preliminary decision is called the "passback." Unlike most other agencies, CFTC receives its passback verbally. While the Commission is not bound by the passback from OMB, negotiations usually lead to an agreed upon amount for the Agency's President's Budget request.

Dec thru Jan – The negotiated amount is included in the final Budget level (or the "Mark") to be included in the President's Budget. The Commission's OMB Budget is adjusted (reformulated) to reflect the agreed upon changes.

Feb – Agency submits the "President's Budget," which is due to Congress the 1st Monday in February.

Feb thru May – House and Senate hearings are scheduled through Office of Legislative Affairs. The Budget Office prepares Hearing Materials for the Chairman's preparation process.

Annual CFTC Budget Timeline

• Late Feb	CFO/CIO Issue IT Budget Data Call
• Mar	Brief Chairman on FY (year) process
• Apr-May	OFM meet with Divisions
• Mid May	Issue OMB Budget Formulation Instructions
• May - June	Receive OMB General Budget Guidance for FY
• Mid May	Update Chairman on Division meetings
• Late May	Establish Top-Line with Chairman
• Early June	Input due from Divisions
• Mid June	Present Chairman Mission Activity/Division Summaries
• June-July	Divisions Finalize OMB justification
• Early Aug	Draft FY 2017 OMB Budget to Chairman and Commissioner Review
• Mid Aug- Sep	Seriatim Sign-Off
• Sept-Oct	Submission to OMB
• Late Nov	OMB Issues Passback
• Late Nov-Dec	Brief Chairman on Passback Adjustments
• Nov-Dec	Reformulation of OMB Budget for President's Budget
• Early Jan	Chairman Brief/Seriatim Sign-Off of President's Budget
• Feb 01	Submission to Congress
• Feb-May	Congressional Hearings

Transmittal of Budget Requests – Bypass Authority

Sec. 2(a)(10)(A), The Commodity Exchange Act.

Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

Legislative Recommendations

Sec. 2(a)(10)(B), The Commodity Exchange Act.

Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974) Sec. 101(a)(3), 88 Stat. 1390; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 2(14) and (15), 92. Stat. 865,867; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 226, P.L. 102-546, 106 Stat. 3590, 3618; by Act of May 13, 2002 (The Farm Security and Rural Investment Act of 2002), title X, subtitle H, Sec. 10702, P.L. 107-171; 116 Stat. 516].

CFTC Funding Sources

Annual Appropriations

- Since inception in 1974, the Commission has received an annual discretionary appropriation which supports the majority of Agency operations.
- In addition, the Commission collects about $1.5 million in user fees from self-regulatory organizations, which are deposited into the miscellaneous receipts account for the US. Government, and not available for agency use.
- The Commission's FY 2016 funding was authorized at $250 million with specific "cave outs" for IT and OIG. The Commission is currently operating under a continuing resolution (CR) through December 9, 2016. The funding limitations established in the FY 2016 appropriations act carry forward into FY 2017 as authorized by the 2017 Continuing Appropriation Act, or until a full – year FY 2017 appropriation is passed by the Congress and signed by the President.

Consolidated Appropriations Act, 2016 PL 114-113

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

Title VI—Related Agencies and Food and Drug Administration:

INDEPENDENT AGENCIES
COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases), in the District of Columbia and elsewhere, $250,000,000, including not to exceed $3,000 for official reception and representation expenses, and not to exceed $25,000 for the expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, of which not less than $50,000,000, to remain available until September 30, 2017, shall be for the purchase of information technology and of which not less than $2,620,000 shall be for expenses of the Office of the Inspector General: Provided, That notwithstanding the limitations in 31 U.S.C. 1553, amounts provided under this heading are available for the liquidation of obligations equal to current year payments on leases entered into prior to the date of enactment of this Act: Provided further, That for the purpose of recording any obligations that should have been recorded against

accounts closed pursuant to 31 U.S.C. 1552, these accounts may be reopened solely for the purpose of correcting any violations of 31 U.S.C. 1501(a)(1), and balances canceled pursuant to 31 U.S.C. 1552(a) in any accounts reopened pursuant to this authority shall remain unavailable to liquidate any outstanding obligations.

- Since FY 2014, the Commission's funding has been separated into three line-items:
  - Salaries and Expenses (S&E)
  - Office of Inspector General (OIG), and
  - Information Technology (IT)

- The majority of the annual funding is received in the Salaries and Expenses (S&E) line-item and is used to fund staff salaries and benefits, facility and leasing costs, and all other operating expenses of the Commission.
- The Office of the Inspector General (OIG) line-item is used for fund the staff salaries and benefits, operating expenses and overhead assigned to the OIG.[1]
- The Information Technology line-item is used to fund the purchase of information technology including infrastructure, hardware, software, and operating expenses supporting the entire Commission. Salaries and benefits for staff working in the Office of Data and Technology are paid from the S&E line-item.

Consumer Protection Fund (CPF) – No Year Fund

- The Consumer Protection Fund (CPF) pays the salaries and benefits, operating expenses, and educational outreach activities of the Office of Customer Education and Outreach and the Whistleblower Office for approximately seventeen staff members, as well as funding the payment of whistleblower awards.
- In accordance with the authorities establishing the CPF, the Commission deposits civil monetary penalties, disgorgements, and interest it collects in covered administrative or judicial enforcement actions into the CPF whenever the balance in the fund at the time of the action is less than or equal to $100 million.
- The balance of the CPF has remained above the $100 million threshold since FY 2014. Depending on the number and amounts of Whistleblower Awards approved for distribution in FY 2017, the Commission may be authorized to make a deposit to the CPF during the fiscal year.

[1] See GAO Decision B-327003, Commodity Futures Trading Commission—Availability of Appropriations for Inspector General Overhead Expenses of September 29, 2015.

FY 2016 Appropriations Bill and Report Language

Consolidated Appropriations Act, 2016 PL 114-113

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

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TITLE VII
GENERAL PROVISIONS
(INCLUDING RESCISSIONS AND TRANSFERS OF FUNDS)

SEC. 717. (a) None of the funds provided by this Act, or provided by previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming, transfer of funds, or reimbursements as authorized by the Economy Act, or in the case of the Department of Agriculture, through use of the authority provided by section 702(b)

of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2257) or section 8 of Public Law 89–106 (7 U.S.C. 2263), that—
(1) creates new programs;
(2) eliminates a program, project, or activity;
(3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
(4) relocates an office or employees;
(5) reorganizes offices, programs, or activities; or
(6) contracts out or privatizes any functions or activities presently performed by Federal employees;
unless the Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission (as the case may be) notifies in writing and receives approval from the Committees on Appropriations of both Houses of Congress at least 30 days in advance of the reprogramming of such funds or the use of such authority.
(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming or use of the authorities referred to in subsection (a) involving funds in excess of $500,000 or 10 percent, whichever is less, that—
(1) augments existing programs, projects, or activities;
(2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or
(3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission (as the case may be) notifies in writing and receives approval from the Committees on Appropriations of both Houses of Congress at least 30 days in advance of the reprogramming or transfer of such funds or the use of such authority.
(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify in writing and receive approval from the Committees on Appropriations of both Houses of Congress before implementing any program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.
(d) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury derived

by the collection of fees available to the agencies funded by this Act, shall be available for—

(1) modifying major capital investments funding levels, including information technology systems, that involves increasing or decreasing funds in the current fiscal year for the individual investment in excess of $500,000 or 10 percent of the total cost, whichever is less;
(2) realigning or reorganizing new, current, or vacant positions or agency activities or functions to establish a center, office, branch, or similar entity with five or more personnel; or
(3) carrying out activities or functions that were not described in the budget request; unless the agencies funded by this Act notify, in writing, the Committees on Appropriations of both Houses of Congress at least 30 days in advance of using the funds for these purposes.
(e) As described in this section, no funds may be used for any activities unless the Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission receives from the Committee on Appropriations of both Houses of Congress written or electronic mail confirmation of receipt of the notification as required in this section.

Explanatory Statement accompanying the Consolidated Appropriations Act, 2016 PL 114-113

Division A - AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

INDEPENDENT AGENCIES
COMMODITY FUTURES TRADING COMMISSION

For the Commodity Futures Trading Commission, the agreement provides an appropriation of$250,000,000, of which $50,000,000 is for the purchase of IT. The agreement includes $2,620,000 for the Office of Inspector General. Of this amount, not more than $330,000 shall be for overhead expenses.

The agreement directs the Commission to comply with the directive regarding swap dealer de minimis in H.Rpt. 114-205.

During collective bargaining agreement negotiations, the Commission is directed to make commitments based upon its current funding situation rather than its proposed budget requests. Consistent with House Report 114-205 and Senate Report 114-97, the agreement directs the Commission to not increase personnel costs, either through excessive hiring, budgetary mismanagement, or collective bargaining agreement negotiations, that would risk any furloughs or reductions-in-force.

The agreement directs the Commission, in accordance with the President's "Reduce the Federal Footprint" initiative, to find ways to decrease space and renegotiate leasing agreements. The agreement directs the CFTC to report to the Committee within 90 days of enactment of this act on steps the agency is taking to dispose of excess space and reduce rental costs in each building currently leased by the Commission.

Consistent with Section 618 of Division E of Public Law 113-235, the Commission is directed to consult with the General Services Administration in fiscal year 2016 prior to issuing a solicitation for offers of new leases or construction contracts and prior to entering into negotiations for succeeding leases.

The agreement includes bill language allowing the Commission to make accounting adjustments through reopening of closed Treasury accounts for the sole purpose of properly recording prior year leasing payment obligations.

The agreement directs the CFTC to submit, within 30 days of enactment, a detailed spending plan for the allocation of the funds made available, displayed by discrete program, project, and activity, including staffing projections, specifying both FTEs and contractors, and planned investments in information technology.

Commodity Futures Trading Commission

FY 2000 - FY 2016 Funding, FTE, & Staffing Levels

Staffing Issues:

1/ CR appropriations from FY 2002 to 2009 limited the Commission's hiring: 2002 appropriation enacted 11/28/01; 2003 appropriation enacted 2/20/03; 2004 appropriation enacted 1/23/04; 2005 appropriation enacted 12/8/04; 2006 appropriation enacted 11/10/05; 2007 appropriation enacted 2/15/07; 2008 appropriation enacted 12/26/07; 2009 appropriation enacted 3/11/09.

2/ In FY 2002, turnover peaked to 14% FT-P and 24% overall, nearly triple the government average among economists and attorneys. After pay parity increase, turnover rate dropped by more than half the following three years.

3/ In FY 2007, hiring limited by House report language.

4/ In FY 2013, sequestered $10M or 5% of the CR amount

Customer Protection Fund (CPF)

- The Customer Protection Fund (CPF) was established in FY 2011 and began operating in FY 2012.
- Section 748 of the Dodd-Frank Act established the CFTC Customer Protection Fund (Fund) for the payment of awards to whistleblowers, through the whistleblower program, and the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of the CEA or the rules or regulations thereunder.
- The Commission undertakes and maintains customer education initiatives through the Office of Consumer Education and Outreach.
- The Whistleblower Office reviews, determines, and recommends payment of monetary awards to eligible whistleblowers that voluntarily provide original information regarding violations of the CEA that lead to enforcement actions that result in more than $1 million in monetary sanctions.
- The Commission is authorized to deposit civil monetary penalties, disgorgements, and interest it collects in covered administrative or judicial enforcement actions into the CPF whenever the balance in the fund at the time of the deposit is less than or equal to $100 million.
- The Commission does not deposit restitution awarded to victims into the CPF.
- The below table is the information display provided to the congressional committees in the 2017 President's Budget Request.

PB 2017 Budget Request

	FY 2015 Actual ($000)	FY 2016 Estimate ($000)	FY 2017 Estimate ($000)
Budget Authority – Prior Year	$269,901	$264,252	$180,587
Budget Authority – New Year	887	0	0
Prior Year Recoveries	89	0	0
Sequestration	4	0	0
Total Budget Authority	**270,874**	**264,252**	**180,587**
Whistleblower Program	1,623	2,685	3,021
Whistleblower Awards	0	60,000	52,000
Customer Education Program	4,999	20,980	22,026
Total Planned Expenditures	**6,622**	**83,665**	**77,047**
Unobligated Balance	**$264,252**	**$ 180,587**	**$103,540**

Impact of a Flat Budget in FY 2017

A flat budget into FY 2017, which would represent three years at the same funding level, would have a devastating effect on the CFTC's ability to oversee the markets and effectively manage operations critical to the functioning of the agency. The following represent significant impacts:

Personnel & Staffing/Administration

- Personnel would drop to 690 FTE, from 714 in FY 2016.
- Staff reductions would result in a hiring freeze for the Commission.
- Fewer staff to do the work would affect the Commission's ability to meet deadlines, process work in a timely manner, and would cause some work to not get done at all.
- Administrative support functions would be impacted – causing delays in the awarding of contracts, strengthening internal controls, complying with government-wide initiatives, and other general support functions that allow the agency to accomplish its mission.

Technology & Cybersecurity

- The Commission is behind in keeping pace with technological innovations in the marketplace. If funds remain flat, the gap will increase, particularly in emergent areas such as cybersecurity and technological risk evaluation.
- IT costs for baseline services such as network infrastructure and licensing costs increase each year. Without resources to at least cover these increases the Commission's ability to invest in technologic innovations that will make the CFTC more efficient are crowded out.
- Improvements in data ingest will be deferred. Receiving, storing, and analyzing message data from markets, in particular the swaps market, will remain unfinished and effect the Commission's ability to protect the marketplace and its participants.
- Commission will be unable to keep forensics, investigation, and litigation support tools current and will not be able to provide staff with sufficient technology support in their investigations, surveillance, and cases.
- Efforts to harmonize data will be constrained. Unharmonized data delays development of new tools and reduces public transparency of the markets.

Impact on Markets

- Market surveillance, risk surveillance and oversight, and enforcement activities will all be reduced. This will place customers, the markets, and the U.S. economy at increased risk of fraud, abusive practices and market manipulations.
- The Commission will not respond in a timely and thorough manner to the concerns of the public and users of the derivatives markets. This engagement with the marketplace is

important in making sure markets work effectively to facilitate price discovery and allow the hedging of risk.

- The Commission will not be able to staff enough economists to perform critical analysis of market developments and provide robust assistance in considering the relative costs and benefits of the Commission's regulatory activities.
- Markets will not be effectively monitored – technology will not be ready to analyze new market trends and practices. Examples of deficiencies include: 1) inability to aggregate various data for reporting requirements; 2) inability to detect and deter market manipulation and trade practice concerns; 3) no development of automated trading violation and surveillance alerts; 4) deteriorated comprehension of market structure changes; 5) no development of sophisticated analysis-based surveillance tools.
- Uncleared swaps will not be incorporated in the risk surveillance program. CFTC is the only entity that can do this – if CFTC does not have the means to evaluate the risk across derivative clearing organizations it will not be done and the risk levels in the market will not be known.

October 20, 2016

UPDATED
Budget Briefing
Committees on Appropriations

CFTC Budget Impacts and Challenges in FY 2017

- CFTC will face serious challenges if FY 2017's budget maintains funding at FY 2015 levels.
- These challenges are increased costs generally and outstanding union negotiations.
- The pending impasse panel decision on union pay and benefits could substantially exacerbate funding pressures and have a dramatic impact on CFTC operations.
- CFTC has already drastically reduced operating expenses and has reduced staffing to stay within funding limits. The agency has almost no flexibility to deal with cost increases or an adverse impasse decision.
- Keeping the CFTC's funding at the same level for three years severely harms the agency's ability to protect market participants.

FY 2017 Budget Distribution at $250M

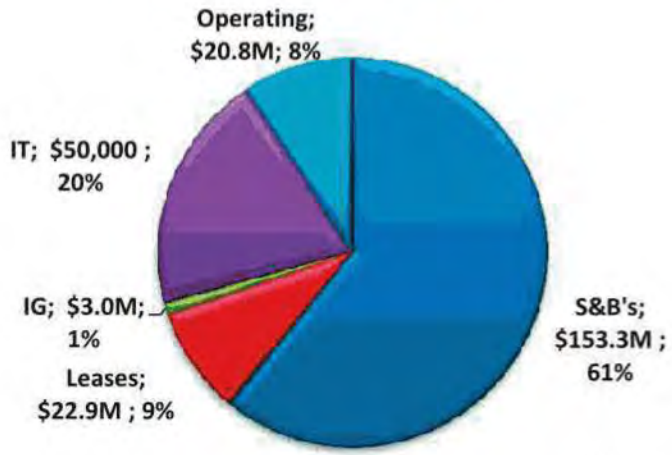
FY 2017 CFTC Current Mark Flat Funding ($'s in millions)		
Non S&E Funding		
IT	$	50.0
OIG	$	3.0
Subtotal Non S&E	$	53.0
S&E Funding		
Leases	$	22.9
Salaries & Benefits	$	153.3
Operating	$	20.8
Subotal S&E	$	197.0
Total CFTC Appropriation	**$**	**250.0**

IT -- Funds are available for IT purchases only, no salary expenses can be charged

OIG -- Funding limited to OIG expenses only

S&E -- Funds available for operations of CFTC including staff pay

CFTC Total Budget

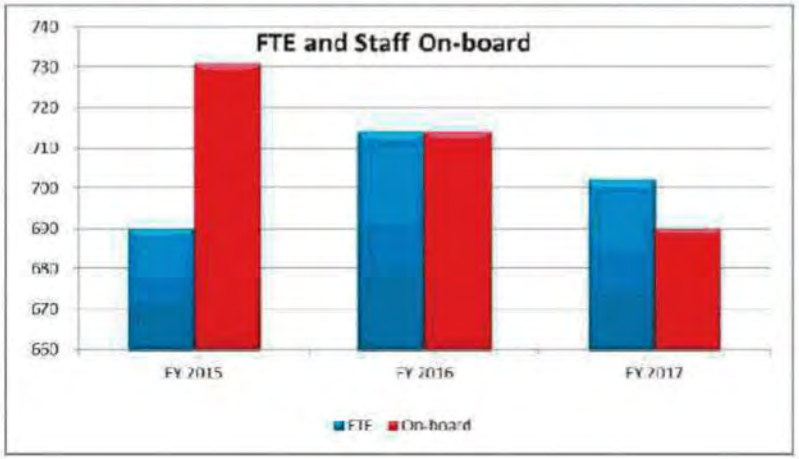


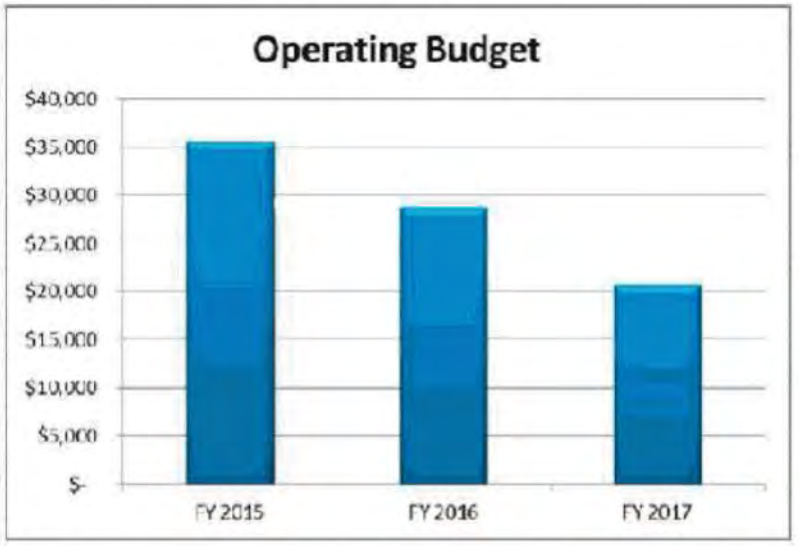
CFTC Budget
(excluding OIG and IT carve-outs)

Operating expenses include data analytic resources, economic analysis, market surveillance, rulemakings, expert witnesses, travel for inspections and case work, other travel, training, and all administrative contracts to run the agency.

CFTC Budget Trends FY 2015 – FY 2017 (Est)

	FY 2015	FY 2016	FY 2017
Salaries & Benefits	$ 140,562	$153,262	$ 153,262
IT	$ 50,000	$ 50,000	$ 50,000
Leases	$ 21,325	$ 15,270	$ 22,949
Operating	$ 35,588	$ 28,848	$ 20,789
Inspector General	$ 2,598	$ 2,620	$ 3,000
Total Budget	**250,073**	**250,000**	**250,000**
FTE	690	714	702
On-board	731	714	690





$'s in thousands

Impact of a Flat Budget in FY 2017

	FY 2015	FY 2016	FY 2017
Salaries & Benefits	$140,562	$153,262	$153,262
IT	$ 50,621	$ 50,000	$ 50,000
Leases	$ 21,325	$ 15,270	$ 22,949
Operating	$ 34,967	$ 28,848	$ 20,789
Inspector General	$ 2,598	$ 2,620	$ 3,000
Total Budget	**250,073**	**250,000**	**250,000**
FTE	690	714	702
On-board	731	714	690

- Staffing must be reduced.
- Operating resources will be down 42% from FY 2015, and down 35% from FY 2014, when the budget was $215M.
- Inability to respond quickly to market participants like commercial end users.
- Reduced ability to engage in exams of clearing houses, potential sources of systemic risk.
- Even less capacity to perform economic analysis, including analysis of market critical events.
- Reduced ability to investigate and prosecute wrongdoing in the markets CFTC regulates.
- Reduced surveillance capacity to detect or analyze market abuses and/or anomalies.
- Reduced ability to maintain basic government mandated programs.

