

# Office of the Inspector General Commodity Futures Trading Commission

Semiannual Report to Congress  
April 1, 2016 – September 30, 2016







**U.S. COMMODITY FUTURES TRADING COMMISSION**

**Office of Inspector General**

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

October 28, 2016

TO: Timothy G. Massad, Chairman  
Commissioner Sharon Y. Bowen  
Commissioner J. Christopher Giancarlo

FROM: A. Roy Lavik *ARL*  
Inspector General

SUBJECT: Semiannual Report of the Office of the Inspector General

Attached is the Office of the Inspector General's Semiannual Report for the period from April 1, 2016, through September 30, 2016. This report is submitted to you in accordance with the requirements of Section 5 of the Inspector General Act of 1978, as amended, and summarizes issued reports and ongoing projects during the reporting period.

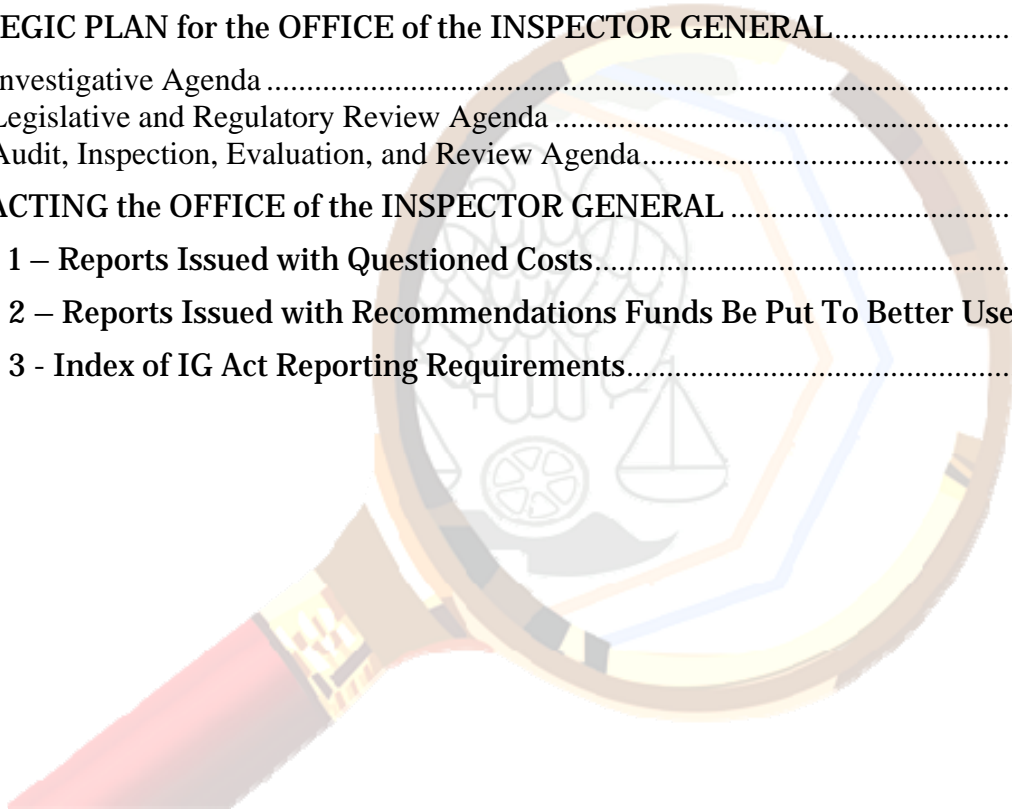
I appreciate your continuing support of this office.



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## EXECUTIVE SUMMARY

This semiannual report is issued by the Commodity Futures Trading Commission's (CFTC's) Office of the Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended.<sup>1</sup> It summarizes OIG's activities and accomplishments for the period April 1, 2016, through September 30, 2016. During this period, OIG completed two audits, two audit reviews, and two investigative reviews. OIG began or continued work on seven audits, one audit review, two investigative reviews, and one investigation. In addition, the OIG closed two allegations of misconduct by CFTC employees, and issued its annual assessment of the most serious management challenges facing CFTC. Finally, the OIG Office of Audit successfully passed a peer review.

### ***Highlights of audits, reviews, and investigations completed this period include:***

#### *Information Security*

- *Covered Federal Computer Systems Pursuant to the Cybersecurity Act of 2015 - Section 406*, (August 12, 2016). The Cybersecurity Act of 2015, Section 406,<sup>2</sup> requires the Inspectors General to submit reports to Congress on information collected on national security systems and/or Federal computer systems that provide access to personally identifiable information. Our report concluded that appropriate logical access standards and guidance were generally in practice, as required. We highlighted that CFTC needs to focus more of its cybersecurity program efforts on monitoring and detecting exfiltration.

#### *Financial Management*

- *FY 2015 Compliance with the Improper Payments Elimination and Recovery Improvement Act of 2010 (IPERA)*, (May 16, 2016). For the fiscal year ended September 30, 2015, the OIG audited the CFTC's compliance with the IPERA<sup>3</sup> and *Office of Management and Budget (OMB) reporting requirements* for improper payments. We concluded that the CFTC complied, in all material respects, with OMB requirements for the fiscal year ended September 30, 2015, and its improper payment assertion made in their respective agency financial report is fairly stated.
- *Review of the CFTC Travel Card Program*, (September 19, 2016). The OIG assessed whether the CFTC complied with its travel card policy. Federal travel regulations require employees to use their travel cards for all travel-related expenses while on official travel unless exempted. We concluded that CFTC's

<sup>1</sup> P.L. 95-452, 92 STAT. 1101 (1978).

<sup>2</sup> P.L. 114-113, 129 STAT. 2935 (2015).

<sup>3</sup> P.L. 111-204, 124 STAT. 2224 (2010).

travel card program is generally effective in minimizing non-compliance with its travel policy (misuse of the card was detected in approximately 3.3% of our sample, totaling approximately 1% of the value of transactions reviewed). However, adherence to current CFTC policy requiring written notification to employees and supervisors of suspected unauthorized transactions, so that the appropriate steps can be taken to address any suspected misuse, would further strengthen its travel card program.

