

STATEMENT OF GARY GENSLER
CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION
BEFORE THE
SENATE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
April 28, 2010

Good afternoon Chairman Durbin, Ranking Member Collins and members of the Subcommittee. I am pleased to testify on behalf of the Commodity Futures Trading Commission (CFTC), and I thank you for the opportunity to discuss issues related to the Commission's 2011 Budget.

In the fall of 2008, the financial system and the financial regulatory system failed. While more than a year has passed and the system appears to have stabilized, we cannot relent in our mission to vigorously implement our mandate to protect the public from fraud, manipulation and other abuses in the commodity markets. I would like to express my gratitude to Congress for the recent increases in appropriations that now permit the Commission to address longstanding regulatory and oversight weaknesses. The CFTC, however, requires additional resources to hire staff with new competencies and skill sets and to ensure our technological infrastructure and systems keep pace with the industry we regulate. These improvements are essential to promoting transparency and integrity in the marketplace. Only through strong, intelligent regulation can we fully protect the American people and keep our economy strong.

CFTC Regulatory Regime

Before I discuss the President's budget request for the CFTC, I will take a moment to discuss the agency's oversight of the futures markets. Futures have traded since approximately the Civil War, when grain merchants came together and created the new marketplace. It took nearly 60 years and the Great Depression until President Franklin Roosevelt and the Congress regulated the futures markets.

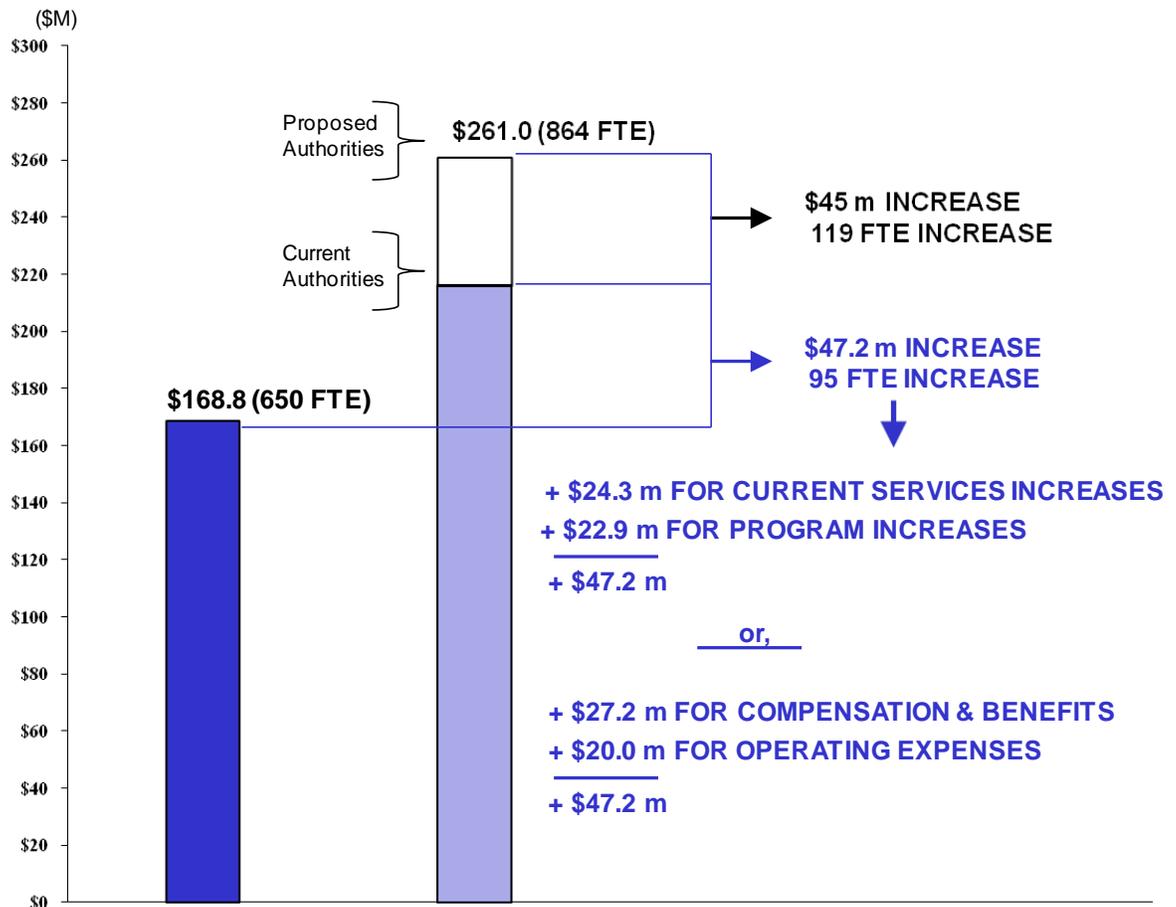
The CFTC ensures that futures and commodity options exchanges have procedures to protect market participants and ensure fair and orderly trading, free from fraud, manipulation and other abuses. Exchanges are where buyers and sellers meet and enter into a transaction. The CFTC also oversees clearinghouses, which enter the picture only after two counterparties enter into the transaction. Clearinghouses act as middlemen between the two parties and take on the risk that one counterparty to the trade may fail to meet its obligations under the contract for the duration of the contract. Centralized clearing has helped lower risk to the markets for decades in both calm markets and in the stormiest of markets, such as during the 2008 financial crisis.