The Challenge of Maintaining Current Services in FY 2017

To **maintain** the level of operations established in FY 2016, the CFTC would require an **increase to its annual appropriation of approximately $11M**.

This assumes no increase in costs resulting from the impasse panel proceeding brought by the union.

The $11 million increase reflects higher costs for:

- Leasing – contract language escalates costs annually
- Maintaining staff at the **current 714 FTE** requires increased resources to keep up with the announced government-wide general increase plus a merit increase (CFTC does not provide general schedule step increases)
- Likelihood of staffing a full 5-Member Commission
- Increases in contracting costs for **existing** mission critical services – standard contract language escalates contract costs annually. Increased resources allow the CFTC to maintain investments that have been made.

Steady State Budget Comparison

	FY 2016 Allocations	FY 2017 Steady State
IT	$ 50,000	$ 50,000
OIG	$ 2,620	$ 2,720
Leases	$ 15,270	$ 22,949
Operating	$ 28,848	$ 28,848
S&B's	$ 153,262	$ 156,462
Total	**$ 250,000**	**$ 260,979**

Union Negotiations Challenges

- The CFTC is currently in pay and benefits negotiations with NTEU for FY 2016. FY 2017 negotiations have not yet started.
- Some of the outcomes of the process are outside the Commission's control.

Background - NTEU Proposal, FY16 Pay and Benefits

On July 27th, 2016 NTEU made its last/best offer for FY 2016 employee compensation.

The offer included the following proposals:

- 3% across-the-board pay increase effective pay period 1, January 2016.
- 3% merit pay for the 2015-2016 performance rating cycle.
- A supplemental retirement program similar to other FIRREA agencies. Program to include a 1% automatic match, with an additional 3% match based on employee contributions.
- $1,000,000 to fund a Student Loan Repayment Program.
- Continue transit subsidy for employees.

Updated Information

- Since submitting their final offer, the union has withdrawn its request for the impasse panel to rule on the supplemental retirement program at this time.
- The following slides provide updated information reflecting this change.
- While the union has currently withdrawn this issue from impasse panel consideration, it remains outstanding and could potentially still impact the FY 2017 budget.

Pay and Benefits Paid in FY 2016

- CFTC was unable to meet the union proposal.
- The Commission made a best and final offer to the union based on what it could afford. Below is a table that summarizes the FY 2016 pay and benefit expenses set by the CFTC :

	FY 2016	Carrying costs into FY 2017
FY 2016 COLA (1%)	$ 1,094,985	$ 1,408,881
FY 2016 Merit (0%)	$ -	$ -
One-time Payment	$ 1,408,000	$ -
Student Loans	$ 800,000	$ -
Cumulative Carrying Costs	**$ 3,302,985**	**$ 1,408,881**

- **Negotiations** with NTEU over pay and benefits were **unsuccessful.**
- CFTC acted unilaterally in setting pay and benefits for FY 2016 to ensure funds set aside for these payments did not lapse.
- NTEU filed a grievance and an **impasse panel has agreed to hear the case** in January, 2017.
- The **decision of the impasse panel is final and binding**.

Possible Outcomes from FY 16 Impasse - Updated

Financial impact of NTEU proposal on CFTC resources: Union proposal, retroactive

	FY 2016	Carrying costs into FY 2017	Total Cost
FY 2016 COLA	$ 3,284,954	$ 4,226,641	$ 7,511,595
FY 2016 Merit	$ 1,028,514	$ 3,970,064	$ 4,998,578
Student Loans	$ 1,000,000	$ -	$ 1,000,000
Cumulative Carrying Costs	**$ 5,313,468**	**$ 8,196,705**	**$ 13,510,173**
Benefits Already Paid, or included in FY 2017 Budget	$ (1,894,985)	$ (1,408,881)	$ (3,303,866)
Net "At Risk" from Impasse Panel	**$ 3,418,483**	**$ 6,787,824**	**$ 10,206,307**

- The most expensive scenario for the CFTC would be if the **impasse panel agrees with NTEU** -- supporting their full request and requiring retroactive payment of FY 2016 costs.
- Total **at risk from this impasse decision is $10.2M** ($3.4M in retroactive payments, and $6.8M in FY 2017 carrying costs) -- net of 1% COLA already paid in FY 2016 and included in FY 2017.
- The annual **operating budget for the entire CFTC is $20.8M**. The CFTC estimates it will expend approximately $3M on operations through December 9th.
- CFTC would not be able to continue operations unless it **furloughed staff**.
- The **impact to CFTC's mission would be severe across all mission areas** and confidence in the markets could be significantly, negatively impacted.

Possible Outcomes from FY 16 Impasse - Updated

Financial impact of NTEU proposal on CFTC resources: Union proposal, not retroactive

	FY 2016	Carrying costs into FY 2017
FY 2016 COLA	$ -	$ 4,226,641
FY 2016 Merit	$ -	$ 3,970,064
Student Loans	$ -	$ -
Cumulative Carrying Costs	**$ -**	**$ 8,196,705**
Benefits already paid, or included in FY 2017 Budget	$ -	$ (1,408,881)
Net "At Risk" from Impasse Panel	**$ -**	**$ 6,787,824**

- If the **impasse panel agrees with NTEU, but does not require a** retroactive payment of FY 2016 costs, the total at risk is **$6.8M**.
- **Significant reductions and possibly furloughs** would be necessary.
- **Mission work would have minimal funds** to pursue/continue cases and monitor markets.
- The impact to the CFTC's mission would be drastic and the negative impacts to the markets could be significant.

Budgets Required to Maintain Current Services and Implement Possible FY2016 Impasse Panel Decisions - Updated

Steady state requirements if impasse panel rules in favor of union proposal, with retroactive payment

	Flat Funding	Maintain Steady State	Impasse Decision	Total FY 2017 Current Operations
IT	$ 50,000	$ -	$ -	$ 50,000
Leases	$ 22,949	$ -	$ -	$ 22,949
Operations	$ 21,169	$ 7,679	$ -	$ 28,848
IG	$ 2,620	$ 100	$ -	$ 2,720
S&B	$ 153,262	$ 3,200	$ 10,206	$ 166,668
Total	**$ 250,000**	**$ 10,979**	**$ 10,206**	**$ 271,185**
FTE	714	714	714	714

Steady state requirements if impasse panel rules in favor of union proposal, with no retroactive payment

	Flat Funding	Maintain Steady State	Impasse Decision	Total FY 2017 Current Operations
IT	$ 50,000	$ -	$ -	$ 50,000
Leases	$ 22,949	$ -	$ -	$ 22,949
Operations	$ 21,169	$ 7,679	$ -	$ 28,848
IG	$ 2,620	$ 100	$ -	$ 2,720
S&B	$ 153,262	$ 3,200	$ 6,788	$ 163,250
Total	**$ 250,000**	**$ 10,979**	**$ 6,788**	**$ 267,767**
FTE	714	714	714	714

Steady state requirements if impasse panel partially rules in favor of union proposal, 2% merit retroactive payment; no supplemental retirement

	Flat Funding	Maintain Steady State	Impasse Decision	Total FY 2017 Current Operations
IT	$ 50,000	$ -	$ -	$ 50,000
Leases	$ 22,949	$ -	$ -	$ 22,949
Operations	$ 21,169	$ 7,679	$ -	$ 28,848
IG	$ 2,620	$ 100	$ -	$ 2,720
S&B	$ 153,262	$ 3,200	$ 3,847	$ 160,309
Total	**$ 250,000**	**$ 10,979**	**$ 3,847**	**$ 264,826**
FTE	714	714	714	714

FY 2017 Pay and Benefits Negotiations

- The impasse panel is only considering pay and benefits for FY 2016.
- The Commission is still required to engage in pay and benefit negotiations for FY 2017.

Impact of a Flat Budget on Information Technology

The impact of receiving a flat (50M) IT budget will result in:

A reduction in overall IT services currently provided to the Commission, as the cost of current services continues to rise. In addition, a flat IT budget impacts the following activities and plans as follows:

- **Inability to provide consolidated and cleansed Swaps data.** Projects will be delayed, including as part of Commission-wide data mart for the staff for analyzing the data for conducting economic analysis, market participant conduct analysis and other analyses such as distinguishing the Dealing versus Hedging trade activity and use that information to determine the De Minimis. Continuation of the status quo will rely on roundabout, imprecise and inefficient methods to derive such information.
- **Inability to proceed with Swaps Data Harmonization at an appropriate pace and delays in adopting industry and international standards.** This will lead to continued inconsistencies in data and adverse effect on data quality for longer than envisaged thus leading to an adverse effect on data analysis for performing the Commission's basic regulatory functions and monitoring for systemic risk. This will also delay the US implementation of international data standards thus putting the USG in an adverse position in the international space.
- **Slowdown in data quality projects.** Delaying the ability to implement data quality projects to implement automated data quality checks and validations against Futures and Swaps data streams thus hindering the ability of Commission staff to conduct basic regulatory analysis on high-quality data.
- **Slowdown or complete stoppage of many automation efforts for data reporting** by market participants, and continuing to rely on paper forms and manual fixing of reported data, thus perpetuating the inability to effectively leverage technology to free up staffing resources for data analysis and core regulatory functions.
- **Long delays in being able to effective architect, manage, structure and house the data** to support the extensive regulatory data analysis needs thus affecting staff's ability to find and use relevant data efficiently.
- **Lack of support for the new Position Limits rulemaking**
- **Reduction in the ability to implement data loading software** for mission critical items such as DCO inflation swaps or the Part 45 TSD effort in a timely manner.
- **TCR Data Quality Improvements** – Analysts will continue to require more manual work to perform their work of surveilling the markets. Additionally, market activities may not be adequately understood due to quality issues in the existing data set. This is the most heavily used data set at the CFTC.
- **Non-Anonymized Order Message Data Ingest** – The CFTC will have limited visibility into the market activities leading up to executed trades on the market. We will continue to rely on tips, complaints, and referrals for identifying unsafe trade practices such as spoofing and banging the close.

- **Give Up Allocation Processing for Transaction Data** – The CFTC will continue to have no insight into the effect of give-up transactions in Market performance.
- **Part 39, DCO data impacted**– we have no funding to add data loaders from DCOs for inflation swaps, or client level accounting.
- **Inability to provide OPERA enhancements** for receiving Organizational Registration and receiving mode complete product data from the exchanges;
- **Lack of analytical tools** for swaps data the Division of Swaps and Intermediary Oversight;
- **Insufficient SAS platform support** would not add the needed 3rd person. This would postpone necessary architecture improvements and routine upgrades, and could impact our ability to provide analysis support for added data sets.
- **Reduced Data Discovery (MicroStrategy) support** would be reduced from 2 contractors to 1. This would inhibit our ability to increase adoption of the product and will postpone many data visualization efforts.
- **Lack of Embedded Analysts**. We would not have embedded Division support for SharePoint, which would postpone business process automation and collaboration projects.
- **Adverse impact on CFTCnet,** the Commission's intranet, would have no resources assigned for operations and maintenance or new development. Systems would be maintained on an as-needed basis by resources typically assigned to other work.
- **Postpone Electronic Records Management**. This could impact the Commission's ability to comply with NARA's Controlled Unclassified Information mandate, and will force the use of existing technologies to support Capstone.
- **Limited ability to comply with IT Security Compliance with FISMA, Cybersecurity Act 2015 and OMB Mandates**
- **Digital Forensics Laboratory Move** – The existing lab has insufficient power/cooling resulting in blown circuits and risk to damaging important evidence and valuable equipment It also can only accommodate 3 of the 4 forensics investigators and provides no room for staffing growth.
- **Upgraded Case Management System** – The current case management system is over 10 years old, based on old technology and is missing many important functions. An upgraded system will provide greatly improved capabilities including document management, document assembly and calendaring integration.
- **Upgrade Automated Litigation Support (ALS) Specialists** – The ALS team is responsible for supporting the user side of the Legal Technology Services Program. Currently they spend the bulk of their time logging, copying and tracking incoming Enforcement electronic evidentiary materials. An FY17 initiative was planned to upgrade these positions by embedding them in Enforcement investigative teams to provide greater expertise with regard to eDiscovery laws, file/media formats, advanced software capabilities and complex searching strategies saving Enforcement legal teams both time and money.
- **Auto-Load –** Currently a team of seven manually ingests all incoming Enforcement evidentiary productions (approximately 500 per month) into Relativity, the Commission's

tool for searching and organizing evidence. The Auto-Load effort will automate the ingestion of 25-50% of these productions and accommodate the rapid growth of incoming production size and volume. It was anticipated that this project would be completed in FY17. Without adequate funding the completion of this project would be delayed.

- **Unstructured Data Analysis** – The Enforcement Program receives roughly 1.5 million evidentiary documents (over 4 million pages) of evidence per month. Currently these documents are searched using standard search approaches. In FY17, a project was planned to introduce software to perform advanced analysis of documents including sentiment analysis, non-obvious relationships analysis (e.g., person A knows person B and person B knows person C so maybe person A knows person C) and entity extraction. This type of capability will allow Enforcement staff to not only locate critical evidence faster but also identify relationships and evidence that would otherwise not be found.
- **Centralized Production Intake (CPI)** – At present the roughly 500 incoming Enforcement evidentiary productions per month are received by Enforcement attorneys and handed to the Legal Technology Services team for ingestion into the CFTC's evidentiary search tool. The CPI initiative will instead send incoming productions directly to a team of trained specialists bypassing Enforcement attorneys, freeing them up to spend more time on legal/investigative work and allowing for the faster ingestion into the CFTC evidentiary search tool.

Expansion of Data Storage and Increase in Data Sources

- Since FY 2008 the growth in the volume of data, as well as the number of data sources from which it is collected, has grown exponentially.
- In FY 2008 the Commission stored approximated 60 terabytes (TB) of data from 8 sources.
- Today the Commission stores over 800 TB from nearly 150 sources. This is 1,233% increase over FY 2008.
- It is projected that storage space will need to be increased 50% this year alone to keep pace with the data the Commission is receiving.
- Growth is projected to continue at an increase of 25-30% annually for the foreseeable future.
- New types of information include swaps transaction information from swaps data repositories and clearing organizations, risk information from banks and commodity swaps information from swap dealers and clearing members.
- In addition to growing the capacity of storing data, challenges arise when new sources of data must also be collected, with considerable staff effort to ensure that the data is correct and complete; without these efforts, new data files are often unusable, or misleading. The Commission anticipates up to 10 new data sources annually through FY 2019.
- The types of data CFTC ingests has grown dramatically more complex.
    - For example, legacy structured end-of-day position data for the futures and options markets contained less than 2 dozen fields per record from a structure that was originally derived from punch cards -whereas some Swaps data now required to be analyzed by the CFTC contains hundreds of fields per record.
    - Analysis of data that is this complex requires a new generation of more powerful high performance computing hardware and analysis techniques in order to understand the volume, interrelations, and market risks being described.

Breakout of estimated cybersecurity funded by ODT since FY 2014.

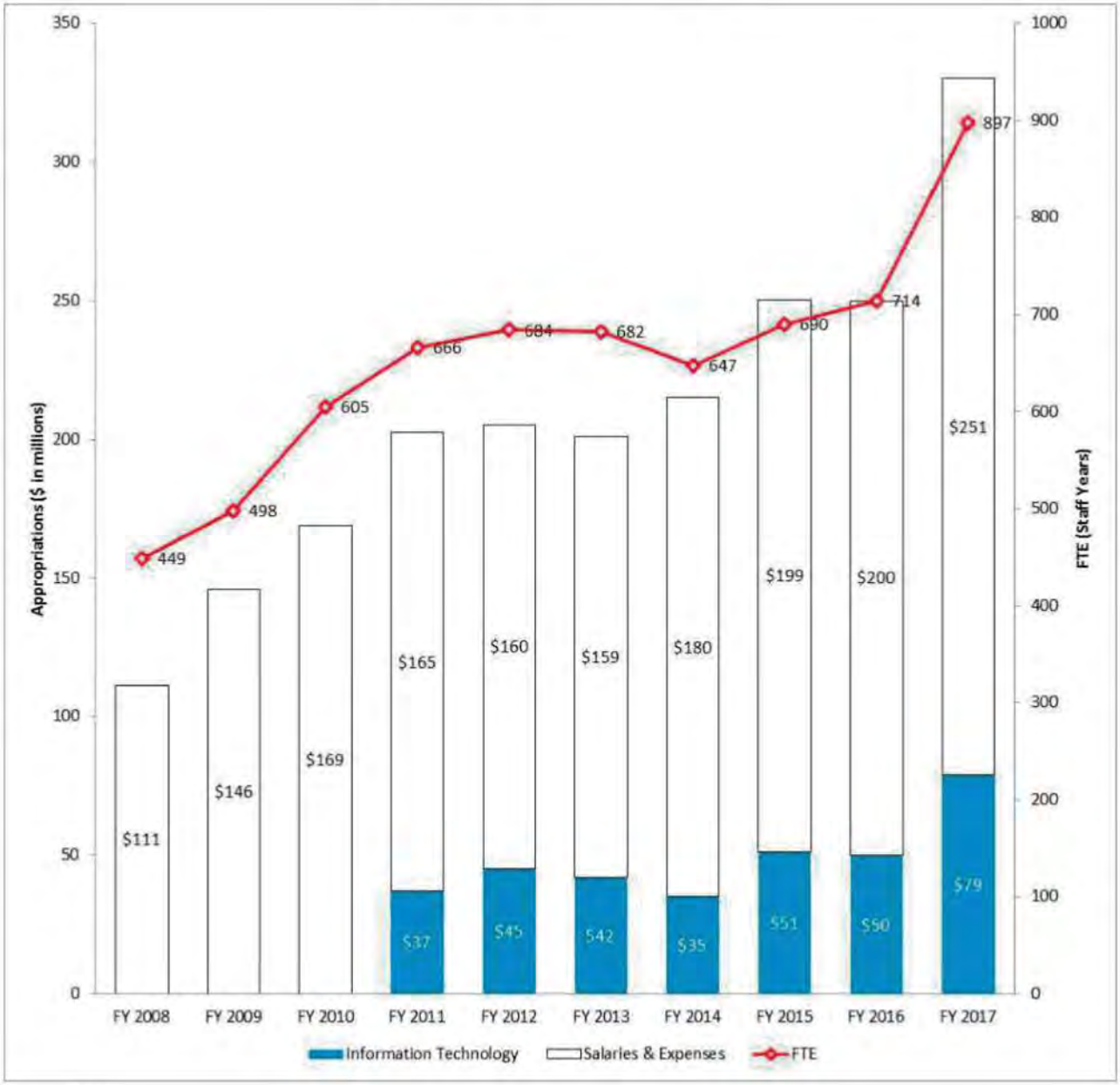
Cybersecurity Investments	FY 14	FY 15	FY 16	FY 17
25717 - Software Maintenance		$164,397	$7,600	$7,600
31031 - Equipment Purchases-Software	$6,630	$235,040	$91,452	$109,866
31051 - Equipment Purchases-Hardware			$2,500	
2510A - Advisory Services	$1,272,717	$3,852,401	$3,459,000	$3,468,000
Grand Total	$1,279,346	$4,251,838	$3,560,552	$3,585,466

FY 2017 President's Budget Exhibits

Charts contained in this tab provide pertinent FY 2017 budget data. Several charts are excerpts from the actual President's Budget Request, while others contain analytical data and historical information on the Commission.

Chart	Description
1(a)	Budget by Program and FTE – FY 2008 to FY 2017
1(b)	FY 2017 Budget Request by Program
1(c)	FY 2017 Budget Request by Mission Activity
1(d)	FY 2017 Budget Request by Division
1(e)	FY 2017 Data and Technology Summary by Area

1(a) - Budget by Program and FTE
FY 2008 – FY 2017



Note:
Actuals displayed for FY 2008 – FY 2015 include prior year carryover, as applicable.
Salaries and Expenses includes funding for OIG.
FY 2015 reflects actual amount including reprogramming of $1.1M from S&E to IT
FY 2016 reflects enacted amount
FY 2017 is the President's Budget Request.

