



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the  
Inspector General

February 26, 2015

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

FROM: A. Roy Lavik *ARL*  
Inspector General

SUBJECT: A Review of Space Utilization of the Chicago Regional Office of the Commodity  
Futures Trading Commission

Attached is a new review from my Office evaluating leased space in the Chicago Regional Office. We are happy to provide further information at your request and convenience.

Last year we reported that the CFTC was leasing three times the space needed to accommodate current staff in Kansas City. In contrast, this new review concludes that Chicago is at more than 80% occupancy. Nevertheless, we offer several recommendations that we believe will increase the efficient use of space which, in downtown Chicago, is at a premium.

While we obtained management response to the Kansas City review, in this instance we did not believe it would be an efficient use of resources in the Office of Executive Director to request the preparation of a formal response at this time. We will follow up in six months to evaluate the CFTC's response to our recommendations.

I am very pleased with the level of cooperation received from staff and management in Logistics and Operations, and in the Chicago Regional Office. I appreciate your continuing support of this Office.

Attachment

Cc (with attachment):  
Anthony C. Thompson, Executive Director

A Review of Space Utilization of the Chicago Regional Office of the  
Commodity Futures Trading Commission

Prepared by the  
Office of the Inspector General  
Commodity Futures Trading Commission

February 26, 2015

## **Executive Summary**

In June 2014, we issued the first in a series of four reviews of CFTC leasing and space utilization rates.<sup>1</sup> We noted that over the life of the CFTC's leases the CFTC would spend approximately \$74,000,000 for the lease of vacant offices.

This review is the second in the series and focuses on the Chicago Regional Office. Chicago's current overall utilization rate is the best of the four regions – 80%, compared to 73%, 63%, and 33%, for Washington DC, New York, and Kansas City, respectively.<sup>2</sup> However, 80% occupancy still means that approximately one-fifth of the offices in Chicago are vacant, and that approximately \$2.75 million will be spent on vacant offices in Chicago<sup>3</sup> over the life of the ten-year lease.<sup>4</sup>

We have identified no way to achieve a reduction in space by subleasing or returning space to the landlord. We have, however, identified a number of areas that are underutilized. Better utilization of these areas would increase office efficiency, improve staff morale, and increase the number of offices available in Chicago without resorting to expansion. Accordingly, this review focuses on potential improvements to existing space.

We note that in December of 2014, the CFTC received an appropriation from Congress that expanded its budget for salaries and benefits by approximately \$18 million. We have requested but currently have incomplete information concerning the CFTC's intentions with respect to the total number of new hires or the distribution of these hires in Chicago; we accordingly take no position on this issue. However, we note that there is sufficient space for an additional 35 hires in Chicago, and that improvements to the current floor plan could increase that number to approximately 45.

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<sup>1</sup> On June 4, 2014, our office released a report that analyzed leasing and occupancy levels in the Kansas City Regional Office. We found that approximately \$3.6 million would be spent on vacant offices over the term of the lease, over two-thirds of the total. We recommended that the CFTC take immediate steps to dispose of the unused space to minimize spending on empty offices. Though not the focus of that review, we also looked at CFTC utilization in the aggregate, across all CFTC offices. We found that of the approximately \$200 million to be spent on the lease of office space, approximately \$74 million would be spent on vacant offices. We recommended that the CFTC institute a review of CFTC offices to identify and implement cost-saving measures.

<sup>2</sup> The CFTC uses a space management system called FOXfms. Our calculations and statistics are derived in large part from that system, and we have received assurance that it is up to date. According to FOXfms, these rates are accurate as of February 23, 2015. We note that the CFTC space system lists Kansas City's occupancy rate at 64%. However, this higher rate is achieved by not counting any of the offices on the now abandoned half floor. To our knowledge, the CFTC has not yet subleased or returned that space to the landlord. Accordingly, the true occupancy rate in Kansas City remains approximately 33%.

<sup>3</sup> The average cost per year for the leased space on the ninth floor is approximately \$422,000. The average cost per year for the leased space on the eleventh floor is approximately \$955,000. The total average cost is approximately \$1.38 million/year, or \$13.8 million over ten years. A vacancy rate of 20% is consistent with total payments of \$2.75 million for vacant offices over ten years. We note that this assumes current occupancy rates.

<sup>4</sup> When the CFTC expanded to the ninth floor, it negotiated a third amendment to its original lease. The lease for the ninth floor is 10.5 years, ending in June of 2022. The updated lease for the original space on the eleventh floor began immediately – prior to the build out of the ninth floor – and is for 12.5 years, ending on the same date of June 2022. For the sake of simplicity, we have calculated lease costs throughout this review over a ten year period.