The CFTC has wide-ranging transparency efforts designed to provide as much information about commodity futures markets and trading to the American public as possible

under current law. The agency also has broad surveillance powers to police the markets for fraud, manipulation and other abuses.

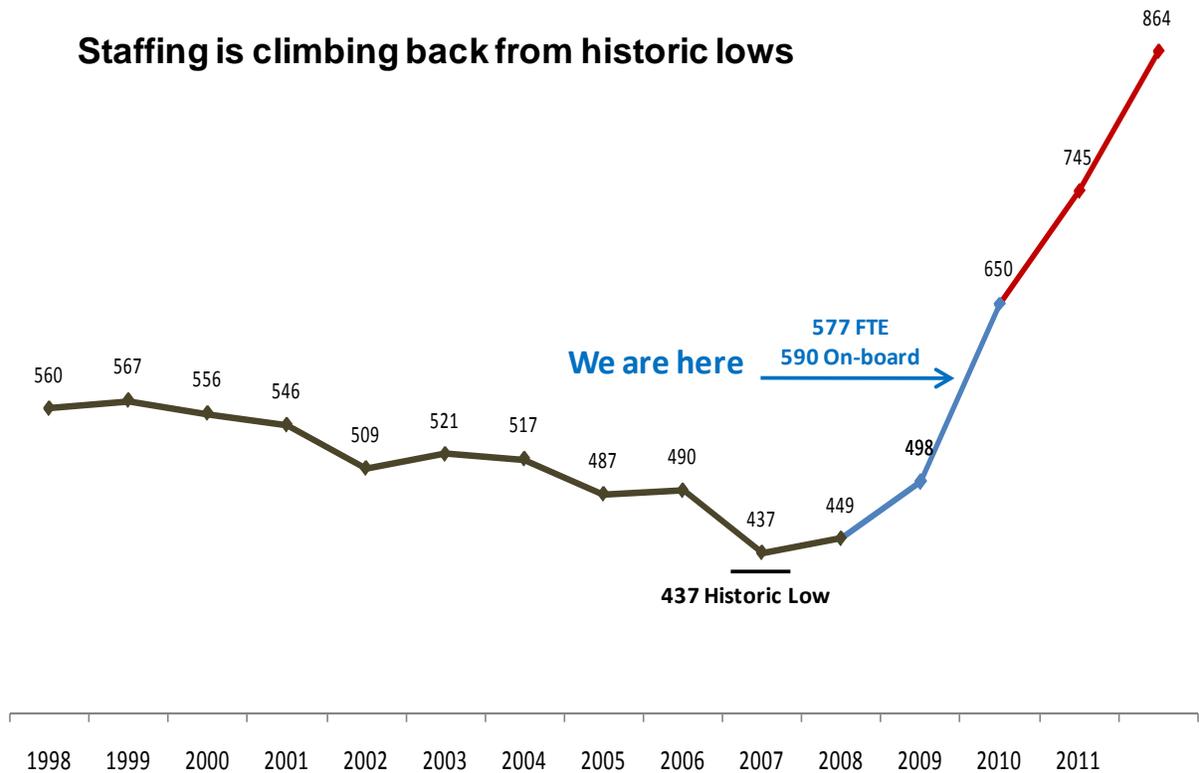
The Budget

The President's Budget proposes that \$216 million be appropriated for the Commission for FY 2011 to remain available until expended through FY 2012.