### *Performance*

- *Whistleblower Office Review* (September 29, 2016). This review initially began in September 2014, but was halted in November 2014 due to competing priorities. It was reopened in FY2015 and completed this reporting period. The review discussed the Whistleblower Program in light of recently proposed amendments to the CFTC Whistleblower Program regulations, and recommended enhanced protection for the identities of whistleblowers, specifically that access to whistleblower identities be restricted within CFTC's Enforcement case management system. (Investigative Review).
- *Review of Management Assurances for Internal Controls (2014-2015)*, ([June 7, 2016](#)). The CFTC relies on a certified Statement of Assurance (SOA) produced by each of its divisions/branches/offices (reporting units) as the basis for the CFTC overall SOA. Our review noted that while the CFTC documented support for Federal Managers' Financial Integrity Act (FMFIA) section 4 assurances for FY 2014 and FY 2015, the CFTC can better document support for section 2 requirements associated with certain mission operations and supporting reporting units.<sup>4</sup> As such, the enterprise-wide assertions were not fully supported.
- *Review of Space Utilization of the Washington D.C. Office of the CFTC*, ([April 25, 2016](#)). In the last of a series of space utilization reviews, we found that the CFTC spends approximately \$2.0–2.8 million per year on empty office space in D.C.. We estimated that the CFTC will spend, throughout all four of its offices, over the terms of its current leases, between \$44.7 and \$56.6 million on empty office space. (Investigative Review.)

### *Other Reports*

- *External Peer Review Report of the CFTC OIG Audit Organization*, ([August 16, 2016](#)). The Architect of the Capitol, Office of the Inspector General, reviewed the system of quality control for the CFTC OIG audit organization in effect for the year ending March 31, 2016. In their opinion, the system of quality control for the

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<sup>4</sup> Section 4 assurances address controls over financial management systems while section 2 requirements address reports of controls over programs and operations. FMFIA, §§2, 4, P.L.97-255, 96 STAT. 815-816 (codified at 31 USC 3512).



audit organization of CFTC in effect for the year ending March 31, 2016, has been suitably designed and complied with to provide CFTC with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. CFTC OIG received the highest external peer review rating of “pass.”

- *Inspector General's Assessment of the Most Serious Management Challenges Facing the CFTC*. ([September 20, 2016](#)). The OIG highlighted 4 management challenges for 2017 in the areas of cyber security (two challenges), agency budget constraints, and financial reporting.

### *Closed Allegations*

- Allegation of time and attendance fraud. OIG began a preliminary investigation after receiving an anonymous allegation of time and attendance infractions. Our preliminary investigation found no evidence of the alleged infractions and is now concluded.
- Allegation of improper treatment of Dodd-Frank<sup>5</sup> commenter. OIG began a preliminary investigation after receiving a complaint that CFTC improperly refused to consider a public comment submitted in response to a Dodd-Frank proposed rule after the deadline to submit comments. Our preliminary investigation found no evidence of misconduct by CFTC officials and is now concluded.

### ***Audits, reviews, and investigations started or continued this period includes:***

#### *Investigation*

- *Investigation into a Potential Information Technology Security Incident* (June 27, 2016). A CFTC IT administrator exposed the CFTC to potential data loss by establishing frequent network connections to a personal server located at his private residence for “testing.” No data loss was uncovered. However, our investigation found that that senior management, lower level management, and staff in the CFTC Office of Data and Technology withheld information from internal investigators. In addition, various officials within the organization considered different retaliatory actions against a contractor who reported the improper network activity. The Chief Information Officer (CIO), to his credit, did not permit them to go forward. We referred our findings to the CFTC for action, and were considering our response to the implemented actions at the end of the reporting period.

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<sup>5</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Dodd-Frank”), P.L. 111-203, 124 Stat. 1376 (2010).

## *Strategic*

- **Audit of CFTC's Enterprise Architecture (EA) Program.** OIG initiated the audit to determine if CFTC (1) has established adequate baseline and target architectures; (2) has effective management practices, policies, and processes for the development, implementation, maintenance, and oversight of the EA program; and (3) has adequate resources to realize target architectures.
- **Lean Labor Audit of CFTC's Division of Clearing and Risk and Division of Market Oversight.** OIG initiated this audit to determine if these two CFTC Divisions could more efficiently balance labor and demand.

## *Financial Reporting*

- **Audits of the CFTC's FY 2016 Annual Financial Report and of the CFTC Customer Protection Fund.** The objective of these audits is to render an opinion on the respective financial statements in accordance with Generally Accepted Government Auditing Standards.

## *Information Security*

- **CFTC's Policies and Procedures for Reviewing Registrants' Cybersecurity Policies.** The OIG contracted Brown & Company to review existing CFTC policies and procedures toward reducing cybersecurity risks of CFTC registrants.
- **Information Security Audit FY 2016: Compliance with Provisions of the Federal Information Security Modernization Act.<sup>6</sup>** The objective of the audit is to conduct an independent evaluation of CFTC's information security program, and practices as required by FISMA.
- **Review of CFTC's Defenses to Protect Sensitive Database Information.** This review focuses on protection controls over databases containing sensitive information entrusted to the Commission.

## *CFTC Oversight (Performance Audit)*

- **Audit of CFTC's Oversight of NFA.** OIG initiated an audit to examine CFTC oversight activities of the National Futures Association (NFA).

## *Reviews (Investigative)*

- **Office of the Chief Economist Follow-up Review.** In January of 2016, we published our second review of the Office of the Chief Economist. We noted that staffing levels remain depressed and that the visiting scholar program – in which

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<sup>6</sup> P.L. 107-347, 116 STAT. 2946 (2002).

academics from outside the CFTC would research and publish on topics relevant to the CFTC's mission for free – remained defunct. We highlighted that certain research topics for full time staff were off-limits due to apparent political sensitivity. We began our follow-up in September 2016.

- We began research on cost-benefit analyses in connection with proposed and final rules under the Dodd-Frank Act. It has been over five years since we issued two reports addressing CFTC's consideration of costs and benefits in connection with proposed Dodd-Frank rules. We intend to publish further on this topic in the coming months.



