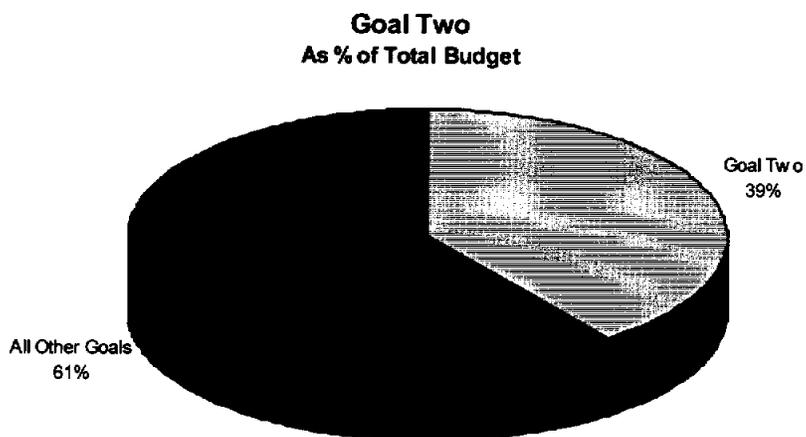
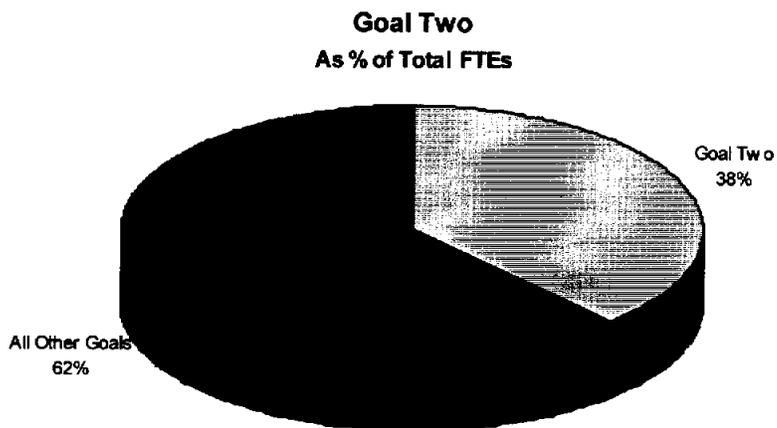


**Goal Two: Protect market users and the public.**

**Total FY 2001 Budget: \$28,379,000 235 FTEs**  
**Total Increase Over FY 2000: \$ 3,544,000 23 FTEs**



*Figure 6: Goal Two – As Percentage of Total Budget*



*Figure 7: Goal Two – As Percentage of Total FTEs*

## Annual Performance Plan

<b>Goal Two: Protect market users and the public.</b>	
<b>Outcome Objective</b>	<b>Activity</b>
<p>1. Promote compliance with and deter violations of federal commodities laws.</p>	<ol style="list-style-type: none"> <li>1. Identify and investigate possible fraudulent and other illegal activities relating to the commodity futures and option markets and their registrants.</li> <li>2. Bring injunctive actions, including using "quick-strike" efforts to protect assets and to stop egregious conduct.</li> <li>3. Bring administrative cases involving fraud and other violations.</li> <li>4. Hear administrative cases.</li> <li>5. Sanction violators in injunctive actions and administrative action cases.</li> <li>6. Inform the public and the industry concerning allegations of wrongdoing and associated legal actions, including through publications and through Commission orders and reports describing the alleged violations and the Commission's legal and policy analysis.</li> <li>7. Collect sanctions and civil monetary penalties against violators.</li> <li>8. Cooperate with the exchanges, the National Futures Association, other federal agencies, state governments and law enforcement entities, and foreign authorities to gain information for law enforcement purposes and to provide enforcement assistance as necessary and appropriate.</li> <li>9. Monitor the Internet and other communication media for fraudulent activities and other possible violations of the Act.</li> <li>10. Resolve appeals in administrative enforcement matters and self-regulatory organization adjudicatory actions.</li> </ol>
<p>2. Require commodities professionals to meet high standards.</p>	<ol style="list-style-type: none"> <li>1. Oversee the National Futures Association registration program including testing, licensing, and ethics training for commodities professionals.</li> <li>2. Oversee NFA's document disclosure review program.</li> <li>3. Investigate and bring administrative registration cases arising out of alleged statutory disqualification and obtain suspensions, revocations, conditions, or restrictions of registration.</li> </ol>
<p>3. Provide a forum for effectively and expeditiously handling customer complaints against persons or firms registered under the Act.</p>	<ol style="list-style-type: none"> <li>1. Provide a reparations program for commodities market users to make claims relating to violations of the Act.</li> </ol>

## Goal Two: FY 1999 Accomplishments by Program

### Trading & Markets

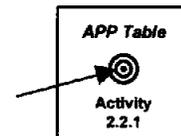
A core part of the CFTC mission is to operate a program that protects the public from fraud and abusive practices related to the sale of commodity futures and options and to prevent fraudulent trade practices and other abusive market practices. The Trading and Markets program conducts an ongoing oversight program related to screening market professionals for fitness and assuring that exchanges have appropriate affirmative compliance programs to investigate market activity for fraud and unsound financial practices and to assure the redress of customer complaints. The Trading and Markets program also defines disclosure standards, particularly for managed investments, to assure that the public is appropriately and consistently informed of the risks of futures and option trading.

#### Fitness Oversight

The Trading and Markets program chaired the Registration Working Group (RWG), which is composed of CFTC and National Futures Association (NFA) representatives. The RWG was created as a means for CFTC and NFA staff to share ideas and concerns about issues that are not tied to any specific pending registration case. In particular, this group looked at the integrity of the registration database, the standardization and monitoring of conditions applied to persons with past histories of misbehavior, the screening and tracking of rogue brokers, and the improvement and refinement of the fitness review process. The accomplishments of the RWG during FY 1999 included:

- Suggestions for enhancements to registration databases maintained by NFA, making such databases more user-friendly and available on the Internet, and consideration of further improvements as NFA undertakes major modifications to the structure of these databases;
- Guidance to NFA concerning factors to consider in statutory disqualification (SD) cases and how to treat respondents' claims of rehabilitation or mitigating circumstances; and
- Review of methods for placing and removing holds on registration so as to better identify the sources of holds and to facilitate the removal of holds when no longer necessary. A hold is used, among other things, to prevent the grant or termination of a persons registration while an investigation is in progress.

The creation of the RWG also coincided with a program of more frequent formal oversight review reports to the Commission concerning the NFA registration program. These activities are designed to protect market participants and the public interest by assuring that persons who deal directly with customers and those who handle customer orders and customer funds meet the standards for fitness, integrity and training established under the Act. Persons who cannot meet these standards may be subject to statutory disqualification from registration and may have their registrations denied, conditioned or revoked.



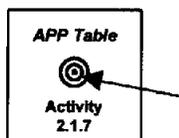
## **Annual Performance Plan**

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The activities of the RWG supplement the Commission's formal oversight of the NFA registration program. This oversight involves inspection of records and interviews with NFA staff, as well as numerous informal contacts between NFA and the Trading and Markets program on a weekly basis.

The Trading and Markets program also shares fitness information with foreign regulators as requested. In FY 1999, five such requests were processed by the program.

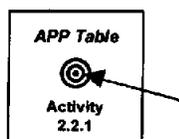
In FY 1999, there were approximately 64,850 industry registrants, an increase of about 2,600 (or 4.2 percent) from FY 1998, consisting of firms carrying customer funds, operators and advisors of collective investments, trading advisors, and related sales personnel. These registrants included 211 FCMs, 1,609 introducing brokers (IBs), 1,534 commodity pool operators (CPOs), and 2,806 commodity trading advisors (CTAs). These firms employ 47,795 related sales personnel, known as associated persons (APs). In addition, there are 9,482 individuals registered as FBs and 1,409 individuals registered as floor traders (FTs) executing trades on US exchanges.



### **Assurance that Penalties Assessed Are Collected**

The Trading and Markets program operates a Civil Monetary Penalty collection program to reinforce Commission sanctions by assuring vigorous pursuit of delinquent debts. During FY 1999, the Commission expects to collect approximately \$22 million in penalties. Delinquent penalties are either referred to DOJ or the US Treasury Department for collection or retained by the Commission for intensified collection efforts.

Of the amount collected, \$6 million was collected from Refco, Inc. in connection with the settlement of charges that it violated order-taking and recordkeeping provisions of the CEA and rules thereunder, and that it failed to administer a proper supervisory system as required by Commission rules. Another \$15 million was collected from Merrill Lynch International, Inc. and Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers), Ltd. in connection with the settlement of charges that they aided and abetted manipulation of the copper market by Sumitomo Corporation of Japan and others during the fourth quarter of 1995. (The Commission collected \$150 million from Sumitomo in FY 1998, \$25 million of which was restitution distributed to victims, in a related action.) These penalties are two of the largest assessed in the 24-year history of the Commission.

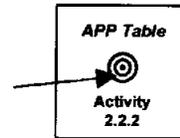


### **Managed Funds Oversight**

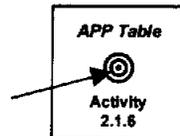
The investing public most frequently accesses the futures markets through a registered CTA or CPO. Public access may be direct through direct ownership of an interest in a commodity pool or CTA-managed trading account. Public access may also be indirect in the case of institutional participation (by, for example, pension funds or investment companies) in commodity pools and CTA-managed trading accounts. The managed funds program is responsible for enforcing the regulatory requirements for each of these investment vehicles.

## Annual Performance Plan

In 1997, the Commission delegated to NFA the authority from the Commission to review the sales and subscription or prospectus information for programs privately offered by CPOs and CTAs. By delegating these functions the Commission has been able to focus on the increasingly complex issues of appropriate disclosures of leverage, volatility, fee structures, multipurpose investment vehicles, and accounting issues relevant to managed funds investments and trading advisors. Moreover, the Trading and Markets program has been able to focus on auditing for problems, provide guidance on internal controls, educate consumers as to these types of investments, and move toward “plain meaning” disclosures. The managed funds staff still review public offerings of commodity pools.

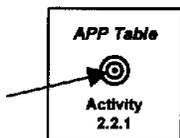


The goal of the Commission program is not only to protect market users from misleading information, but also to ensure that they have sufficient information to make an informed decision regarding their participation in the futures markets. This is accomplished by providing consistent performance data to ensure that participants and advisory clients are appropriately apprised of the risks and costs of futures and option trading. Commission regulations require that past performance of traders be disclosed and that any material adverse information about pool operators or trading advisors, including the existence of legal actions against such registrants or their affiliated persons, also be disclosed. Toward this end, in FY 1999, staff participated in the President's Working Group on Financial Markets. On April 19, 1999 the working group published its report entitled, *Hedge Funds, Leverage, and the Lessons of Long Term Capital Management*. The report contained eight recommendations. The Division staff are determining how best to implement the recommendations.



### Sales Practice Oversight

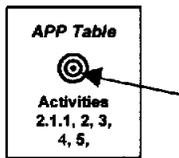
The Trading and Markets program conducts a sales practice oversight and surveillance program, which includes a review of the non-financial audit work done by SROs. The oversight program includes review of field audit programs used by SROs as well as review of the execution of the programs during required on-site audits of member organizations. Areas specifically addressed by these programs include advertising and promotional material, customer complaints, disclosure documents, customer account documentation, customer orders, and registration. The Commission also requires that each SRO maintain procedures to investigate any firm that is identified by audit findings, excessive customer complaints, or other sources for sales practice abuses, such as oral or written misrepresentation, excessive trading, or high-pressure sales solicitation.



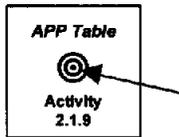
Trading and Markets program staff review and record all customer complaints received by the Office of Proceedings of the Commission. Findings or summaries of reviews of complaints are used to ensure that SROs are aware of the complaints, to investigate the allegations in the complaints, and to take corrective action.

## Annual Performance Plan

### Enforcement



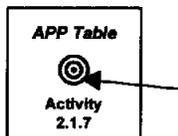
A core aspect of the mission of the Enforcement program is to protect large and small traders and the retail public from fraud. To this end, the program consistently devotes the great majority of its resources to investigating and prosecuting fraud in connection with futures and option trading.



In the last few years, many of the matters investigated involved fraud committed by unregistered CTAs, CPOs, and FCMs soliciting individual, retail investors and converting customer funds to the personal or business use of the unregistered person. In addition, public customers have been plagued by unregistered boiler room operators selling illegal futures contracts. Many fraud cases involving sales to the retail public have concerned false or misleading advertising disseminated through mass media such as radio, television, and the Internet.

To deal effectively with fraudulent practices, the Enforcement program maintains a quick-strike ability—the ability to file injunctive actions quickly after detecting fraud—in order to obtain timely injunctive relief and to enhance the possibility that customer funds and records reflecting wrongdoing are recovered. The Enforcement program also maintains strong cooperative enforcement relationships with domestic and foreign authorities to supplement its ability to detect and investigate fraud.

The Enforcement program protects market users and the public by promoting high fitness standards for registered professionals. To accomplish this objective, the Enforcement program investigates and prosecutes registration cases when appropriate, supplementing the NFA's authority in this area. SD cases can result in denial or revocation of registration or in conditioned or restricted registration.



### Litigation Relief Obtained

Sanctions and relief obtained during FY 1999 are listed below.<sup>3</sup>

#### Administrative Actions

Persons Against Whom Cease and Desist Orders Were Entered	48
Persons Whose Registrations Were Suspended, Denied, or Revoked	31
Persons Prohibited from Trading	28
Persons Subject to Civil Penalty	34
Total Amount of CMPs Assessed	\$26,822,000
Persons Ordered to Pay Restitution	6

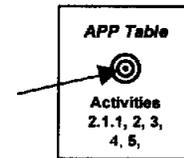
<sup>3</sup> These figures reflect results obtained in all aspects of the effort of the Enforcement program and are not segregated by goal. Thus, for example, they include results obtained in cases alleging supervision and trade practice violations, some of which are discussed under Goals One and Three. In order to more accurately reflect sanctions obtained, the FY 2001 budget will reflect only sanctions which become final during FY 1999. Thus, the sanctions listed above reflect only settled matters; unappealed decisions of Commission ALJs, of the Commission, of United States District Courts, or of United States Circuit Courts of Appeal; and decisions of the United States Supreme Court.

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Total Amount of Restitution	\$ 4,710,000
 <i>Injunctive Actions</i>	
Persons Preliminarily Enjoined in Injunctive Actions	24
Persons Permanently Enjoined in Injunctive Actions	75
Persons Subject to Civil Penalty	15
Total Amount of CMPs Assessed	\$58,869,000
Persons Ordered to Pay Restitution and Disgorgement in Injunctive Actions	41
Total Amount of Restitution	\$85,137,000
Receivers Appointed	6
Amount of Money Under Receivership	\$ 1,016,703

**Unregistered Activity and/or Fraud – Cases Filed**

In FY 1999, as in past years, the Enforcement program has devoted the largest portion of its time and resources to matters involving possible fraud. To a large degree, these cases involve unregistered CTAs, CPOs, and/or FCMs acting in a capacity that requires registration with the Commission and violating the anti-fraud provisions of the Act in connection with these activities by making fraudulent misrepresentations, usually to individual retail customers, to induce them to invest. Customer funds in such cases are often converted to the personal or business uses of the unregistered persons.



Examples of cases filed in this area during FY 1999 are discussed in greater detail below:

- *In re Green*. In November 1998, the Commission entered an order instituting proceedings, making findings, and imposing sanctions on David Green. In the order, which accepted an offer of settlement in which Green neither admitted nor denied the findings, the CFTC found that the respondent acted as an unregistered CPO and mishandled customer funds. Specifically, the order found that Green, from approximately June 1996 to July 1997, operated a commodity pool and received a total of at least \$263,995 in customer funds. The order further found that Green commingled customer funds, failed to provide proper risk disclosure documents or issue required customer statements and failed to refund customer funds when the pool ceased trading. The Commission ordered Green, among other things: to cease and desist from further violations of the Act and Commission regulations as charged; and to pay \$28,677.92, of which \$9,943.80 represents a civil monetary penalty and the remainder represents sums to be paid as restitution to certain pool participants. *In re Green*, CFTC Docket No. 99-1 (CFTC filed November 2, 1998).
- *In re Dunhill Financial Group, Inc., et al.* In March 1999, the Commission filed a four-count administrative action against Dunhill Financial Group, Inc. (Dunhill), Dunhill's sales manager Mark Hutcher-

## **Annual Performance Plan**

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son, Dunhill's compliance officer Kevin Jackam, New Millennium Promotions (NMP), and two NMP employees, Michael Thomas and Forrest Dayton, Jr. The complaint charged that Dunhill, a registered IB, and Dunhill's registered APs, Hutcherson and Jackam, violated the anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting prospective customers to open accounts to trade options on commodity futures contracts. The complaint also charged NMP with operating as an unregistered IB of Dunhill. Thomas and Dayton were charged with failing to register as APs of NMP. The complaint alleged that NMP solicited customers over the Internet on Dunhill's behalf by sending unsolicited bulk e-mail in return for a fee paid by Dunhill for generating a list of prospective customers. The complaint also alleged that, from October 1995 through the filing of the complaint, Dunhill, Hutcherson and Jackam made false and misleading statements regarding the likelihood of profit, risk of loss and amount of commissions involved in the trading of commodity options, specifically that customers who purchase options on futures contracts would profit from seasonal and other existing and known supply and demand forces that affect the prices of certain commodities in the cash market. These misrepresentations were allegedly made in advertisements over the Internet, on the radio, in promotional materials sent to customers, and in direct telephone solicitations of prospective customers. As alleged in the complaint, at least 91.4 percent of the customer accounts opened by Dunhill from October 1995 through September 1998 lost money and total net losses, including commissions, were in excess of \$9.3 million. *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7 (CFTC filed March 4, 1999). In May, a Commission ALJ entered a default order against respondent Forrest Dayton, who was ordered to cease and desist from violating the Act and Commission regulations, as charged in the complaint, and to pay a civil monetary penalty of \$273,000. *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7, Ruling on Motion for Default Order (CFTC entered May 26, 1999).

In July, the Commission issued orders accepting offers of settlement from respondents Jackam, Thomas, and NMP. Jackam, without admitting or denying the findings, consented to the entry of an order which, among other things, directed him to cease and desist from further violations as charged; prohibited him from trading on or subject to the rules of any contract market; imposed a \$200,000 restitution award on him, to be paid pursuant to a five-year payment plan; and ordered him never to apply for registration or claim exemption from registration in any capacity. *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7, Order Making Findings and Imposing Remedial Sanctions as to Respondent Kevin Jackam (CFTC entered July 29, 1999). Thomas and NMP, without admitting or denying the findings, consented to the entry of an order that, among other things, directed them to cease and desist from further violations as charged; and required them never to apply for registration or claim exemption from registration in any capacity. *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7, Order Making Findings and Imposing Remedial Sanctions as to Respondents Michael Thomas and New Millennium Productions (CFTC entered July 29, 1999). The Commission chose not to order immediate restitu-

tion and civil monetary penalties against the three respondents due to their financial condition.

- *In re Gaiber*. In March 1999, the Commission filed a two-count administrative action against Selwyn “Sy” Gaiber. The complaint charged that Gaiber failed to register as a CTA. Specifically, the complaint alleged that from January 1997 through December 1997, Gaiber acted as an unregistered CTA by giving commodity trading advice for compensation to the members of a private investment club he co-founded and operated, the Bulls and Bears Club. The complaint further alleged that Gaiber recommended trades pursuant to discretionary trading authority over seven of the members’ trading accounts and acted as the CTA for the participants of a commodity pool formed by some members. Finally, the complaint alleged that Gaiber failed to deliver required disclosure documents and past performance records to his customers. *In re Gaiber*, CFTC Docket No. 99-8 (CFTC filed March 4, 1999).

