COMMODITY FUTURES TRADING COMMISSION

Congressional Budget Review

Committees on Appropriations FY 2024

FY 2024 President's Budget

In order for the CFTC to fulfill its duty to oversee the Nation's vital derivatives markets in FY 2024, CFTC is requesting $411.0 million (M) to operate the Commission effectively and advance priority initiatives and reflects the level of resources needed for the CFTC to maintain and enhance its role as the primary regulator of the U.S. futures, swaps, and options markets.

- $411.0M Total Budget Request
  - 764 full-time equivalents (FTE)
  - $46.0M increase above the FY 2023 Enacted Budget

CFTC

FY 2024 Budget Request by Program[1,2,3,4,5]

Program	FY 2022 Actual $ (000)	FY 2023 Spend Plan $ (000)	FY 2024 Request $ (000)	Change
Salaries and Expenses	$314,384	$360,782	$404,755	$43,973
Office of the Inspector General	$3,678	$4,218	$6,245	$2,027
Annual Total	**$318,063**	**$365,000**	**$411,000**	**$46,000**
Facilities Replacement and Relocation	$62,000	$0	$0	$0
Grand Total	**$380,063**	**$365,000**	**$411,000**	**$46,000**

[1] FY 2023 amounts provided in the "Consolidated Appropriations Act, 2023," Public Law 117-328, Division E.
[2] Salaries and Expenses: The Salaries and Expenses program provides funding for all CEA-related activities. This includes funding for Federal staff salaries and benefits, leasing of facilities, information technology, travel, training, and general operations of the Commission.
[3] The Office of the Inspector General program provides audits, investigations, reviews, inspections, and other activities to evaluate the operations and programs of the Commission.
[4] The Commission considers the Salaries and Expenses and Office of the Inspector General programs to be its sole PPAs. All other budget displays by division or any other depictions are for informational purposes only.
[5] Facilities Relocation and Replication resources are a separate no-year account from the Commission's other PPAs included in the FY 2022 appropriations.

FY 2024 Budget Request

Process Summary

- FY 2024 budget request was built using the FY 2023 President's Budget as the base plus +
  - Negotiated compensation increases
  - Assumed contract inflation rates
  - Focus on Data, IT and Cyber related initiatives and funding alignment

- Funding Alignment Purpose
  - Focused effort to make the Data, IT and Cyber budgets whole
    - Historical Commission budget restraints required incremental funding procurement actions on our larger contracts.
    - New contracts for existing services require full funding procurement actions with higher than anticipated inflation costs that current budget is unable to absorb.

Request Increases by Division

- Enforcement, $1,400K
  - Supports subject matter engagement; Digital asset tools
- Data, $4,750K
  - Replace legacy data loading framework; Application Modernization – Cloud-enable legacy applications; Implement an enterprise metadata repository
- Administration - Cyber, $1,500K
  - Supports additional security integration, certification and monitoring in all architecture
- Alignment - $17,000K
  - Administration – IT($9,500K)
  - Administration – Cyber ($2,000K)
  - Data ($5,500K)
- OIG, +5 FTE

FY 2024 Budget Request by Division

	FY 2022 Actual		FY 2023 Spend Plan		FY 2024 Request		Change	
	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)
Enforcement	161	$61,273	172	$67,866	172	$70,559	0	$2,692
Market Oversight	75	$26,697	93	$34,143	93	$36,060	0	$1,918
Clearing and Risk	79	$27,948	91	$33,838	91	$34,994	0	$1,155
Market Participants	64	$22,797	73	$27,318	73	$28,395	0	$1,077
Office of the Chief Economist	19	$6,460	20	$7,052	20	$7,387	0	$334
Office of the General Counsel	57	$25,379	59	$25,993	59	$28,255	0	$2,232
Office of International Affairs	15	$5,576	20	$7,859	20	$8,661	0	$802
Division of Data	38	$33,815	43	$40,128	43	$53,269	0	$13,141
Division of Administration	126	$92,395	136	$101,217	136	$120,242	0	$19,025
Office of the Chairman & Commissioners	32	$12,044	41	$15,367	41	$16,963	0	$1,596
Office of the Inspector General	9	$3,678	11	$4,218	16	$6,245	5	$2,027
Total	**676**	**$318,063**	**759**	**$365,000**	**764**	**$411,000**	**5**	**$46,000**

CFTC

FY 2024 Administration Proposal on User Fees

Program	FY 2024 Request
Salaries and Expenses	$404,755
Office of the Inspector General	$6,245
Total Appropriation	$411,000
Offsetting Collections	($116,000)
Net Appropriation	$295,000

- Same proposal as FY 2023
- Offsetting collections remained constant, $116M, same in FY 2023 President's Budget
- Increased base to $295M from $249M in FY 2023 President's Budget

- This budget reflects the Administration's intention to propose authorizing legislation to collect user fees of $116 million to fund a portion of the Commission's activities.
- The CFTC is the only Federal financial regulator that does not derive its funding from the specialized entities it regulates. It may be appropriate for those participants to at least partially offset or contribute toward the cost of providing those programs. The Administration has proposed a user fee for the CFTC for most of the past ten+ years.
- Any such fee would be contingent upon enactment of authorizing legislation permitting the CFTC to collect fees.
- Any such market participation fees would be designed in a way that supports market access, liquidity, and the efficiency of the Nation's derivatives markets. The Commission oversees the most complex markets of any U.S. regulator, and supports whatever funding mechanism Congress deems appropriate that secures the CFTC the resources it needs.

FY 2024 President's Budget

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases), in the District of Columbia and elsewhere, $411,000,000, including not to exceed $3,000 for official reception and representation expenses, and not to exceed $25,000 for the expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, of which not less than $20,000,000 shall remain available until September 30, 2025, and of which not less than $6,245,000 shall be for expenses of the Office of the Inspector General: Provided, That notwithstanding the limitations in 31 U.S.C. 1553, amounts provided under this heading are available for the liquidation of obligations equal to current year payments on leases entered into prior to the date of enactment of this Act: Provided further, That for the purpose of recording and liquidating any lease obligations that should have been recorded and liquidated against accounts closed pursuant to 31 U.S.C. 1552, and consistent with the preceding proviso, such amounts shall be transferred to and recorded in a no-year account in the Treasury, which has been established for the sole purpose of recording adjustments for and liquidating such unpaid obligations.

FY 2024 Request	
Salaries and Expenses	$404.8M
Office of the Inspector General	$6.2M
Total	$ 411.0M

Legislative Language Summary

- Administrations request sets distribution of $295M (non-fee) for operations
- Includes a provision to conform language with authorities of other regulators for international meetings and consultations
- Includes a provision to continue with the transfer and use of the no-year fund to record and liquidate lease payments each year.
  - CFTC needs this leasing language until at least 2025.

CFTC

Appropriations Committee Questions:

User Fees
QUESTION: *How would the CFTC anticipate implementing the administration's user fee proposal? What is the vision for OMB's proposal for user fees?*

RESPONSE: The Commission has not proposed any method for collecting user fees and has not received any materials or guidance on how the Administration envisions the user fee implementation.

Cloud Providers
QUESTION: *Provide additional information about available cloud service providers.*

RESPONSE: The CFTC procurement group provided the following resources on cloud service providers. GSA has aggregated the acquisition information for Cloud Support here:
https://cic.gsa.gov/acquisitions/acquisition-resources

As you can see, there are multiple federal acquisition vehicles and service providers available for agencies to use.

In addition, the Cloud Information Center's main page provides details on how GSA can help with obtaining support:
https://cic.gsa.gov/

Procurement Model
QUESTION: *Explain why the contract model is now FFP vs. T&M and how the change took place.*

RESPONSE: The change in procurement model is one of the factors associated with the Commission's funding realignment strategy. This change does not apply to all contracts at the Commission, however it is a shift for some of our larger value contracts, such as IT support services. The shift from the cost-reimbursement or time and materials(T&M) contracts to firm fixed price (FFP) supports the Administration's expectations that agencies maximize FFP contracts and minimize the use of T&M contracts as shared in OMB Memo, M-21-11 – *Increasing Attention on Federal Contract Type Decisions* (attached). An FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This model for more operational and maintenance type contracts follows the Federal Acquisitions Regulations (FAR) guidance because it provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The timing of the shift has been a more recent occurrence due to the timing of contract recompete timelines.

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Chairman

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September 29, 2023

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Dear Director Young,

On behalf of the Commodity Futures Trading Commission (Commission or CFTC), I am pleased to transmit the Commission's budget estimate for fiscal year (FY) 2025. The CFTC is requesting a budget of $399.0 million and 725 full-time equivalents (FTE) to operate the agency effectively and support our mission in FY 2025. This request was developed with the "Fiscal Responsibility Act of 2023" in mind. The FY 2025 request is a decrease of $12 million, or 2.9%, below the FY 2024 President's Budget and includes a decrease of 39 FTE, or 5.1%, below the FY 2024 President's Budget.

This proposed budget reflects the CFTC's resource needs to maintain and enhance its role as the primary regulator of the U.S. futures, swaps, and options markets and supports the Administration's priorities and executive orders. The Commission's investments in FY 2025 will continue to prioritize efforts to deliver results for all Americans through enforcement program support, and strengthening cybersecurity capabilities and protection efforts.

It may be helpful to provide examples of priority initiatives that would be funded through this proposed budget. The proposed budget focuses on our continuous efforts to ensure optimal preparation and protections to keep our consumed markets data and Commission systems protected from emerging risks and cyber threats. The budget supports the need to ensure that our enforcement program sustains its growth trajectory and continues its proactive approach in identifying and addressing misconduct within our ever expanding and transforming markets. This is especially critical in light of growing retail participation and the need for greater protections in the digital asset space. The planned prioritization in these areas will help the CFTC fulfill its mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

These initiatives are vital to our oversight of market utilities and participants, such as swap execution facilities, market intermediaries, and commodity pool operators. The focus also facilitates our enforcement efforts, including investigating and prosecuting fraud and manipulation in digital assets.

In conclusion, the proposed budget would help the CFTC continue to build capacity to fulfill its mission as the derivatives markets evolve. Thank you for your consideration.

Sincerely,

R. Behnam

Rostin Behnam

Attachments:
A FY 2025 OMB Budget Estimate Request by Program
B. FY 2025 OMB Budget Estimate Request by Division
C. FY 2025 OMB Budget Estimate Request by Object Class
D. FY 2025 OMB Budget Estimate Justification by Division
E. FY 2025 OMB Budget Estimate Request for the Office of the Inspector General
F. FY 2025 OMB Budget Estimate CFTC Facility Lease, Replacement, and Relocation Cost Exhibits

Attachment A

FY 2025 OMB Budget Estimate Request by Program[1, 2, 3]

	FY 2023 Spend Plan $ (000)	FY 2024 President's Budget $ (000)	FY 2025 Budget Request $ (000)	Change $ (000)
Salaries and Expenses	$360,782	$404,755	$392,419	($12,335)
Office of the Inspector General	$4,218	$6,245	$6,581	$335
Annual Total	**$365,000**	**$411,000**	**$399,000**	**($12,000)**

Columns may not add due to rounding

[1] The Commission considers the Salaries and Expenses and the Office of the Inspector General programs to be its sole programs, projects, and activities (PPAs). All other budget displays by Division or any other depiction are for informational purposes only.
[2] Salaries and Expenses: The Salaries and Expenses program provides funding for all CEA-related activities. This includes funding for Federal staff salaries and benefits, leasing of facilities, travel, training, and general operations of the Commission.
[3] The Office of the Inspector General program provides audits, investigations, reviews, inspections, and other activities to evaluate the operations of the Commission.