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## **Background**

### **Facts**

The CFTC entered into a lease for its present location in 2001, initially occupying 40,750 SF on the 11<sup>th</sup> floor at 525 West Monroe, Chicago Illinois, 60661. In the summer of 2009, the CFTC negotiated to add approximately 20,000 SF on the ninth floor.<sup>5</sup>

The CFTC expanded in every region during this period, and the impetus for the Chicago expansion appears to be the same as elsewhere. In brief, the CFTC anticipated expanded jurisdiction into the swaps and derivatives markets, and expected substantial and immediate increases in appropriations from Congress to accomplish its expanded regulatory mission. It entered into long-term leases on the basis of these expectations. When the CFTC's expectations proved incorrect, the CFTC was left paying substantial sums for vacant office space. The scale of expansion in Chicago appears to have been relatively modest – approximately 50%.

### **Scope and Methodology**

To complete our review, we interviewed 33 staff from Divisions and Offices in the Chicago region as well as a few key individuals in the Washington DC office. This included individuals in the Divisions of Enforcement, Market Oversight, and Swap Dealer and Intermediary Oversight, as well as the Offices of Data and Technology, the Executive Director, and individuals within the sub-offices of Financial Management and Logistics and Operations. Some witnesses were interviewed on multiple occasions. We requested and reviewed the relevant leasing documents, procurement documents, and architectural drawings, as well as other documents and CFTC communications concerning the Chicago Regional Office. We researched pertinent legal principals including federal leasing rules and standards, independent leasing authority, Government Accountability Office (“GAO”) reports and testimony, and government-wide efforts to increase agency efficiency with respect to real estate. Finally, we reviewed the recent history of CFTC leasing.

### **Legal Background**

The problem of empty and underutilized office space is by no means limited to the CFTC.<sup>6</sup> Congressional inquiries, committee hearings, as well as numerous articles in the press have discussed this issue; indeed, some agencies are apparently not aware of all of the real estate they own or lease.<sup>7</sup>

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<sup>5</sup> Third amended lease for the Chicago Regional Office, dated August 3, 2009.

<sup>6</sup> See GAO report, Federal Real Property: Excess and Underutilized Property Is an Ongoing Challenge (<http://www.gao.gov/products/GAO-13-573T>) (all internet addresses verified as of February 24, 2015).

<sup>7</sup> E.g., U.S. House Committee on Oversight and Government Reform, Subcommittee on Government Operations, *Government Operations Oversight: Addressing Unused and Vacant Federal Property*, Hearing (<http://oversight.house.gov/hearing/government-operations-oversight-addressing-unused-and-vacant-federal-property/>) Article: <http://www.whitehouse.gov/blog/2011/10/20/sale-cutting-waste-getting-rid-excess-real-estate>, Article: <http://cagw.org/media/wastewatcher/time-get-real-federal-property>,

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In January 2003, the GAO designated federal real property as a high-risk area, citing the government's overreliance on costly, long-term leasing as one of the major reasons.<sup>8</sup> More recently, GAO declared that, "[t]he federal government faces long-standing problems in managing real property, including an overreliance on leasing, and excess and underutilized property."<sup>9</sup> With regard to excess and underutilized space, GAO stated that "agencies often do not have a strong understanding of the real property held by other agencies and may lack the authority or expertise to lease their own underutilized property to other federal agencies."<sup>10</sup> GAO noted that the agencies it reviewed "have taken some actions to dispose of and better manage these properties, including using excess and underutilized property to meet space needs, consolidating offices to use space efficiently, and reducing employee workspace to use space more efficiently."<sup>11</sup>

The General Services Administration ("GSA") is responsible for creating rules and standards governing federal leasing, and it assists agencies by negotiating leases on their behalf.<sup>12</sup> Some agencies, like the CFTC, have independent leasing authority and negotiate their own leases without reference to GSA.<sup>13</sup> But independent leasing authority is more than the ability to separately negotiate leases; it also includes independence from GSA rules and regulations designed to, for instance, minimize government waste. Exercising that independence, the CFTC declined until February of 2011 to develop any written leasing standards or procedures of its own. Consequently, there appear to have been no CFTC or other written rules that directly governed the CFTC's leasing process.<sup>14</sup>

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<sup>8</sup> Federal Real Property: Strategy Needed to Address Agencies' Long-standing Reliance on Costly Leasing, GAO-08-197 (January 2008) (<http://www.gao.gov/assets/280/271449.pdf>).

