



**U.S. COMMODITY FUTURES TRADING COMMISSION
OFFICE OF INSPECTOR GENERAL**

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TO: Rostin Behnam, Chairman
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FROM: A. Roy Lavik, Inspector General *ARL/R*

DATE: September 26, 2022

SUBJECT: Inspector General's Assessment of the Most Serious Management and Performance Challenges Facing the Commodity Futures Trading Commission FY 2022

The Reports Consolidation Act of 2000 (RCA)¹ requires the Inspector General to summarize the “most serious management and performance challenges facing the agency” and briefly assess the Agency’s progress in addressing those challenges.² Management challenges are “programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where failure to perform well could seriously affect the ability of an agency to achieve its mission or goals.”³ This memorandum fulfills our duties under the RCA.

To complete our assessment, we relied on data contained in the CFTC financial statement audit and Agency Financial Report, representations by agency management, and our knowledge of industry trends and CFTC operations.

¹ P.L. [106-531](#), § 3, 114 STAT. 2537 (Nov. 22, 2000), codified at 31 U.S.C. § 3516(a). All links last accessed on September 26, 2022.

² Id.

³ Government Performance and Results Modernization Act of 2010, P.L. [111-352](#), § 3, 124 STAT. 3866 (Jan. 4, 2011), codified at 31 U.S.C. § 1115(h)(5).

CFTC's Progress on FY 2021 Management and Performance Challenges

For FY 2021, we highlighted information technology (IT) modernization and data governance as management challenges, and recognized the Agency appointed a new Chief Information Officer (CIO) and established the position of Chief Data Officer (CDO). During FY 2022, we recognize that the CIO is completing CFTC's migration to a cloud environment and the CDO is advancing the analytic use of structured and unstructured data to detect potential misconduct, including manipulation of markets. We will continue to monitor the progress of CFTC's technological initiatives.

Fiscal Year (FY) 2022 Management and Performance Challenges

We also highlighted three other management challenges for FY 2021 which remain for FY 2022, as discussed below.

Climate Change

Climate change impacts the CFTC's mission, its physical assets and infrastructure, as well as the businesses of market participants. In this regard, we note Chairman Behnam launched the CFTC Climate Risk Unit (CRU) in March 2021⁴ and is evaluating the Financial Stability Oversight Council recommendations⁵ related to climate change financial risks in collaboration with the Commission. We recognize that CFTC is currently evaluating responses to its June 2022 Request for Information on Climate-Related Financial Risk.⁶ We also recognize the Supreme Court's recent holding that, under the "major questions doctrine," a federal regulatory agency may not adopt rules that are "transformational" to the economy unless Congress has specifically authorized such a transformative rule to address a specific problem, like climate change.⁷

Management of IT (Cybersecurity)

Threats to system information, including Personally Identifiable Information (PII), are a continuing management challenge. CFTC is updating its security

⁴ CFTC Release No. [8368-21](#), *CFTC Acting Chairman Behnam Establishes New Climate Risk Unit*, March 17, 2021.

⁵ FSOC [Report](#) on *Climate-Related Risk*, October 21, 2021.

⁶ [87 FR 34856](#), June 8, 2022.

⁷ *West Virginia v. Environmental Protection Agency*, [No. 20-1530](#), p. 20, 597 U.S. ____ (June 2022).

policies to comply with new requirements and continues to devote resources to its real-time cyber threat response program.

Emerging in this area are the intersections of privacy and enterprise risk management requirements that integrates them into business objectives. We recognize that CFTC is integrating privacy controls with systems controls to prevent loss. However, we believe the Privacy Office may be challenged by staffing shortages for an increasing workload.

Enterprise Risk Management

As it relates to Enterprise Risk Management (ERM), CFTC's ERM program can become an operational asset for the Commission to prioritize and respond to a variety of internal and external risks, including cyber related risks. In March 2021, the CFTC hired its first Chief Risk Officer (CRO), who reports directly to the head of the Division of Administration (DA). We recognize that [CFTC's 2022-2026 Strategic Plan](#) shows a commitment to ERM. However, the CRO is organizationally distant from the Commission, and may be under resourced, which may challenge the program's governance, culture, and operational success. We will continue to monitor this area.

Efficient Leased Space Following the Establishment of Post-Pandemic Telework and Remote Work Policies

The fourth management challenge is new for FY 2022. CFTC's four leased facilities have been underutilized since March 2020.⁸ We note that until the Chairman finalizes a post-pandemic policy for telework and remote work, and updates office space requirements accordingly, taxpayers continue to needlessly pay for unused space. Space needs may decrease as a result of expanded post-Pandemic telework/remote work policy following negotiations with the Union.⁹ While space utilization may return to prior levels, or even increase, if CFTC is given additional regulatory responsibilities, that is not the

⁸ On March 13, 2020, the CFTC Office of the Executive Director (OED) announced that, effective March 16, 2020, and until further notice, all CFTC offices will be open and all employees will have the option of unscheduled leave or unscheduled telework until further notice. CFTC began a Phase I reopening on October 1, 2021, with participation 100% voluntary. In June 2022, OED announced a Phase II reopening, which "allows the 100% voluntary return to the CFTC's office of a limited number of staff, and provides procedures in limited cases where staff may be directed to a CFTC office to perform a specific task." However, the June 2022 communication stated that Phase II will only take place "following negotiations with the Union." Negotiations were not completed (and announced to staff) as of Friday, September 23, 2022.

⁹ See fn.8.

current situation and we note that CFTC has a history of spending taxpayer funds on underutilized lease space.¹⁰ We are currently conducting an inspection and evaluation of leased space utilization at CFTC, and will continue our work in what may be a period of significant change for CFTC's space needs.

The management challenges relating to CFTC's cloud migration, ERM efforts, cyber response program, establishment of the CRU, and its evolving space needs, all address risk-related priorities communicated in several Executive Orders.¹¹ We will continue to monitor the progress of CFTC's risk related programs as they mature.

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¹⁰ In 2016 GAO reported: "CFTC did not make cost-effective decisions consistent with leading government guidance for lease procurement and internal controls when planning for additional space in fiscal years 2008–2015." GAO, *Commodity Futures Trading Commission Needs Better Guidance to Improve Cost-Effectiveness*, [GAO-16-434](#) (April 18, 2016). See also, CFTC OIG, *A Review of Leasing and Occupancy Levels of the Kansas City Regional Office of the Commodity Futures Trading Commission, June 2014* (between 2010 and at least June 2014, CFTC leased space for 75 workers in one field office while maintaining only approximately 27 workers).

¹¹ [Executive Order on Protecting Americans' Sensitive Data from Foreign Adversaries](#), EO 14034, June 9, 2021; [Executive Order on Improving the Nation's Cybersecurity](#), EO 14028, May 12, 2021; [Executive Order on Climate-Related Financial Risk](#), EO 14030, May 2021; and OMB [M-21-25](#), *Integrating Planning for A Safe Increased Return of Federal Employees and Contractors to Physical Workplaces with Post-Reentry Personnel Policies and Work Environment*, June 21, 2021.