Attachment B

FY 2025 OMB Budget Estimate Request by Division[1, 2, 3]

	FY 2023 Spend Plan		FY 2024 President's Budget		FY 2025 Budget Request		Change	
	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)	FTE	$ (000)
Enforcement	172	$67,866	172	$70,559	163	$73,997	(9)	$3,438
Market Oversight	93	$34,143	93	$36,060	88	$35,987	(5)	($74)
Clearing and Risk	91	$33,838	91	$34,994	86	$35,553	(5)	$559
Market Participants	73	$27,318	73	$28,395	69	$28,488	(4)	$93
Office of the Chief Economist	20	$7,052	20	$7,387	19	$7,993	(1)	$606
Office of the General Counsel	59	$25,993	59	$28,225	56	$28,630	(3)	$405
Office of International Affairs	20	$7,859	20	$8,661	19	$8,547	(1)	($114)
Division of Data	43	$40,128	43	$53,269	41	$42,106	(2)	($11,164)
Division of Administration	136	$101,217	136	$120,242	129	$113,449	(7)	($6,793)
Office of the Chairman & Commissioners	41	$15,367	41	$16,963	39	$17,670	(2)	$708
Office of the Inspector General	11	$4,218	16	$6,245	16	$6,581	0	$335
Total	**759**	**$365,000**	**764**	**$411,000**	**725**	**$399,000**	**(39)**	**($12,000)**

Columns may not add due to rounding

[1] The Commission considers the Salaries and Expenses and the Office of the Inspector General programs to be its sole programs, projects, and activities (PPAs). All other budget displays by Division or any other depiction are for informational purposes only.
[2] Estimates include costs for all PPAs
[3] The Office of the Inspector General estimate includes an amount for overhead.

Attachment C

FY 2025 OMB Budget Estimate Request by Object Class[1, 2]

	FY 2023 Spend Plan $ (000)	FY 2024 President's Budget $ (000)	FY 2025 Budget Request $ (000)	Change $ (000)
11.0 Personnel Compensation	$169,601	$180,130	$184,840	$4,710
12.0 Personnel Benefits	$61,135	$63,302	$65,360	$2,058
21.0 Travel and Transportation of Persons	$2,149	$2,293	$1,240	($1,053)
22.0 Transportation of Things	$52	$55	$56	$1
23.1 Rental Payments to GSA	$3,336	$3,503	$5,575	$2,072
23.2 Rental Payments to Others	$25,241	$26,541	$23,060	($3,481)
23.3 Communications, Utilities, & Misc.	$3,168	$3,388	$3,497	$109
24.0 Printing and Reproduction	$657	$690	$691	$1
25.0 Other Services	$91,272	$122,150	$105,698	($16,452)
26.0 Supplies and Materials	$2,609	$2,765	$2,657	($107)
31.0 Equipment	$5,763	$6,165	$6,323	$158
32.0 Building and Fixed Equipment	$16	$17	$2	($15)
Total	**$365,000**	**$411,000**	**$399,000**	**($12,000)**

Columns may not add due to rounding

[1] The Commission considers the Salaries and Expenses and the Office of the Inspector General programs to be its sole programs, projects, and activities (PPAs). All other budget displays by Division or any other depiction are for informational purposes only.
[2] Estimates include costs for all PPAs.

Attachment D

FY 2025 Budget Estimate Justification

The Commission is requesting $399.0 million and 725 FTE for FY 2025. In addition to maintaining and enhancing the CFTC's role as the primary regulator of derivatives markets, the Commission's request for FY 2025 will allow it to continue to invest in mission-critical functions and priorities outlined in the request.

Summary justifications are provided below by division:

Division of Enforcement

The Commission requests $74.0 million and 163 FTE for its enforcement program. The Commission remains committed to protecting the public and seeing that America's derivatives markets operate free from fraud, manipulation, and other trading abuses by being tough on those who break the rules. The Commission is on track for another robust enforcement year with many significant accomplishments.

Based on the continued growth of innovative products and practices such as digital assets and algorithmic trading, the ongoing fraud and illegal operations in these new spaces, as well as the continued occurrence of manipulative and trade practice violations, the Commission anticipates more time-intensive and inherently complex investigations to continue in coming years.

The CFTC has risen to the challenges brought by the burgeoning digital asset market by ensuring that the markets and market participants acting within its jurisdiction comply with their statutory and regulatory requirements. The CFTC uses its anti-fraud, false reporting, and anti-manipulation enforcement authority over commodity cash markets in interstate commerce to investigate and address misconduct in the digital asset space. Thus far during 2023[1], the Commission has brought 28 actions involving conduct related to digital assets, representing more than 49% of all actions filed during that period.

The novel and complex investigations undertaken by the enforcement program continues to require the use of subject matter experts in specialized areas. In addition, manipulative and trade practice schemes continue to evolve, as evidenced by recent cross market misconduct. The enforcement program will use additional resources to engage with subject matter experts, to enable the Commission to keep pace with this rapidly growing industry, including the digital asset space.

A tough enforcement program is vital to maintaining public confidence in the financial markets. The Commission uses its enforcement authorities to deter fraudulent and manipulative conduct and to ensure that markets, firms, and participants subject to the Commission's oversight meet their obligations. The Commission also maintains a robust market surveillance program and applies analytical tools and techniques including artificial intelligence and machine learning (AI/ML) to vast quantities of trade data to identify trading patterns or positions that warrant further investigative inquiry.

The Commission engages in cooperative enforcement work with domestic, state, federal, and international regulatory and criminal authorities. The information-sharing through these cooperative agreements assists in enforcing the Commodity Exchange Act (CEA), which state securities regulators and state attorney generals are statutorily authorized to do alongside the Commission. Information shared could generate enforcement actions under federal or state securities laws, commodities and derivatives laws, or other areas of law, further extending

[1] Through July 31, 2023

protections to market participants. The Commission also supports the criminal prosecution of provable, willful violations of the CEA.

Division of Market Oversight

The Commission requests $36.0 million and 88 FTE to continue its commitment to maintaining the integrity of the derivative markets, to improve market intelligence capabilities and to continue to foster open, transparent, fair, competitive and secure markets that are free of fraud and manipulation.

The Commission remains focused on fostering market integrity, fairness, and security through robust oversight and reviews of Designated Contract Markets (DCMs), Swap Execution Facilities (SEFs) and Swap Data Repositories (SDRs). Commission staff conduct examinations of these derivatives platforms' self-regulatory programs to evaluate their compliance with the core principles and Commission regulations. Effective cybersecurity and system safeguards oversight is increasingly crucial to the stability of the economy and a critical element of the examinations and requires an increase in the number and frequency of examinations conducted annually. In conducting such oversight, the Commission works to reduce the burden on entities by coordinating system safeguards examinations between Derivatives Clearing Organizations (DCOs) and one or more DCMs, SEFs or SDRs that share a common program of system safeguards analysis and oversight. The Commission also oversees foreign boards of trade in connection with trading by direct access from the U.S., and will work to automate the process that foreign boards of trade use to submit products to the Commission in order to make the products available for trading to U.S. persons.

The Commission continues to work diligently with existing and prospective DCMs and SEFs to promote responsible financial innovation and compliance with the CEA and Commission regulations. DCMs and SEFs made over 600 rule filings in FY 2023 to date. The Commission is currently analyzing several applications from new entities seeking to become designated as contract markets or to become registered as a SEF so that they may list derivatives products for trading.

The Commission will closely monitor developments concerning new and novel products such as, for example, digital assets and environmental risk products, including the substantial growth in spot markets, derivatives markets. The Commission reviews product filings received from DCMs and SEFs to evaluate compliance with the core principles and Commission regulations, including more than 630 products received in FY 2023 to date. The Commission will continue advising the Commission on any emerging risks relating to digital assets and how legislation or regulations could benefit innovation in the industry and enhance Commission oversight. In addition, the Commission will monitor developments and continue its oversight relating to event contracts as they continue to evolve to ensure that the regulation of such contracts is aligned with the CEA and designed to benefit innovation in the markets. The Commission will continue to review the evolution of environmental risk products and their listing on derivatives markets.

The Commission completes extensive analysis and provides information regarding U.S. and global derivatives markets, including with respect to commodity and financial markets, international events impacting commodity markets, and volatility and inflation in markets. The Commission is also executing an ambitious rulemaking agenda, including with respect to event markets, governance and conflicts of interest, data and reporting, and other areas. Several of these will have notices of proposed rulemaking published, with work on final rules anticipated in 2024 and 2025.

Division of Clearing and Risk

The Commission requests $35.6 million and 86 FTE for its Division that oversees DCOs. DCOs are the buyer to every seller, and the seller to every buyer, in derivatives contracts. DCOs are critical infrastructures in the global financial system; the failure of a DCO, or disruption to the functioning of a DCO, could create significant liquidity or credit problems for other financial institutions.

The Commission's goal in overseeing DCOs is to identify and address issues that may affect a DCO's ability to manage, control, and monitor risk. DCR carries out the Commission's oversight of DCOs through daily surveillance of DCO risk data, review of DCO rule changes, regular examinations of DCOs, and the development of regulations applicable to DCOs.

In FY 2023, the Commission approved several rule proposals and final rules put forth by DCR concerning DCO governance, reporting, and recovery and resolution. The Commission also began or continued reviewing six applications for DCO registration, which, if ultimately approved, would increase the number of registered DCOs subject to Commission oversight from 15 to 21. The Commission continued to examine DCOs, including its annual examinations of the two DCOs designated as systemically important by the Financial Stability Oversight Council.

Market Participants Division

The Commission requests $28.5 million and 69 FTE to maintain effective oversight of the registration and compliance of swap and futures market participants and swap and futures industry self-regulatory organizations, including the Chicago Mercantile Exchange and the National Futures Association (NFA).

The Commission oversees thousands of market participants, including retail foreign exchange dealers and futures commission merchants, who collectively hold hundreds of billions in customer funds; major swap participants and swap dealers, who form the core of the U.S. regulated swaps markets and who collectively transact in hundreds of trillions in notional value swap contracts annually; introducing brokers; and commodity pool operators and commodity trading advisors. The Commission directs its registration and compliance resources to provide these entities with critical policy and regulatory guidance and to design rules, standards, and reporting requirements that keep pace with the needs of the evolving marketplace. The Commission further directs its resources to oversee NFA as it implements its delegated registration and compliance authority over market participants. Taken as a whole, the Commission's use of its registration and compliance resources serves to foster the development and integrity of the commodity derivatives markets that are so vital to the efficient hedging of risk.

Office of the Chief Economist

The Commission requests $8.0 million and 19 FTE to maintain its core economic expertise in order to conduct in-depth studies of economic issues affecting all areas of Commission and regulatory interest.

The Commission's work requires top-quality researchers with a strong understanding of market participants and the markets as a whole. The mission of the Office of the Chief Economist is to conduct rigorous economic and econometric analysis of derivatives markets; to foster market transparency by disseminating its research to market participants and the general public, and to partner with other CFTC divisions and offices to integrate economic reasoning and data analysis into Commission policy and cost-benefit considerations. The Office will continue its program of partnerships with academics in relevant fields and encourage academics to work on areas of interest to the Commission. The Commission's economic capabilities continue to expand, along with improvements in data quality and computing capacity, allowing the CFTC to measure and monitor risk and conduct robust quantitative analysis of liquidity, volatility, market quality, transaction costs, and other aspects of derivatives market activity.

Office of the General Counsel

The Commission requests $28.6 million and 56 FTE for the Office of the General Counsel (OGC). OGC provides legal representation for the Commission in federal courts and before administrative bodies in litigation, including appeals of enforcement actions, challenges to CFTC actions, derivatives industry bankruptcies, employment lawsuits, and other administrative matters. The Commission's OGC also provides reviews of all rulemakings and staff interpretive and no-action letters to ensure consistency and compliance with the requirements of the CEA. OGC houses the Freedom of Information Act program, the CFTC's Ethics program, the Secretariat, Privacy, Records, Library, and the CFTC's E-discovery program.

Office of International Affairs

The Commission requests $8.5 million and 19 FTE to continue and enhance critical work with our international counterparts, shape international policy to advance or protect U.S. and CFTC interests, and participate in regulatory bodies to ensure that the rules and regulations of foreign regulators and international standard setters are consistent with the Commission's oversight of derivatives markets.

