



Commodity Futures  
Trading Commission

FY 1996 Annual Report

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FY 1996 was a year of change and challenge for the Commission. Two new members of the Commission were appointed, bringing the Commission to full strength. At the same time, the futures industry continued to expand with the development of new products and the continuing internationalization of the markets. This year, the Commission approved a record number of new contracts and worked extensively on a number of international and domestic market concerns. In addition, the Commission further increased its enforcement activities, concentrating on cases with a broad impact and on actions to halt illegal trading activities. The Commission continued to improve its oversight of markets and market participants through regulatory actions and expanded its educational outreach to the public through its new World Wide Website.

The Commission and the CFTC staff continued to demonstrate their high level of commitment and expertise during fiscal 1996. It is with great pleasure that I submit this Annual Report of the Commodity Futures Trading Commission to the U.S. Congress.

Sincerely yours,

Brooksley Born

Chairperson

## **CFTC Commissioners**

### **Brooksley Born, Chairperson**

Brooksley Born was sworn in as Chairperson by Acting Chairman John E. Tull on August 26, 1996. Ms. Born was nominated by President Clinton on May 3, 1996, and confirmed by the Senate on August 2, 1996, for a term expiring in April, 1999.

Ms. Born practiced law at the Washington, D.C., firm of Arnold & Porter from 1965 until her appointment to the CFTC. As a partner in the firm, Ms. Born specialized in representing institutional and corporate clients in complex litigation, primarily in the federal courts, and in futures regulation matters.

Ms. Born is an active member of the District of Columbia Bar and the American Bar Association (ABA), having served on the Boards of Governors of both organizations. She currently serves on the Boards of the American Bar Foundation and the National Women's Law Center.

Ms. Born was in 1972-1973 an Adjunct Professor of Law at Georgetown University Law Center and a Lecturer at Law at Columbus School of Law, Catholic University of America, in 1972-1974.

A native of San Francisco, California, Ms. Born received her A.B. degree from Stanford University in 1961 and her Juris Doctor degree from Stanford Law School in 1964, where she graduated first in her class and was President of the Stanford Law Review. She is a member of Order of the Coif. She has also been honored by the National Association of Public Interest Law, the National Legal Aid and Defender Association, and the National Women's Law Center. She received the Woman Lawyer of the Year Award from the Women's Bar Association of the District of Columbia in 1981.

### **Joseph B. Dial, Commissioner**

Joseph B. Dial was sworn in as a Commissioner of the Commodity Futures Trading Commission by Judge Clarence N. Stevenson in Victoria, Texas, on June 20, 1991, after being nominated by President George Bush in April 1991, and confirmed by the U.S. Senate in May. Commissioner Dial chairs the CFTC's Agricultural Advisory Committee.

A native Texan, Commissioner Dial graduated from Texas Military Institute and received a Bachelor of Arts degree in Business Management from the University of Maryland. He owned and managed a multi-faceted cattle, crop, and agricultural products/services business in South Texas. He was active in banking and international trade. For 25 years he exported agricultural products to seventeen foreign countries. During this time he travelled extensively and worked closely with representatives of the international banking community, government officials, and private sector business leaders. He served on the United States Trade Representative's Agricultural Technical Advisory Committee and the Foreign Trade Committee of the National Cattlemen's Association.

Dial is a past President of the Former Texas Rangers Association and served as a trustee of the Texas State Aquarium. In 1990, Texas Governor Bill Clements appointed Commissioner Dial agricultural representative to the Texas Citizen Advisory Committee (CAC) for the Environmental Protection Agency's Gulf of Mexico Program. He was then elected Chairman by the 24 CAC members appointed by the governors of the five Gulf states. Commissioner Dial presently serves on the Board of the Gulf of Mexico Foundation and is a Member of the Group of Experts United Nations Conference on Trade and Development Committee on Commodities.

**John E. Tull, Jr.,** Commissioner

John E. Tull, Jr. was nominated to be a Commissioner of the Commodity Futures Trading Commission by President Bill Clinton on November 5, 1993. Following confirmation by the Senate, he was sworn in on November 24, 1993 for a term expiring April 15, 1998. Commissioner Tull served as Acting Chairman of the Commission from January 29, 1996 through August 26, 1996.

Prior to joining the CFTC, Mr. Tull owned and operated a diversified farming operation in his hometown of Lonoke, Arkansas which produces rice, soybeans, corn, and wheat and raises cattle. In addition to farming, Commissioner Tull traded the rice contract as a licensed floor broker at the New Orleans Commodity Exchange and the Mid-America Commodity Exchange and he was later a member of the Chicago Board of Trade's Rice Working Group.

His active involvement in agriculture led to his association with numerous agricultural organizations. Mr. Tull has served as Member and Chairman of the Arkansas State Plant Board, Board Member of the U.S. Rice Foundation, President and Board Member of both the Arkansas and National Rice Councils, and Chairman and Board Member of the European Subcommittee of the National Rice Council.

He has held the positions of President of the Arkansas Seed Growers Association, President and Board Member of the Arkansas Cattlemen's Association, Vice President of the Arkansas Soybean Association, and Chairman of the Governor's Rail Safety Committee. He also served on the Advisory Board for Agriculture to the University of Arkansas College of Agriculture, Board Member of the Bayou Meto Irrigation District, and Member of the Advisory Board of the First Commercial Bank of Cabot, Arkansas. Commissioner Tull was recently inducted into the Arkansas Agriculture Hall of Fame.

Mr. Tull received a B.S. in Commerce from the University of North Carolina. He served in the U.S. Navy during World War II and the Korean Conflict and ended his military service with the rank of Lieutenant. Mr. Tull and his wife, Mary, have three children and eight grandchildren.

**Barbara P. Holum,** Commissioner

Barbara Pedersen Holum was nominated to be a Commissioner of the Commodity Futures Trading Commission by President Clinton on November 8, 1993, and was confirmed by the Senate on November 19, 1993, and sworn in on November 28, 1993. On December 23, 1993, she was elected by seriatim order of the Commission to serve as Acting Chairman. Ms. Holum served in this capacity until October 12, 1994. She was appointed Chairman of the Advisory Committee on CFTC-State Cooperation on March 14, 1994.

Prior to joining the CFTC, Ms. Holum was President of the National Agricultural Lands Center, a non-profit private organization which administers agricultural resource conservation programs and projects. Ms. Holum's government posts include serving as the Director of Congressional Liaison for the Commodity Futures Trading Commission during President Carter's administration and as the Congressional Liaison Officer for the National Agricultural Lands Study.

Ms. Holum was raised in Boelus, Nebraska, where her father, mother and brothers operate a dairy farm. She attended the University of Nebraska and the University of Denver. Ms. Holum and her husband John reside in Annapolis, Maryland.

**David D. Spears**, Commissioner

David D. Spears was sworn in as a Commissioner on September 1, 1996. Mr. Spears was nominated by President Clinton on May 3, 1996, and confirmed by the Senate on August 2, 1996, for a term expiring in April 2000. A native of Wichita, Kansas, Mr. Spears received his B.S. degree in Agricultural Economics from Kansas State University in 1979.

After graduating from college, he joined the lending division of the Wichita Bank for Cooperatives, which finances agricultural cooperatives and agribusiness in the four-state region of Kansas, Oklahoma, Colorado and New Mexico. From 1979 to 1989, Commissioner Spears worked at the bank (later "Cobank") as, among other positions, Assistant Vice President, responsible for supervising the delivery of financial services and products to Cobank's customers. During this period Commissioner Spears also served on various bank management, advisory and loan committees.

For the past seven years, Commissioner Spears held several staff positions with the office of Senator Bob Dole. Starting in 1989, he was a legislative assistant to the Senator in Washington, D.C., specializing in agriculture, credit and trade issues. In this regard, Commissioner Spears had primary responsibility for advising Senator Dole on agriculture and agricultural trade policy, including the 1990 Farm Bill and other credit and trade legislation.

From July 1992 through June 1996, Commissioner Spears served as State Director for Senator Dole in Wichita, Kansas. In this capacity, he represented the Senator at events and forums throughout the state and managed the Senator's staff in offices located in Kansas City, Topeka, and Wichita.

Mr. Spears and his wife, Pam, have two children.

## About the CFTC

The Commodity Futures Trading Commission (CFTC) was created by Congress in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The agency's mandate was renewed and expanded in 1978, 1982, 1986, 1992 and 1995.

The CFTC is responsible for ensuring the economic utility of futures markets by encouraging their competitiveness and efficiency, ensuring their integrity, and protecting market participants against manipulation, abusive trade practices and fraud. Through effective oversight regulation, the CFTC enables the commodity futures markets to better serve their important function in the nation's economy -- providing a mechanism for price discovery and a means of offsetting price risk.

Futures contracts for agricultural commodities have been traded in the U.S. for more than 100 years and have been under Federal regulation since the 1920's. In recent years, futures trading has expanded rapidly into many new markets, beyond the domain of traditional physical and agricultural commodities. Futures and options are now offered on a vast array of financial instruments, including foreign currencies, U.S. and foreign government securities, U.S. and foreign stock indices, and various other macroeconomic indices. During FY 1996, 494,502,868 futures and option contracts were traded on U.S. futures exchanges.

The Commission regulates the activities of 241 commodity brokerage firms, 49,308 salespeople, 8,993 floor brokers, 1,288 floor traders, 1,317 commodity pool operators, 2,523 commodity trading advisors, and 1,507 introducing brokers.

To ensure the financial and market integrity of the nation's futures markets, the CFTC reviews the terms and conditions of proposed futures contracts. The Commission conducts daily market surveillance and can, in an emergency, order an exchange to take specific action to restore an orderly market in any futures contract that is being traded. Companies and individuals who handle customer funds or give trading advice must apply for registration through the National Futures Association (NFA), a self-regulatory organization approved by the Commission. The CFTC seeks to protect customers by requiring registrants to disclose market risks and past performance information to prospective customers, by requiring that customer funds be kept in accounts separate from those maintained by the firm for its own use, and by requiring customer accounts be adjusted to reflect the current market value at the close of trading each day. In addition, the CFTC monitors registrants' supervision systems, internal controls and sales practice compliance programs, and mandates that all registrants to fulfill an ethics training requirement.

Commodity exchanges complement Federal regulation with rules and regulations of their own for the conduct of their markets -- rules covering clearance of trades, trade orders and records, position limits, price limits, disciplinary actions, floor trading practices and standards of business conduct. A new or amended exchange rule may be implemented only upon approval by the CFTC, which may also direct an exchange to change its rules and practices. The CFTC also regularly audits each exchange's compliance program.

Based in Washington, D.C., the CFTC maintains regional offices in Chicago and New York, and has smaller offices in Kansas City, Los Angeles, and Minneapolis. The Commission consists of five Commissioners, appointed by the President to serve staggered five year terms. One of the Commissioners is designated by the President, with the consent of the Senate, to serve as Chairperson. No more than three commissioners at any one time may be from the same political party.

Commission members have included:

William T. Bagley (Chairman) 1975-1978

Gary L. Seevers 1975-1979

Read P. Dunn, Jr. 1975-1980

John V. Rainbolt (Vice Chairman) 1975-1978

Robert L. Martin 1975-1981

David G. Gartner 1978-1982

James M. Stone (Chairman) 1979-1983

Phillip McBride Johnson (Chairman) 1981-1983

Susan M. Phillips (Chairman) 1981-1987

Kalo A. Hineman 1982-1991

Fowler C. West 1982-1993

William E. Seale 1983-1988

Robert R. Davis 1984-1990

Wendy L. Gramm (Chairman) 1988-1993

William P. Albrecht 1988-1993

Sheila C. Bair 1991-1995

Joseph B. Dial 1991-

John E. Tull, Jr. 1993-

Barbara P. Holum 1993-

Mary L. Schapiro (Chairman) 1994-1996

Brooksley Born (Chairperson) 1996-

David D. Spears 1996-

Additional information about the Commission and its activities can be obtained from the Commission's Office of Public Affairs or through the CFTC's home page on the World Wide Web (<http://www.cftc.gov>).

# The Year in Review

## Copper Market Surveillance

In the Fall of 1995 serious surveillance concerns regarding the copper market developed into a formal, multi-jurisdictional investigation of copper trading. Following the opening of U.S. delivery points on the London Metals Exchange (LME) copper contract, a sharp increase in the price backwardation on that market, and the establishment of an LME cash price premium over Comex copper prices led to a depletion of Commodity Exchange, Inc. (Comex) copper stocks. The Commission sought the assistance of British regulators in assessing the international scope of the copper problem, assessed the possible risk exposure faced by U.S. brokers, and worked extensively with Comex surveillance staff and other regulators on domestic market concerns. In the midst of the Commission's investigation, Sumitomo Corporation announced that it had fired its head copper trader, who reportedly caused the Japanese company to lose approximately \$2.6 billion in copper trading activities.

## Grain Market Surveillance

Corn and wheat cash and futures prices increased sharply in the spring of 1996 to historically high levels due to strong domestic and export demand and serious losses to the winter wheat crop. Deliverable supplies on all of the Chicago Board of Trade (CBT) grain and soybean contracts fell to very low levels as the crop year progressed. Aggressive surveillance, by both Commission and CBT staff, was necessary to assure that no price distortion occurred. Record-high corn prices also exacerbated problems with "hedge-to-arrive" contracts between grain producers and elevators. On May 15, 1996, the Commission staff

released Statements of Policy and Guidance regarding these contracts. The first statement was intended to remove any perceived impediment to mutual decisions of farmers and merchants to use cash payments in unwinding these contracts. The second statement provided guidance regarding the risk implications of particular features of these contracts for deferred delivery of grain.

## International Coordination

On March 15, 1996, fourteen international futures regulators signed a U.S. CFTC/U.K. Securities and Investment Board (SIB) initiative entitled Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations at Boca Raton, Florida. The same day, the 14 regulators also welcomed the signing of a complementary Memorandum of Understanding and Agreement (MOU) by 49 international futures exchanges and clearing organizations from 18 jurisdictions. The Declaration and MOU constitute multilateral mechanisms for the sharing of information on a bilateral basis between the requesting and requested market authorities consistent with their legal and contractual obligations. Both agreements are at the core of developments contemplated in the recommendations and endorsements agreed to at the meeting in Windsor, England, convened in May 1995 by the CFTC and SIB. Under the agreements, the occurrence

of certain events affecting an exchange member's financial resources or positions will trigger the sharing of information under the Declaration and MOU.

### **Enforcement Actions**

During this fiscal year, the Commission concentrated on cases which could provide broad guidance to the marketplace on certain forms of misconduct and on bringing actions swiftly to halt ongoing illegal activity. In a number of cases, the Commission instituted action within weeks or even days of discovering the suspected illegal activity. Many of these cases involve Commodity Trading Advisors (CTAs) and/or Commodity Pool Operators (CPOs) who are not registered with the Commission, but who are acting in a capacity which requires registration and who were suspected of fraud in connection with their CPO/CTA activities.

### **Audit Trail**

In November, 1995, the Commission exempted low-volume exchanges from the heightened audit trail standards imposed by the Futures Trading Practices Act of 1992 (FTPA). The low-volume exemption granted to the Minneapolis Grain Exchange was contingent on the exchange's implementation of recommendations made in a recent rule enforcement review. The CFTC also gave the New York Cotton Exchange, which had recently become ineligible for an exemption due to increases in volume, additional time to demonstrate good faith compliance with the new audit trail standards.

The CFTC issued letters informing the Coffee, Sugar and Cocoa Exchange and the New York Mercantile Exchange that they were within the safe harbor for compliance with the heightened audit trail standards. In November, 1995, the Commission informed the Chicago Mercantile Exchange (CME) and the Chicago Board of Trade (CBT) that, although they did not meet the express terms of the safe harbor, the Commission would defer its determination on whether they were in good faith compliance pending a re-test of the exchanges' audit trail systems. The retests of both the CME's and the CBT's audit trail systems found that, although significant improvement had been made, both exchanges again failed to establish the required precision: 90 percent verifiability of trade times and sequence. CME and CBT will report by November, 1996, how they intend to demonstrate compliance. The Commission also found that Comex passed a self- test of its audit trail system in June 1996. The Commission plans to retest Comex in FY 1997.

### **CFTC Internet Website**

On October 10, 1995, the CFTC launched its website on the Internet (<http://www.cftc.gov>) to introduce the CFTC and its Commissioners and to provide information about the Commission. Since then, the Commission has steadily expanded the nature and variety of information available on its website. One recent addition to the website allows the CFTC to receive information from customers concerning possible misconduct or suspected wrongdoing involving futures and options.

### **Roundtable Discussions**

The CFTC continued its public roundtable discussions of significant issues and followed up on recommendations made during roundtable discussions held during the last fiscal year. In December, 1995, the CFTC held a roundtable discussion on agricultural trade options that brought together a diverse group of commodity option and agricultural experts, regulators, academics, and market users to discuss the pros and cons of lifting or retaining the ban on agricultural trade options.

In February, 1996, the Commission proposed amendments concerning the CFTC's financial reporting cycle and debt-equity ratio requirements for Futures Commission Merchants and Introducing Brokers. The proposals are intended to conform the CFTC's rules to those of the Securities and Exchange Commission (SEC) and are an outgrowth of the regulatory capital issues roundtable held in September, 1995.

The Commission also held a symposium in June, 1996, on internal controls and risk management practices. The purpose of the symposium, which was open to the public, was to discuss current risk management strategies and the usefulness of existing resources, with the goal of identifying areas where educational outreach by regulators and the private sector could be enhanced.

### **New Contracts**

The Commission approved applications for 42 new futures contracts and 50 new option contracts. The total of 92 new contracts was the highest total approved for a single fiscal year since the Commission was created. The record number of approvals was made possible by the Commission's commitment to streamline its review process. The average processing time for applications for contract market designation has been reduced by more than half since the program began. During FY 1996, the average review time for processing the unprecedented number of applications for new contracts remained at approximately three months. In addition, the backlog of pending contracts has been eliminated; new applications are considered promptly upon submission.

## Division of Enforcement

The Division of Enforcement investigates and prosecutes alleged violations of the Commodity Exchange Act ("CEA" or "Act") and Commission regulations. Violations may involve commodity futures or options trading on domestic commodity exchanges, or the improper marketing of commodity investments. The Division takes enforcement actions against individuals and firms registered with the Commission, others who are engaged in commodity futures and option trading on designated exchanges, and those engaged in the unlawful offer and sale of futures and option contracts that are not traded on exchanges.

Division investigations are based on information the Division develops independently, as well as information referred to it by other Commission divisions, industry self-regulatory associations, federal, state and international authorities, and public customers. At the conclusion of an investigation, the Division, among other things, may recommend that the Commission initiate administrative proceedings or seek injunctive and ancillary relief on behalf of the Commission in federal court. Administrative sanctions may include orders suspending, denying, revoking or restricting registrations and exchange trading privileges, imposing civil monetary penalties, cease and desist orders and orders of restitution. The Division also may obtain temporary restraining orders and preliminary and permanent injunctions in federal court to halt ongoing violations, as well as civil monetary penalties. Ancillary relief may include appointment of a receiver, a freeze of assets, restitution, and disgorgement of unlawfully acquired benefits. When injunctive orders are violated, the Division may seek to have the offenders held in contempt.

When the Division obtains evidence during an investigation indicating that criminal violations of the CEA have occurred, the matter may be referred to the Department of Justice for prosecution. Criminal activity involving commodity-related instruments can result in prosecution for criminal violations of the CEA and for violations of other federal criminal statutes, including mail fraud, wire fraud and conspiracy.