Baseline should be FY 2010 budget (last pre-Dodd Frank budget)

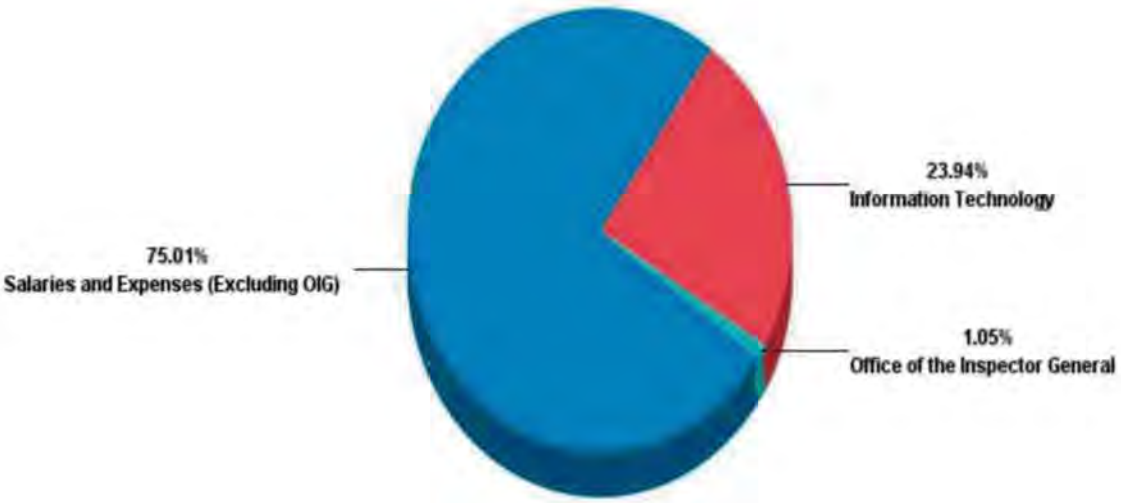
The increase from FY 2010 to FY 2016 is $81.2M and 109 FTE, a 48% increase in funding and 18% increase in FTE

The increase from FY 2010 to FY 2017 is $161.2M and 292 FTE, a 95% increase in funding and 48% increase in FTE

1(b) - FY 2017 Budget Request by Program

	FY 2015 Actual $ (000)	FY 2016 Enacted $ (000)	FY 2017 Request $ (000)	Change $ (000)
Salaries and Expenses (Excluding OIG)	$196,854	$197,380	$247,538	$50,158
Office of the Inspector General	$2,598	$2,620	$3,462	$842
Information Technology	$50,621	$50,000	$79,000	$29,000
Total	**$250,073**	**$250,000**	**$330,000**	**$80,000**

Columns may not add due to rounding

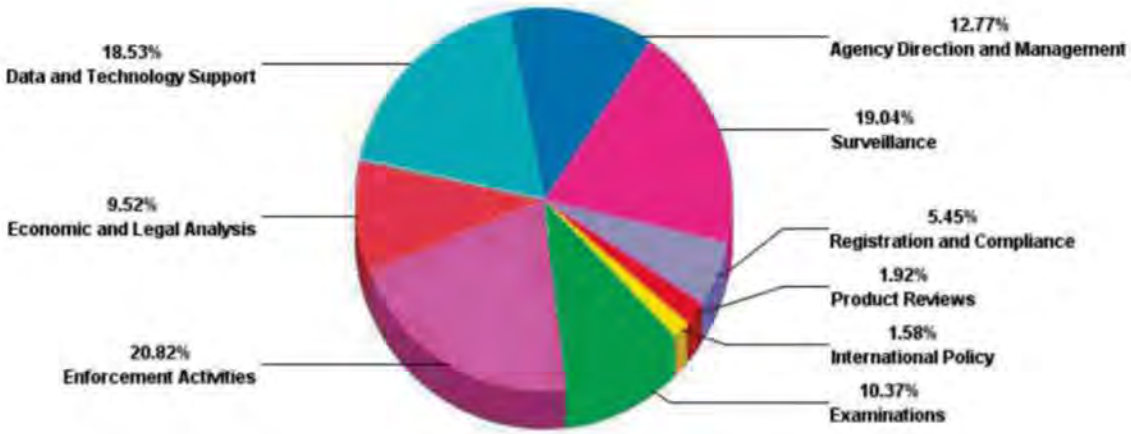


Note: A reprogramming notification for $1.1M from Salaries and Expenses (S&E) to Information Technology (IT) has been submitted. This increases the FY 2015 IT budget authority from $50M to $51.M.

1(c) - FY 2017 Budget Request by Mission Activity

	FY 2015 Actual		FY 2016 Enacted		FY 2017 Request		Change	
	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)
Agency Direction and Management	119	$41,968	115	$35,495	132	$42,135	17	$6,640
Data and Technology Support	49	$40,874	49	$44,004	60	$61,136	11	$17,131
Economic and Legal Analysis	75	$22,475	85	$25,227	103	$31,423	18	$6,196
Enforcement Activities	155	$50,976	161	$53,188	212	$68,720	51	$15,532
Examinations	99	$26,386	115	$30,785	128	$34,216	13	$3,431
International Policy	13	$3,941	13	$4,175	18	$5,226	5	$1,052
Product Reviews	16	$4,644	20	$5,501	22	$6,349	2	$849
Registration and Compliance	46	$13,682	52	$14,489	62	$17,975	10	$3,486
Surveillance	119	$45,127	104	$37,135	160	$62,819	56	$25,684
Total	**690**	**$250,073**	**714**	**$250,000**	**897**	**$330,000**	**183**	**$80,000**

Columns may not add due to rounding



1(d) - FY 2017 Budget Request by Division

	FY 2015 Actual		FY 2016 Enacted		FY 2017 Request		Change	
	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)
Agency Direction	33	$9,001	28	$8,003	37	$10,075	9	$2,073
Agency Management and Support	78	$19,368	74	$18,342	84	$20,802	10	$2,460
Chief Economist	11	$3,154	12	$3,036	18	$5,334	6	$2,298
Clearing and Risk	62	$16,757	72	$19,642	95	$25,138	23	$5,495
Data and Technology	92	$83,229	95	$78,605	113	$113,433	18	$34,828
Enforcement	158	$48,767	164	$49,623	217	$64,940	53	$15,316
General Counsel	46	$13,523	47	$13,872	58	$17,295	11	$3,424
Inspector General	8	$2,598	10	$2,620	11	$3,462	1	$842
International Affairs	10	$3,054	10	$3,215	12	$3,509	2	$294
Market Oversight	107	$27,608	115	$29,961	153	$39,613	38	$9,652
Swap Dealer and Intermediary Oversight	85	$23,013	87	$23,082	99	$26,400	12	$3,318
Total	**690**	**$250,073**	**714**	**$250,000**	**897**	**$330,000**	**183**	**$80,000**

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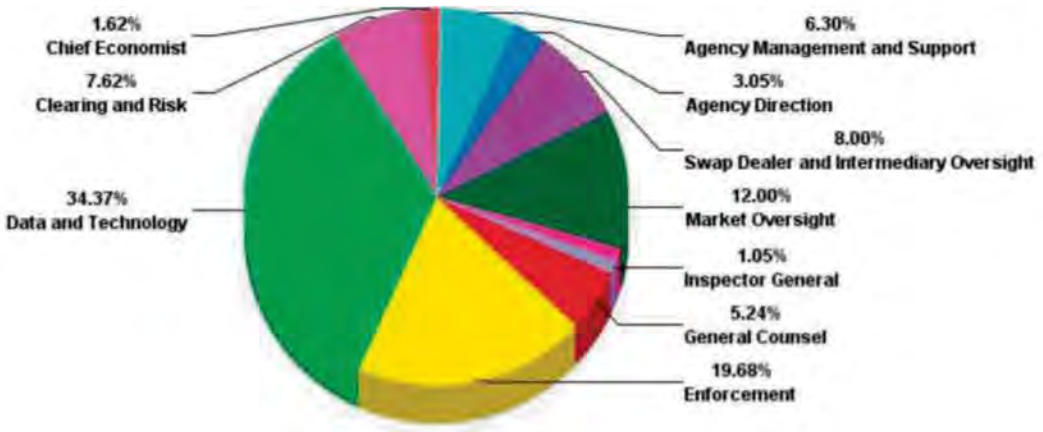


1(e) - Data and Technology

The Commission has organized its IT portfolio into the five major investments areas supporting major mission areas of Surveillance, Enforcement, Other Mission Support, Data & Infrastructure and Management and Administrative Support.

	FY 2015	FY 2016	FY 2017	Change
	Actual	Enacted	Request	FY 2017 - FY 2016
Mission Activity Supported	($000)	($000)	($000)	($000)
Surveillance	22,135	16,543	31,716	15,174
Enforcement Activities	4,310	6,416	6,628	212
Other Mission Support	2,513	2,927	3,819	892
Agency Direction and Management	11,008	6,405	7,822	1,417
Data and Technology Support	38,163	41,544	58,518	16,974
Indirect Overhead	5,101	4,770	4,930	160
Total	**$83,229**	**$78,605**	**$113,433**	**$34,828**

Columns may not add due to rounding

CFTC User Fees

At the request of OMB in 2014, CFTC assembled a working group of individuals from Financial Management, General Counsel and Office of the Chief Economist to conduct an analysis of how user fees could be developed. The main goal was to determine whether fess could be assessed and collected, with minimal market impacts, to provide offsets to the CFTC appropriations. User fees would be designed to collect a portion of, or all, of the CFTC budget such that the CFTC's appropriation would be budget neutral. As with the SEC, the CFTC budget would still be set by Congressional appropriation. The working group also developed draft legislation that could implement the potential fee structure.

While the Administration had included a reference to User Fee legislation in the President's Budget since 2009, in July 2015, the Administration formally submitted User Fee legislation to Congress.

The attached presentation provides the results of that analysis along with legislation that the Administration proposed to Congress regarding CFCT User Fees.

Attachments:

a. CFTC User Fee Package_Biden_7.8.2015
b. OMB User Fee Presentation, November 2014
c. CFTC Update to User Fee Presentation, February 2016

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

July 8, 2015

The Honorable Joseph R. Biden
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

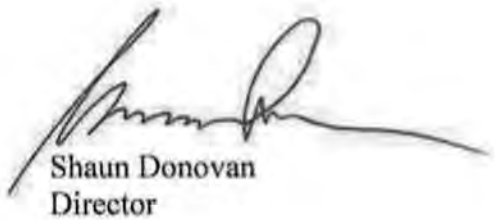
As proposed in the President's FY 2016 Budget, enclosed is draft legislation that would authorize the Commodity Futures Trading Commission (CFTC) to collect user fees to recover the cost to the Federal Government of its annual appropriation by Congress. Also enclosed is a sectional analysis of the legislation. We recommend that this legislation be introduced, referred to the appropriate committee for consideration, and passed by the Congress.

To meet changing market conditions, the CFTC's mandate has been renewed and expanded several times since its inception. Since enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), the CFTC has worked aggressively to implement the regulatory reforms Congress mandated in response to the financial crisis and to adapt its organization to more effectively monitor an ever-changing and technologically complex industry. Fee authorization would bring the CFTC in line with all other financial and banking regulators, which are funded in whole or in part through user fees, and would establish a fairer and more stable source of funding for the Commission.

Under this proposal, Congress would retain its ability to set annual limitations on CFTC funding, but the costs of regulatory services provided by the Commission would shift from the general taxpayer to the primary beneficiaries of the CFTC's oversight. Fee rates would be designed in a way that supports market access, market liquidity, and the efficiency, competitiveness, and financial integrity of futures and swaps markets in the United States. Subject to enactment of authorizing legislation permitting the CFTC to collect user fees, the Administration proposes that collections begin with the FY 2017 appropriation.

The Administration strongly supports fee authorization for the Commission and we look forward to working collaboratively with you and your staff toward this goal. Please direct any questions regarding the proposal to our Office of Legislative Affairs at (202) 395-4790.

Sincerely,



Shaun Donovan
Director

Enclosures

Identical Letter Sent to The Speaker of The House of Representatives

SEC. __. FEES TO RECOVER COSTS.

(a) In General.—The Commodity Exchange Act is amended by adding after section 10 (7 U.S.C. 17) the following new section:

"SEC. 11. FEES TO RECOVER COSTS.

"(a) RECOVERY OF CERTAIN COSTS OF ANNUAL APPROPRIATION.—

"(1) IN GENERAL.—Effective beginning October 1, 2016, so as to recover the costs to the Federal Government of the annual appropriation to the Commission by Congress, the Commission shall assess and collect fees under this subsection.

"(2) REQUIREMENTS.—Subject to subparagraph (3), the Commission may—

"(A) assess fees to recover the costs of the regulatory services provided by the Commission; and

"(B) assess fees from registered entities and persons registered under this Act.

"(3) SERVICE FEES.—The Commission may assess fees to recover the costs of the following regulatory services provided by the Commission:

"(A) Designated contract market compliance examinations.

"(B) Foreign board of trade registration reviews.

"(C) Swap execution facility designation reviews.

"(D) Swap data repository registration reviews.

"(E) Designated contract market designation reviews.

"(F) Swap execution facility compliance examinations.

"(G) Swap data repository compliance reviews.

"(H) Designated contract market contract review and approvals.

"(I) Swap execution facility contract review and approvals.

"(J) Designated contract market contract certification and rule reviews.

"(K) Swap execution facility contract certification and rule reviews.

"(L) Swap data repository rule reviews.

"(M) Reviews of mergers, transfers, and other action requests from designated contract markets, swap execution facilities, and swap data repositories.

"(N) Designated self-regulatory organization financial surveillance reviews.

"(O) Registered futures association compliance program reviews.

"(P) Derivatives clearing organization reviews.

"(Q) Futures commission merchant examinations.

"(R) Registered foreign exchange dealer examinations.

"(S) Swap dealer registration reviews.

"(T) Swap dealer examinations.

"(U) Other entity registration, reviews, or examinations, or other regulatory services provided by the Commission.

"(4) FEE RATES.—Fees assessed shall—

"(A) be reasonably related to the cost to the Commission of providing the services of the Commission;

"(B) take into consideration the full-time equivalent number of employees performing the services, overhead costs, and other factors that the Commission determines are necessary in the public interest;

"(C) support market access for smaller market participants hedging or mitigating commercial or agricultural risk; and

"(D) minimize negative impacts on market liquidity and maintain the efficiency, competitiveness, and financial integrity of futures and swaps markets in the United States.

"(5) COLLECTION OF FEES.—The Commission shall collect fees paid in accordance with subparagraph (2) in a manner and within such time as determined by the Commission.

"(b) PUBLICATION.—Not later than 60 days after the date on which a law providing a regular appropriation to the Commission for a fiscal year is enacted, the Commission shall publish in the Federal Register—

"(1) notices of the fee rates for the fiscal year, including any estimates or projections on which the fees are based; and

"(2) a schedule of fees, including an explanation of the method used for calculating

applicable fee rates.

"(c) DEPOSIT OF FEES.—

"(1) OFFSETTING COLLECTIONS.—Fees collected under paragraph (a) for any fiscal year—

"(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

"(B) except as provided in paragraph (c), shall not be collected or available for obligation for any fiscal year except to the extent provided in advance in appropriation Acts.

"(2) GENERAL REVENUES PROHIBITED.—No fees collected under paragraph (a) shall be deposited and credited as general revenue of the Treasury.

"(d) FEE ORDERS.—

"(1) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order set the fees applicable under paragraph (a) for the fiscal year at rates that are reasonably likely to produce aggregate fee collections under this section that are equal to the costs to the Federal Government of the annual appropriation to the Commission by Congress.

"(2) MID-YEAR ADJUSTMENT.—

"(A) IN GENERAL.—For each fiscal year, the Commission shall determine, not later than March 1 of the fiscal year, whether, based on the actual fees collected during the first 5 months of the fiscal year, the collections generated under the fee rates determined under subparagraph (1) for the fiscal year are reasonably likely to be 10 percent (or more) greater or less than the annual appropriation for the fiscal year.

"(B) ADJUSTMENT.—If the Commission makes an affirmative determination, the Commission shall by order, not later than March 1, adjust the fees for the fiscal year to rates that are reasonably likely to produce aggregate fee collections under this section that are equal to the cost to the Federal Government of the annual appropriation to the Commission by Congress. The fee rates shall be assessed on the same factors listed in paragraph (a).

"(e) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under paragraph (a) at the rates in effect on September 30 of the preceding fiscal year, until 90 days after the date a regular appropriation is enacted.

(b) Conforming Amendments.—

(1) Section 2(d) of the Commodity Exchange Act (7 U.S.C. 2(d)) is amended by striking "and 9" and inserting "9, and 11".

(2) Section 4(c)(1)(A)(i)(I) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended by inserting "11," after "8e,".

(3) Section 15(a)(3) of the Commodity Exchange Act (7 U.S.C. 19(a)(3)) is amended by adding at the end the following:

"(D) An action under section 11.".

Section by Section

COMMODITY FUTURES TRADING COMMISSION (CFTC) FEE AUTHORIZATION

Adds after Section 10 of the Commodity Exchange Act (CEA) (7 USC 17) the following:

Section 11. *Fees to recover costs.*

Paragraph (a). *Recovery of certain costs of annual appropriation.*

Subparagraph (1). *In general.*

This subparagraph authorizes the Commission to assess and collect fees to recover the costs of its annual appropriation and sets an effective date.

Subparagraph (2). *Requirements.*

This subparagraph specifies that fees may be used to recover the costs of regulatory services provided by the Commission. Such fees may be assessed on CFTC registrants.

Subparagraph (3). *Service fees.*

This subparagraph provides a listing of regulatory services provided by the Commission, the costs of which will be offset by fees the Commission assesses. This is not an exhaustive list, as indicated by "... or other regulatory services... "

Subparagraph (4). *Fee rates.*

This subparagraph requires that fee rates be reasonably related to the cost of providing regulatory services, including staffing, overhead, and other costs. Fees assessed shall: support market access for smaller market participants hedging or mitigating commercial or agricultural risk; minimize negative impacts on market liquidity; and maintain the efficiency, competitiveness, and financial integrity of futures and swaps markets in the United States.

Subparagraph (5). *Collection of fees.*

This subparagraph provides that the Commission shall determine the method and schedule by which it collects fees.

Paragraph (b). *Publication.*

This paragraph requires the Commission to publish fee-related materials, including the proposed fee rates in the Federal Register, no later than 60 days after enactment of a regular appropriation for a fiscal year.

Subparagraph (1).

This subparagraph requires that the Commission publish notices of its fee rates for the fiscal year, including any estimates or projections on which the fees are based.

Subparagraph (2).

This subparagraph requires that the Commission publish a schedule of fees, including an explanation of the method used for calculating applicable fee rates.

Paragraph (c). *Deposit of fees.*

Subparagraph (1). *Offsetting collections.*

This paragraph provides that fees collected shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission. Except in the event of a lapse in appropriations, fees shall be collected or available for obligation only to the extent provided in advance in appropriations Acts.

Subparagraph (2). *General revenues prohibited.*

This paragraph prohibits collections from being deposited and credited as general revenue of the Treasury.

Paragraph (d). *Fee orders.*

Subparagraph (1). *Annual adjustment.*

This subparagraph requires the Commission to adjust fees annually, by order, to reflect rates reasonably likely to produce aggregate fee collections equal to its annual appropriation.

Subparagraph (2). *Mid-year adjustment.*

This subparagraph requires that the Commission determine whether collections generated during the first five months of the fiscal year are reasonably likely to be 10 percent (or more) greater or less than its annual appropriation. In the event of an affirmative determination, the Commission is further required to issue an order by March 1 to adjust its fees rates for the fiscal year to reflect rates reasonably likely to produce aggregate fee collections equal to its annual appropriation.

Paragraph (c). *Lapse of appropriation.*

This subparagraph provides that if a regular appropriation has not been enacted by October 1, the Commission shall continue to assess fees under rates in place on September 30 of the last fiscal year, until 90 days after a regular appropriation is enacted.

Where applicable, conforming amendments to the CEA are provided.

OMB-Requested Analysis of Hypothetical CFTC User Fees

November 2014

OMB requested that CFTC staff develop an analysis regarding how user fees could replace appropriated funds. This presentation of the preliminary analysis has been prepared in response. This is not a CFTC proposal.

User fees could be designed to collect a portion of, or all, of the CFTC budget. As with the SEC, the CFTC budget would still be set by Congressional appropriation.

User Fee Design: Key Assumptions

Staff has made the following assumptions in analyzing hypothetical user fees.

User fees should, to the greatest extent possible:

- Minimize any impact to market liquidity
- Maintain market efficiency, competitiveness, integrity
- Achieve equitable treatment of futures, options, and swaps
- Avoid creating incentives for business to move offshore
- Avoid changing competitive dynamics
  - Avoid favoring one product over another
  - Avoid favoring one trade execution method over another
- Support administrative ease and certainty

Background: Existing Industry Fees

Collecting Entities	Revenue Source	Typical Revenue per Transaction	Estimated Aggregate Revenue
US Designated Contract Markets (DCMs)[1]	Listed Transactions of Futures and Options on Futures	Average rate = $0.77 / contract[7]	$2.8 bn
National Futures Association (NFA)[2]	Listed Transactions, principally by non-exchange members	Transaction fee rate is $0.02 per side per round turn as of 10/1/2014[8]	$40 mm
National Futures Association (NFA)[2]	Registrations	$150,000 - $1,000,000 per year for swap dealers and major swap participants	$17 mm
Dealers[3]	Trading	Headline ticket charge for swap trade is ~$500, based on publicly available info	$22.2 bn
Swap Execution Facilities (SEFs)[4]	Transactions	$10 - $1,000 per trade	Not available
Swap Data Repositories (SDRs)[5]	Reports of transactions	$0.10 - $20 per report	Not available
Derivatives Clearing Organizations (DCOs)[6]	Cleared Transactions	Upfront fees typically in the $10 - $1,000 range. See Appendix for details.	Not available

1. Designated Contract Markets (DCMs) are exchanges that operate under the regulatory oversight of the CFTC, pursuant to Section 5 of the Commodity Exchange Act (CEA). Source: http://test2.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm
2. NFA is the self-regulatory organization for the U.S. derivatives industry, including on-exchange traded futures, retail foreign currency (forex) and OTC derivatives (Swaps) . Source: http://www.nfa.futures.org/NFA-about-nfa/index.HTML.
3. Trading revenue for insured U.S. commercial banks and savings associations, 2013 (Source: OCC)
4. SEFs are trading systems or platforms created by the Dodd-Frank Act in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce. (Source: Glossary at www.cftc.gov)
5. Swap data repositories (SDRs) are registered entities created by the Dodd-Frank Act that collect and maintain information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. (Source: Glossary at www.cftc.gov)
6. DCO: A clearing organization registered with the CFTC that, in respect to a contract (1) enables each party to the contract to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties; (2) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such contracts; or (3) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such contracts. (Source: Glossary at www.cftc.gov)
7. Source: Market-wide estimate based on 2013 Annual reports for CME Group and Intercontinental Exchange, Inc..
8. NFA does not charge for exchange member trades but does charge for trades by US customers on foreign boards of trade. Aggregate revenue for NFA FY 2013 (July 2012 – June 2013).