<sup>9</sup> Federal Real Property: High-Risk Designation Remains due to Persistent Management Challenges, GAO-13-422T (February 2013) (<http://www.gao.gov/products/GAO-13-422T>).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The Comptroller General has described the process by which the government leases real property as follows:

Congress has centralized in GSA the authority to lease real property and facilities for the use of federal agencies. The Federal Property and Administrative Services Act of 1949 (FPASA) transferred to GSA the authority to lease real property and facilities on behalf of the federal government, subject to several exceptions not relevant here. FPASA, ch. 288, § 3, 63 Stat. 377, 378 (June 30, 1949), as amended, codified in 40 U.S.C. § 585. As presently written, this authority allows GSA, on behalf of all federal agencies, to enter into leases of real property and facilities to meet the government's needs for periods of up to 20 years and to obligate fiscal year funds without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B). 40 U.S.C. § 585. *See* B-309181, Aug. 17, 2007.

Matter of: National Transportation Safety Board--Application of Section 1072 of the Federal Acquisition Streamlining Act (41 U.S.C. § 254c) to Real Property Leases, B-316860, 2009 U.S. Comp. Gen. LEXIS 89, April 29, 2009 (<http://www.gao.gov/decisions/appro/316860.htm>).

<sup>13</sup> Without specific statutory authority and absent a delegation of authority from GSA, a federal agency may not lease real property or facilities for its own use or on behalf of any other government entity. Matter of: Interagency Agreements -- Use of an Interagency Agreement between the Counterintelligence Field Activity, Department of Defense, and GovWorks to Obtain Office Space, B-309181, 2007 U.S. Comp. Gen. LEXIS 143, Aug. 17, 2007 (<http://www.gao.gov/decisions/appro/309181.htm>).

<sup>14</sup> The lease in Chicago was negotiated prior to February of 2011. CFTC Management states that it followed the same standards prior to 2011, but had not reduced them to writing. We note that the CFTC's written standards

Over the years, however, Presidents of the United States have issued executive orders to reform and improve federal leasing standards. In general, these require government agencies to efficiently utilize space.<sup>15</sup> Some are more specific, requiring agencies to reduce the amount of work space to that which is essential for known agency missions, and ensuring that the amount of office space per person is the minimum necessary to accomplish the task.<sup>16</sup> For instance, in February of 2004, the President signed Executive Order 13327 (EO 13327) which, among other things, established a Federal Real Property Council to address issues in property acquisition and management, including adding as a performance measure for covered Agencies “changes in the amounts of vacant Federal space.”<sup>17</sup> Similar in purpose to the Executive Orders, President Obama issued a Presidential Memorandum on June 10, 2010, requiring agencies to dispose of unneeded federal real estate.<sup>18</sup> This included a specific directive to “take immediate steps to make better use of remaining property assets as measured by utilization and occupancy rates....”<sup>19</sup>

Finally, we have the OIG’s own regulatory mandate to detect and prevent waste and abuse, and to recommend policies designed to promote economy, efficiency, and effectiveness in connection with programs and operations of the Agency.<sup>20</sup> In sum, despite the absence of written rules requiring minimum levels of utilization or reassessment of leases in light of changed budgetary assumptions, the CFTC must still strive to limit waste in this area.

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developed in 2011 focus on the initial leasing process, and do not address any circumstances under which the CFTC should reassess its space needs – due, for instance, to underutilization or changed budgetary circumstances.

<sup>15</sup> Executive Order 13576--Delivering an Efficient, Effective, and Accountable Government, June 13, 2011, (*requiring* “frequent data driven reviews” of, among other things, “improving the management of Federal real estate”) (<http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>; Executive Order 13589 -- Promoting Efficient Spending, November 9, 2011, (*requiring* agencies to “act in a fiscally responsible manner, including by minimizing their costs...”) (<http://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending>).

<sup>16</sup> Executive Order 12411 -- Government work space management reforms, March 28, 1983, (*requiring* agencies “to institute fundamental changes in the manner in which Federal work space is managed to ensure its efficient utilization.”) (<http://www.archives.gov/federal-register/codification/executive-order/12411.html>).

<sup>17</sup> EO 13327 is available here: <http://www.gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf>. EO 13327 did not apply to CFTC. The other Executive Orders cited in this paper did apply to CFTC.

<sup>18</sup> Presidential Memorandum--Disposing of Unneeded Federal Real Estate, June 10, 2010 (<http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate>). This memorandum applied to CFTC.