The Division provides expert help and technical assistance with case development and trials to U.S. Attorneys' Offices, other federal and state law enforcement agencies, and international authorities. The Commission and individual states may join as co-plaintiffs in civil injunctive actions brought to enforce the CEA.

During FY 1996, the Commission instituted 17 injunctive actions, 10 administrative proceedings, and 11 statutory disqualification actions. Permanent injunctions were entered against 17 individuals or firms, preliminary injunctions were entered against 22 individuals or firms, and 10 ex parte temporary restraining orders were obtained. Approximately \$6,390,000 of customer funds and other assets were placed under the protection of 6 equity receivers appointed this fiscal year.

Administrative litigation resulted in the entry of cease and desist orders against 21 individuals or firms. Thirteen individuals or firms were prohibited from trading on or subject to the rules of any exchange; 24 registrations with the Commission were denied, suspended, revoked or restricted; and civil monetary penalties totaling \$5,530,000 were imposed on 17 individuals or firms.

During this fiscal year, the Commission concentrated on cases which would provide the greatest impact and on actions to halt ongoing illegal activity. In a number of cases, the Commission instituted actions within weeks or even days of discovering the suspected illegal activity. Many of these cases involve CTAs and/or CPOs who are not registered with the Commission, but who are acting in a capacity which requires registration and who were suspected of fraud in connection with their CTA/CPO activities.

### **Commodity Pool Operator (CPO) and Commodity Trading Advisor (CTA) Cases**

On October 16, 1995, the Commission filed an injunctive complaint against Richard Maseri and Ronald Romberg and three firms controlled by them. According to the complaint, the defendants cheated and defrauded customers in connection with the solicitation and receipt of funds for the purchase of computer-generated trading systems and the solicitation of funds to trade commodity futures contracts. The complaint alleges that the defendants misrepresented that they were trading an account using the trading system and that all trading had been profitable. According to the complaint, no such trading account existed and the representations made concerning the purported success of the system were exclusively based upon hypothetical trading, which was not disclosed to potential customers. The day the complaint was filed, the federal district court entered an *ex parte* order freezing the defendants' assets, protecting and granting Commission access to books and records, and appointing a receiver. The court subsequently entered a consent order of preliminary injunction against Maseri and his company enjoining future violations of the nature alleged and continuing the previously ordered relief. After a hearing, the court entered similar preliminary injunctions against the remaining defendants. *CFTC v. Maseri*, Civ. No. 95-6970 (S.D. Fla. filed Oct. 16, 1995).

The Commission filed a five-count injunctive complaint against New Forest Capital Management, a registered CTA and its owner Robert Besner, a registered AP. According to the complaint, the defendants defrauded investors by misappropriating and converting customer funds, and by making misrepresentations and issuing false reports and statements to investors. The complaint alleges that the defendants accepted at least \$2.7 million from investors, of which \$2.2 million is unaccounted-for. Defendants allegedly represented that accounts would be opened for customers at an FCM and that defendants would direct the trading. According to the complaint, defendants sent letters confirming the establishment of such accounts when in fact the accounts were never opened. Defendants also allegedly sent statements purportedly issued by the FCM indicating that trading was profitable when in fact no trades were placed. The defendants are alleged to have converted the funds to their own use. The day the complaint was filed, the federal district court entered an *ex parte* order freezing assets and protecting and granting Commission access to books and records. The court subsequently entered a consent order of preliminary injunction continuing the previously-ordered relief and enjoining future violations of the nature alleged. *CFTC v. Besner*, Civ. No. 96-0076 (N.D. Ill. filed January 4, 1996).

On January 4, 1996, the Commission filed a four-count injunctive complaint against Mark Shaner and his firm alleging fraud in connection with the operation of a commodity pool. In particular, the complaint alleges that the defendants, a registered CPO and AP respectively, misappropriated and converted pool funds for

business and personal use and as security for personal obligations of Shaner, that they violated their duty to investors, and misrepresented to investors that their money would be used for the benefit of the commodity pool.

The complaint also names the Iowa State Bank and Trust Company as a relief defendant, seeking a constructive trust on assets of the bank traceable to the defendants' alleged fraud. According to the complaint, the defendants misappropriated \$675,000 of the pool's funds to secure a personal loan at Iowa State Bank. Those funds allegedly were placed with the bank in a certificate of deposit in the pool's name. When defendants thereafter defaulted on the bank loan, pool assets on deposit with the bank are alleged to have been used to satisfy the debt and other obligations to the bank.

On the day the complaint was filed, the court entered an ex parte order freezing the defendants' assets, and protecting and requiring access to books and records. Subsequently, the court denied the Commission's motion for a TRO, stating that there was no likelihood of future violations of the nature alleged. *CFTC v. Shaner*, Civ. No. 96-70005 (S.D. Iowa filed Jan. 4, 1996).

On January 11, 1996, the Commission filed an injunctive action jointly with the Securities and Exchange Commission alleging fraud, conversion, and registration violations in connection with the operation of a commodity pool. The complaint alleges that Michael Tropiano, acting as an unregistered CPO, solicited \$2.9 million from 118 investors for the purpose of investing in commodity pools, and, after conducting some futures trading, ceased trading and converted customers' funds to his personal benefit. Simultaneously with the filing of the complaint, the defendant agreed to the entry of a preliminary injunction enjoining future violations of the nature alleged, freezing his assets, and ordering an accounting. *CFTC and SEC v. Tropiano*, Civ. No. 96-228 (D.N.J. filed January 11, 1996).

The Commission instituted an injunctive action against a firm registered as a CPO and CTA, two individuals and an affiliated firm, alleging that the defendants made false, deceptive or misleading representations in soliciting investors to invest in a commodity pool. The complaint alleges that the defendants received approximately \$1 million from at least 34 customers. The defendants allegedly told the customers that their funds would be deposited into two accounts: 60 percent into an S&P 500 futures trading program and the remainder in mutual funds to protect against losses in the trading program. According to the complaint, the defendants never used the trading program and deposited less than \$4,000 of funds into a money market fund. The day the complaint was filed, the federal district court issued an ex parte order freezing the defendants' assets and protecting and granting access to books and records. NFA has been appointed by the court to conduct an accounting of the defendants' assets. Subsequently, the court entered preliminary injunctions against the two individual defendants enjoining future violations of the nature alleged and continuing the previously ordered relief. *CFTC v. Prism Financial Corp.*, Civ. No. 96-D-389 (D. Colo. filed Feb. 20, 1996).

The Commission filed an administrative complaint alleging that R&W Technical Services, Ltd., which sold computer software containing commodity futures trading programs that provide signals on "when to buy, when to sell and where to place stops," among other things, acted as a CTA in violation of the registration requirements of the Act. The complaint also charged the respondents with fraud in

connection with their activity. R&W sued the Commission in the United States District Court for the Southern District of Texas seeking to enjoin the Commission's administrative action on grounds, inter alia, that the Commission's registration requirement violates the First Amendment, as applied to that respondent. On July 2, 1996, the district court denied the request for a preliminary injunction, holding that R&W failed to show a substantial threat of irreparable injury or that a preliminary injunction would serve the public interest. The court did not address the First Amendment argument. The district court now has before it the Commission's unopposed motion to dismiss the complaint. *R&W Technical Services v. CFTC*, Civ. No. H-96-1149 (S.D. Tex. July 2, 1996). *In re R&W Technical Services*, CFTC Docket No. 96-3 (filed March 19, 1996).

On April 2, 1996, the Commission filed an injunctive complaint alleging that Michael Indihar and Robert Hoffman and firms controlled by them fraudulently solicited and accepted customer funds for investment in commodity futures contracts through a commodity pool. The Commission's fraud allegations include guarantees of profit and downplaying of risk of loss. According to the complaint, the defendants also allegedly converted customer funds and commingled funds with defendants' personal funds. The day after the complaint was filed, the court entered an ex parte order freezing defendants' assets and protecting and granting CFTC access to books and records. Subsequently, the court denied the Commission's motion for a preliminary injunction without discussion. *CFTC v. Indihar*, Civ. No. 90-08282 (S.D. Fla. filed April 2, 1996).

The Commission filed a three-count injunctive complaint against Ken Willey in connection with the operation of a commodity pool. According to the complaint, the defendant received investor funds in a name other than the pool's and commingled pool property with assets of other persons. The defendant also allegedly distributed account statements that misrepresented changes in net asset value and income and loss realized. The day the complaint was filed, the court entered a consent order of preliminary injunction freezing the defendant's assets, protecting and granting the Commission access to defendant's books and records, and enjoining future violations. The court subsequently entered an order finding the defendant in contempt for failing to divulge the location of all customer funds, as required by the preliminary injunction. The defendant was jailed on May 8, 1996. *CFTC v. Willey*, Civ. No. 96-0200 (E.D. Wash. filed April 9, 1996).

On April 17, 1996, the Commission filed an injunctive action against Christopher Schafer and Peter Urbani and two firms in connection with the fraudulent operation of a commodity pool and the mishandling of individual customer funds. According to the complaint, the defendants allegedly provided false reports and statements to investors in the pool and commingled customer funds. The day the complaint was filed, the court entered an ex parte order freezing the defendants' assets and protecting and granting the CFTC access to their books and records. The court subsequently entered consent preliminary injunctions enjoining future violations of the nature alleged and ordering an accounting of the defendants' assets. *CFTC v. Schafer*, Civ. No. 96-1213 (S.D. Tex. filed April 17, 1996).

On June 20, 1996, the Commission filed and simultaneously settled an administrative action against Oster Communications. In the order accepting the settlement and imposing sanctions, the Commission found that Oster violated the Act's anti-fraud and CTA registration provisions in connection with the sale of a computer software trading system owned by JDI Limited, Inc. In particular, the order finds that Oster

joined JDI in the marketing, sale, and support of the trading system by, among other things, supplying JDI with computer hardware, software and commodity quotes at no charge, distributing promotional material and collecting names and addresses of prospective customers, and leading customers to believe that Oster was a participant in the venture. The Commission found that Oster was required to be registered as a CTA by virtue of its joint activity with JDI, notwithstanding the fact that Oster and JDI are independent firms. The Commission also found that Oster and JDI's joint activity resulted in an independent registration obligation on the part of each firm. As a consequence of the joint conduct, Oster also was found liable for fraud committed by JDI employees. Oster consented to the entry of a cease and desist order and agreed not to, either directly or jointly with others, provide advice concerning commodity futures and options contracts, without being registered. *In re Oster Communications, Inc.*, CFTC Docket No. 96-6 (filed June 20, 1996). The Commission also filed an amended injunctive complaint in *CFTC and the State of Florida v. JDI Limited, Inc.*, Civ. No. 95-Civ. 622 (S.D. Fla. filed Mar. 6, 1995), charging Oster with acting as an unregistered CTA and with violating the anti-fraud provisions of the Act and Commission Regulations in connection with its relationship with JDI. Simultaneously with the filing of the amended injunctive complaint, Oster consented to an order of permanent injunction and to disgorge at least \$670,000 for the benefit of defrauded JDI customers.

On July 1, 1996, the Commission filed an injunctive complaint against Donald Chancey and a firm controlled by him. The allegations stem from the defendants' solicitation of at least 19 customers to invest more than \$3 million in a commodity pool. The complaint alleges that the defendants cheated and defrauded customers by misrepresenting significant profits, misrepresenting the pool's performance, misrepresenting and failing to disclose the risks of trading futures contracts, and misrepresenting the circumstances under which defendants would derive income from the pool. The complaint further alleges that the defendants invested only \$703,000 of the \$3 million obtained from customers. Chancey paid himself a salary and bonus from some of the funds but the majority are unaccounted-for. Of the amount invested, over 50 percent was lost in trading. Defendants, however, continued to represent that trading was profitable. The day the complaint was filed, the court entered an *ex parte* order against the defendants in this action, freezing their assets, appointing a receiver, and protecting and requiring access to books and records. *CFTC v. Chancey and Southeastern Venture Partners Group*, Civ. No. 7:96-61 (M.D. Ga. filed July 1, 1996).

On July 1, 1996, the Commission filed an injunctive complaint alleging that Edward Schroeder, a Trust controlled by him, and an individual who acted as an unregistered AP violated the anti-fraud and registration provisions of the Act in connection with the operation of a commodity pool. According to the complaint, the defendants, through misrepresentations and false statements, solicited approximately 40 customers to participate in a commodity pool. Rather than invest the funds as represented, the defendants allegedly commingled the funds with assets of other persons and converted over \$3 million in customer funds to their own use. The defendants also allegedly suffered over \$1 million in commodities trading losses while assuring customers that they were earning high profits. The day the complaint was filed, the federal district court issued an *ex parte* order freezing the defendants' assets and granting Commission access to and protecting books and records. The court subsequently entered a preliminary injunction continuing the previously entered relief and enjoining future violations of the nature alleged. The preliminary

injunction also requires Schroeder to make a full accounting of customer funds with the court. *CFTC v. Schroeder*, Civ. No. 96-5895 (C.D. Cal. filed July 1, 1996).

On July 29, 1996, the Commission filed an injunctive action alleging fraud in connection with an individual's activities as an unregistered CPO. According to the complaint, Thomas Deniz solicited pool participants with misrepresentations of profits, used funds from new participants to pay "interest" to other participants and commingled pool funds with his own. The complaint alleges that the defendant sent false statements to some participants which indicated a rate of return in excess of 25% while losing nearly 50% of the principal amount he deposited in a commodity trading account carried in his own name. The day the complaint was filed, Deniz consented to the entry of a preliminary injunction freezing his assets, protecting and granting Commission access to books and records, and enjoining future violations of the nature alleged. *CFTC v. Deniz*, Civ. No. 96-5895 (E.D. Cal. filed July 29, 1996).

The Commission filed a four-count injunctive complaint alleging that Everett Hobbs violated the Act by committing fraud in connection with acting as an unregistered commodity pool operator. According to the complaint, Hobbs advertised the pool in a fraudulent manner and pooled in excess of \$375,000 from at least 25 customers which he commingled with his own personal funds. The complaint further alleges that the defendant failed to register as a commodity pool operator. The day the complaint was filed, the federal district court issued an ex parte order freezing the defendant's assets and granting Commission access to books and records. The court subsequently entered a temporary restraining order continuing the previously ordered relief, prohibiting the destruction of books and records, and prohibiting further violations of the Act or solicitation of new funds or accounts. On September 5, 1996, the court entered a consent order of preliminary injunction. The preliminary injunction enjoins future violations of the nature alleged, continues the asset freeze and other previously ordered relief, and requires an accounting. *CFTC v. Hobbs*, Civ. No. 96-5946 (E.D. Cal. filed August 13, 1996).

On September 23, 1996, the Commission, with the Arizona Corporation Commission as co-plaintiff, instituted injunctive proceedings against Anthony Andrews, Marvin Pendergraft and two firms controlled by them. The ten-count complaint alleges that the defendants committed fraud while acting as an unregistered CPO and FCM. The defendants are alleged to have solicited and accepted funds from investors for trading in individual commodity futures trading accounts. It is alleged that, instead of establishing separate accounts as represented, the defendants commingled and misappropriated funds, and then mailed fictitious account statements to their customers reflecting trades and profits that had never been made. The complaint further alleges that the defendants violated Arizona law by selling unregistered instruments and committing fraud in connection with such sales. The day the complaint was filed the federal district court entered ex parte and temporary restraining orders freezing the defendants' assets and protecting and granting Commission access to books and records. The order also prohibits future violations of the nature alleged in the complaint and future sales solicitations by the defendants. *CFTC and the Arizona Corp. Comm'n v. United Metals Trading Corp.*, Civ. No. 96-2185 (D. Ariz. filed Sept. 23, 1996).

On September 30, 1996, the Commission filed a six-count injunctive complaint against Eugene Walter in connection with a commodities trading scheme. According to the complaint, Walter employed material misrepresentations, omissions, and other

fraudulent devices in soliciting or encouraging customers to (1) place funds in Walter's own futures and options trading account and share in his ostensible trading profits, and (2) open discretionary futures and options accounts under Walter's sole control. Walter allegedly did not trade the pooled funds as represented, misappropriated certain of the funds, and sent false account statements representing that trading occurred as represented and was profitable. Walter also is charged with acting as an FCM without being so registered and failed to provide required disclosure documents and written monthly account statements. *CFTC v. Walter*, Civ. No. 3-96CV2734T (N.D. Tex. filed Sept. 30, 1996).

The Commission instituted injunctive proceedings against Meca International, its president and another individual on September 30, 1996. The seven-count complaint alleges violations of the anti-fraud and registration provisions of the CEA and Commission Regulations in connection with the operation of a commodity pool. Both individuals are alleged to have made fraudulent misrepresentations in soliciting customers to invest in Meca. The misrepresentations alleged included statements limiting the risk of loss, the use of investors' funds and the actual profits made. According to the complaint, although some funds were used to trade futures contracts, those transactions did not result in profits and some funds were never invested but rather were allegedly misappropriated by the defendants. The defendants also are charged with failing to provide required disclosure documents. *CFTC v. Meca Int'l, Inc.*, Civ. No. 96- 74525 (E.D. Mich. filed Sept. 30, 1996).

### **Manipulation and Trade Practice Cases**

On July 10, 1996, the Commission filed and simultaneously settled an administrative action against Fenchurch Capital Management, Ltd. The Commission's order finds that Fenchurch attempted to and did manipulate the value of its position on the Ten Year U.S. Treasury Note futures contract by cornering the available supply of the cheapest-to-deliver notes. According to the Commission's order, Fenchurch increased its position in the issue through a series of repurchase market transactions at a time when the notes were in tight supply. Fenchurch exacerbated the tightness in the supply of the cheapest-to-deliver notes by increasing its position and intentionally withholding the notes from the market with no legitimate economic purpose. The Commission's action and its underlying investigation were coordinated with the SEC and the Chicago Board of Trade, both of which filed related charges. In settling the CFTC's action, Fenchurch consented to the entry of a cease and desist order and to various undertakings related to its Treasury market trading. Fenchurch also agreed to conduct a review of its policies and procedures and, if necessary, to formulate and implement reforms or augmentations of those policies and procedures. Fenchurch agreed to pay a civil monetary penalty of \$600,000 to the U.S. Treasury, which also satisfies Fenchurch's obligations under the SEC's consent order of permanent injunction. *In re Fenchurch Capital Management, Ltd.*, CFTC Docket No. 96-7 (filed July 10, 1996).

The Commission filed a five count administrative complaint alleging that Ronald Schiller, Eugene Chesrow, Jr. and Emmett Whealan, all floor brokers in the live cattle futures pit at the CME, engaged in a variety of illegal trading practices. According to the complaint, Schiller defrauded customers by allocating favorable trades executed on their behalf into his personal account, allocated unfavorable trades to his customers' accounts, and changed prices and quantities on trades he made on behalf of customers which were detrimental to his customers. Schiller also is alleged to

have indirectly bucketed customer orders, filled opposing buy and sell customer orders by offset and various other forms of noncompetitive trading. The other two floor brokers are alleged to have entered into noncompetitive trades with Schiller that permitted him to accomplish the unlawful trades. All three respondents are charged with various recordkeeping violations which resulted in subverting the audit trail of trading activity relied upon by the markets, the exchange and the Commission. *In re Schiller*, CFTC Docket No. 96- 4 (filed April 18, 1996).