User Fee Design: Potential Fees and Assessments

Type of Transaction	Potential Revenue Attachment Points	Potential Collection Methods	Notes
Futures + Options on Futures	Transactions	From Exchange, Futures Commission Merchant, or Exchange Clearing Member, potentially through NFA	Exchange clearing fees exist; Non-exchange member transactions already covered by NFA fees
	Open positions	From Futures Commission Merchant, or Exchange Clearing Member, potentially through NFA	No fees currently implemented
	Registration fees: DCMs, CPOs, FCMs, etc.	From registrant, potentially through NFA	Similar to existing NFA fees
Swaps	Cleared Transactions[1]	From Derivatives Clearing Organizations, Swap Data Repositories, Swap Dealers, Major Swap Participants, or SEFs	Method used by CME, ICE, Bloomberg SDRs. Flat fees for some trades, fees linked to notional for other trades. DCOs collect varying rates based on position attributes.
	Uncleared Transactions	From Swap Data Repositories, Swap Dealers, Major Swap Participants, or SEFs	
	Cleared, Open Positions[1]	From Derivatives Clearing Organizations, Swap Data Repositories, Swap Dealers, or Major Swap Participants	Method used by DDR. Flat fees per record, not linked to notional amounts
	Uncleared, Open Positions	From Swap Data Repositories, Swap Dealers, Major Swap Participants, or SEFs	
	Registration fees: SDs/MSPs, CPOs, DCOs, SEFs, etc.	From registrant, potentially through NFA	Similar to existing NFA fees

1. A **transaction** is the entry or liquidation of a trade. A **position** is interest in the market, either long or short, in the form of one or more open contracts. Source: Glossary at www.CFTC.gov.

User Fee Design – Factors to Consider

- Fee design needs to consider assessing fees at Designated Contract Markets (DCMs)[1] or Futures Commission Merchants (FCMs)[2] for futures transactions
  - There are fewer DCMs than FCMs (which already pay NFA fees directly)
  - DCMs have existing procedures for invoicing fees for transactions

- Fee design needs to consider various methods of measuring market activity for swaps
  - Fees could be tied to 1) the number of positions taken[3]; 2) notional swap size; 3) other metrics
    - Tying fees to number of positions means that fees are commensurate with CFTC resources required to store and analyze data.
      - A record of a small swap takes just as much computer memory as a record for a large position.
      - The size of the position need not match the efforts expended by CFTC staff on that position.
        - » Positions require monitoring throughout the life of the trade, not just at execution.
      - Notional size of positions/transactions does not directly match risk (spread trades, offsetting trades, optionality) or other considerations of the prioritization of a transaction.
      - Counting swap transactions requires detailed administrative decisions not required for counting positions: e.g., treatment of amendments, allocations, transfers between clearinghouses, novations, clearing, and regular compressions.
    - Largest Swap Data Repository (SDR) has existing procedures for invoicing fees based on positions

- To minimize administrative burden, it would likely be best to collect fees
  - At SDR for swaps
  - At DCMs for listed futures and options on futures transactions
  - At Swap Dealers/Major Swap Participants for annual registration fees

All definitions from the Glossary at www.CFTC.gov

1. **Designated Contract Market:** A board of trade or exchange designated by the CFTC to trade futures, swaps, and/or options under the CEA. A contract market can allow both institutional and retail participants and can list for trading contracts on any commodity, provided that each contract is not readily susceptible to manipulation.
2. **Futures Commission Merchant:** Individuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted. See 7 USC 1a(28).
3. A **position** is interest in the market, either long or short, in the form of one or more open contracts. A **transaction** is the entry or liquidation of a trade.
4. **Swap data repositories** (SDRs) are registered entities created by the Dodd-Frank Act that collect and maintain information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. See 7 U.S.C. §1a(48).

User Fee Design – Factors to Consider

Swaps vs. Futures

- Futures markets and swaps markets are different
- Futures market
  - $25 – 35 trillion notional outstanding
  - More standardized
  - Smaller transaction size
  - Short-dated: Contracts usually expire in less than 6 months
  - Large trading volume/high position turnover (many transactions opened and closed within one trading day)
  - All transactions cleared (substituting central counterparty as one side of the trade)
  - Increased volume in recent years has led to NFA reducing fees from $0.04 per side per round turn to $0.02 per side per round turn as of October 1, 2014
- Swaps market
  - $400 - $700 trillion notional outstanding[1]
  - Fewer, larger transactions
  - Long-dated: Majority of positions expire years after the trade date
  - Lower trading volume / low turnover of positions
  - Many transactions are between dealers to manage risk, others are directly between dealer and end-user
  - Standard transactions cleared, many are customized or illiquid and are not cleared
  - Swap structures tend to be more complex
- <u>A practical approach to allocating regulatory costs across these markets would reflect the more customized, longer-dated, and larger notional size of swap trades relative to futures trades</u>

1. Notional value does not measure risk. Reported estimates for the aggregate notional value for swaps market range from $400 trillion for market-facing swaps reported to US Swap Data Repositories (CFTC) to $700 trillion global survey estimates (Bank for International Settlements). One major difference between the estimates is that the BIS estimate includes both swaps resulting from the clearing process, whereas the CFTC measure counts only one side. Various measures highlight different aspects of the markets.

User Fee Model #1 - Potential Framework

If the goal of fees is to collect an amount equal to the President's FY 2014 budget for the agency, here is one, high level model. There are, of course, many variations. We included sample inputs for discussion. This could be changed depending on the target revenue, and how one wants the fees to be assessed.

At NFA levels

	Average Rate	Count[2]	Revenue	Total Revenue
Futures + Options on Futures transactions	$0.02	3.6 billion	$72 mm	**Revenue from futures and options on futures: $72 mm**
Swap Dealer/ Major Swap Participant assessment	$440,278[1]	108	$47.5 mm	**Revenue from swaps market: $208.2 mm**
Swap positions	$22.95 (annual rate)	7 mm (cleared + uncleared)	$160.7 mm	
Swaps: IRS	$22.95	5.5 mm	$126.2 mm	
Swaps: CDS	$22.95	250k	$5.7 mm	
Swaps: FX	$22.95	1mm	$23.0 mm	
Swaps: Other	$22.95	250k	$5.7 mm	
TOTAL (Offset to $280 million budget: Does not account for estimated $4 million upfront costs to the Commission to administer fees)				$280.2 mm

This rate is lower than the theoretical equivalent for futures hedge of a hypothetical, typical swap. Based on SDR data, the "average" interest rate swap is a typical 10 year US dollar denominated fixed/floating swap with a notional value of $100 million. Theoretically, the initial equivalent futures position would consist of 3,735 Eurodollar futures contracts, which would generate NFA fees of **$74.70** for a non-exchange member. See the appendix for details on the hedge ratio.

1. Assumes 15 entities @ $1mm, 93 entities @ $300k. NFA Tier 1 swap dealers pay $1mm per year, with other dealers paying between $150,000 - $250,000.
2. CFTC estimates based on 2013 trading volume on US DCMs (futures and options on futures) and from Swap Data Repository data for swaps

Appendix

Appendix Material

- Industry Fee Structures
  - NFA Fees
  - Exchange Fees
  - Swap Data Repository Reporting Rates
  - Dealer Clearing Costs
  - Swap Execution Facility Fees
  - Swap Clearinghouse Clearing Costs
- SEC Fee Structure
- Impact Analysis

Industry Fee Structures
NFA Fees

- NFA collects fees from FCMs, based on customer transactions (from all CPOs and from non-exchange members otherwise)
- Each NFA FCM member pays; i.e., buyer and seller both pay
  - Futures:
    - Two cents per side to Sep. 30, 2014
    - One cent per side as of Oct. 1, 2014
  - Options:
    - Two cents per trade to Sep. 30, 2014
    - One cent per trade as of Oct 1, 2014
  - $40.3 mm collected in year ending June 2013
  - In aggregate, NFA projected $108mm revenue in 2014 (vs. $68mm in 2013) against $70mm expenses (vs $62mm in 2013)

- NFA's Board of Directors approved the reduction in rates in May 2014, noting that public trading volume grew an average of 7% over the previous five years and grew 20% for fiscal 2014. Given the large increases in volume, if NFA had kept the assessment fees at the prior levels, NFA predicted that reserves would soon exceed NFA's targeted reserve amount of fourteen months of operating expenses. NFA expressed confidence that, barring a significant drop in public volume or an unanticipated large increase in spending, the assessment fees could be sustained "for a few years."[2]

1. NFA's by-laws specify that each "FCM Member shall pay an assessment of $0.02 for each commodity futures contract traded on or entered into subject to the rules of a contract market (other than an option contract) on a round-turn basis" (Bylaw 1301. Schedule of Dues and Assessments). A "round-turn" in the futures industry is a completed transaction involving both a purchase and a liquidating sale, or a sale followed by a covering purchase. (Source: CFTC Glossary at www.cftc.gov)

2. Source: Correspondence from NFA to CFTC Secretary, May 28, 2014, available at http://www.nfa.futures.org/news/.%5CPDF%5CCFTC%5CBylaw_1301_AssessmentFeeReduction_051514.pdf

Industry Fee Structures
NFA Fees

- NFA collections p.a., year ending June 2013:
  - $40.3 mm from transaction fees (total exchange volumes = 3.6 bn contracts)
    - $0.02 per futures side per round-turn from Futures Commission Merchants who are non-Exchange members
    - $0.005 per round-turn from contract market members (i.e., exchanges)
  - $17.1 mm from registration fees

NFA has established the following revenue structure for Swap Dealers (SD) and Major Swap Participants (MSP):
Each SD Member that meets the definition of a Large Financial Institution pursuant to Article XVIII(n) of NFA's Articles of Incorporation shall pay to NFA annual dues in the amount of $1,000,000 (Tier 1);
Each SD Member that does not meet the definition of a Large Financial Institution pursuant to Article XVIII(n) of NFA's Article of Incorporation shall pay to NFA annual dues in the amount of $250,000 (Tier 2);
Each MSP Member shall pay to NFA annual dues in the amount of $250,000; and
Any SD Member or MSP Member that is an affiliate as defined in Article XVIII(b) of NFA's Article of Incorporation of a SD Member or a MSP Member shall pay annual dues in the amount of $150,000 (affiliate of Tier 1 or Tier 2 Swap Dealer).

Industry Fee Structures
NFA FCM Transaction Fees as of Oct. 1, 2014

- **BYLAW 1301. SCHEDULE OF DUES AND ASSESSMENTS.**
- * * *

Subject to the provisions of Article XII, dues and assessments of Members shall be as follows:

* * *

b) FCM Members.

(i) Each FCM Member shall pay to NFA an assessment equal to:

(A) **$.02 for each commodity futures contract traded** on or entered into subject to the rules of a contract market (other than an option contract) on a round-turn basis;

(B) **$.01 for each option contract traded** on or entered into subject to the rules of a contract market on a per trade basis; carried by it for a customer other than: (1) a person having privileges of membership on a contract market where such contract is entered (except that this exemption does not apply to transactions by commodity pools operated by NFA Member CPOs); (2) a business affiliate of such FCM that directly or indirectly owns 100 percent of or is owned 100 percent by or has 100 percent ownership in common with such FCM provided such FCM has privileges of membership on the contract market where such contract is entered; or (3) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM;

(C) **$.02 for each commodity futures contract traded on or entered into subject to the rules of a foreign board of trade** (other than an option contract) on a round-turn basis;

(D) **$.01 for each option contract traded on or entered into subject to the rules of a foreign board of trade on a per trade basis**, carried by it for a customer other than: (1) on an omnibus account basis for another FCM Member for which assessments are payable to NFA by the other FCM; or (2) for the proprietary trades of a person who has privileges of membership on any NFA Member contract market that has annual transaction volume of 1,000,000 calculated in conformance with Article VII, Section 2(a)(iii) of NFA's Articles of Incorporation provided, however, that this exemption shall not be afforded for the foreign proprietary trades of a person's parent, affiliate, or subsidiary unless these entities separately meet the requirements of this subsection.

(E) $.01 for each dealer option contract on a per trade basis carried by it for a customer other than a business affiliate of such FCM that directly or indirectly owns 100 percent of or is owned 100 percent by or has 100 percent ownership in common with such FCM Member:

Provided, however, such assessments shall be suspended or adjusted by the Board for a period not to exceed three months when in the judgment of the Board such action is appropriate in light of NFA's overall financial goals. The FCM Member shall invoice these assessments to its customer and shall remit the amount due to NFA;

Industry Fee Structures
Monthly Assessment Fee Reports Submitted to NFA

Submitted Report

FCM ASSESSMENT FEE SUMMARY REPORT
MONTH ENDED _____

NFA ID: _____

		VOLUME OF TRANSACTIONS	FEES ($)
	DOMESTIC TRADES:		
A.	FUTURES CONTRACTS TRADED ON U.S. EXCHANGES (ROUND-TURNS, EXCLUDING SECURITY FUTURES PRODUCTS)		
B.	SECURITY FUTURES CONTRACTS TRADED ON U.S. EXCHANGES (ROUND-TURNS)		
C.	OPTIONS TRADED ON U.S. EXCHANGES (NUMBER OF TRADES)		
	FOREIGN TRADES:		
D.	FUTURES CONTRACTS TRADED ON FOREIGN EXCHANGES FOR U.S. CUSTOMERS (ROUND-TURNS)		
E.	OPTIONS CONTRACTS TRADED ON FOREIGN EXCHANGES FOR U.S. CUSTOMERS (NUMBER OF TRADES)		
F.	TOTAL NFA ASSESMENT FEE – DUE BY _____		
G.	LIST FCM REMITTING FEES ON YOUR BEHALF		

If your firm has no assessment fees to submit for the month, please indicate zero volume and fees above. Then simply sign and return this form by the due date.

I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT _____
AUTHORIZED SIGNATURE

KINDLY SEND A COPY OF THIS REPORT ALONG WITH YOUR REMITTANCE TO: NATIONAL FUTURES ASSOCIATION, BOX 98383, CHICAGO, ILLINOIS 60693-0001, ATTN: TREASURER'S OFFICE

IF YOU ARE WIRING FUNDS OR HAVE NO VOLUME FOR THE MONTH, PLEASE RETURN THE COMPLETED FORM VIA FACSIMILE TO THE ATTENTION OF MITCH KOZLOWSKI AT (312) 559-3559 OR VIA EMAIL TO MKOZLOWSKI@NFA.FUTURES.ORG.

Worksheet for Report (lists adjustments to raw data)

SCHEDULE II

NATIONAL FUTURES ASSOCIATION
Box 98383
Chicago, Illinois 60693-0001

FCM ASSESSMENT FEE WORKSHEET
MONTH ENDED __/__/__

_____
FCM Member

The information concerning transactions provided on this form will be utilized solely for purposes of computing the applicable NFA Assessment Fee and will be treated as confidential by NFA. This information may be supplied to the CFTC upon its request. However, it is the opinion of NFA that such information my be withheld by the CFTC from public disclosure under applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552.

	Futures Contracts Traded On U.S. Exchanges	**Total**
1.	Total U.S. futures contracts round-turns	
2.	**Less:** Round-turns of customers having "privileges of membership" on exchange where contract is executed	( )
3.	**Less:** Round-turns in an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM	( )
4.	**Less:** Round-turns in an omnibus account cleared by another FCM Member for which the clearing FCM Member has agreed to pay the NFA assessment fee on your behalf	( )
5.	**Less:** Round-turns carried in an account owned by a business affiliate of an FCM executed on an exchange of which the FCM is a member	( )
6.	Total assessment fees due on futures contracts traded on U.S. Exchanges (Line 1 less Lines 2-5)	x$.04= $
	Futures Contracts Traded On Foreign Exchanges for U.S. Customers	
7.	Total foreign futures contract round-turns	
8.	**Less:** Round-turns in an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM	( )
9.	**Less:** Round-turns in an omnibus account cleared by another FCM Member for which the clearing FCM Member has agreed to pay the NFA assessment fee on your behalf	( )
10.	Assessable volume (Line 7 less Lines 8-9)	x$.04= $
	Options Traded On U.S. Exchanges	
11.	Total U.S. exchange-traded option trades	
12.	**Less:** Trades of customers having "privileges of membership" on exchange where contract is executed	( )
13.	**Less:** Trades in an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM	( )
14.	**Less:** Trades in an omnibus account cleared by another FCM Member for which the clearing FCM Member has agreed to pay the NFA assessment fee on your behalf	( )
15.	**Less:** Trades carried in an account owned by a business affiliate of an FCM executed on an exchange of which the FCM is a member	( )
16.	Total assessment fees due on options contracts traded on U.S. Exchanges (Line 11 less Lines 12-15)	$
	Options Traded On Foreign Exchanges For U.S. Customers	
17.	Total foreign exchange-traded option trades	
18.	**Less:** Trades in an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM	( )
19.	**Less:** Trades in an omnibus account cleared by another FCM Member for which the clearing FCM Member has agreed to pay the NFA assessment fee on your behalf	( )
20.	Assessable volume (Line 17 less Lines 18-19)	x$.02= $
21.	Total NFA assessment fee (Lines 6, 10, 16, and 20)	$

Transfer the information on Lines 6, 10, 16, 20, and 21 to the FCM Assessment Fee Summary Report

Source: http://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9017&Section=9

Industry Fee Structures
NFA Membership Dues (1/3)

- Revenues, year ending June 2013:
  - $17.1 mm
- Example tiered membership dues per annum:
  - Swap Dealer categories
    - Tier 1 Swap Dealer: $1 mm[1a, 3]
    - Tier 2 Swap Dealer: $250k[1b]
    - Swap Dealer affiliate: $150k[1d, 2]
  - MSP categories
    - MSP: $150k (as of October 1, 2014, was $250k)[1c]
    - MSP affiliate: $150k[1d, 2]
  - FCM categories[4]
    - Exchange is SRO: $1500
    - NFA is SRO: $5,625

1. NFA has established the following revenue structure for Swap Dealers (SD) and Major Swap Participants (MSP):
   a. Each SD Member that meets the definition of a Large Financial Institution pursuant to Article XVIII(n) of NFA's Articles of Incorporation shall pay to NFA annual dues in the amount of $1,000,000 (Tier 1);
   b. Each SD Member that does not meet the definition of a Large Financial Institution pursuant to Article XVIII(n) of NFA's Article of Incorporation shall pay to NFA annual dues in the amount of $250,000 (Tier 2);
   c. Each MSP Member shall pay to NFA annual dues in the amount of $150,000; and
   d. Any SD Member or MSP Member that is an affiliate as defined in Article XVIII(b) of NFA's Article of Incorporation of a SD Member or a MSP Member shall pay annual dues in the amount of $150,000 (affiliate of Tier 1 or Tier 2 Swap Dealer).
2. Article XVIII(b) of NFA's Articles of Incorporation defines an affiliate as "unless otherwise provided, any person that directly or indirectly owns more than 50% of or is owned more than 50% by or has more than 50% ownership in common with another person."
3. Article XVIII(n) of NFA's Articles of Incorporation defines a "Large Financial Institution" as a "Swap Dealer included in a well defined, publicly available and independent list of financial institutions that the Board of Directors identifies by resolution from time to time." NFA Correspondence dated November 20, 2012 with CFTC Secretary indicates that the se institutions are "the dealer signatories on the commitment letters executed with the OTC Derivatives Supervisors Group a/k/a currently the G-14") (Source: http://www.nfa.futures.org/news/PDF/CFTC/Bylaw1301f_RevenueStruc4SwapDealersMSPs_111512.pdf)
4. When a futures commission merchant (FCM) is a member of more than one Self-Regulatory Organization (SRO), the SROs may decide among themselves which of them will be primarily responsible for enforcing minimum financial and sales practice requirements. With approval, the SRO will be appointed Designated SRO (DSRO) for the particular FCM. (Source: NFA Glossary at http://www.nfa.futures.org/%5C/basicnet/glossary.aspx?term=D)

Industry Fee Structures
NFA Membership Dues (2/3)

NFA Membership Totals by Highest Class, with annual assessment ranges

		Per annum NFA assessments
Swap Dealers	99	$150k - $1mm
Major Swap Participants	2	$150k - $250k
Retail Foreign Exchange Dealers	7	$125k - $1mm
Futures Commission Merchants	68	$1.5k - $1mm
Introducing Brokers	1,299	$750
Commodity Pool Operators	1,634	$750 - $2500
Commodity Trading Advisors	1,048	$750 - $2500
Exchanges	6	Not available
Associates	57,196	
Total Membership	4,163	

Source: http://www.nfa.futures.org/NFA-registration/NFA-membership-and-dues.HTML. Data as of September 30, 2014.