<sup>19</sup> *Id.*

<sup>20</sup> 5 USC App. 3, § 2(1).

## Analysis

Over the life of its ten-year lease ending in 2022, the CFTC will pay an average of approximately \$117,000/month, or \$1.38 million/year.<sup>21</sup> Of the 175 offices, 35 are vacant. At 80% occupancy, this means that the CFTC is paying approximately \$280,000/year for vacant office space. Because some swing space is desirable for visitors, or to accommodate minor staffing changes, we use a 95% target for occupancy. Given this target, the CFTC's payments for vacant offices in Chicago are reduced to approximately \$210,000/year. In total, the CFTC will spend approximately \$2.1 million over ten years on empty offices in Chicago.

Because the CFTC occupies 80% of one and one-half floors, we have identified no efficient means of eliminating excess space in terms of subleasing or returning space to the landlord. However, through our interviews with staff we have identified substantial space that is under or poorly utilized. The remainder of our review focuses on recommendations to management, all of which come from staff interviews, to better utilize these areas.

We have attached two floor maps, which correspond to the 9<sup>th</sup> and 11<sup>th</sup> floors occupied by the CFTC.<sup>22</sup> The starred areas have been identified as underutilized. Because these rooms lack official usage statistics – and indeed, we do not believe tracking such figures would be an efficient use of CFTC resources – we arrived at utilization estimates by interviewing staff. We describe common areas as underutilized when our estimates indicate use is less than 20% of each day, and most of our recommendations deal with underutilized areas.<sup>23</sup> We estimate that the square footage of underutilized areas is approximately 5150 SF out of a total 37,924 SF, or 13.5% of the Chicago office.<sup>24</sup>

### **The Ninth Floor**

The ninth floor consists primarily of the Division of Enforcement. CFTC Enforcement is charged with investigating and prosecuting violations of the Commodity Exchange Act. The work they do is essential to detecting and preventing fraud on the public and securing public confidence in futures and swaps markets.

Enforcement work is sensitive and confidential, involving both confidential trade information protected under section 8 of the Commodity Exchange Act<sup>25</sup> and personally identifiable information (PII). Unfortunately, space on the ninth floor is not conducive to confidentiality; of the ten total conference areas on the ninth floor, visitors must walk through internal Enforcement

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<sup>21</sup> This estimate excludes minor costs associated with utilities.

<sup>22</sup> See Appendix 1 & 2.

<sup>23</sup> Underutilization often appears to be the result of perceived flaws with the design of a particular area. We also discuss a few areas that are sufficiently utilized, but for which staff suggested improvements during our interviews.

<sup>24</sup> Total square feet can be measured in various ways. Our figure of 37,924 SF excludes hallways and similar non-room areas. The total square footage with no exclusions would be 56,553 SF.

<sup>25</sup> 7 U.S.C. § 12(a).

space to reach nine of them.<sup>26</sup> This raises security and confidentiality concerns, and as a practical matter creates problems for Enforcement staff – who must always be on guard against visitors seeing confidential documents or hearing confidential Enforcement conversations.

Chicago CFTC Enforcement attorneys come largely from top private-sector law firms.<sup>27</sup> When they join the CFTC they take a substantial pay cut, and switch from expensive décor and a window office to a windowless inner office, often with a support pillar taking up part of a wall, and used furniture. While CFTC cannot match a private law firm in amenities, we note that the current space configuration prioritizes natural light for under-utilized conference space instead of offices. We found this unusual, and confirmed that this space configuration – locating substantial conference and common space in windowed areas – is unique not only in Chicago but throughout all offices at the CFTC including headquarters.

These were the major concerns expressed by Enforcement staff, and we share them. Our recommendations occur in the context of the specific areas discussed below.

#### Open (Non-Private) Conference Rooms with Windows

On the ninth floor, CFTC Enforcement has ten conference rooms. Seven of these conference rooms are open, with no wall or door partitioning them from the hallway and other offices.<sup>28</sup> These open-air conference rooms received, by far, the largest number of complaints from staff, and utilization estimates ranged between 5% and 20%.

Reasons provided for under-utilization included:

- Confidentiality and liability concerns with respect to sensitive Enforcement matters, since visitors from outside the CFTC might pass by these areas and see or hear confidential matters;
- The conference rooms are adjacent to one another; holding simultaneous conferences in close proximity is difficult when sound travels so freely, and it is difficult to hear phone and video conference calls;
- Holding a conference disrupts all nearby offices;
- The conference rooms have large windows, which creates glare on the video conference screens.