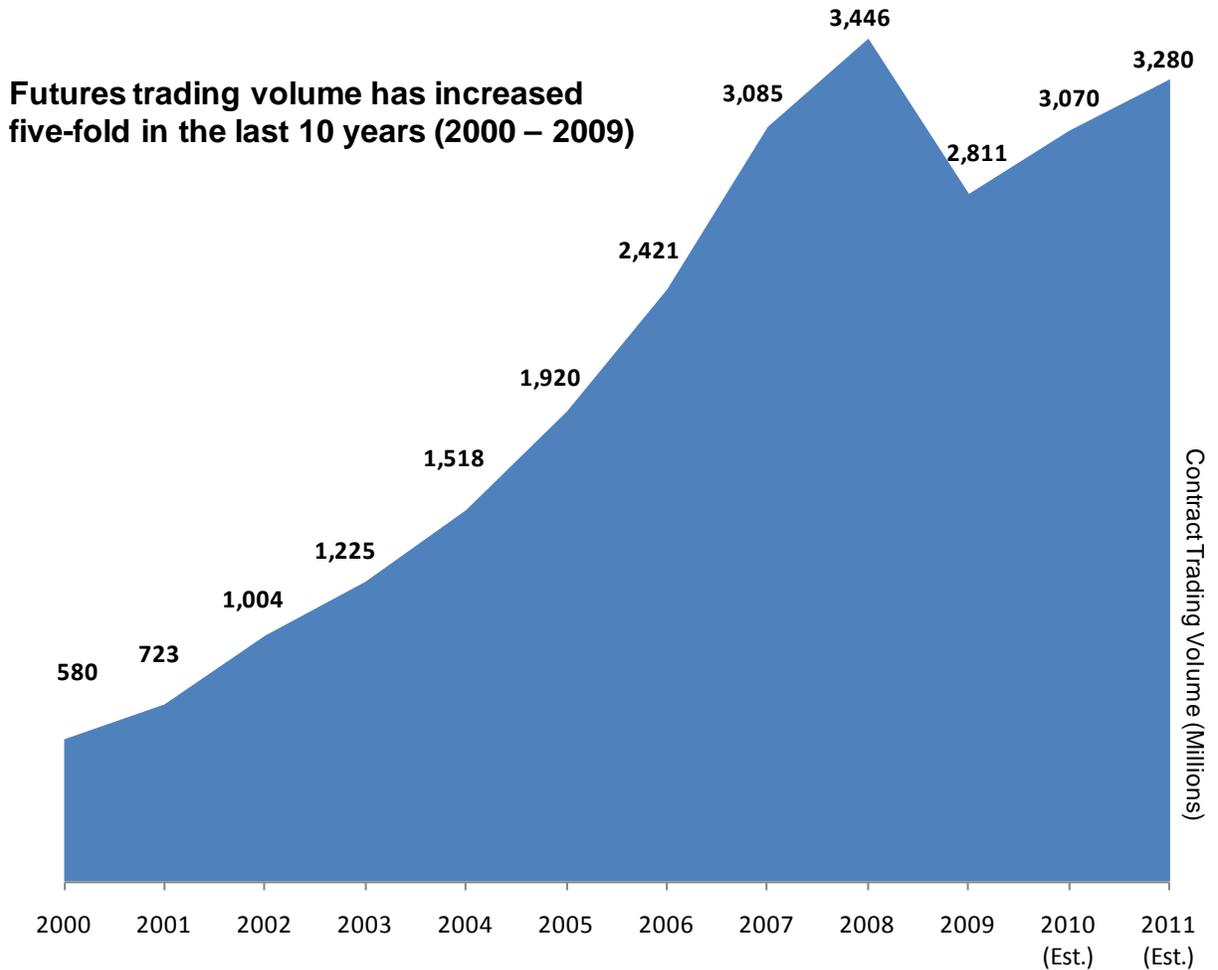


This amount would be for the agency to perform its duties under current statutory direction. In addition, the Budget proposes that \$45 million be appropriated to be available through FY 2012 contingent upon the enactment of authorizing legislation of new or enhanced financial regulation activities of the Commission.