In June 1999, the Commission entered an order accepting Gaiber’s offer of settlement. The order found that Gaiber violated the Act by failing to register as a CTA and further found that he had violated certain regulations governing the conduct of CTAs. Without admitting or denying the findings, Gaiber consented to the entry of the order that: directed him to cease and desist from further violations of the Act and Commission regulations, as charged; imposed a three-year trading ban; and required him to comply with his undertaking never to apply for registration or ever engage in any activity requiring such registration. *In re Gaiber*, CFTC Docket No. 99-8, Order Making Findings and Imposing Remedial Sanctions (entered June 23, 1999).

- *In re Hoffman*. In March 1999, the Commission entered an order instituting proceedings, making findings, and imposing sanctions against Peter D. Hoffman. In the order, which accepted an offer of settlement in which Hoffman neither accepted nor denied the findings, the Commission found that Hoffman violated the Act and Commission regulations by acting as an unregistered CTA. The order further found that Hoffman had solicited customers for his commodity trading advisory service, the Renaissance Trading Program, with false claims regarding both his success in the market and the risk involved in trading futures contracts. As part of the settlement, the Commission ordered: Hoffman to cease and desist from further violations of the Act and Commission regulations as charged; imposed a five-year trading ban; and ordered Hoffman to comply with his undertaking to never seek registration with Commission in any capacity and to never engage in any activity requiring such registration. While the Commission noted the appropriateness of a civil monetary penalty, it waived the assessment of such penalty based upon Hoffman’s financial condition. *In re Hoffman*, CFTC Docket No. 99-9 (CFTC filed March 30, 1999).
- *In re Wellington Financial Group, Inc.* In March 1999 the Commission filed a one-count administrative action against Wellington Financial Group, Inc. (Wellington), a registered IB. The complaint alleged violations of the anti-fraud provisions of the Act and Commission

## **Annual Performance Plan**

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regulations. Specifically, the complaint alleged that Wellington fraudulently misrepresented that customers who purchase options on futures contracts would profit from seasonal and other existing and known supply and demand forces that affect the prices of certain commodities in the cash market. These misrepresentations were allegedly made in radio "infomercials," radio advertisements and telephone sales solicitations. In addition, the complaint alleged that 109 of approximately 120 customer accounts opened by Wellington from March 1997 through September 1998 lost money, and that total net losses, including commissions, were approximately \$800,000. One of Wellington's principals, Todd Thomas, is the named respondent in a pending administrative action charging him for his fraudulent solicitation of customers, including his customers at Wellington. *In re Thomas*, CFTC Docket No. 98-13 (CFTC filed April 27, 1998). *In re Wellington Financial Group, Inc.*, CFTC Docket No. 99-10 (CFTC filed March 30, 1999).

- *CFTC v. Trivette*. In April 1999, the Commission filed a four-count civil injunctive action against Donald G. Trivette, a former FB who was registered with the Commission from 1993 to 1998. The complaint alleged that, from at least 1995 to the present, Trivette violated anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting and accepting in excess of \$100,000 from investors to participate in a commodity pool or, in the case of one investor, a joint account to trade S&P 500 futures contracts and options on those futures. The complaint alleged that Trivette misrepresented to prospective investors the performance record and size of a pool that he had been trading and later misappropriated at least part of the funds he had solicited by using them for his own trading and personal expenses. The complaint further alleged that Trivette continuously represented to investors that their investments were doing well and earning double-digit returns, when, in fact, both the commodity pool account and Trivette's other trading accounts lost money in 1996, 1997, and 1998. Eight days after the filing of the complaint, the court entered an *ex parte* statutory restraining order prohibiting Trivette from destroying or altering any of his business records, and granting Commission representatives immediate access to Trivette's books and records. Subsequently, the court entered a restraining order freezing the defendant's assets and enjoining him from further violations of the Act and Commission regulations. *CFTC v. Trivette*, 5:99 CV 59-V (W.D.N.C. filed April 6, 1999). In June, the Court entered a preliminary injunction enjoining Trivette from further violations of the Act and Commission regulations and requiring an accounting of all customer investments with Trivette.
- *CFTC v. McGivney, et al.* In April 1999, the Commission filed an eight-count civil injunctive action against Joseph P. McGivney, Sr., Edwin A. Koziol, Jr., and a series of six corporations in which they were officers. The complaint alleged that the defendants violated the anti-fraud provisions of the Act and Commission regulations. McGivney is not currently registered with the Commission in any capacity, but the complaint alleges that he had CPO and AP registrations revoked by the Commission in December 1990. The complaint first alleged that McGivney, through a series of companies he incorporated, solicited money from individual investors under the guise of "loan" agreements between the companies and the inves-

tors. The agreements provided that investors would receive a pro-rata share of profits from commodity futures trading purportedly being conducted by the corporations. McGivney and the companies allegedly accepted nearly \$1 million from at least 72 investors pursuant to these "loan" agreements. The complaint alleges that McGivney and the companies defrauded the investors by fraudulently soliciting funds and that they are acting, and have acted, as unregistered CPOs. Additionally, the complaint alleged that McGivney, Koziol, and the companies misappropriated customer funds and mailed false statements to customers. The complaint also alleged that McGivney and the companies failed to operate their commodity pools as separate legal entities and commingled investor funds with the property of others; and failed to distribute a disclosure document to commodity pool investors. The complaint further alleged that McGivney and the companies allegedly repaid a fraction of the funds invested, misappropriated the remaining investor funds for their own use, and diverted a portion of the funds to Leslie Wnu-kowski, Marita McGivney (each named as a relief defendant), and others. In addition, the complaint alleged that McGivney and three of the companies have advertised and operated a daily telephone hotline that disseminated specific commodity futures trading recommendations since at least 1997 without being registered as required by Federal commodity laws. Finally, the complaint alleged that McGivney and these three companies, while acting as CTAs, failed to distribute required disclosure documents to clients or prospective clients. *CFTC v. McGivney, et al.*, No. 99-Civ. 2375 (N.D.Ill. filed April 12, 1999). On the same day the complaint was filed, the court issued a statutory restraining order freezing the assets of the defendants, prohibiting the defendants from destroying any of their books and records, requiring them to make their books and records available for inspection and copying by the Commission, and temporarily prohibiting the defendants from soliciting investments in commodity futures or engaging in any futures-related activities. The statutory restraining order was later modified to allow defendants to continue operating certain aspects of their business under the court's supervision.

- *In re Godres*. In June 1999, the Commission filed an order instituting administrative proceedings against and simultaneously accepting an offer of settlement from Ross R. Godres. Godres founded the commodity pool, Navco Precious Metals Fund, Ltd., in 1993. In its order, the Commission found that Godres violated the anti-fraud provisions of the Act by fraudulently concealing from commodity pool participants losses he had sustained trading precious metals futures on behalf of the pool and by making verbal misrepresentations and sending sporadic falsified statements to participants that their investments were secure and still intact. Specifically, the order found that Godres began trading on behalf of the pool's five participants in June 1993 and, within a year, lost almost all of the pool's assets of over \$60,000. Godres without admitting or denying the findings, consented to the entry of the order that ordered him to cease and desist from further violations of the Act and Commission regulations, as charged; imposed a permanent trading ban; ordered him to pay a total of \$67,750 as restitution, plus pre-judgment interest, to the pool participants over a five-year period; and ordered

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him to comply with his undertaking to never apply for registration or engage in any capacity requiring registration. *In re Godres*, CFTC Docket No. 99-13 (CFTC filed June 28, 1999).

- *CFTC v. Calhoun*. Also in June, the Commission filed a four-count civil injunctive action against Kent C. Calhoun. Calhoun has not been registered in any capacity since July 1983, when he was registered as a CTA. The complaint alleged that Calhoun violated the anti-fraud provisions of the Act by, among other things, implying in his solicitations to customers that the CFTC has in some manner recommended or approved him as a CTA or otherwise passed upon his abilities or qualifications as a CTA. Specifically, the complaint alleged that from at least June 1995 to the present, Calhoun, individually, as an agent of, or doing business as KCI Seminars, solicited customers to purchase his commodity trading systems and attend his KCI commodity trading seminars through national advertisements that included false and misleading statements representing or implying that the CFTC has documented, verified, or otherwise passed upon the success of his KCI trading systems and/or the accuracy of his advertisements for such trading systems. *CFTC v. Calhoun*, No. SA99CA0684 (W.D.Tex. filed June 29, 1999). In August 1999, the district court entered a consent preliminary injunction against Calhoun. Without admitting or denying the allegations of the complaint, Calhoun agreed, among other things, to be enjoined from referencing the CFTC or using the Commission's name in the solicitation of customers or potential customers and from violating the antifraud provisions of the Act or Commission regulations. *CFTC v. Calhoun*, No. SA99CA0684, Consent Order of Preliminary Injunction (W.D. Tex. entered Aug. 6, 1999).
- *CFTC v. Benun*. In July 1999, the Commission filed a six-count civil injunctive complaint against Morris J. Benun. Benun had been registered with the Commission as an IB from 1989 through 1990 and as a CTA and CPO from 1989 until 1996. The complaint alleged that Benun violated the anti-fraud provisions of the Act and Commission regulations in his operation of two commodity pools, Benun Futures Fund and Aspen Capital Management Fund, L.P. Specifically, the complaint alleged that Benun falsely represented, through oral and written statements to pool participants and prospective participants, that the pools were profitable when, in fact, they were losing almost all of the approximately \$3.6 million invested. The complaint further alleged that Benun converted for his own use at least \$49,531 in participant funds and commingled property of the pool with the property of others. The complaint was filed on July 2, 1999, and on July 19, 1999, the court entered a consent order and judgment of permanent injunction. Benun consented to the order, without admitting or denying the allegations of the complaint. Under the terms of the consent order, Benun is permanently enjoined from committing further violations of the Act and Commission regulations as charged; permanently banned from seeking registration with the Commission; barred from any activity in the futures industry on behalf of himself or others; and ordered to pay \$1,046,516 in restitution, of which \$49,531 also constitutes disgorgement to participants. *CFTC v. Benun*, No. 99 Civ. 4822 (S.D.N.Y. filed July 2, 1999).

- *CFTC v. R.J. Fitzgerald & Co., Inc., et al.* In July 1999, the Commission filed a six-count civil injunctive complaint against R.J. Fitzgerald & Co., Inc. (RJFCO), Raymond Fitzgerald (R. Fitzgerald), Leiza Fitzgerald (L. Fitzgerald), Greg Burnett, Al Coringrato, and Chuck Kowalski. RJFCO, whose president and sole shareholder is R. Fitzgerald, is a registered IB whose obligations are guaranteed by Iowa Grain Company. R. Fitzgerald, L. Fitzgerald and Kowalski are registered APs of RJFCO. Burnett and Coringrato were registered as APs of the firm between January 1997 and August 1998 and between June 1997 and July 1998, respectively. The complaint alleged that the defendants violated the anti-fraud provisions of the Act and Commission regulations in connection with the solicitation and offer or sale of commodity futures and options contracts to customers or prospective customers. Specifically, the complaint alleged that, from January 1996 through July 1998, RJFCO and R. Fitzgerald made misrepresentations and omissions of material fact to customers including claims about the likelihood of high profits in the grain markets due to the effects of El Niño and about the limited risk of loss in trading commodity options contracts. The complaint further alleged, among other things, that: R. Fitzgerald and Burnett churned customer accounts; R. Fitzgerald, Burnett, and Kowalski operated RJFCO to cheat, defraud or deceive customers; R. Fitzgerald, L. Fitzgerald, Coringrato, and Burnett failed to properly supervise RJFCO and its employees. *CFTC v. R.J. Fitzgerald & Co., Inc., et al.*, No. 99-1558 Civ-T-23F (M.D.Fla. filed July 6, 1999).
- *CFTC v. Belz.* In July 1999, the Commission filed a five-count civil injunctive action against Richard G. Belz doing business as Safetrak Group, Ltd., Andrew E. Cafferky, and Blue Chip Information Corporation (Blue Chip). Simultaneously, the Commission filed a consent order of permanent injunction. According to the complaint, Blue Chip publishes a daily newsletter about market trends in stocks and stock indices called *Options Fastrak Newsletter*. Cafferky was Blue Chip's owner and president, and Belz was a Blue Chip agent and corporate secretary. While Belz had been registered as an AP of various FCM's from 1979 until 1991, neither Cafferky nor Blue Chip has ever been registered. The complaint alleged that the defendants violated the Act and Commission regulations by, among other things, fraudulently soliciting customers to participate in an unregistered commodity pool, Safetrak Group, Ltd. (Safetrak), failing to register as APs of Safetrak, operating an unregistered commodity pool, and failing to comply with CPO recordkeeping and disclosure requirements. Specifically, the complaint alleged that, from April 1994 through at least July 1997, Belz, Cafferky, and Blue Chip participated in a fraudulent scheme to solicit and misappropriate commodity pool funds. The complaint alleged that during the relevant time period, the defendants fraudulently solicited 12 individuals to invest \$56,581. The complaint further alleged that Belz and Cafferky misrepresented to Safetrak participants the profitability of pool investments, the trading activity in the pool, and the total amount of funds in the pool. These deceptions masked Safetrak's actual trading losses of over \$137,000 and the misappropriation of approximately \$459,581 in customer funds. *CFTC v. Belz, et al.*, No. 3:99-CV-378 (E.D. Tenn. filed July 19, 1999).

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In September 1999, the court entered the consent permanent injunction against the defendants, who neither admitted nor denied the allegations in the complaint. Among other things, the order finds that they committed the violations as alleged in the CFTC's complaint and enjoins them from such further violations of the CEA and Commission regulations; prohibits them from acting as unregistered CPOs or unregistered APs of CPOs; permanently bans them from seeking registration with the CFTC or acting in any capacity requiring CFTC registration and from trading on any futures market on behalf of themselves or others; and requires Belz, Cafferky, and Blue Chip, jointly and severally, to disgorge \$596,581, plus post-judgment interest, to defrauded investors by making annual payments based on a percentage of their future income over a five-year period. Civil monetary penalties were not ordered based on defendants' sworn financial statements. *CFTC v. Belz, et al.*, No. 3:99-CV-378, Consent Order of Permanent Injunction (E.D. Tenn. entered Sept. 3, 1999).

- *CFTC v. Pelton Street Publishing, Inc., et al.* In August 1999, the Commission filed a four-count civil injunctive complaint against Pelton Street Publishing, Inc. (Pelton), and its president and principal, Roger Martin Hoy a/k/a/ Roger Martin. The complaint alleged that Pelton and Hoy fraudulently solicited members of the public to purchase a 90-day commodity trading "course" called "The Keys to the Marvelous Money Machine" (Money Machine). Pelton was registered as a CTA since October 1998. The complaint specifically charged that from at least October 1998 until the complaint was filed, in mail solicitations sent nationwide, Pelton and Hoy falsely claimed that Hoy had personally made substantial profits through futures trading, that purchasers of the Money Machine were likely to achieve substantial profits with minimal or no risk, and that specific commodity traders had made extravagant profits by using the Money Machine. According to the complaint, the defendants' mail solicitations also include testimonials that falsely purport to be from customers who purchased the Money Machine and make false claims of huge profits achieved by using the course. Defendants' commodity trading course consists, the complaint alleged, of a manual and audiotapes that describe basic information about futures and options trading, provide a trading strategy, and purport to teach how to use stop loss orders and options to trade in a manner described as "virtually risk free." It is also alleged that the course includes 90-day access to messages recorded by the defendants that can be retrieved through an automated telephone system. The complaint alleged, among other things, that by making false and misleading statements about the Money Machine, Pelton and Hoy violated the anti-fraud provisions of the Act and Commission regulations. *CFTC v. Pelton Street Publishing, Inc., et al.*, No. 99-CV-1184 (D. Minn. filed Aug. 2, 1999). On September 1, 1999, defendants, without admitting the allegations in the complaint, entered into a Consent Order of Preliminary Injunction which was filed with the federal court. They were ordered, among other things, to cease violating the Act and Commission regulations, and are prohibited from marketing the "Money Machine" course.

- *In re Wolcott & Lincoln Futures, L.L.C., et al.* In August 1999, the Commission issued an order simultaneously instituting and settling

an administrative proceeding against Wolcott & Lincoln Futures, L.L.C, a FCM, and David Gibson, Wolcott & Lincoln's manager. The CFTC order finds that Wolcott & Lincoln, formerly known as Wolcott & Lincoln Futures, Inc., mishandled customer funds; willfully filed inaccurate and improperly executed reports with the CFTC; violated CFTC recordkeeping requirements; and breached its duty to supervise diligently the handling of customer funds. The order also finds Gibson liable for Wolcott & Lincoln's violations. The Commission's order, among other things, directs both respondents to cease and desist from further violations of the Act and Commission regulations; orders them to pay jointly and severally a civil monetary penalty in the amount of \$50,000; revokes Wolcott & Lincoln's FCM registration; and requires Gibson to comply with extensive undertakings. The respondents consented to the issuance of the order without admitting or denying the findings contained therein. *In re Wolcott & Lincoln Futures, L.L.C. f/k/a Wolcott & Lincoln Futures, Inc., et al.*, CFTC Docket No. 99-14 (CFTC filed Aug. 9, 1999).

- *In re Walters*. In August 1999, the Commission filed a two-count administrative complaint against Max E. Walters, alleging that as general partner in a limited partnership he defrauded both the limited partnership and the limited partner out of more than \$1 million in connection with commodity futures and options trading. The complaint against Walters alleged that from August 1993 through October 1996, Walters violated the anti-fraud provisions of the Act and Commission regulations. Specifically, the complaint alleged that Walters misrepresented to the limited partner, both orally and in writing, that the limited partnership was earning constant trading profits that eventually exceeded \$945,000 when, in fact, it was accumulating trading losses that exceeded \$800,000 by September 1996. Further, the complaint alleged that Walter misappropriated limited partnership funds for his own personal trading and other personal uses. *In re Walters*, CFTC Docket No. 99-15 (CFTC filed Aug. 9, 1999).
- *CFTC v. Marantette, et al.* In September 1999, the Commission filed a five-count civil injunctive complaint in the US District Court for the District of Hawaii against David T. Marantette, III and Troubadour, Inc. As alleged, Marantette appears to be the president, treasurer, director, and primary shareholder of Troubadour. The complaint alleged that Marantette and Troubadour fraudulently solicited members of the public to invest in commodity pools and to use their commodity trading advisory services by making material misrepresentations about profitable trading and failing to disclose the material fact that Marantette had been barred from the securities industry. The complaint also alleged that Marantette and Troubadour operated the pools without being registered as commodity pool operators. Specifically, the complaint alleged that the defendants violated the anti-fraud provisions of the Act and Commission regulations. The complaint also alleged that Marantette and Troubadour violated the Act by failing to register as commodity pool operators. The complaint further alleged that: Marantette and Troubadour, through private offering memoranda and over the Internet, fraudulently solicited members of the public to purchase commodity trading advisory products, including the defendants' weekly com-

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modity trading advisory newsletters; Marantette and Troubadour fraudulently solicited customers to invest in two commodity pools; and Marantette fraudulently solicited customers to invest in a third commodity pool by falsely representing that Marantette and Troubadour had made substantial profits over the past 12 years using a cyclic analysis program, when, in fact, the profits were based on hypothetical trading results, and by failing to disclose that Marantette had been permanently barred from the securities industry in 1992. *CFTC v. Marantette, et al.*, No. CV99-00653 SOM/LEK (D. Haw. filed Sept. 22, 1999).

