U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

Office of the
Inspector General

MEMORANDUM

TO: Gary Gensler
Chairman

FROM: A. Roy Lavik ARL
Inspector General

DATE: November 10, 2011

SUBJECT: Inspector General's Assessment of The Most Serious Management Challenges Facing the Commodity Futures Trading Commission (CFTC)

Introduction

The Reports Consolidation Act of 2000 (RCA) authorizes the CFTC to provide financial and performance information in a more meaningful and useful format for Congress, the President, and the public. The RCA requires the Inspector General to summarize the "most serious" management and performance challenges facing the Agency and to assess the Agency's progress in addressing those challenges. This memorandum fulfills our duties under the RCA.

In order to identify and describe the most serious management challenges, as well as the Agency's progress in addressing them, we have relied on data contained in the CFTC financial statement audit and Annual Financial Report, representations by agency management, as well as our knowledge of industry trends and CFTC operations. Since Congress left the determination and threshold of what constitutes a most serious challenge to the discretion of the Inspector General, we applied the following definition in preparing this statement:

Serious management challenges are mission critical areas or programs that have the potential for a perennial weakness or vulnerability that, without substantial management attention, would seriously impact Agency operations or strategic goals.

This memorandum summarizes the results of the CFTC's current financial statement audit, describes the Agency's progress on last year's management challenges, and finally discusses the most serious management challenges that we have identified:

- Implementation of the Dodd-Frank Act
- Human Resource Expansion and Management

- Efficient Deployment of Information Technology Resources
- Expanding Delivery of Customer Protection Resources and Consumer Education

CFTC Financial Statement Audit Results

In accordance with the *Accountability of Tax Dollars Act*, CFTC, along with numerous other federal entities, is required to submit to an annual independent financial statement audit by the Inspector General, or by an independent external auditor as determined by the Inspector General. The results of the Fiscal Year 2011 financial statement audit will be discussed in the Annual Financial Report, and the financial statement audit is expected to result in an unqualified audit opinion.

CFTC's Progress on Last Year's Challenges

Last year, we identified two of the most serious management challenges:

- Implementation of the Dodd-Frank Act; and,
- Human Resource Expansion and Management.

CFTC made progress on both challenges, but due to ongoing implementation of the Dodd-Frank Act these challenges remain significant. Following is our statement made last year followed by an update.

OIG Statement 2010

Implementation of the Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Dodd-Frank"), Pub. L. 111-203, 124 Stat. 1376 (2010). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act to establish a comprehensive new regulatory framework for swaps and security-based swaps. In order to implement the Dodd-Frank Act, the Commission has identified 30 areas where rules will be necessary. Many of these rules will require or result in cooperative efforts with the Securities and Exchange Commission or other federal agencies. In addition, the Dodd-Frank Act calls for numerous studies and other undertakings by the Commission, some also with cooperation from other agencies. The Commission recognizes that many of the new rules required under Dodd-Frank must be adopted within 180 days. The magnitude of this undertaking under a compressed timeline during FY 2011 presents a serious management challenge.

Update

During the past year CFTC staff and Commissioners have met more than 1,000 times with members of the public to discuss rules proposed under Dodd-Frank, and have conducted 14 public roundtables. Additionally, the Commission has received more than 25,000 comment letters pertaining to Dodd-Frank. The Commission has held 20 public meetings to vote on various Dodd-Frank matters, and more meetings are scheduled this year and into next year. The Commission has issued nearly 60 proposed rules, notices, or other requests seeking public comment, as well as 22 final rules, interim final rules, and exemptions, but implementation is not yet complete.

In order to address the new regulatory mandates stated in the Dodd-Frank Act, the Agency has reorganized into 4 Divisions and 7 operating offices. Operational challenges associated with Dodd-Frank implementation remain, in our view, a serious management challenge.

OIG Statement 2010

Human Resource Expansion and Management

The Commission's new responsibilities under Dodd-Frank significantly increased its workload. By the end of Fiscal Year 2010, the Commission had on-board 687 employees, which is 58 below the 745 FTE CFTC requested to carry out our pre-Dodd-Frank authorities. To fully implement the Dodd-Frank reforms, the Commission states it requires an additional 398 FTEs. Rather than 398, the President's FY 2011 Budget provided for hiring only 238 additional positions. CFTC is requesting an additional 160 FTEs for FY 2012 to staff areas of critical need. However, the current budgetary limits imposed by the government-wide continuing resolution will significantly impact the CFTC's ability to hire any additional employees during FY2011. Should Congress lift the continuing resolution, the CFTC will need to dramatically expand its Human Resource function to meet and manage the CFTC's need for additional staff and training to address the requirements of Dodd-Frank Act. We view the possibility of a rapid and dramatic increase (35% staff increase in FY11) in new employees to address new rules over newly regulated markets, such as swaps, a significant management challenge during Fiscal Year 2011.

Update

During Fiscal Year 2011 the agency secured additional appropriations and staff. The CFTC's 2011 spending plan accommodated 717 FTEs. It is our understanding, based on the President's Budget Submission, that CFTC may increase to 983 staff years – an increase of over 200 staff years – for FY 2012 and, accordingly, we restate *Human Resource Expansion and Management* as a serious and continuing management challenge in the coming fiscal year.

Most Serious Management Challenges for the coming year

Two new issues that are likely to challenge CFTC management in the coming year are:

Efficient Deployment of Information Technology Resources

According to current data, over eighty percent of futures and options trading on the Chicago Mercantile Exchange are transacted electronically. We believe that expanded jurisdiction over swaps will increase the volume of electronic trading the Agency will monitor. As a result of this structural shift in futures trading (from floor based open outcry to electronic platforms), the CFTC has requested from Congress and received additional resources to facilitate electronic surveillance.

Congress in FY 2011 authorized a minimum of $37.2 million for "the highest priority information technology activities of the Commission." In response to this congressional directive as well as the Agency's added responsibility over the swaps marketplace, the Agency in FY 2011 allocated over $42 million dollars towards technological modernization (21% of FY 2011 appropriations). Approximately two thirds of this budgeted commitment was targeted towards automated data processing systems to modernize the Agency's systems for capturing and processing market related data. We identify efficient deployment of information technology resources as a serious management challenge for the coming year.

Expanding Delivery of Customer Protection Resources and Consumer Education

Section of 748(g) of the Dodd-Frank Act added section 23(g) to the Commodity Exchange Act to establish within the Treasury of the United States a revolving fund that will be available to the Agency for the payment of whistleblower awards and education initiatives. The new Customer Protection Fund may be funded -- up to $100 million -- by civil monetary penalties collected through the Commission's enforcement program that are not otherwise distributed to victims. At the end of FY2011 the Customer Protection Fund totaled over $23 million dollars. On October 24, 2011, an initial Office of the Inspector General financial statement audit of the Customer Protection Fund resulted in an unqualified opinion on the financial statements, which is encouraging.

Increasingly, the Customer Protection Fund's resources and commitments will demand significant management attention. This new commitment to whistleblower protection and education will challenge the Agency to effectively manage decisions regarding additions to and awards from the CPF, develop its organizational structure, and prudently manage significant additional resources. We are encouraged that the agency will soon select management for the startup Customer Protection Fund and Consumer Education initiatives, but nevertheless we count the creation of this new program among the most serious management challenges facing the Commission in the coming year.