The Commission's regulated markets are by nature global. As our international counterparts advance their equities in international settings, this office is critical to ensuring that international policies remain appropriate for the priorities of the U.S. and Commission. Through this office, the Commission engages in the leadership of international bodies such as the International Organization of Securities Commissions (IOSCO). IOSCO's joint work with the Committee on Payments and Market Infrastructures (CPMI-IOSCO), the work of IOSCO's Sustainable Finance Task Force on carbon markets, the Financial Stability Board (FSB), and the CFTC-pioneered Financial Stability Engagement Group to interface between IOSCO and the FSB. This office's active participation in an array of policy committees and task forces in these forums continues to advance key CFTC priorities and equities as the international regulatory landscape continues to evolve. The Commission continues to expand its international portfolio giving CFTC an even stronger voice building on its vast global footprint.

As the CFTC's foreign regulatory counterparts seek to shape international standards and policy, while concurrently implementing swaps reforms in their markets, it is essential that the Commission ensures that these developments are appropriate for the U.S. derivatives markets and our rules do not conflict with, or fragment, the global marketplace. Through this office, the CFTC maintains a sophisticated understanding of foreign regulatory developments and processes to carry out successful outcomes-based regulatory coordination. In 2023, this office successfully engaged with the Bank of England as the UK develops its framework on non-UK clearinghouses operating in the UK, fostering regulatory cooperation that results in deferential supervision of U.S. clearinghouses. This office additionally negotiated successful outcomes in IOSCO's development of baseline standards for crypto-asset markets, international policy concerning clearinghouse margin procyclicality and transparency, and operational resilience. International policy development in these areas continues to expand at a rapid and active pace. Furthermore, this office leads the Commission's negotiation of cross-border supervisory cooperation agreements and robust technical assistance to emerging market authorities. Moreover, with the facilitation provided by this office, the Commission will continue to coordinate with counterparts in enforcement cooperation, supervisory cooperation, and policy development.

Division of Administration

The Commission requests $113.4 million and 129 FTE for its administrative operations. The Division of Administration directs the internal management of the Commission's business, including personnel, financial, technological, security, and strategic, operational resources.

The Division is a key partner in the Commission's efforts to promote excellence through executive direction and leadership, organizational and individual performance management, and effective management of resources. Efforts to achieve these objectives will result in better-informed decision-making regarding the management and investment of the Commission's resources.

The FY 2025 budget request focuses on strengthening the Commission's fiduciary posture by executing and evaluating opportunities for program and process improvements. In addition, the request recognizes the need to keep overhead costs as low as possible while making careful investments to continue efficiency, innovation, and effectiveness in its operations and management.

The Commission aims to further reduce its reliance on physical data centers and increase the utilization of cloud technologies to improve availability and reliance of the Commission's technology infrastructure. In FY 2023, the Commission completed the lift and shift phase of the cloud migration project. Currently over 90% of the commission's infrastructure resides and operates from cloud environments. In FY 2024 and FY 2025, the Commission will analyze and implement improvements on functionality and reliability so that IT applications and systems function optimally in a cloud environment. In addition to the actions to be taken in the cloud to optimize migrated systems, some legacy applications may not be migrated to the cloud due to the obsolescence of their base technologies. The Commission continues to modernize these applications and their associated hardware to migrate all our systems to the cloud.

In accordance with Executive Order 14028, Improving the Nation's Cyber Security, the CFTC's Division of Administration is continuing to modernize and address security vulnerabilities in the Commission's IT infrastructure. CFTC is planning and implementing multiple programs to support the cybersecurity focus areas outlined in Executive Orders, OMB mandates and CISA Directives:

1. Continue to achieve progress in zero trust deployments as outlined in OMB Memorandum M-22-09, Moving the U.S. Government Toward Zero Trust Cybersecurity Principles.
2. Establishing a Data Protection Program, including data loss prevention technologies and processes to manage access to sensitive data and ensure it is tightly controlled and monitored.
3. Advance the Insider Risk Program implementation to ensure compliance with E.O. 13587 and applicable standards and guidelines relating to National Insider Threat Policy and Minimum Standards.
4. Extend the Enterprise Security Operations Center (eSOC) coverage. This will enhance CFTC's network detection and monitoring capabilities.
5. Leverage advanced AI/ML for eSOC to enhance CFTC's ability to automate and augment threat detection and response.
6. Enhance the Cybersecurity Awareness and Cyber Workforce Continuous Education.

The Commission will continue to improve compliance with the Federal Information Security Management Act by maintaining a comprehensive control inheritance model to enhance security while reducing the effort required to secure CFTC systems. The Commission will also continue to adhere to DHS CISA's Cybersecurity Binding Operational and Emergency Directives and any related OMB security mandates supporting the protection of sensitive market participants and Commission's data.

Division of Data

The Commission requests $42.1 million and 41 FTE for the Division of Data, headed by the Chief Data Officer and responsible for the Commission's data strategy, enterprise data catalog, analytics systems, and AI efforts.

The CFTC has begun leveraging its digital transformation to use the new tools available in cloud services offerings. Migration to the cloud allows the Commission to build out AI efforts that take in market data and analyze it more quickly, allowing for faster turnaround of cases and preventing further market manipulation. However, just moving systems to the cloud through "lift and shift" is not enough; applications and architecture to fully utilize the new service offerings need to continue to be modernized. The Commission's regulatory and enforcement programs are predicated on gathering, maintaining, understanding, and analyzing data in the most effective and efficient manner. Modernization must continue in order to operate in the new cloud services paradigm as well as to use new functionality such as AI.

AI techniques like machine learning and pattern recognition helps find bad actors in our trading environment. Techniques such as natural language processing can ingest massive numbers of documents and produce only the information the analyst needs. AI can help identify data in legacy systems and move the analysis closer to where and when the data is stored, which reduces the time from analysis to action.

Office of the Chairman and Commissioners

The CFTC requests $17.7 million and 39 FTE for the Commission's leadership function. This request includes 23 FTE for the immediate Office of the Chairman, inclusive of the Office of Legislative and Interagency Affairs, Office of Public Affairs, Office of Minority and Women Inclusion, and Office of Technology and Innovation, and 16 FTE to support the other four Commissioners. The Office of the Chairman and the Commissioners provides executive direction through the development and adoption of Commission policy that implements and enforces the CEA and other statutes, regulations, and rules. The request also provides funding for official reception and representation purposes and Commission Advisory Committees.

Attachment E

FY 2025 OMB Budget Estimate Request
Office of the Inspector General

Budget Year	Total Budget	OIG Requested Budget	Estimated Overhead	Training Budget Estimate	CIGIE	FTE
FY 2024	$6,245,244	$5,532,000	$913,244	$100,000	$22,000	16
FY 2025	$6,580,562	$5,642,000	$938,562	$104,000	$26,000	16

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110

August 11, 2023

TO: Rostin Behnam, Chairman
Kristin Johnson, Commissioner
Christy Goldsmith Romero, Commissioner
Summer Mersinger, Commissioner
Caroline Pham, Commissioner

FROM: Dr. Brett M. Baker
Acting Inspector General

SUBJECT: FY 2025 Office of Inspector General (OIG) Budget

In accordance with the Inspector General Act of 1978, as amended (IG Act), I am requesting the OIG Fiscal Year (FY) 2025 budget to operate my office. Through audits, investigations, reviews, inspections, and other projects, OIG assists in improving the economy, efficiency, and effectiveness of operations, as well as in detecting and preventing fraud, waste, and mismanagement. For FY 2025 I am requesting $5,642,000, representing an incremental increase (2%) over our requested FY 2024 operating budget ($5,532,000) to cover anticipated cost increases.

Our FY 2024 request increased OIG staff full-time equivalents (FTE) from 11 to 16. Staffing at that level is crucial to building and improving a compliant OIG that performs all work to a standard including quality assurance. Our FY 2025 request will support salaries/benefits for 16 FTE and consultants, as well as audit and service contracts. Of this amount, $104,000 is budgeted for training purposes and will satisfy all training requirements. Finally, we include an estimated OIG contribution to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), as the IG Act requires.

The FY 2025 OIG budget amounts found on the next page are proposed by the OIG. CFTC will calculate and add overhead after receipt of this request, prior to transmittal to OMB. This process reserves to the Agency maximum flexibility to manage Agency-wide overhead, while ensuring compliance with the Inspector General Act. We respectfully request that Appropriations language or commentary limits **CFTC overhead to the amount determined by Congress, and increases the OIG FY 2024 total budget request reported here in that amount** (and is not subtracted from it).

Attachment

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110

Attachment

OIG FY2025 Budget Request

Salaries and Benefits (16 FTE and consultants)	$4,918,000
Travel	$104,000
Training	$104,000
Contract Audits	$414,000
Contract Services	$76,000
CIGIE Contribution	$26,000
Total Direct OIG Costs	**$5,642,000**
CFTC-wide overhead (OIG portion) TO BE ADDED	$-------------
TOTAL OIG FY 2025 BUDGET REQUEST ($5,642,000 plus overhead)	**$-------------**
FTE	**16**

FY 2025 OMB Budget Estimate Request
CFTC Facility Lease, Replacement, and Relocation Cost Exhibits

CFTC maintains a facility portfolio that includes four locations: the Washington D.C. Headquarters office and three regional offices in Kansas City, Chicago, and New York. The Commission currently maintains a sublease for its alternate facility site with the Federal Reserve Board (FRB), which supports the Continuity of Operations (COOP).

1) Table 1: CFTC Rent Costs by Location – provides an overview of CFTC's estimated rent costs under collapsed and current CFTC administered leases with the associated lease expiration dates and estimated GSA assignment annual rent costs.
2) Table 2: CFTC Facility Relocation and Replication Costs by Location – provides an overview of CFTC's actual and estimated costs of the relocation and replication efforts by location and fiscal year.

The Commission signed Occupancy Agreements with GSA for replacement facility locations in Kansas City, Chicago, and New York in FY 2021. In FY 2021, the Kansas City CFTC lease collapsed and staff are working in the GSA assigned space. In FY 2022, the New York and Chicago CFTC leases collapsed and staff are now working in the GSA assigned spaces. The Washington, D.C. CFTC lease is the scheduled to expire in FY 2025.

Table 1: CFTC Facility Rent Costs by Location[1, 2, 3]

CFTC Facility Rent Costs by Location								
		FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Facility Location	**Lease Expiration**	**Estimate**	**Estimate**	**Estimate (BY)**	**Estimate (BY+1)**	**Estimate (BY+2)**	**Estimate (BY+3)**
Kansas City							
GSA Assignment		$309	$313	$316	$319	$322	$325
Chicago							
GSA Assignment		$1,587	$1,625	$1,633	$1,642	$1,651	$1,660
New York							
GSA Assignment		$2,068	$2,072	$2,083	$2,094	$2,105	$2,116
Washington, D.C.							
Legacy CFTC Lease	September 2025	$20,657	$21,277	$21,915	$0	$0	$0
GSA Assignment		$0	$0	$1,543	$9,255	$9,255	$9,255
	Washington D.C. Sub Total	$20,657	$21,277	$23,458	$9,255	$9,255	$9,255
COOP Site		$232	$45	$0	$0	$0	$0
	Grand Total	**$24,853**	**$25,332**	**$27,490**	**$13,310**	**$13,333**	**$13,356**

[1] The annualized rent costs for the locations are included in CFTC's annual funding request, is provided as reference information only.
[2] FY 2025 requires a duplicate lease payment during the relocation phase of the project.
[3] The COOP sublease with the FRB facility ends 12/31/2023. The new COOP location will be in the New York location with no additional leasing costs.

The CFTC received $31.0 million in the FY 2020 appropriation as a separate line-item, no-year appropriation to support the three regional facility relocation and replication. The CFTC also received $62.0 million in the FY 2022 appropriation as a separate line-item, no-year appropriation to support the headquarters facility relocation and replication. Table 2 displays actual and estimated costs for the items payable to GSA and other sources for alteration, relocation and replacement equipment for the new locations, such as IT infrastructure and telecommunications equipment, and furniture and personal property for CFTC's facility portfolio. These costs are necessary to provide complete, habitable, and operational spaces for the Commission's occupancy.