# MANAGEMENT and ADMINISTRATION

## 1. CFTC Programs and Operations

Congress created the CFTC in 1974 as an independent agency with the mandate to regulate commodity futures and options markets in the United States. The Commission's mandate was renewed and/or expanded in 1978, 1982, 1986, 1992, and 1995. In December 2000, the Commission was reauthorized by Congress and the President through Fiscal Year 2005 with the passage of the Commodity Futures Modernization Act of 2000 (CFMA). In May of 2008, Congress reauthorized the CFTC through Fiscal Year 2013. On July 21, 2010, the President signed into law the Dodd-Frank Act,<sup>1</sup> which expanded the CFTC's jurisdiction and authorities.

The CFTC is responsible for fostering the economic utility of futures markets by encouraging their competitiveness and efficiency, ensuring their integrity, and protecting market participants against manipulation, abusive trade practices, and fraud. Through effective oversight regulation, the CFTC enables the commodity futures markets better to serve their vital function in the nation's economy—providing a mechanism for price discovery and a means of offsetting price risks. The Dodd-Frank Act authorized the CFTC to regulate swap dealers and increase transparency in the derivatives marketplace.

The CFTC operating divisions are: Office of the Chairman, Division of Clearing and Risk, Division of Swap Dealer and Intermediary Oversight, Division of Enforcement, Division of Market Oversight, Office of the Chief Economist, Office of the Executive Director, Office of General Counsel, Office of International Affairs, and Office of Data and Technology. Within the Office of the Chairman there are Offices of Minority and Women Inclusion, Legislative Affairs, and Public Affairs. In addition to its headquarters office in Washington, D.C., the CFTC maintains offices in Chicago, Illinois; Kansas City, Missouri; and New York, New York.

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<sup>1</sup> See fn. 5.

## 2. **OIG Responsibilities**

The CFTC OIG was created in 1989 in accordance with the 1988 amendments to the Inspector General Act of 1978.<sup>2</sup> OIG was established as an independent unit to:

- Promote economy, efficiency, and effectiveness in the administration of CFTC programs and operations, and detect and prevent fraud, waste, and abuse in such programs and operations;
- Conduct and supervise audits and, where necessary, investigations relating to the administration of CFTC programs and operations;
- Review existing and proposed legislation, regulations, and exchange rules and make recommendations concerning their impact on the economy and efficiency of CFTC programs and operations or the prevention and detection of fraud and abuse;
- Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations; and
- Keep the Commission and Congress fully informed about any problems or deficiencies in the administration of CFTC programs and operations and provide recommendations for correction of these problems or deficiencies.

OIG is a member of the Councils of Inspectors General on Financial Oversight (CIGFO), created under the Dodd-Frank Act to examine the work of the Financial Stability Oversight Council (FSOC).

OIG is required to conduct, supervise, and coordinate audits of CFTC programs and operations in accordance with [\*Generally Accepted Government Auditing Standards\*](#). OIG is also required to recommend changes to existing and proposed CFTC programs and operations to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse. OIG also conducts inspections, evaluations, and reviews in accordance with the [\*Quality Standards for Inspection and Evaluation\*](#) issued by the Council of Inspectors General for Integrity and Efficiency (CIGIE).

OIG investigations are performed in accordance with the [\*Quality Standards for Investigations\*](#) issued by the CIGIE. Investigations are performed in response to allegations and/or evidence indicating possible violations of law, regulations, or applicable standards, as well as other alleged or suspected improper conduct in connection with the programs and operations of the Agency (investigative reviews).

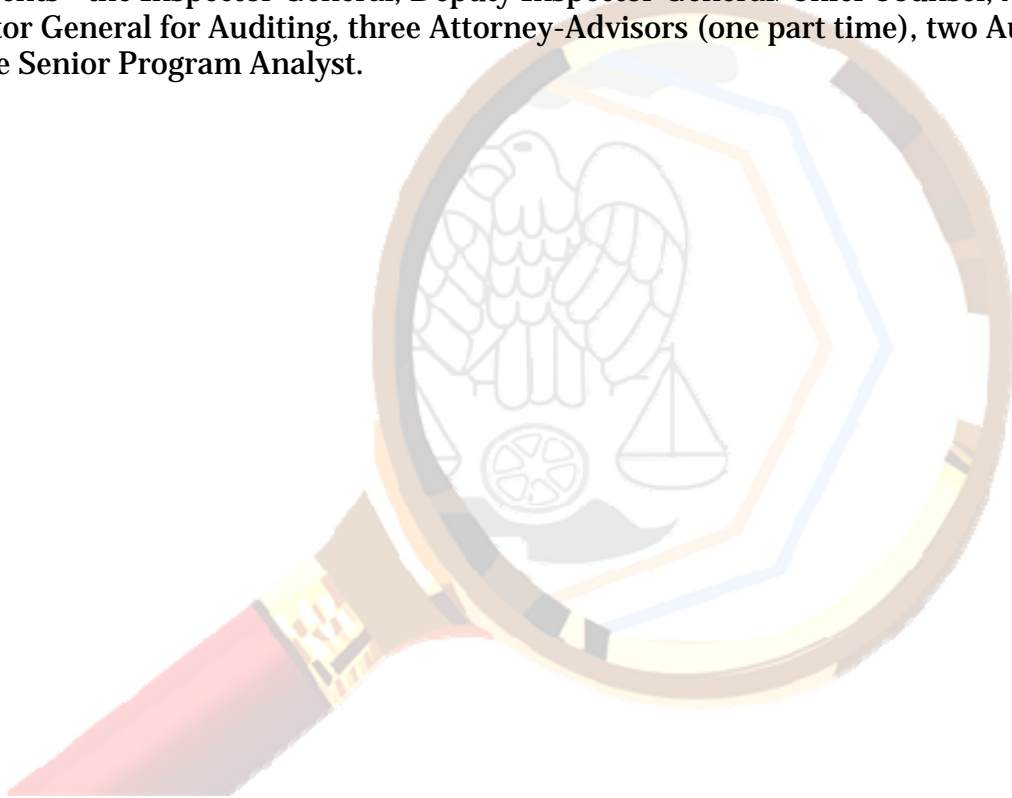
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<sup>2</sup> Inspector General Act Amendments of 1988, P.L. 100-504, 102 Stat. 2515 (1988).