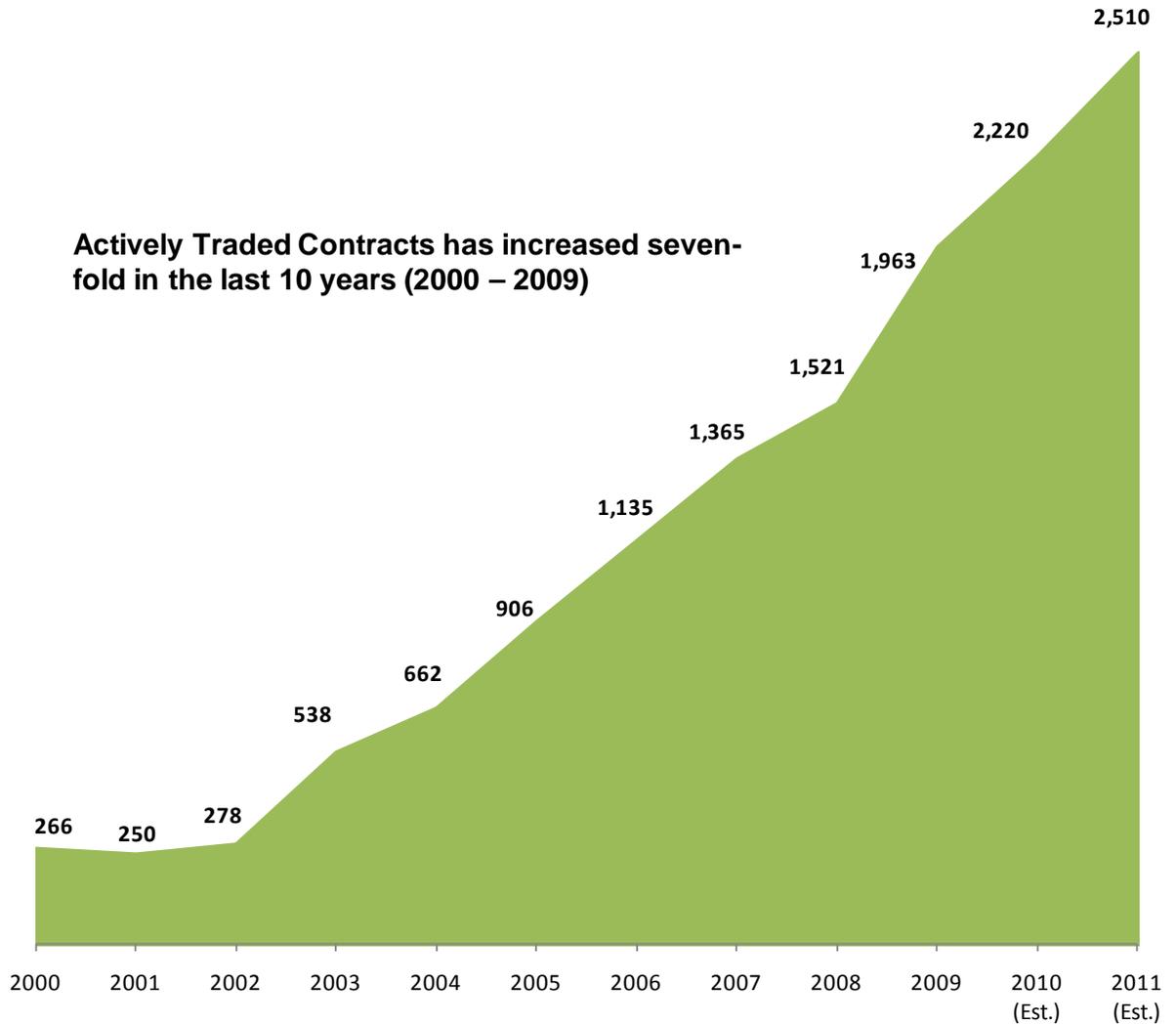
Ten years ago, the CFTC was near its peak staffing level at 567 employees, but shrunk by 20 percent over the subsequent eight years before hitting a historic low of 437. Thanks to increased funding from Congress, the CFTC now has almost 600 staff on board, which is a net increase of 100 staff over where we stood a year ago.