Table 2: CFTC Facility Relocation and Replication Costs by Location

Location	FY 2020 Actuals	FY 2021 Actuals	FY 2022 Actuals	FY 2023 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2026 Estimate	Total
Kansas City	$1,776,321	$1,616,774	$0	$0	$0	$0	$0	$3,393,095
Chicago	$1,254,898	$7,902,257	$864,638	$28,664	$0	$0	$0	$10,050,457
New York	$7,018,886	$1,555,403	$1,394,685	$50,000	$0	$0	$0	$10,018,974
All Regional Locations	$392,113	$442,002	$744,161	$0	$0	$0	$0	$1,578,276
Unobligated Regional	$0	$0	$0	$0	$0	$0	$0	$5,959,198
Washington, D.C.	$0	$0	$890,342	$317,592	$54,539,658	$5,782,408	$470,000	$62,000,000
Total	**$10,442,218**	**$11,516,436**	**$3,893,826**	**$396,256**	**$54,539,658**	**$5,782,408**	**$470,000**	**$90,000,000**

U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

May 1, 2023

BY ELECTRONIC DELIVERY

The Honorable Glenn Thompson
Chairman
House Committee on Agriculture
400 Cannon House Office Building
Washington DC 20510

The Honorable David Scott
Ranking Member
House Committee on Agriculture
468 Cannon House Office Building
Washington DC 20510

The Honorable Kay Granger
Chairwoman
House Committee on Appropriations
2134 Rayburn House Office Building
Washington DC 20510

The Honorable Rosa DeLauro
Ranking Member
House Committee on Appropriations
2221 Rayburn House Office Building
Washington DC 20510

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Thompson, Chairwoman Granger, and Chairman Comer, and Ranking Members Scott, DeLauro, and Raskin:

Pursuant to Section 8G(e) of the Inspector General Act of 1978, 5 U.S.C. App. 3 §§ 1 *et seq.*, as amended by the Securing Inspector General Independence Act of 2022, Public Law 117-263 (enacted December 23, 2022), Section 5202(a)(2), the Commodity Futures Trading Commission ("CFTC" or "Commission") hereby provides notice that it has voted to place A. Roy Lavik, the CFTC's Inspector General ("IG Lavik"), on non-duty status effective Wednesday, May 17, 2023. The Commission voted 3-0 with two recusals (Chairman Rostin Behnam and Commissioner Caroline Pham) to place IG Lavik on non-duty status, thus satisfying the statutory requirement of a 2/3 Commission vote in the affirmative in order to do so. I am also sending a similar letter to your counterparts in the Senate as required by law.

The Commission's determination was based on a report issued on February 13, 2023, by the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency ("Integrity

Committee"). The Integrity Committee found, by a preponderance of the evidence, that IG Lavik engaged in substantial misconduct by wrongfully disclosing whistleblower identities, violating CFTC Information Technology security policy, wasting more than $165,000 in government funds by hiring a consultant who did minimal work, grossly mismanaging the CFTC's Office of the Inspector General by flagrantly disregarding well-established oversight standards, and engaging in conduct undermining the independence and integrity reasonably expected of an IG by demeaning and disparaging CFTC employees. On those bases, the Integrity Committee recommended "appropriate disciplinary action for IG Lavik—up to and including removal."

Attached is a copy of the Integrity Committee's February 13, 2023 letter summarizing its findings. On the basis of those findings, the Commission believes it is necessary to place IG Lavik on non-duty status to protect the Government's interests in the proper functioning of the CFTC's Office of the Inspector General and preservation of taxpayer resources, pending the Commission's consideration of appropriate action for IG Lavik. Simultaneously, the Commission has voted to appoint Dr. Brett M. Baker, Inspector General for the National Archives and Records Administration, as the CFTC's Acting Inspector General effective at the time IG Lavik is placed on non-duty status.

Should you have any questions regarding this interim measure, please feel free to contact the Commission for additional information. Thank you for your continued support of the CFTC.

On behalf of the Commission:

Commissioner Kristin N. Johnson

Commissioner Christy Goldsmith Romero

Commissioner Summer K. Mersinger

Attachment

U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

Rostin Behnam
Chairman

(202) 418-5575
CFTCChairman@CFTC.gov

February 13, 2023

The Honorable Patty Murray
Chairwoman
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Kay Granger
Chairwoman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Susan Collins
Vice Chairwoman
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Rosa DeLauro
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20510

Dear Chairwoman Murray, Vice Chairwoman Collins, Chairwoman Granger, and Ranking Member DeLauro:

In accordance with Section 608, Division E of the *Consolidated Appropriations Act, 2023,* Public Law 117-328, the Commodity Futures Trading Commission (CFTC) submits its FY 2023 spending plan based on the FY 2023 appropriation of $365.0 million, of which not less than $4.218 million is designated for the Office of the Inspector General. The plan supports an estimated 759 FTE. The following chart provides information about CFTC annual spending priorities by program.

FY 2023 ($000)			
Program	**President's Budget Request**	**Congressional Adjustments**	**Enacted Amount**
Salaries and Expenses	$360,433	$349	$360,782
Office of the Inspector General	4,567	(349)	4,218
Total	**$365,000**	**$0**	**$365,000**

The Salaries and Expenses program provides funding for all Commodity Exchange Act (CEA) related activities, including funding for federal staff salaries and benefits, leasing of facilities, travel, training, information technology, and general operations of the Commission.

The Office of the Inspector General program provides audits, investigations, reviews, inspections, and other activities to evaluate the operations and programs of the Commission. Such activities assist in improving the efficiency and effectiveness of operations, as well as detecting and preventing fraud, waste, and mismanagement.

The attached exhibits provide additional insight into how CFTC is planning the FY 2023 annual funds to conduct its work for the Salaries & Expenses and Inspector General programs. The CFTC considers the Salaries & Expenses, and Office of the Inspector General programs to be its sole annual programs, projects and activities (PPAs).

Should you have any questions about the details of this plan, please contact Ann Wright (202-418-5594; awright@cftc.gov).

Sincerely,

R. Behnam

Rostin Behnam

cc:

The Honorable Chris Van Hollen
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Bill Hagerty
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Andy Harris
Chairman
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Sanford D. Bishop, Jr.
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Exhibit A: CFTC FY 2023 Estimated Obligations by Object Class

Object Class	FY 2023 President's Budget Request	FY 2023 Enacted
	($ millions)	
Personnel Compensation	$169.86	$169.60
Personnel Benefits	61.22	61.13
Travel and Transportation of Persons	2.15	2.15
Transportation of Things	0.05	0.05
Leasing, Rent, Communication, and Utilities	31.75	31.75
Printing and Reproduction	0.66	0.66
Other Services	90.92	91.27
Supplies and Materials	2.61	2.61
Equipment	5.76	5.76
Building and Fixed Equipment	0.02	0.02
Total	**$365.00**	**$365.00**

Exhibit B: CFTC FY 2023 Estimated Staffing

The Projected Headcount in the table below uses current staffing, planned hiring, and assumed attrition by division to calculate the year-end values. Actual attrition may vary by division. The Commission expects to enter FY 2024 burning FTE at an annualized rate equal to the projected headcount shown below.

Federal Staff by Organization	Current Headcount	Projected Headcount	09/30/2023 Projected FTE
Administration	125	136	136
Chief Economist	19	20	20
Clearing & Risk	84	91	91
Data	32	43	43
Enforcement	158	172	172
International Affairs	17	20	20
Inspector General	7	11	11
General Counsel	56	59	59
Market Oversight	74	93	93
Market Participants	65	73	73
Office of the Chairman & Commissioners	40	41	41
Total	**677**	**759**	**759**

Current On-Board Contractors by Organization*	FY 2023 Estimate
Administration	231
Chief Economist	11
Clearing & Risk	3
Data	72
Enforcement	6
International Affairs	0
Inspector General	5
General Counsel	4
Market Oversight	1
Market Participants	0
Office of the Chairman & Commissioners	4
Total	**337**

*Due to the nature of contracted services, the on-board contractor count is based on the number of cleared contractors as of January 3, 2023. Cleared contractors provide a variety of services, and should not be assumed to work full-time at the Commission.

U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Rostin Behnam
Chairman

(202)418-5575
CFTCChairman@cftc.gov

August 10, 2023

The Honorable Patty Murray
Chairwoman
Committee on Appropriations
U.S. Senate
Washington, D. C. 20510

The Honorable Susan Collins
Vice Chairwoman
Committee on Appropriations
U.S. Senate
Washington, D. C. 20510

The Honorable Kay Granger
Chairwoman
Committee on Appropriations
U.S. House of Representatives
Washington, D. C. 20515

The Honorable Rosa DeLauro
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20510

Dear Chairwoman Murray, Vice Chairwoman Collins, Chairwoman Granger, and Ranking Member DeLauro:

Consistent with the requirements set forth in the Consolidated Appropriations Act, 2023 (Division E of Public Law 117-328, Sec. 634), the Commodity Futures Trading Commission (CFTC) submits the FY 2023 quarterly budget report for the quarter beginning April 1, 2023 and ending June 30, 2023.

Treasury Symbol	Fund Name	Total FY23 Q3 Obligations[1]
339-2223-1400	Salaries and Expenses Multi-Year	347,915.75
339-23-1400	Salaries and Expenses Annual	86,564,315.49
339-23-1400	Salaries and Expenses – Annual IG	1,313,009.54
339-23-1400	Salaries and Expenses – Reimbursable	539.12
339-2324-1400	Salaries and Expenses Multi-Year	972,165.96
339-X-1402	Salaries and Expenses No-Year – Lease Obligations	0.00
95-X-1400	Salaries and Expenses No-Year	30,718.82
95-X-1400	Salaries and Expenses No-Year DC	296,377.58
95-X-4334	Whistleblower Expenses	1,307,250.47
95-X-4334	Consumer Education Expenses	558,168.86
95-X-4334	Whistleblower Awards	625,000.00
	Total	**$92,015,461.59**

[1] Obligation amounts do not include commitments

If you have any questions regarding this matter, I would be pleased to discuss them with you, or you may contact Andrea Busch, Acting Budget Officer, at 202-418-5052, or abusch@cftc.gov.

Sincerely,

R. Behnam

Rostin Behnam

cc:

The Honorable Chris Van Hollen
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. Senate
Washington, D. C. 20510

The Honorable Bill Hagerty
Ranking Member
Subcommittee on Financial Services
and General Government
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The Honorable Andy Harris
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Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Sanford D. Bishop, Jr.
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

COMMODITY FUTURES TRADING COMMISSION
QUESTIONS FOR THE RECORD
HOUSE APPROPRIATIONS AGRICULTURE SUBCOMMITTEE HEARING

The Honorable Rostin Behnam, Chairman, Commodity Futures Trading Commission, Washington, D.C.

March 28, 2023

The following question by
Chairman Andy Harris, Maryland

1. Are your Cloud migration contracts long-term contracts?

Response:
The intent of using the phrase long-term contracts is that we have existing, essential multi-year service contracts in place. The majority of the CFTC IT contracts are multi-year contracts, including our cloud service contract. A multi-year contract is made up of a Base Year + Option Years to be funded each fiscal year.

To specifically expand on cloud services in relation to costs, a major factor for the costs associated with our cloud services are linked to a cost model associated with the data storage for our market data intake and CPU utilization for our data analysis and querying. Due to the nature of our business, working with large volumes of data will not be able to adjust down to align with our budget levels, therefore we would not be able slow many of our service contracts under a reduced budget.

2. Please provide additional information related to the Senate Agriculture Committee testimony statement on why the CFTC would request the authority to "assess the diversity policies and practices of entities regulated by the agency". Why would the CFTC delve into regulated entities diversity policies?