OIG operates independently of the Agency and has not experienced any interference from the CFTC Chairman or Commissioners in connection with the conduct of any investigation, inspection, evaluation, review, or audit. Our investigations have been pursued regardless of the rank or party affiliation of the target. OIG also has conducted audits, inspections, evaluations, and reviews without interference where it has perceived the opportunity to recommend improvement to futures regulation efforts, again without regard to the party affiliation of any Chairman or Commissioner.<sup>3</sup>

### **3. OIG Resources**

At the end of the reporting period, the CFTC OIG consisted of 8.5 full time equivalents—the Inspector General, Deputy Inspector General/Chief Counsel, Assistant Inspector General for Auditing, three Attorney-Advisors (one part time), two Auditors, and one Senior Program Analyst.



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<sup>3</sup> The Inspector General Act of 1978, as amended, states: “Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation....” 5 U.S.C. App. 3 sec. 3(a).

## **COMPLETED AUDITS, INSPECTIONS, EVALUATIONS, REVIEWS and OTHER PROJECTS**

During this period, OIG completed two audits, two audit reviews, two audit compliance matters, and two investigative reviews.

### **1. Covered Federal Computer Systems Pursuant to the Cybersecurity Act of 2015 - Section 406** (August 12, 2016)

In December 2015, President Obama signed into law the Cybersecurity Act of 2015.<sup>1</sup> Section 406 requires Inspectors General to submit reports to Congress on information collected on national security systems and/or Federal computer systems that provide access to personally identifiable information. Our report satisfies the requirement for the CFTC and concludes that appropriate logical access standards and guidance were generally in practice, as required. We recommended that CFTC focus more of its cybersecurity program efforts on monitoring and detecting exfiltration as reinforced by vulnerability test results. This report is not public.

### **2. [FY 2015 Compliance with the Improper Payments Elimination and Recovery Improvement Act](#)** (May 16, 2016)

For the fiscal year ended September 30, 2015, we audited CFTC's compliance with OMB [Circular A-136](#) (Financial Reporting Requirements) as they relate to the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA);<sup>2</sup> and OMB [Circular A-123](#), Appendix C (Requirements for Effective Estimation and Remediation of Improper Payments). OIG's responsibility is to express an opinion on the agency's compliance with these requirements. We concluded that the CFTC complied, in all material respects, with the aforementioned requirements for the fiscal year ended September 30, 2015 and its improper payment assertion for reporting made in their respective agency financial report is fairly stated.

### **3. [Review of the CFTC Travel Card Program](#)** (September 19, 2016)

We reviewed the use of CFTC travel card holders' US Bank transactions from June 1, 2015, to June 31, 2016. Our review assessed whether the CFTC complied with its travel card policy. Federal travel regulations require employees to use their travel cards for all travel-related expenses while on official travel unless exempted. CFTC policy also requires employees to use their government-issued travel cards for payment of expenses related to their official travel. CFTC travel card holders are billed directly by the travel card issuing bank for their charged official travel expenses, and are responsible for payment. Official travel expenses are separately reimbursed to the traveler. Any use of

<sup>1</sup> P.L. 114-113, 129 STAT. 2935 (2015).

<sup>2</sup> P.L. 112-248, 126 STAT. 2390 (2013).

the travel card (including cash withdrawals) to pay expenses incurred for purposes other than official travel and travel-related activities are unauthorized.

We concluded that CFTC's travel card program is generally effective in minimizing non-compliance with its travel policy. However, adherence to current CFTC policy requiring notification to employees and supervisors of suspected unauthorized transactions, so that the appropriate steps can be taken to address any misuse, would further strengthen its travel card program. We recommended that management follow its review and remedial action policy so that employees and their supervisors are informed of instances of suspected non-compliance with its travel card program. Management concurred with the findings and recommendation and expressed that they are drafting written communications to notify (1) employees in non-compliance of travel regulations and policy, and (2) their supervisors to determine punitive actions, if necessary.

**4. Review of Management Assurances for Internal Controls (2014-2015)**  
(June 7, 2016)

CFTC relies on a certified Statement of Assurance (SOA) produced by each of its divisions/branches/offices (reporting units) as the basis for the CFTC overall SOA. For fiscal year (FY) 2015, CFTC management issued a qualified SOA, indicating that the agency's internal controls and financial management systems met the objectives of the FMFIA, with one exception. Other than an outstanding exception related to the recording of lease obligations, the CFTC asserted its internal controls were operating effectively, and that no other reportable conditions presented throughout the year. For FY 2014, the CFTC declared that it conformed to FMFIA requirements without any exceptions.

Our audit noted that while the CFTC documented support for FMFIA section 4 assurances for FY 2014 and FY 2015, the CFTC can better document support for section 2 requirements associated with certain mission operations and supporting reporting units.<sup>3</sup> We found seven of 14 reporting units were not able to fully support the positive assertions made in their FY 2014 SOAs. For FY 2015, six of 14 reporting units, all repeating from the prior year, were not able to fully support their SOAs. As such, the enterprise-wide assertions are also not fully supported. We recommended that the CFTC establish a Chief Risk Officer (CRO) and reporting unit champions, define roles and responsibilities for the CRO and reporting unit champions, and develop and communicate an implementation plan. Management generally concurred with recommendations. Given budgetary constraints, CFTC's actions are responsive to the report recommendations.

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<sup>3</sup> See fn.4.



**5. Whistleblower Office Review** (September 29, 2016).

This review initially began in September 2014, but was halted in November 2014 due to competing priorities. It was reopened in FY2015 and completed this reporting period. The review discussed the Whistleblower Program in light of recently proposed amendments to the CFTC Whistleblower Program regulations,<sup>4</sup> and recommended enhanced protection for the identities of whistleblowers, specifically that access to whistleblower identities be restricted within CFTC's Enforcement case management system. (Investigative Review).

**6. [Review of Space Utilization of the Washington D.C. Office](#)**  
(April 25, 2016)

In this last of a series of space utilization reviews, we found that the CFTC spends approximately \$2.0–2.8 million per year on empty office space in D.C., and that the D.C. office has an occupancy rate between 79% and 84%. We estimated that the CFTC will spend, throughout all four of its offices, over the terms of its current leases, between \$44.7 and \$56.6 million on empty office space. Although we noted several concerns regarding D.C. office space utilization, we chose to focus on a single recommendation that the Commission base all future leasing decisions and all decisions impacting the use of existing space on realistic expectations of current budget resources. This would lessen unused space. We note that the CFTC has not returned or sublet any of its excess space since our first review of the Kansas City office was published in June of 2014.