The Commission filed an administrative complaint charging Mark Sitzmann with breaching his fiduciary duty to his employer by trading ahead of its orders and by concealing his personal trading from it. David Sitzmann, Mark's brother, is charged with aiding and abetting the fraud. According to the complaint, Mark Sitzmann was responsible for implementing his employer's hedging strategies. Before placing orders for his employer's account he would place orders for his personal account in the same contract and on the same side of the market as orders he thereafter placed for his employer's account. David Sitzmann allegedly aided and abetted the fraud by accepting his brother's orders through an IB owned by David Sitzmann. Both respondents also are charged with various recordkeeping violations. *CFTC v. Sitzmann*, CFTC Docket No. 96-5 (filed April 18, 1996).

### **Reporting, Recordkeeping and Financial Cases**

On September 25, 1996, the Commission issued an order instituting an administrative proceeding against Deloitte & Touche LLP, and Thomas Lux, a former partner of Deloitte. Simultaneously with the filing of the complaint, the Commission accepted offers of settlement from both Deloitte and Lux. The allegations arose from Deloitte's 1993-1994 audit of an FCM, for which Lux was the supervising partner. The order finds that Lux failed to conduct the audit of the FCM's financial statements in accordance with generally accepted auditing standards and failed to investigate properly and report on material inadequacies in the FCM's internal controls. The order finds Deloitte liable for Lux's violations. Deloitte settled the charges against it by consenting to pay a civil monetary penalty of \$100,000 and to comply with certain undertakings. For a period of four years, the concurring reviewer on each and every audit of a Commission registrant will have at least five years relevant experience and in each year any Deloitte partner acts as a concurring reviewer on audits of FCMs, such partner shall take at least eight hours of relevant continuing professional education. Lux settled the charges against him by agreeing to the entry of a cease and desist order and the entry of a Commission censure. *In re Deloitte & Touche*, CFTC Docket No. 96-10 (filed Sept. 25, 1996).

On January 24, 1996, the Commission filed and simultaneously settled an administrative action finding that Refco, Inc., violated the segregation requirements of the Act and Commission Regulations by combining the accounts of five separate entities and that Refco failed to supervise diligently the handling of these accounts by its employees. To settle the action, Refco, without admitting or denying the allegations, agreed to the entry of a cease and desist order and the payment of a \$925,000 civil monetary penalty. Refco also agreed to make specific changes in its internal controls and reporting lines governing compliance and the establishment and handling of multiple accounts. For example, Refco's Director of Compliance and Senior Officer in Charge of Operations must now approve in writing certain customer account information and the Senior Officer in Charge of Operations must also pre-

approve all consolidations of multiple accounts. *In re Refco*, CFTC Docket No. 96-2 (filed Jan. 24, 1996).

The Commission filed an administrative action against Gary Bielfeldt, Carlotta Bielfeldt and Bielfeldt & Co., alleging that Gary Bielfeldt violated the CFTC's speculative limits for corn futures trading by: (1) acting pursuant to an express or implied agreement with various family members and acquaintances; and (2) controlling the trading in the futures trading accounts of his wife. All three respondents are charged with various recordkeeping violations. *In re Bielfeldt*, CFTC Docket No. 96-1 (filed Oct. 31, 1996).

### **Unlawful Off-Exchange Instrument Cases**

On April 1, 1996, the Commission, with the Arizona Corporation Commission as co-plaintiff, filed an injunctive action charging AYM Financial Corp. and three individuals associated with AYM with violating the Act by engaging in fraud in connection with the offer and sale of illegal off-exchange futures contracts to the general public. According to the complaint, the defendants exaggerated the profit potential associated with the foreign currency investments being offered and sold, and allegedly "bucketed" customer orders and converted customer funds to defendants' own use. The day the complaint was filed, three of the four defendants consented to the entry of permanent injunctions enjoining future violations of the nature alleged, freezing their assets, and protecting and granting Commission access to books and records. The permanent injunctions also prohibit those defendants from soliciting or accepting any future funds in connection with commodity futures or options and from acting in any capacity requiring registration under the Act. Those three defendants were ordered to make an accounting and they agreed to make disgorgement in the future upon application of the Commission in an amount to be determined by the court. Subsequent to the filing of the complaint, the fourth defendant agreed to the entry of a preliminary injunction enjoining future violations of the nature alleged, and granting Commission access to books and records. *CFTC and Arizona Corp. Comm'n v. AYM Financial Corp.*, Civ. No. 96-2640 (E.D. Pa. filed April 1, 1996).

### **Registration, Fitness and Other Proceedings**

In September, the Commission filed two cases and issued orders pursuant to which the respondents agreed to stop providing advisory services to Internet subscribers until they register as CTAs and comply with applicable regulatory requirements.

In one case, J. Spencer Brown, doing business as ProTrade, consented to the entry of an order finding that he has been operating as an unregistered CTA in violation of the Act and preventing him from violating the Disclosure Document and hypothetical performance requirements of the Commission's regulations. Brown voluntarily withdrew his page when contacted by the Division, which was less than two weeks after it was posted. At the time the page was withdrawn, Brown had not successfully solicited any customers. *In re Brown*, CFTC Docket No. 96-8 (filed Sept. 3, 1996).

In the other case, Steven Marks also consented to the entry of an order which finds that he has been operating as a CTA without being registered as such and that he failed to provide his customers, or file with the Commission, the Disclosure Document as required. The Commission's order also directs Marks to refund all funds he received from subscribers to his service and to transmit an electronic mail

message over the Internet to all former subscribers notifying them of the action and of the Commission's Internet website. *In re Marks*, CFTC Docket No. 96-9 (filed Sept. 3, 1996).

During FY 1996, the Commission filed 11 statutory disqualification cases, including seven cases against floor broker or floor trader registrants or applicants who were subject to a statutory disqualification. *In re Augello*, CFTC Docket No. 96-1 (filed Dec. 26, 1996); *In re McBride*, CFTC Docket No. SD 96- 3 (filed Feb. 12, 1996); *In re Blumert*, CFTC Docket No. SD 96-4 (filed Mar. 7, 1996); *In Kelly*, CFTC Docket No. SD 96-6 (filed April 16, 1996); *In re Laner*, CFTC Docket No. SD 96-7 (filed May 17, 1996); *In re Geraghty*, CFTC Docket No. SD 96-9 (filed Aug. 7, 1996); and *In re Murphy*, CFTC Docket No. SD 96-10 (filed Sept. 11, 1996). In five of those cases, the Commission simultaneously settled the matter by granting conditional registration to the applicants. See *McBride*, *Blumert*, *Kelly*, *Laner*, and *Geraghty*.

On January 17, 1996, the Commission filed an injunctive action against Thomas Richards charging him with violating a Commission order. Richards had agreed to pay a \$200,000 civil monetary penalty to settle an administrative action filed in FY 1995. See *In re Richards*, CFTC Docket No. 95-12. He failed to do so. The injunctive complaint alleged that by failing to pay the civil monetary penalty as agreed in a Commission consent order, Richards violated the Act. The complaint sought an injunction, pre- and post- judgment interest on the unpaid amount, and imposition of a civil monetary penalty for violation of the Commission order. The defendant paid \$216,600 in settlement of the matter. *CFTC v. Richards*, Civ. No. 96-0334 (N.D. Ill. filed Jan. 17, 1996).

### **Cooperation With States and Other Federal Agencies**

The Commission continued to participate in the interagency Securities and Commodities Fraud Working Group. This group facilitates and encourages effective prosecution of securities and commodities fraud. Participants include various United States Attorneys, the SEC, the Federal Trade Commission, the FBI, the IRS, the Postal Inspection Service, the National Association of Attorneys General, state law enforcement officials, and various securities and futures exchanges. During FY 1996, the Commission also continued to participate in the interagency working group on telemarketing fraud, which was formed in FY 1992.

### **International Matters**

During FY 1996, through formal and informal information- sharing arrangements, the Division cooperated with and received assistance from foreign authorities in Belgium, Canada, the Cayman Islands, Denmark, France, Germany, Guernsey, Hong Kong, the Isle of Man, Korea, Japan, Jersey, Malta, Mexico, the Netherlands, the Philippines, New Zealand, Norway, the Peoples Republic of China, Spain, Switzerland, Turkey, and the United Kingdom.

During this fiscal year, the Commission signed two Memoranda of Understanding ("MOU") with foreign regulatory authorities. On October 5, 1995, the Commission signed an MOU and a supervisory Declaration with the Hong Kong Securities and Futures Commission ("SFC"). The MOU formalized the Commission's extensive history of cooperation with the SFC, particularly in battling cross- border fraud that has victimized investors in the United States. The MOU will enable the Commission

and the SFC to use their investigative powers to assist each other on an ongoing basis. The Declaration also will enhance the Commission's ability to supervise registrants engaged in managed futures activity in the U.S. and Hong Kong.

On September 16, 1996, the Commission and the New Zealand Securities Commission ("NZSC") signed an MOU concerning consultation and mutual assistance for the exchange of information. Under the MOU, the Commission and NZSC arranged to provide each other with the fullest mutual assistance permitted by U.S. and New Zealand law, including taking testimony and statements, obtaining information and documents, and conducting compliance inspections or examinations of futures transactions and futures businesses.

During FY 1996, the Division continued to represent the Commission as a member of Working Party No. 4 of the Technical Committee of the International Organization of Securities Commissions (IOSCO). This year the working party continued its work on cross-border measures available to protect the interests and assets of defrauded investors, on the exchange of information among regulators and self-regulatory organizations, and on a new mandate concerning challenges for securities and futures regulators posed by the increasing use of computer networks such as the Internet.

Also during FY 1996, Division staff continued to act in an advisory capacity to the U.S. delegation to the Financial Action Task Force, ("FATF"), an international body dedicated to promoting the development of effective anti-money laundering controls and enhanced cooperation in money laundering investigations. In 1990, FATF issued a 40-point list of recommendations on money laundering countermeasures and currently is reviewing and proposing certain modifications to the recommendations, including the mandatory reporting of suspicious transactions. This later modification may impact on the futures industry by ultimately requiring that FCMs and other registrants report suspicious transactions.

### **Criminal Referral and Assistance**

The Division provided assistance to the Department of Justice and other federal and state agencies in commodity-related criminal proceedings, which produced the following results during the fiscal year:

- The conviction of an unregistered individual who fraudulently operated a commodity pool and his sentencing to 37 months imprisonment followed by two years supervised release and an order to make \$425,851 in restitution.
- The indictment of a foreign bank doing business in the U.S. on charges of conspiracy to defraud the Federal Reserve Board and making false entries in bank records. A bank employee was indicted on charges of money laundering, misapplication of bank funds, making false entries in bank records. The charges stemmed from the employee's trading, in part, in various futures contracts and attempts to conceal losses resulting from that trading.
- The serving of state criminal search warrants on defendants to a Commission action simultaneously with service of the ex parte order.

**Table 1**

**FISCAL 1995 ENFORCEMENT CASES**

**LISTED BY PROGRAM AREA**

Name of Case/Press Release No./Date Filed

**Commodity Pool Operator and Commodity Trading Advisor Cases**

CFTC v. Maseri/3877-95/10/16/95

CFTC v. Besner/3885-96/01/04/96

CFTC v. Shaner/3887-96/01/04/96

CFTC and SEC v. Tropiano/3886-96/01/11/96

CFTC and Arizona Corp. Comm'n v. Prism Financial Corp./3892-96/02/20/96

In re R&W Technical Services, Ltd./3996-95/03/19/96

CFTC v. Indihar/3900-96/04/02/96

CFTC v. Willey/3912-96/04/09/96

CFTC v. Schafer/3914-96/04/17/96

In re Oster Communications, Inc./3921-96/06/20/96

CFTC v. Chancey/3929-96/07/01/96

CFTC v. Schroeder/3925-96/07/01/96

CFTC v. Deniz/3928-96/07/29/96

CFTC v. Hobbs/3933-96/08/13/96

CFTC and Arizona Corp. Comm'n v. United Metals Trading Corp./3944-96/09/23/96

CFTC v. Walter/3947-96/09/30/96

CFTC v. Meca Int'l, Inc./3946-96/09/30/96

**Manipulation and Trade Practice Cases**

In re Fenchurch Capital Management, Ltd./3922-96/07/10/96

In re Schiller/3905-96/04/18/96

In re Sitzmann/3904-96/04/18/96

**Reporting, Recordkeeping and Financial Cases**

In re Bielfeldt/3871-96/10/31/95

In re Deloitte & Touche/3943-96/09/25/96

In re Refco/3888-96/01/24/96

**Unlawful Off-Exchange Instrument Cases**

CFTC and the State of Arizona v. AYM Financial Corp./3898-96/04/01/96

**Registration, Fitness and Other Cases**

In re Augello/None/12/26/95

In re CCFI, Inc./None/12/26/96

In re McBride/None/02/12/96

In re Blumert/None/03/07/96

In re Sharp/3897-96/03/19/96

In re Kelly/3906-96/04/16/96

In re Laner/None/05/17/96

In re Romero/None/08/06/96

In re Geraghty/None/08/07/96

In re Brown/3935-96/09/03/96

In re Marks/3935-96/09/03/96

In re Murphy/3942-96/09/11/96

In re Saxena/3945-96/09/30/96

CFTC v. Richards/None/01/17/96

**Table 2**

**INJUNCTIVE ACTIONS**

**Fiscal Year - Actions Initiated - Defendants Named**

1987 - 11 - 32

1988 - 14 - 25

1989 - 15 - 34

1990 - 11 - 33

1991 - 11 - 18

1992 - 18 - 50

1993 - 11 - 60

1994 - 10 - 34

1995 - 11 - 27

1996 - 17 - 45

**Table 3**

**ADMINISTRATIVE ACTIONS**

**Fiscal Year - Actions Initiated - Respondents Named**

1987 - 22 - 59

1988 - 40 - 100

1989 - 35 - 106

1990 - 37 - 81

1991 - 31 - 51

1992 - 36 - 79

1993 - 45 - 72

1994 - 33 - 60

1995 - 41 - 72

1996 - 21 - 32

## **Division of Economic Analysis**

One of the Commission's principal responsibilities is to assure that futures markets operate competitively, free of manipulation or congestion, and serve the risk-shifting and price-discovery needs of the U.S. and world economies. Division of Economic Analysis (DEA) programs -- market analysis, market surveillance, and market research -- are designed to accomplish these objectives.

### **Market Analysis**

The market analysis section reviews applications to trade futures or option contracts and all subsequent rule changes that have economic significance. Improperly designed contracts can increase the chance of cash, futures, or option market disruptions and undermine the usefulness and efficiency of a market. To avoid these consequences, the market analysis section considers whether the terms and conditions of a proposed contract or subsequent rule amendments to the contract conform to commercial practice and provide for adequate deliverable supplies. In the case of cash-settlement contracts, the staff evaluates the cash-settlement procedure to assure that it will be based on a reliable price series reflecting the underlying cash market. The market analysis staff considers a contract's potential commercial usefulness for hedging and price basing and other public interest considerations.

During FY 1996, the subprogram completed the economic reviews of 42 applications for new futures contracts and 50 applications for new option contracts. The subprogram also completed 106 rule amendment packages for existing futures and option contracts. The total of 92 new contracts approved in FY 1996 was the highest total for a single fiscal year.

The record number of approvals this fiscal year was made possible by the Commission's commitment to streamline its review process. Aware that the U.S. regulatory system must be responsive to market changes for the domestic futures and option markets to remain competitive, the CFTC has attempted to facilitate innovation and reduce the costs of regulation without reducing its commitment to maintaining the integrity of the markets and customer protection.

The average processing time for applications for contract market designation has fallen by more than half since the program began. In addition, the backlog of pending contracts has been eliminated; new applications are considered promptly upon submission. Most significantly, even though the number of new contracts submitted last fiscal year was at a record level, the average review time for processing this unprecedented number of new contracts remained at about three months.

### **New Futures Contracts**

Electricity Futures. The NYMEX Palo Verde and California Oregon Border electricity futures contracts were the first futures contracts ever approved by the Commission in this commodity. These contracts were designed to meet the specialized hedging needs of firms in the electricity industry, including utilities that are becoming more actively involved in cash market transactions as a result of ongoing deregulation.

Corn Yield Insurance Futures. The Commission approved five CBT corn yield insurance futures contracts based on the States of Illinois, Indiana, Nebraska, and Ohio, as well as the U.S. as a whole. These contracts provide a vehicle for crop insurance companies and other cash market entities to hedge financial risk related to fluctuations in the yields of corn.

Other Agricultural Futures. Also during FY 1996 the CSCE milk and butter futures contracts and the CME fluid milk futures contract were approved. These contracts provide a risk-shifting vehicle for dairy cooperatives, producers, resellers, and end-users. In addition, the NYCE potato futures contract was approved by the Commission.

Other Nonfinancial Futures. Three energy futures, the NYMEX Permian Basin and Alberta natural gas contracts and its New York Harbor conventional gasoline contracts, and a forest product future, the CME oriented-strand board contract were approved.

Debt and Equity Based Futures. During FY 1996, the Commission approved several innovative financial futures contracts based on the debt and equities of emerging markets. These include the NYCE emerging market debt index futures contract, representing the dollar-denominated Brady par bonds of the four largest Brady bond issuers. The Commission also approved three CBT futures contracts based on indexes representing multiple issues of Mexican, Argentine, and Brazil Brady bonds, as well as seven CME contracts, each representing a single issue of Mexican, Argentine, Brazilian, or Venezuelan Brady bond debt. These contracts, the first approved in this commodity area, provide international portfolio managers and other institutional investors with a means of hedging portfolios containing government debt of emerging foreign markets. The Commission approved two stock index contracts based on Mexican equities -- the CME Mexico 30 and the IPC contracts, representing the most active stocks listed in Mexico.

Domestic Stock-Index Futures. Several domestic stock-index futures contracts were approved, including the CME S&P 500/BARRA value index and S&P 500/BARRA growth index, each representing key components of the S&P 500 index. The CME NASDAQ 100 index contract, which represents the 100 largest stocks traded on the NASDAQ over-the-counter market and the NYFE PSE technology index contract, which represents the stocks of firms in the technology sector, were approved. These contracts provide equity portfolio managers and other institutional investors with an additional means of hedging their portfolios.

Yield Differential Futures. Several futures contracts approved are designed to meet the hedging needs of institutions exposed to risk arising from changes in the yield differentials between U.S. Treasury instruments. These contracts include the CBT's four Treasury yield curve spread futures contracts involving the following maturities: 30-year/3-year, 10-year/3-year, 5-year/3-year, and 3-year/2-year.

Currency Futures. Also approved were futures contracts which address the hedging needs of institutions having exposure to foreign currency exchange rate risk not directly involving the U.S. dollar. These contracts include the four CME currency futures contracts on the following currency combinations: deutsche mark/French franc, deutsche mark/Italian lira, deutsche mark/Swedish krona, and deutsche

mark/Spanish peseta. The CME Brazilian real and the MCE Mexican peso currency futures contracts also received approval.

### **New Option Contracts**

The 50 option contracts approved by the Commission in FY 1996 were all options on futures. These include 18 nonfinancial options -- the NYMEX options on its Permian Basin and Alberta natural gas contract and the options on its Palo Verde and California Oregon Border electricity futures contracts, the CBT options on its five corn yield insurance futures contracts and the options on its diammonium phosphate and anhydrous ammonia fertilizer futures contracts, the NYCE option on its potato futures contract, the CME options on its fluid milk, butter, and oriented-strand board futures, the CSCE options on its milk and butter futures contracts and the MGE option on its barley futures contract.