All Commission programs: technology, market and intermediary oversight, enforcement, economic, legal and risk analysis have benefited from increased staff resources. Still, merely raising our staffing levels to the same as a decade ago will not be enough to adequately fulfill the agency's statutory mandate. In the last ten years, futures trading volume increased almost five-fold.



The number of actively traded futures and options contracts increased seven-fold, and many of these have become considerably more complex in nature.

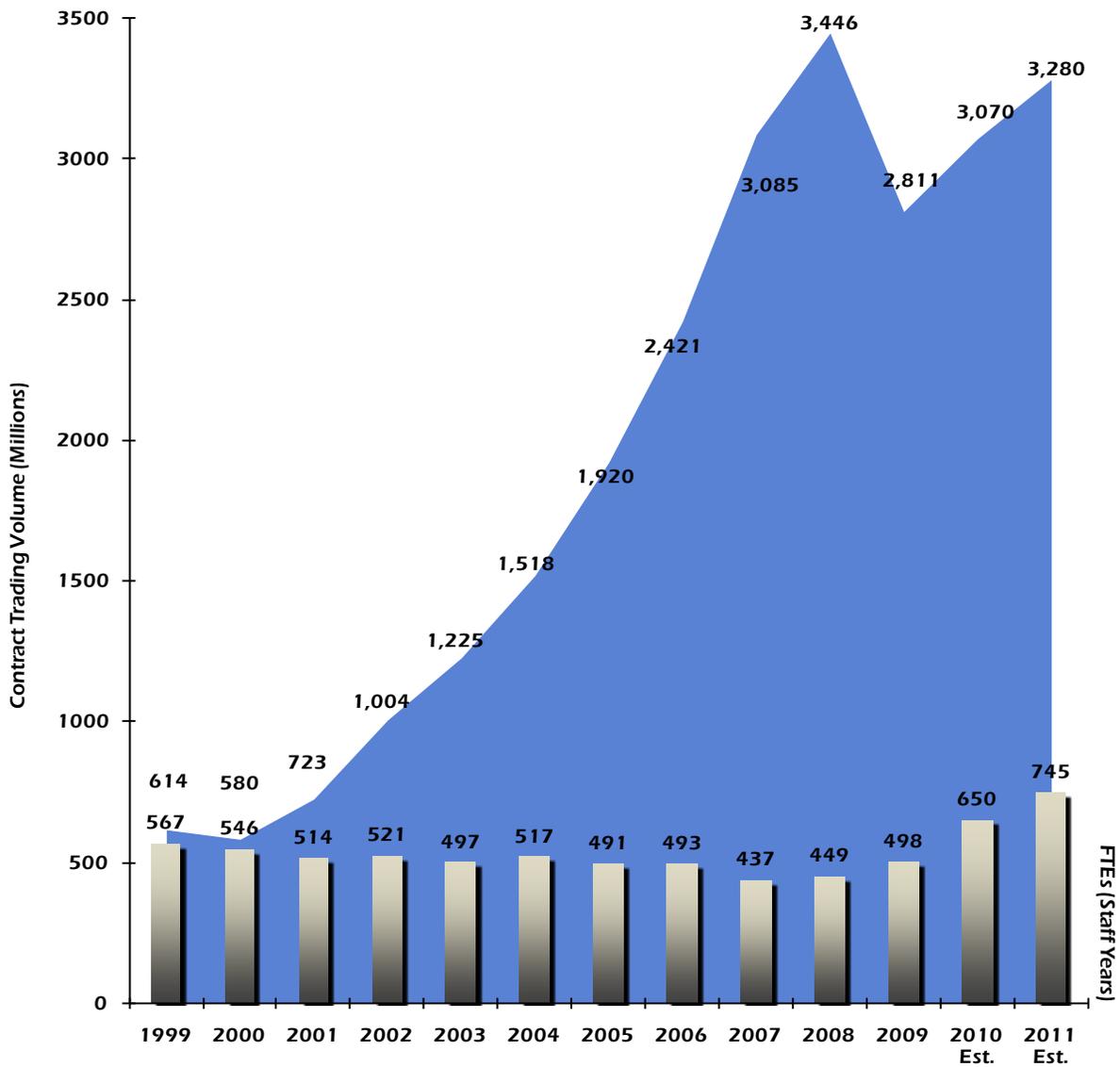


We also moved from an environment with open-outcry pit trading to highly sophisticated electronic markets. What was once a group of regional domestic markets is now a global marketplace. What was once just a \$500 billion business has grown to a \$33 trillion industry. In

