



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

Office of the
Inspector General

MEMORANDUM

TO: David Meister, Division of Enforcement

FROM: A. Roy Lavik, Office of the Inspector General *arl*

DATE: September 4, 2012

SUBJECT: INSPECTION #12-01-Division of Enforcement-
Disposition of Preliminary Investigations Records

The Office of the Inspector General (OIG) initiated this inspection to ascertain whether the Division of Enforcement (DOE), during the review period, retained closed Preliminary Investigation files as required under the CFTC records retention policy previously approved by the National Archives and Records Administration (NARA).

SUMMARY

- In a randomly selected sample of closed Preliminary Investigation matters, the Inspection team found no instance of a Preliminary Investigation file that was destroyed prior to the CFTC designated and NARA approved 3 year disposal date.
- The Inspection team randomly selected 174 out of 1722 total Preliminary Investigation matters stored in DOE's exclusive electronic database for review. The inspection team confirmed that the database reflected all matters received, reviewed by DOE staff, and closed during the review period. The inspection team confirmed the closed status of the 174 selected matters and found that all 174 closed Preliminary Investigation matters (in the randomly selected sample) are present in the DOE database. Thus none of the 174, randomly selected, closed Preliminary Investigation matters were destroyed prior to their CFTC designated and NARA approved destruction date.
- The Inspection team confirmed by interviews that DOE staff is periodically informed of the CFTC records retention policy for DOE matters.

End

BACKGROUND

The Office of the Inspector General initiated an inspection of the Division of Enforcement's policies and practice for handling the disposition of Preliminary Investigation matters. Preliminary Investigation matters are documents and artifacts received by DOE which allege a potential violation of the Commodity Exchange Act. The objective of this inspection was to ascertain whether DOE had adhered to the CFTC records disposition schedule approved by NARA.¹

The approved records retention schedule for closed Preliminary Investigations matters requires that all relevant documents remain accessible for three calendar years. All CFTC employees must manage records in accordance with Federal laws and regulations.² Premature destruction of Preliminary Investigation materials may reduce the Division of Enforcement's ability to efficiently use its database of prior leads to undertake investigations.

We planned and conducted this inspection by following the Council of Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluations (January 2012).

OBJECTIVE

To ascertain whether the Division of Enforcement retained closed Preliminary Investigation matters for the requisite three year period stated in Section 405 of the CFTC's records retention schedule and approved by NARA in 2002.

SCOPE and METHODOLOGY

We interviewed DOE senior management and staff responsible for acquiring, compiling, and retaining documents received from the public and other sources. We accessed DOE's Practice Manager Electronic Database and randomly³ inspected 174 out of 1722 total closed cases over the period January 1, 2008 to August 1, 2011. According to senior managers in DOE, the division on October 1, 2006 adopted Practice Manager as the sole repository for all matters⁴ received by DOE. The Practice Manager database had sufficient capacity⁵ to retain and store all relevant documents during the review period. Electronic access controls also restricted deletion of documents in the database. Testing of access controls was not included in this inspection.

¹ The CFTC records retention schedule was approved by the Archivist of the United States on May 7, 2002.

² CFTC Records Management Directive (Rev. July 21, 2004) and 44 U.S.C. Chapters 21, 29, 31, 33, 101 and 36 CFR Parts 1220-1238.

³ The inspection team created a random number generator for selecting individual cases

⁴ A matter consists of paper, audio, photo, video, and electronic items.

⁵ We confirmed this by interviews with the Information Technology staff.

FINDINGS

1. We were able to confirm with NARA⁶ that the CFTC's records retention schedule was approved by NARA and is currently applicable to DOE documents.
2. We were able to confirm that the Division of Enforcement does inform staff of the NARA approved records retention policies⁷.
3. This inspection primarily focused on the disposition of matters classified as Preliminary Investigations (covered under Section 405 of the CFTC records retention policies) which must be retained for three years. Consequently, we sought to identify any Preliminary Investigative matters that were closed and disposed prior to the three year NARA approved retention deadline-we found none, zero. According to NARA approved records retention schedule, matters under a full Investigation must be retained for five years and so were beyond the scope (time frame) of this inspection.
4. DOE utilizes an electronic database for capturing, storing, and managing all matters received by the division from all sources. In the electronic database the team examined a sample of all matters received during the review period by DOE. The inspection team visually inspected 174 randomly selected⁸ closed cases out of a total of 1722 closed cases in Practice Manager-the division's database. With the assistance of the Practice Manager Database administrator we supervised conducting computer queries to ascertain the status of the 174 Preliminary Investigations stored in the system. In the sample the team found no evidence of any matter excluded from the database during the review period.
5. Current management controls in place restrict the ability of staff attorneys to alter and/or purge data captured by the system. The division locked down Practice Manager on September 21, 2011 so that the Inspection team could examine Practice Manager's contents.

ADDITIONAL FINDINGS

1. During this Office of the Inspector General inspection a communication error at the contracted records storage firm led to the accidental destruction of fifty-eight cartons⁹ of material that should have been retained (in case the OIG requested specific information). This accidental destruction did not impact any ongoing or potential investigation. The physical documents in the fifty-eight cartons exceeded their designated retention date. However, to accommodate this inspection the scheduled destruction was delayed by the CFTC Records Officer in case the Office of the Inspector General needed to examine the documents. This accidental destruction did not impact the inspection results.

End

⁶ Specifically, the inspection team spoke directly with the Chief Records Officer for the US Government.

⁷ CFTC DOE Electronic Records Management and Document Control January 1, 2010 page 5.

⁸ We used a random number generator to select each of the 174 Preliminary Investigation files for review.

⁹ See letter from Iron Mountain Inc. to Mr. Roberson Contracting Officer at the CFTC dated January 5, 2011.