**7. [External Peer Review of the CFTC OIG Audit Organization](#)**  
(August 16, 2016)

The Architect of the Capitol, Office of the Inspector General reviewed the system of quality control for the audit organization of the CFTC OIG in effect for the year ending March 31, 2016. The peer review was conducted in accordance with Government Auditing Standards and the [CIGIE Guide for Conducting Peer Reviews of the Audit Organizations of Federal Offices of Inspector General](#). In their opinion, the system of quality control for the audit organization of CFTC OIG in effect for the year ending March 31, 2016, has been suitably designed and complied with to provide CFTC with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Audit organizations can receive a rating of pass, pass with deficiencies, or fail. CFTC OIG received an external peer review rating of pass, the highest rating.

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<sup>4</sup> [81 FR 59551 \(Aug. 30, 2016\)](#).

**8. Inspector General's Assessment of the Most Serious Management Challenges Facing the CFTC (September 20, 2016)**

For FY2017, the OIG identified four management challenges. Specifically, CFTC is challenged to:

- Stimulate registrants towards enhancing their cyber security controls over vital client information so as to reduce the impact of any future information technology breach. Our recently issued audit of CFTC's approach to reducing cybersecurity risks at registrants identified several testing and intelligence sharing opportunities to enhance the current approach to this threat.
- Minimize information security vulnerabilities in its network with particular attention to the exfiltration of sensitive data. Results of OIG information systems reviews revealed that management is addressing information security vulnerabilities.
- Effectively triage oversight tasks in order to execute its strategic plan with limited budgetary resources. For the second year (FY2015 and FY2016) in a row CFTC budget's was flat at \$250 million while certain operational costs increased. Therefore, CFTC must effectively triage its budgetary resources to meet its oversight responsibilities stated in its Strategic Plan.
- Address findings from its FY2015 financial statement audit report. For FY2015, the IPA issued a qualified opinion on CFTC's financial statements and alerted users that previously issued audit opinions were unreliable. The IPA identified a material weakness in internal controls over financial reporting related to the recording of lease obligations that materially affected the Statement of Budgetary Resources. Currently, the Government Accountability Office (GAO) and the CFTC are developing a suitable framework for disclosing future lease financial commitments.

The assessment of most serious management challenges will be published with the CFTC financial statement audit.

## **CURRENT AUDITS, INSPECTIONS, EVALUATIONS, REVIEWS, and OTHER PROJECTS**

At the end of this reporting period, OIG began or continued work on seven audits, one audit review, two investigative reviews, and one investigation.

### **1. Audit of CFTC's Enterprise Architecture Program**

In 1996, Congress enacted the Information Technology Management Reform Act, known as the Clinger-Cohen Act,<sup>5</sup> which requires each agency's CIO to develop, maintain, and facilitate the implementation of the agency's enterprise architecture (EA). By implementing EA, agencies can ensure that they efficiently spend limited information technology resources on well integrated systems that support agency mission and strategic goals. OIG initiated this audit to determine if CFTC (1) has established adequate baseline and target architectures; (2) has effective management practices, policies, and processes for the development, implementation, maintenance, and oversight of the EA program; and (3) has adequate resources to realize target architectures.

### **2. Lean Labor Audit of Division of Clearing and Risk and Division of Market Oversight Functions**

Lean labor focuses on the workforce and its interaction with other resources required for output. It seeks out inefficiencies such as overproduction, waiting, and unused employee potential to maximize the value of human capital assets. Given mission similarities, our objective is to assess the effectiveness of balancing labor and workload for CFTC's Division of Clearing and Risk and Division of Market Oversight.

### **3. Audits of the CFTC's FY 2016 Annual Financial Report (AFR) and Customer Protection Fund (CPF)**

The objective of these two Congressionally mandated audits is to render an opinion on the AFR and CPF financial statement in accordance with Generally Accepted Government Auditing Standards.<sup>6</sup>

### **4. CFTC's Policies and Procedures for Reviewing Registrants' Cybersecurity Policies**

We contracted with Brown & Company to review existing CFTC policies and procedures toward reducing cybersecurity risks of CFTC registrants. Brown & Company highlighted that CFTC and its oversight divisions have developed policies and procedures to address cybersecurity risks at CFTC registrants and identified five areas

<sup>5</sup> P.L. 104-106, 110 STAT. 202 (1996).

<sup>6</sup> The Accountability of Tax Dollars Act, P.L. 107-289, § 2, 116 STAT. 2049 (2002), requires our annual audit of the AFR. Section 748 of the Dodd-Frank Act, (see fn.5) requires our annual audit of the CPF.

with recommendations where the CFTC could improve its policies and procedures toward reducing cybersecurity risks of registrants. Specific areas of improvement relate to data transfer protocols, frequency of internal and external penetration and vulnerability testing, oversight assessments, and intelligence and information sharing. We provided our discussion draft to Management on September 2, 2016, received the management response on September 28, 2016. At the close of the reporting period OIG and Brown and Company were reviewing the management response.<sup>7</sup>

#### **5. Information Security Audit FY 2016: Compliance with Provisions of the Federal Information Security Modernization Act (FISMA)**

The objective of this audit is to conduct an independent evaluation of CFTC's information security program and practices as required by FISMA.<sup>8</sup> The scope of the work covers the requirements of Federal Information Systems Modernization Act of 2014<sup>9</sup> and OMB reporting guidance provided in the OMB FY 2015-2016 publication, [Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management](#).

#### **6. Review of CFTC's Defenses to Protect Sensitive Database Information**

The OIG contracted with staff from Department of Transportation-Enterprise Service Center (ESC) to conduct vulnerability scans of all databases under the control of the CFTC. This is a follow-on review to our prior year network vulnerability scans performed by the ESC team. However, during this review the team will employ standard non-destructive forensic software to explore access controls and procedures employed by Office of Data and Technology (ODT) to identify potential compromise vectors to commercially sensitive and/or personally identifiable information resident on selected databases.