short, the Commission requires funds to hire and retain highly trained professionals and equip them with information technologies that are as sophisticated as the expanding markets they we oversee.

Despite rapid advances in technology and the increased size and number of regulated futures markets, funding for the CFTC has lagged behind the growth of the markets.

**Staffing has not kept pace with Industry Growth
Volume and Complexity**



While market participants have the technology to automate their trading, we do not yet have the resources to employ modern technology to automate our surveillance. Further, the CFTC still does not have the staffing levels or the resources to conduct regular examinations of market intermediaries, exchanges and clearinghouses. Until additional staff resources are acquired we can conduct those examinations only periodically and have no choice but to leave

routine examinations of intermediaries to self-regulatory organizations. The CFTC needs additional staff, with new expertise to conduct yearly examinations of the registrants we regulate.

For these reasons, it is appropriate for our staffing levels and our technology to be bolstered to meet the new financial realities of the day. As such, the CFTC's Budget and Performance Estimate for FY 2011, for existing statutory authorities, would increase the agency's funding by \$47.2 million to \$216 million and would augment agency staff by 95 FTE to a total of 745 FTE.

The requested funding increase to cover current statutory authorities includes resources to accomplish the following goals:

Updating the Commission's Surveillance and Technology Programs. The Commission requires additional resources to replace legacy surveillance technology with 21st Century computers and software. Significant changes in the markets demand new systems capable of efficiently receiving and managing massive amounts of raw data and converting it to useful information for analysis by skilled market experts, economists and technologists. For example, existing Commission surveillance systems annually process more than one billion transactions to capture mission-critical data. Recent Commission initiatives to promote transparency of market data reveal the need for a substantial investment in systems development.

The timely reporting of quality and meaningful market information is not possible with current legacy systems. Integration of two legacy systems, one with position data and one with trade data, is vital to building necessary functionality to capture more detailed data by trader, account ownership, inter-day transactions and intra-day transactions across all markets.

Upgraded systems and analytical tools, such as market compliance detection and alert software, together with new staff competencies and skill sets, will increase the staff's efficiency and ability to monitor the markets and provide better information about futures and options trading to the American public. Market transparency is crucial to public trust and confidence in the price discovery and risk management functions of the futures and option markets. In addition, increased transparency, sophisticated use of automation and a heightened level of oversight will foster market compliance and integrity and enable the CFTC to keep pace with a rapidly evolving industry.

Strengthening the Commission's Enforcement Program. The CFTC should be adequately resourced to vigorously investigate and litigate complex market manipulation and trade-practice violations. Properly functioning markets must be free from fraud, manipulation and other abuses to ensure their integrity in setting prices and offsetting risk. A robust Enforcement program will foster regulatory compliance in the marketplace, protecting the American public and the marketplace. Adequate legal staff is necessary to act swiftly to investigate and prosecute fraudulent acts, such as the rash of Ponzi schemes uncovered during the recent market downturn.

Rigorously Exercising Existing Authorities to Ensure Market Integrity. Additional economic and legal staff will enable the CFTC to conduct mandatory annual reviews of all contracts listed on exempt commercial markets (ECMs) to determine if they are significant price discovery contracts (SPDCs). Such contracts must be reviewed to determine whether the ECM should be subject to statutory Core Principles and Commission's regulations. These and other new and increasingly diverse products add to the scope and complexity of products staff must review and monitor to ensure the integrity of the marketplace.

Initiating Major Reviews of Existing Programs. The Commission seeks additional resources to initiate major programmatic reviews of existing programs; expand development of the Commission's continuity of operations program (COOP); increase public and consumer education and outreach; implement the strategic plan; improve performance metrics; and enhance the Commission's equal employment opportunity program. The Commission is committed to creating a diverse pool of qualified candidates.