Response:

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), 12 U.S.C. § 5452 (2010) required most federal financial regulatory agencies to create an Office of Minority and Women Inclusion ("OMWI"). The CFTC is the only federal financial regulatory agency that was not required by the Dodd-Frank Act to establish an OMWI. Although not covered by the Dodd-Frank Act, the CFTC established its own OMWI and is seeking statutory authorization of its OMWI on par with all other federal financial regulatory agencies. Among other responsibilities, Section 342(b)(2)(C) requires each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the agency. Following a series of roundtables and a notice and comment period in the Federal Register (78 FR 64052 and 77792), in 2015 six of the federal financial regulatory agencies covered by Section 342 of the Dodd-Frank Act issued a Final Interagency Policy Statement establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities they Regulate ("Joint Standards") (80 FR 33016 (June 10, 2015)).

The Joint Standards provide a framework for regulated entities of each agency to voluntarily assess their diversity policies and practices annually in several key areas, including: 1) organizational commitment to diversity; 2) workforce profile and employment practices; 3) procurement and business practices- supplier diversity; and 4) practices to promote transparency of organizational diversity and inclusion. The Joint Standards envision regulated entities would provide information pertaining to their annual self-assessments to the OMWI Director of their primary federal financial regulator. Per Section 342(b)(1)(C), agencies use neither supervisory nor examination authority to enforce the assessment provisions of the statute. The development of standards per Section 342 and submission of regulated entities self-assessments strengthen the CFTC's ability to advance and promote diversity and inclusion across the financial industry by allowing the CFTC to monitor trends and highlight best practices, as does every other federal financial regulatory agency.

The following question by:
Representative Hinson, Iowa

3. Provide information on any cooperation between the CFTC and DHS CISA and what is being doing to be proactive on cybersecurity threats?

Response:

The Commission works collaboratively with other agencies and partners on sharing threat intelligence, Indicators of Compromise (IOC) and Indicators of Threat (IOT). In the event the Commission experiences a cyber-attack, CFTC has the right agreements in place to work with DHA CISA and other partners to respond and mitigate the risk of cyber-attacks to the extent possible. CFTC proactively works with DHS CISA on cyber threats by subscribing to the Protective Domain Name System (DNS) Service, a new service offering from DHS CISA to replace the Einstein 3 Accelerated (E3A) sink holing capability. The service provides the Commission with increased DNS protections against malicious domains and enhanced incident detection and response capabilities. Additionally, CFTC continues to leverage the DHS CISA E3A protective email capability until it is replaced or decommissioned. CFTC has a deep working relationship with the DHS CISA Joint Cyber Defense Collaborative (JCDC) to better understand the Cyber Threat Intelligence (CTI) offering.

The CFTC security team receives cyber hygiene and threat intelligence reports frequently as well as participates in a weekly meeting with DHS-CISA. The reports and meetings keep the team up to date on the cyber security threat landscape as a whole. The CFTC continually tracks, follows, and implements security controls set forth by CISA's Binding

Operational Directive (BOD) 22-01 – Reducing Significant Risk of Known Exploited Vulnerabilities.

Additionally, the CFTC participates in the DHS-CISA Continuous Diagnostics and Mitigation (CDM) Program. The CDM Program provides cybersecurity tools, integration services, and dashboards to participating agencies to support them in improving their respective security posture and take proactive measures to mitigate against cyber-attacks and reduce the attack surface. Program objectives are to:

- Reduce agency threat surface
- Increase visibility into the federal cybersecurity posture
- Improve federal cybersecurity response capabilities
- Streamline Federal Information Security Modernization Act (FISMA) reporting

To be proactive on cybersecurity threats, the Commission has implemented a combination of security technical and management controls that are deemed effective in protecting the Commission from most cyber-attacks. We have modernized and continue to advance our cyber defensive tools to automate and manage alerts and are enhancing our technical and management security controls. In addition to having robust technical controls in place to identify, detect, monitor and respond to cyber threats, the Commission has implemented a repeatable user awareness training program to educate our staff on phishing and ransomware attacks.

The proposed budget cuts to align FY 2024 with FY 2022 levels would significantly impact the Commodity Futures Trading Commission's (CFTC or Commission) ability to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets. Funding would be cut $91M, or 22%, from the CFTC's FY 2024 request that identified a $411M requirement to achieve its mission.

Staffing

A $91M cut would reduce planned staffing levels by 286 FTE – *i.e.*, from the requested 764 to 478 FTE. The Commission has not had staffing levels below 500 FTE since FY 2009 – which was prior to the CFTC incorporating its extensive new statutory and regulatory responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Staffing reductions of this magnitude would reduce mission effectiveness and readiness across the Commission. For example, the CFTC would experience the following non-exhaustive list of mission-impacting consequences:

- Degraded ability to protect the American public from fraud and market manipulation related to the derivative instruments under the Commission's jurisdiction
- Severely curtail our ability to respond to requests/applications from market participants and stakeholders on registrations, orders, no action letters, compromising the US position as a desirable location do business
- Reduced technological capabilities to identify threats to the financial sector
- Reduced enforcement and regulation of derivative markets
- Reduced oversight over derivative markets to ensure that compliance obligations are met by regulated entities and market participants
- Suspended IT modernization efforts: migration to the cloud and Data Programs
- Reduced modernization efforts that keep pace with digitized market innovations and capabilities
- Degraded ability to identify and protect against emergent cybersecurity threats

Because the CFTC is a relatively small agency, the reductions in staffing could not be contained to a particular section of the agency. All divisions and offices would lose resources. This would lead to a significant limitation on the CFTC's ability to quickly and comprehensively identify and respond appropriately to market problems, including, but not limited to, pursuing enforcement efforts when necessary. Additionally, a reduction of resources of this magnitude for even a single fiscal year would take the Commission years from which to recover – both to rehire essential staff and rebuild operational capability.

FY 2023 and FY 2024 Investments

The FY 2023 and FY 2024 budget requests included $33M for multiple investments in our IT, Data, and Cyber programs. These areas ensure that our staff can perform their work in a secure, stable, and efficient manner. Cutting or pausing these investments could result in reducing the cut of up to 104 FTE from the 286 identified above. However, budget cuts to these investments would threaten the CFTC's ability to maintain pace with evolutions in the financial markets, protect against cyber threats, and optimize current systems that would provide long-term savings. Staff could be preserved, but may not have the tools required to be mission effective.

Key FY 2023 and FY 2024 Investments:

Zero Trust Architecture	Implement Data Virtualization	Modernization to Cloud-Enable Legacy Applications
Data Leak Protection	Procure and Implement New Visualization Tool	Replace Legacy Data Loading Framework
EndPoint Detection and Response	Additional Data Systems and Cybersecurity Support	Contract Right-Sizing Effort

Cyber

The Commission collects massive amounts of market data and must protect it with the highest standards to ensure the integrity of the US financial markets and the confidentiality of market participants. Cuts to cyber would reduce the effectiveness of our current investments and the ability to protect against emergent risks in an ever-evolving threat landscape and regulatory environment. The cyber investments included in the FY 2024 budget fund the tools and services required to meet the numerous Executive Orders, OMB mandates, and CISA Binding Operational Directives (BOD). Failure to implement these tools and services will prevent the CFTC from meeting these Government-wide mandates which are meant to ensure agency and market data are protected commensurate with the data's sensitivity. Since the FY 2022 budget was finalized there have been at least 13 mandated compliance and reporting requirements related to cybersecurity. These directives have no funding at the FY 2022 funding level.

Data

The CFTC is modernizing its data collection capabilities to keep pace with the evolving complexity of the markets we regulate. Data standards that were adequate even a few years ago are no longer sufficient for today's markets. Additionally, we are modernizing our data architecture to provide an environment that can support analysis using tools and techniques that are common today, and modernizing our legacy applications to work in these modern data environments. The costs of contractual services have also risen due to inflationary pressures in the labor market. Failing to store or process modernized data in a modernized information environment would limit the data available to support mission-facing efforts, including market surveillance, enforcement, and risk analysis.

Quick Numbers

- The current fiscal year (2023) budget is $365M
- Returning to FY 2022's budget would be an immediate cut of $45M, or 12%, from in-place resources
- Impact of inflation: the CFTC would require $366M in FY 2024 dollars to repeat the executed FY 2022 budget
- Between FY 2018 and FY 2022 the CFTC has transferred more than $2.2B to the Treasury from fines and penalties collected. Over the same period the Commission's budget totaled $1.4B, indicating a $0.8B net positive contribution to the Treasury from CFTC operations.

House Authorizing Committee Questions:

Hiring
QUESTION: *Provide details behind what our recruiting and hiring strategies are. What is the average hiring timeline? How are you going to hire to your requested FTE levels?*

RESPONSE: The Commission has prioritized hiring and is completing an internal review of our recruiting and hiring practices to invest in our workforce planning. The review is focused on building a hiring model to define and streamline processes to support hiring advances. Some of the strategies that the Commission is beginning to employ include utilizing additional platforms to promote job opportunities, making multiple selections from a single certification, and utilizing direct hire-authority.

It is important to note that hiring lags and keeping up with attrition is not a Commission-specific concern and many other Federal agencies are experiencing similar workforce challenges.

FTE
QUESTION: *Provide the current FTE breakdown by Division*

RESPONSE:

Division	Current FTE
Office of the Chairman and Commissioners	38
Division of Administration	124
Division of Clearing and Risk	84
Division of Market Oversight	75
Division of Data	36
Enforcement	160
Market Participants	65
Office of the Chief Economist	18
Office of the General Counsel	56
Office of International Affairs	17
Office of the Inspector General	7
Total	**680**

Enforcement – Digital Asset Tools
QUESTION: *Provide additional information on the digital asset tools and how they support the enforcement program.*

RESPONSE: In recent years, the Division of Enforcement has undertaken an increasing number of investigations in fraud and other violations involving digital assets. Access to additional tools and subscriptions increase the division's ability to investigate digital asset matters by providing staff with access to additional datasets associated with the digital markets.

Procurement Model

QUESTION: *Explain why the contract model is now FFP vs. T&M and how the change took place.*

RESPONSE: The change in procurement model is one of the factors associated with the Commission's funding realignment strategy. This change does not apply to all contracts at the Commission, however it is a shift for some of our larger value contracts, such as IT support services. The shift from the cost-reimbursement or time and materials(T&M) contracts to firm fixed price (FFP) supports the Administration's expectations that agencies maximize FFP contracts and minimize the use of T&M contracts as shared in OMB Memo, M-21-11 – Increasing *Attention on Federal Contract Type Decisions* (attached). An FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This model for more operational and maintenance type contracts follows the Federal Acquisitions Regulations (FAR) guidance because it provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The timing of the shift has been a more recent occurrence due to the timing of contract recompete timelines.

CFTC Preliminary Regulation Plan

The summaries below provide the Commodity Futures Trading Commission's (CFTC or Commission) preliminary regulatory plan to support Bill S.4760: Digital Commodities Consumer Protection Act (DCCPA).

The information provided is intended to be for informational purposes only.

Estimated Registrants and Markets Analysis

Analysis
The Commission estimates that there would be approximately 100 possible registrants: 12 trading facilities, 75 broker dealers, and 20 custodians under the CFTC's purview following the passage of the DCCPA.

- *Trading Facilities:* Our estimate is based on the number of platforms offering central limit order books (CLOBs) to U.S. customers and evidence of attempted compliance with existing U.S. regulation (e.g., FinCEN registration, state money transmitter licenses). We note that the top five trading facilities expected to register represent over $2.5 billion in daily spot volume based on data from August 2022, although volume metrics have been extremely volatile.

- *Broker-Dealers*[1]*:* An April 2021 Bank for International Settlements (BIS) report states that over 420 crypto-related firms are registered with FinCEN as money services businesses. Of that number, the Commission believes that many will cease to exist or would reorganize themselves so as not to be subject to registration as a broker and/or a dealer, based on our review of FinCEN money services business (MSB) registration categories.

- *Custodians:* Many custodial platforms also provide other trading services (i.e., act as a trading facility, broker, or dealer). There are also a handful of large custodians that are almost exclusively engaged in custody as an institutional service (e.g., BitGo, Anchorage, NYDIG). The Commission believes that required registration of custodians will result in significant consolidation and reduction in the number of custodians, and that custody would cease to be dispersed among hundreds of entities.