- *CFTC v. Monte, et al.* In September 1999, the Commission filed a three-count civil injunctive complaint in the US District Court for the Southern District of Florida against Fred Monte (Monte), Jeanne H. Monte (JMonte), and Comp Tech Ltd., Inc. (Comp Tech). Monte and JMonte are the president and the secretary, respectively, of Comp Tech. According to the complaint, the defendants solicited investors to purchase Comp Tech's trading system for foreign currency futures contracts by falsely stating in various advertisements that defendants earn \$300 per day through currency trading and that prospective customers could earn \$300 per day through currency trading. The complaint further alleged that, among other things, defendant Monte falsely told investors that Comp Tech's trading system had been successful 83 percent of the time and that Monte had many years of experience as a broker or trader in the futures industry. In the complaint, the Commission alleged that Comp Tech received at least 45 deposits of \$6,000 (totaling at least \$270,000) into its bank account for the sale of its trading system. *CFTC v. Monte, et al.*, No. 99-8750 CIV-RYSKAMP (S.D. Fla. filed Sept. 29, 1999).
- *CFTC v. Nickolaou, et al.* In September 1999, the Commission filed a four-count civil injunctive complaint in the US District Court for the Northern District of Illinois against Ca-Ni Industries, Ltd. (Ca-Ni), and its owner and principal, Nicholas J. Nickolaou. Ca-Ni has been registered with the Commission as a CTA since 1991. Nickolaou has never been registered with the Commission in any capacity. The complaint alleged that, from at least 1995 to the date it was filed, Ca-Ni and Nickolaou fraudulently solicited members of the public to purchase a computerized commodity trading program and methodology called Wisdom of the Ages and to allow their commodity accounts to be managed by Nickolaou. Specifically, the complaint alleged that Ca-Ni and Nickolaou fraudulently solicited customers by falsely presenting a simulated track record as if it were based on real trading and fraudulently guaranteed the profits to be made using Wisdom of the Ages. It is alleged that, at the same time, the defendants downplayed the risks of commodity trading, falsely represented Nickolaou's trading experience, including suggesting that he used the program to trade, and included testimonials in their advertisements that falsely purported to be from customers who had purchased Wisdom of the Ages. The complaint further alleged that, based on the same misrepresentations and omissions of material fact, Nickolaou fraudulently solicited Ca-Ni customers to allow him to direct trading for their commodity futures accounts and did so without the required registration and disclosures. The complaint alleged that, by making these false and misleading statements, Ca-

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Ni and Nickolaou violated the anti-fraud provisions of the Act and Commission regulations. The complaint also charged Nickolaou with violating the Act and regulations by failing to register with the Commission and failing to provide required disclosures to clients before undertaking to manage their accounts. *CFTC v. Nickolaou, et al.*, No. 99-C-6425 (N.D.Ill. filed Sept. 30, 1999).

### **Unregistered Activity and/or Fraud – Other Enforcement Results**

The Commission has obtained numerous results in this area during FY 1999.

- *CFTC v. Ramirez, et al.*, No. 97 C 6528, Consent Order Addressing Issues of Restitution, Disgorgement and Civil Monetary Penalty (as to Defendants Ramirez and Abacus Investment Group, Ltd.) (N.D.Ill. entered January 9, 1999);
- *In re Abraham and Sons Capital, Inc., et al.*, CFTC Docket No. 98-7, Order Making Findings and Imposing Remedial Sanctions (CFTC entered February 3, 1999);
- *CFTC v. Sigma, Inc., et al.*, No. 95-1598 (AET), Order of Permanent Injunction Against N.S. Ramchandran (D.N.J. entered March 30, 1999);
- *CFTC v. Sigma, Inc., et al.*, No. 95-1598 (AET), Consent Order of Permanent Injunction Against Chuck Kohli (D.N.J. entered March 30, 1999);
- *In re Hsu, et al.*, CFTC Docket No. 98-10, Order Granting Motion for Entry of Default Order, Findings of Fact and Conclusions of Law and Imposition of Sanctions (CFTC entered April 6, 1999);
- *CFTC v. Swartz*, No. 98 C 7505, Order of Default Judgment For Permanent Injunction And Other Ancillary Relief (N.D.Ill. entered May 27, 1999);
- *In re Liberty Futures, Inc.*, No. 98-2, Default Judgment (ALJ entered May 28, 1999);
- *CFTC v. Schafer, et al.*, No. H-96-1213 Final Judgment (S.D.Tex entered May 28, 1999); and *CFTC v. Michael Indihar, et al.*, No. 96-8202-CIV-GONZALEZ, Consent Order of Permanent Injunction Against Michael Indihar, Computer Warehouse, Inc. and Automated Trading Systems, Inc. (S.D.Fla. entered June 25, 1999);
- *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7, Order Making Findings and Imposing Remedial Sanctions as to Respondent Kevin Jackam (CFTC entered July 29, 1999); *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7, Order Making Findings and Imposing Remedial Sanctions as to Respondents Michael Thomas and New Millennium Productions (CFTC entered July 29, 1999);
- *CFTC v. Michael Indihar, et al.*, No. 96-8202-CIV-GONZALEZ, Order of Permanent Injunction and Ancillary Equitable Relief by Default Against Defendant Robert Hoffman (S.D. Fla. entered Sept. 29, 1999);

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- *CFTC v. Calhoun*, No. SA99CA0684, Consent Order of Preliminary Injunction (W.D. Tex. entered Aug. 6, 1999).

Further results achieved in this area during FY 1999 include:

- *CFTC v. AVCO Financial Corp., et al.* In October 1998, the US District Court for the Southern District of New York permanently enjoined AVCO Financial Corp. (AVCO) and Anthony Vartuli from, among other things: acting as a CTA and using any means of interstate commerce in connection with such activity unless registered with the Commission; violating the anti-fraud provisions of the Act and Commission regulations; soliciting or accepting any new clients for commodity futures or commodity options trading or accepting any new funds from existing clients or acting in any capacity that requires registration with the Commission; and engaging in trading on or subject to the rules of a contract market subject to Commission regulation. AVCO and Vartuli are jointly and severally liable for disgorgement in the amount of \$701,534. AVCO and Vartuli were ordered to each pay \$5,000 to the US Treasury as a civil penalty. The action was dismissed as to defendant J. Michael Gent. *CFTC v. AVCO Financial Corp., et al.*, No. 97 Civ. 3119 (JFK), Judgment (S.D.N.Y. entered Oct. 14, 1998).
- *CFTC v. Rhee, et al.* In November 1998, the US District Court for the Southern District of New York entered consent orders of permanent injunction against Thomas E. Kelly, Andrew David Rhee, and Reflex Asset Management Corporation, a Delaware corporation. The orders bar the defendants from any activity in the futures industry, permanently enjoin them from violations of federal commodities laws, and require disgorgement payments totaling approximately \$2.6 million. The court's orders stem from a two-count civil injunctive action filed by the CFTC on July 23, 1998. The complaint alleged that, from October 1995 through February 1998, the defendants cheated, defrauded, and willfully deceived Kelly's employer, John W. Henry & Co. (JWH) and others. The Commission's complaint charged, in part, that Kelly stole confidential, non-public proprietary information concerning JWH's planned commodity futures trades and provided that information to Rhee. Rhee, in turn, allegedly placed trades—ahead of JWH's commodity futures trades—in Reflex's commodity pool account, his personal commodity trading account, and the accounts of several customers. Further, the complaint alleged that, based on the trading results obtained with the stolen information, Rhee created a commodity futures trading performance record for himself and Reflex, which they used to solicit new customers and retain existing customers. Without admitting or denying the allegations of the complaint, Kelly, Rhee, and Reflex agreed to be enjoined permanently from further violating the provisions of the Act alleged in the complaint. The orders also prohibit all defendants from engaging in any activity in the futures industry for themselves or on behalf of others. Kelly and Rhee are ordered, jointly and severally, to disgorge \$4,735,000, the amount by which they profited. Due to their current financial situations, the court waived all of the disgorgement but \$291,938 as to Kelly and all but \$2,308,578 as to Rhee. *CFTC v. Rhee, et al.*, Consent Order of Permanent Injunction (S.D.N.Y. entered November 3, 1998).

- *CFTC v. Maseri*. In November 1998, the US District Court for the Southern District of Florida entered a Final Judgment Order against defendants Richard E. Maseri, Ronald Bruce Romberg, and the three firms they controlled, Bullseye International, Inc. (Bullseye), AIM International, Inc. (AIM) and Private Research, Inc. (PRI). This six-count civil injunctive action was filed October 16, 1995. The Final Judgment was based on the court's previous findings that the defendants had committed fraud in connection with the sale of a commodity trading program; the court's October 1997 order granting the Division's motion for summary judgment against Maseri and PRI and motion for default judgment against Bullseye and AIM; and the court's Default Final Judgment against Romberg. In its previous orders, the court had found, among other things, that the defendants had defrauded customers in connection with the sale of a commodity software trading program known as "CAT-FX" that Maseri developed, owned, and marketed. As sanctions, the court ordered the defendants to cease and desist from further violations of the Act and Commission regulations as charged; Maseri to pay restitution of \$552,271, plus interest; Romberg to pay restitution of \$225,000; and PRI to pay \$239,432 in restitution, plus interest. *CFTC v. Maseri*, No. 95-6970-CIV-DAVIS, Final Judgment (S.D.Fla. entered November 6, 1998).
  
- *CFTC v. Barth*. In December 1998, the US District Court for the Western District of Kentucky entered a consent order against defendant Charles Nicholas Barth. The court's order was entered to settle this seven-count civil administrative action filed on April 4, 1995. While the defendant neither admitted nor denied the findings, the order found that Barth violated the Act and Commission regulations by defrauding commodity pool investors and mishandling pool funds. Specifically, the order found that, from at least September 1986 through January 1995, Barth fraudulently solicited investors by misrepresenting not only the profitability and success of his trading but also the risks associated with trading commodity futures and options contracts. The court further found that Barth failed to register as a CPO, FCM, and AP of a CPO and FCM; distributed false account statements to customers and failed to distribute required disclosure documents; and commingled customer funds. Under the terms of the consent order, Barth was permanently enjoined from committing further violations of the Act and Commission regulations as charged; permanently banned from seeking registration with the Commission; barred from any activity in the futures industry on behalf of himself or others; and was ordered to make restitution of \$2,292,902 to his customers by making annual payments based on a percentage of his future income. *CFTC v. Barth*, No. 3:95CV-279-A, Consent Order of Permanent Injunction (W.D.Ky. entered December 1, 1998).
  
- *CFTC v. Bell, et al.* In December 1998, the US District Court for the Northern District of Oklahoma entered a consent order against Richard Conroy Bell; his defunct company, Barrett Bell Investment Corporation (BBIC); and two partnerships he formed, Manticore Resources and ZIA Investments. The court's order was entered to settle with the defendants this six-count civil injunctive action filed on

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November 16, 1993. While the defendants neither admitted nor denied the findings, the order found that the defendants defrauded investors in a commodity pool and misappropriated pool funds. Specifically, the order found that, between 1990 and 1993, Bell and BBIC defrauded approximately 110 investors of approximately \$8 million in a commodity pool formed to trade oil futures. The court found that the defendants sent investors false account statements and misappropriated customer funds for personal use and to make returns of principal and purported profits to earlier investors, in a manner akin to a Ponzi scheme. Under the terms of the consent order, the defendants are permanently enjoined from committing further violations of the Act and Commission regulations as charged; barred from any activity in the futures industry on behalf of themselves or others; and ordered to make additional restitution to their customers of \$3.4 million, plus pre- and post-judgment interest. The receiver in this action has already gathered and returned approximately \$4.5 million to defrauded investors pursuant to previous court orders. *CFTC v. Bell, et al.*, No. 93-C-1022H, Consent Order of Permanent Injunction (N.D. Okla. entered December 11, 1998).

- *CFTC v. Trinity Financial Group, Inc., et al.* In January 1999, the US District Court for the Southern District of Florida entered a final order of disgorgement of \$7,961,295 against Marc Stephen Wuensch in *CFTC v. Trinity Financial Group, Inc.* Wuensch was formerly the president of Carrington Financial Corp. Inc. and sales manager of Trinity Financial Group, Inc. Previously, in a September 29, 1997 order, after a 17-day trial, the court found Carrington and Wuensch liable for “systematic and willful” violations of the antifraud and supervisory provisions of the Act and Commission regulations. In the September 29, 1997 order, the court also permanently enjoined Wuensch and Carrington from violating the Act’s antifraud and supervisory provisions, and permanently enjoined the remaining defendant, A. Francis Sidoti, from violating the registration provisions of the Act. The court also ordered defendants to disgorge all profits that Wuensch and Sidoti received from Carrington and Trinity; prohibited the transfer of assets; appointed a receiver; and ordered Carrington, Wuensch, and Sidoti to transfer all books and records to the receiver. The receiver immediately seized control of Carrington and terminated its operations. Subsequently, Commission staff worked with the receiver in the preparation of a report and recommendation for disgorgement to the court. In its January 22, 1999 order, the court stated that the Commission had proven “systematic and pervasive fraudulent conduct” and noted that “Wuensch encouraged, condoned, and participated in a pervasive fraud.” The court adopted, in part, the receiver’s Report and Recommendation, and ordered Wuensch to disgorge \$7,961,295, which represents the income he received from Trinity and Carrington from 1991 through September 1997. *CFTC v. Trinity Financial Group, Inc., et al.*, No. 92-6832-CIV-UUB (S.D. Fla. entered January 22, 1999). In June 1999, the US Court of Appeals for the Eleventh Circuit affirmed in part, vacated in part, and remanded the case. *CFTC v. Sidoti, et al.*, 178 F.3d 1132 (11<sup>th</sup> Cir. 1999). On remand, the US District Court for the Southern District of Florida ordered Wuensch to disgorge a total of \$2,290,207.60, the amount equivalent to his income at Trinity and Carrington from 1991 through 1994. *CFTC v. Trinity Financial Group,*

*Inc., et al.*, No. 92-6832-CIV-UUB, Omnibus Order on Revised Disgorgement Motions (S.D. Fla. entered Dec. 7, 1999).

- *CFTC v. Zoller, et al.* In February 1999, the US District Court for the District of Minnesota entered a consent order against James M. Zoller and twenty-nine Tech-Comm Limited Partnerships (Tech-Comm pools) that were operated by Zoller (collectively Defendants). The court's order was entered to settle this six-count civil injunctive action filed on November 21, 1997. The order found that the defendants, who had never been registered with the Commission, defrauded investors in a commodity pool and misappropriated pool funds. Specifically, the order found that, between August 1991 and October 13, 1997, Zoller solicited approximately \$13 million from at least 219 pool participants for the purported purpose of trading commodity futures on their behalf but had in fact invested \$719,000 of the investors' funds. The defendants, in a manner the court likened to a Ponzi scheme, sent its customers account statements that falsely reported profits and returned approximately \$9.2 million in principal and purported profits to investors. The order found that Zoller had misappropriated nearly \$5 million of pool participants' funds. Under the terms of the consent order, the defendants are permanently enjoined from committing further violations of the Act and Commission regulations as charged; barred from any activity in the futures industry on behalf of themselves or others; and ordered to make restitution of \$4,914,784, plus pre- and post-judgment interest. In a related criminal action brought by the US Attorney for the District of Minnesota, Zoller pled guilty in June 1998 to four counts of mail fraud and one count of embezzlement for which he was sentenced to 41 months in prison and he is currently serving that sentence. *CFTC v. Zoller, et al.*, No. 97-5691, Consent Order of Permanent Injunction (D.Minn. entered February 23, 1999).
- *In re International Futures Corp., et al.* In February 1999, the Commission issued an order accepting an offer of settlement from International Futures Corporation (IFC), a registered IB, in connection with a complaint filed by the CFTC on August 13, 1998. In its order, the Commission found that IFC violated the anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting clients to open accounts in its Hermes managed commodity futures trading account program. The Commission further found that IFC also violated the Act and Commission regulations by acting as an unregistered CTA. The Commission also found that IFC fraudulently misrepresented in its radio advertisements, written promotional material, and oral representations to prospective clients that the program had between three and eight years of actual performance results when, in fact, all the performance results provided were hypothetical. According to the order, IFC customers who opened accounts lost approximately \$400,000 trading pursuant to the program. IFC, without admitting or denying the findings, consented to the entry of the order directing it to cease and desist from further violations as charged and revoking its registration as an IB. In the order, the CFTC noted that orders of restitution and a civil monetary penalty against IFC would be appropriate in this case, but did not impose them based upon IFC's demonstrated financial condition. The case continues as to the other respondent named in the CFTC

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complaint, FCM LIT Division of First Options of Chicago (LIT). The August 1998 complaint alleges that LIT, which guaranteed IFC, is liable for IFC's statutory and regulatory violations and that LIT failed to diligently supervise IFC as required by Commission regulations. *In re International Futures Corp., et al.*, CFTC Docket No. 98-16, Order Making Findings and Imposing Remedial Sanctions (CFTC entered February 25, 1999).

- *CFTC v. ChateauForte, et al.* In March 1999, Dr. Richard E. Busch was ordered to pay over \$45 million as part of an order of permanent injunction entered against him by default for his violations of the anti-fraud and registration provisions of the Act. The order directs Busch to make full restitution to investors of at least approximately \$13 million, including prejudgment interest, and to pay a civil monetary penalty of over \$32 million. In its order, the court found that Busch failed to answer or otherwise plead to the Commission's complaint (filed in July 1998) and that all the allegations and facts in the complaint and other pleadings were deemed admitted as true. Based on the complaint and the court's order, the court found that since approximately October 1996, Busch participated with other defendants in soliciting Alabama residents to invest at least \$10.8 million in The Millennium Fund, an unregistered commodity pool. The court further found that, Busch, acting through co-defendant The ChateauForte Consortium, Inc., misappropriated investor funds, acted as an unregistered CPO, and failed to comply with commodity pool reporting and disclosure requirements. The court's order enjoined Busch from violating the anti-fraud and registration provisions of the Act, as well as certain reporting and disclosure provisions, and from engaging in any commodity futures-related activity, including entering into any commodity futures transactions or accepting funds from investors for the purpose of trading commodity futures contracts. Furthermore, the order leaves in place the court's July 7, 1998 order freezing assets, preserving records, and appointing a receiver over all named defendants, including Busch. In the still pending portion of the litigation, the Commission seeks a court order permanently enjoining defendants The ChateauForte Consortium, Inc., WorldEx, S.A., John La Tourette, and William E. Amos from violations of the Act and requiring the defendants to make an accounting, to disgorge profits, to make restitution to defrauded customers, and to pay civil fines not exceeding \$110,000 per violation or triple the defendants' monetary gain. *CFTC v. ChateauForte, et al.*, No. CV-98-N-1755-S, Order of Permanent Injunction (N.D. Ala. entered March 5, 1999).
- *In re Hsu, et al.* In March 1999, the Commission issued an order accepting an offer of settlement from Allen Tsui in connection with a complaint filed by the CFTC on March 31, 1998. In its order, the Commission found that Tsui, a registered AP of CMB Capital Management Corp. (CMB), a registered guaranteed IB, committed fraud by failing to adequately disclose to potential and existing customers the risks of futures trading, and by misrepresenting and omitting the reasons customers' accounts no longer would be maintained at a FCM. By those acts, Tsui violated the anti-fraud provisions of the Act and aided and abetted CMB's violations of Commission regulations. Tsui, without admitting or denying the allegations in the complaint, consented to the entry of the order which states, among

other things, that: Tsui shall cease and desist violating the provisions of the Act and Commission regulations as charged in the complaint; Tsui's registration with the Commission as an AP is revoked; Tsui is prohibited, for a two-year period, from trading on or subject to the rules of any contract market, and all contract markets are directed to refuse Tsui privileges thereon; Tsui will liquidate all futures and commodity options positions held by him or on his behalf, or in which he has any beneficial interest; Tsui is prohibited from soliciting or accepting funds from any person in connection with the purchase or sale of any commodity futures contract, placing orders for others, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures contracts, introducing customers to any other person engaged in the business of commodity futures trading, and issuing statements or reports to others concerning commodity futures trading; Tsui shall not have to pay a civil monetary penalty or restitution based upon his inability to pay; and Tsui shall not seek registration in any capacity under the Act and acting in any capacity for which registration with the Commission is required under the Act. *In re Hsu, et al.*, CFTC Docket No. 98-10, Order Making Findings and Imposing Remedial Sanctions as to Respondent Allen Tsui (CFTC entered March 10, 1999).