Of the staff interviewed, 100% agreed that some or all of the open-air conference rooms should be converted to offices. Most staff agreed that any remaining conference rooms should be walled off to address the concerns listed above. We estimate converting all of the areas to offices would create seven large window offices, while losing two cubicles that currently fill one of the conference room spaces.

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<sup>26</sup> The tenth conference room is discussed at page 7 (“Primary Conference Room (Room 9111)”).

<sup>27</sup> In the past ten years, 14 of 19 Chicago Enforcement hires have been from medium to large private sector firms.

<sup>28</sup> One of these conference rooms is currently occupied with two cubicles and utilized by interns.

We recommend that the Commission prioritize this particular space improvement. We share staff members' concerns that current space plan creates a risk that the confidentiality of Enforcement discussions may be breached,<sup>29</sup> and this is the only recommended space improvement with an associated problem of this sort. We make no recommendation as to the split between closed conference rooms and offices; however, we recommend that the Commission consider the views of Chicago Enforcement staff. Our interviews revealed a perception that the current underutilized layout was imposed over the protest of the Chicago Enforcement staff who would actually be using the space.

### Computer Room

The ninth floor has an open area the size of a window office that contains a computer that is used to anonymously view websites of potential targets for investigations. Of staff interviewed, 100% agreed that this could be more efficiently done in a closed inner office or more private cubicle. Besides creating space for another window office, it would serve to better protect the confidentiality of the research. We recommend that this area be converted into a window office, and that the computer be moved to an enclosed (and more private) area.

### Training Room

The ninth floor includes a large room with a long wall of windows, approximately 765 SF, that staff estimated they use approximately four times a year, for 15 minutes to an hour on each occasion. It is the largest room in Chicago aside from the hearing room, and contains numerous desktop computers and a projector screen for presentations. Staff estimated that they used the desktop computers for training an average of between zero and one times per year.<sup>30</sup> Staff observed that during the few presentations attended, the desktop monitors were merely in the way of the presentation on the projector screen, and that glare from the windows made the projection difficult to see.

We recommend that the training room be converted to offices, conference rooms, or a combination of offices and conference rooms. Most training at the CFTC now occurs on desktop computers in staff's individual offices, and staff indicated a preference for training on the desktop computer they use every day. To the extent training for larger groups remains necessary, in which many people must simultaneously work on computers in the same room, we recommend that laptops or desktops be set up and taken down as needed; permanent reservation of space for such limited use is inefficient.<sup>31</sup>

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<sup>29</sup> Examples of potential risks provided by staff were not limited to outsiders walking by an ongoing conference. Open-air conference rooms risk documents being inadvertently left behind, or litigation plans left on a whiteboard, or even simply a loud conversation being overheard by attorneys or market participants who are on the phone with Enforcement staff whose offices are proximate to the conference rooms.

<sup>30</sup> Staff did say that they used to attend summer training presentations in the room somewhat more frequently.

<sup>31</sup> A staff person observed that the training room is uniquely set up with additional power outlets and electricity to support multiple computers running at the same time. We do not suggest that the training room must never be used for training; rather, we recommend that the room be able to support multiple functions, so as to increase the presently low rate of utilization.

### Primary Conference Room (Room 9111)

Prior to August 2014, the 9th floor did not have a conference room that was accessible to the public without first escorting them through confidential Enforcement areas. After a visit to the Chicago Regional Office, the Executive Director approved a project to permit access to conference room 9111 without first going through internal CFTC areas. This project was completed on September 4, 2014. Staff widely viewed this as a significant improvement, and we share their assessment.

We note that immediately adjacent to the primary conference room 9111 is an area with low tables and chairs. Outside counsel and clients cannot use this space without risk of overhearing confidential CFTC Enforcement matters. Staff estimated utilization of this area as close to zero. We recommend only that the CFTC consider options for this space that do not leave it underutilized.

### Secondary Conference Room (Room 9206)

The secondary conference room is accessible only by bringing outside attorneys through internal CFTC space. Staff raised confidentiality concerns, and we share them. We recommend that the CFTC review ways in which to create additional areas accessible to outside attorneys and clients that do not permit access to internal CFTC areas. We note that there are no CFTC offices between this conference room and the elevators, and that moving or adding a door with key card access between the common areas and the conference room may help to address this issue.

Outside the second conference room is a second area that consists of a few chairs in an otherwise open space. Staff estimated its usage as close to zero. We recommend that CFTC management consult with Chicago Enforcement to determine better uses for this space.