#### **7. Audit of CFTC's Oversight of NFA**

OIG initiated a review to examine CFTC's oversight activities of the NFA. Specifically, OIG is assessing the nature of reviews performed by the CFTC, frequency of reviews, and effectiveness of CFTC management in achieving its desired outcomes from the NFA. We are reviewing data provided by management, anticipate completing necessary analyses during the first quarter of FY2017, and thereafter plan to issue a draft report.

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<sup>7</sup> We issued our final report on October 12, 2016. This report is not published.

<sup>8</sup> See fn.6.

<sup>9</sup> P.L. 113-283, 128 STAT. 3073 (2014).

## **8. Office of the Chief Economist Follow-up Review.**

In January of 2016, we published our second review of the Office of the Chief Economist. We noted that staffing levels remain depressed and that the visiting scholar program – in which academics from outside the CFTC would research and publish on topics relevant to the CFTC’s mission for free – remained defunct. We highlighted that certain research topics for full time staff were off-limits due to apparent political sensitivity. We stated our intent to follow up this report, and we began our follow-up in September 2016.

## **9. Economic Analysis of Dodd-Frank Rules**

We began research on cost-benefit analyses in connection with proposed and final rules under the Dodd-Frank Act. It has been over five years since we issued two reports addressing CFTC’s consideration of costs and benefits in connection with proposed Dodd-Frank rules.<sup>10</sup> We intend to publish further on this topic in the coming months.

## **10. Office of General Counsel Follow-up Review.**

Follow-up to Management Letter. In our Semiannual Report for the period ending [September 30, 2015](#), we reported the issuance of a Management Letter that addressed allegations of unprofessional conduct by a CFTC manager, and stated our intent to follow up during the next reporting period. Due to competing priorities, as well as personnel changes within the relevant CFTC unit, we were not able to begin our follow up.

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<sup>10</sup> *An Investigation Regarding Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act* ([April 15, 2011](#)); *A Review of Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act* ([June 13, 2011](#)).

## **AUDIT REPORTS and REVIEWS OVER SIX MONTHS OLD**

### **1. Corrective Action Not Completed**

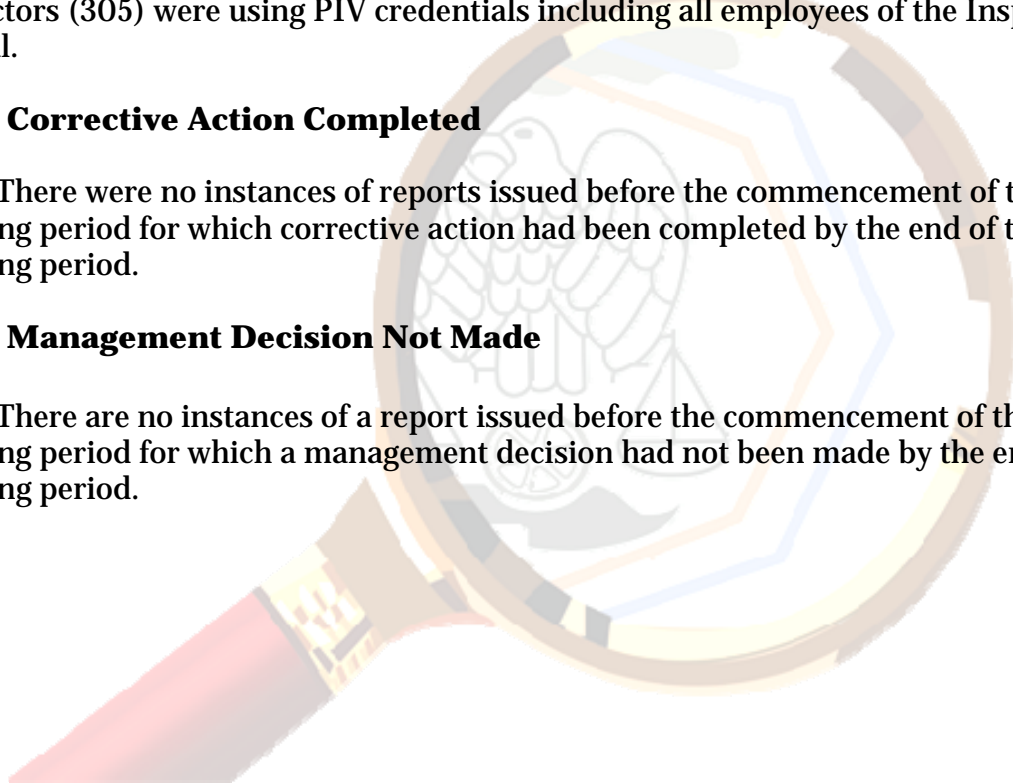
There is one audit report over six months old where corrective action had not been completed by the planned action date. Specifically, on November 23, 2015, we recommended that management update its plans to ensure logical access security policies are in place for the Personal Identity Verification cards as part of its rollout. Management's initial date of completion was extended from March 2016 to December 2016. As of August 2016, 245 or 32% of total CFTC employees (759) and 69 or 22% of contractors (305) were using PIV credentials including all employees of the Inspector General.

### **2. Corrective Action Completed**

There were no instances of reports issued before the commencement of the reporting period for which corrective action had been completed by the end of the reporting period.

### **3. Management Decision Not Made**

There are no instances of a report issued before the commencement of the reporting period for which a management decision had not been made by the end of the reporting period.



## INVESTIGATIONS

The Inspector General Act of 1978, as amended, provides that the Inspector General may receive and investigate complaints or information from the Commission's employees and other sources concerning the possible existence of an activity constituting a violation of law, rules or regulations, or mismanagement, abuse of authority, or gross waste of funds, or a substantial and specific danger to the public health and safety. During this period, the OIG engaged in the following investigative activity:

### **1. Investigation into a Potential Information Technology Security Incident**

Senior CFTC management referred this matter to our office after a brief internal investigation. We contracted with USPS OIG for special agents trained in computer forensics to assist with our investigation. We found that a CFTC IT administrator had exposed the CFTC to potential data loss by establishing frequent network connections to a personal server located at his private residence for “testing.” No data loss was uncovered. No data loss was uncovered. However, our investigation found that that senior management, lower level management, and staff in the CFTC Office of Data and Technology withheld information from internal investigators. In addition, various officials within the organization considered different retaliatory actions against a contractor who reported the improper network activity. The Chief Information Officer (CIO), to his credit, did not permit them to go forward. We referred our findings to the CFTC for action, and were considering our response to the implemented actions at the end of the reporting period.