[1] Source: Supervising crypto assets for anti-money laundering (https://www.bis.org/fsi/publ/insights31.htm, page 13)

CFTC Cost Estimates[2]

For purposes of this plan, the CFTC assumes that the DCCPA would be enacted January 1, 2023. A given fiscal year (FY) is from October 1 through September 30.

The Commission estimates that the cost to execute the DCCPA would be approximately $127M over the first three years. The costs below provide the cost to hire staff, provide physical space, and support data information technology and other administrative needs.

Table 1: Three Year Resource Estimate by Division[3,4]

		Year 1 FY 2023		Year 2 FY 2024		Year 3 FY 2025		Total
Division	**HC**	**FTE**	**$(000)**	**FTE**	**$(000)**	**FTE**	**$(000)**	**$(000)**
Enforcement	33	11	$4,141	32	$10,996	30	$10,730	$25,867
Market Oversight	36	12	$4,517	34	$11,683	29	$10,373	$26,573
Clearing and Risk	19	6	$2,384	17	$5,842	16	$5,723	$13,948
Market Participants	18	6	$2,258	14	$4,811	11	$3,934	$11,004
Office of the Chief Economist	6	2	$753	5	$1,718	3	$1,073	$3,544
Office of the General Counsel	9	3	$1,129	9	$3,093	4	$1,431	$5,653
Office of International Affairs	4	1	$502	4	$1,375	3	$1,073	$2,949
Division of Data	6	2	$8,753	6	$6,062	4	$4,431	$19,245
Division of Administration	4	1	$5,502	4	$5,375	3	$4,073	$14,949
Office of the Chairman & Commissioners	4	1	$502	4	$1,375	4	$1,431	$3,307
Office of the Inspector General	0	0	$0	0	$0	0	$0	$0
Total	**139**	**46**	**$30,441**	**129**	**$52,328**	**107**	**$44,271**	**$127,040**

Columns may not add due to rounding

Rulemaking

Analysis

The Commission plans to develop and review digital commodity related rules by establishing multiple, separate teams. Each team will work simultaneously and will include members from different divisions of the CFTC.

The table below provides a cost estimate for full-time equivalent (FTE) and other resource requirements to draft, propose and publish final rules over a three year period by division.

[2] HC represents headcount

[3] Year 1 hiring FTE estimates are calculated to be one-third of the total headcount need.

[4] Table 1 includes support costs that are not captured in Table 2 and Table 3.

Table 2: Three Year Resource Estimate for Rulemaking by Division

	Year 1 FY 2023			Year 2 FY 2024		Year 3 FY 2025		Total
Division	HC	FTE	$(000)	FTE	$(000)	FTE	$(000)	$(000)
Enforcement	3	1	$376	2	$687	0	$0	$1,064
Market Oversight	8	3	$1,004	6	$2,062	1	$358	$3,423
Clearing and Risk	4	1	$502	2	$687	1	$358	$1,547
Market Participants	8	3	$1,004	4	$1,375	1	$358	$2,736
Office of the Chief Economist	3	1	$376	2	$687	0	$0	$1,064
Office of the General Counsel	6	2	$753	6	$2,062	1	$358	$3,172
Office of International Affairs	1	0	$125	1	$344	0	$0	$469
Division of Data	2	1	$251	2	$687	0	$0	$938
Division of Administration	1	0	$2,125	1	$1,344	0	$0	$3,469
Office of the Chairman & Commissioners	1	0	$125	1	$344	1	$358	$827
Office of the Inspector General	0	0	$0	0	$0	0	$0	$0
Total	**37**	**12**	**$6,642**	**27**	**$10,278**	**5**	**$1,788**	**$18,709**

Columns may not add due to rounding

Implementation

Analysis

The Commission plans to implement digital commodity related rules by integrating qualified experts and staff within our infrastructure to complete compliance activities in support of the DCCAP.

The table below provides an annual cost estimate for FTEs and other resource requirements to implement rules and maintain oversight of digital platforms by division.

Table 3: Three Year Resource Estimate for Implementation by Division

	Year 1 FY 2023			Year 2 FY 2024		Year 3 FY 2025		Total
Division	HC	FTE	$(000)	FTE	$(000)	FTE	$(000)	$(000)
Enforcement	30	10	$3,764	30	$10,309	30	$10,730	$24,803
Market Oversight	28	9	$3,513	28	$9,622	28	$10,015	$23,150
Clearing and Risk	15	5	$1,882	15	$5,154	15	$5,365	$12,402
Market Participants	10	3	$1,255	10	$3,436	10	$3,577	$8,268
Office of the Chief Economist	3	1	$376	3	$1,031	3	$1,073	$2,480
Office of the General Counsel	3	1	$376	3	$1,031	3	$1,073	$2,480
Office of International Affairs	3	1	$376	3	$1,031	3	$1,073	$2,480
Division of Data	4	1	$502	4	$1,375	4	$1,431	$3,307
Division of Administration	3	1	$3,376	3	$4,031	3	$4,073	$11,480
Office of the Chairman & Commissioners	3	1	$376	3	$1,031	3	$1,073	$2,480
Office of the Inspector General	0	0	$0	0	$0	0	$0	$0
Total	**102**	**34**	**$15,798**	**102**	**$38,050**	**102**	**$39,483**	**$93,331**

Columns may not add due to rounding

CFTC Fees

The Commission estimates that it will be well-positioned to begin estimating and collecting fees at some point during FY 2025, which begins October 1, 2024.

DCCPA Requirements

The DCCPA includes requirements for multiple examinations, reports and publications. A summary of the requirements and associated dues dates may be found below:

Anti-Money Laundering Regulations
The Commission shall consult with the Secretary of the Treasury to support the publication of proposed and final regulations to require digital commodity platforms to submit a report of any suspicious transactions under section 5318(g) of title 31, United States Code.

- Timeline: Proposed Regulations - Not later than 180 days after enactment of DCCPA
- Final Regulations - Not later than 180 days after the date of the proposed regulations.

Energy Consumption in Digital Commodity Markets
The Commission shall examine the energy consumptions and sources of energy used in connection with the creation and transfer of the most widely traded digital commodities.

- Requirements:
    1. Describe an estimate of the energy consumption and sources of energy used in connection with the creation and transfer of the most widely traded digital commodities
    2. Describe the methodology used by the Commission to genera the estimate
    3. Publish the report on the Commission's public website.
        a. The report shall be updated periodically on a timely basis.
- Timeline: Not later than 180 days after enactment of DCCPA

Fees for Registration
The Commission shall assess and collect fees, which shall be used to recover the annual costs of registering digital commodity platforms, conduct oversight of digital commodity trades, and carrying out education and outreach.

- Requirements:
    1. Publish the fee rates for a given fiscal year
    2. Publish any estimates or projections on which those fee rates are based.
- Timeline: Not later than 60 days after enactment of appropriation Act for the Commission for a fiscal year

Historically Underserved Customers Participating in Digital Commodity Markets
The Commission shall examine the racial, ethnic, and gender demographics of customers participating in digital commodity markets and provide a report to Congress.

- Requirements:
    1. Describe how digital commodity markets customer demographics will inform the Commission's rules and regulations
    2. Propose ways in which the Commission can provide outreach to historically underserved customers
    3. Provide recommendations relating to activities that the Commission determines to be necessary to provide appropriate protection, outreach, or other similar activities to historically underservices customers
- Timeline: Not later than 180 days after enactment of DCCPA

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Oversight of the Commodity Futures Trading Commission
March 8, 2023
Questions for the Record
The Honorable Rostin Behnam

<u>Chairwoman Debbie Stabenow</u>

1. **In *Prime Int'l Trading, Ltd. v. BP PLC*, the Second Circuit Court of Appeals blocked plaintiffs from suing for manipulation under the Commodity Exchange Act (CEA), finding that the CEA's antifraud provisions do not permit a plaintiff trading on a United States futures exchange to bring an action for fraud or manipulation where the misconduct occurred overseas. On the other hand, some courts have found that the Securities and Exchange Commission may pursue fraud or manipulation that takes place abroad where there is an effect on American securities markets or investors.**

   How does the Second Circuit's decision in *Prime Int'l* impact the Commodity Futures Trading Commission's (CFTC) mission to protect U.S. persons and markets from fraudulent and manipulative conduct?

   <u>Response:</u> The CFTC believes that without congressional action, the Second Circuit's decision in *Prime Int'l* and subsequent decisions, may hinder the CFTC's mission to protect U.S persons and markets from fraudulent and manipulative conduct.

   Recently in a CFTC action, a district court held that a CFTC claim that a false and misleading statement regarding the price of a Ten-Year Swap Spread that was trading in the United States, and being affected by the defendant's manipulative acts, was "impermissibly foreign" conduct because the statement of the U.S.-based price was made in Japan to a Japanese-affiliate of a U.S.-based bank. *See, CFTC v. Gorman*, 21-cv-870, 2023 WL 2632111 (S.D.N.Y. Mar. 24, 2023). In the Department of Justice's criminal action against Sam Bankman-Fried (FTX), the defendant Bankman-Fried recently filed a motion to dismiss in part arguing that the commodities fraud charges must be dismissed because they are an impermissible extraterritorial application of the CEA. Specifically invoking the Second Circuit's "predominantly foreign" test, Bankman-Fried argued the relevant manipulative and deceptive conduct occurred outside the United States.

   The SEC is not subject to the same challenging precedent. Congress amended the federal securities laws to apply extraterritoriality when the statutory conduct-and-effects test is satisfied. 15 U.S.C. § 77v(c); 15 U.S.C. § 78aa(b). Without a congressional fix, the CFTC will argue that the holding in the *Prime Int'l* case is distinguishable because it relates to a private right of action and not a government enforcement action that focuses on the interests of the public. The CFTC will also argue that the plain language of the anti-manipulation and anti-fraud authority set forth in Section 6(c)(1) of the CEA and Commission Regulation 180.1, properly construed with other provisions of the CEA, contain clear indicia of extraterritorial application. Those provisions apply in connection with swaps, contracts of sale of any commodity in interstate commerce, and to futures contracts on or subject to the rules of any registered entity. However, it must be noted that as to swaps, Congress has explicitly provided for extraterritorial application, which, in the absence of congressional action, could result in disparate outcomes depending on the nature of the jurisdictional product at issue in a particular action.

2. **During the hearing, you testified that the CEA limits the CFTC's use of funds from the Customer Protection Fund to educating customers about fraud and other violations of the Act or CFTC rules. You explained that customers would benefit from Congress expanding the agency's authority under CEA Section 23(g)(2), permitting it to engage more broadly with consumer advocacy groups and state regulators in education and outreach.**

   If Congress were to expand the CFTC's authority to conduct education and outreach under CEA Section 23(g)(2), how would you propose that the agency enhance its outreach to customers, particularly those in historically underserved communities?

   <u>**Response:**</u> CEA Section §23(g)(2) limits the CFTC's Office of Customer Education and Outreach to (OCEO) to funding educational initiatives designed to help customers protect themselves against fraud or violations of the CEA and CFTC regulations. These limits prevent the office from developing material that addresses risks associated with new technologies, and users engaging with that technology. This is particularly problematic due to the increase in retail participation using phone apps and other easy to use applications. Lifting the strict limits would allow the CFTC to offer more effective education and outreach such as:

   - Material that addresses new technologies, such has cryptocurrency, where education of the risks is paramount to protecting market participants before they become victims of fraud.
   - Targeted education and outreach to diverse audiences and communities who have historically been shut out of traditional finance to help them understand risk.
   - Research to fill research gaps pertaining to the growing number of retail traders in our markets to better inform programming and messaging.
   - Material to educate producers and agricultural end-users about hedging and about market and product fundamentals and the risks involved in using the derivative markets as a risk management tool.