### The "War Room"

The CFTC War Room is a small room with a center table and shelves with various hard-copy CFTC resources lining the walls. CFTC Enforcement staff largely view this room as undesirable to use for conferences; some staff mentioned poor lighting and a lack of electronic capabilities, including no ability to video conference with the other regions. We recommend that the CFTC consult with Chicago Enforcement staff to determine a way to improve utilization of this room.

### Other Ninth Floor Utilization Issues

Enforcement staff noted that visiting attorneys have no area in which to talk privately with their clients. This is primarily because only one conference room in the ninth floor Enforcement area is accessible without entering into internal CFTC areas, and no additional private area is attached to that conference room for visiting attorneys and their clients. Our interviews revealed that groups of attorneys, witnesses, and targets are literally forced to discuss their cases by the elevators or in the bathroom – each of which is hardly private. We view this as a basic and necessary functionality for litigators; and while we are as committed as the CFTC itself to investigating and prosecuting those who violate the Commodity Exchange Act, defense counsel

should still have a separate and private room to converse with a witness or target during an investigative interview. We recommend that the CFTC consider ways to provide such a space.

### **The Eleventh Floor**

The eleventh floor houses the Divisions of Market Oversight, Clearing and Risk, Swap Dealer and Intermediary Oversight, as well staff in the Office of Data and Technology. Staff on the eleventh floor had fewer overall complaints, and we identified fewer areas of conspicuous underutilization.<sup>32</sup>

#### Large Copy Room

There is an area of approximately 624 SF that contains only a single copier and some boxes of paper on the floor; these take up only a small percentage of the room's available space. It is used primarily not for its intended purpose; instead, staff use it to walk between areas without having to use a keycard. Staff unanimously agreed that this was a poor use of space. Suggestions included turning it into a conference room or offices. We note that this room is close enough to the elevator bank to serve as an external conference room – that is, one that might be accessible to visitors without having to take them through internal CFTC areas. Given the relative lack of such rooms presently, we recommend that the CFTC consider adding a conference room in this presently underutilized area.

#### Large File Room

This file room is approximately 964 SF and is, predictably, filled with files. A quick search of this room showed files with time-stamps ranging back to 1978. Interviews with staff indicated that this room is not widely used; however, it remains necessary because the CFTC continues to require some forms to be filed by fax or in hard copy.

We understand that progress has been made towards electronic filing of all documents, and we understand that further progress is planned. Nevertheless, we do not believe it is appropriate in 2015 for the CFTC to be accepting hard copies of documents in anything but extraordinary circumstances.<sup>33</sup> Presently, some forms are filed in hard copy or fax, then individually scanned and uploaded as PDFs into a CFTC system. Others are never scanned; they are simply physically stored in the file room in case they are one day needed.

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<sup>32</sup> The eleventh floor also differs from the ninth in that the divisions have generally competed for preferred offices, usually offices with windows. This competition for resources caused some angst among staff, particularly because Divisions would reserve unused window offices for years in hopes of eventually hiring, while staff labored in inner offices immediately across from the empty window office. We viewed this as an inefficient use of space. Prior to the completion of this report, the head of the Chicago Regional Office completed a review of this procedure, developed a new one, and obtained sign off from the heads of every Division with staff in the Chicago Region for a more equal and efficient way to distribute offices among the divisions.

<sup>33</sup> For instance, some victims and witnesses in cases brought by the Division of Enforcement are not represented by counsel and do not have access to the technology necessary to scan their paper documents. In such a circumstance, it is of course incumbent upon the CFTC to accept production in whatever means available to the victim or supporting witness.

In interviews with staff, there was a consensus that 100% electronic filing would be preferred. It would improve efficiency not only for collecting the data, but in processing and analyzing the data after it is collected. And more immediately relevant to this review, a pure electronic filing system would free up a large room in the Chicago Office; given the value of downtown Chicago real estate, this would result in a measurable efficiency gain. We recommend that the CFTC prioritize its move to electronic filing for all of its forms, and that it then consider alternative uses for this area. In the short term, we recommend the CFTC consider off-site storage as appropriate.

### Hearing Room

The largest room in the Chicago office is the “Hearing Room,” though in recent years it has not been used for hearings.<sup>34</sup> Presently it is used for regional events, including training, office parties, “town-hall meetings” and occasions when a high-ranking official such as the Chairman or a Commissioner addresses the entire CFTC staff in Chicago. Staff broadly agreed on the necessity of a room large enough to contain most or all Chicago staff. Were these the only uses to which the room could be put, we would disagree; setting aside so much space solely for the occasional large event is less than efficient, in our view.