Industry Fee Structures
NFA Membership Dues (3/3)

Initial membership Dues	
Swap Dealer - Tier 1**	$1,000,000
Swap Dealer - Tier 2**	$250,000
Swap Dealer - Affiliate of Tier 1 or Tier 2 Swap Dealer**	$150,000
Major Swap Participant**	$150,000
Major Swap Participant - Affiliate of a Major Swap Participant**	$150,000
Futures Commission Merchant - Exchange is Designated Self-Regulatory Organization	$1,500
Futures Commission Merchant - NFA is Designated Self-Regulatory Organization	$5,625
FCM Forex Dealer Member - Exchange is Designated Self-Regulatory Organization that has agreed to examine the Forex Dealer Member's forex activities	$25,000
FCM Forex Dealer Member - NFA is Designated Self-Regulatory Organization	$125,000
Retail Foreign Exchange Dealer	$125,000
Introducing Broker	$750
Introducing Broker Forex Firm	$2,500
Commodity Pool Operator	$750
Commodity Pool Operator Forex Firm	$2,500
Commodity Trading Advisor	$750
Commodity Trading Advisor Forex Firm	$2,500

Annual membership Dues	
Swap Dealer - Tier 1****	$1,000,000
Swap Dealer - Tier 2****	$250,000
Swap Dealer - Affiliate of Tier 1 or Tier 2 Swap Dealer****	$150,000
Major Swap Participant****	$250,000
Major Swap Participant - Affiliate of a Major Swap Participant****	$150,000
Futures Commission Merchant - Exchange is Designated Self-Regulatory Organization	$1,500
Futures Commission Merchant - NFA is Designated Self-Regulatory Organization	$5,625
FCM Forex Dealer Member - Exchange is Designated Self-Regulatory Organization that has agreed to examine the Forex Dealer Member's forex activities	$25,000
FCM Forex Dealer Member - NFA is Designated Self-Regulatory Organization with annual forex revenue of:****	
•$5 million or less	$125,000
•more than $5 million but not more than $10 million	$250,000
•more than $10 million but not more than $25 million	$500,000
•more than $25 million but not more than $50 million	$750,000
•more than $50 million	$1,000,000
Retail Foreign Exchange Dealer with annual forex revenue of:****	
•$5 million or less	$125,000
•more than $5 million but not more than $10 million	$250,000
•more than $10 million but not more than $25 million	$500,000
•more than $25 million but not more than $50 million	$750,000
•more than $50 million	$1,000,000
Introducing Broker	$750
Introducing Broker Forex Firm	$2,500
Commodity Pool Operator	$750
Commodity Pool Operator Forex Firm	$2,500
Commodity Trading Advisor	$750
Commodity Trading Advisor Forex Firm	$2,500

Source: http://www.nfa.futures.org/NFA-registration/NFA-membership-and-dues.HTML. Data as of September 30, 2014.

Industry Fee Structures
Exchange Fees

- CY 2013, CME generated $2.4 bn in revenue on 3.1 bn futures and options on futures traded
  - CME revenue: Average Rate per Contract of $0.78
    - Fees vary across asset classes, participant type, and activity
    - Fees for other exchanges are a similar magnitude
  - Sample relations of relevant fees to notional value:
    - 2 cents / $1mm notional = (2/10,000) x 1 bp [Eurodollar contract notional]
    - 2 cents / $100,000 notional = (2/1,000) x 1 bp [SPX e-mini contract notional]

Source: CME Group 2013 10-K filing

Industry Fee Structures
SDR Reporting Rates[1]

	Bloomberg[4]	CME[5]	DDR[6]	ICE[7]
General Fee Structure[2,3]	Flat fee per report	Constant rate for reports after minimum allotted trades	Tiered rates by position counts	Constant rate x notional units
Fees for Rates		$20 per report	$0.10 - $3.50	
Fees for Credit	$5 per report	$20 per report	$0.10 - $3.50	$0.45 [$1.13] per $1mm notional for CDX [single name CDS]
Fees for Commodities	$5 per report	$20 per report	$0.00 - $3.50 per report	Various: e.g., USD Commodity Index Swap @ $1.10 per $1mm notional
Fees for Equities			$0.10 - $3.50	
Fees for FX		$1.50 per report	$0.05 - $0.70 per report	
Maintenance Fees	None	None	Monthly	None

1. Data accessed November 5, 2014.
2. A "report" for an over-the-counter swap is a record of the transaction that is submitted by one of the parties to the transaction.
3. A "position" is an outstanding trade that has not been closed out by an offsetting transaction or by expiration of the contract.
4. Source: http://www.bloombergsdr.com/assets/img/BSDR%20-%20Exhibit%20O%20(Fees).pdf
5. Source: http://www.cmegroup.com/market-data/files/cme-repository-service-fee-schedule.pdf
6. Source: http://www.dtcc.com/~/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Fees.pdf
7. Source: https://www.theice.com/publicdocs/ICE_Trade_Vault_Fee_Schedule.pdf

Industry Fee Structures
SDR Reporting Rates

- DDR's fee structure (on a per month basis) is based on position counts and is given below for 4 of the 5 DFA asset classes
- Example: A reporting party with 1,001 credit positions reported to DDR will pay $3.50 for the first 100 positions, $3.00 for the next 900 positions, and $2.50 for the last position, for a total of ($3.50 x 100) + ($3.00 x 900) + ($2.50 x 1) = $3,052.50

Credit, Equities, Rates

Tier	Start	End	Monthly fee per position (US$)
Tier 1	0	100	3.50
Tier 2	101	1,000	3.00
Tier 3	1,001	5,000	2.50
Tier 4	5,001	10,000	2.25
Tier 5	10,001	50,000	2.00
Tier 6	50,001	200,000	1.25
Tier 7	200,001	500,000	0.40
Tier 8	500,001	+	0.10

FX

Tier	Start	End	Monthly fee per position (US$)
Tier 1	0	1,000	0.70
Tier 2	1,001	5,000	0.60
Tier 3	5,001	10,000	0.50
Tier 4	10,001	50,000	0.40
Tier 5	50,001	100,000	0.30
Tier 6	100,001	150,000	0.20
Tier 7	150,001	500,000	0.10
Tier 8	500,000	+	0.05

Source: http://www.dtcc.com/~/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Fees.pdf Data accessed November 5, 2014.

Industry Fee Structures
Dealer Clearing Costs

	OTC		Listed Futures & Options
Dealer	**Clearing Fee (per ticket)**	**Portfolio Charge (on Initial Margin)**	**Clearing Fee (per contract)**
Barclays Bank Plc[1]	£750	1.00%	£10
Citigroup Global Markets Limited[2]	$750	0.50%	$6
Deutsche Bank AG[3]	€500	0.75%	€5
J.P. Morgan Securities plc[4]	$1,500	0.60%	$2
Merrill Lynch International[5]	$1,200	0.75%	$6
Morgan Stanley & Co. International plc[6]	$500	Not available	€2

Data are for standard, undiscounted fees from European Market Infrastructure Regulation (EMIR) Article 38(1) public disclosure of indicative prices and fees associated with clearing services.

To the extent possible, the table represents a simplified, representative version of disclosed fees in order to highlight the general pricing structure and magnitudes of charges for a transaction cleared at LCH Clearnet Ltd. as a basis for comparison. Third party fees including clearing house fees are not included. Other charges, such as maintenance fees or cash movement fees may also apply, and charges may vary depending on whether a client has opted for omnibus client segregation or individual client segregation. Data accessed November 5, 2014.

1. Source: http://investmentbank.barclays.com/pdf/Pricing_Schedule_for_Listed_and_OTC.pdf
2. Source: https://www.citibank.com/mss/products/citi_futures/docs/citi_costs_disclosure_updated.pdf
3. Source: https://www.db.com/en/media/Deutsche-Bank-EMIR-Clearing-Member-Price-Disclosure-Document.pdf
4. Source: https://www.jpmorgan.com/directdoc/is_jpmsplc_emir_disclosure_fee.pdf
5. Source: http://corp.bankofamerica.com/documents/16303/74434/MLI_EMIR_Fees_Disclosure.pdf
6. Source: http://www.morganstanley.com/institutional/sales/Final%20MSIP%20Pricing%20Disclosure%20EMIR%20Art%2039.pdf

Industry Fee Structures
SEF Fees

- Execution fees for 5 year, US$100 million fixed/floating interest rate swap
  - ICAP SEF: $625[1]
  - Javelin: $900[2]
  - TrueEX: $990[2]
- Execution fees for 5 year credit default swap index (US CDX)
  - Bloomberg[3]: $15
  - ICAP SEF[4]:
    - High Yield: $50 (Voice), $43 (Electronic)
    - Investment Grade: $8.50 (Voice), $6.50 (Electronic)
- Execution for other select instruments
  - Bloomberg[3]:
    - $10 for transactions other than credit default swap index
    - Fees waived for FX and Commodity swaps until Dec 31, 2014
  - ICAP SEF[4]:
    - iTraxx Credit Index: $250 per $5mm notional, Aggressor only charged
    - USD ABX index: $150 per million USD on original face amount
    - Commodity Index: $800 per million notional value

1. Electronic execution on i-Swap Central Limit Order Book. Source: http://www.icap.com/~/media/Files/I/Icap-Corp/pdfs/icap-sef.pdf
2. Source: Risk.NET, June 27, 2014
3. The fee is charged to both counterparties. Source: http://www.bloombergsef.com/content/uploads/sites/6/2013/10/Fee-Schedule.pdf
4. Source: http://www.icap.com/~/media/Files/I/Icap-Corp/pdfs/icap-sef.pdf

Industry Fee Structures
Swap Clearinghouse Clearing Costs

	Entity-level Fees		Per Trade Fees	
Clearing entity	**Onboarding fee**	**Annual fee**	**Upfront fee**	**Maintenance fee**
CME[1]	Not Available	None	$0.25 - $24 per $1 million notional	$2 per $1 million notional per year
LCH[2]	£50,000	£500k - £2.25 million	£0 - £75	£0 - £6 per month

- Example: US$ 100 million 10 year interest rate swap
  - Clearing fees at CME would be $800 upfront and $200 per year for the life of the trade, before any discounts are applied
  - Clearing fees at LCH:
    - £0 marginal charge for a high volume client paying £2.25 million annual membership fees
    - £75 upfront fee plus £6 per month maintenance fee for a low volume client paying £500,000 annual membership fees

1. CME Standard Transaction Fee Schedule as of October 2014. CME also offers volume discounts and an alternate fee schedule with $25 per ticket fee and monthly charge of 10 basis points annualized on the client's initial margin requirement. No volume discounts are available for the Alternate Fee Schedule. Source: http://www.cmegroup.com/trading/interest-rates/files/cleared-otc-irs-customer-fees.pdf
2. LCH SwapClear Self-Clearing Fees as of 20 March 2014. Source: http://www.lchclearnet.com/en/asset-classes/otc-interest-rate-derivatives/fees
3. Exact fees charged by LCH depend on the applicable tariff structure for the client and the number of contracts processed. The "Low volume client" is assumed to have fewer than 20,000 contracts cleared per year, and the "High volume client" is assumed to have greater than 30,000 contracts cleared per year.

SEC Model: Section 31 Fees (Offsetting Collections)

Fee	Securities	Security Futures
Dollar amount as specified by SEC	$22.10 per $1mm dollar volume transacted (as of March 18, 2014)	$0.0042 per round turn transaction
Dollar amount expressed as approximate rate of transaction value for convenience	Approximately (2/10) x 0.01% of dollar volume	Approximately (1/100) x 0.01% of notional value for 100 share contract with share price at $30

- NFA also charges $0.00008 per round turn for security futures, if held in commodity futures account
- Section 31 fees collected from 19 SROs (exchanges) and FINRA.
- SEC also charges registration fees, which are general revenues.
  - Thousands of filers, potentially hundreds of small transactions each day.
  - Resource intensive; requires customer service to ~10,000 potential and actual filers

Compare with a $0.02 fee on an S&P 500 e-mini futures contract, which would have a much lower rate:
Approx: 2 cents / $100,000 notional = (2/1,000) x 0.01%

Source:
http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540783933#.VFqfFjZOlaQ

SEC Model:
Section 31 Fees (Offsetting Collections)

- Each month, SROs complete Form R-31 "Form for Reporting Covered Sales and Covered Round-Turn Transactions under Section 31 of the Securities Exchange Act of 1934" documenting dollar amount of covered sales and transactions.
- Each month, SEC Division of Risk and Economic Analysis staff
  - Projects fees for current month
  - Validates fees calculated by SROs
  - Performs independent calculations by two staff members (est. 50 manhours/month)
  - Sends monthly invoice data to SEC Accounting Analysis Branch (AAB)
- AAB prepares invoices 2x per year, sends to SROs.
  - Alerts Enforcement Treasury Operations Branch (ETOB)
  - Tracks details of invoice/billing and receipts to date
  - Performs monthly reconciliations between Delphi and invoices application

SEC Model:
Section 31 Fees (Offsetting Collections)

- SROs primarily pay fees via electronic funds transfers (EFTs) to FRB NY
  - FRB NY transmits funds to Treasury, ETOB Financial Management Specialist reconciles data
  - ETOB Specialist provides wire details to AAB
  - AAB reconciles
- SEC Office of Compliance, Inspections and Examinations (OCIE) conducts inspections of SROs for compliance.
  - Inspection reports forwarded to AAB for review in determining if recognized revenues should be adjusted

SEC Model:
Section 31 Fees (Offsetting Collections)

- Each year, the SEC reviews collections to determine if a credit to appropriation needs to be processed. If so, AAB requests Financial Management branch at Treasury to send SEC a warrant to credit amounts.
- Two DERA economists independently calculate fee rate for upcoming year to produce aggregate fee collections equal to SEC's appropriations.
  - Updated Fee rates are approved by Commission before publication in "Fee Rate Advisory Notice" on website

Impact Analyses

How would a user fee impact the market?

Impact Analysis: Factors to consider

Critique of Published literature

Current economic analysis frequently argues against fees and focus on the following:

- Sensitivity of volume to transactions costs (significant elasticity often found)
- Case studies
  - Sweden (1983) is most prominent: 1% round trip tax on equities, 2% stock options, 0.15% fixed income and fixed income derivatives. Activity fell 60+% and moved to London before tax was abolished.
- Broadly critical of "financial transactions taxes", claimed to
  - harm liquidity,
  - harm price discovery,
  - raise little revenue,
  - have little impact on volatility, and
  - drive trading offshore to lower cost jurisdictions
  - E.g., "STTs can obstruct price discovery and price stabilization, increase volatility, reduce market liquidity, and inhibit the informational efficiency of financial markets."
    - Habermeier & Kirilenko (2003)
    - Kirilenko is former CFTC CE (departed end-2012, now at MIT)

Impact Analysis: Factors to consider

Key Point - A user fee is not a transaction tax

A "User Fee" to fund regulatory costs is typically 100 to 1,000 times smaller than a "Transactions Tax"

- "Financial Transactions Tax"
  - Typical goals:
    - Raise large amounts of general revenue (e.g., tens of billions of dollars)
    - Explicit or implicit goal of decreasing financial activity
  - Typically in the range of 0.1-0.2% (securities), 0.01% for derivatives
  - The Swedish and Italian taxes fall into this category

- "User Fee"
  - Typical goals:
    - Raise funds to offset regulatory costs
    - Protect efficiency and liquidity of markets
  - Much smaller than "Transactions Taxes" - e.g., (1/100) x 0.01% or (1/1,000) x 0.01%
  - Smaller than fees charged by exchanges or similar entities
  - CFTC user fees would be in this category.
    - The goal would only be to offset costs of regulatory work.

Impact Analysis: Factors to consider

Recent European Experience is for Transactions Taxes at rates far higher than those for User Fees

- *The European Union has worked to implement a Financial Transactions Tax to begin in 2016*
  - *Scope and rates far in excess of that for user fees*
  - *European Commission's stated goals include:*
    - *"Raising Revenue"*
    - *"Adequate (fair and substantial) contribution from the financial sector" (Identifying new revenue sources; Compensate for VAT exemption of financial services)*
    - *"Reducing undesirable market behavior and therefore stabilizing markets." (Reduce incentives for excessive risk taking; Address specific risks posed by automated trading; Reduce leverage (e.g., debt-to-equity ratio))*
  - *EC's baseline assumptions for Impact Assessment, assuming 0.01% tax rate:*
    - *Financial transactions decline 70% (Generates EUR 34 bn – EUR 43 bn revenue)*
    - *Financial transactions decline 90% (Generates EUR 16 bn – 22 EUR bn revenue)*
  - *Details not yet worked out, led to France and Italy unilaterally implementing their own taxes*

- *French securities taxes implemented in Aug 2012 (coincident with other tax policy changes)*
  - *0.2% on large cap trades involving ownership transfer (i.e., trades standing overnight, market makers exempted)*
  - *0.1% on orders modified or canceled if order:trade ratio > 5:1. Applies to France-based HFTs trading prop.*
  - *0.01% charge on notional for European sovereign CDS trades that are not hedges*
  - *Equity volumes down 15-20% compared to control group (with blocks declining more than vanilla on-exchange trades)*
  - *Spreads increased (~10-20%), quoted depth declined (~10-20%)*

- *Italian securities taxes implemented March 2013, derivatives taxes September 2013*
  - *0.1% on large cap trades on-exchange involving ownership transfer), 0.2% off-exchange (i.e., blocks)*
  - *0.2% on transactions for HFTs (defined as entities with cancellation to transaction rate > 60%)*
  - *Sharp declines in volume/trades after implementation*

Sources: Commission Staff Working Paper, Impact Assessment accompanying the document Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC: Vol. 12 and Executive Summary of the Impact Assessment.

Impact Analysis: Factors to consider

Our analysis shows that no material impact on market activity expected

- *A User Fee on a swap position in the tens of dollars per year would not materially impact market participant activity.*
- *The costs of initiating a swap position is often several hundred dollars, and the costs of maintaining that swap position over time can be several thousand dollars per year.*

Example: Costs to execute and maintain a 2 year USD 100 million dollar notional Interest Rate Swap

Fees charged by:	Upfront Fees (USD)	Annual Maintenance Fees (USD)
Dealer	500	2,800 (CME) or 3,400 (LCH) (=0.60% x IM)
Clearinghouse	250 (CME) or 240 (LCH)	200 (CME) or 300 (LCH)
SDR	20 (CME)	0 (CME) or 1.20 – 42.00 (DDR)[1]
Total	**765 (CME) or 740 (LCH)**	**3,000 (CME) or 3,700 (LCH)**

1. CME SDR charges a flat fee of $20 upfront with no maintenance fee; DDR charges fees ranging from 0.10 to 3.50 per month
Source: Clarus Financial Technology estimates, DDR

User Fee Model #1 - Potential Framework

If the goal of fees is to collect an amount equal to the President's FY 2017 budget for the agency, here is one, high level model.
There are, of course, many variations. We included sample inputs for discussion.
This could be changed depending on the target revenue, and how one wants the fees to be assessed.

At NFA levels

	Average Rate	Count[2]	Revenue	Total Revenue
Futures + Options on Futures transactions	$0.02	4.0 billion	$80 mm	**Revenue from futures and options on futures: $80 mm**
Swap Dealer/ Major Swap Participant assessment	$443,750[1]	104	$46.15 mm	**Revenue from swaps market: $250 mm**
Swap positions	$31.73 (annual rate)	6.425 mm (cleared + uncleared)	$203.85 mm	
Swaps: IRS	$31.73	4.9 mm	$155.47 mm	
Swaps: CDS	$31.73	275k	$8.73 mm	
Swaps: FX	$31.73	1mm	$31.73 mm	
Swaps: Other	$31.73	250k	$7.93 mm	
TOTAL (Offset to $330 million budget: Does not account for estimated $4 million upfront costs to the Commission to administer fees)				$330 mm

This rate is lower than the theoretical equivalent for futures hedge of a hypothetical, typical swap. Based on SDR data, the "average" interest rate swap is a typical 10 year US dollar denominated fixed/floating swap with a notional value of $100 million. Theoretically, the initial equivalent futures position would consist of 3,735 Eurodollar futures contracts, which would generate NFA fees of **$74.70** for a non-exchange member.

1. Assumes 15 entities @ $1mm, 89 entities @ $350k. NFA Tier 1 swap dealers pay $1mm per year, with other dealers paying between $150,000 - $250,000.
2. CFTC estimates based on 2015 trading volume on US DCMs (futures and options on futures) and from Swap Data Repository data for swaps

2015 CME Group Inc. Contract Volume and Average Clearing & Transaction Fee Revenue, by Asset Class

	2015 Contract Volume (millions)	Percent of 2015 Contract Volume	Average Rate, Clearing & Transaction Fees
Interest Rates	1,700	48.1%	$0.50
Equities	706	20.0%	$0.72
Energy	498	14.1%	$1.23
Commodities	320	9.1%	$1.31
FX	221	6.2%	$0.81
Metals	87	2.5%	$1.63
Total/Average	**3,533**	**100.0%**	**$0.77**

1. Source: CME Group Inc. volume reports and CFTC calculations. Rates estimated using data from January – November 2015 data.

***Leasing and Financial Statement Audit*:**

The CFTC currently has four current multiple-year leases for office space in Washington, D.C., Chicago, New York, and Kansas City. Under 7 U.S. Code § 16 the CFTC is authorized to enter into rental agreements for space that further the purposes of the Commodity Exchange Act. When the Commission entered into the multiple-year leases it recorded only the lease payments due each fiscal year rather than the full multiple-year obligation in the year the lease was initiated. On February 4, 2016, GAO issued Comptroller General Decision B-327242, *Commodity Futures Trading Commission – Recording of Obligations for Multiple-Year Leases* (Decision). This Decision concluded that CFTC's historical practice of recording multiple-year lease obligations on an annual basis violated the recording statute, 31 U.S.C. § 1501(a)(1), which is a violation of the Anti-deficiency Act (ADA).

The FY 2015 CFTC financial statement audit resulted in a qualified opinion as a result of CFTC's historical leasing practices. KPMG, the former independent auditors, found that, "except for the Statement of Budgetary Resources (SBR), the financial statements were fairly presented, in all material respects, in conformity with US GAAP.

To remediate the issue, the Commission consulted with GAO and OMB on reasonable approaches to report the lease obligations, to ensure due diligence in resolving this matter. In addition, as part of the remediation efforts, CFTC signed a Memorandum of Understanding (MOU) with the General Services Administration (GSA) whereby GSA will provide expertise on current leasing issues and assume responsibility for procuring future space on behalf of the Commission.

CFTC has altered its FY 2016 financial statements to properly reflect lease transactions and, upon completion of the FY 2016 audit, the CFTC intends to report an ADA violation in compliance with Office of Management and Budget Circular A-11.