Continuing Current Service Level. The CFTC requires additional resources to provide a continuation of the FY 2010 current service level into FY 2011. This includes annual merit based compensation adjustments for staff, lease of office space, utilities and communications, printing, supplies, capital equipment and fixed equipment.

Specifically, the funding will be allocated to increase staffing levels in the following divisions:

Division of Enforcement.

The Commission's Enforcement program is on track to reach a staff level of more than 170 by the end of this fiscal year. This is a significant program turnaround from an all-time low of 109 in FY 2008. Nevertheless, a staff of 170 may be below what is needed to address the current challenges brought by the recent financial crisis. Our goal for FY 2011 is to have an Enforcement staff of 200, including strategic plans to double the Enforcement staff in the Kansas City office. In addition, the Commission intends to augment the enforcement staff with improved litigation and forensics support technologies, such as the e-Law system. Use of the e-Law system improved productivity and has permitted the Commission to pursue resource-intensive investigations and litigation involving manipulation. It also has improved our ability to implement our new Farm Bill authorities in the over-the-counter forex futures market.

Division of Market Oversight. The rapid changes occurring in the futures markets over the last decade have brought new challenges to the Commission's Division of Market Oversight (DMO). . DMO now needs additional experienced professional staff to actively monitor exchanges to ensure compliance with CFTC regulations; keep a close eye for signs of manipulation or congestion in the marketplace and decide how to best address market threats;

and ensure that traders do not exceed federal position limits. Thus, the Commission seeks to increase DMO's staff from 139 in FY 2010 to 168 in FY 2011.

Specifically, DMO requires additional highly skilled economists, investigators, attorneys and statisticians so that: 1) position data may be analyzed quickly and thoroughly; 2) exchange applications and rule changes may be reviewed efficiently and comprehensively to ensure compliance with Core Principles and CFTC rules and policies; 3) exchange self-regulatory programs may be examined on an on-going annual basis with regard to trade practice oversight, market surveillance and compliance with disciplinary, audit trail and record-keeping regulations; 4) comments related to a proposed energy position limits rulemaking, proposed significant price discovery contract determinations and other proposed rulemakings and industry filings can be comprehensively reviewed and summarized; and 5) proposed rulemakings and determinations can be effectively implemented should the Commission approve them.

Division of Clearing and Intermediary Oversight. Additional resources would allow the Commission to perform regular and direct examinations of registrants and more frequently assess compliance with Commission regulations.

In the case of intermediaries, the Commission requires additional resources to directly assess compliance instead of relying on designated self-regulatory organizations (DSROs). The

frequency of the reviews will increase to once a year from approximately once every three years. New staff will permit the review annually of all derivatives clearing organizations (DCOs) and the audit and financial surveillance programs of each DSRO ensuring ongoing rather than intermittent oversight. The Commission seeks to increase the Division of Clearing and Intermediary Oversight staff from 113 in FY 2010 to 120 in FY 2011.

Offices of the Chairman and the Commissioners. The Offices of the Chairman and the Commissioners require professional, legal and economic expertise as they undertake a number of high priority programmatic initiatives, including: 1) subject to enactment of new authorities, regulation of derivatives markets and regulatory changes to protect the American public from systemic financial risks; 2) regulatory coordination with other agencies such as the Securities and Exchange Commission (SEC) and Federal Energy Regulatory Commission (FERC); 3) promoting market transparency; 4) promoting transparency on the Commission's website; 5) regulation of energy markets – especially with regard to position limits and the Commission's review of significant price discovery contracts; 6) increasing frequency of reviews and audits of Commission registrants; and 7) technology modernization, resource justification and program performance. The Commission proposes to bolster these offices from 35 staff in FY 2010 to 47 staff in FY 2011.

Office of the Chief Economist. The CFTC's Office of the Chief Economist (OCE) conducts research on major economic issues related to the futures and options markets; participates in the development of Commission rulemakings; provides expert economic support

and advice to other CFTC offices; conducts special studies and evaluations; and participates in the in-house training of staff on matters related to futures, options, swaps and risk management. OCE requires additional economists to review and analyze new market structures and off-exchange derivative instruments. OCE also needs additional resources to review and analyze risk management models supportive of the Commission's enforcement and surveillance programs. The Commission proposes to increase OCE staff from 13 in FY 2010 to 17 in FY 2011.