However, the room can also be split into three sections with dividing walls; this permits the room to be used for conferences. The flaw in this design is that dividing walls permit sound to flow freely between rooms. Thus, more than one conference can be held simultaneously only if none of them include confidential material, or include visiting attorneys, or are particularly loud. Also, the hearing room retains the judicial bench from the period in which hearings were a regular occurrence.

Accordingly, we recommend that the CFTC improve the utility of the Hearing Room by sound-proofing the dividing walls. We also recommend that the CFTC determine its continued need for the judicial bench. Interviews with staff suggested that there was no continued need for the bench and that it occupied space that could be better used. However, the CFTC recently announced that it would begin bringing more cases before Administrative Law Judges.<sup>35</sup> Accordingly, we are uncertain as to the potential utility of the judicial bench, and recommend only that the CFTC decide the matter after careful consideration of its need for full-time Administrative Law Judges.

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<sup>34</sup> In December 2011 the CFTC eliminated its sole Administrative Law Judge (who had 20 years’ experience with adjudications under the Commodity Exchange Act) through a reduction in force. In November 2014, the Wall Street Journal reported that the CFTC plans to direct more cases to ALJs because it will save money. Eaglesham, Jean. “CFTC Turns Toward Administrative Judges.” *Wall Street Journal* 9 Nov. 2014 (<http://www.wsj.com/articles/cftc-turns-toward-administrative-judges-1415573398>). In the article, CFTC’s Director of the Division of Enforcement stated “[the] overwhelming reason for this change is resources.” *Id.* The article went on to state, “Administrative cases are typically far faster and cheaper for agencies to litigate than ones in federal court, according to officials.” *Id.*

<sup>35</sup> See fn.34.

### The Market Watch Room

The market watch room contains a computer with access to current market data via Bloomberg, as well as a number of other computers, video conference capability and a number of television news channels broadcast concurrently. The video conference equipment is permanently linked to a similar room in Washington DC, and staff from the Division of Market Oversight (“DMO”) occupy these rooms in both regions. Because the video feed between locations is on all day, few personnel outside of DMO use them. Personnel from other divisions suggested that they would use the room absent the permanent link to DMO staff in Washington DC.<sup>36</sup>

While no formal usage statistics are kept, it is rare to see more than one person in the market watch room. And that one person is almost always using the single Bloomberg machine, which could be placed anywhere. We do not believe it appropriate in this instance to comment on usage policies or to recommend specific ways to improve utilization; the underlying dynamics are too complex. Rather, we note only that the room appears underutilized and recommend that CFTC fix the problem by first determining whether DMO can efficiently utilize the room, and if not whether opening the room to other divisions would improve utilization. We further recommend that the CFTC include staff in this process.

### The “Dance Floor”

Outside of the market watch room is a windowed area with polished wood floors. The polished wood floors (and complete lack of use) are what engendered staff to call it the Dance Floor. If the CFTC’s mission were to impress visiting taxpayers with views of Chicago, this might be the way to do it. But it is not, and the space is large enough for an additional office, so we recommend the CFTC consider ways to better utilize this space.<sup>37</sup>

## **Conclusions and Recommendations**

In Chicago, compared with headquarters and the other regional offices, the CFTC is doing its best job of utilizing leased space. To be sure, 35 offices remain vacant as of the date of this review; however, occupancy rates are high enough that we can identify no way in which space could be feasibly subleased or returned to the landlord. Further, we have reason to believe that occupancy levels will improve in light of CFTC’s FY 2015 budget.

Nevertheless, we have identified approximately 5,150 SF of underutilized space, or 13.5% of the total space in the Chicago Regional Office. If the CFTC were to prioritize new offices, we believe at least ten could be created through better use of space; we believe better use of space

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<sup>36</sup> From DMO management we learned that the permanent video link is intended to help the staff of Washington DC and Chicago coordinate their work. However, the Chicago staff only rarely use the room. Broadly speaking, our interviews revealed that some Chicago staff believe that they can accomplish their work better from their individual offices. Management, on the contrary, believes it useful for Chicago staff to interact more with staff in Washington D.C. We express no view on the relative efficiency of working in the market watch room or in individual offices.

<sup>37</sup> We emphasize that we are not against 100% of common areas having a window. For instance, the lunch room on the ninth floor has one. Rather, we are against underutilized common areas having windows, especially when staff place a premium on window offices.