   OCEO would also expand our outreach to community partners and organizations. Trusted local partners provide access to underserved communities where there may be limited exposure to materials about market risks and participation. Partner organizations could include, local low-income financial or housing counseling services, tribal organizations, public libraries, cooperative extension services, Annie's Project, National Black Farmers Association, Intertribal Agriculture Council, Farm Bureau, state AARP chapters, Latino Economic Development Center, Unidos US, military financial educators, veterans' organizations, other federal, state, and local government agencies.

If the strict limits were lifted, the CFTC would undertake retail customer research to get a better understanding of who is using the markets, including trading activity, sources of trading/investing information, investing experience, financial literacy, demographics, geographic concentrations, media preferences, and income and asset levels. Data as well as qualitative studies, would provide the evidence needed to hone culturally relevant messaging, develop relevant multi-lingual materials, and deliver learning equitably and effectively.

3. **Section 342 of the Dodd-Frank Act required six federal financial agencies to each establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters relating to diversity in management, employment, and business activities. Section 342(b)(2)(C) of the Dodd-Frank Act also required the OMWI Director of each agency to develop standards for assessing the diversity policies and practices of entities regulated by the agency. To implement this requirement, the six financial agencies jointly issued an interagency policy statement that established joint standards to assess the diversity policies and practices of regulated entities.**

   The CFTC was not included in Section 342 of the Dodd-Frank Act as an agency statutorily required to establish an OMWI office. How has this impacted the CFTC's ability to address diversity, both within the agency and across the markets it regulates?

   Response: As the only federal financial regulatory agency that was not required by the Dodd-Frank Act to establish an OMWI, the CFTC is easily a decade behind other financial regulatory agencies in our diversity and inclusion efforts. Prior to the arrival of the CFTC's first Chief Diversity Officer in January of 2022, the CFTC's OMWI was solely focused on equal employment opportunity (EEO) complaints processing and enforcement of EEO-related statutes, regulations, and executive orders, which Section 342 (a)(3) of the Dodd-Frank Act specifically states are not included in OMWI office responsibilities. The lack of this statutory authorization impacts the CFTC OMWI's ability to fill the broader mandates of Section 342 of the Dodd-Frank Act to address diversity within the CFTC's workforce, procurement and contracting activities, and regulated entities.

   Section 342 articulates robust mandates for advancing and promoting diversity in the workforce, requiring each agency to take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency, including recruiting at colleges and universities; sponsoring and recruiting at job fairs; engaging in mass media communications; partnering with organizations that are focused on developing opportunities for minorities and women for industry internships, summer employment, and full-time positions; and partnering with majority minority high schools to establish or enhance financial literacy programs and provide mentoring.

   Furthermore, Section 342(b)(2)(C) of the Dodd Frank Act requires each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the agency. Following a series of roundtables and a notice and comment period in the Federal Register (78 FR 64052 and 77792), in 2015 the Department of Treasury; the

Federal Deposit Insurance Corporation (FDIC); the Federal Housing Finance Agency (FHFA); the Federal Reserve Banks; the Board of Governors of the Federal Reserve System (Board); the National Credit Union Administration (NCUA); the Office of the Comptroller of the Currency (OCC); the Securities and Exchange Commission (SEC); and the Consumer Finance Protection Bureau (CFPB) issued a [Final Interagency Policy Statement establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities they Regulate] ("Joint Standards") (80 FR 33016 (June 10, 2015)). Statutory authorization would enable the CFTC to similarly develop standards to assess diversity policies and practices of entities regulated by the CFTC, allowing the CFTC to monitor trends and highlight best practices.

4. **In a recent speech, CFTC Commissioner Johnson called on Congress to enhance the agency's authority to conduct due diligence on businesses that seek to purchase entities registered with the CFTC.**

   What authority does the agency currently have under the CEA to review the purchase of a CFTC registrant by an unregistered entity? If there is no such authority, what risks does this present to customers and U.S. derivatives markets?

   Response: Agency rules and regulations include a notification obligation involving the transfer of significant equity interest in a registered entity. In order to maintain registration with the CFTC, a DCO, DCM or SEF must at all times remain in compliance with applicable statutory core principles and CFTC regulations. This compliance obligation persists in the event of a change in ownership.

Ranking Member John Boozman

1. **The CFTC Division of Market Oversight issued a staff advisory (Advisory) in September 2021 on what triggers the requirement for a person to have to register as a swap execution facility (SEF). The Advisory has created confusion and alarm that the Commission is applying a new interpretation that goes beyond what market participants had understood from the SEF registration rules adopted in 2013, and moreover without the benefit of public rulemaking or cost-benefit analysis. Based on a common sense understanding of the CEA's SEF definition, including the "multiple-to-multiple" element, reinforced by the Commission's statements in the original SEF rulemaking and in other contexts at the time, many market participants concluded that certain common swaps brokerage services were acceptable without the involvement of a SEF. The Commission seemed to reaffirm this long-held understanding when it decided not to adopt a more expansive SEF interpretation it had proposed in 2018 in the face of strong objections, to avoid unintended consequences and market disruption. End users and other market participants are now trying to work through the consequences of an Advisory that seems to call into question traditional swaps agency brokerage services, including those provided by introducing brokers and commodity trading advisors. Market participants depend on these established services to access derivatives markets.**

a. **In light of these concerns, will the CFTC consider suspending or revoking the 2021 Advisory pending approval of a final rule that is subject to notice and public comment to better understand the costs and benefits of its new interpretation?**

Response: The 2021 advisory was intended to clarify when certain activities may trigger SEF registration. Agency staff are considering whether further clarification of the SEF registration standard may be appropriate.

2. **SEC Chairman Gary Gensler has repeatedly asserted that all "stable token[s] backed by securities…are subject to the securities laws and must work within our securities regime." This designation would include all major stable coins, including USDT, USDC, and BUSD, as each are backed by at least some securities holdings. There is further evidence that the SEC views BUSD as a security, in light of the SEC's recent Wells notice to Paxos about BUSD. Moreover, Chairman Gensler recently indicated in an interview that all digital assets, except for bitcoin, are securities. However, long before Chairman Gensler's pronouncements and actions, the CFTC has been active in settling enforcement actions and filing law suits in court over the digital asset space. In several of these legal documents, the CFTC has asserted, without limitation, that digital assets are commodities. In particular, CFTC enforcement filings state that "stable coins such as [T]ether" and USDC are commodities and that Bitcoin, Ether, Litecoin, and Dogecoin are all commodities. It appears that the SEC disagrees with the CFTC's long-standing views on which digital assets are commodities, particularly with respect to centrally-issued stable coins, and is willing to impose its different views on the digital asset market.**

   Do you currently support CFTC's prior positions on these digital assets?

   Response: Yes, I support the CFTC's positions in the digital asset-related cases that we have brought. I also recognize that there can be difficult legal issues presented in digital asset-related cases that may implicate the jurisdiction of multiple regulators. However, in the absence of Congressional legislation, the CFTC will continue being proactive in this space when our jurisdiction is implicated. We will work with the SEC and other agencies to ensure that wrongdoers are held accountable.

3. **Reports have stated that SEC Chairman Gensler, since June of last year, has implied that Ether is a security despite the fact the CFTC has already issued a number of settlements stating that Ether is a commodity.**

   a. **In light of these statements, is your current view that Ether remains a commodity? Why or why not?**

      Response: Yes, my view is that ETH is a commodity. As multiple courts have held, digital assets generally fall within the broad definition of a commodity, and the CFTC's jurisdiction over ETH as a commodity is both well supported by the law and by the practical fact that CFTC-regulated platforms have been offering derivatives tied to the value of ETH for multiple years.

b. **If you do believe it is still a commodity, do you think the SEC has jurisdiction over Ether if it is offered in a security product?**

Response: I cannot comment on a hypothetical product, but I can confirm that the SEC generally has primary jurisdiction over a security product.

4. **I appreciate the agency's Aluminum Futures Market Report issued in the Fall of 2022, but I continue to hear concerns regarding aluminum markets and pricing. Does the agency have any concerns relating to these markets or pricing?**

Response: The CFTC holds primary regulatory authority over Designated Contract Markets ("DCMs") and Swap Execution Facilities ("SEF"). These markets are registered with the CFTC and are required to comply with many core principles and associated CFTC regulations that govern the operation of their facilities. All DCMs and SEFs are required to either self-certify to the Commission that new contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before offering them for trading. Particularly relevant here, Core Principle 3 for both DCMs and SEFs requires that these entities list only contracts that are not readily susceptible to manipulation. In addition, Appendix C to Part 38 of the CFTC's regulations provides non-binding guidance for use in determining whether a contract is readily susceptible to manipulation.

The Appendix C guidance states that when evaluating the susceptibility of a cash-settled contract, such as the COMEX Midwest Premium contract (MWP), to manipulation, the DCM should consider the size and liquidity of the underlying cash market and design the terms and conditions of the contract to avoid any impediments to convergence. 17 C.F.R. pt. 38 App. C. For cash-settled contracts, Appendix C notes that DCMs should consider the commercial acceptability and robustness of the cash price series. Also, each cash-settled contract's price series should be based on publicly available prices and should be available on a timely basis for calculating the cash settlement price at the expiration of the commodity contract.

The CFTC's Division of Enforcement furthers the CFTC's mission to protect market users and the public from fraud, manipulation, and abusive practices that are prohibited by the CEA. In addition, analysts within the Market Surveillance Unit of the Division of Enforcement work to detect potential violations, which are then referred to an investigative team within Enforcement. While the CFTC does not have direct regulatory authority over cash metals markets, it does have authority to address fraud or manipulation in those markets.

The agency will continue to use its existing authority to ensure that contracts trading on platforms regulated by the CFTC are not subject to manipulation and to action if necessary to address any misconduct.

5. **In instances where CFTC staff has consecutively extended no-action relief, will you commit to codifying that relief? Also, as part of your response, do you agree that waiting until the last minute to extend no-action relief creates uncertainty and enhances market risk and will you commit to working with the appropriate staff to extend no-action relief at least 6 months before expiration?**

   Response: Under my leadership staff has been working to codify existing staff no-action letters and positions where appropriate. The Commission has proposed rules in the last year and staff is working on additional proposals that would, if approved by the Commission, codify several long-standing no-action position letters. Staff will endeavor to consider no-action requests in a timely fashion and will work to provide market participants with as much certainty as possible.

6. **Do you agree that market participants losing trust in the ability of their regulator to safeguard data enhances market risk and/or reduces resiliency? And can you commit to finding solutions that balance the agency's enforcement mandate and the need to keep registrant data secure?**

   Response: I agree that if market participants lose trust in the ability of their regulator to safeguard data that could enhance market risk and/or reduce resiliency. I can also commit to finding solutions that will allow the CFTC to appropriately exercise its enforcement authority while keeping registrant data secure as well.

   To that end, the CFTC has implemented numerous protections to safeguard registrant data, including market sensitive data protected under Section 8 of the Commodity Exchange Act. These include, among other things: ensuring limited access to data; the encryption of data; storing data on hardened servers; malware and antivirus protection; annual security and privacy awareness training; the use of PIV cards and multi-factor authentication; and the use of a myriad of security devices and tools to protect the network and the computer systems from hackers and unauthorized users, such as firewalls, intrusion detection systems, and data leak prevention software. Registrant data is protected in accordance and in compliance with the Federal Information Security Modernization Act (FISMA), other Federal mandates and guidelines, and industry best practices.

7. **The CFTC website states that "data in the Commitment of Traders (COT) reports is from Tuesday and released Friday," and that the CFTC "receives the data from the reporting firms on Wednesday morning and then corrects and verifies the data for release by Friday afternoon." Why is there lag between when the CFTC receives the data from reporting firms (Wednesday) to when the CFTC releases the data (Friday afternoon)? Is that delay statutorily mandated? Also, please provide a detailed description of the CFTC's internal process from the time the agency receives data to when the CFTC releases the data.**

   Response: The Commitments of Traders Report (COT Report) provides a breakdown of each Tuesday's open interest for futures and options on futures markets in addition to aggregated trader positions for markets in which 20 or more traders hold positions equal to or above the reporting levels established by the CFTC.