The CFTC anticipates an additional GAO Opinion related to CFTC's leases regarding the following issues: CFTC's use of cash allowances (Tenant Improvement Allowance); open-ended indemnity and variable cost clauses; payments in advance of receiving services; application of the bona fide needs rule related to the purchase of furniture through the lease.

PERFORMANCE MANAGEMENT AND PAY REFORM

Status:

Since the CFTC has a complex and expanded mission, it requires a high performing results-oriented workforce. To achieve this, CFTC needs effective performance management and pay systems. In the summer of 2016, CFTC commissioned Deloitte, Consulting LLP to conduct a study of the CFTC performance management and pay systems, and to benchmark systems at other FIRREAS. The study identified several potential areas for improvement. Currently, OED is in the process of developing recommendations for revising the performance management and pay systems. These recommendations will also need to be negotiated with our unions.

***Performance Management System*:**

There are many challenges with the current performance management system and a major overhaul is needed to gain transparency, accountability, and to properly reward performance. A key facet that is missing from CFTC's pay for performance is an effective oversight process for performance ratings. Currently, CFTC does not have a systematic process for review and evaluation of performance results within each division or across the agency, to ensure that ratings are given fairly and consistently weighted. Consequently, we are considering a structured governance process for performance ratings and awards in the agency. This would ensure collective review and oversight of ratings by a review panel that considers the contributions across the organizational units and assigns ratings based on meeting or exceeding CFTC-wide goals and objectives.

Additionally, CFTC needs better policy guidance and training for the workforce on performance management principles, especially supervisors, including the respective roles of rating and reviewing officials. With regular budget constraints, limited resources have been dedicated to developing a more robust performance management policy or assisting supervisors in developing effective goals and expectations for staff. Consequently, we are evaluating a number of challenges with the current system, such as:

- Performance plans for the workforce, executives included, are generic; and applied across the board to each CFTC employee regardless of the type of position. The language in the performance standards is consequently more difficult for supervisors to apply in measuring and evaluating performance. Instead, we are considering options for tailoring performance plans with clear goals and performance measures specific to groups of positions or specific positions.

- CFTC performance plans lack a "mission critical" element which illustrates the strategic alignment and linkage of the employee's performance goals to the organizational performance goals and the CFTC Strategic Plan. Employees have a difficult time visualizing a clear line-of-sight between the employee's performance and the Agency's strategic goals and objectives. A clearly aligned performance plan shows the employee

how his/her individual accomplishments within a unit contribute to the overall mission results of the agency.

- CFTC performance plans for supervisors, managers, and executives have two managerial elements in the existing policy that apply to all supervisory positions without regard to the level of authority or responsibility exercised by the position. We are considering how best to evaluate how effectively they "lead" to accomplish their responsibilities as well as what they accomplish and how effectively they manage human capital responsibilities such as their performance management duties.

- We are also considering recalibrating the timing of the CFTC annual performance cycle, to correspond with the budget and funding cycle and the Strategic Plan cycle, which are both fiscal-year based. For that reason, projects and funding are not aligned which makes it more challenging for reporting performance and rewarding staff. Consideration should be given to changing the performance cycle to match the budget cycle to facilitate consistency in project funding and execution.

CFTC Workforce Pay:

Pay and compensation systems are central to the effective management of employees at the CFTC. In a merit based system, salary increases for executives and employees should be linked to both individual and organizational performance. For salary increases to be perceived as fair and meaningful, the performance management system should distinctions in performance, so that top performers receive the highest ratings and the highest salary increases and bonuses. There is currently no provision for performance awards (bonuses) for employees. When the current system was designed, performance awards (or bonuses) were eliminated in favor of rolling the money into Merit Increases to have higher pay raises under pay for performance. Reinstituting bonuses would incentivize pay for performance and improve accountability in years where carryover costs from salary increases would not be feasible. Having bonuses as part of pay for performance would be consistent and competitive with other agencies, especially the FIRREA's, and would improve morale. Currently, as evidenced by Employee Viewpoint Survey data, CFTC employees do not see a consistent benefit in the awards program, and largely believe CFTC pay for performance does not make meaningful distinctions in performance results.

Pay Setting:

Currently, there is also inequity among salaries of those who come from the private sector and those who are current Federal employees at the CFTC. The promotion percentage scale cap of 8% is lower than most other FIRREAs and does not allow federal agency employees covered by the General Schedule (GS) pay plan coming to CFTC to receive salaries comparable to private sector employees with equivalent experience and expertise. Often, the result is that new employees from the private sector receive salaries at the top of the pay range and higher than the salaries of their co-workers and in some cases, their supervisors. This is a serious inequity and a significant concern to CFTC employees. In fact, the perception that it is a disincentive to accept a management role with more duties and accountability without an additional salary increase which would result in them earning more money than their subordinate staff. To address this, we

are considering a policy that permits promotion increases higher than 8% to ensure delineation between supervisory and non-supervisory salaries or address other inequities. This would involve establishing pay setting criteria for new employees coming on board to the CFTC to ensure that the salary paid to the employees hired, regardless of whether they are from the federal or private sector, reflects the level of responsibility and accountability of the position, as well as, the experience and qualifications brought to the position.

Special Topic Paper: 2016 FISMA Report

Information security is a high-risk area Government-wide. Congress passed the E-Government Act of 2002 in an effort to strengthen Federal information security programs and practices. The Federal Information Security Modernization Act (FISMA) provides a comprehensive framework to ensure the effectiveness of security controls over information resources that support Federal operations and assets.

CFTC's IT security program is managed and measurable. The program is effective and complies with the FISMA, Office of Management and Budget (OMB) mandates, and exemplifies numerous industry and government best practices. Given the evolving complex nature of cyber threats and adversaries' constantly targeting government networks, it is imperative for the Commission to continuously improve and strengthen its security posture. To accomplish this, we will institutionalize risk-based security policies and ensure enterprise compliance, expand and extend continuous monitoring capabilities, integrate Identity, Credential, and Access Management (ICAM) programs into our security program, assure a trusted and resilient information and communications infrastructure, and continue to improve our anti-phishing and malware defense capabilities. The successful deployment of the aforementioned capabilities is an important foundation which the Commission can continue to build and enhance the protection of information and infrastructure assets.

In FY2016, the Commission did not report any major computer security incidents, including major incidents that involve a breach of personally identifiable information. However, during this time the Commission did report four separate incidents to the U.S. Department of Homeland Security's (DHS's) U.S. Computer Emergency Readiness Team (US-CERT). None of the incidents reported were categorized as a significant compromise of information security.

Based on the data collected, the Commission has seen a rise in malicious emails known as phishing attempts, intended to trick recipients to open infected attachments that enable malicious actors to steal information. To address this trend, we will continue to focus our efforts on effective email filtering, improve training for CFTC personnel, implement a layered defense, and expand our practice of effective network monitoring.

The Commission will continue to make progress toward meeting FY2017 FISMA metric requirements. To ensure adequacy and effectiveness of cybersecurity controls, the CFTC also measures performance based Cybersecurity Cross-Agency Priority (CAP) Goals established by OMB, DHS and the CIO Council. The CAP Goals focus on the longstanding and critical issues affecting the federal government.

FISMA also requires Commission Inspector General to assess the effectiveness of the information security programs and practices. Guidance has been issued by the OMB in both circulars and memoranda and by National Institute of Standards and Technology (NIST) in its 800 series of special publications supporting FISMA implementation covering significant aspects of the law.

The Office of the Inspector General (OIG) witnessed a re-energized focus by CFTC to improve its cybersecurity posture. The OIG's audit results from information systems reviews revealed that management is addressing information security vulnerabilities. This increase in information security competency is demonstrated by the Office of Data and Technology's (ODT) approach of reallocating staff, increasing the frequency of network scans, and patching vulnerabilities accordingly. During the year, an assessment of sensitive databases demonstrated adequate configuration to minimize vulnerabilities and risk of data loss.

Areas of Compliance:

- **FY 16 Cybersecurity Awareness Training**: The Commission successfully migrated to a Cybersecurity and Privacy Awareness training system in FY 16. The Commission successfully completed its FY16 annual Cybersecurity Awareness training with a 100% completion status.
- **Internal Assessments**: The Commission has successfully completed the Accreditation and Authorization (A&A) of its General Support System (GSS). It was granted an Authority to Operate (ATO) and has been moved into the Commission's Continuous Monitoring Program. In addition, the commission began its A&A of the E-Law Major Application.
- **External Assessments**:
  - **OIG Database Scans**: The OIG performed a scan of the Commission's databases. The initial brief by the external auditors concluded that the Commission's databases are secure. The external auditors requested that CFTC provide the auditors with database best practices implemented within the Office of Data and Technology (ODT) to take back and implement within their own organization.
  - **Microsoft Persistent Adversary Detection Service (PADS)**: Microsoft engaged with CFTC to perform a PADS engagement to identify whether a persistent adversary is on the CFTC's network. The results of the finding concluded that a persistent adversary was not on the network. Microsoft identified some additional findings that have been addressed by ODT.
- **DHS Einstein 3 Accelerated:** The Commission is currently participating in the Department of Homeland Security (DHS) Einstein 3 Accelerated (E3A) Intrusion Detection and Prevention program. CFTC has implemented the first of two security products provided by this program and is planning on implementing the second product in FY17.

White House Cross Agency Priority (CAP) Goals:

- Implementation of Information Security Continuous Monitoring Mitigation (ISCM) Program:
  - Implementation and monitoring of technical controls.
  - Participation in DHS Continuous Diagnostics and Mitigations (CDM) Program.
  - Participation in the DHS E3A program.
- Implementation of the Identity, Credential, and Access Management (ICAM):
  - Personal Identity Verification (PIV) card implementation for logical access. CFTC is currently requiring only 33% of the population use PIV authentication.
  - **Area for Improvement:** CFTC will need to require PIV authentication to at least 85% of the user population.
- Implementation of Anti-Phishing & Malware Defense:
  - Implemented technologies that filter suspected phishing attacks targeting the CFTC employees.
  - FY16 Cybersecurity and Privacy Awareness training for phishing
  - Posters have been posted throughout the Commission's DC location which identifies how to spot a phishing attack.
  - **Areas for Improvement:**
    - CFTC will need to implement sender verification technology to ensure that users can authenticate senders prior to opening a malicious email.
    - CFTC will need to implement an environment that can take suspected malware and analyze it prior to it being accessed by CFTC staff.

OIG FY16 FISMA Audit Results:

- **FY15:** One finding - Resolved
- **FY16:** Two findings:
  - Physical Access Control: Resolved
  - Two-Factor Authentication for Non-CFTC owned external systems: ODT and OED will work with service providers to resolve the issue.

Memo to: Transition Committee

Subject: The Role of the CFTC in Financial Stability Oversight Council (FSOC)

The chairman of the Commission serves an important function on the Financial Stability Oversight Council (FSOC). Along with the chair of the Securities and Exchange Commission (SEC), the chairman of the Commission brings a more market-focused viewpoint to the Council, providing a perspective that sometimes differs significantly from that of the other regulators. Additionally, because the Commission has oversight over derivatives clearinghouses, the Commission is an important voice in the Council on issues involving clearing and the clearing industry.

Background

FSOC was created as part of Title II of the Dodd-Frank Act. The chairman of the CFTC is a full voting member of FSOC, which is made up of representatives of fifteen agencies and organizations and is chaired by the Secretary of the Treasury. Ten of the component representatives are voting members, including:

- Secretary of the Department of Treasury;
- Chairman of the Board of Governors of the Federal Reserve Board (Board);
- Controller of the Currency (OCC);
- Chairman of the Federal Deposit Insurance Corporation (FDIC);
- Director of the Consumer Financial Protection Board (CFPB);
- Chairman of the National Credit Union Administration (NCUA);
- Chairman of the SEC;
- Chairman of the Commission; and
- Independent Member with Insurance Expertise (appointed by the President).

Additionally, other agencies and organization have non-voting representation, including:

- the Director of the Office of Financial Research, which was established to serve as the research arm of the FSOC;
- the Director of the Federal Insurance Office;
- a state insurance commissioner designated by the state insurance commissioners;
- a state banking supervisor designated by the state banking supervisors; and
- a state securities commissioner(or officer performing like functions) designated by the state securities commissioners.

The Federal Reserve Bank of New York also participates in the meetings of FSOC at all levels. Principals' meetings generally are also attended by the Federal Reserve Board governor who is the U.S. representative to the Financial Stability Board (FSB).

FSOC Principals meet as scheduled by the Secretary of the Treasury, sometimes as often as once a month, as well as occasional calls or items circulated for notation votes. The FSOC Deputies Committee generally meets every two weeks, and serves an important function as a "gateway" to the Principals. FSOC Deputies, who are generally senior staff of the agencies or organizations represented, generally consider such items as potential designations, annual evaluations, draft reports and other items prior to those items going before Principals.

Committees

FSOC generally functions through five committees staffed by personnel from each of the agencies and organizations that participate in FSOC. Either on the committees' own initiative or at the direction of the Deputies or Principals, the committees perform the initial research and on-going monitoring necessary for FSOC to function. The following provides background on each committee, as well as a summary of some of the most important issues considered recently or currently under consideration.

Financial Market Utilities and Payment, Clearing, and Settlement Committee

The FMU Committee is responsible for providing recommendations to FSOC on the potential designation of financial market utilities (FMUs) or payment, clearing, and settlement (PCS) activities under section 804 of the Dodd-Frank Act. After designation, the FMU Committee reviews and reports annually on whether the designations remain appropriate. This committee also consults with the supervisory agencies on the risk management standards applicable to this type of designated entity and is responsible for identifying and monitoring potential threats to financial stability related to FMUs or PCS activities;

CFTC staff members are very active participants in the FMU Committee. Two organizations regulated by the CFTC are among the entities designated as Systemically Important FMUs (SIFMUs): the Chicago Mercantile Exchange, Inc. (CME) and ICE Clear Credit LLC (ICC). As defined under Title I of the Dodd-Frank Act, the CFTC is the Supervisory Agency (*i.e.*, primary regulator) for these two organizations. Both of these organizations are central counterparties, registered with the CFTC as derivatives clearing organizations, and are also referred to as Systemically Important Derivatives Clearing Organizations, or SIDCOs. Because of the designation by FSOC under Title I, these entities are overseen by the CFTC, with the involvement of the Federal Reserve Board.

The FMU Committee engages in an on-going annual re-evaluation process to consider whether any additional FMUs should be considered for designation, and whether FMUs currently designated should continue to be. The FMU Committee has most recently conducted a series of inter-agency educational and discussion sessions on particular aspects of risk management of clearing organizations, including clearinghouse risks and stress to financial markets. These discussions have included issues such as default management, liquidity risk, clearable products, and bank affiliate participation in FMUs, among other topics, and were

coordinated with the Systemic Risk and Regulatory and Resolution Committees. The FMU Committee likely will be issuing a report in on these discussions before year end 2016.

The FMU Committee has responsibility for planning possible CCP tabletop exercises across public and private stakeholders on market stress scenarios in the derivatives markets. There is a significant amount of ongoing work in this area and the CFTC representatives work to ensure that the FMU Committee's work does not duplicate other ongoing initiatives or put a strain on scarce CFTC resources.

While other future work of the FMU Committee remains subject to discussion, among the topics being discussed are whether additional educational sessions would be useful and possible work on the interconnections among various clearing and payments organizations.

Main staff contact: Sarah Josephson (x5684)

Nonbank Financial Companies Designations Committee

The Nonbank Financial Companies Designations Committee is responsible for monitoring companies and organizations that meet the metric standards established by FSOC and for making recommendations to FSOC Deputies and Principals as to which of those non-bank financial organizations should be designated as systemically important. Following the work conducted by the Nonbank Designations Committee, the companies currently designated as systemically important are:

- American International Group, Inc.
- Prudential Financial Inc.
- MetLife, Inc. (currently in litigation)

The Nonbank Designations Committee also is responsible for conducting the annual re-evaluations of previously designated nonbank financial companies required under the Dodd-Frank Act to determine whether these companies should remain designated. This committee conducted the preparatory studies for de-designation of General Electric Capital, Inc., which was voted on earlier this year by Principals.

Additionally, FSOC Principals or Deputies may direct the Nonbank Designations Committee to pursue activities conducted by a large number of market participants rather than specific companies. Based on work conducted by the Nonbank Designations Committee, FSOC previously made recommendations to the SEC concerning additional conditions to prevent money market mutual funds from experiencing the kind of runs experienced during the financial crisis.

Currently, after a lengthy investigation into two asset management companies, FSOC Principals determined that, rather than focus on individual asset managers, staff should inquire into activities that are common to many entities across the asset management industry. As a result, the current inquiry under the Nonbank Designations Committee is focused hedge funds

that are significant users of leverage. The Committee established a Hedge Fund Working Group (HFWG) to analyze the extent to which the practices of certain large hedge funds present a potential systemic threat to the financial stability of the financial system. In addition to looking at existing data, the HFWG will make recommendations to Principals on improvements to existing data that would improve its ability to monitor hedge funds and determine the level of risk presented by their activities in the future.

Additionally, the Nonbank Designations Committee is doing work to update the metrics used to screen companies for the Committee's monitoring list to determine is whether the existing metrics are still appropriate.

Main staff contact: Susan Milligan (x5981) generally; Scott Mixon (x5771) for Hedge Fund Working Group

Regulation and Resolution Committee

The Regulation and Recovery Committee has several areas of responsibilities:

- monitoring domestic and international financial regulatory proposals and developments, while serving as a forum for information sharing and coordination among Council members regarding domestic financial services policy development;
- making recommendations regarding general supervisory priorities and principles, including with respect to heightened prudential standards for nonbank financial companies and large, interconnected bank holding companies; and
- monitoring and making recommendations regarding resolution plan requirements for banks, designated nonbanks, and clearing organizations, including implement the orderly liquidation authority under Title II of the Dodd-Frank Act.

The Committee has served as a forum for briefings by the member agencies on numerous topics, particularly the development and implementation of various capital and liquidity measures, including the supplementary leverage ratio (SLR). CFTC staff has made presentations to the Committee about the impact of SLR on the clearing industry and potential future impact on resolution of clearing members.

The Committee also has been involved in a series of roundtables on recovery and resolution of clearing organizations.

Main staff contacts: Susan Milligan (x5981) generally; Bob Wasserman (x5092) and Kirsten Robbins (x5313) for CCP resolution issues.

Systemic Risk Committee

The purpose of the Systemic Risk Committee (SRC) is to support FSOC in identifying risks to, and in responding to emerging threats to, the stability of the U.S. financial system, both from domestic and international sources. The SRC's focus is on monitoring and analyzing events, developments and trends in the financial markets with a view to assessing potential risks

and emerging threats to financial stability. Recent examples of issues discussed in monthly meetings of the SRC include:

- Market developments related to Deutsche Bank;
- Broad discussion of the effects of the prolonged low interest rate environment on financial markets and institutions;
- Developments in money market mutual funds following specific reforms;
- Developments in the repo market;
- Discussion of corporate and public pensions and related potential financial stability risks;
- Discussion on effect of the Brexit vote on financial markets;
- Update on Housing Finance Reform; and
- Update on Reference Rate Reform.

While some of these issues may be one-time events, many will require ongoing monitoring to inform Deputies and Principals of potential threats to the financial system.

Main staff contact: Sayee Srinivasan (x5309)

Data Committee

The Data Committee is less active than the other committees, but provides an important forum for identifying sources of data, data gaps, and data integration needs to support the Council and its members. The Data Committee facilitates data standardization, as well as information sharing and coordination among member organizations on data related matters. Discussions at the Data Committee support the Council in providing direction to the OFR, and OFR in implementing the Council's objectives.

The Committee has been involved in a series of Regulatory Data Workshops, which have served to identify issues of interest to the member agencies. Most recently, the Committee has engaged in discussions of data governance and how data belonging to agencies and companies should be treated. Other topics include data nomenclature, data conventions, and identifiers, such as legal entity identifier (LEI) and unique transaction identifier (UTI). As part of its work to facilitate data sharing, the Committee has identified existing bilateral MOUs among agencies in order to identify common elements. This has led to a legal workstream to identify existing MOUs and potentially simplify future documents.

The Committee also developed an Interagency Data Inventory, a catalogue of over 300 data sets, which now resides on OFR's website and is available to the public. The Committee updates the catalogue annually.

Main staff contact: Srini Bangarbale (x5315)

Annual Report

FSOC is required by statute to produce an Annual Report which addresses the following:

- FSOC's activities;
- significant financial and regulatory developments and an assessment of those developments on the stability of the financial system;
- potential emerging threats to the financial stability of the U.S.;
- all designations of non-bank financial companies and FMUs, and the basis for such determinations;
- all recommendations made to resolve disputes regarding supervisory authority between member agencies; and
- recommendations:
    - to enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;
    - to promote market discipline; and
    - to maintain investor confidence.

The drafting process for the Annual Report typically begins in early January. FSOC staff typically initiates and writes the initial drafts and seek input regarding particular sections from the staff Member Agencies. The process generally involves broad participation across Commission staff to provide comments across the entire report, but particularly focused on any analysis of clearing and derivatives markets. FSOC collects comments and manages any disagreements among in the drafting process, which often involve extended negotiations among agencies. Ultimately, the Annual Report is considered and approved by the Principals in late Spring and published around mid-year.

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Office of General Counsel

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TO: Agency Review Team

FROM: Jonathan L. Marcus
General Counsel

RE: Presidential Election Transition Issues

Memorandum

Questions have been posed about the possible impact of the upcoming presidential election on the Commission's operations. These questions focus on how a vacancy in the position of the Chairman would be handled in a variety of circumstances. As discussed below, the answers to these questions turn on Commodity Exchange Act (CEA) Sections 2(a)(2)(B), which addresses the selection and tenure of the Chairman, and CFTC Rule 140.13, which addresses the selection and tenure of an Acting Chairman.