### **2. Time and Attendance Allegation**

OIG concluded a preliminary investigation after receiving anonymous allegations of potential time and attendance infractions. We found no evidence of the alleged infractions.

### **3. Allegation of Improper Treatment of Dodd-Frank Commenter**

OIG began and concluded a preliminary investigation after receiving a complaint that CFTC improperly refused to consider a public comment submitted in response to a Dodd-Frank proposed rule after the deadline to submit comments. Our preliminary investigation found no evidence of misconduct by CFTC officials and is now concluded.

There were no open investigations at the close of the reporting period.

## **SUMMARY of MATTERS REFERRED to PROSECUTORIAL AUTHORITIES**

No matters were referred to prosecutorial authorities during the reporting period.

## **CONGRESSIONAL INQUIRIES**

OIG fielded multiple requests for assistance from members of Congress and staff during the reporting period. Issues addressed included recent OIG and Agency activities.

## **LEGISLATIVE, REGULATORY, and RULE REVIEWS**

### **1. Introduction and Summary**

As specified in Section 4(a)(2) of the Inspector General Act of 1978, OIG reviews the impact of existing and proposed legislation and regulations on CFTC programs and operations and makes recommendations regarding more effective or efficient alternatives or protections against fraud and abuse. OIG also reviews exchange rule proposals circulated to senior staff at the CFTC.

OIG notified the responsible Divisions as to any concerns with draft and final documents relating to legislation, rules or investigations. Formal comments were not filed with the Commission during this reporting period.

### **2. Rule Reviews Initiated in Previous Reporting Periods**

There were no rule reviews initiated in previous reporting periods which were continued into this reporting period.

### **3. Rule Reviews Initiated this Reporting Period**

No rule reviews were initiated during this reporting period.

### **4. Legislative Activities**

OIG tracked legislation impacting programs and operations of the CFTC, and made contact with Congressional staff concerning various Agency and IG issues as appropriate. The IG serves on the legislation committee for the Council of Inspectors General on Integrity and Efficiency, which comments on proposed amendments to the IG Act and other legislation affecting the IG community.



## PEER REVIEWS

An important function in each Agency OIG is the peer review process. The Council of Inspectors General on Integrity and Efficiency describes the processes for audits and investigative peer reviews on its [website](#) as follows:

- *Government Auditing Standards* require that audit organizations conducting audits of Federal agencies undergo peer reviews every 3 years. The IG community has implemented a process to meet this requirement. The purpose of the peer review is to determine whether the reviewed audit organization's internal quality control systems are adequate and provide reasonable assurance that applicable auditing standards, policies and procedures are met.
- Similarly, investigative peer reviews are conducted to ensure compliance with the requirements of the [Quality Standards for Investigations](#) and determine whether adequate internal safeguards and management procedures exist to ensure that law enforcement powers are properly exercised.

Section 989C of the Dodd-Frank Act<sup>11</sup> implemented a requirement to include in each OIG semiannual report an appendix containing:

- The results of any peer review conducted by another Office of Inspector General during the reporting period; or if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;
- A list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and
- A list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.

In accordance with Section 989C of the Dodd-Frank Act, please be advised that the Architect of the Capitol Office of Inspector General completed a peer review of the CFTC OIG Office of Audit. The peer review was completed on August 16, 2016 and our Office of Audit received a rating of “*pass*”; the highest rating.

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<sup>11</sup> See fn. 5.

## **SUMMARY of EACH REPORT MADE to the AGENCY HEAD**

No reports were made to the Agency head under section 6(b)(2) concerning information or assistance unreasonably refused or not provided (mandated under section 5(a)(5) of the Act).

## **REVISED MANAGEMENT DECISIONS**

No management decisions were revised during the reporting period.

## **INSPECTOR GENERAL DISAGREEMENT**

The Inspector General did not disagree with any management decisions on OIG recommendations during the reporting period.

## **GAO LIAISON**

OIG is charged with providing policy direction for, and conducting, supervising, and coordinating audits and investigations relating to CFTC programs and operations. In addition, OIG is required to recommend policies for, and conduct, supervise, and coordinate with other Federal agencies, state and local governmental agencies, and nongovernmental entities, audits, investigations, and evaluations regarding the economy, efficiency, and effectiveness of CFTC programs and operations.

GAO also conducts audits of CFTC activities, and OIG plans its audits, inspections, evaluations, reviews, and investigations so as not to duplicate GAO's efforts. Moreover, OIG in its audit activities identifies the goals of each audit and the methods of reaching the goals so as to minimize the requirements placed on CFTC resources.

# **STRATEGIC PLAN for the OFFICE of the INSPECTOR GENERAL**

## **1. Investigative Agenda**

The Inspector General Act of 1978, as amended, provides that the Inspector General may receive and investigate complaints or information from the Commission's employees concerning the possible existence of an activity constituting a violation of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

OIG has to date conducted only a reactive investigative program chiefly relying on unsolicited employee complaints as the source of investigative leads. However, allegations and complaints are also received from the general public and Congress. This reactive program has resulted in only a handful of investigations per year. This strategy was followed because OIG believed that an independent regulatory Agency such as the CFTC, without grant money or substantial contracts to award, was not likely to generate a substantial investigative workload.

To insure that employee complaints could easily reach OIG, a 24-hour hotline was established in February 1993 to receive complaints. The hotline phone number is (202)418-5510.

Because of the necessarily reactive nature of OIG's investigative program, no investigative agenda has been established.

## **2. Legislative and Regulatory Review Agenda**

Because of the importance of this activity in a financial and economic regulatory Agency, OIG reviews proposed and final CFTC regulations, legislation and selected exchange rules using six basic criteria: Whether the Agency: (1) has identified specifically the problem(s) to be addressed by the proposal; (2) has defined through case study or data analysis a clear link between the proposed solution and the identified problem(s); (3) has specified clearly the means to effectively and efficiently enforce the proposal; (4) has assessed the likely efficiency and effectiveness of alternative solutions; (5) can reasonably document that the proposal will yield positive net benefits over the long term; and (6) has met the requirements of the Regulatory Flexibility Act and the Paperwork Reduction Act.