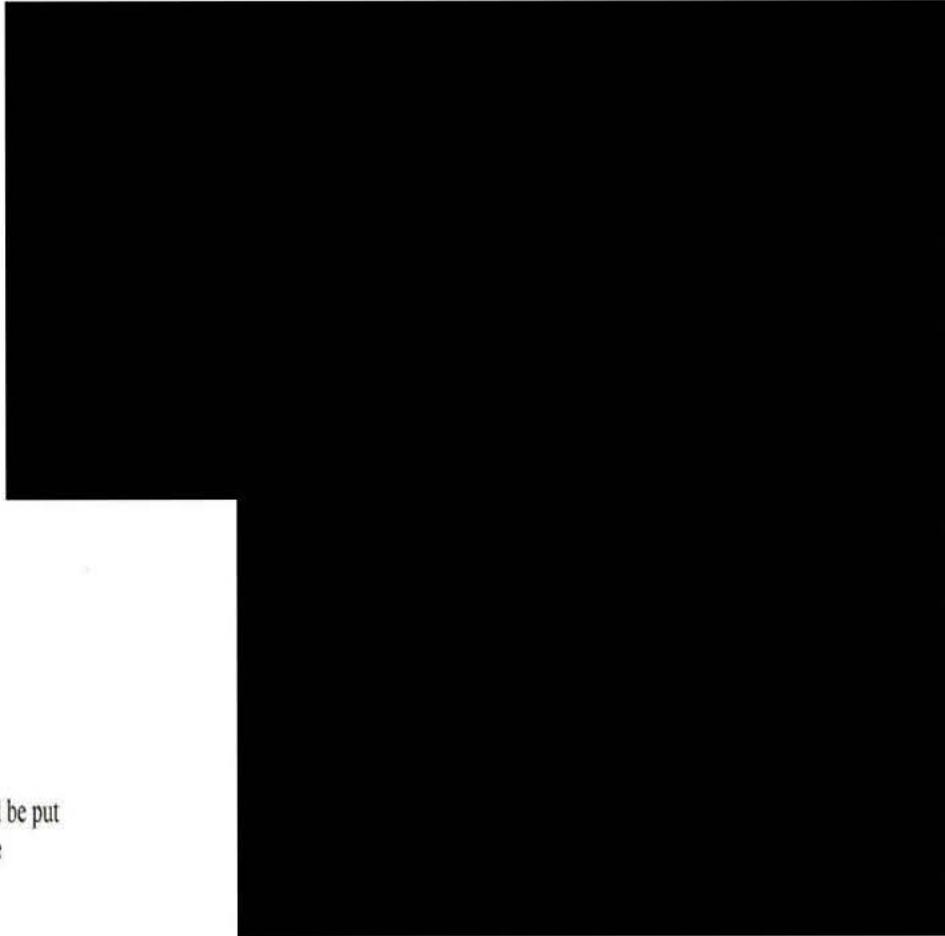
U.S. Commodity Futures Trading Commission  
Office of the Inspector General

would also improve morale for Chicago Enforcement staff. Accordingly, our primary recommendation is that the CFTC avoid expanding its lease in Chicago (or in other regions) until it has improved its utilization of the space for which it is already paying.

Our secondary recommendation is that the CFTC use this review to guide it in interviewing staff for ways to improve the utilization of its Chicago office space. We believe that poor space planning particularly impacts the Division of Enforcement. It not only makes their jobs more difficult but negatively impacts morale and risks improper disclosures of confidential Enforcement discussions and documents, as well as PII and trade data protected under section 8. It is our hope that this review will help to raise the visibility of these matters.

Finally, we note once again that Congress has appropriated an increase in funds to the CFTC for FY 2015. If a portion of those funds are used to improve the utilization of space and to hire additional staff in Chicago, we believe that the Chicago Regional Office can effectively eliminate its spending on vacant offices and remedy long-term design flaws that contribute to the underutilization of common areas. We plan to follow up on this review in six months to track the CFTC's progress.

**Appendix 1 -- Chicago 9<sup>th</sup> Floor Plan**



 Space could be put  
to better use

- Non-occupiable (23 rooms)
- Occupied (38 rooms)
- Vacant (14 rooms)

Chicago - 9  
Color Scheme: Occupancy  
Printed on Thu Feb 12  
2015

**Appendix 2 -- Chicago 11<sup>th</sup> Floor Plan**



 Space could be put  
to better use

- Non-occupiable (42 rooms)
- Occupied (99 rooms)
- Under Capacity (1 rooms)
- Vacant (19 rooms)

Chicago - 11  
Color Scheme: Occupancy  
Printed on Thu Feb 12  
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