In the past, Chairmen have resigned after presidential elections, particularly when the new President is of a different party from the current Chairman.[1] So, while the President has the legal authority to terminate a Chairman at will,[2] the question of how a Chairman could be

[1] When President Reagan was elected, Chairman Stone resigned. When President Clinton was elected, Chairman Gramm resigned. When President George W. Bush was elected, Chairman Rainer resigned. When President Obama was elected, Acting Chairman Lukken resigned.

[2] CEA Section 2(a)(2)(B) provides that "[t]he President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President."

terminated at will by a new President has not arisen.

When a Chairman vacancy occurs – by resignation, at-will termination, expiration,[3] or otherwise – an Acting Chairman is selected to serve until a new Chairman has been confirmed and taken office. 17 C.F.R. § 140.13 (2016).[4] Only sitting Commissioners are eligible to serve as Acting Chairman. If the President nominates a current Commissioner to serve as the Chairman, that Commissioner becomes the Acting Chairman until the Senate confirms or rejects that Commissioner to serve as the Chairman. Otherwise, the Commissioners vote for one of their own to serve as the Acting Chairman. As the rule indicates, the Acting Chairman has the authority to exercise all executive and administrative functions that the Chairman has under the CEA.

Often in the past, when a Chairman has resigned, that person also resigned as a Commissioner.[5] However, when Chairman Stone resigned as the Chairman in 1981, he did not resign as a Commissioner. Because he remained as a Commissioner, he would have been

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[3] When the President did not nominate Chairman Gensler to a second term as a Commissioner, Chairman Gensler's term as Chairman expired when his term as a Commissioner expired.

[4] The rule provides that-

> At any time that a vacancy exists in the position of Chairman of the Commission the remaining members of the Commission shall elect a member to serve as acting Chairman who shall exercise the executive and administrative functions of the Commission that would otherwise be exercised by a Chairman in accordance with section 2(a)(6) of the Commodity Exchange Act, as amended, until a new Chairman has been appointed by the President and confirmed by the Senate: *Provided, however,* That if the President shall appoint a new Chairman from among the existing members of the Commission, that Commissioner shall serve as acting Chairman for these purposes until such time as his appointment as Chairman has been confirmed or rejected by the Senate.

[5] Section 2(a)(2)(B) authorizes one person to serve both as a Chairman and as a Commissioner at the same time, but it does not require that person leave those offices at the same time.

eligible to vote on the selection of an Acting Chairman under Rule 140.13. As it turned out, that vote never took place because his resignation as Chairman was contingent on the Senate confirmation of his successor as Chairman, Phillip McBride Johnson. So, there was no need to select an Acting Chairman because Chairman Stone remained in office as a caretaker Chairman during that presidential transition.

To protect the continuity of the Commission's operations, votes under Rule 140.13 in practice have taken place before the resigning Chairman has left office since most resigning Chairmen have not remained in office on a caretaker basis. When such a vote occurs, the resigning Chairman does not vote except when the resigning Chairman plans to remain as a Commissioner.[6]

[6] When it became apparent that Chairman Gensler would not serve a second term as a Commissioner, the Commission elected Commissioner Wetjen to serve as Acting Chairman shortly before Chairman Gensler's term expired. Chairman Gensler did not participate in that election. Commissioner Wetjen's term as Acting Chairman ended when Timothy Massad took office as Chairman.

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Office of General Counsel

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TO: Agency Review Team

FROM: Jonathan L. Marcus
General Counsel

RE: Overview of Commission Operations

Memorandum

This memorandum highlights the processes and authorities for the conduct of official business by the Commission and its staff under the Commodity Exchange Act (CEA) and the Commission's rules.

Authority of the Chairman and the Commission

CEA § 2(a)(2)(A) establishes the CFTC as a five-member independent agency of the federal government. CEA § 2(a)(2)(B) further provides that the Chairman is the Commission's chief administrative officer and presides at hearings before the Commission. CEA § 2(a)(6), in turn, defines and delineates the authority of the Chairman and the Commission.

CEA § 2(a)(6) establishes that the Chairman exercises the Commission's executive and administrative functions, including the appointment and supervision of personnel, the distribution of business among staff offices and divisions, and the expenditure of funds. These functions are reserved solely to the Chairman.

The Chairman's authority is subject to the general policies, budget, plans, and priorities as established and approved by the Commission. This authority is also subject to the Commission's regulatory decisions, findings, and determinations. The Chairman is further authorized by CEA § 2(a)(6)(F) to delegate, as appropriate, his executive and administrative functions to Commission staff.

Appointments of the heads of major administrative units are subject to Commission approval under CEA § 2(a)(6)(C). Special provisions are also made for the General Counsel and the Executive Director under CEA §§ 2(a)(4) and (5). Both the Executive Director and the General Counsel are appointed by the Commission and serve at the pleasure of the Commission.[1]

Under CEA § 2(a)(6)(A), the Chairman has sole authority over the use and expenditure of funds, according to the budget categories, plans, programs, and priorities that the Commission has established and approved. Each year, by late summer, the Commission formulates a budget proposal, which is forwarded for review by the Office of Management and Budget in the early fall. The Commission is notified of OMB's "passback" decision by late fall. The President, in turn, submits the OMB-approved proposal to Congress as a component of his government-wide budget proposal by early February. The Chairman testifies in support of the budget proposal before the appropriations committees of Congress.

While the Commission has reserved authority to revise budget estimates and to determine the distribution of appropriated funds according to major programs and purposes under CEA

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[1] Additionally, the Inspector General Act of 1978 ("IG Act"), as amended by Dodd-Frank, provides that the Inspector General reports to the entire Commission. 5 U.S.C. Appendix Inspector General Act of 1978 §8G, amended by Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1945 (2010). The IG Act gives the Inspector General the authority to hire necessary personnel, IG Act §6(a)(7), and to submit to the Commission an annual budget request. *Id.* at § (6)(f).

§ 2(a)(6)(E), the Chairman as a matter of practice oversees staff spend plans for the expenditure of appropriated funds.

Under the Dodd-Frank Act, the Chairman of the Commission is a member of the Financial Stability Oversight Council. The Chairman has no duty to consult with the Commissioners on such matters under the Dodd-Frank Act or the CEA.

Commission Action

Quorum and voting are the essential elements of Commission action. While CEA § 2(a)(2) establishes the Commission as a five-member agency, CEA § 2(a)(3) specifies that a vacancy in the Commission does not impair the right of the remaining Commissioners to exercise all rights of the Commission. Under this authority, the Commission has conducted business with a quorum of as few as two Commissioners on several occasions. Commission action occurs by a vote of the majority of the quorum. *FTC v. Flotill Prods., Inc.*, 389 U.S. 179, 183-84 (1967).

Commission action takes place in two ways - at public meetings or by seriatim consideration. The conduct of public meetings is governed by the Commission's Part 147 rules, which implement the requirements of the Government in the Sunshine Act. Meetings are held pursuant to public notice made at least one week in advance. In recent years, the Commission has held public meetings to consider rulemakings implementing the Dodd-Frank Act and related matters. The Commission also holds closed meetings when it receives confidential surveillance and/or enforcement briefings from the staff, as permitted under the Sunshine Act and Part 147.[2]

Agenda items at public meetings are considered by the Commission often by motion made by one of the Commissioners. Each item typically includes a staff memorandum

[2] In recent years, the Commission has been holding regular Friday meetings on surveillance matters.

explaining the proposal under consideration. The rules of procedure set forth in Robert's Rules of Order are used when points of parliamentary procedure arise during meetings.

Whenever the Chairman is of the opinion that joint deliberation among the Commissioners is unnecessary, but is of the view that a matter should be voted on, the matter may be disposed of by circulation of the relevant materials.[3] This is known as seriatim consideration and is authorized by Rule 140.12. Only the Chairman can initiate such consideration.

Under the seriatim process, once the Chairman has determined that such consideration is appropriate, the relevant materials are circulated to each Commissioner, unless the Commissioner is unavailable or has determined not to participate in the matter. Relevant materials usually include a staff memo with a draft of the matter under consideration. A written record of the vote of each participating Commissioner is reported to the Secretariat. A substantial amount of the Commission's business is conducted by seriatim consideration, including rulemakings, adjudicatory opinions, SRO and NFA rule approvals, and enforcement-related matters.[4] However, any Commissioner may request that any matter circulated for seriatim consideration be withdrawn from circulation and scheduled instead for consideration at a public meeting.

When it is not feasible to convene a quorum of the Commission, emergency action by the senior Commissioner available is authorized by Rule 140.11. Under this rarely used procedure,

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[3] If no deliberation among Commissioners is involved, the Commissioners may also meet to receive a briefing by staff. For many years, the Commission has held weekly meetings with division directors ("senior staff") to receive updates on business within each division.

[4] When adopting standards originating from international groups, such as IOSCO, Commission approval is needed. Commission approval in this context is sought via seriatim and reflected by an absence of objection by a majority of Commissioners.

the emergency action must be reported promptly to the Commission and is subject to Commission review.

Staff Action

As mentioned above, the Chairman is authorized to assign executive or administrative functions to the Commission's staff. Under this authority, the staff is organized in divisions and offices where much of the day-to-day implementation of the Commission's mission occurs.

When staff acts pursuant to the Chairman's direction, an "absent objection" process is often employed. This refers to an informational circulation to the Commission. Although conducted through the Office of the Secretariat, it does not call for a Commission vote. It is intended to keep the Commissioners apprised of staff action that has been conducted under the Chairman's authority. Under this process, the Chairman may choose to respect the objections of Commissioners and decline to issue the staff action.

Staff action also occurs under authority specifically delegated by the Commission. *See, e.g.*, Rules 140.14, 140.20, 140.72 – 140.97. The staff's issuance of no-action letters, interpretative letters, and exemptive letters is authorized by Rule 140.99. The issuance of a letter is entirely within the discretion of the staff. Each type of letter differs in terms of scope and effect.

A no-action letter is a written statement issued by the staff that it will not recommend enforcement action to the Commission for a failure to comply with a specific provision of the Act, or of a Commission rule, regulation, or order. No-action letters are binding only on the issuing Division or the Office of General Counsel, and not the Commission or other Commission staff. These letters only apply to the specific situation and person addressed in them, so third parties may not rely on them. *See* Rule 140.99(a)(2).

An exemptive letter may be issued only when the Commission itself has exemptive authority and is issued by the staff under authority delegated by the Commission. These letters grant relief from the applicability of a specific provision of the Act, or of a Commission rule, regulation, or order.

Exemptive letters bind the Commission and the staff only for the relief specifically provided in the letter. Third parties may not rely on them. *See* Rule 140.99(a)(1). Typically, exemptive letters retain the Commission's anti-fraud and anti-manipulation authority.

An interpretative letter is written advice or guidance issued by the staff. While interpretative letters bind only the issuing division or office, third parties may rely on them. *See* Rule 140.99(a)(3).

	CATEGORY/ITEM	STATUS
	RULEMAKINGS	
*	**Parts 3 and 9 revisions to include SEFs and minor changes**	
	Staff is considering recommending to the Commission proposed rule changes to parts 3 and 9. The proposed part 3 rules would integrate existing advisory guidance, while the proposed part 9 rules would incorporate SEFs and update provisions currently applicable to DCMs.	• **Provision of document to the 9th floor for circulation:** November 14, 2016.
*	**Part 49 Idemnification**	
	The FAST Act repealed CEA 21(d)(2), added to the CEA by Dodd-Frank 728, which provided that domestic and foreign regulators that are otherwise eligible to, and that do, request data from an SDR (collectively Regulators) agree to indemnify the SDR and the CFTC for expenses resulting from litigation relating to the information provided. When considered in light of the CFTC's current regulations addressing Regulators' access to SDR data, the removal of the indemnification requirement presents a number of issues, primarily related to the scope of Regulators' access to SDR data, and maintaining the confidentiality of such data consistent with CEA 8. The Commission plans to address these issues in a notice of proposed rulemaking (NPRM) that revises the current approach to Regulators' access to SDRs' swap data and set forth more information regarding the confidentiality agreement that is required by CEA 21(d).	• **Provision of document to the 9th floor for circulation:** November 15, 2016.
*	**Part 49 Clean-Up (Validation, Rejection, Data Accuracy)**	
	Staff is considering recommending to the Commission proposed rule changes to part 49. The proposed part 49 rules would integrate existing staff guidance, clarify and amend certain provisions, and introduce additional requirements for swap data repositories. Specifically, the proposed part 49 rule changes would address ambiguities and fill gaps in the existing language of the Commission's regulations concerning existing obligations for SDRs to accept and confirm data accuracy.	• **Provision of document to the 9th floor for circulation:** NPRM - December 2016
*	**Part 37 revisions to codify no-action relief**	
	Staff is proposing rule changes to part 37. The proposed part 37 rules would codify existing no-action relief related to blocks, error trades and confirmations; and clarify	• **Provision of document to the 9th floor for circulation:** December 2016

* *Denotes an Unified Agenda item*

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	CATEGORY/ITEM	STATUS
	and amend certain provisions relating to requirements for swap execution facilities.	• Currently, there are certain issues still in discussion.
*	**Part 37 – MAT**	
	The Commodity Futures Trading Commission ("Commission") is proposing to amend its regulations pursuant to which a swap is determined to have been made "available to trade" on a swap execution facility ("SEF") or designated contract market ("DCM") for purposes of the trade execution requirement in section 2(h)(8) of the Commodity Exchange Act ("CEA" or "ACT"). The proposed amendments are intended to improve the process and methodology for determining whether a swap is made available to trade. As aprt of the proposed amendments, the Commission is proposing to consolidate the made available to trade regulations in a new part 36 of title 17 of the Code of Federal Regulations.	• **Provision of document to the 9th floor for circulation:** October 25, 2016 • NPRM publication is expected in January 2017.
	Part 40 Clean-up	
	DMO is considering whether to proceed with a proposed NPRM which would modify the Commission's Part 40 regulations and its requirements regarding the procedures for the submission and review of new rules, contracts and amendments thereto by registered entities. The NPRM would, among other things, revise Part 40 by: (1) aligning the requirements of Regulation 40.6(c)(4) regarding the Commission objection to self-certified rule submissions with the statutory requirement of CEA Section 5c(c)(3)(B)(ii), and (2) establishing clearer standards regarding the adequacy of explanations accompanying rule, contract, and amendment submissions.	• **Provision of document to the 9th floor for circulation:** NPRM – June 2017
	Position Limits Update for Security Futures Products	
	DMO is considering whether to proceed with an NPRM to update the rules regarding speculative position limits for security futures products contained in part 41.25(a)(3) of the Commission rules. These rules were adopted in 2002 and were developed based on levels observed for options listed for trading on national securities exchanges. Over time the limits for options have been expanded to the point where limits for security futures are significantly lower than analogous limits in the options markets.	• **Provision of document to the 9th floor for circulation:** NPRM – 2nd quarter of 2017

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	CATEGORY/ITEM	STATUS
*	**Governance and the Mitigation of Conflicts of Interest at DCMs and SEFs**	
	The Commission proposed requirements to implement the following sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act, insofar as they pertain to conflicts of interest, governance, and fitness: section 726 (Rulemaking on Conflict of Interest); sections 725(c) and (d) (DCO Core Principles and Conflicts of Interest); section 735(b) (DCM Core Principles); and section 733 (SEF Core Principles). After reviewing public comments, and following certain changes in U.S. and international supervisory standards, the Commission proceeded to propose and adopt Governance and Conflict of Interest standards for DCOs in a separate rulemaking. In light of this development, the Commission will issue a new proposed rulemaking, which will: (1) Apply to DCMs and SEFs alone; and (2) take into account domestic and international market developments since the publication of the original proposed rulemaking. The title of this rule has been updated accordingly, to reflect the focus going forward on DCMs and SEFs.	• **Provision of document to the 9th floor for circulation: TBD**
	Ownership and Control Reporting	
		• **Provision of document to the 9th floor for circulation: TBD**
*	**Position Limits for Commodity Derivatives Contracts**	
	The Commission proposed amendments to the Commission's position limits regime, including associated reporting rules. Staff is preparing a Supplemental Notice of Proposed Rulemaking to allow designated contract markets (DCM) and swap execution facilities (SEF) to process requests for exemptions from position limits for: (i) Bona fide hedges not enumerated under the definition for bona fide hedging position proposed in December, 2013; (ii) transactions normally known to the trade as spreads; and (iii) anticipatory bona fide hedging positions.	• The reproposal was published on December 30, 2016. • The comment period closes on February 28, 2017.
*	**Core Principle 9 and Block Trading**	
	Staff is recommending that the Commission propose new rules concerning all aspects of centralized market trading on DCMs, block trading in futures and options, and	• **Provision of document to the 9th floor for**

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	CATEGORY/ITEM	STATUS
	EDRPs. Among other things, the proposed rules would limit block trading to a specified percentage of Average Daily Volume of futures and of options on futures contracts listed by a DCM.	**circulation: TBD**
*	**Automated Trading**	
	On December 17, 2015, the Commission published a notice of proposed rulemaking ("NPRM") titled "Regulation Automated Trading." Regulation Automated Trading proposes a series of risk controls, transparency measures and other safeguards to enhance the regulatory regime for automated trading on U.S. designated contract markets. The initial comment period was open through March 16, 2016, and was re-opened from June 10 through June 24, 2016. After evaluating all comments received, the Commission is now considering publishing a supplemental NPRM to incorporate comments and make certain amendments to its proposal.	• **Provision of document to the 9th floor for circulation: TBD**

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CATEGORY/ITEM	STATUS	SPECIAL NOTES
REGISTRATION		
SEFs		
EBS Global Facility, Ltd. (EGFL)	**Official receipt:** 05/16/2016 **Application stayed**: 09/21/2016 **Provision expected to the Commission for circulation:** March 2017	• Issues applicable to the stay include: - Lack of CCO for SEF; unable to provide information/answer questions - Still developing systems - Parent company (ICAP) is selling off a number of its interests to TP. EGFL is expected to resubmit documents when transfer is complete (mid-January 2017). • Projected date to the Commission subject to staff receiving outstanding information.
Ledger X	**Official receipt:** 09/30/2014 **Provision expected to the Commission for circulation:** March 2017	• Has also applied to be a DCO. • Application was withdrawn on 05/13/2016 due to lack of funding. • Applicant has indicated that they will reapply.
DCMs		
American Gas Exchange, LLC	**Official receipt:** 09/20/2016 **180-days review period ends**: 03/19/2017 **Provision expected to the Commission for circulation:** Late March 2017	• Application currently has an outstanding issue around Exhibit V (technology concerns). • Market Compliance staff is working to have resolved. • Application is subject to a possible stay in January 2017 if issues are not resolved by 01/20/2017.

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CATEGORY/ITEM	STATUS	SPECIAL NOTES
BCause LLC	**Official receipt:** 09/15/2016 **180-days review period ends:** 03/15/2017 **Provision expected to the Commission for circulation:** Mid-March 2017	• Application will be stayed in early January 2017 due to the following issues: - Lack of clearing agreement - Trading and surveillance systems - Funding issues
Bitnomial Exchange, LLC	**Official receipt:** 09/30/2016 **180-days review period ends:** 03/29/2017 **Provision expected to the Commission for circulation:** Late March 2017	• Application is subject to a possible stay in Mid-January 2017 due to the following issues: - Lack of clearing agreement - In-house surveillance • A letter staying the review has been prepared.
Aqua-Index Exchange, LLC	**Official receipt:** 08/10/2015 **Application stayed**: 02/08/2015	• The application was stayed due to the following issue: - Lack of financing
GFI Futures Exchange, LLC	**Official receipt:** 03/19/2013 **Application stayed**: 09/16/2013	• The application was stayed due to the following issues: - Staff has a number of outstanding questions to which responses have not been provided. - GFI is currently focused on its SEF and is not working on the DCM application . • Staff reached out in November 2016 to outside counsel and was advised that GFI intends to provide its outstanding application materials sometime in the future.