The Commission approved 11 options submitted by the CBT and CME for their Brady bond futures contracts, as well as the NYCE option on the emerging market debt index futures contract. In addition, the Commission approved the CME options on the Mexico 30 and IPC Mexican stock index futures, as well as the CME options on the following financial futures -- the four currency cross rates, the S&P 500/BARRA value index, the S&P 500/BARRA growth index, the NASDAQ 100 stock index and the Brazilian real. Also approved this fiscal year were the CBT's four options on its yield curve spread futures contracts and its option on its 30-day Fed funds futures contract and five NYFE options based on four currency futures contracts and the PSE technology index contract.

### **Rule Changes**

During FY 1996 the staff completed the economic reviews of 98 rule amendment packages for existing futures contracts and 8 rule amendment packages for existing option contracts. The Commission approved:

- oMajor revisions to the CME and MCE hogs futures contract to provide for cash settlement in lieu of physical delivery.
- oSubstantive revisions to the CME butter and MGE barley futures contracts regarding the delivery points, quality standards, and contract size, as well as proposals to reactivate trading in those dormant contracts.
- oAmendments to the CSCE nonfat dry milk and cheddar cheese futures contracts with respect to the quality standards.
- oRevisions to the delivery procedures for the CSCE sugar #11 futures contract.
- oChanges to the MGE shrimp futures contracts regarding quality standards and delivery procedures.
- oA change to the daily price limit provisions for the NYCE cotton #2 futures contract.
- oAmendments to the NYMEX New York Harbor unleaded gasoline futures contract to revise the product quality standards regarding the delivery of reformulated gasoline,

in connection with the implementation of rules to meet Environmental Protection Agency requirements.

oAmendments to the requirements for eligible delivery facilities on the CBT fertilizer futures contracts.

oProposals to reactivate trading in the dormant CBT Eurodollar and CME Federal funds rate futures contracts, as well as substantive revisions to the terms and conditions of those contracts.

oRevision to the price quotation format and other changes to the NYFE currency futures contracts.

oRevisions to the speculative position limit levels for several futures and option contracts.

oA flexible (flex) option system adopted by the CSCE for the sugar #11 contract, allowing traders to more precisely specify certain option terms to enhance risk management.

### **Market Surveillance**

The objective of the Commission's market surveillance program is to maintain free and competitive futures and option markets. The presence of manipulation and other anticompetitive practices could undermine the capacity of these markets to perform the economic functions of price discovery and risk management. The market surveillance program is designed to protect these functions by monitoring daily all active futures price relationships and fundamental supply and demand conditions. The market surveillance staff works closely with the exchanges and other government agencies to deal with any potential market threats that may develop. The Commissioners and senior CFTC staff are apprised of potential problems and significant market developments at weekly surveillance briefings so that the Commission may take prompt regulatory action when warranted.

### **Copper**

In the Fall of 1995 serious surveillance concerns regarding the copper market developed into a formal, multi-jurisdictional investigation of copper trading. Following the opening of U.S. delivery points on the LME copper contract, a sharp increase in the price backwardation on that market (with the price of near months exceeding the price of later months), and the establishment of an LME cash price premium over Comex copper prices led to a depletion of Comex copper stocks. The Commission sought the assistance of British regulators in assessing the international scope of the copper problem and worked extensively with Comex surveillance on domestic market concerns. In the midst of the Commission's investigation, Sumitomo Corporation announced that it had fired its head copper trader, who reportedly caused that Japanese company to lose about \$2.6 billion. Market surveillance staff provided extensive support to the Commission's examination of the copper market.

## **Agricultural Markets**

Corn and wheat cash and futures prices increased sharply in the spring of 1996 to historically high levels due to strong domestic and export demand and serious losses to the winter wheat crop. Deliverable supplies on all of the CBT grain and soybean contracts diminished to very low levels as the crop year progressed. Aggressive surveillance, by both Commission and exchange staff, was necessary to assure that no price distortion occurred.

The closing of several grain elevators regularly used for delivery on the CBT contracts accentuated surveillance concerns and prompted extensive review by CFTC of the need for revisions to the delivery terms for wheat, corn, and soybean futures contracts.

Record-high corn prices also exacerbated problems with hedge-to-arrive contracts between grain producers and elevators. Surveillance staff monitored the extent to which these forward and deferred delivery contracts were hedged in the corn futures market and the possible impact on futures prices as those hedges were liquidated or rolled forward.

Declines in cattle futures prices in the spring, while feed costs were rising significantly, renewed cattlemen's concerns about the impact of futures trading on the cash price of cattle. The surveillance staff compiled special analyses of the aggregated futures and option positions and net trades of packers, feeders, and commodity funds and presented the results at meetings with cattlemen's groups.

An increase in coffee prices as certificated stocks for delivery fell to the lowest levels of the decade due to a drop in Brazilian coffee production also prompted enhanced surveillance of that market.

## **Energy Markets**

Sharp price increases in several energy futures led CFTC to a special review of fundamental supply and demand factors, as well as closer surveillance of those markets. Crude oil prices reached post-Gulf War highs in April 1996, due to increased oil demand, curtailed production, and low inventories. Gasoline prices also rose sharply on the basis of preseasonal strength in demand, refinery outages, and a decline in inventories to fifteen-year lows. Natural gas prices increased sharply at futures delivery points after the long, cold winter in the eastern U.S. depleted stocks and created an usually high demand.

## **Financial Futures Markets**

Surveillance staff devoted a substantial amount of time to monitoring events and large trader activities in financial cash and futures markets during FY 1996. Financial markets experienced considerable volatility and increased trading volume as stock index levels periodically incurred several large declines on the road to successive record highs. Long-term interest rates fell until February, when the Federal Reserve tightened monetary policy, and then rose substantially. The surveillance staff monitored these markets and shared pertinent information with other financial regulators.

## **Other Activities**

The surveillance staff published final rules amending large trader reporting requirements, particularly the identification of large trader accounts, and is in the process of redesigning the large trader reporting system.

Surveillance staff continued to monitor and review margin levels for stock index futures and option contracts. The staff also prepared material for the annual report to the Federal Reserve Board on the Commission's exercise of this delegated margin authority.

## **Market Research**

The market research section conducts research on major policy issues facing the Commission, assesses the economic impact of CFTC regulatory changes on the futures markets and other sectors of the economy, participates in the development of Commission rulemakings, provides expert economic support and advice to other Commission divisions, and conducts special market studies and evaluations.

During FY 1996, staff provided critical technical support for the assessment of exchange audit trail systems undertaken by the Commission in FY 1995. As members of the Commission's off-exchange task force, research staff were active in the economic analysis of newly-developed derivative instruments to the extent that such instruments raised questions of regulatory jurisdiction. Also, staff provided analytic support to the Division of Trading and Markets in their administration of new risk assessment rules.

The research section made significant contributions to several Commission enforcement efforts involving various types of derivative instruments. The research staff also provided support in several cases involving the alleged sale of illegal off-exchange futures.

In addition, the research staff examined economic issues relating to exchange-proposed amendments to various futures and option contracts, and conducted an analysis of the potential hedging uses of several newly-proposed futures contracts.

## Division of Trading and Markets

The Commission's Division of Trading and Markets (T&M) oversees the compliance activities of the commodity futures industry's self-regulatory organizations (SROs), which include the U.S. commodity exchanges and the National Futures Association (NFA). T&M:

- Conducts trade practice surveillance.
- Performs financial and sales practice compliance audits of selected registrants.
- Reviews exchange applications to trade new futures and option contracts.
- Considers exchange and futures association rule amendments and submissions.
- Oversees the registration and ethics training of industry professionals.
- Drafts Commission regulations which govern the operations of exchanges and registered futures associations.
- Drafts requirements for registration, disclosure, minimum financial standards, segregation of customer funds, managed funds, supervision and internal controls, and other activities of regulated entities.
- Serves as the focal point for the Commission's global regulatory coordination efforts.
- Develops regulations and policies governing foreign and cross-border transactions.

Highlights of T&M's activities during FY 1996 include the following:

### Electronic Media

The Commission approved the publication of an interpretative release developed by T&M to assist managed futures professionals using the Internet and other electronic media. The Release cautions persons who wish to use the Internet to provide commodity interest trading advice, to seek participants for a commodity pool, or to recommend advisors or trading programs, that they must comply with relevant registration requirements. The use of the Internet or other electronic media to solicit managed accounts or pool participants requires that a Disclosure Document be delivered in accordance with Commission rules whether in hard-copy form or by acceptable electronic means.

The Commission published proposed amendments to facilitate the use of electronic media by commodity pool operators (CPOs) and commodity trading advisors (CTAs). The proposed revisions clarify the application of formatting, filing and disclosure requirements that were adopted for paper documents to electronic communications.

### Audit Trail

- The Commission issued a report which assesses exchange compliance with the heightened audit trail standards imposed by the Futures Trading Practices Act of 1992 (FTPA). The report includes further steps to be taken by the exchanges and by the Commission to assure future compliance with the FTPA's audit trail requirements and to address pending exchange dual trading petitions. In summary, the report states that:

- (1) The Commission conducted re-tests of both the Chicago Mercantile Exchange's (CME) and the Chicago Board of Trade's (CBT) audit trail systems and found that, although significant improvement has been made, both exchanges failed to establish a 90 percent verifiability rate for trade times and sequence. CME and CBT will report by November, 1996, how they intend to demonstrate to the Commission that they have achieved a 90 percent verifiability rate by January 1, 1997.

(2) The Commission found that Comex passed a self-test of its audit trail system in June 1996 and the Commission will retest Comex (pending a detailed analysis of these results in September 1996). Staff will continue to assess the extent to which exchanges affected by 1995 standards are in compliance with the audit trail standards.

- T&M organized briefings for Commission staff by industry representatives on their plans and perspectives for technological improvements related to order routing, trade execution, trade tracking, surveillance systems, and clearing. The Commission issued a public summary of the information presented at the briefings and is taking the information into account in formulating regulatory policy.
- T&M staff prepared exemptions issued by the Commission for New York Futures Exchange (NYFE), the Kansas City Board of Trade (KCBT), and the Philadelphia Board of Trade (PBT) under the Commission's authority to exempt low-volume exchanges from the heightened audit trail standards. The Commission granted an exemption to the Minneapolis Grain Exchange (MGE), contingent upon implementation of recommendations made in T&M's September 1996 rule review.
- T&M staff prepared and the Commission approved rule amendments that prohibit the obliteration of information written on trading records and otherwise enhance the protections in place to assure that trading records are properly prepared and retained.
- The Commission held a roundtable discussion in Chicago which addressed automation issues at the exchanges and clearinghouses.

## **International**

- T&M organized the document signing ceremony in Boca Raton, Florida, at which 14 international futures regulators signed the "Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations." T&M also encouraged the development of the complementary Memorandum of Understanding and Agreement (MOU) signed by 49 international futures exchanges and clearing organizations at Boca Raton. The Declaration and MOU evolved from the plan of action agreed at the meeting in Windsor, England, convened in May 1995 by the CFTC and U.K. Securities Investment Board (SIB).
- With the U.K. SIB, T&M staff developed the "Final Report from the Co-Chairmen of the May 1995 Windsor Meeting to the Technical Committee of IOSCO (August 1996)." The Report provides the perspective of the CFTC and

U.K. SIB on the substantial progress that has been made in implementing the May 1995 Windsor Declaration initiatives. T&M staff also provided support to several IOSCO committees during the year.

- Based on experiences gained from sharing information during the Sumitomo copper market events, T&M staff helped to develop the CFTC and U.K. SIB joint proposal to the Technical Committee of the International Organization of Securities Commission (IOSCO) to develop a mechanism for streamlining the process by which information is shared under such arrangements.
- Also, in response to Sumitomo, T&M designed and provided technical assistance to a conference cosponsored by the CFTC, Japanese Ministry of International Trade and Industry (MITI) and the U.K. SIB to discuss the special supervisory and other issues arising from physical delivery derivatives markets.
- T&M recommended the elimination of the requirement that the CFTC issue an order authorizing the offer and sale of a particular foreign exchange-traded commodity option before it can be offered or sold in the United States.
- T&M organized the Commission's annual training seminar for foreign futures authorities which took place in October 1996 at the Commission's Chicago regional offices and brought together 79 participants from more than 48 organizations representing 29 jurisdictions.
- T&M compiled the 1996 edition of "International Regulation of Markets, Products and Financial Intermediaries," which describes the various approaches to regulation of derivative markets in participating jurisdictions, including a section on managed money.

### **Financial Oversight**

- T&M actively monitored events in the copper markets relating to the approximately \$2 billion losses by the Sumitomo Corporation. T&M staff undertook a comprehensive risk assessment analysis in order to determine the exposure faced by U.S. brokers resulting from activities by their affiliates on the London Metal Exchange (LME), were in frequent contact with U.S. and foreign regulators and self-regulatory organizations and briefed members of the President's Working Group on Financial Markets. This event triggered the first use of the Declaration.
- The Commission amended its financial "early warning" system to require reporting by all futures commission merchants (FCMs) regarding substantial reductions in capital. In addition, the Commission conformed the minimum dollar amount of adjusted net capital for FCMs and introducing brokers (IBs) to the National Futures Association's (NFA) requirements.
- T&M staff clarified its guidance regarding third party custodial accounts, in particular, reminding custodians that such accounts are to be under the control of the carrying FCM, and not the customer.

- The Commission held an interactive symposium on Risk Management and Internal Controls in Washington, D.C.

### **CPO/CTA Matters**

- The Commission issued an Advisory that provides relief from disclosure, reporting, and recordkeeping requirements for registered commodity pool operators of offshore pools under certain circumstances. This Advisory replaces the relief that had previously been granted only on a case-by-case basis.
- T&M issued an Advisory to permit registered CPOs and CTAs to present the required past performance for an offered pool or trading program in a capsule format that may include, subject to certain restrictions, performance data for the entire history of the offered pool or program where the history exceeds five years.

### **Broker Associations**

- T&M staff prepared and the Commission approved a rule which requires exchanges to make a listing of each broker association's membership available to the public to facilitate greater visibility of the activities of these associations.

### **Contract Markets**

The Contract Markets program of T&M reviews proposed exchange rules for consistency with the Commodity Exchange Act (CEA) and Commission regulations. The program also reviews rules proposed by the National Futures Association. In addition, staff conduct reviews to ensure that exchanges are enforcing their own rules.

### **Review and Approval of Exchange Rules**

During FY 1996, T&M reviewed, and the Commission approved, 150 new rules or rule amendments submitted by exchanges. T&M staff also reviewed and permitted 400 exchange rules to become effective. Significant exchange rules approved by the Commission or permitted to go into effect by T&M in FY 1996 include rules:

- Allowing the Chicago Mercantile Exchange (CME) to enhance its Globex electronic trade execution system by creating a wholly-owned subsidiary to function as a market maker for foreign currency futures contracts traded through the Globex system. CME also received approval to establish a pilot program to permit commodity trading advisors to trade on Globex for certain accounts.
- Enhancing the availability of trading in large-lot orders in currency futures and options by establishing an automated facility at the CME. CME also receive approval to give special handling to intermediate size orders.

- Listing agriculture products on Project A, the CBT's automated after-hours trading system, for the first time. Previously, only financial products had been traded through the after-hours system.
- Conforming the bankruptcy provisions of agreements among participants in the CME and the Intermarket Clearing Corporation (ICC) cross-margining program to revised Commission bankruptcy regulations. This process involved substantial dialogue and coordination between the CFTC and its regulatees on how the bankruptcy of an FCM involved in cross-margining would be handled.
- Allowing the CME to prohibit the execution of exchange for physical (EFP) transactions in any Eurodollar contract delivery month beyond the second listed delivery month. In reviewing this rule, the Commission determined that it was within the authority of the CME to limit trading in EFPs in order to enhance trading in its futures and option contracts.

### **Review and Approval of NFA Rules**

During FY 1996, T&M recommended, and the Commission approved, several NFA initiatives and programs which enhance customer information and protection, including:

- Approval of an NFA proposal which restricts the use of hypothetical trading results in promotional materials by, among other things, requiring that persons using hypothetical trading results accompany them with: (1) comparable actual trading results, and (2) a special disclaimer which expands upon the disclaimer language mandated by the Commission's Regulations.
- Approval of a set of NFA rules which create a similar set of restrictions, including special disclaimers, for persons who include composite, pro forma or extracted trading results in their promotional material.
- Approval of an NFA proposal that certain members adopt special supervision procedures with respect to their telemarketing activities, including the tape-recording of all employee-customer telephone conversations and the submission of promotional materials to NFA before dissemination.

### **Rule Enforcement Oversight and Trade Practice Surveillance**

The CEA requires each exchange, through a program of continuing rule enforcement, to ensure that its members adhere to exchange rules. Before T&M will recommend approval of an application to trade a futures or option contract, it considers whether the exchange maintains an adequate rule enforcement program. T&M periodically reviews each exchange's rule enforcement program and conducts follow-up reviews if it finds a need for improvement in an exchange's programs. When appropriate, the reviews include recommendations for improvements and schedules for implementing those recommendations. In addition, T&M reviews particular practices or program areas across exchanges in "horizontal" reviews which facilitate the adoption by exchanges of "best practices."

During FY 1996, T&M completed full scope rule enforcement reviews of the New York Mercantile Exchange (NYMEX) and the Coffee, Sugar and Cocoa Exchange, Inc. (CSCE) in which T&M examined the exchanges' programs for market surveillance, trade practice surveillance, disciplinary and audit trail compliance. T&M also completed a follow-up rule enforcement review of the Minneapolis Grain Exchange (MGE) which examined aspects of the MGE's audit trail, trade practice and market surveillance programs. In addition, T&M completed a horizontal rule enforcement review of each exchange's programs for monitoring corrections made to their respective time and sales record. Highlights of these rule enforcement reviews are as follows:

***New York Mercantile Exchange*** -- T&M reported to the Commission that NYMEX operates adequate market surveillance, trade practice surveillance, disciplinary and audit trail programs. T&M recommended that NYMEX complete trade practice investigations more promptly, particularly those initiated by customer complaints, that it enhance its recordkeeping of market surveillance-related inquiries, and that it continue to implement the Commission's recommendations for improvement of its audit trail. T&M also recommended that NYMEX take additional steps to increase member compliance with the trading card recordkeeping requirement to identify trades executed during the close, and that it refer to its Business Conduct Committee for charges, those members who repeatedly receive the maximum fine under NYMEX's summary fine schedule for violations of NYMEX's pit card rule.

***Coffee, Sugar and Cocoa Exchange, Inc.*** -- T&M found that CSCE's market surveillance, trade practice, audit trail, and disciplinary programs generally were adequate and made recommendations for further improvement. With respect to market surveillance, T&M recommended that CSCE should not approve cash and carry exemptions from spot month speculative position limits that are excessively large relative to deliverable stocks or the total delivery capacity on the expiring contract. T&M also recommended that the exchange compliance staff notify nonmember customers when a customer's behavior is inconsistent with market surveillance-related rules such as exceeding the exchange's speculative position limits. With respect to trade recordkeeping, T&M recommended that CSCE should take steps to improve member compliance with the Commission regulation requiring recordation of order numbers on floor order tickets. In addition, T&M recommended improvements in certain logs maintained by exchange compliance staff.

***Minneapolis Grain Exchange*** -- T&M found that MGE maintained a generally adequate audit trail program and responded adequately to 1995 review recommendations for MGE's trade practice and market surveillance programs. T&M recommended that MGE permit its staff more latitude to exercise judgment in initiating investigations and, to the extent practicable, review all error-coded transactions that indicate a possible substantive trading violation.