The Regulatory Flexibility Act requires the Agency to evaluate the impact of its regulations on small entities. The Paperwork Reduction Act requires the Agency to manage effectively and efficiently its information collections so that they are the least burdensome necessary to achieve the stipulated objectives.

Because OIG does not initiate legislation or, generally, regulations, OIG legislative and regulatory review program is reactive to the legislative and regulatory proposals developed by others. Accordingly, no independent legislative and regulatory review agenda has been established.

### **3. Audit, Inspection, Evaluation, and Review Agenda**

#### **a. Introduction**

The primary objectives of OIG's audit, inspection, evaluation, and review agenda are to promote long-term efficiency and effectiveness in the administration and operation of the Commission and to protect against fraud and abuse. The audit, review, evaluation, and inspection agenda and priorities for OIG are determined based on the following factors:

- Adequacy of internal control systems as indicated by vulnerability assessments and internal control reviews recommended by OMB Circular A-123;
- Changes in the program conditions or particular vulnerability of the organization, program, activity, or function to problems or deficiencies;
- Current and potential dollar magnitude and likely benefits of a review on the efficiency or effectiveness of CFTC programs and operations;
- Management priorities and improvements that may be possible;
- Results of audits of CFTC programs and operations by other Federal agencies; and
- Availability of audit resources and the potential opportunity costs to the agency.

#### **b. Annual Audits**

The following required audits are performed on an annual basis.

##### **Audit of CFTC Financial Statements**

In FY 2002, Congress passed the Accountability of Tax Dollars Act.<sup>12</sup> The Act requires the CFTC, along with numerous other Federal entities, to have its financial statements audited annually. To this end, OIG has engaged a contractor to provide the audit effort required to enable the contractor to render an opinion on the Agency's

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<sup>12</sup> See fn.15.

financial statements for each fiscal year in accordance with generally accepted auditing standards, Government Auditing Standards and OMB Bulletin 07-04.

### Audit of the CFTC Customer Protection Fund

Section 745(g)(5)(I) of the Dodd-Frank Act<sup>13</sup> requires the Agency to submit to Congress a yearly report on the Commission's whistleblower award program that includes a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis. To this end, OIG has engaged a contractor to perform the audit.

#### **c. Annual Reviews and Compliance Letters**

OIG will perform the following reviews and evaluations on an annual basis:

##### Inspector General's Assessment of the CFTC's Management Challenges

The Reports Consolidation Act of 2000 requires the Inspector General to summarize the most serious management and performance challenges facing the CFTC and to assess the Agency's progress in addressing those challenges.

##### Review of Compliance with the Federal Managers' Financial Integrity Act, FMFIA

In support of OMB Circular A-123 (Revised), the Inspector General will evaluate, provide technical assistance and advise the Agency head as to whether the Agency's review and evaluation process was conducted in accordance with the circular's requirements.

##### Evaluation of the CFTC Information Security Management Act, FISMA

The Federal Information Security Management Act requires the Inspector General or his designee to perform annual independent evaluations of the information security program and practices of the Agency. This compliance may also be performed through an audit.

#### **d. Other Audits, Inspections, Evaluations, Reviews and Projects**

Looking to the long term, OIG intends to focus the balance of its resources on the review of the management and operation of the agency and compliance with Congressional mandates. OIG plans to concentrate its efforts in reviewing activities relating to the most serious management challenges facing the CFTC.

In addition, OIG is aware of the immense regulatory undertaking required under the Dodd-Frank Act. OIG will seek to identify issues and to conduct inspections,

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<sup>13</sup> See fn.5.

reviews, investigations, and other activities relating to these management and regulatory challenges. Finally, OIG will stand ready to respond to issues and requests as they are received from Congress, the Agency, members of the public, or any other source.

**e. Resources Required**

OIG estimates that approximately four staff years of effort will be devoted over each of the next five years to the annual audit, the annual review, and the annual evaluation described above. However, OIG continuously updates its audit universe in view of the CFTC's increased responsibilities under the Dodd-Frank Act and will reevaluate its staffing needs once each update is complete. OIG estimates three staff years of effort will be devoted over each of the next five years to the investigative, legislative and regulatory review functions. OIG estimates one staff year for management, administrative, and outreach efforts. Because OIG resources can be diverted at any time to an investigation, audit, inspection, evaluation, review, or other project that responds to current concerns or allegations, and must be completed in a timely fashion in order to be of assistance to the Agency or Congress, it is not possible to forecast with complete accuracy how resources will be utilized from year to year.

**CONTACTING the OFFICE of the INSPECTOR  
GENERAL**

OIG is located at 1155 21st Street, N.W., Washington, D.C. 20581. Regular business hours are between 8:30 AM and 5:00 PM, Monday through Friday, except Federal holidays. The telephone number is (202) 418-5110. The facsimile number is (202) 418-5522. The hotline number is (202)418-5510. OIG's web page is located at <http://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm>.

<b>TABLE 1 – Reports Issued with Questioned Costs</b>
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**April 1, 2016 – September 30, 2016**

	<u>Number</u>	<u>Dollar Value Thousands Questioned</u>	<u>Unsupported</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0	0
B. Which were issued during the reporting period	0	0	0
<b>Subtotals (A + B)</b>	<b>0</b>	<b>0</b>	<b>0</b>
C. For which a management decision was made during the reporting period	0	0	0
(I) <u>dollar value of disallowed costs</u>	0	0	0
(ii) <u>dollar value of costs not disallowed</u>	0	0	0
D. For which no management decision has been made by the end of the reporting period	0	0	0

<b>TABLE 2 – Reports Issued with Recommendations That Funds Be Put To Better Use</b>
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**April 1, 2016 – September 30, 2016**

	<u>Number</u>	<u>Dollar Value Thousands</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A + B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) dollar value of recommendations that were agreed to by management	0	0
(ii) dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0



### **TABLE 3 - Index of IG Act Reporting Requirements**

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