Enterprise Risk Management Office. The budget proposes a new Enterprise Risk Management subprogram, consisting of three staff, to focus on proactively developing and employing methods and processes to manage risks that may be obstacles to the discharge of the Commission's responsibilities. The staff will identify plausible risks posed by current and future events or circumstances that may affect the Commission's ability to respond effectively. Risks will be assessed in terms of the likelihood and magnitude of impact. The program will determine an appropriate response strategy and monitor outcomes.

Office of the Executive Director. The budget requests additional staff within the Office of the Executive Director to establish a Commission strategic and operational planning and evaluation function, the first such permanent resource. The additional two staff members will assist the Commission's programs in establishing metrics to track, monitor and evaluate program results, outcomes and goal achievement to ensure the effective and efficient allocation of resources. Adequate staff in the office is needed to ensure a sufficient level of human capital

expertise focusing on employee development, recruitment and outreach, leadership, management training and employee relations. The Commission is mindful of the need to effectively manage staff resources to develop and sustain a professional workforce capable of keeping pace with our growing regulatory responsibilities.

Office of International Affairs. The budget requests an additional staff member in the Office of International Affairs, which coordinates the Commission's non-enforcement related international activities, represents the Commission in international organizations such as the International Organization of Securities Commissions (IOSCO), coordinates Commission policy as it relates to U.S. Treasury global initiatives and provides technical assistance to foreign market authorities. The financial crisis has heightened the need for international cooperation among regulators, and an additional staff member is required to meet the mission critical responsibilities of the office.

Office of Proceedings. The Office of Proceedings is responsible for providing an inexpensive, impartial and expeditious forum for handling customer complaints against persons or firms registered under the Commodity Exchange Act. The Commission requires one additional staff to ensure expeditious processing of complaints.

Regulatory Reform

In addition to implementing the authorities established in the Commodity Exchange Act, the CFTC also is working with Congress to bring comprehensive regulation to the over-the-counter derivatives marketplace. The Commission's budget request includes an additional \$45,000,000 and 119 full-time equivalent employees for fiscal year 2011 to begin implementation of the Administration's comprehensive proposal for financial regulatory reform. As proposed, the request is contingent on Congressional enactment of legislation giving the Commission new authorities. The Commission's fiscal year 2012 total (current and proposed new authorities related to financial regulatory reform) staff requirement is estimated to be approximately 1,000 FTE. The requested funds will permit Commission implementation of new responsibilities under consideration by Congress, such as:

- Requiring swap dealers and major swap participants to register and come under comprehensive regulation, including capital standards, margin requirements, business conduct standards and recordkeeping and reporting requirements;
- Requiring dealers and major swap participants to use transparent trading venues for their standardized swaps;
- Ensuring that dealers and major swap participants bring their clearable swaps into central clearinghouses; and
- Providing the CFTC with authority to impose aggregate position limits including in the OTC derivatives markets.

Specifically, the Commission's FY 2011 budget request for regulatory reform would be allocated as follows:

- 41 additional staff for Market Oversight;
- 30 additional staff for Clearing and Intermediary Oversight and Risk Surveillance;
- 18 additional staff for Enforcement;
- 15 additional staff for Information Technology;
- Eight additional staff for General Counsel;
- Five additional staff for Human Resources and Management Operations;
- One additional staff for the Chief Economist;
- And one additional staff for International Affairs.

Closing

The staff of the CFTC is a talented and dedicated group of public servants. The financial crisis and the significant increase in trade volume, market complexity and globalization require that additional resources be committed to the protection of American taxpayers. For all of these reasons, it is necessary and appropriate that Commission staffing levels and technology be bolstered to address the new financial realities of the day.

In short, despite the recent increase in funding, the Commission remains an underfunded agency. With additional resources, we will be more able to police the market, promote market

integrity and protect the public from fraud, manipulation and other abuses.

I thank you for inviting me to testify today. I will be happy to answer any questions you may have.