- *CFTC v. Hobbs, d/b/a Commodity Futures Investments*. In March 1999, the US District Court for the Eastern District of California entered a Final Order of Permanent Injunction, Restitution, and Ancillary Relief Against Everett Scott Hobbs Doing Business As Commodity Futures Investments. This four-count civil injunctive action was filed on August 13, 1996 and charged Hobbs with illegally acting as an unregistered CPO, commingling customer funds, and fraudulently misrepresenting to customers that their losing accounts were profitable. The court, having granted the Division's motion for summary judgment, ordered that the defendant be permanently enjoined from committing further violations of the Act and Commission regulations as charged; be banned from acting in any capacity for which registration with the Commission is required under the Act and from trading on or subject to the rules of any contract market; to make restitution to his customers of \$327,241, plus pre- and post-judgment interest. *CFTC v. Hobbs, d/b/a Commodity Futures Investments*, No. CV-F-96-5946 SMS, Final Order of Permanent Injunction (E.D.Cal. entered March 25, 1999).
- *CFTC v. Estate of Chancey, et al.* In May 1999, the estate of Donald B. Chancey and Southeastern Venture Partners Group, Inc. (SVPG) were ordered to pay over \$11.5 million as part of an order of default judgment entered against them for violations of the anti-fraud and registration provisions of the Act. The order bars Chancey's estate and Southeastern from soliciting new customers or customer funds in connection with commodities trading and orders them to pay restitution to customers of over \$2.9 million and a civil monetary penalty of over \$8.8 million. The court's action stems from a six-count civil injunctive complaint, filed by the Commission on July 1, 1996, charging, among other things, that the defendants violated the anti-fraud provisions of the Act and Commission regulations. Specifically, the complaint alleged that SVPG, a CPO, and Donald B. Chancey,

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SVPG's chief executive officer, fraudulently solicited at least 19 customers to invest more than \$3 million in an unregistered commodity pool and that Chancey fled with customer funds and did not respond to the CFTC's complaint. In addition, the complaint charged that Chancey and SVPG operated an unregistered commodity pool and violated numerous disclosure, reporting, and recordkeeping requirements. On the same day the complaint was filed, the court froze the defendants' assets, appointed a receiver to take charge of the business operations, and issued a Writ of Ne Exeat, a court order directing the US Marshals Service to locate Chancey and hold him in custody until he posted a \$3 million bond. As part of the effort to locate Chancey, the CFTC posted his photograph on its Web site and sought information on his whereabouts from members of the public. The FBI also indicted Chancey on October 22, 1997. In June 1998, Chancey's body was found in a Louisiana cabin with a gunshot wound. The coroner for the State of Louisiana concluded that it was an apparent suicide. The court's order of default judgment also directs that all proceeds obtained from the defendants be distributed in accordance with a proposal previously submitted by the court-appointed receiver. *CFTC v. Estate of Chancey, et al.*, No. 7-96-CV-61, Order of Default Judgment (M.D.Ga. entered May 17, 1999).

- *CFTC v. Klitin, et al.* In August 1999, the US District Court for the Eastern District of New York entered a consent order of permanent injunction against Oscar A. Klitin and Klitin Associates II, L.P., a New York limited partnership operated by Klitin as a commodity pool. The court's order stems from a three-count complaint filed by the CFTC on August 26, 1997. The complaint charged the defendants with, among other things, fraudulently operating a commodity pool by misappropriating more than \$200,000 in customer funds and by misrepresenting the pool's financial condition to pool participants. Without admitting or denying the charges in the complaint, the defendants consented to the entry of the order that, among other things: permanently enjoined them from further violations of the Act and Commission regulations; ordered Klitin to disgorge \$115,772.86 (including prejudgment interest totaling \$31,983.17); prohibited the defendants from soliciting or accepting new clients or participants for commodity futures or options trading; and prohibits the defendants from trading on any contract market subject to Commission regulation. By entry of a previous consent order in March 1999, the district court appointed the NFA as the court's Monitor and directed it to make an interim distribution to the investors in Klitin Associates II, L.P. of the more than \$100,000 in an account frozen by a court order issued on the filing of the Commission's complaint. *CFTC v. Klitin, et al.*, No. CV 97 4973 (SJ), Order of Permanent Injunction Against Oscar A. Klitin and Klitin Associates II, L.P. (E.D.N.Y. entered Aug. 4, 1999).

On August 6, 1999, the Commission filed an action against Klitin in the US Bankruptcy Court for the Eastern District of New York to except from discharge his debt of \$115,772.86, plus post-judgment interest. On October 26, 1999, the bankruptcy court entered a Consent Order, ordering that the debt of \$115,772.86, plus post-judgment interest, reflected in the August Order of the US District Court for the Eastern District of New York in case No. CV 97 4973, owed by Klitin, be excepted from discharge. *CFTC v. Klitin, ADV.*

PRO. NO. 899-8350-478, Consent Order (Bankr. E.D.N.Y. entered Oct. 26, 1999).

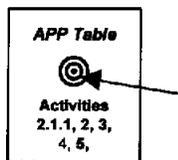
- *CFTC v. Lamar*. In August 1999, the US District Court for the Eastern District of Michigan entered a consent order permanently enjoining Thomas Lamar from, among other things, violating the anti-fraud, registration, disclosure, and reporting provisions of the Act and Commission regulations. The entry of the consent order of permanent injunction stems from a five-count complaint against Lamar filed on February 13, 1998, which alleged that Lamar defrauded at least 85 investors who had invested at least \$2 million in the Lamar Investments Group (LIG), a commodity futures trading pool operated by Lamar. Specifically, the complaint alleged that, among other things, from approximately March 1989 through October 1996, Lamar made misrepresentations to investors concerning the status and performance of LIG, reported fictitious profits to customers through fraudulent monthly account statements, and misappropriated funds received from investors. Lamar was also charged with acting as a CPO and CTA without being registered as such with the Commission. In the consent order, Lamar admitted the allegations of the complaint. Lamar was ordered: to pay \$2,838,169 as disgorgement and restitution to customers; permanently enjoined from violating the Act and Commission regulations; permanently banned from seeking registration with the Commission or acting in any capacity that requires registration or is exempt from registration, and permanently prohibited from trading commodity interests for himself or others, or otherwise engaging in any business activities relating to commodity interest trading. *CFTC v. Lamar*, No. 98-70169, Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Thomas W. Lamar (E.D. Mich. entered Aug. 5, 1999).

In addition, the day before the Commission filed its complaint, February 12, 1998, Lamar was indicted for fraud and money laundering violations in connection with the operation of the LIG pool. He subsequently pled guilty to one count of mail fraud and one count of fraud, false reporting, and deception in commodity futures trading. The criminal court sentenced Lamar in May 1999, and ordered him to pay restitution to pool customers in the amount of \$2,838,169. The civil court's order that Lamar pay restitution in the criminal proceeding will satisfy the restitution and disgorgement obligations of the consent order with the Commission.

- *CFTC v. Schenk*. In August 1999, the US District Court for the District of Utah entered separate consent orders of permanent injunction against Robert Moncur and Douglas Foster. The six-count complaint was filed by the CFTC on March 27, 1998, against Foster, Moncur, and six others. The complaint charged Foster and Moncur, among other defendants, with fraudulently soliciting investors, issuing false statements, and misappropriating customer funds in connection with four commodity pools, Capital Advantage Group II, L.L.C., Brighton Fund, L.L.C., Augusta Fund, L.L.C., and Sunrise Fund, L.L.C. Without admitting or denying the allegations in the complaint, Foster and Moncur consented to be, among other things: permanently enjoined from further violations of the Act and Com-

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mission regulations, as charged; prohibited from soliciting or accepting new clients or participants for commodity futures or options trading and seeking registration or exemption from registration in any capacity; and prohibited from trading any commodity futures contracts or options on commodity futures contracts for their own personal accounts or having any such contracts traded on their behalf for a ten-year period. In addition, the court ordered Moncur to disgorge \$21,505, representing his gross profits from the conduct alleged in the Commission's complaint. The order acknowledges that Moncur has already satisfied this obligation. The case was filed as the result of a joint investigation with the State of Utah, Division of Securities. As a result of this investigation, over \$850,000 was returned to victims of this fraudulent scheme and a related securities scheme. Litigation continues against the other remaining defendants in the case. *CFTC v. Schenk*, No. 2:98CV00216J, Consent Order of Permanent Injunction and Other Equitable Relief Against Douglas Foster (D. Utah entered Aug. 18, 1999); *CFTC v. Schenk*, No. 2:98CV00216J, Consent Order of Permanent Injunction and Other Equitable Relief Against Robert Moncur (D. Utah entered Aug. 25, 1999).



### Quick-strike Matters – Cases Filed

The Enforcement program is committed to responding quickly to investigations which uncover ongoing fraud. Quick-strike cases are civil injunctive actions which are generally filed in federal district courts within days or weeks of the discovery of the illegal activity. This quick-strike capability enables the program to stop fraud at an early stage and to attempt to preserve customer funds. Through these cases, sanctions are imposed on wrongdoers in an expedited time period, sending a strong, deterrent message to other potential wrongdoers. Examples of quick-strike cases filed in FY 1999 follow:

- *CFTC v. Swartz, et al.* In November 1998, the Commission filed a three-count civil injunctive complaint against Ronald J. Swartz and Vertrix, Inc., a dissolved corporation of which Swartz was president. The complaint alleged that, from at least August 1997 through the filing of the complaint, the defendants defrauded investors of \$165,000 in their solicitation for and operation of a fictitious commodity pool and defrauded other investors of \$80,000 in connection with discretionary commodity trading accounts in which Swartz was a joint owner. Specifically, the complaint alleged that the defendants violated the anti-fraud provisions of the Act by, among other things: fraudulently misrepresenting their trading track record; falsely representing that the pool was highly profitable; preparing and distributing a false disclosure document; misappropriating investor funds; and preparing and distributing to investors false account statements. On the same date that the complaint was filed, the court issued a statutory *ex parte* restraining order against the defendants and on December 16, 1998, the court entered a consent order of preliminary injunction. On January 20, 1999, upon the defendants' failure to file an answer, despite the court's grant of an extension of time for them to do so, the court granted the Commission's request to enter a default. On May 27, 1999, the court entered an Order of Default Judgment for Permanent Injunction which,

among other things, ordered defendants to pay \$330,482 in restitution, \$330,482 in civil monetary penalty, and the Commission's costs and fees. *CFTC v. Swartz, et al.*, No. 98C 7505 (N.D.Ill. filed November 23, 1998).

- *CFTC v. Colton.* In December 1998, the Commission filed a six-count civil injunctive complaint against Michael Colton, individually and doing business as Future-Comm Trading (Future-Comm). The complaint alleged that Colton, from January 1997 through the filing of the complaint, defrauded commodity pool investors who invested at least \$650,000. Specifically, the complaint alleged that Colton, through an Internet site, brochures and in-person presentations, fraudulently solicited investors with false claims regarding trading profitability and risks. The complaint further alleged that the defendant: falsely represented that Future-Comm was a registered CPO; acted as an unregistered CPO and CTA; and mishandled customer funds by, among other things, accepting funds in his own name, and commingling and misappropriating these pool funds. On the same date that the complaint was filed, the court issued a statutory *ex parte* restraining order freezing the assets of the defendant, appointing a temporary receiver, prohibiting the defendant from destroying any of his books and records, and requiring him to make his books and records available for inspection and copying by the CFTC. *CFTC v. Colton*, No. 98-2575-CIV-T-26C (M.D.Fla. filed December 16, 1998).

In April, the court entered an order of default judgment against Colton who, the court found, had failed to respond to the Commission's complaint. Among other things, the court: permanently enjoined Colton from violating the Act and Commission regulations, as charged in the complaint; permanently enjoined him from acting in any capacity as an FCM, CPO, CTA, IB, FB, FT or AP of any registrant, from seeking registration with the Commission and from soliciting or accepting new customers in connection with commodity futures or options trading; and ordered him to pay restitution in the amount of \$523,950.54, disgorgement of \$523,950.54, and a civil money penalty of \$1,571,851.60 as well as costs and pre- and post-judgment interest. *CFTC v. Colton*, No. 98-2575-CIV-T-26C, Order of Default Judgment (M.D.Fla. entered April 5, 1999).

- *CFTC v. Chulik.* In March 1999, the Commission filed a six-count civil injunctive action against Mark E. Chulik, a registered CTA. The complaint charged that Chulik operated as an unregistered CPO, violated the anti-fraud provisions of the Act and Commission regulations, misappropriated and commingled pool participants' funds, and failed to provide required CPO disclosure documents and reports to pool participants. Specifically, the complaint alleged that Chulik, doing business as Westgate Partners, MEC Management, and MEC Capital Management, obtained since May 1997 in excess of \$750,000 from at least seven speculators and pooled these funds for the purpose of trading commodity futures contracts. The complaint further alleged that Chulik reported fictitious profits to pool participants when, in fact, his trading resulted not in profits but in significant losses, including 1998 losses in excess of \$500,000. Finally, the complaint alleged that in individual customer accounts,

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where Chulik directed trading as a CTA, he fraudulently exaggerated the actual balance in such accounts. On March 11, 1999, the court entered a statutory and temporary restraining order, and on March 24, 1999, the court entered a consent order of preliminary injunction. The consent order restrains the defendant from committing further violations of the Act and Commission regulations as charged, freezes the defendant's assets, prohibits the defendant from destroying any of his books and records, and prohibits him from further soliciting clients or customers or accepting funds from them. *CFTC v. Chulik*, No. 99-02412 (C.D.Cal. filed March 9, 1999).

- *CFTC v. James, et al.* In April 1999, the Commission filed an eight-count injunctive action against Donald E. and Donald James, Inc. (James, Inc.). The complaint alleged that the defendants defrauded investors in two commodity pools the defendants operated under the names of Franklin Thomas & Company and Franklin Thomas Investments, L.P. Specifically, the complaint alleged that the two pools received more than \$5 million from at least 25 investors and that James and James, Inc. misappropriated funds of newer investors in the pools to pay principal and purported profits to earlier investors in a manner akin to a Ponzi scheme. The complaint charged, among other things, that James and James, Inc. defrauded investors by: misrepresenting to investors that all their funds were going to be used to trade commodity futures, when they were not; misrepresenting James' trading success and promising profits, while claiming to be able to limit risks; misrepresenting to investors that their funds were "frozen" at a brokerage firm in Chicago; misrepresenting to investors that they could withdraw their funds at any time after appropriate notice; and misrepresenting to investors, orally and in written statements, profits from trading and the value of each investor's share of the pool. Additionally, the complaint charged that James acted as a CPO and CTA, and that James, Inc. acted as a CTA, all without required registration with the Commission. Finally, the complaint alleged that James failed to provide required risk disclosure documents and accurate account statements to investors and that he illegally commingled investors' funds with his own funds and the funds of others. The complaint names Franklin Thomas Investments, L.P. as a relief defendant and seeks to recover funds from it that are traceable to the fraud of the defendants. *CFTC v. James, et al.*, 99-Civ-0967 (N.D.Ga. filed April 15, 1999). One day after the filing of the complaint, the court entered a statutory restraining order against James and James, Inc. In its order, the court appointed a temporary receiver, enjoined the defendants from further violations of the CEA, freezes the defendants' assets, prohibited the destruction of books and records, and banned the defendants from any activity in the commodity futures industry.
- *CFTC v. Sheldon.* In April 1999, the Commission filed a five-count injunctive action against Edwin Jay Sheldon, Applied Capital Management, LLC (ACM), and Charles Edward Powell. The complaint alleged that the defendants fraudulently solicited at least 30 individuals in Tennessee to invest more than \$500,000 in Fair Haven Futures Fund, LLC (FHFF), a commodity pool operated by ACM. ACM is registered with the Commission as a CPO and CTA, Sheldon is registered as an AP and a principal of ACM, and Powell has never been registered with the Commission. Specifically, the complaint

alleged that the defendants misrepresented the profit potential of commodity futures transactions; misrepresented the amount of investor funds that would be invested in commodity futures contracts; sent false account statements and reports to investors that reported profits when, in fact, defendants lost almost all of their investors' money; violated the disclosure and reporting provisions of the Act applicable to commodity pools; and made false statements in reports filed under the Act. On the same day the complaint was filed, the court entered a statutory restraining order, freezing the defendants' assets, prohibiting the destruction of books and records, and requiring that books and records be made available to the Commission for inspection. *CFTC v. Sheldon*, No. 1:99-CV-138 (E.D.Tenn. filed April 28, 1999).

- *CFTC v. EuroPacific Equity and Capital Management, Ltd., et al.* In May 1999, the Commission filed a five-count civil injunctive action against EuroPacific Equity and Capital Management, Ltd. (EuroPacific); Tortola Corporation Company, Ltd. (Tortola); International Investment Group, Ltd. (IIG); David Michael Loyd; and Richard Tichy. The complaint alleged that EuroPacific, Tortola, IIG, Loyd, and Tichy fraudulently solicited at least 10 individuals from the US and Canada to invest over \$800,000 in a commodity pool variously called the EuroPacific or IIG Fund. According to the complaint, the vast majority of investor funds were misappropriated by transferring them to persons and entities unrelated to any commodity pool, and by using them to pay for personal expenses. The complaint also alleged that the defendants violated the antifraud, registration, and disclosure and reporting requirements of the Act and Commission regulations. The fraudulent conduct with which the defendants are charged includes: misappropriating investor funds; misrepresenting the profit potential of commodity futures transactions; misrepresenting the amount of investor funds that would be invested in commodity futures contracts; and sending false account statements and reports to investors that reported profits when, in fact, the defendants lost or misappropriated almost all the investors' money. On the day the complaint was filed, the court entered a statutory restraining order against EuroPacific, Tortola, IIG, Loyd, and Tichy, freezing the defendants' assets, prohibiting the destruction of books and records, requiring that books and records be made available for inspection and copying, and appointing a temporary receiver. Nine days later, the court entered consent orders of preliminary injunction enjoining the defendants from, among other things, engaging in any commodity futures-related activity, and continuing the terms and conditions of the earlier freeze order. *CFTC v. EuroPacific Equity and Capital Management, Ltd., et al.*, No. 99-6506 (S.D.Fla. filed May 5, 1999).
- *CFTC v. Berzins*. In August 1999, the Commission filed a seven-count civil injunctive complaint against Peter Berzins. The complaint alleged that Berzins violated anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting and accepting from investors in excess of \$500,000 to participate in a commodity pool to trade commodity futures contracts and options on futures contracts. Specifically, the complaint alleged that, in order to induce additional investments, Berzins misrepresented to prospective

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investors the performance record of the pool he had been trading and provided investors with written statements which falsely represented that investors were making significant monthly profits. The complaint further alleged that Berzins continuously represented to investors that their investments were earning double-digit returns, when, in fact, Berzins' trading accounts all lost money in 1995-1998. The complaint alleged that Berzins minimized the risk of investing in the commodity pool when soliciting investors. Further, in March 1998, Berzins represented to investors that their investments, and the profits purportedly earned earlier, had been lost in trading the previous month, and provided one or more investors with falsified documents, reflecting a purported margin call from a FCM to support the claim of recent large trading losses. No such margin call was ever made. Finally, the complaint alleged that Berzins failed to register as a CPO, failed to provide investors with periodic account statements, commingled investor funds with his own funds, failed to operate the commodity pool as an entity separate from himself, and accepted trading funds in his own name, in violation of the Act and Commission regulations. *CFTC v. Berzins*, No. 3:99cv592 (E.D. Va. filed Aug. 24, 1999). Two days after the complaint was filed, the federal district court entered an *ex parte* statutory restraining order against Berzins, prohibiting him, among other things, from altering or destroying books, records, and documents and from transferring assets. *CFTC v. Berzins*, No. 3:99cv592 (E.D. Va. entered Aug. 26, 1999). On September 17, 1999, the court entered a preliminary injunction against Berzins, enjoining him, among other things, from violating the Act and regulations; soliciting or accepting funds from prospective and current investors in connection with commodity futures or options; and trading commodity futures contracts or options on any exchange. *CFTC v. Berzins*, No. 3:99cv592 (E.D. Va. entered Sept. 17, 1999).

- *CFTC v. Princeton Global Management Ltd., et al.* In September 1999, the Commission filed a three-count civil injunctive complaint against Princeton Economics International, Ltd. (PEI), its wholly owned subsidiary, Princeton Global Management, Ltd. (PGM), and their chairman Martin A. Armstrong. The complaint alleged that the defendants defrauded customers by misrepresenting the value of customer interests in a commodity pool in connection with an investment scheme involving the trading of commodity futures and the operation and management of the commodity pool. Specifically, the complaint alleged that from at least 1996 until the day the complaint was filed, the defendants sold billions of dollars worth of fixed-term promissory notes issued by PEI and its subsidiaries to companies located in Japan. The complaint also alleged that the principal amount of the notes has been used to fund the purchase of derivative instruments, bonds and/or currencies, including futures contracts and options (collectively, the Fund). Armstrong is the Fund's primary trading advisor. Further, the assets of the fund were held at a FCM in sub-accounts for the purpose of trading futures contracts and options. Since 1996, Armstrong is alleged to have arranged for the FCM to issue over 200 letters to PGM, which inflated the net asset value of the assets held in those sub-accounts and which Armstrong and PGM then transmitted to customers in Japan. The complaint alleged that the current principal amount of outstanding

notes is approximately one billion dollars, while the assets currently in the Fund total no more than approximately \$46 million dollars. *CFTC v. Princeton Global Management Ltd., et al.*, No. 99CIV9669 (S.D.N.Y. filed Sept. 13, 1999). The day the action was filed, the court entered a temporary restraining order freezing all of the defendants' assets pending a hearing on the request for a preliminary injunction. The order also appointed a temporary receiver with the power to, among other things, take immediate possession, custody, and control of all assets and property and the books and records of PEI and PGM and take all steps necessary to secure and protect the assets and property of PEI and PGM. *CFTC v. Princeton Global Management Ltd., et al.*, No. 99CIV9669 (S.D.N.Y. entered Sept. 13, 1999). The Commission coordinated its enforcement efforts in this matter with the Securities and Exchange Commission (SEC) and the US Department of Justice, both of which filed related actions, and the Japanese Financial Supervisory Authority.

#### **Illegal Instruments – Cases Filed**

The Enforcement program also investigates and prosecutes the sale of illegal futures and option contracts to the public. Examples of cases filed during FY 1999 follow:

- *CFTC v. Noble Wealth Data Information Services, Inc., et al.* In October 1998, the Commission filed a four-count civil injunctive complaint against Noble Wealth Data Information Services, Inc. (Noble Wealth); International Advanced Investment, Inc. (IAI); Esfand Baragosh, who is a principal of both firms; and Currex International Corporation (Currex). The complaint was amended to add defendant Currex. The complaint alleged that, from August 1994 through the filing of the complaint, the defendants violated the anti-fraud provisions of the Act and Commission regulations by defrauding customers, offering and selling illegal off-exchange futures contracts on foreign currencies, misappropriating customer funds, and bucketing orders. Specifically, the complaint alleged that the defendants placed newspaper classified advertisements for “traders” who were given training and materials that made false claims regarding Noble Wealth and the potential of extraordinary profits from trading foreign currencies. The complaint further alleged that the “traders” were urged to open personal trading accounts with Noble Wealth and to solicit additional funds from friends and family. However, the customer funds so solicited were not used to invest in foreign currencies but were in fact misappropriated. On October 1, 1998, the court issued a statutory *ex parte* restraining order freezing the assets of defendants as well as the assets of two companies that are alleged affiliates of Noble Wealth which received funds directly traceable to the fraud, Noble Wealth Development, Ltd. and Bull & Bears, Ltd. (also known as Bull & Bears International Investment, Ltd.). On October 26, 1998, the court entered an order of preliminary injunction against all defendants. *CFTC v. Noble Wealth Data Information Services, Inc., et al.*, No. PJM 98-3316 (D.Md. filed October 1, 1998, amended October 21, 1998).
- *In re The Andersons, Inc.* In January 1999, the Commission issued an order instituting administrative proceedings and simultaneously accepting an offer of settlement from The Andersons, Inc. (Ander-

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sons), a grain merchandizing concern. The Commission found that Andersons offered to enter into and entered into illegal futures and option contracts in violation of the Act and Commission regulations. Specifically, the Commission found that from January 1, 1994, through December 31, 1995, Andersons' commercial grain marketing program included convertible hedge-to-arrive contracts (HTAs) that constituted illegal futures contracts because they were not traded on a designated contract market. In addition, according to the order, Andersons offered contracts that included option features that under certain circumstances could result in additional grain delivery obligations. The Commission's order found that these contracts were commodity options prohibited by the Act and regulations. Andersons, without admitting or denying the Commission's findings, consented to the entry of the order that directed it to cease and desist from further violations of the Act and Commission regulations, and directed it to pay a \$200,000 civil monetary penalty. Under the settlement, Andersons also agreed to maintain newly established procedures whereby a committee co-chaired by the president of its Agricultural Group and the vice president of its Grain Division has the responsibility to review all new proposed types of HTA contracts and any type of contract involving option features for the legality of such contracts under the Act and regulations. *In re The Andersons, Inc.*, CFTC Docket No. 99-5 (CFTC filed January 12, 1999).

- *In re Farmers Cooperative Co., et al.* Also in January 1999, the Commission filed a five-count administrative action against Farmers Cooperative Company (Farmers Co-op), a cooperative grain elevator, and three elevator employees, Richard Houge, John McPherson, and Larry Peterson. The complaint charged that Farmers Co-op, aided and abetted by Houge and Peterson, violated the Act by offering and entering into HTA grain contracts which constituted contracts for the purchase and sale of a commodity for future delivery, but which were not traded on a designated contract market. The complaint also charged that Farmers Co-op, aided and abetted by Houge and Peterson, further violated the Act and Commission regulations by offering and entering into illegal agricultural options contracts. The complaint further charged that Farmers Co-op, aided and abetted by Houge, McPherson and Peterson, operated as an unregistered FCM in violation of Act. Finally, the complaint charged that Farmers Co-op, aided and abetted by the three employees, failed to provide risk disclosure statements and monthly profit and loss statements to the farmers who were allowed to buy and sell exchange-traded futures and options contracts. *In re Farmers Cooperative Co., et al.*, CFTC Docket No. 99-6 (CFTC filed January 12, 1999).
- *In re Cargill, Inc.* In August 1999, the Commission filed a one-count administrative complaint against Cargill, Inc. Cargill is an international marketer, processor and distributor of agricultural, food, financial, and industrial products, operates grain elevators in at least 21 states, and is a Delaware corporation with headquarters in Minnesota. Cargill's Grain Division purchases corn, soybeans, and wheat, among other agricultural products, from producers and sells or merchandises grain to processors. The complaint alleged that from January 1998 to the date the complaint was filed, Cargill's commercial grain marketing program offered certain grain contracts,

called Premium Offer Contracts (POCs), that operate as call options. Based on the complaint, the terms of Cargill's POC are set forth in an addendum to Cargill's standard grain contracts. The complaint alleged that under the POC, Cargill pays a non-refundable premium to a producer, which is added to the nearby grain delivery price, in exchange for the producer's "firm offer" to sell Cargill grain for deferred delivery if, at a specified date, the futures price is at or above a specified strike price. The complaint alleged that Cargill's POC is an agricultural trade option that is prohibited by the Act and Commission regulations. *In re Cargill, Inc.*, CFTC Docket No. 99-16 (CFTC filed Aug. 26, 1999).

- *CFTC v. Clairmont Capital Corp., et al.* In September 1999, the Commission filed a three-count civil injunctive complaint in the US District Court for the District of Colorado against Clairmont Capital Corp. (Clairmont), a Colorado corporation with offices in Denver, and its principals: Geoffrey L. Mann, president, and Charles W. Trench, vice president. The complaint charged defendants with, among other things, making material misrepresentations and omitting material facts in connection with the sale of illegal foreign currency option contracts. Mann is not currently registered with the Commission and Trench has never been registered with the Commission. The complaint alleged that the defendants violated the anti-fraud provisions of the Act and Commission regulations in connection with the solicitation and offer or sale of commodity option contracts to customers or prospective customers. The complaint also alleged that the defendants sold illegal commodity options and failed to give required disclosures to customers, in violation of the Act and Commission regulations. According to the complaint, from July 1998 until the day the complaint was filed, Clairmont, Mann, and Trench, among other things, cheated, defrauded, and deceived customers by: making misrepresentations of material fact regarding the likelihood of profit and the limited risk of loss in trading foreign currency option contracts; failing to provide customers with material information concerning fees; and failing to disclose to customers that Clairmont was the grantor of the options it recommended to customers. Specifically, the Commission charged that Clairmont represented to potential customers that they could earn as much as 100 to 200 percent trading options on Japanese Yen, when in fact virtually all customers lost a substantial portion of their money investing with Clairmont. Clairmont was also charged with omitting to tell customers that it routinely charges a \$250 "mark up" on each option in addition to a \$250 commission. The complaint also alleged that Clairmont offered to enter into, and entered into, commodity option transactions not conducted on, or subject to, the rules of a board of trade that has been designated by the Commission as a contract market. Mann and Trench were charged individually with directly violating the anti-fraud provisions of the Act and being a controlling person responsible for Clairmont's illegal acts under the Act. *CFTC v. Clairmont Capital Corp., et al.*, No. 99-S-1874 (D. Colo. filed Sept. 27, 1999).

## **Annual Performance Plan**

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### **Illegal Instruments – Other Enforcement Results**

During FY 1999, the Division obtained the following additional enforcement results in cases involving the sale of illegal futures and options contracts to the public.

- *CFTC v. C.O.M. Consultants, Inc., d/b/a Golden State Bullion.* In February and December 1998, the US District Court for the Central District of California entered consent orders of permanent injunction against defendants C.O.M. Consultants, doing business as Golden State Bullion (Golden State); Richard David Otto, Golden State's president and owner; Bruce Michael Paine, a Golden State telemarketer; and Linton Samaru, also a Golden State telemarketer. The court's orders were entered to settle with those defendants this two-count civil injunctive action filed on June 18, 1998. While the defendants neither admitted nor denied the findings, the court found that they had engaged in fraudulent telemarketing of illegal, off-exchange futures contracts purportedly involving platinum, gold, silver and palladium. Under the terms of the consent orders Golden State, Otto, Paine and Samaru are permanently enjoined from committing further violations of the Act as charged; Golden State was ordered to pay restitution in the amount of \$10,300,000; Otto was ordered to pay restitution in the amount of \$9,245 and an additional 25 percent of his taxable income for the years 1997 through 2001; and Golden State, Otto, Paine and Samaru are permanently barred from ever seeking registration with the Commission. In December 1997, the court entered a default judgment against Golden State telemarketer Fred Roland Williams that permanently barred him from soliciting customers or funds in connection with futures trading; and ordered him to pay restitution in the amount of \$2,459,117. This action remains pending against defendants Paine and Samaru. As to defendant Samaru, the only issue that remains is the award of a specific amount for restitution. *CFTC v. C.O.M. Consultants, Inc., d/b/a Golden State Bullion*, Civ. No. 97-4443 WMB, Consent Orders Of Permanent Injunction (C.D.Cal. entered February 12, 1998, and December 16, 1998).
- *CFTC v. World Wide Currencies, Inc.* In December 1998, the US District Court for the Southern District of New York entered a final judgment and order against World Wide Currencies, Inc., (also known as World Wide Currencies, Inc., also known as World Wide Currencies Ltd.), United Currencies Corp. (also known as United Currencies, Inc.), A+ Currencies Int'l Inc. (doing business as International Currencies, Inc.). The order is the culmination of this action, which began with the filing of a four-count civil injunctive complaint on October 16, 1996. The complaint alleged that the defendants violated the Act and Commission regulations by offering and selling illegal currency futures contracts, cheating and defrauding customers in connection with the offer and sale of such contracts, violating the CFTC's registration requirements, and misappropriating customer funds. The court permanently enjoined the defendants from committing further violations of the Act and Commission regulations as charged; ordered the defendants, jointly and severally, to pay a civil monetary penalty of \$7,142,394 and make restitution to customers of \$2,380,798; and rescinded all contracts entered into by the defendants with their customers. *CFTC v. World*

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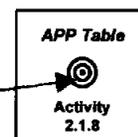
*Wide Currencies, Inc., et al.*, No. 96 CIV. 7814 WK, Judgment and Order (S.D.N.Y. December 23, 1998).

- *In re Competitive Strategies for Agriculture, Ltd., et al.* Additionally, in December 1998, the Commission settled with two respondents in an earlier filed HTA case. *In re Competitive Strategies for Agriculture, Ltd., et al.*, CFTC Docket No. 98-4, Order Making Findings and Imposing Remedial Sanctions as to Respondent William Eugene Arnold (CFTC entered December 12, 1998), and *In re Competitive Strategies for Agriculture, Ltd., et al.*, CFTC Docket No. 98-4, Order Making Findings and Imposing Remedial Sanctions as to Respondent Jeffrey James Wichmann (CFTC entered December 18, 1998).
- *CFTC v. New York Currency Research.* In May 1999, the Commission obtained a final judgment against New York Currency Exchange Corp, New York Currency Research Corp., and Michael T. Matejka, president of both corporations, ordering the defendants jointly and severally to pay \$2,701,486 in restitution to customers and a civil monetary penalty of \$8,104,458. The judgment also permanently enjoins the defendants from violating the provisions of the Act and Commission regulations alleged in the complaint, and rescinds all contracts entered into by the defendants with their customers. The judgment is a culmination of proceedings stemming from the August 1998 complaint, which alleged that the defendants violated the anti-fraud, registration, and various other provisions of the Act and Commission regulations by cheating and defrauding customers, offering and selling illegal foreign currency futures contracts, commingling and converting customer funds, bucketing customer orders, and operating as an unregistered FCM. Shortly after the complaint was filed, the court entered an *ex parte* order and subsequently a preliminary injunction, which, among other things, froze the defendants' assets. *CFTC v. New York Currency Research*, No. 98 CIV 5588, Judgment and Order (S.D.N.Y. entered May 12, 1999).

### Cooperative Enforcement—Domestic

Cooperative enforcement is an important element in promoting compliance with, and deterring violation of, federal commodities laws. Cooperative enforcement enables the Commission to maximize its ability to detect, deter and sanction wrongdoing involving US markets, registrants and customers. The benefits of cooperative enforcement include: 1) use of resources available from other sources to support Commission enforcement actions; 2) coordination of the filing of actions with other authorities to further the impact of enforcement efforts; and 3) enhancement of the consistency and clarity of governmental response and avoidance of duplication of efforts by multiple authorities.

During FY 1999, the Enforcement program coordinated enforcement efforts with a variety of other federal agencies and authorities, including the Department of Justice (DOJ), the Federal Bureau of Investigation, the Securities and Exchange Commission, the Federal Trade Commission, and the US Postal Inspection Service. The Enforcement program both provided assistance to and received assistance from such agencies. It also represented the Commission on interagency task forces designed to keep participants abreast of new developments in financial crimes and to coordinate the governmental response. For example, during FY



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1999, the Division of Enforcement has participated in the following domestic cooperative enforcement efforts:

- *Telemarketing and Internet Fraud Working Group.* The Telemarketing and Internet Fraud Working Group is composed of representatives from state and federal regulatory and criminal authorities. At the working group's quarterly meetings, members discuss all aspects of telemarketing and Internet fraud, including issues such as new scams, new uses of technology, geographical hotspots for certain types of fraudulent activity, effective enforcement techniques, and recent cases that establish relevant precedent in the area. In the past, the working group served as a vehicle to introduce authorities to, and train them to use, the Consumer Sentinel Database, a clearinghouse for consumer complaints relating to, among other things, telemarketing and Internet fraud. The Commission has participated in the working group since its inception.
- *Telemarketing Fraud Initiative.* Another example of the Commission's efforts with regard to telemarketing fraud is its participation in the December 1998 announcement of a major initiative by federal and state agencies targeting telemarketing fraud. The DOJ's initiative, named "Senior Sentinel II - Double Barrel," began in June 1996. As part of the announcement, participating agencies, including the Commission, described their efforts to combat telemarketing fraud during the last two and a half years. During that time, the CFTC filed a total of 21 civil injunctive and administrative actions involving telemarketing fraud and released two Consumer Advisories warning the public of the prevalence of fraudulent schemes marketing futures. Operation Double Barrel was a cooperative effort involving the Commission, the DOJ, the Federal Bureau of Investigation, the Postal Inspection Service, the Federal Trade Commission, and the Securities and Exchange Commission.
- *Securities and Commodities Fraud Working Group.* The Securities and Commodities Fraud Working Group provides a vehicle for public and private sector participants to discuss current trends in financial crime in the securities, futures, and options industries and exchange ideas about enforcement techniques. The group, organized by the Fraud Division of the DOJ, meets on a quarterly basis and its members include both criminal and regulatory authorities from both state and federal agencies as well as representatives from various exchanges. The most recent meeting of the group, in Chicago in May 1999, featured several aspects of the Enforcement program's work, including a presentation concerning its work addressing retail foreign exchange fraud. The Commission will host the next meeting of the group in September 1999.
- *Bank Secrecy Act Advisory Group.* The US Treasury's Bank Secrecy Act Advisory Group (BSAAG) recently invited the Commission to provide a representative to the group, and an Enforcement program staff member has been serving in this capacity since November 1998. The BSAAG was formed in 1994 in order to provide a forum for law enforcement and financial regulators to discuss, with members of the private sector, practical ways to enhance government money laundering programs. The Division has been an active participant in the BSAAG's regularly scheduled meetings.

- Money Laundering Strategy Working Group. The Money Laundering Strategy Working Group (MLSG) is chaired by the Treasury and Department of Justice and includes US law enforcement authorities and financial regulators who are meeting on a bi-weekly basis to discuss the prevention, detection and prosecution of money laundering through financial markets. The MSLG is currently working to implement the action items identified in The National Money Laundering Strategy for 1999, the first in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998. The issues discussed and the initiatives contemplated have relevance to the CFTC's regulatory and enforcement programs.

Additionally, enforcement efforts were coordinated with numerous state authorities, including state commissions responsible for the regulation of corporations, securities, insurance, and banking. The Enforcement program also provided federal and local law enforcement authorities with assistance in connection with criminal investigations. The Commission continued to work closely with the NFA, using NFA staff expertise to assist in investigating and prosecuting cases. While the Commission is not able to discuss the specifics of investigations in which such cooperation was obtained or given, what follows is a sampling of cases filed during FY 1999, in which the Enforcement program coordinated its efforts with domestic authorities:

- CFTC v. Noble Wealth Data Information Services, Inc., et al. In October 1998, the Commission filed a four-count civil injunctive complaint against Noble Wealth Data Information Services, Inc. (Noble Wealth); IAI; and Esfand Baragosh, who is a principal of both firms. The complaint was later amended to add defendant Currex International Corporation (Currex). The complaint alleged that, from August 1994 through the filing of the complaint, the defendants violated the anti-fraud provisions of the Act and Commission regulations by defrauding customers, offering and selling illegal futures contracts on foreign currencies, misappropriating customer funds, and bucketing orders. Specifically, the complaint alleged that the defendants placed newspaper classified advertisements for "traders" who were given training and materials that made false claims regarding Noble Wealth and the potential of extraordinary profits from trading foreign currencies. The complaint further alleged that the "traders" were urged to open personal trading accounts with Noble Wealth and to solicit additional funds from friends and family. However, the customer funds so solicited were not used to invest in foreign currencies but were in fact misappropriated. The Maryland Division of Securities provided valuable assistance to the Commission during its investigation of the matter. *CFTC v. Noble Wealth Data Information Services, Inc., et al.*, No. PJM 98-3316 (D.Md. filed October 1, 1998, amended October 21, 1998) (for a more complete case description, see the "Illegal Instruments" section of Goal Two FY 1999 Accomplishments for Enforcement, page 198).
- In re Soule, et al. In December 1998, the Commission filed a three-count administrative complaint against Kyler F. Lunman II, his company, Hold-Trade, Inc. (also known as Hold Trade, Ltd.) (Hold-Trade) and Steven G. Soule, a former employee of Coastal Corporation

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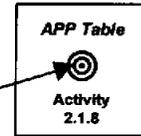
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(Coastal). The complaint was amended on February 4, 1999 to add as a respondent Robert C. Rossi, the principal owner and manager of Refined Energy Executions, Inc. and Refine Executions, Inc. (collectively Refined) which provided Coastal with floor broker services on the NYMEX. The amended complaint alleged that, from September 1993 through December 1994, the respondents defrauded Coastal by misappropriating its energy futures trades and wrongfully allocating them to accounts they controlled. Specifically, the complaint alleged that Soule, as the Coastal employee responsible for entering its energy futures orders to the floor of the NYMEX, allocated, with the assistance of one of Refined's telephone clerks, profitable Coastal trades to futures trading accounts owned or controlled by respondents Lunman and Hold-Trade who, along with Rossi, distributed the profits among the members of the scheme. *In re Soule, et al.*, CFTC Docket No. 99-4 (CFTC filed December 22, 1998, amended February 4, 1999).

- *CFTC v. Swartz, et al.* In November 1998, the Commission filed a three-count civil injunctive complaint against Ronald J. Swartz and Vertrix, Inc., a dissolved corporation of which Swartz was president. The complaint alleged that, from at least August 1997 through the filing of the complaint, the defendants defrauded investors of \$165,000 in their solicitations for and operation of a fictitious commodity pool and defrauded other investors of \$80,000 in connection with discretionary commodity trading accounts in which Swartz was a joint owner. The Commission received assistance in its investigation from the Federal Bureau of Investigation and the NFA. *CFTC v. Swartz, et al.*, No. 98C 7505 (N.D. Ill. filed November 23, 1998) (for a more complete case description, see the "Quick-strike" section of Goal Two FY 1999 Accomplishments for Enforcement, page 198).
- *CFTC v. Princeton Global Management Ltd., et al.* In September 1999, the Commission filed a three-count injunctive complaint against Princeton Economics International, Ltd. (PEI), its wholly owned subsidiary, Princeton Global Management, Ltd. (PGM), and their chairman Martin A. Armstrong. The complaint alleged, among other things, that the defendants defrauded customers by misrepresenting the value of customer interests in a commodity pool. Specifically, the complaint alleged that from at least 1996 to the filing of the complaint, the defendants sold billions of dollars worth of fixed-term promissory notes issued by PEI and its subsidiaries to companies located in Japan. The complaint alleged that the current principal amount of outstanding notes is approximately one billion dollars, while the assets currently in the Fund total no more than approximately \$46 million dollars. The Commission coordinated its enforcement efforts in this matter with the SEC and the US Department of Justice, both of which filed related actions, and the Japanese Financial Supervisory Authority. *CFTC v. Princeton Global Management Ltd., et al.*, No. 99CIV9669 (S.D.N.Y. filed Sept. 13, 1999) (for a more complete case description, see the "Quick-strike" section of Goal Two FY 1999 Accomplishments for Enforcement, page 198).

**Cooperative Enforcement—International**

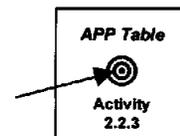
The Commission coordinates enforcement activities with foreign authorities. In FY 1999, the Commission made 26 new enforcement-related requests for assistance to 16 foreign authorities and received 25 new enforcement-related requests from 23 authorities in foreign jurisdictions. The information and assistance exchanged between the Commission and foreign authorities during the fiscal year included information on the disciplinary histories, registrations, and corporate status of US and foreign firms and individuals, evidence for use in investigations and enforcement actions, and details from investigation and litigation files. Foreign authorities also assisted the Commission in locating and serving defendants outside the US. Examples of matters in which the Enforcement program sought information or assistance from foreign authorities during FY 1999 follow:



- *In re Global Minerals & Metals Corporation, et al.* In May 1999, the Commission filed a one-count administrative complaint against Global Minerals and Metals Corporation (Global); Global's president and chief executive officer R. David Campbell; and Global's chief copper trader Carl Alm, alleging that the respondents manipulated, cornered, and attempted to manipulate and attempted to corner the copper market in late 1995. The complaint also names Merrill Lynch & Co. Inc., Merrill Lynch International Inc., and Merrill Lynch, Pierce, Fenner and Smith (Brokers & Dealers) Limited of London, England (collectively referred to as Merrill Lynch), alleging that they aided and abetted Global, Campbell, and Alm in the worldwide copper market manipulation and attempted manipulation. The complaint alleges that between October and December 1995, Global, Campbell, and Alm, together with Sumitomo Corporation of Japan, manipulated and attempted to manipulate upward the worldwide price of copper and copper futures contracts in violation of Sections 6(c), 6(d) and 9(a) of the Act, as amended. According to the complaint, the manipulation of copper prices was the culmination of a long and deliberate scheme by Campbell and Sumitomo's former chief copper trader, Yasuo Hamanaka, to acquire large market positions and liquidate them at distorted and artificially high prices. As in the related, previously filed Sumitomo matter, *In re Sumitomo Corporation*, CFTC Docket No. 98-14 (CFTC filed May 11, 1998), Commission staff worked closely with authorities in the United Kingdom and Japan. *In re Global Minerals & Metals Corp., et al.*, CFTC Docket No. 99-11 (CFTC filed May 20, 1999) (for a more complete case description, see the "Manipulation" section of Goal One FY 1999 Accomplishments for Enforcement, page 153).

**Statutory Disqualification (SD) Matters – Cases Filed**

The Enforcement program investigates and prosecutes administrative registration cases based on SD. While most SD actions are commenced by the NFA as part of its delegated authority to handle registration functions for the Commission, the Commission has retained authority to act directly in appropriate cases. SD actions can result in denial, suspension, or revocation of registration or conditioned or restricted registration. Such actions promote high standards of fitness for commodity professionals. Examples of these cases filed in FY 1999 follow:



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- *In re Varner*. In January 1999, the Commission filed a Notice of Intent to Revoke, Suspend or Restrict Registration against Michael H. Varner, a registered floor broker who is a member of the NYCE, which is now part of the Board of Trade of New York. The notice alleged that, between 1987 and 1997, Varner was charged by the NYCE in 35 disciplinary actions, three of which involved serious charges, such as trading ahead, prearranged trading, and accommodation trading. The disciplinary actions resulted in cumulative sanctions of \$36,250 in fines, two cease and desists orders, and a 30-day suspension. The notice alleged that the disciplinary actions, and the facts underlying those actions, constitute good cause under section 8a(3)(M) of the Act to revoke, suspend or restrict Varner's floor broker registration as authorized under section 8a(4) of the CEA. *In re Varner*, CFTC Docket No. SD 99-1 (CFTC filed January 27, 1999).
- *In re Myskowski*. In January 1999, the Commission filed a Notice of Intent to Suspend, Revoke or Restrict Registration against Anthony Myskowski, a registered floor broker who is a member of the CSCE, and simultaneously accepted Myskowski's offer of settlement. The notice alleged that Myskowski was charged by the CSCE in 14 disciplinary actions, two of which alleged serious violations, including trading ahead of an active customer buy order, misallocating a customer order, and engaging in noncompetitive and prearranged trading. The two serious violations resulted in \$15,500 in sanctions. The notice further alleged that the disciplinary proceedings constitute good cause under section 8a(3)(M) of the Act to revoke, suspend or restrict Myskowski's floor broker registration as authorized under section 8a(4) of the CEA. Myskowski, without admitting or denying the charges in the notice, consented to the entry of a Commission order which restricted his registration for two years, during which time, among other things, he will be prohibited from directly or indirectly trading on behalf of customers and be required to have a sponsor. *In re Myskowski*, CFTC Docket No. SD 99-2 (CFTC filed January 27, 1999).
- *In re Barbarino, et al.* In February 1999, the Commission filed a Notice of Intent to Suspend, Revoke or Restrict Registration against Frank Barbarino and Frank D'Amato, two registered FBs who traded on the NYMEX. The notice alleged that on January 9, 1991, Barbarino traded ahead of executable customer orders. The notice further alleged that on that date Barbarino's and D'Amato's employees intentionally and negligently misallocated customer orders and failed to relay executable customer orders to Barbarino in a timely manner, which resulted in Barbarino trading for his personal account ahead of these orders. Finally, the notice alleged that Barbarino and D'Amato settled the two NYMEX disciplinary actions that arose from these incidents resulting in cumulative sanctions of \$40,000 in fines plus \$15,500 in restitution. *In re Barbarino, et al.*, CFTC Docket No. SD 99-3 (CFTC filed February 3, 1999).
- *In re Atwood Commodities, LLC*. In March 1999, the Commission filed a Notice of Intent to Suspend or Restrict and Thereafter Revoke Registration against Atwood Commodities, L.L.C. (Atwood) and simultaneously accepted Atwood's offer of settlement. Atwood is a

registered FCM and the settlement, made without Atwood admitting or denying the allegations contained in the notice, placed restrictions on its registration for a period of four years. The registration action resulted from a previous criminal conviction of Atwood's principal, ConAgra, Inc. (ConAgra). The notice alleged that ConAgra pled guilty to and was convicted of wire fraud as a result of an alleged scheme to defraud buyers of grain by misweighing and misgrading grain within ConAgra's Peavey Grain division. Among other things, the Commission's order accepting Atwood's settlement prohibits Atwood from ever employing any person involved in any of the conduct or activities underlying the ConAgra criminal information and, for a period of four years, prohibits Atwood from employing any person who simultaneously has management responsibilities for the operation of the Peavey Grain division of ConAgra. The order further requires Atwood for the next four years to give heightened review to ConAgra's orders to ensure that they are handled and processed in accordance with the Act and Commission regulations and to report any problems to the Commission. *In re Atwood Commodities, LLC*, CFTC Docket No. SD 99-4 (CFTC filed March 30, 1999).

- *In re Pedersen*. In May 1999, the Commission simultaneously filed a Notice of Intent to Suspend, Revoke or Restrict Registration against Earl A. Pedersen and accepted Pedersen's offer of settlement. The notice alleged that Pedersen, a registered floor broker who is a member of the CSCE, was charged by the CSCE in 11 disciplinary actions, two of which alleged the serious violations of trading ahead of an active customer sell order and misallocating a customer order. The two serious violations resulted in total fines of \$7,500. The notice further alleged that the disciplinary proceedings, which charged Pedersen with serious violations, and the misconduct underlying the two actions constitute a basis by which Pedersen's floor broker registration may be conditioned, suspended, revoked, or restricted under the Act. Without admitting or denying the charges in the notice, Pedersen consented to the entry of a Commission order that restricted his registration for two years, during which time, among other things, he will be prohibited from directly or indirectly trading on behalf of customers and be required to have a sponsor. *In re Pedersen*, CFTC Docket No. SD 99-5 (CFTC filed May 3, 1999).
- *In re Berry, et al.* In June 1999, the Commission filed a Notice of Intent to Suspend, Revoke or Restrict Registrations against Felix A. Berry and BFC Commodities, Inc. (BFCC) and simultaneously accepted their offer of settlement. BFCC has been registered as a CPO, CTA, and IB. Berry is a principal and registered AP of BFCC. The notice alleged that on January 28, 1998 the Illinois Secretary of State issued a Consent Order of Prohibition against Berry that included findings of fact that Berry had made false or misleading statements to purchasers of securities in Berry's financial corporation which violated various state securities statute anti-fraud provisions. The notice further alleged that the consent order of prohibition constitutes grounds for statutory disqualification of Berry from registration under Section 8a(2)(E) of the Act. Berry, on behalf of himself and BFCC, without admitting or denying the charges in the notice, consented to the entry of a Commission order that revoked Berry's AP registration; revoked BFCC's CPO, CTA, and IB registra-

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tions; and ordered Berry and BFCC to comply with their undertakings to never reapply for registration or act in a capacity requiring registration. *In re Berry, et al.*, CFTC Docket No. SD 99-6 (CFTC June 2, 1999).

- *In re Connelly*. In July 1999, the Commission filed a Notice of Intent to Suspend, Revoke or Restrict Registrations against James L. Connelly and simultaneously accepted his offer of settlement. Connelly has been a member of the Index and Options Market division of the CME and has been registered as a floor broker. During the relevant time period, June 1992 to June 1993, Connelly was a member of the Linnco Futures Group, Inc. Broker Association. The notice alleged that on eight instances Connelly allocated profitable customer trades to his own trading account and then, to fill the customer order and offset the position taken into his personal account, bucketed his customer's order against another floor trader or broker. The notice further alleged that Connelly violated recordkeeping rules in connection with the preparation and time-stamping of his customer orders. Finally, the notice alleged that Connelly settled the CME disciplinary action that arose from these incidents resulting in cumulative sanctions of \$25,000 in fines, \$7,952 in restitution, and six month suspension. Connelly, without admitting or denying the allegations in the notice, consented to the entry of a Commission order which imposed a lifetime dual-trading restriction on his floor broker registration. *In re Connelly*, CFTC Docket No. SD 99-7 (CFTC July 30, 1999).
- *In re Rhee, et al.* In September 1999, the Commission filed a Notice of Intent to Suspend, Restrict or Revoke Registrations against Andrew David Rhee and Reflex Asset Management Corporation (Reflex). Reflex has been registered as a CPO and CTA. Rhee is a principal, sole owner, and AP of Reflex. On July 23, 1998, the US Attorney's Office for the Southern District of New York filed a criminal information against Rhee and Thomas Edmund Kelly, charging that they conspired to commit wire fraud by misappropriating confidential proprietary information from John W. Henry & Co. (JWH), a registered CPO and CTA, and used that information to place commodity futures trades ahead of JWH's futures trades, for the benefit of Rhee, Reflex, and Kelly, and to JWH's detriment. The same day, Rhee pled guilty to the felony charge of conspiring to commit wire fraud in federal district court. In December 1998, a judgment order of conviction was entered against Rhee concerning the felony charge in the US District Court for the Southern District of New York. Also on July 23, 1998, the Commission filed a two-count civil injunctive complaint in the same court against Rhee, Reflex, and Kelly, charging them with fraud under the Act in connection with their scheme to trade ahead of JWH's futures orders. On November 3, 1998, the US District Court for the Southern District of New York entered a consent order of permanent injunction against Rhee and Reflex in the civil action which permanently enjoins them from, among other things, directly or indirectly engaging in or continuing activity involving fraud and activity involving transactions in or advice concerning contracts of sale of a commodity for future delivery. The Notice alleged that the facts set forth above constitute grounds for disqualifying Rhee from registration under Sections 8a(2)(C) and (D) of the Act. In addition, according to the Notice, the facts constitute

grounds for the statutory disqualification of Reflex from registration under Sections 8a(2)(C) and (H). *In re Rhee, et al.*, CFTC Docket No. SD 99-8 (CFTC September 20, 1999).

**Statutory Disqualification – Other Enforcement Results**

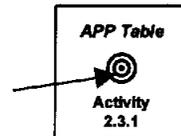
Other results obtained by the Division in this area during FY 1999 include the following.

- *In re Gravitt.* In June 1999, the Commission accepted John Lee Gravitt's offer of settlement regarding the June 15, 1998 Notice of Intent to Refuse or Condition Registration against the applicant. Without admitting or denying the allegations in the Notice, Gravitt consented to the entry of a Commission order granting his application for floor trader registration for a two year period, subject to certain conditions. During this time, among other things, Gravitt may not directly or indirectly trade on behalf of customers, and is required to have a sponsor. *In re Gravitt*, CFTC Docket No. SD 98-7, Opinion and Offer of Settlement of John Lee Gravitt and Granting and Conditioning Registration (CFTC entered June 2, 1999).

**Office of Proceedings**

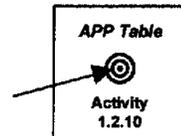
**Reparations Cases in the Office of Proceedings**

Of the 192 complaints filed in FY 1999, 147 were forwarded for hearing. During the fiscal year, the ALJs and judgment officers (JOs) disposed of 164 reparations cases through dismissal for cause, settlement, default, or initial decision. Proceedings staff responded to approximately 14,000 inquiries and distributed approximately 1,000 reparations brochures.



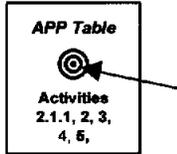
**Enforcement Cases in the Office of Proceedings**

From an administrative docket of 51 cases, of which 26 cases were filed in FY 1999, decisions were issued in 26 cases, four cases were settled, and 21 were carried over until next year. Sanctions imposed through this program serve the important function of discouraging other would-be violators from engaging in similar misconduct. Sanctions include trading prohibitions, registration sanctions, substantial civil monetary penalties, cease and desist orders, and requirements for restitution by wrongdoers.



During FY 1999, one initial decision was issued by an ALJ finding that an agricultural cooperative violated Section 4(a) of the Act when it offered to enter into and subsequently entered into off-exchange futures contracts. These contracts were in the form of agricultural merchandising contracts, collectively referred to as HTA contracts, specifically a variation called "Flex HTA" contracts. The ALJ designated the Flex HTA contracts as futures contracts and not cash forward contracts as the respondents argued. Proof of scienter was not necessary for violations of Section 4(a) of the Act and respondents' actions were found to have constituted willful conduct. The ALJ denied the applicability of any of respondents' affirmative defenses, including collateral estoppel, the use of official notice, and improper review by the forum. No civil monetary penalty was ordered for the out of business cooperative; however, a cease and desist order was issued. This matter is currently on appeal.

## **Office of the General Counsel**



### **Deterring Fraud and Other Illegal Activities**

In FY 1999, the Office of the General Counsel reviewed approximately 75 enforcement recommendations involving the initiation and conduct of investigations and injunctive actions and administrative proceedings involving fraud and other violations to assure their legal sufficiency and their conformance with general Commission policy and precedent. As part of the Commission's continued crackdown on fraudulent foreign currency trading schemes, the staff reviewed the complaint filed in *CFTC v. Noble Wealth Data Information Services, Inc., et al.*, No. CIV-PJM-98-3316 (D.Md. October 1, 1998), in which a Maryland firm and its principals were charged with cheating and defrauding customers, offering and selling illegal futures contracts on foreign currencies, misappropriating funds, and bucketing orders. Other complaints included *CFTC v. Swartz, et al.*, No. 98-CIV-7507 (N.D.Ill. November 23, 1998), in which the defendants were charged with, *inter alia*, defrauding investors in connection with their solicitation for and operation of a fictitious commodity pool; and *CFTC v. James, et al.*, No. 99-CIV-0967 (N.D.Ga. April 15, 1999), in which the defendants were charged with operating a \$5 million ponzi scheme over a four-year period.

Through its Opinions Program, the Office of the General Counsel assists the Commission in the performance of its adjudicatory functions. In FY 1999, the Office of the General Counsel assisted with the resolution of 11 appeals to the Commission from Initial Decisions in administrative enforcement matters. Noteworthy cases included *In re Kelley*, No. 97-6, which involved the scope and extent of the recordkeeping and production obligations of a CTA; *In re R&W Technical Services, Ltd.*, No. 96-3, which involved whether and to what extent the regulatory requirements of a CTA are applicable to sellers of computerized trading software; *In re Zuccarelli*, No. SD-97-3, which involved the scope and effect of evidence of rehabilitation in the context of a revocation of a floor broker's registration; *In re Global Link Miami Corp.*, No. 98-1, which is the Commission's first definitive statement as to the meaning of the term "board of trade" in the context of the US Treasury Amendment; and *In re First Commercial Financial Group, Inc., et al.*, No. 95-10, which involved the scope of controlling person liability under the CEA and the proper determination of monetary penalties.

In FY 1999, the Office of the General Counsel assisted with the resolution of 12 appeals to the Commission arising out of self-regulatory organization disciplinary actions. Significant appeals from such disciplinary actions included *American Futures Group, Inc., et al. v. National Futures Assoc.*, Nos. CRAA 98-1, 98-2, 98-3, and 98-4, in which the Commission affirmed findings of recordkeeping and sales practice violations.

Through its Litigation Program, the Office of the General Counsel represents the Commission in the US District Courts and Courts of Appeals and assists the Solicitor General in representing the Commission before the US Supreme Court. During FY 1999, significant District Court cases included *Chicago Board of Trade v. CFTC*, No. 98-CV-5631 (N.D. Ill.), involving a claim by the CBT that the Commission's approval of an

electronic exchange for the trading of futures contracts on US Treasury bills was in violation of the requirements of the Administrative Procedure Act; and *Great Plains Coop v. CFTC*, No. 98-CV-609 (D.Neb.), which involved an effort to persuade a District Court to stop ongoing administrative enforcement proceedings, by means of a writ of mandamus, on the ground that prior judicial precedents in private litigation involving HTA contracts should be given preclusive effect in a proceeding brought by the Commission. In FY 1999, the Office of the General Counsel also argued several appeals of cases having significant implications to the protection of market users, including *New York Currency Research Corp. v. CFTC*, No. 98-4159 (2nd Cir.), which involved the scope of a registrant's duties to maintain and produce documents; *CFTC v. Trinity Financial Group*, No. 97-5757 (11th Cir.), which involved the nature of the proof needed to support a disgorgement order and the degree of proof necessary to support a finding of fraud; *Commonwealth, et al. v. CFTC*, Nos. 98-4569 and 97-4506 (11th Cir.), which involved whether issues of collateral estoppel barred the Commission's findings of liability for fraud in an enforcement action; *Clark v. CFTC*, No. 97-4228 (2nd Cir.), which involved revocation of registration based on a pattern of prior sanctions by a self-regulatory organization; and *Arnold v. CFTC*, No. 97-5713 (11th Cir.), which involved the appealability, on an interlocutory basis, of disciplinary actions taken against attorneys during enforcement proceedings.

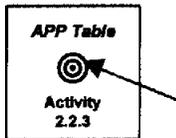
During FY 1999, the Office of the General Counsel defended a number of lawsuits brought by publishers of commodity trading advice seeking declaratory and injunctive relief on the ground that the Act's registration requirement for CTAs violates the First Amendment. Significant cases included *Taucher, et al. v. Born, et al.*, No. 97-CV-01711 (D.D.C.), in which the District Court held, after a four-day bench trial, that the registration requirement was unconstitutional as applied to the particular publishers in that case. Other such cases included *Commodity Trend Service v. CFTC*, No. 97-C-2362 (N.D.Ill.), in which the District Court agreed with the Court in *Taucher* that the registration requirement was unconstitutional as applied to a CTA that published wholly impersonal commodity trading advice, but found also that such publishers are subject to the anti-fraud provisions of Section 4o of the CEA and Commission Regulation 4.41, and that the Commission was entitled to investigate whether the CTA had violated these provisions. Another such case is *Agora, Inc. v. Born*, No. JFM-98-3453 (D.Md.), in which cross-motions for summary judgment are currently pending. First Amendment issues have arisen in several other cases during FY 1999, including *CFTC v. Vartuli*, Nos. 98-6280 and 98-6281 (2nd Cir), in which the Office of the General Counsel is currently representing the Commission in an appeal from a successful enforcement action brought by the Commission's New York office.

Through its *amicus curiae* litigation program, the Office of the General Counsel supports the Commission in assisting the courts in resolving difficult or novel questions arising under the CEA or Commission regulations, with a view to making significant contributions to the development of consistent and accurate legal precedent. In FY 1999, Commission participation was authorized in three such cases, *Board of Trade of City of Chicago*, No. 98-2923 (7th Cir.), in which the Commission addressed whether the Securities and Exchange Commission erred in de-

## Annual Performance Plan

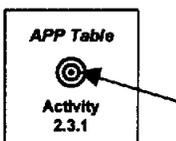
nying, pursuant to the Shad-Johnson Accord, an application to establish a contract market for futures and option contracts on two stock indices, the Dow Jones Utility Average and the Dow Jones Transportation Average; *Grain Land Coop v. Obermeyer*, Nos. 98-3217 and 98-3304 (8th Cir.), in which the Commission was asked by the court to address whether particular HTA grain contracts were futures contracts subject to the provisions of the CEA; and *Lauchmund v. ADM Investor Services, Inc.*, No. 97-C-92 (7th Cir.), in which the Commission was asked by the court to address the viability of a claim that particular HTA grain contracts were subject to the CEA.

The Office of the General Counsel also monitors bankruptcy cases involving futures industry professionals and, as appropriate, represents the Commission in carrying out the special US Bankruptcy Code provisions pertaining to commodity firms. The Office of the General Counsel also represents the Commission in other bankruptcy cases in which the Commission has claims. During FY 1999, the Office was involved in 11 such cases, including *In re Griffin Trading Co.*, No. 98-41742 (Bankr. N.D.Ill.), in which the Commission's Part 190 commodity broker liquidation rules have been challenged.



### Requiring Commodities Professionals to Meet High Standards

During FY 1999, the Office of the General Counsel supported Commission oversight of the NFA registration program, reviewing SD cases referred to the Commission by the NFA, reviewing the delegation by the Commission to the NFA of registration authority for FBs and FTs, establishing registration for agricultural trade option merchants, and participating in the RWG, which meets quarterly with the NFA to discuss registration issues.



### Providing a Forum for Handling Customer Complaints against Registrants

The Commission provides a Reparations Program to assist customers who have disputes with commodity futures trading professionals who are registered with the Commission at the time of the alleged wrongdoing or at the time the complaint is filed. The Office of the General Counsel assists the Commission in resolving appeals from the Initial Decisions in such cases and represents the Commission when its decisions are appealed to the US Courts of Appeals. In FY 1999, the Office of the General Counsel assisted the Commission in deciding 18 appeals from Initial Decisions in reparation cases. Noteworthy opinions included *Violette v. First American Discount Corp.*, No. 97-RO20, in which the Commission affirmed the validity of rules holding guarantor FCMs liable for customer losses arising from the misconduct of their guaranteed IBs and determined that exculpatory clauses waiving customer rights against guarantor FCMs are unenforceable; *Clemons v. McCabe, et al.*, No. 97-RO53, in which the Commission held again that such exculpatory clauses are unenforceable; and *Harter v. Iowa Grain Co.*, No. 98-RO95, in which the Commission held that a claimant's failure to prevail in an arbitration proceeding against a guaranteed IB barred relitigation of the claim against the guarantor FCM. The Office of the General Counsel represented the Commission in five appeals of Commission reparation decisions to the US Courts of Appeals during FY 1999, one of

which was dismissed by the Court pursuant to the Commission's motion.

## Executive Direction & Support

### Administrative Management and Support

In FY 1999, OIRM continued to assist the Enforcement program with the development and implementation of automated support. OIRM worked with Enforcement staff to produce monthly status reports for the division and on the development of an integrated enforcement support system. In addition, the intranet introduced during FY 1999 provides enhanced research tools for agency staff.

## Goal Two: FY 2000 and FY 2001 Plan by Program

### Trading & Markets

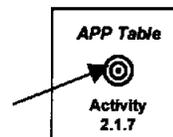
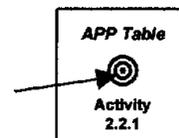
#### Fitness Oversight

The Trading and Markets program staff will oversee the NFA fitness review program (registration) through formal reviews of the program, informal staff contacts, and meetings of the RWG. The Trading and Markets program will work with other Commission staff to provide input to NFA on the redesign of the Clearinghouse of Disciplinary Information (to be renamed Background Affiliation Status Information Center, or BASIC), as well as on the overhaul of the NFA registration database.

As the pace of technological change quickens, Trading and Markets program staff will review rules and other guidance provided to the industry to ensure that customer and marketplace protections are maintained and enhanced. Working with industry groups, the staff will develop appropriate changes in the minimum financial requirements and related reporting requirements. In connection with such efforts, the staff will modify oversight programs to conform to any changes in the way market and credit risk are assessed pursuant to the relevant capital rules. Staff will continue to examine firms' risk assessment and internal control oversight programs.

#### Ensuring that Assessed Penalties Are Collected

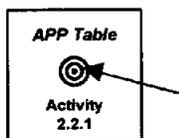
The Trading and Markets program will collect civil monetary penalties assessed in Commission cases and may turn over to the US Treasury Department delinquent debts for cross-servicing, administrative offsets and wage garnishments in accordance with both the Debt Collection Improvement Act of 1996 and the letter of agreement entered into between the Commission and the US Treasury Department. The Commission may also, in appropriate cases, continue to refer delinquent debts directly to the DOJ for enforced collection. The Trading and Markets program will monitor the progress of each such case.



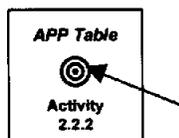
## Annual Performance Plan

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### Managed Funds and Sales Practice Oversight

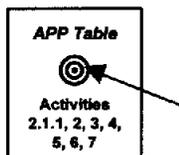


The Division of Trading and Markets program staff will implement programs to appropriately respond to potentially systemic risks posed by hedge funds, particularly the largest and most highly leveraged funds. The Trading and Markets staff will continue to work with the President's Working Group on Financial Markets in this area.



The Trading and Markets program staff will continue to conduct its oversight reviews of the regulatory program conducted by NFA. Trading and Markets staff will review the NFA program pursuant to which NFA reviews Disclosure Documents provided to potential investors and clients by CPOs and CTAs. As part of its oversight of the NFA audit program, the Trading and Markets staff also will review NFA's audit program for CPOs and CTAs, as well as the NFA audit programs for FCMs, IBs, and branch offices. The Trading and Markets program staff also will conduct reviews of NFA's oversight of industry practices (including telemarketing).

To ensure full protection of existing and potential customers from abusive sales practices, Trading and Markets staff will review the sales practice components of each exchange's compliance program. The staff will conduct selected CPO and CTA audits and FCM sales practice audits to test such self-regulatory programs. The staff will also support the Division of Enforcement's program in circumstances where the special expertise of the Trading and Markets staff is needed. The Trading and Markets staff will continue to monitor customer complaints to identify any emerging patterns of abusive practices.



### Enforcement

Because the primary areas of concentration of the Enforcement program have remained consistent over the past several years, the program expects to commit the large majority of its resources to investigate and litigate cases involving fraud to protect market users and the public from abuses in these areas.

While it is difficult to project what new issues or trends will arise that will require an enforcement response, certain current factors are likely to be indicative of future resource needs, such as continued industry growth, the development of technology that allows more complicated trading strategies and enhanced ease of access to a wider customer base through mass media, and the increased volume of pooled and managed money flowing into the industry.

With the increased volume of investment dollars flowing to pooled and managed funds, the Commission continues to pursue numerous cases involving unregistered CTAs, CPOs and FCMs engaged in fraudulent conduct. In FY 1999, the Commission filed a number of actions alleging fraud in the solicitation and/or management of pooled customer funds. See, e.g., *In re Green*, CFTC Docket No. 99-1 (filed November 2, 1998); *CFTC v. Trivette*, No. 5:99 CV 59-V (W.D.N.C. filed April 6, 1999); *CFTC v. McGivney, et al.*, No. 99-Civ. 23-75 (N.D.Ill. filed April 12, 1999); *In re Godres*, CFTC Docket No. 99-13 (CFTC filed June 28, 1999); and *CFTC v. Benun*, No. 99 Civ. 4822 (S.D.N.Y. filed July 2, 1999). See also quick-strike cases described below. The Commission also filed cases involving

## Annual Performance Plan

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allegations of fraudulent advertising for commodity futures and option-based investments on radio, television and the Internet. *In re Dunhill Financial Group, Inc., et al.*, CFTC Docket No. 99-7 (filed March 4, 1999) and *In re Wellington Financial Group, Inc.*, CFTC Docket No. 99-10 (filed March 30, 1999). It is anticipated that in FY 2000 and FY 2001, Enforcement staff will devote increasing attention to cases in which defendants use mass media to reach broad cross-sections of the general public, including unsophisticated investors. The Enforcement program has pursued cases involving solicitation fraud including false advertising in the past, but the fact patterns in these cases continue to evolve and grow increasingly complex. Moreover, with the increased use of mass media, such as the Internet, such solicitations are reaching more retail customers than ever before.

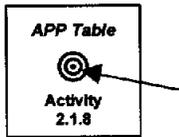
Additional staff resources will enable the Enforcement program to continue to move quickly when wrongdoing is detected and customer funds are at risk. Properly staffed, the Enforcement program is able rapidly to investigate and take injunctive action in quick-strike cases without diverting staff from large, complex matters. Such quick-strike cases not only send a deterrent message, but they also provide the Commission with the opportunity to freeze assets and preserve books and records, where possible. In FY 1999, the Enforcement program has pursued several quick-strike cases. *CFTC v. Swartz, et al.*, No. 98C 7505 (N.D.Ill. filed November 23, 1998); *CFTC v. Colton*, No. 98-2575-CIV-T-26C (M.D.Fla. filed December 16, 1998); *CFTC v. Chulik*, No. 99-02412 (C.D.Ca. filed March 9, 1999); *CFTC v. James, et al.*, 99-CIV-00967 (N.D.Ga. filed April 15, 1999); *CFTC v. Sheldon*, No. 1:99-CV-138 (E.D.Tenn. filed April 28, 1999); *CFTC v. EuroPacific Equity and Capital Management, Ltd., et al.*, No. 99-6506 (S.D.Fla. filed May 5, 1999); *CFTC v. Berzins*, No. 3:99cv592 (E.D. Va. entered Sept. 17, 1999); *CFTC v. Princeton Global Management Ltd., et al.*, No. 99CIV9669 (S.D.N.Y. filed Sept. 13, 1999).

The Commission expects to maintain its activity in matters involving illegal foreign currency futures contracts not sold on a Commission-designated contract market. The Treasury amendment has affected the Commission's ability to bring cases in certain circuits. Nonetheless, in those jurisdictions and others, the Commission is working with other authorities to protect the public. See, e.g., *CFTC v. Noble Wealth Data Information Services, Inc, et al.*, No. PJM 98-3316 (D.Md. filed October 1, 1998, amended October 21, 1998); and *CFTC v. Clairmont Capital Corp., et al.*, No. 99-S-1874 (D. Colo. filed Sept. 27, 1999).

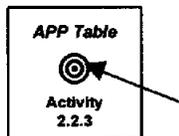
Just as significant resources will be used to investigate matters involving fraud, so will significant litigation resources be committed to prosecuting individual registrants who engage in fraud. Such individuals have a substantial stake in the outcome of these cases because they risk losing their licenses. As a result, they tend to defend such actions vigorously. The Enforcement program must have a sufficient number of personnel available so that potential defendants do not believe they can force the Commission into settlement because of strains on its resources caused by the demands of litigation.

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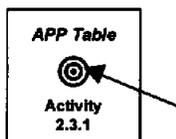
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The Commission is dedicated to maintaining both its domestic and international cooperative enforcement activities. The relationships the Enforcement program has forged with federal, state, and local authorities are invaluable to the effort of the Enforcement program to fulfill its mission. The Enforcement program also fully expects that its investigations will continue to require assistance from foreign authorities. The Commission has formal cooperative enforcement arrangements with more than a dozen foreign authorities and continues to negotiate additional arrangements as authorities obtain comprehensive investigatory powers. Much of the international work can be labor-intensive given differences in language and regulatory schemes; similarly, effective domestic cooperative enforcement requires that strong relationships be built over time.



Finally, the Enforcement program expects a decrease in the amount of time and resources devoted to SD investigations and cases (SDs) in coming fiscal years. Late in FY 1997, the Commission delegated to the NFA the authority to take registration actions against FBs and FTs consistent with Commission guidance. The number of SDs brought by the Commission in FY 1998, and the number it expects to bring in FY 1999, is consistent with historical numbers. However, many of these cases represent investigations that were in progress at the time of the delegation. Looking forward to FY 2000 and FY 2001, the Enforcement program expects that its inventory of pre-delegation SDs will be eliminated, but it will continue to investigate and prosecute certain, significant SD matters (*In re Atwood Commodities, L.L.C.*, CFTC Docket No. SD 99-4 (CFTC filed March 30, 1999)) as well as disqualifications that are related to matters previously prosecuted by the Commission. Accordingly, the Enforcement program expects the number of matters and staff hours devoted to these matters to decline, but not to disappear altogether. The staff hours formerly devoted to SDs will be distributed among the activities described above and will bolster the efforts of the Enforcement program to pursue both quick-strike and larger, more complex matters.



### Office of Proceedings

During FY 1999, commodity futures and option markets continued to expand into new areas, and the volume of trading grew. However, the number of filings did not increase and are expected to remain about the same or increase slightly from 192 in FY 1999 to 200 in FY 2000, and 210 in FY 2001.

### Office of the General Counsel

#### Deterring Fraud and Other Illegal Activities

The Office of the General Counsel will continue to review all enforcement recommendations involving the initiation and conduct of investigations, injunctive actions and administrative proceedings involving fraud and other violations to assure their legal sufficiency and their conformance with general commission policy and precedent. In addition, the Office of the General Counsel will continue to assist the Com-

mission in the performance of its adjudication, litigation, *amicus curiae*, and bankruptcy functions

**Requiring Commodities Professionals to Meet High Standards**

The Office of the General Counsel will continue to support Commission oversight of the NFA program by reviewing SD cases referred to the Commission by the NFA, reviewing the Commission's delegation of registration authority to the NFA, and by participating in the RWG.

**Providing a Forum for Handling Customer Complaints against Registrants**

The Office of the General Counsel will continue to assist the Commission in resolving appeals from Initial Decisions in reparation cases and will represent the Commission when its reparation decisions are appealed to the US Courts of Appeals.

**Executive Direction & Support**

**Administrative Management & Support**

During FY 2000, OIRM staff will complete development of applications to support Enforcement program operations. These applications are being developed and implemented as individual modules sharing a common information database. When completed, the modules will comprise a program-wide management information system.

In FY 2001, OIRM anticipates conducting analyses of the opportunities to enhance the operations of the Office of Proceedings.

## **Working Relationships in Support of Goal Two**

### National Futures Association

The CEA authorizes the Commission to delegate registration functions to the NFA and requires that the NFA perform certain regulatory functions. NFA is the principal direct regulator, under Commission oversight, of those industry professionals who are not members of another SRO. The statutory structure is designed to promote a partnership between NFA and the CFTC to assure high standards for industry professionals. NFA monitors registrants for compliance with the CEA and rules promulgated thereunder. NFA also monitors activities of NFA members registered as CPOs, CTAs, IBs, FCMs that are not members of a futures exchange, as well as APs of any of the foregoing. The Commission oversees the NFA registration program through frequent contacts with NFA staff members on specific matters and through formal reviews by the Commission of NFA programs. A Registration Working Group, comprised of CFTC and NFA staff, meets quarterly to discuss issues of mutual interest concerning registration. The Commission has delegated to NFA functions related to:

- Reviewing certification files by persons seeking to become ethics trainers;
- Monitoring activities of ethics trainers;
- Maintaining records of registrants' attendance at ethics training;
- Reviewing applications of individual foreign firms for an exemption from registration;
- Reviewing CPO and CTA disclosure documents; and
- Collecting, processing, and maintaining Regulation 9.11 notices submitted by exchanges.

Joint activities include:

- Redesign of the Clearinghouse of Disciplinary Information, renamed Background Affiliation Status Information Center (BASIC), to enhance public access to disciplinary information on registrants through the Internet;
- Working to delegate regulatory responsibilities associated with the direct filing of Regulation 9.11 notices to NFA.

### Domestic Cooperative Efforts with Law Enforcement and Regulatory Authorities

Task forces and working group designed to keep market participants abreast of new developments in financial crimes and to coordinate governmental responses.

### SEC-SRO Internet Working Group

Information sharing concerning regulatory and enforcement initiatives involving securities and futures activities on the Internet.

*International Organization of Securities Commissions (IOSCO)*

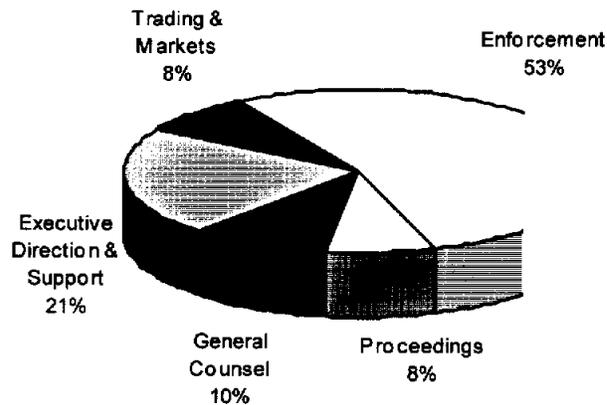
Provides vehicle for exchanging information and expertise among regulatory authorities for the supervision of world securities and derivatives markets, to establish standards of best practices, ensure market integrity, and promote effective supervision. Work conducted through working parties specialize in enforcement, and especially concerning cooperation between law enforcement and regulatory authorities and the detection, investigation, and prosecution of price manipulation.

## Annual Performance Plan

**Table 3: Goal Two – Summary of Request by Program**

	FY 2000		FY 2001		CHANGE	
	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE
Market Surveillance, Analysis, & Research	\$0	0.00	\$0	0.00	\$0	0.00
Trading & Markets	2,036	17.50	2,387	20.00	351	2.50
Enforcement	12,946	109.51	15,056	125.54	2,110	16.03
Proceedings	1,948	18.09	2,127	19.00	179	0.91
General Counsel	2,331	17.82	2,756	20.52	425	2.70
Executive Direction & Support	5,574	49.14	6,053	50.44	479	1.30
<b>TOTAL:</b>	<b>\$24,835</b>	<b>212.06</b>	<b>\$28,379</b>	<b>235.50</b>	<b>\$3,544</b>	<b>23.44</b>

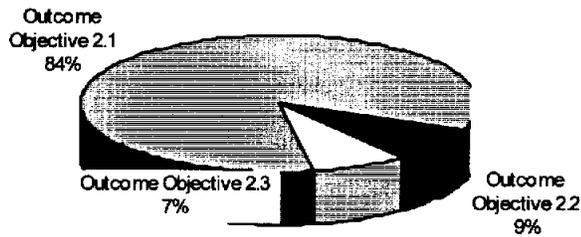
**Figure 8: Goal Two – FY 2001 Budget Dollars by Program**



**Annual Performance Plan**

**Table 4: Goal Two – Summary of Request by Outcome Objective**

	FY 2000		FY 2001		CHANGE	
	\$ (000)	FTE	\$ (000)	FTE	\$ (000)	FTE
<b>GOAL TWO: Protect markets users and the public.</b>						
<b>Outcome Objectives</b>						
2.1 Promote compliance with and deter violations of federal commodities laws.	\$ 20,765	177.09	\$ 23,775	197.40	\$3,010	20.31
2.2 Require commodities professionals to meet high standards.	\$ 2,115	18.07	\$ 2,436	20.14	321	2.07
2.3 Provide a forum for effectively and expeditiously handling customer complaints against persons or firms registered under the Act.	\$ 1,955	16.90	\$ 2,168	17.96	213	1.06
<b>Total Goal Two</b>	<b>\$24,835</b>	<b>212.06</b>	<b>\$28,379</b>	<b>235.50</b>	<b>\$3,544</b>	<b>23.44</b>



**Figure 9: Goal Two – FY 2001 Budget Dollars by Outcome Objective**

## Ranking of Goal Two Activities

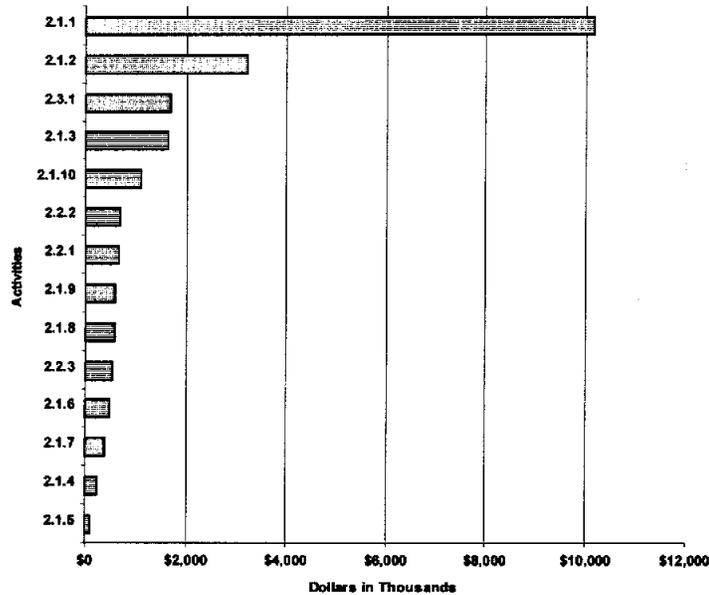


Figure 10: Ranking of Goal Two Activities

- **Activity 2.1.1:** Identify and investigate possible fraudulent and other illegal activities relating to the commodity futures and option markets and their registrants.
- **Activity 2.1.2:** Bring injunctive actions, including using "quick-strike" efforts to protect assets and to stop egregious conduct.
- **Activity 2.3.1:** Provide a reparations program for commodities market users to make claims relating to violations of the Act.
- **Activity 2.1.3:** Bring administrative cases involving fraud and other violations.
- **Activity 2.1.10:** Resolve appeals in administrative enforcement matters and self-regulatory organization adjudicatory actions.
- **Activity 2.2.2:** Oversee NFA's document disclosure review program.
- **Activity 2.2.1:** Oversee the National Futures Association registration program including testing, licensing, and ethics training for commodities professionals.
- **Activity 2.1.9:** Monitor the Internet and other communications media for fraudulent activities and possible violations of the Act.
- **Activity 2.1.8:** Cooperate with the exchanges, the National Futures Association, and other federal agencies, state governments, and law enforcement entities, and foreign authorities to gain information for law enforcement purposes and to provide enforcement assistance as necessary and appropriate.
- **Activity 2.2.3:** Investigate and bring administrative registration cases arising out of alleged statutory disqualification, and obtain suspensions, revocations, conditions, or restrictions of registration.
- **Activity 2.1.6:** Inform the public and the industry concerning allegations of wrongdoing and associated legal actions, including through publications and through Commission orders and reports describing the alleged violations and the Commission's legal and policy analysis.
- **Activity 2.1.7:** Collect sanctions and civil monetary penalties against violators.
- **Activity 2.1.4:** Hear administrative cases.
- **Activity 2.1.5:** Sanction violators.

Summary of Annual Performance Targets

Goal Two								
Protect market users and the public.								
Outcome Objective 2.1								
Promote compliance with and deter violations of federal commodities laws.								
Annual Performance Goal								
All known possible wrongdoing identified and investigated. All violators brought to justice.								
Activity/Strategy	Output Measure 1/	FY99	FY00	FY01	Outcome Measure 1/	FY99	FY00	FY01
1. Identify and investigate possible fraudulent and other illegal activities relating to the commodity futures and option markets and their registrants. (See ●, pp. 178, 179, 198, 216)	Number of such investigations opened during the fiscal year.	84	83	86	Of all such investigations closed or resulting in actions during the fiscal year, percentage of such investigations closed or resulting in CFTC enforcement action within one year of opening.	TBD	TBD	TBD
	Total number of such investigations closed or resulting in CFTC enforcement action during the fiscal year	TBD	TBD	TBD				
	Number of such investigations closed or resulting in CFTC enforcement action within one year of opening.	39	42	48	Of all CFTC enforcement investigations closed or resulting in actions during the fiscal year, percentage of such investigations.	TBD	TBD	TBD
	Number of such investigations pending at close of fiscal year.	114	112	108				
2. Bring injunctive actions, including using "quick-strike" efforts to protect assets and to stop egregious conduct. (See ●, pp. 178, 179, 198, 216, 220)	Number of such injunctive actions filed using "quick-strike" procedures.	8	8	9	Of the total number of such injunctive actions filed during the fiscal year, percentage of quick strike actions.	40%	42%	41%
	Total number of such injunctive actions filed during the fiscal year.	20	19	22				
	Number of such injunctive actions completed during the fiscal year.	19	18	21				
	Number of such injunctive actions pending the close of the fiscal year.	TBD	TBD	TBD				
3. Bring administrative cases involving fraud and other violations. (See ●, pp. 178, 179, 198, 216, 220)	Number of administrative cases filed.	13	12	14	Of all such cases filed during the fiscal year, percentage of such administrative cases filed within one year of the investigation opening.	TBD	TBD	TBD
	Number of such administrative cases filed within one year of opening the related investigation.	TBD	TBD	TBD				
	Number of such administrative cases completed during the fiscal year.	13	12	14	Of all CFTC enforcement cases pending at the close of the fiscal year, percentage of such injunctive and administrative cases pending.	TBD	TBD	TBD
	Number of such administrative cases pending the close of the fiscal year.	TBD	TBD	TBD				
4. Hear administrative cases. (See ●, pp. 178, 179, 198, 216, 220)	Number of administrative cases heard during the fiscal year.	20	23	23				
5. Sanction violators in injunctive actions and administrative cases. (See ●, pp. 178, 179, 198, 216, 220)	Number of <i>ex parte</i> restraining orders obtained.	11	11	12	Percentage of investigations resulting in sanctions.			
	Number of preliminary Injunctions obtained.	10	10	12				
	Number of permanent injunctions obtained.	20	20	22				
	Amount of disgorgement and restitution granted.	\$78M	\$55M	\$57M				
	Amount of civil monetary penalties granted.	\$44M	\$35M	\$36M				
	Number of cease and desist orders obtained.	17	16	18				
	Number of requests for registration restrictions granted.	8	8	8				
	Number of requests for trading prohibitions granted.	11	11	12				
6. Inform the public and the industry of the reasons for the Commission's decisions concerning allegations of wrongdoing through published opinions describing the alleged violations and the Commission's legal and policy analysis. (See ●, pp. 178, 179, 198, 216, 220)	Number of cases decided with published opinions.	10	11	12	Percentage of cases decided with published opinions.	TBD	TBD	TBD
	Number of cases decided by orders of summary affirmance.	7	9	10	Percentage of cases decided with summary affirmance.	TBD	TBD	V

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## Annual Performance Plan

Outcome Objective 2.1 (continued)								
Promote compliance with and deter violations of federal commodities laws.								
Annual Performance Goal								
All known possible wrongdoing identified and investigated. All violators brought to justice.								
Activity/Strategy	Output Measure 1/	FY99	FY00	FY01	Outcome Measure 1/	FY99	FY00	FY01
7. Collect sanctions and civil monetary penalties against violators. (See ●, pp. 176, 178, 179, 198, 216, 220)	Amount of civil monetary penalty assessed.				Percentage of assessed sanctions collected.	TBD	TBD	TBD
	Amount of civil monetary penalties collected.	\$22M	\$1.5M	\$1.5M	Percentage of assessed civil monetary penalties collected.	21%	15%	15%
8. Cooperate with the exchanges, the National Futures Association, other federal agencies, state governments and law enforcement entities, and foreign authorities to gain information for law enforcement purposes and to provide enforcement assistance as necessary and appropriate. (See ●, pp. 206, 211)	Number of enforcement investigations pending at any point during the fiscal year that involved cooperation with authorities.	37	38	41	Of the total number of investigations that were open during the fiscal year, percentage of investigations that involved cooperation with other authorities.	TBD	TBD	TBD
	Number of requests for assistance from foreign authorities.	25	25	27				
	Number of requests for assistance made to foreign authorities.	26	25	27				
9. Monitor the Internet and other communication media for fraudulent activities and other possible violations of the Act. (See ●, pp. 178)	Number of preliminary investigation referrals generated from Internet and media monitoring.	46	48	50	Of total CFTC enforcement preliminary investigations, percentage of Internet and media monitoring preliminary investigation referrals.	22%	22%	22%
	Total number of CFTC enforcement preliminary investigations.	TBD	TBD	TBD				
10. Resolve appeals in administrative enforcement matters and self-regulatory organization adjudicatory actions. (See ●, pp. 215)	Number of administrative enforcement appeal cases decided during the FY that were decided within six months.	1	3	5	Percentage of administrative enforcement appeals resolved within six months.	TBD	TBD	TBD
	Number of administrative enforcement appeals resolved.	11	15	17	Percentage of SRO adjudicatory action appeals resolved within six months.	TBD	TBD	TBD
	Number of SRO adjudicatory action appeal cases decided during the FY that were decided within six months.	1	3	4				
	Number of SRO adjudicatory action appeals resolved.	12	13	14				

1/ Many new output and outcome measures were developed during the FY 2001 budget formulation process. As such, new measurement data must be formulated. In cases where measurement data is not yet available, the acronym TBD, which stands for "to be determined," has been used in one, two, or all three fiscal year columns.

Outcome Objective 2.2								
Require commodities professionals to meet high standards.								
Annual Performance Goal								
No unregistered, untested, and unlicensed commodity professionals.								
Activity/Strategy	Output Measure 1/	FY99	FY00	FY01	Outcome Measure 1/	FY99	FY00	FY01
1. Oversee the National Futures Association registration program including testing, licensing, and ethics training for commodities professionals. (See ●, pp. 175, 176, 177, 219, 220)	Number of registered commodity professionals.	64,800	66,000	67,500	Percentage of professionals compliant with standards regarding testing, licensing, and ethics training.	96%	97%	98%
	Number of registrants compliant with standards regarding testing, licensing, and ethics training.	62,000	64,000	66,000	Percentage of CFTC-NFA Registration Working Group meetings attended by CFTC	100%	100%	100%
	Number of CFTC-NFA Registration Working Group meetings.	4	4	4				
2. Oversee NFA's document disclosure review program. (See ●, pp. 177, 220)	Number of disclosure documents reviewed.	69	100	100	Percentage of deficient disclosure documents.	10%	10%	10%
	Number of deficiency letters issued.	7	10	10				
	Number of CPO and CTA biennial review reports issued.	1	0	1				
	Number of CPO/CTA interpretations, advisories, and proposed rule changes.	16	10	10				

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**Annual Performance Plan**

<b>Outcome Objective 2.2 (continued)</b>								
<b>Require commodities professionals to meet high standards.</b>								
<b>Annual Performance Goal</b>								
No unregistered, untested, and unlicensed commodity professionals.								
<b>Activity/Strategy</b>	<b>Output Measure 1/</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>	<b>Outcome Measure 1/</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>
3. Investigate and bring administrative registration cases arising out of alleged statutory disqualification and obtain suspensions, revocations, conditions, or restrictions of registration. (See ●, pp. 211, 218, 222)	Number of statutory disqualification investigations opened during the fiscal year.	3	3	3	Of total number of such investigations closed or resulting in enforcement action during the fiscal year, percentage of statutory disqualification investigations closed or resulting in enforcement action within one year	TBD	TBD	TBD
	Total number of statutory disqualification investigations closed or resulting in CFTC enforcement action during the fiscal year.	TBD	TBD	TBD	Statutory disqualification investigations as a percentage of all CFTC enforcement investigations pending at the close of the fiscal year.	TBD	TBD	TBD
	Number of statutory disqualification investigations closed or resulting in CFTC enforcement action within one year of opening the investigation.	4	4	4	Of all such actions filed during the fiscal year, percentage of statutory disqualification actions filed within one year of the opening of the relevant investigation.	TBD	TBD	TBD
	Number of statutory disqualification investigations pending at the close of the fiscal year.	TBD	TBD	TBD	Of all CFTC enforcement actions pending at the close of the fiscal year, percentage of statutory disqualification actions	TBD	TBD	TBD
	Total number of statutory disqualification cases filed during the fiscal year.	8	7	7				
	Number of statutory disqualification actions filed within one year of the opening of the relevant investigation.	TBD	TBD	TBD				
	Number of statutory disqualification actions completed during the fiscal year.	TBD	TBD	TBD				
	Number of statutory disqualification actions pending the close of the fiscal year.	TBD	TBD	TBD				
Number of respondents/defendants against whom the CFTC's request for registration restrictions has been granted.	TBD	TBD	TBD					

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<b>Outcome Objective 2.3</b>								
<b>Provide a forum for effectively and expeditiously handling customer complaints against persons or firms registered under the Act.</b>								
<b>Annual Performance Goal</b>								
All customer complaints against persons or firms registered under the Act are resolved within one year from the date filed (does not include appeals).								
<b>Activity/Strategy</b>	<b>Output Measure 1/</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>	<b>Outcome Measure 1/</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>
1. Provide a reparations program for commodities market users to make claims relating to violations of the Act. (See ●, pp. 215, 218, 222)	Number of reparations complaints filed.	192	200	210	Percentage of reparations complaints forwarded as cases.	72%	80%	76%
	Number of reparations complaints forwarded for hearing as cases.	139	159	160	Percentage of complaints resolved.	TBD	TBD	TBD
	Number of appeal cases decided during the FY that were decided within six months.	4	5	6				
	Number of customer complaints resolved in fiscal year within one year of filing date.	TBD	TBD	TBD	Percentage of appeals resolved within six months.	22%	28%	33%
	Number of appeals resolved.	18	18	18				

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