***Horizontal Time and Sales Review*** -- T&M reported that some similarities exist among exchanges in the methods used to approve quote change requests. However, generally, each exchange follows its own protocols. Staff found areas where it believes a "best practice" approach would improve the integrity of the quote change process at all exchanges and made recommendations accordingly. Staff also recommended that all exchanges periodically review a sample of quote changes to determine compliance with exchange rules and procedures, the legitimacy of the changes, and the adequacy of the required documentation.

## **Audit and Review**

The Audit and Review program protects market participants by reviewing and enforcing the Commission's disclosure, recordkeeping, net capital, segregation and other financial and customer protection regulations. The staff reviews the self-regulatory organizations' (SROs') audits of financial, reporting, disclosure and recordkeeping compliance by their member futures commission merchants (FCMs), commodity pool operators (CPOs), commodity trading advisors (CTAs) and introducing brokers (IBs). The staff assesses the risk to exchanges and their clearing organizations created by external events, including geopolitical events and price volatility, and the adequacy of measures the SROs have in place to address such risks. In addition, the staff identifies risks to individual registrants caused by market conditions, internal events and impairment of parent or affiliated firms.

The staff may also review the financial stability of firms particularly threatened by the financial strains of volatile markets, seeking to safeguard customer funds held by these firms. T&M auditors conduct direct, limited-scope examinations of registrants to evaluate compliance with specific rules and assess the extent of potential financial impairment of particular FCMs. These direct reviews allow T&M to monitor the quality of SRO audit programs.

The managed funds branch is responsible for enforcement of the Commission's rules applicable to CPO and CTA disclosure requirements. The branch reviews filings by CPOs and CTAs, not only to ascertain compliance with Commission rules, but also to determine whether investors have been provided with sufficiently clear and relevant information to permit them to fully understand the risks unique to each CPO or CTA program and to make informed decisions.

All the sections of the Audit and Review program work closely with the Division of Enforcement. They provide referrals to Enforcement for investigation of suspicious activities and advice in the formulation of investigative strategy. The staff also provides testimony in enforcement cases involving financial and managed funds issues. Finally, the staff provides interpretations and, in appropriate cases, exemptive relief from the Commission's financial, reporting and disclosure regulations.

## **SRO Oversight**

T&M evaluates SRO rule enforcement and operational programs on an ongoing basis and makes recommendations for enhancement to the individual SROs during the course of audit and oversight work. Periodically T&M issues formal reports on the results of this work, which are available to the public. In FY 1996, T&M issued three rule enforcement review reports, including one report on the financial and sales practices surveillance program of the Chicago Board of Trade and two reports on National Futures Association's registration fitness and processing program.

***Chicago Board of Trade*** -- T&M found that the CBOT's financial and sales practices surveillance program generally meets the Commission's regulatory requirements. The report recommended: (1) that the CBOT enhance its documentation of financial surveillance activities; and (2) that in light of audit staff turnover, the CBOT consider what steps might be taken to increase the average level of experience of the audit staff in order to assure the continued prompt completion and adequacy of audit

coverage. In addition, T&M reported that for the required two-year period which ended April 1996, CBOT had successfully complied with the undertakings which were a part of the terms of the settlement with the Commission In the Matter of Board of Trade of the City of Chicago, CFTC Docket No. 93-17 (Commission Opinion and Order Accepting Offer of Settlement, April 18, 1994). This case arose out of deficiencies in the CBOT's financial surveillance program in connection with the failure of Stotler, Inc., a major CBOT clearing member FCM. For the period of the undertakings, the CBOT program had been subjected to heightened reporting requirements on the operation of its audit and surveillance program.

**National Futures Association** -- T&M issued a report on NFA's registration fitness program and a report on its registration processing program. In the first report, T&M concluded that NFA was adequately fulfilling its statutory obligations and the Commission's regulatory objectives in carrying out the registration fitness program. The report recommended several actions designed to improve the reliability of fingerprint submissions and to enhance the scope and quality of background checks of foreign principals. In the report on NFA's registration processing program, T&M found that NFA generally met fifteen objectives identified for satisfactory processing of registrations. T&M recommended enhancement of the NFA Registration Processing Procedures Manual and made other recommendations designed to improve the execution of the program. In particular, T&M recommended following up on APs who terminate employment with multiple firms, and identified certain inconsistencies between firm employment records and NFA registration records which should be immediately reconciled.

## **Financial Oversight**

The Audit and Review staff carried out several projects to enhance the financial oversight of the industry. Projects included programmatic actions as well as audit/enforcement actions designed to address potential rule violations. In particular, the staff:

- Monitored the copper market and U.S. firm's exposure subsequent to the announcement of the estimated \$2 billion in losses of Sumitomo trading on the London Metal Exchange.
- Streamlined performance reporting, strengthened disclosures and required new measures of volatility and performance of CPO and CTA programs.
- Issued an interpretation which, subject to specific conditions designed to assure Commission standards are met, permits a commodities SRO to rely on the audit work of a securities-side regulator. This interpretation is intended to reduce the burden on regulated firms and to eliminate duplication of effort by regulators.
- Worked with SROs to permit FCMs to file required financial reports via computer.
- Began compiling and publishing, for public use, selected FCM financial data every six months, including amounts of net capital and customers' funds carried.

- Monitored a "stress test" of the U.S. commodities clearing system which was designed to simulate the disruption of CFTC-regulated markets due to the failure of a hypothetical major clearing FCM that was a common member of the CBOT, CME and the NYMEX.
- Continued operation and refinement of the Commission's Risk Assessment System, working with reporting firms to clarify descriptions of internal controls and risk management systems and identify Material Affiliated Persons.
- Assisted the Financial Accounting Standards Board and the American Institute of Certified Public Accountants in the development of accounting and auditing standards and guides relevant to the commodities industry.
- Assisted the Division of Enforcement on financially-oriented cases. Obtained and documented evidence of compliance failures and provided advice on the application of generally accepted accounting principles and auditing standards to specific fact situations.

### **Audit and Review Activities, FY 1995 and FY 1996**

#### **Activity - FY 1995 - FY 1996**

SRO Rule Enforcement Reviews - 3 - 3

#### **Oversight Audits:**

FCMs - 25 - 28

CPOs - 23 - 13

Other Registrants - 35 - 8

Financial Investigations - 2 - 6

#### **Referrals:**

To SROs - 10 - 6

To Division of Enforcement - 7 - 6

Financial Reports Processed - 3,609 - 4,017

Warning and Noncompliance

Letters Issued - 140 - 200

#### **CPOs and CTAs:**

Disclosure Documents Processed - 3,453 - 3,346

Comment Letters Issued - 1,415 - 2,006

### **Interpretations and Relief**

Letters Issued - 154 - 114

Early Warning Notices Processed - 53 - 181

Customer equities transferred - \$579M - \$231M

### **Regulatory Development**

The Regulatory Development program develops and interprets Commission regulations relating to registration, disclosure, managed funds, segregation of funds, ethics training, and other requirements applicable to commodity professionals and commodity pools. The staff responds to requests for exemptions and other relief from regulations and prepares advisories and guidelines on the application of Commission regulations. Staff provide support for coordination with other domestic and international financial regulators, development of regulatory approaches to off-exchange derivative instruments, preparation of Congressional testimony, and drafting of reports and proposed legislation. Staff also comment on regulations and interpretations drafted by other units in T&M or prepared by other divisions and offices, oversee NFA's registration program, and administer the Commission's civil monetary penalty collection program. During FY 1996, T&M staff concentrated their efforts in a variety of areas, including:

- Drafting the Commission's interpretative release to assist managed futures professionals using the Internet and other electronic media, as well as proposed amendments to facilitate the use of electronic media by CTAs and CPOs.
- Drafting the Commission's advisory to provide certain offshore commodity pools relief from disclosure, reporting and recordkeeping requirements.
- Drafting amendments to rules governing ethics training for registrants. The amendments require ethics training providers, who have not already been authorized by the Commission to provide training, to pass the Series 3 commodities exam and to possess three years of relevant experience. In conjunction with the amendments, an Advisory was published to remind registrants of their mandatory ethics training obligations.
- Reviewing proposed offerings of off-exchange instruments.
- Assisting Commission advisory committees, particularly on clearance and settlement issues, regulatory requirements applicable to CPOs and CTAs, and minimum financial requirements for FCMs and IBs.
- Participating as observers on various self-regulatory and advisory committees, including the Clearing Bank and Clearing Organization Roundtable and the Unified Clearing Group.

- Chairing the Registration Working Group, inaugurated in January 1996, which includes NFA and Commission staff. The purpose of the group is to discuss registration issues of mutual concern.
- Providing staff support to the President's Working Group on Financial Markets, particularly with respect to information sharing, margin requirements, internal controls, suitability and other OTC derivatives issues.
- Coordinating with NFA and the Division of Enforcement, as well as monitoring the Internet and futures publications, to identify unregistered individuals who appear to be acting as CTAs.

In FY 1996, T&M staff prepared over 300 responses to requests for exemptions, no-action positions and interpretations relating to registration, disclosure and other regulatory requirements. Published responses included letters which are summarized below.

**CTA/IB Registration**--T&M provided interpretative advice on the registration, disclosure and trade authorization requirements applicable to third party advisors, IBs, and APs. CFTC Letter No. 95-85, October 12, 1995.

**CTA Relief**--T&M confirmed that CTAs may claim relief from certain disclosure and recordkeeping requirements for some categories of foreign institutional clients by filing a notice of claim for exemption under CFTC Rule 4.7. Absent relief, these clients would be ineligible for treatment as qualified eligible participants because they are foreign entities. CFTC Letter No. 95-106, November 9, 1995, Advisory No. 54-95, November 9, 1995.

**Commingling of Pool Funds** -- T&M granted no-action relief to permit a CPO to invest the assets of various of its pools in newly formed general partnerships and to use the assets of each such general partnership to engage a CTA whose minimum account size would otherwise exceed the assets of each of the pools comprising such general partnership. CFTC Letter No. 96-22, March 6, 1996.

**IB Registration**--T&M provided interpretative advice on the registration requirements for a company engaged in the business of generating lists of potential customers and selling such lists to Commission registrants, including FCMs and IBs. CFTC Letter No. 96-45, May 8, 1996.

## **Registration**

T&M also carries out the Commission's registration, registrant ethics training and civil monetary penalty collection responsibilities. Under authority delegated by the Commission, NFA processes applications and conducts background checks for applicants in all registration categories. NFA is also authorized to take adverse action against applicants and registrants. However, with respect to the floor broker and floor trader registration categories, NFA forwards to the Commission for review any case where there is a potential statutory disqualification for which NFA does not propose to deny or revoke registration. During FY 1996, T&M reviewed the files of 70 floor broker or floor trader applicants or registrants forwarded by NFA.

T&M also processed approximately 1,500 requests for withdrawal from registration. In addition, T&M is responsible for the Commission's civil monetary penalty collection program. This year staff prepared proposals to bring the civil monetary collection program into compliance with new federal debt collection requirements. During FY 1996, approximately \$1,585,000 was collected.

### **By Category, the Number of Commodity Professionals Registered, FY 1995 and FY 1996**

#### **Professional Category- FY 1995- FY 1996**

Futures commission merchants - 261 - 241

Introducing brokers - 1,468 - 1,507

Commodity pool operators - 1,358 - 1,317

Commodity trading advisors - 2,597 - 2,523

Leverage transaction merchants - 0 - 0

Floor brokers - 9,319 - 8,993

Floor traders - 1,370 - 1,288

Associated persons - 46,583 - 49,308

Total - 65,956 - 62,177

#### **International Markets**

The International Markets program is the focal point for the Commission's global regulatory coordination efforts. The Commission's international work continues to grow in response to the increasingly multinational nature of regulated firms, the international linking of markets by screen-based trading systems, concerns about international market risk, the increasing use of off-exchange derivative products, and the increasing pressures on the competitiveness of U.S. markets and firms. T&M staff develop the Commission's regulations governing foreign transactions and implement policies governing cross-border transactions. The staff also assists in the negotiation of information sharing agreements with foreign regulators and provides technical and educational assistance to emerging markets. In addition, staff provides policy and representational support to the Commission in international organizations and conferences.

During FY 1996, T&M staff addressed several hundred requests for guidance, interpretations of rules and general information relative to international matters and reviewed 21 applications for comparability treatment originating in jurisdictions which have secured such relief.

***Windsor Follow-up*** -- T&M coordinated the Commission's efforts to follow-up on recommendations related to the Windsor Declaration. These included developing

large exposure information sharing arrangements, conducting a domestic stress test, inspiring a model exchange information statement to make transparent exchange default and financial integrity measures, and drafting the follow-up reports to Windsor, including not only the co-chair report but also the initial draft of a summary of the response to the Windsor agenda by the various jurisdictions participating at Windsor.

**Sumitomo --** T&M was a major contributor to the Commission's efforts to monitor and investigate the events in the copper markets and the effects of the losses by the Sumitomo Corporation in the copper markets and to develop the regulatory response to the lessons learned from that experience once the market situation had been addressed. In response to copper market events, T&M staff:

- Conducted a risk analysis of the effects of the copper market events on U.S. firms which had large positions in copper.
- Provided relevant information to the President's Working Group on Financial Markets (the Board of Governors of the Federal Reserve System, the Department of the Treasury, and the Securities and Exchange Commission).
- Invoked the Windsor Declaration to obtain relevant information from UK authorities.
- Provided information to the UK SIB in support of the SIB's public review of the UK metals markets.
- Requested advice from U.S. contract markets concerning the need for improvements in market surveillance.
- Identified ways to improve information sharing by resolving issues related to the scope and relevancy of requested information.
- Drafted, in coordination with the U.K. SIB, a concept paper proposing further work which was submitted jointly by the CFTC and the SIB to the IOSCO Technical Committee (which agreed to take the project forward).
- Helped to organize a conference of international regulators to study special issues related to the supervision of physical delivery markets.

**Regulatory Cooperation --** Staff also participated in several international associations and meetings. T&M continued its active participation in IOSCO, particularly the Working Party on Secondary Markets and the Working Party on Market Intermediaries. The Working Party on Secondary Markets finalized, and IOSCO's Technical Committee approved, two post-Barings projects on which T&M staff were contributors:

1. A report on "Cooperation between Market Authorities" (which addresses the monitoring of and exchange of information among market authorities on large exposures on futures and options markets).

2. A report on "Default Procedures" (which addresses best practices by market authorities on the treatment of positions and funds in default situations).
3. A Report on Margin (which is designed to provide guidance on the use of margin to markets and their regulators that are considering establishing or revising margin requirements).

The reports were released in March 1995, by the Technical Committee of IOSCO as the views of the Technical Committee. Staff also contributed to the Report on Client Asset Protection which was produced by the Working Party on Market Intermediaries.

Staff also planned and provided technical assistance to the March 1996 International Regulators Meeting, which considered cooperative arrangements and joint regulation of international firms, current trends in market linkages, the European Community Investment Services Directive and other Directives, and post- Barings follow-up work.

***Other Regulatory Actions*** -- Staff continued to support Commission programs to facilitate cross-border transactions. Staff drafted Federal Register releases that were approved by the Commission, including an amendment to eliminate the requirement that the CFTC issue an order authorizing the offer and sale of a particular foreign exchange-traded commodity option before it can be offered or sold in the United States. The rule change did not affect existing CEA product restrictions related to stock indexes and foreign government debt.

Staff responded to Congressional inquiries, including one in response to a request by Senator Daniel K. Inouye for comment on a proposal by Governor Benjamin Cayetano to establish a trading facility for Asia-based securities or commodities in a foreign trade zone in the State of Hawaii.

T&M provided information to authorities from emerging market jurisdictions on the development and regulation of futures markets and prepared a data base of information on emerging markets. Staff enhanced its annual training seminar for foreign futures authorities. The October 1996 seminar was attended by 79 persons from 29 foreign countries representing 48 different organizations. The seminar offers intensive training and course work covering the operation of U.S. futures markets, the CFTC, and techniques for conducting oversight of futures trading for market integrity and customer protection purposes. In light of recent market events, this year's seminar included discussions on cooperation and coordination during market emergencies.

## Office of General Counsel

The Office of the General Counsel (OGC) is the Commission's legal advisor. OGC attorneys represent the Commission in appellate litigation and certain trial-level cases, including bankruptcy proceedings which involve futures industry professionals. As legal advisor, the Office of the General Counsel (OGC) reviews all substantive regulatory, legislative, and administrative matters presented to the Commission and advises the Commission on the application and interpretation of the Commodity Exchange Act (CEA) and other administrative statutes. Through its Opinions Program, OGC staff assist the Commission in performing its adjudicatory functions.

### Litigation

During FY 1996, 30 cases were pending before United States Courts of Appeals. Significant cases included the following.

#### Appellate Litigation Involving the Commission's Enforcement Program

*Armstrong v. CFTC*, 77 F.3d 461 (3d Cir.), *cert. denied*, 116 S. Ct. 2502 (1996). This petition for review arose from an administrative enforcement complaint brought by the Commission against Martin Armstrong and two corporations he set up to provide commodity trading advice and related services. The complaint charged the corporations with fraud for failing to disclose to managed-account clients the existence of a commission-rebate agreement with a futures commission merchant; with misrepresenting hypothetical performance results as actual trading in published advertising; and with omitting a required advertising disclaimer. Armstrong was charged with liability as a controlling person of the firms.

The Commission's first opinion upholding the controlling person charge against Armstrong was vacated by the Third Circuit on Administrative Procedure Act grounds, and remanded to the Commission for further consideration. See 1994 Annual Report at 72; 12 F.3d 401 (1993). On remand from the Third Circuit, the Commission issued a further opinion finding Armstrong liable as a controlling person for the corporations' violations. It also imposed a cease and desist order and a \$12,000 civil penalty.

On review, the Third Circuit summarily denied Armstrong's petition in an unpublished order, and the Supreme Court denied his subsequent petition for a writ of certiorari.

*CFTC v. Commonwealth Financial Group, Inc. and Charles Paul Hoffecker*, 11th Cir., No. 94-5182, (Feb. 21, 1996). This appeal by the Commission grew out of an order issued by the U.S. District Court for the Southern District of Florida refusing to impose an injunction against an introducing broker (IB) and its president. The CFTC's complaint charges the IB with fraud in connection with solicitation of futures and options transactions, and charges its president with liability as a controlling person for these violations. In its unpublished opinion the court of appeals agreed with the Commission that post-complaint evidence of misconduct, when considered in conjunction with the pre-complaint evidence, was relevant to the issue of liability as well as the need for injunctive relief. Accordingly, the court vacated the district court's order, and remanded the matter for further proceedings. The case was pending on remand before the district court at the end of the fiscal year.

*CFTC v. Frankwell Bullion, Ltd., et al.*, 9th Cir., Nos. 95- 16977 and 95-17298 (9th Cir. 1996). This case involves an appeal from a district court order which dismisses a Commission enforcement action for lack of jurisdiction. The Commission action seeks to enjoin several unregistered companies from selling and marketing off-exchange foreign-currency futures contracts to the general public. The court concluded that the so-called "Treasury Amendment," 7 U.S.C. 2(ii), excludes all off-exchange foreign currency transactions from CEA regulation. *CFTC v. Frankwell Bullion Ltd., et al.*, 904 F. Supp. 1072 (N.D. Cal. 1995). On October 3, 1995, the court also issued an order which imposed three quarters of the receivership costs upon the Commission.

By order entered November 30, 1995, the district court stayed the October 3 order pending appeal to the Ninth Circuit. The case has been fully briefed and oral argument was heard on September 17, 1996. It awaited decision at the end of the fiscal year

*Gordon v. CFTC*, No. 94-4382 (11th Cir. 1996). This petition for review grew out of a Commission administrative decision. In that decision, the Commission imposed a \$200,000 civil money penalty and revoked the registration of an associated person (AP) who had committed fraud in connection with soliciting customers to purchase commodity options. The AP argued that the Commission abused its discretion when it imposed harsher sanctions than those ordered by two administrative law judges (ALJs). The AP also argued that the penalty was improper because it exceeded his net worth, and was uncollectible under Florida law. On review, the U.S. Court of Appeals for the Eleventh Circuit summarily affirmed the Commission's decision without opinion.

### **Appellate Litigation Involving the Commission's Reparations Program**

*Carr Investments, Inc., et al. v. CFTC and Richard C. Davis*, 87 F.3d 9 (1st. Cir 1996). A Commission order reversed an ALJ's award of attorney fees and costs against a customer who was found to have brought his complaint in bad faith. On appeal the First Circuit vacated the Commission's decision and remanded to the Commission for further proceedings. The court determined that the mitigating factors the Commission relied on in reversing the award of attorney fees and costs did not provide reasoned support for the Commission's conclusion that the ALJ abused his discretion. The case was pending on remand before the Commission at the end of the fiscal year.

*Edwards v. CFTC*, No. 94-1488 (D.C. Cir. 1995). In this unpublished decision, the D.C. Circuit affirmed a Commission opinion and order. In its order, the Commission concluded it lacked jurisdiction because the customer had failed to establish that he filed his complaint within two years of his actual discovery of the alleged violation.

*Monex International v. CFTC*, 83 F.3d 1130 (9th Cir. 1996). This petition for review involves a first-time customer's right to rescind his purchase of two silver leverage contracts pursuant to Commission Regulation 31.23. The Ninth Circuit affirmed in full the Commission's order finding in favor of the customer, and awarded \$296,874.96. Specifically, the Court concluded that the customer had properly rescinded his purchase of two silver leverage contracts under Commission Regulation 31.23 even though he erroneously asserted that he was not responsible for certain market losses at the time of his rescission. The Court found that the regulation did not entitle the leverage transaction merchant (LTM) to ignore the customer's rescission demand

even though the customer erroneously insisted that the LTM absorb certain market losses that had accrued. In addition, the Court affirmed the Commission's finding that the customer did not ratify the positions that remained open on the books once he declared his intention to rescind. The LTM's motion for rehearing and suggestion for rehearing *en banc* was subsequently denied.

*Welzant v. CFTC*, No 94-8133 (11th Cir. 1996). In this unpublished decision, the Eleventh Circuit upheld a Commission order summarily affirming an ALJ's dismissal of a reparation complaint. The Court determined that the ALJ had provided the complainant with a full, fair, and impartial hearing.

### **Other Litigation**

*AVCO Financial Corp. v. CFTC*, 929 F. Supp. 714 (S.D.N.Y. 1996). In this injunctive and declaratory judgment action, the publisher of computer software which is designed to chart foreign currency futures seeks to enjoin a Commission investigation. The Commission was investigating whether the company acted as an unregistered commodity trading advisor by marketing its currency trading system. The publisher asserts that its trading recommendations constitute impersonal investment advice exempt from regulation under the Act, and that any effort to regulate its activities constitutes an abridgement of its First Amendment right of free speech.

On June 5, 1996, the district court issued a order rejecting the publisher's request for a preliminary injunction, finding that it had failed to establish irreparable injury to its business. The court further concluded that the Commission was entitled to complete its duly authorized investigation in order to ascertain all the facts surrounding those activities.

*Grossfeld and Stein v. CFTC*, No. 95-531 (S.D. Fla. 1996). In this unpublished decision, the U.S. District Court for the Southern District of Florida granted the Commission's motion for summary judgment in a suit brought under the Right to Financial Privacy Act (RFPA), 12 U.S.C. 3401, *et seq.* The suit alleges that damages were incurred in connection with document subpoenas issued to various financial institutions during an administrative enforcement proceeding. The court found that the plaintiffs were required to institute a customer challenge under the RFPA by requesting that the subpoenas be quashed if they were not issued in "substantial compliance" with the provisions of the RFPA. The court agreed with the Commission that customers are not permitted to sit on their early right to challenge a subpoena, and then later seek to claim damages and civil penalties.

*R&W Technical Services, Ltd., et al. v. CFTC*, No. H-96-1149 (S.D. TX. 1996). A corporation and two of its individual principals brought this suit against the Commission to seek declaratory relief and to enjoin an ongoing administrative enforcement proceeding before the Commission. The enforcement proceeding charges that R&W is violating the antifraud provisions of the Act by marketing and selling trade-signalling computer programs that are used in conjunction with trading futures, and operating as a commodity trading advisor. R&W argues that its impersonal "publishing" activities are beyond CFTC jurisdiction, and that it was engaged in speech protected by the First Amendment.

On July 1, 1996, the district court denied R&W's request for a preliminary injunction on the grounds that R&W had not shown a substantial threat of irreparable injury or that the granting of its motion would serve the public interest. The Commission's motion to dismiss remained pending before the court at the end of the fiscal year.

### **Bankruptcy Proceedings**

OGC monitors bankruptcy proceedings involving futures industry professionals and in some cases assists courts, trustees, and customers in carrying out the special Bankruptcy Code provisions pertaining to commodity firms. During FY 1996, OGC monitored 31 bankruptcy cases.

### **Legal Advisor**

#### **Significant Regulatory Activities**

As the Commission's legal advisor, OGC drafts or reviews proposed regulations, enforcement actions, special reports to Congress, legislative proposals, responses to requests from other federal agencies, proposed interpretive and no-action letters, applications to trade futures and option contracts, and proposals to amend exchange bylaws or rules. In FY 1996, OGC reviewed more than 90 matters related to enforcement actions, investigations of illegal activity, and complaints in administrative or judicial actions; 40 applications to trade futures or option contracts; and approximately 140 exchange rule amendments.

The growing international nature of futures and option markets continued to impact OGC's work. Through the review of numerous interpretive letters and Commission orders, OGC assisted the Division of Trading and Markets in implementing rules governing the offer and sale of foreign futures and option contracts in the United States. During FY 1996, OGC issued three no-action letters regarding the offer or sale within the United States of foreign futures contracts based on foreign stock indices. OGC also worked closely with the Division of Enforcement to establish information-sharing agreements with foreign financial market regulators and with the Divisions of Trading and Markets and Enforcement in their activities involving the International Organization of Securities Commissions (IOSCO).

Pursuant to exemptive authority granted to the Commission by the *Futures Trading Practices Act of 1992*, OGC has helped the Commission to analyze requests for exemptions from various requirements of the CEA and Commission regulations for certain exchange-traded futures and option contracts. On September 21, 1995, the Commission adopted rules providing for a three-year pilot program to exempt certain contracts from specified requirements of the Act and Commission rules. These rules were adopted in response to a request for exemptive relief submitted on behalf of the Chicago Mercantile Exchange with respect to the purchase and sale of contracts known as Rolling Spot Futures Contracts, and a request from the Chicago Board of Trade seeking to establish a "professional trading market" exemption.

OGC helps to prepare, and comments on, proposed legislation that would affect the Commission. OGC also reviews all Commission Congressional testimony. During FY 1996, OGC provided assistance with respect to: (1) regulatory reform bills pending before Congress; (2) the Lobbying Disclosure Act of 1995; (3) testimony prepared for the House and Senate Agriculture Committee Commodity Exchange Act oversight

hearings; (4) the Small Business Regulatory Enforcement Fairness Act of 1996; (5) the Anti-Terrorism Act of 1996; and (6) testimony on the Federal Anti-Lobbying Act.

### **Administrative Matters**

During FY 1996, OGC advised the Commission on issues raised under the *Freedom of Information, Privacy, and Government in the Sunshine Acts*. It also assisted the Commission in complying with the *Regulatory Flexibility and Paperwork Reduction Acts*.

OGC is responsible for all matters relating to the Commission's ethics standards and compliance with its Code of Conduct and the Office of Government Ethics (OGE) government-wide ethics regulations, including the provision of annual ethics training for CFTC employees as required by OGE regulations.

OGC continued to advise the Commissioners who chair the Commission's advisory committees on procedural and substantive matters. The Advisory Committee on CFTC-State Cooperation provides advice to the Commission on matters of joint concern to the states and to the Commission. The Agricultural Advisory Committee provides advice on issues affecting agricultural producers, processors, lenders, and others interested in or affected by the agricultural markets. The Financial Products Advisory Committee provides advice on issues concerning financial futures and option markets regulated by the Commission.

### **Opinions**

The Commission's appellate jurisdiction in adjudicatory matters includes: (1) administrative cases prosecuted by the Division of Enforcement (Division) against alleged violators of the CEA or related regulations; (2) reparation cases brought by futures customers to recover money damages from industry registrants; and (3) adjudicatory actions by industry self-regulatory organizations. Some of the Commission's significant decisions during the past fiscal year include the following cases.

### **Cases Involving the Commission's Enforcement Program**

*In re Hirschberg*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,573 (CFTC Dec. 27, 1995); *In re Schillaci*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,735 (CFTC July 11, 1996); *In re Gath*, Docket No. SD 94-12 (CFTC Aug. 11, 1996). All of these cases involve an individual subject to a statutory disqualification from registration with the Commission. On appeal, the Commission reviewed the evidence of mitigation and rehabilitation supplied by respondents and found it was insufficient to overcome the presumption of unfitness for registration arising from their disqualifying conduct.

In *In re Gath*, the Division appealed from an initial decision granting respondent Daniel M. Gath's application for registration as a floor trader. An ALJ had found that Gath was fit for registration despite evidence that he was subject to disqualification because the National Association of Securities Dealers (NASD) had revoked his membership in 1989 after Gath failed to pay a \$3,000 fine. On review, the Commission concluded that the ALJ had erred by crediting unreliable evidence of

mitigation and rehabilitation. The Commission noted that Gath had submitted unsworn pleadings and failed to appear at the hearing before the ALJ. The Commission also emphasized that Gath's failure to pay the NASD fine or to take steps to resolve his differences with NASD about the revocation of his membership showed a lack of respect for industry self-regulatory procedures. On this basis, the Commission vacated the initial decision and denied Gath's application for registration. Gath has appealed the Commission's decision. *Daniel M. Gath v. CFTC*, No. 96-3115 (11th Cir., filed Aug. 26, 1996).

In *In re Schillaci*, Robert L. Schillaci appealed from the initial decision summarily denying his application for registration as a floor trader. An ALJ had found that Schillaci was subject to disqualification from registration because the Commission revoked his floor broker registration in 1989. He also concluded that Schillaci had failed to make a colorable showing of mitigation and rehabilitation. In affirming the initial decision, the Commission held that the ALJ did not err by declining to hold a hearing on the issues of mitigation and rehabilitation. Summary disposition is appropriate in statutory disqualification cases when the parties' pleadings establish both the existence of the disqualification, and the absence of a colorable showing of mitigation or rehabilitation. In *In re Hirschberg*, respondent Judd Hirschberg appealed from an order revoking his floor broker registration and ruling that he could not reapply for registration for ten years. An ALJ had found that Hirschberg was subject to disqualification from registration because he had been convicted of mail fraud in 1991. The ALJ ruled that Hirschberg's evidence of mitigation and rehabilitation was unpersuasive. The Commission found that the seriousness of Hirschberg's criminal conduct was not mitigated by the fact that some aspects of his conviction were reversed on appeal, and that those remaining were affirmed by a divided court. The Commission did conclude that the ALJ had erred by rejecting Hirschberg's claim of rehabilitation on the ground that he had expressed no remorse. In light of its independent analysis, however, the Commission found that the rehabilitation evidence Hirschberg offered was insufficient to rebut the presumption that he was unfit for registration. On this basis, the Commission affirmed the revocation of Hirschberg's registration. The Commission vacated the ALJ's order limiting Hirschberg's ability to apply for registration as contrary to the CEA.

*In re Catalfo*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,636 (CFTC Feb. 29, 1996). This enforcement action arose from respondent's failed attempt to manipulate the Treasury bond futures contract. After Catalfo was criminally convicted and sentenced to prison for his conduct, an ALJ entered a default order in this administrative proceeding because Catalfo had twice missed the deadline for answering the Division's complaint. On appeal to the Commission, Catalfo claimed that his failure to file an answer should be excused because it was the product of a misunderstanding between himself and his attorney as to the scope of the attorney's representation. The Commission held that Catalfo's limited explanation was insufficient to establish excusable neglect and that his general denial of the complaint's allegations was insufficient to show that Catalfo had a meritorious defense. On this basis, the Commission declined to vacate the ALJ's default judgment. The decision has been appealed. *Anthony P. Catalfo v. CFTC*, No. 96-1780 (7th Cir., filed Apr. 5, 1996).

*In re Gordon*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,326 (CFTC Mar. 6, 1995). The Division appealed from an ALJ's decision imposing a civil money penalty of \$1,000 on respondent Keith Gordon. The Commission found that the ALJ

had failed to comply with its instructions for the calculation of an appropriate civil penalty. Based upon an independent review of the record, the Commission concluded that a civil money penalty of \$200,000 was appropriate. In reaching this conclusion, the Commission considered: (1) the gravity of Gordon's widespread fraud against customers; (2) his net income during the relevant period (between \$200,000 and \$260,000 over two years); and (3) his net worth of \$235,000, consisting primarily of the equity in his house. The Commission rejected Gordon's claim that his net worth was actually negative, explaining that he had not persuasively established any debts other than his mortgage or proved that his in-laws owned a half-interest in the house. The Commission's decision was affirmed on appeal. *Keith Robert Gordon v. CFTC*, No.95-4382 (11th Cir. 1996). (*Note*: Pursuant to recent amendments to the CEA, net worth is no longer a mandatory element to be considered in determining a civil money penalty.)

*In re Brenner*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,538 (CFTC Nov. 15, 1995). In August 1990, an ALJ issued a decision imposing a cease and desist order, ten-year trading ban, and \$10,000 civil money penalty on Steven Brenner. The ALJ imposed these sanctions because Brenner had traded futures contracts during a period when he was on the Commission's Sanctions in Effect List for failing to pay an award made in a reparation case. (Those on the Commission's Sanctions in Effect List are prohibited from trading on or subject to the rules of any contract market.) In February 1985, Brenner filed a motion seeking to set aside the sanctions imposed by the ALJ because his attorney had failed to adequately represent him during that proceeding. The Commission noted that the relief Brenner requested was not contemplated by its Rules of Practice, but ruled that a party may be relieved from a final judgment or order under the circumstances contemplated by the Federal Rules of Civil Procedure. Because Brenner gave no explanation for the four and one-half year delay for filing the motion, the Commission concluded that the motion was not filed in a reasonable time. Further, the Commission found that even if Brenner's factual allegations were deemed to be true, the validity of the sanctions imposed by the ALJ would not be undermined. Accordingly, the Commission denied Brenner's motion to vacate the ALJ's sanctions.

*In re Nikkhal*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,635 (CFTC Mar. 1, 1996); *In re Fisher*, Docket No. 93-2 (CFTC Jul. 22, 1996). In both of these cases, respondents sought interlocutory review of an ALJ's refusal to disqualify himself for bias. In each instance, the Commission found that respondents had not established the type of extraordinary circumstances that justify immediate review of the judge's ruling. In reaching these conclusions, the Commission clarified its precedent regarding the standard to be applied in assessing a request for disqualification involving an alleged bias that did not involve an extrajudicial source. In such circumstances, the Commission stated, disqualification is required when the record establishes that the presiding officer has a deep-seated favoritism or antagonism that would make a fair judgment impossible. The Commission also held that opinions formed on the basis of facts introduced or events occurring in the course of either the current or a prior proceeding do not have an extrajudicial source, and rarely constitute a basis for finding bias.

### **Cases Involving the Commission's Reparations Program**

*John H. Faro v. Interlink Trading, Inc., Ron T. Rubin, Jeffrey E. Fryzel, Peters and Company, and Neil E. Kelly*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH)

26,537 (CFTC Nov. 16, 1995). Complainant appealed the ALJ's dismissal of his complaint for failure of proof, arguing that the ALJ erred by resolving disputed issues of fact without an oral hearing. The Commission agreed, vacated the dismissal, and remanded the case for an oral hearing. While Commission Rule 12.311 authorizes a presiding officer to forego an oral hearing when documents and other tangible forms of proof submitted by the parties are sufficient to permit resolution of some or all of the factual issues without the need for oral testimony, the Commission has stated previously that oral hearings should be the rule rather than the exception in formal decisional proceedings. In this instance, the Commission found, the ALJ invoked Rule 12.311's procedures prematurely, when the only documents the parties had submitted were the complaint and answers. Given the limited record before him, the Commission concluded that there was no reliable basis for the ALJ to determine, as required by the rule, that no oral hearing was needed. Prior to the completion of the discovery process, a presiding officer can reliably determine neither the range of issues the parties may raise nor the quality of the documentary submissions they may make. Additionally, the Commission reversed the ALJ's dismissal of complainant's unauthorized liquidation claim because the rigorous burden of proof he imposed on complainant was inconsistent with Commission precedent.

*John Theodore Gilbert v. Lind-Waldock and Kelly Ann Kelleher a/k/a Kelly Ann Harrington*, Docket No. 91-R194 (CFTC June 17, 1996). The Commission affirmed the Judgment Officer's dismissal of the complaint in which complainant attributed his loss to respondents' order clerk incorrectly telling him that he had no open positions in his account. The Judgment Officer determined that complainant's negligent monitoring of his account broke the causal link between respondents' misrepresentation and complainant's losses. Noting that it had previously rejected analogous reasoning, the Commission stated that a customer does not have a duty to investigate the truth of statements made to him but may ordinarily rely on the honesty of his account executive. The Commission concluded that Gilbert relied on Lind-Waldock's misrepresentation of the status of his account at the time he was damaged. Nevertheless, it found that an award of damages was not warranted because the evidence was insufficient to establish that Lind-Waldock either misled Gilbert intentionally or in reckless disregard of its statutory duties; a simple error does not establish a violation of Section 4b(a)(ii) of the Act. The Commission also found that Lind-Waldock's failure to retain tapes of conversations with Gilbert did not rise to a level that justified drawing an adverse inference on the issue of scienter. In this regard, the Commission held that Rule 1.35(a) does not require futures commission merchants to retain tape recordings of conversations with their customers.

*Resolution Trust Corp. v. Geldermann*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,621 (CFTC Feb. 14, 1996). The Resolution Trust Corporation (RTC), the receiver for a failed Texas thrift, appealed from an ALJ's order dismissing its reparations complaint for lack of standing. The losses RTC sought to recover had been suffered by a subsidiary of the thrift, not the thrift itself. The agreement under which the RTC became receiver for the thrift made it the sole shareholder of the subsidiary. The Commission affirmed the initial decision, holding that under general rules of standing, a party "must assert its own rights and interests, not those of a third party." The Commission concluded that because the claim grew out of losses suffered by the subsidiary, a non-party, the RTC lacked standing to pursue the claim. Application of Texas corporate law yields the same result-- only a corporation, not its shareholders, may seek redress for an injury to the corporation. Finally, the Commission concluded that the Financial Institutions Reform, Recovery and

Enforcement Act (FIRREA) did not compel it to permit the RTC to litigate the subsidiary's claim. The FDIC, the RTC's successor in interest, has appealed the decision. *FDIC v CFTC*, No. 96-1070 (D.C. Cir., filed Apr. 22, 1996).

### **Office of General Counsel's Litigation Docket, FY 1996**

Appellate cases involving the CFTC's enforcement program: 21

Appellate cases involving the CFTC's reparations program: 6

Appellate cases involving the CFTC's review of registered futures association and exchange review cases: 3

District Court cases: 11

Administrative cases: 3

Subpoenas: 11

Bankruptcy cases monitored: 31

Amicus cases monitored: 10

### **Opinions Docket, FY 1995-1996**

#### **FY 1995 - FY 1996**

##### **Cases:**

Beginning Total 52 - 46

Received 52 - 46

Completed 58 - 38

##### **Pending:**

DSRO Disciplinary Actions 4 - 5

Reparations Cases 18 - 23

Enforcement Cases 24 - 26

Total 46 - 54

## Office of Executive Director

The Office of the Executive Director (OED) formulates and implements the administrative policies and operations of the agency. The OED staff formulates budget strategies, supervises the allocation and use of agency resources, promotes management controls and financial integrity, oversees the development and implementation of the agencies automated information systems, and provides the agency's library services. In addition, the OED staff ensures the agency's compliance with federal requirements enacted by Congress and imposed by the Office of Management and Budget, the General Accounting Office, the Office of Personnel Management, and other Federal agencies. The administrative support offices under the supervision of the Executive Director are the Offices of Administrative Services, Financial Management, Information Resources Management, Human Resources, and the Library. The Office of Proceedings is under the administrative direction of OED.

During FY 1996 the Office of the Executive Director established the End-User Advisory Group and appropriate subcommittees to assist in the establishment of priorities for all aspects of information resources management. The Advisory Group, which has representatives from all divisions and regions of CFTC, grew out of a National Performance Review initiative to provide employees with greater input into the allocation and use of the agency's information resources. This year, the Group provided recommendations on the agency's long-range information development priorities, the selection of new software for word processing, spreadsheets, and data management, and the approach to several information policy issues.

The Office of the Executive Director also took over the preparation of several Commission publications. OED prepared a new brochure describing the Commission's reparations program, and developed the agency's annual report to Congress. Both publications are available in hard copy and on the agency's Internet home page. In response to an initiative of the National Performance Review and the implementing Executive Order, OED coordinated a review of internal procedures which resulted in the elimination of over two-thirds of agency-wide directives. The remaining directives were updated and made available on the agency's bulletin board system, providing access to all employees. OED also initiated strategic planning efforts to meet the requirements of the Government Performance and Results Act and acted as the Commission liaison with the General Accounting Office.

**The Library** continued its enhancement of electronic access to research materials during FY 1996 via increased usage of CD-ROM applications and the offering of Internet access to Commission employees. The Library also completed the bar coding of the Commission's book collection in anticipation of implementing an on-line circulation system early in FY 1997.

**The Office of Administrative Services (OAS)** is responsible for procurement and contracting, property accountability, contract and lease administration, telecommunications management, issuance of supplies, space acquisition and management, mail receipt and distribution, publications and printing. During FY 1996, the OAS staff upgraded the telecommunications system by installing the CFTC's own digital switch. The new system provides better communication capabilities at a reduced cost. OAS also renewed the lease for the Kansas City office and eliminated additional space in the Los Angeles office.

**The Office of Financial Management (OFM)** manages the agency's financial and budget functions, including administrative accounting, voucher audit and budget formulation and execution. During fiscal 1996, OFM upgraded the CFTC's financial management system software application to improve and enhance its functionality. The upgraded system provides better tracking and reporting of receivables, the ability to participate in electronic commerce, and more streamlined financial reporting to comply with various Treasury and OMB mandates. OFM also installed an automated system for processing travel related documents. Staff throughout the Commission were trained on the new system, which will provide improved accuracy and processing of travel orders and vouchers.

**The Office of Human Resources (OHR)** provides advice and services to the Commission in such areas as recruiting, pay administration, employee-labor relations, benefit services and administration, diversity programs, performance management and employee recognition, payroll, and employee development and training. During FY 1996 OHR underwent a substantial reorganization to provide better services to its customer. Two teams were created that focus on important functions and services of the office. In addition, OHR provided support for the hiring of additional staff, began the task of developing a new performance and awards system, coordinated the Commission's annual awards ceremony, provided management briefings on dealing with employee problems and leave issues, started a Work-Life program for CFTC employees which included a Wellness Fair, rewrote and published a new Employee Handbook, and continued an ongoing effort to empower employees to access and change their own benefits and records through an electronic system called Employee Express. OHR also implemented delegated examining authority, which allows CFTC to be responsible for all aspects of recruitment and hiring of its employees.

**The Office of Information Resources Management (OIRM)** is responsible for automated data processing and information resources management which includes (1) operating and maintaining computer and data communications network hardware and software, (2) enhancing existing information systems, (3) developing new information systems, (4) providing user information services, and (5) ensuring information security and integrity. During FY 1996, OIRM activities including the following:

- Upgrading the agency's computer capabilities to more effectively serve the operating divisions and manage Commission resources. Enhancements included upgrades to the agency's telecommunications, upgrading software and hardware, and installation of the new Financial Management System.
- Providing Internet E-mail addresses to all Commission employees and installing World-Wide-Web Access to staff members as needed.
- Implementing new end-user computing software for word processing, spreadsheet development, data management, and presentation graphics.
- Awarding a contract and commencing work on the development of a new Integrated Market Surveillance System. The new system will operate in a client-server architecture and will provide for the collection, processing and integration of Daily Options Large Trader data with Daily Futures Large Trader data, enhancing surveillance and analysis.

- Developing a new five-year ADP plan to identify current and future CFTC information requirements and the necessary resources to meet those requirements.

### **Proceedings**

The Office of Proceedings is under the administrative direction of the Office of the Executive Director. Proceedings is divided into two sections--the complaints section and the hearings section. The complaints section receives customer claims (called "reparations complaints") against persons or firms registered under the Commodity Exchange Act, prepares claims for forwarding to the hearings section and dismisses claims which are clearly outside the Commission's jurisdiction or which are pending in another forum. Judgment Officers decide reparations complaints in voluntary and summary proceedings and Administrative Law Judges conduct formal proceedings. The Administrative Law Judges also decide administrative enforcement cases brought by the Commission against persons or firms who have violated the Commodity Exchange Act or the Commission's rules and regulations.

The Office of Proceedings also provides information about the complaints process and the number of complaints filed against specific firms in response to about 14,000 telephone inquiries during the year. Many telephone calls come from members of the public who are considering investing with these firms. Computerized information on the number of complaints against each firm allows the staff to retrieve this information and respond quickly to requests. During FY 1996, the Office of Proceedings implemented a new case tracking system which tracks the progress of each case from receipt through disposition in the Office of Proceedings, through any appeal to the Commission and through any appeal to Federal court. This system not only assists case management within the agency, but also allows the Office of Proceedings to provide better information on the status of cases in response to public inquiries.

Both the complaints and the hearings sections maintain current Reparations Sanctions In Effect List and an Enforcement Sanctions in Effect List. The Reparations Sanctions in Effect List, which is published annually and updated twice a month, is a record of individuals and firms who have not paid reparations awards. The Enforcement Sanctions In Effect List, which is published annually and updated quarterly, is a record of individuals and firms who have enforcement sanctions such as trading prohibitions outstanding against them. These lists are made available to the public and are distributed to the exchanges, the National Futures Association, the Futures Industry Association, the National Association of Securities Dealers and the Securities and Exchange Commission for use in their compliance efforts.

During FY 1996 customer complaints resulted in about \$875,000.00 in reparations awards. The decisions rendered in reparations cases continue to provide valuable guidance to the commodities industry on a wide variety of legal issues.

The following statistics reflect the status of reparation complaints and administrative enforcement cases at the end of fiscal year 1996:

### **Status of Reparation Complaints Processed, FY 1995 and FY 1996**

Reparation complaints pending **beginning of fiscal year - 33 - 30**

**Reparation complaints filed or reinstated 155 - 172**

**Reparation complaints dismissed or settled 19 - 27**

**Reparation complaints forwarded for all types of proceedings - 139 - 136**

**Reparation complaints pending end of fiscal year - 30 - 39**

**Status of Enforcement Caseload Statistics, FY 1995 and FY 1996**

**Enforcement cases pending beginning of fiscal year - 22 - 25**

**Enforcement cases received for adjudication - 44 - 23**

**Enforcement cases settled - 1 - 4**

**Enforcement decisions issued - 40 - 23**

**Enforcement cases pending end of fiscal year - 25 - 21**

**STATUS OF REPARATION CASES, FY 1995 AND FY 1996**

**Reparation cases pending beginning of fiscal year - 139 - 92**

**Reparation cases received for all types of proceedings - 158 - 147**

**Reparation cases dismissed for cause - 14 - 5**

**Reparation cases settled - 126 - 61**

**Reparation cases disposed of by default - 16 - 13**

**Reparation cases disposed of by initial decision - 49 - 67**

**Cases pending end of fiscal year - 92 - 93**

# Offices of the Chairperson

## Office of Public Affairs

The Office of Public Affairs (OPA) serves as the Commission's liaison with the news media, producer and market user groups, educational groups, and the general public. OPA provides information about the regulatory mandate of the Commission, the economic role of the futures markets, new market instruments, market regulation, enforcement actions, customer protection issues, the CFTC's Internet website and the diverse functions of the Commission.

During FY 1996, OPA assisted more than 2,000 domestic and foreign news correspondents, as well as Commission staff and those with a business or academic interest in the Commission's regulatory activities, current regulatory initiatives and policy positions, and accomplishments. In addition to issuing press releases and advisories covering the CFTC's regulatory and enforcement activities, OPA also publishes and updates a series of Backgrounders which highlight and explain important policy issues and initiatives and salient aspects of the Commission's regulatory mandate. For example, OPA Backgrounders describe affinity fraud and commodity scams, transborder fraud and enforcement activities, international enforcement, bilateral and multilateral regulatory and enforcement information sharing agreements, and cooperation between the CFTC and the states.

OPA publishes a variety of brochures and educational materials about the CFTC, the futures industry and markets, and customer protection issues, including customer protection brochures in Spanish and Chinese. OPA's News Feature, a quarterly summary of CFTC activities and priorities, the Weekly Advisory, a weekly newsletter reporting on Commission activities, and the Daily News Clips, a daily compilation of media stories and articles relevant to CFTC regulatory concerns, provide timely and important information about the Commission to the media and others.

During the year, OPA continued to assist with various aspects of the Commission's Internet website (<http://www.cftc.gov>). The CFTC website includes information about the Commission's Commitments of Traders (COT) reports; the Proceedings Bulletin, which contains information about the CFTC's administrative and injunctive actions and its statutory disqualification from registration proceedings; and information on the Commission's Reparations Program, which is available for resolving disputes between commodity customers and commodity professionals through the Commission. Also available are the text of the Weekly Advisory, Chairperson and Commissioner speeches, press releases, enforcement actions, biographies of the Commissioners, and CFTC brochures. In addition, the website allows the CFTC to receive information from customers concerning possible misconduct or suspected wrongdoing involving futures and options.

The OPA assists with foreign and academic visitors to the Commission. During FY 1996, OPA conducted 15 briefing sessions for foreign regulators, as well as academic representatives, to acquaint them with the U.S. futures markets and the Commission's functions and regulatory responsibilities. OPA conducts briefings for media representatives on proposed rules, regulations, and enforcement activities, as well as other technical issues.

OPA continued to assist with updating Commission enforcement and disciplinary information into the National Futures Association's toll-free Customer Protection Information Hotline (1-800-676-4632). The Customer Protection Hotline helps customers verify the registration status and disciplinary history of firms and individuals in the commodity industry. The OPA also provided input for a chapter on commodity investment fraud for inclusion in the 1997 edition of the Consumer's Resource Handbook, published by the U.S. Office of Consumer Affairs.

OPA plays an active role in educating and informing the media, potential customers, and various publics about fraudulent commodity investment schemes by working with organizations like the Office of Consumer Affairs, the Alliance Against Fraud in Telemarketing, the American Association of Retired Persons, the President's Consumer Affairs Council, Better Business Bureaus, and the National Consumers League. In addition, OPA makes a particular effort to target regional media outlets where the Commission has initiated enforcement actions.

OPA public outreach activities were enhanced during FY 1996 through the implementation of streamlined procedures to make no-action, interpretative, and exemption letters and other written communications available to the public and the media.

As in past years, OPA worked closely with the Commission's advisory committees. OPA provides information to participants and the media regarding committee activities and deliberations, including minutes of the meetings. During FY 1996, OPA continued to assist with media and external affairs related to the public Roundtable Discussion series, initiated by the Chairperson's office, and symposia. Roundtables, held this year on agricultural options, are designed to bring together a diverse group of exchange experts, regulators, academics, and market users to discuss particular industry issues. In June, the Commission held a full-day interactive symposium on internal controls and risk management practices. The purpose of the symposium, which was also open to the public, was to discuss current risk management strategies and the usefulness of existing resources, with the goal of identifying areas where educational outreach by regulators and the private sector could be enhanced.

### **Office of the Secretariat**

The Office of the Secretariat provides administrative support for official Commission activities, coordinating the preparation and dissemination of policy documents and controlling the flow of information to the Commission. The Secretariat serves as liaison between the Commission and the staff, and distributes official Commission documents to the staff, other government organizations, exchange officials, and interested members of the public.

The Secretariat coordinates and schedules the Commission's monthly and weekly agendas, ensuring that Commissioners have ample time to review all relevant materials prior to each meeting. The Secretariat may, in consultation with individual Commissioners, schedule an executive session on any proposed agenda item.

The Secretary attends and tapes Commission meetings, and maintains the official minutes of all meetings. Some meetings such as market surveillance, enforcement, and meetings addressing pending adjudicatory matters, must be closed to the public.

by law. All other meetings are open to the public, with audio/visual taping and photography allowed.

The Secretariat releases documents to be discussed in open meetings one day before the meeting. Following the meeting, the Secretariat supplies any requested transcripts, cassette recordings or minutes of the open meetings. The Secretariat also monitors Commission compliance with the requirements and provisions of the Sunshine Act, as it applies to all meetings attended by a quorum of Commissioners. During FY 1996, the Commission held 83 meetings.

The Secretary signs documents on the Commission's behalf once the Commission has reached a formal decision to take an action, has agreed to the language of a document, and has directed that the document be issued. The Secretary also keeps and authorizes the use of the official Commission seal and receives all official Commission correspondence. More than 20,000 items of correspondence were received in FY 1996, with approximately 300 pieces being controlled by the Secretariat for preparation of the Commission's response.

The Secretariat processed and published 174 items in the *Federal Register* during FY 1996. Secretariat received and responded to hundreds of requests from the public for information about current or past Commission activities or copies of publicly available records.

### **Records Section**

The Records Section, which maintains the Commission's official records, received and responded to over 2,000 inquiries for information from those records in FY 1996, both from the Commission staff and the public. The Records Section staff performs any research necessary to respond to inquiries, maintains and updates on a daily basis several large automated indices kept by the Secretariat, and produces reports, either periodically or as requested, compiled from these automated indices. During FY 1996, the staff, with support from the Office of Information Resource Management, completed modernization and refinement of the Secretariat's largest automated indexing system. Expansion and refinement of other automated systems and conversion of official files to microfiche in accordance with Commission and federal regulations continued during this period. A recent innovation encourages submission of public comment in response to CFTC Federal Register announcements via Internet in addition to mail and facsimile (e-mail submissions should be addressed to [secretary@cftc.gov](mailto:secretary@cftc.gov)).

### **Freedom of Information Office**

The Secretariat staff oversees the Commission's compliance with Freedom of Information (FOIA), Privacy, and Government in the Sunshine Acts, statutes that provide public access to government records and meetings and protect an individual's right to privacy. The staff processes and responds to requests filed under these statutes and prepares the legally-mandated annual reports pertaining to Commission activities in these areas. During FY 1996, the Secretariat received and processed more than 500 FOIA requests. The FOIA staff also works with the Office of General Counsel to ensure the Commission's compliance with these Acts when a Commission action creates a new system of records or affects existing record systems. The FOIA office is officially designated to receive all petitions requesting

confidential treatment of data filed with the Commission. In FY 1996, the Commission received more than 800 petitions for confidentiality. An additional 500 petitions were processed according to the Commission's regulations addressing petitions. The FOIA staff ensures that the complex requirements of Commission regulations regarding petitions for confidential treatment are met before responding to any FOIA request for records subject to a request for confidential treatment.

### **Office of the Inspector General**

The Office of the Inspector General (OIG), established on April 14, 1989, conducts and supervises audits and investigations of programs and operations of the CFTC and reviews existing and proposed legislation and regulations. The OIG recommends policies to promote economy, efficiency and effectiveness in Commission programs and operations, and to prevent and detect fraud and abuse. The OIG keeps the Chairperson and the Congress informed about problems, deficiencies, and the progress of corrective action in programs and operations.

During FY 1996, the OIG conducted a review of the use of American Express Cards for official travel and audited imprest funds in Washington, D.C. and the regional offices. The OIG monitored CFTC's compliance with the Federal Manager's Financial Integrity Act and conducted a review of CFTC's Rule Enforcement Review Program. The OIG also conducted a peer review of the Office of Inspector General of another designated federal entity. The OIG reviewed proposed and final CFTC and exchange rules and regulations and conducted investigations of allegations of impropriety lodged against CFTC employees.

### **Office of Legislative and Intergovernmental Affairs**

The Office of Legislative and Intergovernmental Affairs (OLIA) is responsible for maintaining effective communication between the Commission and Members of Congress and their staffs. OLIA provides information and advice to the Commission and its staff on legislative matters, educates the Congress on the Commission's agenda and regulatory program and coordinates preparation for Congressional hearings and other meetings. OLIA also handles all Congressional inquiries to the Commission and ensures that a timely response is provided. In addition, OLIA serves as a liaison to other federal agencies regarding issues of mutual interest.

During FY 1996, OLIA assisted Acting Chairman Tull with six Congressional hearings, which addressed the Commission's FY 1996 appropriation, grain market volatility, hedge-to-arrive contracts, price discovery in the dairy industry, and regulatory review. OLIA assisted Commissioner Dial with a hearing on the Federal Anti-Lobbying Act. In addition, OLIA assisted Chairperson Born with a hearing on the impact of Sumitomo Corporation's copper trading losses on the U.S. banking system. The hearings on the CFTC's FY 1997 appropriation were part of Congressional consideration of the annual agriculture appropriations bill. On August 6, 1996, President Clinton signed that bill, which provided \$55,101,000 for the CFTC during FY 1997, an increase of approximately \$1.5 Million over the FY 1996 level.

The Office participated in extensive communications with the Commission's Congressional oversight committees regarding legislation and other matters. Finally, the Office was involved in contacts with other federal agencies including the

Department of the Treasury, the Department of Agriculture, the Federal Reserve Board, the Securities and Exchange Commission and the General Accounting Office.

## Futures Statistics by Major Commodity Group

**Average Month end Open Interest, Estimated Number of Contracts Traded and Number of Contracts Settled by Delivery or Cash Settlement by Major Groups, All Markets Combined from FY 1990 through FY 1996**

Fiscal Year	Total	Grain	Oilseed Products	Livestock Products	Other Agriculturals	Energy/Wood Products	Metals	Financial Instruments	Currencies
<b>Average Monthend Open Interest (In Contracts)</b>									
1990	3,341,983	334,782	269,295	138,887	298,387	437,472	299,905	1,324,046	239,209
1991	3,398,057	331,527	260,400	120,758	262,021	451,667	259,669	1,492,253	219,762
1992	4,264,893	375,313	266,364	124,992	255,949	555,561	263,452	2,037,774	385,488
1993	5,164,957	365,751	301,492	116,640	292,869	697,275	314,421	2,758,539	317,970
1994	6,508,063	422,466	323,368	125,664	328,149	807,177	363,406	3,799,004	338,829
1995	6,434,175	502,955	332,115	118,664	<u>357,332</u>	<u>695,734</u>	378,352	<u>3,749,845</u>	<u>299,178</u>
1996	6,671,956	594,283	383,027	149,110	357,039	707,515	368,788	3,776,614	335,580
<b>Number of Contracts Traded</b>									
1990	272,306,699	17,042,490	20,362,563	7,951,472	11,010,249	35,214,701	17,832,411	135,709,001	27,183,812
1991	261,422,699	16,580,052	19,837,101	6,926,039	9,492,757	31,849,116	13,871,666	134,096,949	28,769,019
1992	289,453,855	17,552,356	18,585,110	6,434,312	9,414,082	38,416,082	12,224,278	148,166,182	38,661,453
1993	325,515,261	16,006,104	20,738,245	5,770,835	10,754,864	42,841,813	15,197,831	185,397,113	28,808,456
1994	411,056,929	19,970,008	20,988,316	6,137,105	12,318,572	50,460,607	18,231,411	252,579,136	30,371,774
1995	409,420,426	21,093,886	20,687,820	6,238,509	<u>12,744,901</u>	<u>47,944,153</u>	17,393,317	<u>259,024,379</u>	<u>24,293,461</u>
1996	394,182,422	30,217,442	25,591,703	7,048,534	12,018,522	46,891,524	16,938,969	234,261,790	21,213,938
<b>Number of Contracts Settled by Delivery/Cash Settlement</b>									
1990	1,691,460	51,611	212,699	9,970	52,417	45,045	179,370	853,557	286,791
1991	1,771,544	70,006	184,385	13,420	39,448	42,735	146,218	890,212	385,120
1992	1,961,005	64,200	177,005	14,256	48,273	55,714	133,018	965,403	503,136
1993	2,082,970	48,573	179,284	11,695	56,840	62,744	184,621	1,035,375	503,838
1994	2,873,454	76,737	88,741	8,366	44,373	78,108	189,502	1,809,418	578,209
1995	2,995,958	70,548	158,003	12,900	<u>60,593</u>	<u>75,209</u>	157,323	<u>1,939,909</u>	<u>521,473</u>
1996	2,890,167	38,226	172,442	13,384	39,406	87,777	132,507	1,903,974	502,451

## Option Statistics by Major Commodity Group

### Average Month End Open Interest and Estimated Number of Contracts Traded and Number of Contracts Traded by Major Groups, All Markets Combined from FY 1990 through FY 1996

Fiscal Year	Total	Grain	Oilseed Products	Livestock Products	Other Agriculturals	Energy/Wood Products	Metals	Financial Instruments	Currencies
<b>Average Month End Open Interest (In Contracts)</b>									
1990	2,614,278	197,566	109,684	78,934	285,041	242,477	191,086	1,133,645	375,845
1991	2,658,330	193,450	121,364	82,750	254,257	258,729	176,192	1,134,565	437,023
1992	3,309,544	244,160	129,115	69,002	199,069	409,491	193,638	1,585,846	479,223
1993	4,071,770	207,013	176,840	63,572	205,258	504,284	224,006	2,155,422	535,375
1994	5,066,276	240,993	226,204	60,570	249,627	575,818	250,622	2,961,585	500,857
1995	5,439,631	<u>347,911</u>	<u>185,995</u>	73,286	<u>375,506</u>	429,094	312,488	<u>3,285,354</u>	429,997
1996	6,172,544	537,468	290,224	82,274	302,587	588,465	393,719	3,514,795	463,012
<b>Number of Contracts Traded</b>									
1990	61,928,120	2,715,382	2,215,133	1,170,091	3,422,780	6,028,874	2,966,055	35,159,089	8,250,716
1991	60,325,530	2,632,788	2,544,475	1,029,810	2,554,945	5,546,785	2,586,765	33,673,427	9,756,535
1992	69,590,346	3,216,275	2,217,621	879,880	2,358,160	8,776,175	2,238,322	39,928,140	9,975,773
1993	76,864,511	2,567,946	3,040,439	694,040	2,694,427	9,041,386	2,704,674	46,814,005	9,307,594
1994	99,205,548	3,339,533	3,493,150	718,515	3,266,062	8,075,827	3,191,136	66,937,138	10,184,187
1995	95,406,042	<u>4,310,729</u>	<u>3,140,330</u>	768,488	<u>4,224,315</u>	<u>6,460,990</u>	3,302,548	<u>65,502,601</u>	7,696,041
1996	100,320,446	8,573,628	5,758,271	896,115	3,445,669	7,817,074	3,369,996	62,667,270	7,792,423

# Data

Exchange <sup>2</sup>	Contract <sup>3</sup>	Notes <sup>3</sup>	Designation Date <sup>4</sup>	Date Trading Began							
<b>AGRICULTURE</b>											
<b>Grains</b>											
	<b>Grain Futures</b>							<b>Summary</b>	<b>ok 10-7-96</b>		
MGE	Barley	Dormant	May 02,1923	October 09,1918	ok	602		<b>Category</b>	<b>Sub-Total</b>	<b>Category</b>	<b>Category Total</b>
MCE	Corn		October 24,1922	pre-1880				Grain Futures	21	Grain Products	34
MGE	Corn	Dormant	May 02,1923	January 30,1922				Grain Options	13	Livestock / Meatproducts	19
CBT	Corn		May 03,1923	1859				Livestock / Meatproduct Futures	14	Oil Seed Products	20
KCBT	Corn	Dormant	May 05,1923	1879				Livestock / Meatproduct Options	5	Fiber Products	8
CRCE	Corn	Vacated 6	October 19,1982	October 22,1982				Oil Seed Product Futures	15	Foodstuffs / Softs	39
KCBT	Grain Sorghums	Dormant	May 05,1923	January 01,1916				Oil Seed Product Options	5	Crop Yield	18
CME	Grain Sorghums	Dormant	January 22,1971	March 02,1971				Fiber Futures	5	Other Agricultural Products	2
MCE	Oats		October 24,1922	pre-1880				Fiber Options	3	Currency Products	116
MGE	Oats	Dormant	May 02,1923	January 18,1904				Foodstuffs / Softs Futures	26	Stock Index Products	65
CBT	Oats		May 03,1923	1859				Foodstuffs / Softs Options	13	Interest Rate Products	136
CRCE	Rice, Milled	Vacated 6	February 12,1981	April 09,1981				Crop Yield Futures	9	Other Financial Instruments	17
CRCE	Rice, Rough	Vacated 6	April 08,1981	April 10,1981				Crop Yield Options	9	Insurance Futures	21
MCE	Rice, Rough	6	November 08,1991	November 11,1991				Other Agricultural Futures	2	Energy Products	38
CBT	Rice, Rough		August 22,1994	October 03,1994				Currency Futures	72	Metals Products	48
MGE	Rye	Dormant	May 02,1923	January 03,1918				Currency Options	44	Wood Products	10
MCE	Wheat		October 24,1922	pre-1880				Stock Index Futures	46	Fertilizer Products	4
CBT	Wheat		May 03,1923	1859				Stock Index Options	19	Other Natural Resource Products	7
KCBT	Wheat, Hard Winter		May 05,1923	1877				Interest Rate Futures	84	Total	602
MGE	Wheat, Spring		May 02,1923	1885				Interest Rate Options	52		
MGE	Wheat, White		August 24,1984	September 10,1984				Other Financial Instrument Futures	10		
	<b>Grain Options</b>							<b>Other Financial Instrument Options</b>	<b>7</b>		
MGE	Barley		July 18,1996	July 20,1996				Insurance Futures	6		
CBT	Corn		January 29,1985	February 27,1985				Insurance Options	15		
MCE	Corn		January 29,1991	March 21,1991				Energy Product Futures	29		
CBT	Oats		December 19,1989	May 01,1990				Energy Product Options	9		
MGE	Oats		February 18,1993	April 02,1993				Metal Futures	33		
CBT	Rice, Rough		August 22,1994	October 03,1994				Metal Options	15		
MCE	Rice, Rough	6	January 22,1992	April 10,1992				Wood Product Futures	7		
MCE	Wheat		October 29,1984	October 31,1984				Wood Product Options	3		
CBT	Wheat		September 16,1986	November 17,1986				Fertilizer Futures	2		
KCBT	Wheat, Hard Winter		October 29,1984	October 31,1984				Fertilizer Options	2		
MGE	Wheat, Spring (American Style)		October 29,1984	October 31,1984				Other Natural Resource Futures	4		
MGE	Wheat, Spring (European Style)		September 26,1989	November 10,1989				Other Natural Resource Options	3		
MGE	Wheat, White		May 21,1991	June 24,1991				Total	602		
<b>Oil Seed Products</b>											
	<b>Oil Seed Product Futures</b>										
PCE	Coconut Oil	Revoked	July 18,1975								
MGE	Flaxseed	Dormant	July 02,1920	May 02,1923							
CBT	FOSFA International Edible Oils Index*		June 15,1994	September 23,1994							
PCE	Palm Oil	Revoked	July 18,1975								
CBT	Soybean Meal		August 22,1951	August 19,1951							
MCE	Soybean Meal*		March 26,1985	April 22,1985							
CBT	Soybean Oil		June 30,1950	July 27,1950							
MCE	Soybean Oil*		December 22,1994	January 13,1995							
CBT	Soybeans		December 08,1940	October 05,1936							
MCE	Soybeans		December 08,1940	October 05,1936							
MGE	Soybeans	Dormant	September 11,1950	September 20,1950							
KCBT	Soybeans	Dormant	September 10,1956	September 18,1956							
CRCE	Soybeans	Vacated 6	October 27,1981	October 29,1981							
MGE	Sunflower Seeds	Dormant	June 30,1980	July 17,1950							
CBT	Sunflower Seeds	Dormant	November 24,1981								
	<b>Oil Seed Product Options</b>										
CBT	Soybean Meal		October 21,1986	February 19,1987							
CBT	Soybean Oil		October 21,1986	February 19,1987							
MCE	Soybean Oil		December 22,1994	January 13,1995							
CBT	Soybeans		October 29,1984	October 30,1984							
MCE	Soybeans		January 29,1985	February 08,1985							
<b>Fiber Products</b>											
	<b>Fiber Futures</b>										
CRCE	Cotton	Vacated 6	June 30,1981	July 07,1981							
NYCE	Cotton No.1	Dormant	September 13,1936	1870							
NYCE	Cotton No.2		September 13,1936	1870							
NYCE	Cotton, Cotlook World*		September 22,1992	October 01,1992							
NYCE	Wool	Dormant	October 27,1954	January 01,1941							

















CBT	CBOT Structural Panel Index*		December 21,1993	January 25,1994						
CME	Oriented Strand Board		September 24,1996							
CME	Plywood	Dormant	June 30,1981	July 28,1981						
CBT	Plywood, Western	Dormant 21	July 18,1975	December 01,1969						
CME	Random Length Lumber		July 18,1975	October 01,1969						
CBT	Stud Lumber	Dormant	July 18,1975	December 01,1972						
CME	Stud Lumber	Dormant	October 04,1977	December 01,1977						
	<b>Wood Product Options</b>									
CBT	CBOT Structural Panel Index		December 21,1993	January 25,1994						
CME	Oriented Strand Board		September 10,1996							
CME	Random Length Lumber		January 21,1987	May 29,1987						
<b>Fertilizer Products</b>										
	<b>Fertilizer Futures</b>									
CBT	Anhydrous Ammonia		October 29,1991	September 11,1992						
CBT	Diammonium Phosphate		July 25,1991	October 18,1991						
	<b>Fertilizer Options</b>									
CBT	Anhydrous Ammonia		March 12,1996							
CBT	Diammonium Phosphate		March 12,1996							
<b>Other Natural Resource Products</b>										
	<b>Other Natural Resource Futures</b>									
CBT	Clean Air	22	April 21,1992							
NYMEX	Electricity, COB		January 31,1996	March 29,1996						
NYMEX	Electricity, Palo Verde		January 25,1996	March 29,1996						
CSCC	Natural Rubber	Dormant	July 18,1975							
	<b>Other Natural Resource Options</b>									
CBT	Clean Air		April 21,1992							
NYMEX	Electricity, COB		January 31,1996	April 26,1996						
NYMEX	Electricity, Palo Verde		January 25,1996	April 26,1996						

## Notes - Main Categories of Commodities

1. The table lists three main categories of commodities -- Agriculture, Financial Instruments, and Natural Resources -- and subcategories within those categories. It groups contracts by futures and options within the categories and subcategories.

2. Exchange abbreviations are as follows:

American Commodity Exchange - ACE

AMEX Commodities Corporation - ACC

Chicago Board of Trade - CBT

Chicago Mercantile Exchange - CME

Chicago Rice & Cotton Exchange - CRCE

Coffee, Sugar & Cocoa Exchange - CSCE

COMEX Division of New York Mercantile Exchange - COMEX

Kansas City Board of Trade - KCBT

MidAmerica Commodity Exchange - MCE

Minneapolis Grain Exchange - MGE

New York Cotton Exchange - NYCE

New York Futures Exchange - NYFE

New York Mercantile Exchange - NYMEX

Philadelphia Board of Trade - PBOT

Pacific Commodity Exchange - PCE

Pacific Futures Exchange - PFE

Twin Cities Board of Trade - TCBT

MCE was previously named the Chicago Open Board of Trade. Its name was changed effective November 22, 1972. The Commodity Exchange, Inc., became a division of the NYMEX on July 20, 1994.

3. Most futures contracts are settled by physical delivery of the underlying commodity. An asterisk (\*) next to the contract name means that the contract is settled in cash, based on a price calculated by an independent third party or through a formula specified in the contract terms. Almost all existing option contracts are options on futures, meaning that exercise results in the establishment of a position in the underlying futures contract; options that have the word "physical" after the contract name are options on physicals, meaning that they are settled by delivery of the actual commodity or via cash settlement. The letter (d) in the Notes column indicates that a designated contract is dormant; i.e., the contract has been designated for more than five years and has not traded in the past six months. A blank space in the Notes column indicates that the contract was traded this fiscal year and is not dormant. The letters (v) and (r) indicate that the contract is no longer legally in force because the designation has been vacated or revoked. "Vacated" contracts are contracts for which an exchange has requested that the designation be removed. "Revoked" contracts are contracts for which the Commission has rescinded an exchange's designation.

4. The "designation date" is the date on which the exchange was authorized to trade the contract (i.e., the exchange was "designated" as a "contract market" in that particular commodity by the CFTC or its predecessor agency). If an exchange was previously designated by the Secretary of Agriculture as a contract market in a commodity, and that designation was in effect on July 18, 1975, the Commission did not specifically designate them as such on July 18, 1975. Those designations continued in force and effect by virtue of Section 411 of the Commodity Futures Trading Commission Act of 1974. Prior to July 18, 1975, the commodities for which designation was granted by the Secretary of Agriculture were among the list of agricultural and animal product commodities explicitly set forth in Section 2(a)(1) of the Commodity Exchange Act. On July 18, 1975, the Commission gave contract market designation to many of the exchanges which traded in previously unregulated commodities, having given provisional contract market designations on April 18, 1975, and having extended such designations on May 5. The effect of the July 18, 1975, designations was to bring under federal regulation all commodities for which a futures contract was actively traded. Previously unregulated commodities, such as COMEX's mercury and rubber contracts, for

which no contract market designations were granted on that date, were not permitted to continue trading after July 18, 1975.

5. The "trading began" column indicates, according to data supplied by the exchanges, when trading began in a commodity, that is, the date of the first recorded futures or option trading in the commodity. For many contracts, the contract terms have changed materially since the date when trading began. A blank space in this column means that, although approved by the Commission, the exchange has not listed the contract for trading as of the end of the current fiscal year.

6. The CRCE originally was the New Orleans Commodity Exchange (NOCE). On June 15, 1983, the NOCE ceased trading and liquidated all open commitments in all traded commodities. In September 1983, NOCE became the Chicago Rice and Cotton Exchange (CRCE). On November 8, 1991, when the MCE was designated in rough rice futures, all open positions in CRCE rough rice futures were transferred to the MCE and, at the same time, all five CRCE futures contract designations were vacated. On October 3, 1994, open positions in MCE rough rice futures were transferred to the CBT.

7. Contract amended June 21, 1983 to specify mandatory cash settlement in lieu of physical delivery.

8. Name changed from Sugar No. 10 to Sugar No. 12 and then, on July 1, 1985, from Sugar No. 12 to Sugar No. 14.

9. Name changed to boneless beef trimmings from boneless beef on April 21, 1977 when contract terms were amended to change the underlying commodity.

10. Contract amended December 20, 1990 to specify mandatory cash settlement in lieu of physical delivery.

11. Contract amended December 10, 1985 to specify mandatory cash settlement in lieu of physical delivery. On June 5, 1992, the basis of the cash settlement price was changed to a USDA price.

12. Contract amended October 25, 1995 to specify mandatory cash settlement, based on USDA price, in lieu of physical delivery. The contract name was also changed at that time, to lean hogs from live hogs, since the underlying commodity was changed to hog carcasses from live hogs.

13. On September 23, 1991, the CBT's Amex Major Market Index (MMI) contract was renamed the MMI Mini contract. The MMI Maxi contract was renamed the MMI contract at that time and subsequently, on September 17, 1993, delisted from the CBT.

14. The option on the Value Line Average Stock Index futures contract was amended to be the option on the Mini Value Line Average Stock Index futures contract on May 28, 1992.

15. Originally designated as the "GNMA-CD" contract, the name was later changed to "GNMA II" and then to "GNMA." On April 19, 1988, this contract was renamed as "Mortgage-Backed Future."

16. The underlying instrument was changed from a three-year interest rate swap to a ten-year interest rate swap on September 4, 1992.

17. These contracts were vacated on April 6, 1993, concurrent with Commission approval of identical CBT contracts.

18. This contract was originally named the NYMEX Gulf Coast unleaded gasoline futures contract. It was renamed as Texas unleaded gasoline to distinguish it from another similar contract approved on February 11, 1992.

19. Contract size was reduced to 1 kilogram from 100 troy ounces, effective April 7, 1983. A 100-troy-ounce CBT gold futures contract was later approved on August 11, 1987.

20. Contract size was reduced to 1,000 from 5,000 troy ounces, effective March 16, 1981. A 5,000-troy-ounce CBT silver futures contract was later approved on August 11, 1987.

21. Contract specifications and name changed from "Plywood" to "Western Plywood," effective April 20, 1981.

22. The underlying commodity is a sulfur dioxide emission allowance issued by the Environmental Protection Agency.

## CFTC 1996 Available Funds and Staff-Years

Funds Appropriated - \$53,532,000

Staff-Years - 565

End-of-year Employment - 541

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### CFTC Staff-Years by Geographic Location (FY 1996 Actual)

California 21

District of Columbia 324

Illinois 112

Minnesota 2

Missouri 7

New York 75

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Total 541

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### Statement of CFTC Obligations by Geographic Location for

#### Administration of the Commodity Exchange Act (during FY 1996)

California - \$ 1,959,000

District of Columbia - 34,146,000

Illinois - 9,967,000

Minnesota - 179,000

Missouri - 633,000

New York - 6,640,000

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Total - \$53,524,000 \*

\* Includes reimbursements of \$6,000

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