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	CATEGORY/ITEM	STATUS	
	FBOTS		
	In Priority Sequence	***Date of Application***	***Date Anticipated Memo in Circulation to the Commission***
1.	ICE Endex (Amsterdam)	05/06/2014	December 2016
2.	Eurex Zurich AG	04/01/2014	January 2017
3.	European Energy Exchange (EEX)	08/07/2012	January 2017
4.	Dubai Mercantile Exchange (DME)	08/16/2012	January 2017
5.	Mercado Mexicano de Derivados S.A. de C.V. (MexDer)	08/20/2012	January 2017
6.	Nasdaq Oslo ASA	08/20/2012	January 2017
7.	Australia Securities Exchange (ASX24)	08/16/2012	February 2017
8.	Osaka Securities Exchange (OSE)	08/16/2012	March 2017
9.	ICE Futures Singapore	04/23/2015	March 2017
10.	Euronext Brussels	08/20/2012	May 2017
11.	Euronext Amsterdam	08/17/2012	May 2017
12.	Euronext Paris	08/17/2012	May 2017
13.	Moscow Exchange		

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CATEGORY/ITEM	STATUS
COMPLIANCE	
RERs	
NYX Trade Practice Surveillance Rule Enforcement Review	• Review began December 2016. • **Provision expected to the Commission for circulation:** Late March 2017
CME, ICE Futures U.S., MGEX, and CBOE Futures Horizontal EFRP Rule Enforcement Review	• **Provision expected to the Commission for circulation:** 1st quarter of 2017
OneChicago Trade Practice Surveillance Rule Enforcement Review	• Review expected to begin in the 1st/2nd quarter of 2017.
SSEs	
ICE Futures U.S. and Trade Vault 2016 System Safeguards Exam	• **Provision expected to the Commission for circulation:** January 2017
MGEX System Safeguards Exam	• **Provision expected to the Commission for circulation:** March 2017
Nadex DCM System Safeguards Exam	• **Provision expected to the Commission for circulation:** March 2017
Bloomberg SDR System Safeguards Exam	• **Provision expected to the Commission for circulation:** April 2017
DDR System Safeguards Exam	• **Provision expected to the Commission for circulation:** April 2017
OneChicago System Safeguards Exam	• **Provision expected to the Commission for circulation:** May 2017
BGC/Cantor System Safeguards Exam	• **Provision expected to the Commission for circulation:** July 2017
CME System Safeguards Exam	• **Provision expected to the Commission for circulation:** September 2017
ICE Futures U.S., Swap Trade, and Trade Vault 2017 System Safeguards Exam	• **Provision expected to the Commission for circulation:** November 2017

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2016/2017 DIVISION OF MARKET OVERSIGHT STRATEGIC PLAN REPORT

As of December 19, 2016

PART A: PENDING MATTERS - Projected Timeline

	CATEGORY/ITEM	PROJECTED TIMELINE	SPECIAL NOTES:
	RULEMAKINGS		
	Parts 9 and 3 revisions to include SEFs and minor changes	NPRM: November 2016	In seriatim as of 11/14/16
	Part 49 Idemnification	NPRM: November 2016	In seriatim as of 11/15/16
	Part 49 Clean-Up (Validation, Rejection, Data Accuracy)	NPRM: December 2016	
	Part 37 revisions to codify no-action relief	NPRM: December 2016	Certain issues still in discussion
	Part 37 – MAT	NPRM: December 2016	In seriatim as of 10/25/2016
	Part 40 Clean-up	NPRM: June 2017	
	Position Limits Update for Security Futures Products	NPRM: 2nd quarter of 2017	
	Governance and the Mitigation of Conflicts of Interest at DCMs and SEFs	TBD	
	Ownership and Control Reporting	TBD	
	Position Limits for Commodity Derivatives Contracts	TBD	
	Core Principle 9 and Block Trading	TBD	
	Automated Trading	TBD	
	REGISTRATION		
	SEFs	**Staff Recommendations**	
	EBS Global Facility, Ltd. *(Official receipt 05/16/2016)*	March 2017	Projected date assuming outstanding information is received. Application stayed September 2016
	Ledger X	March 2017	Applicant has indicated that they wil reapply
	DCMs	**Staff Recommendations**	
	American Gas Exchange, LLC *(Official receipt 09/20/2016)*	March 19, 2017	Staff will determine by Jan. 20/2017 whether application should be stayed
	BCause LLC *(Official receipt 09/15/2016)*	Mid-March 2017	Possible stay of application (Jan.1/2017) due to lack of clearing agreement **Projected dates:** 180 days began: 09-16-16 Memo to Nancy: 02-01-17 Memo to OGC: 02-08-17

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	CATEGORY/ITEM	PROJECTED TIMELINE	SPECIAL NOTES:
			Memo to 9th floor: 2-15-17 180 days ends: 3-15-17
	Bitnomial Exchange, LLC *(Official receipt 09/30/2016)*	Late March 2017	Possible stay of application (mid-Jan. 2017) due to lack of clearing agreement **Projected dates:** 180 days began: 09-30-16 Memo to Nancy: 02-15-17 Memo to OGC: 02-22-17 Memo to 9th floor: 03-01-17 180 days ends: 03-29-17
	Aqua-Index Exchange, LLC *(Official receipt 08/10/2015)*	*None*	Application currently stayed pending applicant response
	GFI Futures Exchange, LLC *(Official receipt 03/19/2013)*	*None*	Application currently stayed pending applicant response
	FBOTs		
	ICE Endex (Amsterdam)	December 2016	
	Eurex Zurich AG	January 2017	
	European Energy Exchange (EEX)	January 2017	
	Dubai Mercantile Exchange (DME)	January 2017	
	Mercado Mexicano de Derivados S.A. de C.V. (MexDer)	January 2017	
	Nasdaq Oslo ASA	January 2017	
	Australia Securities Exchange (ASX24)	February 2017	
	Osaka Securities Exchange (OSE)	March 2017	
	ICE Futures Singapore	March 2017	
	Euronext Brussels	May 2017	
	Euronext Amsterdam	May 2017	
	Euronext Paris	May 2017	
	COMPLIANCE – RERs/SSEs		
	NYX Trade Practice Surveillance Rule Enforcement Review	Begins December 2016	
	ICE Futures U.S. and Trade Vault 2016 System Safeguards Exam	January 2016	

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	CATEGORY/ITEM	PROJECTED TIMELINE	SPECIAL NOTES:
	MGEX System Safeguards Exam	March 2017	
	Nadex DCM System Safeguards Exam	March 2017	
	Bloomberg SDR System Safeguards Exam	April 2017	
	DDR System Safeguards Exam	April 2017	
	OneChicago System Safeguards Exam	May 2017	
	BGC/Cantor System Safeguards Exam	July 2017	
	CME System Safeguards Exam	September 2017	
	ICE Futures U.S., Swap Trade, and Trade Vault 2017 System Safeguards Exam	November 2017	
	CME, ICE Futures U.S., MGEX, and CBOE Futures Horizontal EFRP Rule Enforcement Review	1st quarter of 2017	
	OneChicago Trade Practice Surveillance Rule Enforcement Review	Begins 1st/2nd quarter of 2017	
	RELIEF		

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PART B: COMPLETED ITEMS

DATE	CATEGORY/ITEM	
	RULEMAKINGS	
03/21/2016	Trade Option Exemption Final Rule	
06/13/2016	Hedge Exemption NPRM	
06/27/2016	Cleared Swap Reporting Final Rule	
09/19/2016	System Safeguards Testing Requirements	
		Compliance Dates
	Vulnerability testing	03/16/2017
	Penetration testing	03/16/2017
	Controls testing	09/17/2017
	For covered DCMs and SDRs key controls testing by independent contractors	09/17/2019
	Security Incident Response Plan testing	03/16/2017
	Enterprise Technology Risk Assessment	09/17/2017
	Updating BC/DR Plans	09/17/2017
	Books and Records Requirements	09/17/2017
	Other Requirements	09/17/2017
11/04/2016	Regulation Automated Trading	
12/16/2016	Aggregation of Positions Rulemaking	
	Effective Date	02/14/2017
*	Position Limits for Commodity Derivatives Contracts – NPRM Reproposal	
	REGISTRATION	
	SEFs	
01/22/2016	Bloomberg SEF LLC	
01/22/2016	DW SEF LLC	
01/22/2016	TW SEF LLC	
01/22/2016	trueEX LLC	
01/22/2016	MarketAxess SEF Corporation	
01/22/2016	GFI Swaps Exchange LLC	
01/22/2016	SwapEx LLC	
01/22/2016	Javelin SEF, LLC	
01/22/2016	ICE Swap Trade LLC	
01/22/2016	tpSEF Inc.	
01/22/2016	360 Trading Networks, Inc.	
01/22/2016	ICAP SEF (US) LLC	
01/22/2016	BGC Derivatives Markets, L.P.	
01/22/2016	Thomson Reuters (SEF) LLC	
01/22/2016	Tradition SEF, Inc.	
01/22/2016	Chicago Mercantile Exchange, Inc.	
01/22/2016	LatAm SEF, LLC	
01/22/2016	ICAP Global Derivatives Limited	
05/26/2016	TeraExchange, LLC	
05/26/2016	GTX SEF LLC	
05/26/2016	FTSEF LLC	
06/27/2016	Clear Markets North America, Inc.	

DATE	CATEGORY/ITEM
08/23/2016	Seed SEF LLC
	DCMs
	FBOTs
06/1/2016	BM&F Bovespa S.A. (BVMF)
06/1/2016	Cleartrade Exchange Pte. Limited
10/31/2016	Eurex Deutschland (Eurex)
10/31/2016	ICE Futures Europe
10/31/2016	London Stock Exchange Derivatives (LSED)
10/31/2016	CME Europe Limited (CMEEL)
10/31/2016	London Metal Exchange (LME)
	COMPLIANCE – RERs/SSEs
04/20/2016	NADEX Systems Safeguard Exam
05/27/2016	CME Group/CME SDR Systems Safeguard Exam
06/30/2016	CBOE Futures Trade Practice Surveillance Rule Enforcement Review
08/30/2016	MGEX Systems Safeguard Exam
09/28/2016	Bloomberg Systems Safeguard Exam
10/13/2016	NYMEX/COMEX Rule Enforcement Review
11/28/2016	DDR Systems Safeguard Exam
12/02/2016	ICE Futures U.S. Trade Practice Surveillance Rule Enforcement Review
	RELIEF
01/15/2016	Masking Reportable Info Based on Privacy Law
02/18/2016	Non-SD/MSP - Form TO
03/14/2016	SEF Confirmation and Recordkeeping for Uncleared
04/08/2016	Identifying Information Reportable on Forms 102A and 102B
04/08/2016	OCR Data Reporting
05/12/2016	Extension - Yield Broker NAL
06/10/2016	Extension enabling SEFs and DCMs to Address Clerical and Operational Errors
08/04/2016	Extension for Transaction-Level Requirements of Non-U.S. Swap Dealers
09/14/2016	Yield Broker NAL
10/07/2016	Extension of Time-Limited Relief from Certain Block Trade Requirements
11/01/2016	Extension of Time-Limited Relief for Package Transactions
11/21/2016	Reporting Relief for Non-US SDs vs Non-US CPs
11/28/2016	Extension of Relief from Swaps Executed Between Certain Affiliated Entities

Procedures for Interaction with the President-elect's Transition Team 2016

All,

We expect members of the President-elect's Transition Team (PETT) who are assigned to CFTC (the Agency Review Team) to begin meeting with staff sometime the week of December 12th. Sharon Brown-Hruska, a former CFTC staff member and Commissioner, is leading the CFTC Agency Review Team. We will provide updates when changes or additions are made to the Agency Review Team list. Room 9124 will be available for the PETT's use during the transition period.

Below is guidance for CFTC career staff interactions with the PETT at CFTC. If you have any questions, please contact Heather Gottry, Susan Milligan, or me.

Anthony C. Thompson
CFTC Transition Director

I. General Communications with the PETT

Initially, members of the PETT will communicate through CFTC's Transition Director.

Throughout the transition, Division and Office Directors should serve as a division/office's primary contact with the PETT; however, Division and Office Directors may delegate such communications to their Deputies. The Transition Director will introduce PETT member to Division and Office Directors. Following the initial introduction, Divisions/Offices may communicate directly with the PETT (subject to the limitations below).

Staff should only communicate with PETT member(s) listed above. If you are contacted by someone claiming to be on the transition team who is not on the CFTC list, please contact the Transition Director to confirm their status before engaging with the individual.

II. Access to Non-Public Information – Transition MOU

The Chief of Staff to the President and the PETT have negotiated a "Memorandum of Understanding Regarding Transition Procedures, Identification of Transition Contacts, and Access to Non-public Government and Transition Information" (MOU). A copy of the MOU is attached.

As a reminder, the members of the PETT are <u>not</u> always Federal employees (even though they will be working inside the agencies and will be given email addresses ending in "ptt.gov"). Agency review teams will be collecting information to assist the Office of the President-elect and Vice President-elect make early policy decisions.

To the extent possible, only publicly available information should be shared with the PETT. **In particular, information that reflects the executive deliberations of the current Administration should not be shared with the PETT**; any exceptions to this must be cleared in advance with the CFTC Transition Director, who will consult CFTC leadership. See the FAQs below for additional categories of information that should not be disclosed without authorization.

Further, it is strongly encouraged that any papers or other materials shared with the transition team be provided in pdf format.

The MOU reflects that some non-public information may need to be shared with the PETT, and the MOU requires that agencies take steps to protect that information as required by law, or as otherwise necessary to preserve applicable privileges when interacting with the PETT.

In this context, "**non-public information**" means information that an agency could protect from disclosure outside of the agency (for example, by asserting that it is protected by the deliberative process privilege or other statutory provisions, including Section 8 of the CEA). If information has not affirmatively been made publicly available, please seek authorization from the appropriate Division/Office Directors before sharing the information with the PETT.

Section 10 of the MOU requires that Agencies:

1. Brief the Transition Team member on the importance of maintaining the constitutional, statutory, and/or common law safeguards afforded the non-public information.
2. Require the Transition Team member to sign a statement representing that, to the member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent.
3. Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition Team personnel unless those other personnel satisfy the requirements for access to that information set forth in the memorandum.
4. Make a written record of any disclosure of non-public information made to a member of the PETT.
5. Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.

III. Procedures for Access to Non-Public Information

The CFTC Transition Director will work with the PETT to address items 1-3. Divisions and Offices should follow the following procedures below to ensure CFTC's compliance with items 4 and 5:

A. Written Records of Disclosure

1. Before providing non-public information to the PETT, staff must get approval from their Division or Office Director (or their designee Deputies).

2. Information provided to the PETT: Each Division and Office Director must sign the completed a "Record of Disclosure of Non-Public Information to Authorized Member(s) of the President-Elect's Transition Team (PETT)" (attached) for each non-public disclosure made to the PETT at the time the disclosure is made. Email this form and the document(s)/information to be disclosed to the CFTC Transition Director.

B. Warnings Against Subsequent Disclosure

1. All documents transmitted to the PETT, including emails, must include the following as a header, footer, or watermark on each page of the document:

   CFTC NON-PUBLIC MATERIALS: SUBSEQUENT DISCLOSURES TO UNAUTHORIZED INDIVIDUALS, INCLUDING UNAUTHORIZED MEMBERS OF THE PETT ARE PROHIBITED

Frequently Asked Questions

1. ***Who may authorize disclosure of non-public information to the PETT?***

   Only CFTC officials at the Division and Office Director level may authorize disclosure of any non-public information. Division and Office Directors may delegate this authority to their Deputies.

2. ***May CFTC staff communicate via e-mail with the PETT?***

   Yes, provided that:
   - The email is sent to the transition team member's official email account (no personal accounts).
   - The CFTC Transition Director and appropriate Division/Office Directors are copied on the email.
   - If the email contains non-public information, it also contains the above warning against subsequent disclosure and a Record of Disclosure is completed and provided to the CFTC Transition Director.

3. ***What if the information proposed to be disclosed contains sensitive personally identifiable information, confidential business information, attorney work product, or attorney-client privileged information?***

Sensitive personally identifiable information, confidential business information, attorney work product, or attorney-client privileged information should not be disclosed to the PETT. If a PETT member requests such information, please contact Heather Gottry, Susan Milligan, or Tony Thompson for further guidance.

Commodity Futures Trading Commission

Record of Disclosure of Non-Public Information to Authorized Member(s) of the President-Elect's Transition Team (PETT)

Date of Disclosure: _____

Form(s) of Disclosure (Oral/Paper/Electronic): _____

General Description of Categories of Non-Public Information Disclosed:

_____

_____

_____

Name(s) of PETT Member(s) to Whom Non-Public Information was Disclosed:

_____

_____

_____

Name(s) and Title(s) of CFTC Official(s) Who Authorized Disclosure:

_____

_____

Name(s) and Title(s) of CFTC Official(s) Who Disclosed the Information:

_____

_____

Summary of Steps Taken to Protect the Non-Public Information from Subsequent Unauthorized Disclosure (e.g. certify that the relevant procedures set forth in paragraphs 10, 11, and 12 of the *Memorandum of Understanding Regarding Transition Procedures, Identification of Transition Contacts, and Access to Non-public Government and Transition Information*, have been followed):

_____

_____

_____

Record of Disclosure Prepared by: _____

Signature of CFTC Official Who Authorized Disclosure: _____

Title: _____

Date: _____

Memorandum of Understanding Regarding Transition Procedures, Identification of Transition Contacts, and Access to Non-public Government and Transition Information

1. The Chief of Staff to the President (the "Chief of Staff") and the designated Chair of the President-elect's Transition Team (the "Chair of the PETT") agree, on behalf of, respectively, the Administration and the PETT, that, in order to effect an orderly transition of power in accord with the Presidential Transition Act of 1963, as amended (the "Transition Act"), the Intelligence Reform and Terrorism Prevention Act of 2004, and Executive Order 13727 entitled "Facilitation of a Presidential Transition," the President-elect and certain of his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office.

2. Section 4(b) of the Transition Act provides that "The President shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President." Additionally, Executive Order 13727 provides that "it is the policy of the United States to undertake all reasonable efforts to ensure that Presidential transitions are well-coordinated and effective, without regard to party affiliation."

3. The Chief of Staff and the Chair of the PETT enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's and the Office of the President-elect's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the PETT during the transition period, to preserve the constitutional, statutory, and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.

4. The Chair of the PETT (or his designee) will furnish in writing to the Chief of Staff the name of each individual authorized by the PETT to work with the Executive Office of the President (EOP) and particular Departments and Agencies, including the designation of a Transition Team lead or leads for the EOP and each Department or Agency. The Chair of the PETT (or his designee) will also indicate in writing that each individual on the list has met the applicable public disclosure requirements of the Presidential Transition Act, as amended, has agreed to abide by the Transition's Code of Ethical Conduct, and has thereby represented that he or she has no conflict of interest that precludes the individual from working on the matters the individual has been assigned to work on with the EOP or the relevant Department or Agency. These lists will be updated as new members are added to the teams. The Chief of Staff (or his designee) will promptly forward these names to the appropriate Departments, Agencies, and EOP offices. The Chief of Staff (or his designee) will also provide in writing to the Chair of the PETT the names of individuals in the Departments, Agencies, and specified offices in the EOP who will serve as contacts responsible for coordinating transition matters on behalf of those Departments, Agencies, or specified EOP offices. The Chief of Staff (or his designee) is the contact person responsible for coordinating transition matters on behalf of those offices of the EOP for which contact persons have not otherwise been designated.

5. The Administration will conduct its transition activities with the PETT through the contacts authorized by the Chief of Staff and the Chair of the PETT. The authorized contacts for the PETT will initiate transition activities with a particular Department, Agency, or specified office of the EOP through the individual(s) at that Department, Agency, or EOP office designated by the Chief of Staff to coordinate transition activities for that Department, Agency, or EOP office. The authorized contacts for the PETT will initiate transition activities involving any other office of the EOP through the Chief of Staff (or his designee).

6. Each Department and Agency will use best efforts to locate and set aside available space in their offices for the duration of the transition for use by authorized members of the PETT to facilitate review of information provided by the Department or Agency and communication with authorized contacts at such Department or Agency. Each Department or Agency will provide, to the extent practicable, appropriate support to and equipment for use by the PETT in such office space. The exact details of space and equipment will be worked out between the PETT lead(s) for that Department or Agency and the individual(s) at that Department or Agency designated by the Chief of Staff.

7. In order to facilitate a smooth transition, it likely will be necessary in some circumstances to provide specified transition personnel with access to non-public information that may be protected by constitutional, statutory, or common law privileges, and material whose distribution is restricted by law. The Chief of Staff has advised the Chair of the PETT that Administration personnel will take steps to protect non-public information that are required by law or otherwise necessary to preserve applicable privileges, such as actions based on the Executive Branch standards of conduct, the Privacy Act, or the attorney-client privilege. The PETT recognizes that there is some information that a Department or Agency may not be able to provide in order to comply with statutory requirements or otherwise preserve applicable privileges.

8. In order to facilitate a smooth transition and provide a mechanism for expeditiously addressing any concerns, including ethical, privacy, and privilege concerns, regarding access to non-public information as described in paragraph (7), the Chief of Staff and the Chair of the PETT will each designate in writing an individual or individuals authorized to confer in order to resolve such concerns informally.

9. The Chief of Staff further advises that, before providing any classified information to a member of the PETT, pursuant to Executive Order 13526, it must be established:

- That the member has the security clearances necessary to have access to that information, and the requisite need to know, and
- That the member has signed the requisite non-disclosure agreement.

10. The Chief of Staff advises that, before providing non-public information (including classified information) as described in paragraph (7) to a member of the PETT authorized to receive it under the guidelines established in this memorandum, Departments and Agencies will expeditiously:

- Brief the Transition Team member on the importance of maintaining the constitutional, statutory, and/or common law safeguards afforded the non-public information.

- Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
- Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition Team personnel unless those other personnel satisfy the requirements for access to that information set forth in this memorandum.
- Require the Transition Team member to sign a statement representing that, to the member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent. The Department or Agency may require such additional information from the Transition Team member as the Department or Agency deems necessary, in light of the proposed disclosure.
- Where advisable, prohibit the Transition Team member from removing records containing non-public information from the offices of the Department or Agency.
- Make a written record of any disclosure of non-public information made to a member of the PETT.

11. Upon request from the EOP, a Department, or an Agency, the PETT will provide a written statement indicating that Transition Team member's need for access to the non-public information. The statement of need will be provided by the Chair of the PETT (or his designee) to the Chief of Staff (or his designee).

12. A government employee may not allow the improper use of non-public information to further his own private interest or that of another by knowing unauthorized disclosure. 5 C.F.R. § 2640.

13. It likely will be necessary for members of the PETT to share with the Administration information that they wish to be kept confidential. Accordingly, to the extent permitted by law, the Administration agrees to protect the confidentiality of information provided to it on a confidential basis by the PETT.

14. Any disagreements between the Administration and the PETT concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (8) or otherwise will be referred by the Administration to the Chief of Staff (or his designee) and by the PETT to the Chair of the PETT (or his designee).

15. To the extent permitted by law, the Administration with respect to its staff members and the PETT with respect to its transition team members, state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.

11/18/16

Signed by:
Denis R. McDonough
Chief of Staff to the President
Date:

Signed by:
Michael R. Pence
Chair of the President-elect's Transition Team
Date: