

A Review of 75 Purchases by the  
Commodity Futures Trading Commission:  
March 2011 – March 2012

Prepared by the  
Office of the Inspector General  
Commodity Futures Trading Commission

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## EXECUTIVE SUMMARY

The Office of the Inspector General for the Commodity Futures Trading Commission reviewed purchases made by the Agency for the period March 2011 through March 2012. We performed this review at the request of Congressional staff. After speaking with staff and reviewing a listing of 856 purchase transactions undertaken during the period, we selected 75 to review, focusing generally on food items, catering, restaurant charges, tourism services, items identified as “illegible” (or similar) in the initial records we reviewed, gift cards, and purchases that looked unusual due to the vendor. We reviewed documentation supporting each of the 75 purchases selected for review, and spoke with staff regarding 12 of the small purchases selected for review. All but two of the 75 selected for review were micro-purchases. All but four of the 75 selected for review were transacted electronically.

Our objective was to ascertain whether the purchases selected for review squared with applicable statutes, regulations and GAO and CFTC policies as permissible expenditures of the Agency’s appropriated funds. We found no purchases that violated applicable standards for transactions of their type. To the extent we found flaws in the process or documentation of a purchase, all were minor or insignificant, or previously addressed by Agency management, and they are noted in the report. We have no recommendations at this time.

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## BACKGROUND, SCOPE, AND OBJECTIVE

### Introduction

In June 2012 we received a request from Congressional staff to take a look at small purchases by the Agency. Of over 800 small purchases provided for our review, we selected 75 to examine. Our field work began over the summer and finished up in the Fall of 2012.

### Scope

Our scope was 856 purchases, all taking place between February, 28, 2011 and March 30, 2012.<sup>1</sup> We focused on what appeared to be a higher than usual volume of food, restaurant, and catering services purchases, as well as purchases made from two vendors that appeared odd (a CFTC registrant and a farm), purchases of tours/tourism events, purchases of gift cards, and purchases that appeared to be incorrectly identified among Agency records provided to us (i.e., purchases with payees marked “unintelligible” or similar). We selected 75 purchases related to the following agency-assigned funding descriptions: Advisory Committee, Awards, Awards Refreshments, Cultural Awareness Events, Fitness Center Services, International R & R, IRC Reimbursable Expense, Maintenance Agreement, Office Supplies, R&R, Subscription Services, and Training, or, again, that were not adequately identified on the spreadsheet we reviewed (with the payee noted as illegible). All but two of the 75 purchases selected for review were less than the micro-purchase threshold of \$3,000.00,<sup>2</sup> and all but four were transacted electronically. All took place between March 2011 and March 2012.

### Objective

Our objective was to ascertain whether the purchases were permissible under statutory and regulatory provisions, as well as applicable policies of the Government Accountability Office, the Office of Personnel Management, or other authority, and internal Agency instructions. Because we were concerned with what appeared to us to be a larger than usual amount of food, catering and other personal expenses (such as gift card and tourism expenses) being purchased by the Agency, we wanted to review existing documentation for these purchases to see whether these purchases could properly be made with appropriated funds, and whether the

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<sup>1</sup> A list of 856 purchases was furnished by Congressional staff.

<sup>2</sup> The two charges that did not fall under the micro-purchase threshold were rental fees for two events: a conference (\$4,757.50) and a multi-day training event (\$9,301.92). We did examine receipts and internal documentation, and noted that Agency staff obtained space for the conference from another Federal entity and anticipated that the conference rental fee would be reimbursed in part by attendee fees. We also noted that Agency staff obtained competitive bids for the training location. We did not perform a formal audit or review of the acquisition process for these two charges exceeding the micro-purchase threshold.

purchase had been for Agency-related business. We did not conduct an audit, and we did not evaluate compliance with the Federal Acquisition Regulation.<sup>3</sup>

### Methodology

We reviewed a total of 73 micro-purchases and two additional purchases above the micro-purchase threshold, examining documentation for each one. Documentation was not immediately clear to us for eleven of the purchases selected for review, and for these purchases we requested further documentation and met with the relevant staff and supervisors involved. In addition, we reviewed the Agency's published internal policies addressing the various types of purchases examined in this review, including policies addressing: Conference and Event Meals and Refreshments, Incentive Awards Policies, Fitness Center Policies, and Procurement Policy. We also reviewed internal forms used by Agency staff for discrete purchases, although we would note that formal documentation of micro-purchase procedures is not required under the FAR and these forms were not always used, or were modified by staff to suit their needs.

## LEGAL BACKGROUND

By way of background, the Federal Acquisition Streamlining Act (FASA),<sup>4</sup> streamlined the acquisition process and made a number of substantial changes in the manner in which relatively low dollar procurements are conducted. Among other things, FASA established micro-purchases – acquisitions of goods or service using simplified procedures to be set out under the Federal Acquisition Regulation<sup>5</sup> – and authorized micro-purchases of up to \$ 2,500.00. In 2006, the micro-purchase threshold increased to \$3,000.00.<sup>6</sup> There are exceptions to the micro-purchase threshold that are not relevant to this review.<sup>7</sup>

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<sup>3</sup> The Federal Acquisition Regulation is located at Title 43 of the Code of Federal Regulations. While we did not perform a detailed audit for purposes of this review, in FY 2012 the OIG engaged the services of an independent public accounting firm (IPA) to conduct an audit of the Agency's compliance with its stated goals for implementing the Federal Managers' Financial Integrity Act of 1982 (FMFIA), Pub. L. No. 97-255, 96 Stat. 814 (codified at 31 U.S.C. sec. 65(1994)) FMFIA requires federal managers to establish a continuous process for evaluating, improving, and reporting on the internal control and accounting systems for which they are responsible (including small purchase processes). The completed report is available here: <http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/fmfia2012.pdf>. (Last visited December 19, 2012).

<sup>4</sup> Pub. L. No. 103-355, 108 Stat. 3243.

<sup>5</sup> 48 CFR Chapter 1, Subchapter C, Part 13.

<sup>6</sup> Technically, Section 807 of the Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375, codified at 41 U.S.C. 1908) for the first time required adjustment of acquisition-related thresholds for inflation every five years (with exceptions not applicable here).

<sup>7</sup> 48 CFR sec. 2.101.

The FAR streamlines the micro-purchase process generally as follows:

- Delegation of micro-purchase authority is encouraged. FAR 13.201(a).
- Government-wide commercial purchase card is the preferred means to purchase and pay for micro-purchases. FAR 13.201(b).
- Micro-purchases may conform to any of the simplified acquisition methods described in the FAR subpart 13.3, provided the purchaser is authorized and trained pursuant to agency procedures. FAR 13.201(c).
- Micro-purchases must comply with required sources of supplies and services in FAR Part 8 (requiring agencies obtain supplies and services if possible first from Agency inventories, then from excess from other agencies, then from Federal Prison Industries, Inc., and so on). FAR 13.201(e).
- To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers. FAR 13.202(a)(1).
- Requirements may not be broken down to permit use of simplified acquisition procedures. FAR 13.003(c)(2).
- Competitive quotations are not required if the Contracting Officer considers the price to be reasonable. FAR 13.202(a)(2).
- Action to verify price reasonableness is not required and “need only be taken” if –
  - The responsible officer suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or
  - Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis). FAR 13.202(a)(3).
- Small business set-aside does not apply. FAR 19.502-1(b).

Because the procedures for making a micro-purchase are so relaxed, we perceived no immediate need to complete a detailed evaluation of compliance with the FAR, but note that we saw no obvious violations. Of course, the Government Ethics principles and rules apply to all government activity. The following are some of the applicable Government Ethics rules and prohibitions that apply to all purchases, including micro-purchases:

- Cardholders are never permitted to: accept a gift in return for being influenced in the performance of an official act; solicit or coerce the offering of a gift; accept a gift from the same or different sources on a basis so frequent that it creates a reasonable perception

that public office is being used for private gain, or accept a gift in violation of any statute. 5 CFR 2635.202.

- Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee. 5 CFR 2635.502(a).

Where a purchase appeared unusual to us due to the vendor, we asked the relevant Agency employees whether they had any relationship that would violate existing ethics regulations or give reason to question their impartiality in the selection of the vendor.

More applicable to our review, generally an Agency may not use appropriated funds to purchase items considered personal expenses, such as food or sightseeing, without specific authority, and this includes micro-purchases.<sup>8</sup> The Government Accountability Office (GAO) has carved out a number of exceptions to this general rule, as discussed throughout this paper. The Agency's guidance was consistent with GAO guidance, and we evaluated the Agency's micro-purchases against the GAO guidance.

## SMALL PURCHASES MARCH 2011-MARCH 2012

### Advisory Committee Meetings

Purchases identified as Advisory Committee included 13 food transactions from either restaurants or catering services.<sup>9</sup> In general, an agency may not use appropriated funds to purchase items considered personal expenses, such as food, without specific authority.<sup>10</sup> However, the Government Accountability Office (GAO) has carved out a number of exceptions to this general rule, one being for an Agency hosting a conference. According to the Comptroller General, a formal agency-sponsored conference typically:

- Involves topical matters of interest to, and participation of, multiple agencies and/or nongovernmental participants;

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<sup>8</sup> North Atlantic Division –Food for a Cultural Awareness Presentation, B-301184, 2004 U.S. Comp. Gen. LEXIS 2002, January 15, 2004.

<sup>9</sup> The 13 transactions included 11 purchases and refunds for two of the purchases.

<sup>10</sup> North Atlantic Division –Food for a Cultural Awareness Presentation, B-301184, 2004 U.S. Comp. Gen. LEXIS 202, January 15, 2004.

- Requires registration;
- Has a published substantive agenda; and
- Features scheduled speakers or discussion panels.
- Food is a legitimate conference expense.

The Agency issued the CFTC Policy and Procedure on Conference and Event Meals and Refreshments that conforms to the GAO guidance. The policy recognizes that CFTC does not need express statutory authority to host a conference, as long as it determines that a formal conference is reasonably and logically related to its statutory responsibilities and serves the Commission's statutory mission.

The 11 food and beverage purchases ranged in cost from \$47.15 to \$1,092.22. Where multiple charges were incurred for the same event from the same vendor, the charges did not exceed the micro-purchase threshold. Three vendors were utilized during the relevant period. The Agency demonstrated in each instance that the purchase of food items conformed to GAO policies. We found nothing unusual in these purchases.

### Awards

The Incentive Awards Act and regulations authorizes the Agency to develop an awards program.<sup>11</sup> OPM guidance states that Agencies may give gift cards as awards, in nominal amounts.<sup>12</sup> Purchases described as awards included three purchases of multiple gift cards in amounts not exceeding \$50 each or totaling more than \$500 (in bulk), for a total of \$1024.10. We examined these three purchases of gift cards. The Agency provided documentation justifying each giftcard award to each employee. We found no irregularities.

### Awards Refreshments

The Agency made four purchases in order to offer refreshments at its yearly Chairman's Awards Ceremony (one purchase for each field office). GAO policy states that an Agency may provide refreshments at awards ceremonies if the employees are recognized publicly and an authorized agency official has determined that food advances the recognition of the awardee.<sup>13</sup> The refreshments for each field office awards ceremony did not exceed the micro-purchase thresholds – the costs ranged from \$361.00 (Kansas City Field Office with approximately 25 employees) to \$2598.75 (CFTC headquarters), and the total spent on the awards ceremony

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<sup>11</sup> See, 5 U.S.C. sec. 4505, et seq. and 5 CFR Part 451.

<sup>12</sup> "The only circumstance where a gift certificate may be used to recognize an employee contribution is as an informal recognition award, which may not exceed nominal value." <http://www.opm.gov/perform/faqs/informal.asp> (last visited December 19, 2012).

<sup>13</sup> E.g., Matter of: Refreshments at Awards Ceremony, B-223319, 65 Comp.Gen. 738, 1986 U.S. Comp. Gen. LEXIS 823 (July 21, 1986).



agency-wide was \$5,474.75. We found no other awards ceremonies involving purchases of food during the year. These purchases comported with Agency and GAO policies.<sup>14</sup>

### Cultural Awareness Events

Refreshments may be provided at cultural awareness events, but the rule is a bit stricter than for Agency-sponsored conferences. Food may be provided as part of a cultural awareness event if the food is part of a formal program intended to advance EEO objectives and to make the audience aware of the cultural of ethnic history being celebrated, and the food is a sample of the food of the culture, and is being offered as part of the larger program to serve an education function.<sup>15</sup> During the relevant period, CFTC purchased refreshments from 12 different establishments for cultural awareness events sponsored at the Agency. Prices ranged from \$120.00 to \$600.00 for these 12 purchases, for a total of \$2,880.40. The Agency provided their internal policy guidance for such expenditures, as well as documentation for each purchase. We did notice that employees occasionally used the wrong form for this purchase (specifically, the form for a conference food purchase rather than a cultural awareness event food purchase); however no form is required for micro-purchases, and the information furnished, albeit on the wrong form, adequately supported food purchase for a cultural awareness event (rather than a conference).

### Fitness Center Services

Two micro-purchases were made during the relevant period to support the fitness center in the CFTC headquarters building. Each purchase was under \$200.00, and staff explained that CFTC makes these purchases pursuant to its lease. Each purchase conformed to CFTC's procurement policy. We examined documentation for these purchases and found nothing remarkable.

### Representation and Reception, and International Representation and Reception

Representation and reception is a specific appropriation. The purpose of the appropriation is to permit certain expenditures primarily in the nature of "entertainment" which generally are not permissible under normal operating appropriations. The official reception and representation appropriations originated from the need to permit officials of agencies with significant presence in foreign countries to reciprocate courtesies extended to them by foreign officials.<sup>16</sup> The agencies "have substantial discretion in the use of such funds, but such

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<sup>14</sup> We did note that one purchase for the Chairman's Awards Ceremony was mislabeled in one instance as an award (rather than award refreshment); however, all other documentation correctly described the transaction as a permissible purchase of refreshments for an awards ceremony, and the misapplied label did not impact the transaction. We brought this minor irregularity to the attention of Agency staff.

<sup>15</sup> Matter of: U.S. Army Corps of Engineers, North Atlantic Division – Food for a Cultural Awareness Program, B-301184, 2004 U.S. Comp. Gen. LEXIS 202 (Jan. 15, 2004).

<sup>16</sup> Matter of: United States Trade Representative--Use of Reception and Representation Funds, B-223678, Comptroller General of the United States, 1989 U.S. Comp. Gen. LEXIS 598, (June 5, 1989).

discretion is not unlimited.”<sup>17</sup> The purpose of the meetings “should be clearly representational” and cannot be interagency working meetings that are not “official receptions.”<sup>18</sup>

CFTC funding for International Representation and Reception has increased significantly in recent years. From Fiscal Year 2005 through FY 2009, Congress appropriated \$3,000.00 “for official reception and representation expenses.”<sup>19</sup> In FY 2010 and FY 2011, Congress appropriated \$3,000 “for official reception and representation expenses,” along with an additional \$25,000 “for the expenses for consultations and meetings hosted by the Commission with Foreign governmental and other regulatory officials.”<sup>20</sup>

Based on the list of purchases provided to OIG, between March 1, 2011 and March 1, 2012, thirteen separate items labeled International R&R were paid for by IPAC card, for a total expense of \$7,416.55 for International R&R. Five separate items labeled R&R totaled \$2,147.70. Each purchase was a micro-purchase, and CFTC utilized five vendors for the 18 purchases. The events were consultations and meetings hosted by the Commission with Foreign governmental and other regulatory officials. For larger functions we viewed the programs and for private functions we reviewed attendee lists. The attendees were regulatory officials, foreign and domestic.

Finally, we reviewed documentation for expenditures for CFTC’s 2011 International Regulators Conference that were designated as reimbursable by other conference participants. These included International R&R expenses for foreign regulators as authorized under the Commission’s appropriation. These anticipated reimbursable expenses paid for a reception, sightseeing tours in Chicago, and a rental fee for the conference room. The micro-purchases ranged in price from \$230.50 to \$1,725.82. The rental fee (\$4,757.50) was not a micro-purchase; we reviewed documentation and learned that the rental fee was paid to another federal entity, and did in fact secure space for the conference at a federal building; however, we did not audit the transaction.

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<sup>17</sup> Matter of: Trade and Development Program--Use of Representation and Entertainment Funds to Pay for Meals, B-250988, Comptroller General of the United States, 72 Comp. Gen. 310; 1993 U.S. Comp. Gen. LEXIS 800 (September 2, 1993).

<sup>18</sup> Matter of: United States Trade Representative--Use of Reception and Representation Funds, B-223678, Comptroller General of the United States, 1989 U.S. Comp. Gen. LEXIS 598, (June 5, 1989).

<sup>19</sup> In FY 2005 the R&R appropriation was \$3,000. Pub. L. No. 108-447, 118 Stat. 2838.  
In FY 2006 the R&R appropriation was \$3,000. Pub. L. No. 109-97, 119 Stat. 2148.  
In FY 2007 the R&R appropriation was \$3,000. Pub. L. No. 110-5, 121 Stat. 8 (year-long continuing resolution)  
In FY 2008 the R&R appropriation was \$3,000. Pub. L. No. 110-161, 121 Stat. 1873.  
In FY 2009 the R&R appropriation was \$3,000. Pub. L. No. 111-8, 123 Stat. 656.

<sup>20</sup> In FY 2010 the R&R appropriation was \$3,000, and not to exceed \$25,000 for the expenses for consultations and meetings hosted by the Commission with Foreign governmental and other regulatory officials. Pub. L. No. 111-80, 123 Stat. 2118.

In FY 2011 the R&R appropriation was \$3,000, and not to exceed \$25,000 for the expenses for consultations and meetings hosted by the Commission with Foreign governmental and other regulatory officials. Pub. L. No. 112-10, 125 Stat. 38 (year-long continuing resolution).

### Training

The CFTC recorded seven separate micro-purchases identified as training expenses on the documentation we reviewed. These charges ranged in amount from \$160.87 to \$1,837.94 for food, fees, and travel related to training. Payment of training-related expenses is of course permitted by the Agency.<sup>21</sup> The Agency may pay for meals provided with training if participation is necessary to obtain the full benefit of training.<sup>22</sup> We examined internal documentation for each expenditure and found nothing facially unusual or out of compliance with Agency policy or applicable authority governing permissible training expenses.

### Illegible Entries

Documentation provided to us indicated that five items of payment were made to vendors listed as “illegible” or “unreadable.” The items ranged in price from \$189.00 to \$2,200.00. While the printout seemed ominous, Agency staff provided documentation for the expenditures, including the identities of the recipients. The expenditures were for such mundane items as court reporting services, library subscriptions, and furniture cleaning. One was a food purchase for a cultural awareness event (and was examined with the other cultural awareness purchases). These payments were by check. The particular printout we reviewed simply did not adequately acknowledge the payee.

### Miscellany

We examined two micro-purchases solely due to the nature of the recipient. One was a Commission registrant; payment was made in the amount of \$1,200.00. Agency staff provided documentation that the CFTC librarian purchased a subscription to commodity research published by the registrant. The second purchase was from a farm, for “office supplies.” Agency staff provided documentation for the purchase of 65 coasters for the Kansas City Field Office from the farm’s gift shop, and stated that lower prices were sought prior to making the purchase. The Agency paid \$547.84 for the coasters (with holders). The employee making the purchase demonstrated that the coasters were durable, long lasting, and would protect the furniture; however, we were informed during a visit that the Kansas City Field Office was staffed with only 27 employees as of September 2012. While we understand that, if completely full, the available conference and waiting rooms in the Kansas City Field Office could accommodate 65 individuals, we do not believe it likely that the need will arise frequently.

We discussed this purchase with the Agency staffer who made the purchase, and the first line supervisor who approved it. We asked both if they had any business or familial or other close relationship with anyone associated with the farm; both replied in the negative. The agency employees who made the purchase stated that the purchase was previously subjected to

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<sup>21</sup> 5 U.S.C. 4109. All training must comply with the Government Employees Training Act definition of training at 5 U.S.C. 4101(4).

<sup>22</sup> To the Secretary of Agriculture, B-140417, 39 COMP. GEN. 119, 1959 U.S. Comp. Gen. LEXIS 125 (August 19, 1959).

an internal review by Agency management and that they now regretted the purchase and had sought at one time to return the coasters.

As earlier recognized,<sup>23</sup> micro-purchase regulations grant a great deal of discretion to an employee with micro-purchase authority both regarding the determination of whether a price is reasonable and the extent to which obtaining competitive quotes and distributing purchases among qualified vendors is appropriate. While we would not have purchased coasters in that amount, we acknowledge that the purchase conformed technically to micro-purchase requirements.<sup>24</sup> We also note with approval that Agency management previously addressed this purchase with relevant CFTC staff.

## CONCLUSION

We conclude that the Agency's documentation was adequate to permit us to understand each of 75 purchases, including the process of selecting the vendor, the process of obtaining appropriate supervisory approvals, and making payment. We found no deficiencies in the Agency's internal policies or the transaction documentation we examined. The purchases we reviewed conformed with applicable GAO policies and requirements regarding permissible expenditures for the various items that would generally be considered personal expenditures. We credit the uptick in such purchases at least in part to Agency efforts to implement the Dodd-Frank Act, as well as the increased appropriation for International Representation and Reception. While we did not encounter perfection in the records we reviewed, the minor errors we did encounter are remarked in this paper and were discussed with relevant Agency staff. Our disagreement with a purchase of coasters was adequately addressed by the Agency, prior to this review. We have no formal recommendations at this time.

As we did not perform an audit of the Agency's compliance with the FAR, it could be that there are technical issues associated with these purchases that were not revealed in this review; however, in FY 2012 the OIG engaged the services of an independent public accounting firm (IPA) to conduct an audit of the Agency's compliance with its stated goals for implementing the Federal Managers' Financial Integrity Act of 1982 (FMFIA), which requires federal managers to establish a continuous process for evaluating, improving, and reporting on the internal control and accounting systems for which they are responsible (which may include small purchase processes). The IPA completed its report while fieldwork for this report was

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<sup>23</sup> See discussion, pages 2-4.

<sup>24</sup> Our review of the coaster purchase drew our attention to the fact that the Kansas City Office currently is not staffed at capacity; we viewed at least 30 empty workspaces (offices and cubicles). We realize the new offices in Kansas City are less than a year old and some staffing increases may be anticipated now that space is available; however, if space is not being used we believe steps should be taken to reduce associated costs, perhaps through subleasing. Moreover, we again raise the issue of CFTC having no office west of Kansas City, Missouri, particularly since there is a probability of no physical futures facility continuing in Kansas City. We urge the Agency to monitor staffing levels in the Kansas City field office in the future and to address space issues on its own initiative.

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ongoing, and concluded that “CFTC followed reasonable processes, including management control reviews that it conducted, to support its FY 2012 FMFIA statement of assurance.”<sup>25</sup>

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<sup>25</sup> The IPA’s report may be viewed on the CFTC OIG website (<http://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm>) at: <http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/fmfia2012.pdf> (last visited 12/19/2012).