The time delay between the Commission's receipt of position data underlying the COT Reports and the publication of the COT Reports is not statutorily mandated. Rather, the current delay provides time for several processes that ensure the quality of the COT Reports. A detailed description of these processes is enumerated below.

<u>Wednesday morning</u>

The Commission receives large trader position data detailing positions as of close-of-business Tuesday. The Commission also receives an identification of controlling accounts from reporting firms. The data is loaded into the Commission's computer systems and made available to Commission staff.

<u>Wednesday afternoon</u>

Commission staff use internal tools to review the data received from reporting firms. Potentially missing or incorrect position data, as well as missing account identifications, are identified.

Commission staff send emails to individual reporting firms to request that they promptly investigate and resolve the discrepancies identified by Commission staff. Commission staff begin to receive corrected and missing data from reporting firms in response to Commission staff outreach. Since it is outside normal business hours for many of the reporting entities that are foreign firms, a significant number of firms do not provide corrected or missing data on Wednesday.

<u>Thursday morning</u>

Corrected and missing data continues to be received from reporting firms in response to the Commission outreach that occurred on Wednesday. In some instances, corrected and missing data continues to be received throughout Thursday and into Friday. Upon receipt of newly submitted data, Commission technical staff load the data into the Commission's computer systems and validate the data. Validated data is passed to Commission subject matter experts for further review.

<u>Thursday afternoon</u>

Commission subject matter experts continue to analyze the data received and, when they are satisfied that the report data is correct, approve the COT Reports for publication. The COT Reports are provided to the staff responsible for the Commission's website. In some instances, the Commission is unable to promptly receive corrected and missing data from reporting firms. In such instances, Commission staff engage in additional outreach to specific reporting firms and these processes may continue until Friday morning.

Friday morning

CFTC staff responsible for the Commission's website prepare the COT Reports for publication. Commission subject matter experts review, and approve, the COT Reports in their final publication form.

Friday afternoon

The COT Reports are published at 3:30 pm ET.

The Commission is currently engaged in several efforts that are expected to expedite the processes detailed above. During Q1 2023, the Commission began making a scorecard accessible to each reporting firm that details the firm's compliance, or non-compliance, with the data reporting requirements that enable the COT Reports. Commission staff have been engaging with firms regarding the non-compliance detailed in these scorecards, and expect that firms will make efforts to improve their compliance with the Commission's data reporting regulations. Additionally, in June, the Commission proposed amendments to the position reporting requirements detailed in Part 17 of the Commission's regulations. (*See* Large Trader Reporting Requirements, 88 Fed. Reg. 41522 (proposed June 27, 2023, [2023-13459a.pdf (cftc.gov)](2023-13459a.pdf)) Commission staff expect that this proposal, if enacted by the Commission, would modernize the position reporting process and expedite the data analysis and firm outreach detailed above. Commission staff believe that these efforts will position the Commission in the future to be able to consider whether the timing of the COT Reports should be changed.

8. I appreciate the Commission's desire for more transparency in the swaps market, while also working to safeguard a deep, liquid, swaps market in the United States. As you know, when the block trade rulemaking was finalized in fall 2020, there were concerns about adopting the new 67% notional threshold without taking into consideration data under the 2020 improvements to the Swaps Data Repository (SDR) and without receiving feedback from the industry on that data. Does the Commission intend to engage with and receive input from affected market participants, especially regarding potential unintended consequences to liquidity in the current economic environment?

Response: Commission staff published revised post-initial appropriate minimum block sizes on April 13, 2023. The revised block sizes take into consideration the data improvements contemplated by the Commission's 2020 Swaps Data Rulemakings.[1] The

[1] The revised block sizes were calculated in accordance with Commission regulation 43.6(g), which requires use of a 67-percent notional amount calculation. The revised block sizes were calculated based on a one-year window of reliable swap transaction and pricing data transmitted to Swap Data Repositories (SDRs) between December 1, 2021 and November 30, 2022. The SDR that receives the vast majority of swap transaction and pricing data reports had

Commission does not intend for the publication of the revised block sizes, which are scheduled to take effect December 4, 2023, to be associated with any formal notice and public comment period.[2] The Commission plans to continue to engage with market participants informally and monitor the liquidity of its jurisdictional markets.

As you know, the Commodity Exchange Act (CEA) directs the Commission to provide for both real-time public swaps reporting and appropriate block sizes. The Commission concluded in both 2013 and 2020 that a 67-percent notional amount block size calculation, applied to the most liquid categories of products in certain swap asset classes, strikes an appropriate balance between the benefits of transparency and any potential costs to market participants. The Commission continues to believe that transparency will increase liquidity, improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers. The currently effective block sizes, which were calculated using a 50-percent notional amount calculation and intended as an initial step towards a phase-in of thresholds determined using a 67-percent notional amount calculation, have not changed in a decade. The Commission is cognizant that the currently effective block thresholds result in less transparency than the Commission has previously determined is appropriate to effectuate its CEA responsibilities.

Senator Cory Booker

1. **The COVID-19 pandemic, supply chain bottlenecks, and Vladimir Putin's invasion of Ukraine has led to rising commodity prices and market volatility that has stifled the global economy. Despite the economy's notable wage growth and employment gains, this volatility has translated into higher prices for working families when heating their homes and buying groceries, increased costs and lower margins for family farmers, and a deepening of the global hunger crisis, pushing even more families on the brink of famine around the globe. Meanwhile, a report out this week found that the commodity industry made record profits of more than $115 billion from trading activities, up 60 percent from the year prior. In fact, the foreign banks, hedge funds, and Wall Street traders saw profits that were nearly three times higher than the pre-pandemic levels.**

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already implemented several key aspects of the Commission's 2020 Swaps Data Rulemakings prior to December 1, 2021.

[2] The Commission's regulations require the Commission to update the block sizes on its website at least once each calendar year, but modify the block swap categories and block calculation methodology through rulemaking. The Commission therefore does not intend for the publication of the revised block sizes to be associated with a formal notice and comment period, as the Commission noted its concern during the 2020 Swaps Data Rulemakings that opening the results of applying the block methodologies to data would suggest the methodologies are open to public comment annually, when opening the rules for public comment each year would be an inefficient use of Commission resources. The Commission expended significant time and resources in analyzing data and responding to public comments received during the comment period associated with the 2020 Swaps Data Rulemakings.

In October, I sent you a letter, along with Senator Warren, asking the CFTC to conduct a series of studies examining whether excessive speculation in key commodities markets – including natural gas, wheat, and oil – had contributed to higher prices of household necessities. Chairman Behnam, I am grateful for your commitment to addressing the pain felt by everyday Americans as a result of market volatility. However, I remain concerned that we lack the guardrails to ensure that Americans are not paying higher prices for the benefit of wealthy traders. In your response to my letter, you wrote: "statutory limitations solidify the policy considerations that circumscribe the Commission's ability to disclose information and analyses associated with its ongoing investigative and oversight function".

a. **Has the CFTC conducted the requested study analyzing potential excessive price speculation in the energy and wheat sectors, and could you share that study with this Committee?**

b. **If not, what statutory changes would you need to make this information publicly available?**

Response: As you note, commodity markets have recently experienced a perfect storm of externalities, including persisting impacts of the Covid-19 pandemic, volatility relating to the conflict in Ukraine, and the escalating effects of climate change. Ensuring that commodity derivatives markets remain liquid, resilient and free from manipulative or disruptive conduct, so that they can effectively serve their risk management and price discovery functions, is the CFTC's highest priority. The CFTC has remained vigilant in order to ensure that this priority continues to be met in the face of recent market stress and volatility. Our preeminent analytic, surveillance and enforcement programs have continued to closely monitor the CFTC's regulated markets - analyzing data, conducting trading analyses for manipulative, inappropriate or disruptive conduct, and leveraging the agency's enforcement authorities to root out bad actors. CFTC staff have also continued to actively monitor compliance by exchanges, clearinghouses and intermediaries with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets. And, faced with an unprecedented array of stressors, our regulatory framework and market structures have served their functions well, enabling end-users to hedge their risks during a particularly challenging period.

Heightened vigilance remains in order as we observe ongoing market impacts related to Russia's aggression against Ukraine and other volatility drivers. I continue to support the full exercise of the Commission's authorities to ensure – particularly in light of these ongoing market impacts – that the relationship between commodity prices and the derivatives markets reflects economic factors, and that the Commission is following Congressional mandates to address the risk of excessive speculation. I continue to support the use of all available resources and expertise to vigorously monitor the CFTC's regulated markets – including through ongoing, commodity-specific staff analyses, under strict parameters, to examine the role of speculators and how, if at all, their participation in the market has negatively impacted price discovery.

As an agency, we are constantly assessing what information and findings from these monitoring efforts may be shared outside of the agency without compromising our oversight, surveillance and enforcement functions. We must also weigh the extent to which such information and findings may be shared in compliance with statutory duties and obligations under the Commodity Exchange Act relating to the treatment of certain sensitive information, including information that would separately disclose the business transactions or market positions of any person.

I look forward to continuing to work closely with you and other members of the Senate Agriculture Committee to ensure that the prices paid by American families when heating their homes, and buying groceries and gas, reflect true supply and demand factors. I would like to reiterate that I am unconditionally committed to transparency. I also take the CFTC's role as a price-agnostic regulator seriously, and I believe that we must exercise particular care in the treatment of our data, analyses and investigations in order avoid any impact on the integrity of the derivatives markets that we oversee, and to safeguard the implementation and effectiveness of our market surveillance tools and enforcement program.

2. **Chairman Behnam, I'm grateful for your focus on improving the gender, racial, and ethnic diversity of the financial industry, both in your testimony and in your work as Chairman of the CFTC. The 2008 financial crisis revealed critical weaknesses in our economy and in the banking industry; as the Mayor of Newark, I saw firsthand how the risks taken by wealthy Wall Street bankers and traders devastated Black and Brown working families in my city. In its response to that crisis, the Dodd-Frank Act, Congress also recognized an alarming lack of diversity in the financial sector. Thanks to Section 342, most of the financial regulators established Offices of Minority and Women Inclusion to address the staggering issue, starting at the federal government. I've been proud to build on that work by pushing federal agencies to take a look at who is managing their assets, and promoting opportunities for emerging asset managers. Unfortunately, the CFTC was not included under Section 342, which hampers the CFTC's ability to engage in this work in a more meaningful way.**

    a. **Does the CFTC currently have data on the demographics of its workforce, and can you share that information with this Committee?**

Response: Yes. A summary of the CFTC's demographic workforce data for FY 2021 and available data for FY 2022 is provided below.

Fiscal Year 2021

During Fiscal Year 2021, out of 690 total CFTC employees (permanent and temporary employees):

- 68.26% (471 employees) identified as White;
- 17.10% (118 employees) identified as African American or Black;

- 10.43% (72 employees) identified as Asian American;
- 3.62% (25 employees) identified as Hispanic;
- Less than 1% (<10 employees) identified as Native Hawaiian, Native American, or Two or More Races;
- 58.26% (402 employees) identified as male and 41.74% (288 employees) identified as female; and
- 5.80% (40 employees) identified as a person with a disability[3], with less than one percent of the workforce (<10) identifying as a person with a targeted disability.[4]

Across grade levels, out of 679 permanent employees:

- Employees identifying as White made up 34.78% of permanent employees at the CT 12 and below level, 51.43% at the CT 13 level, 70.67% at the CT 14 level, 76.22% at the CT 15 level, and 77.78% at the CT 16 and above level.
- Employees identifying as minority[5] employees made up 65.22% of permanent employees at the CT 12 and below level, 48.57% at the CT 13 level, 29.33% at the CT 14 level, 23.78% at the CT 15 level, and 22.22% at the CT 16 and above level.
- Employees identifying as male made up 32.61% of permanent employees at the CT 12 and below level, 60.00% at the CT 13 level, 58.67% at the CT 14 level, 62.94% at the CT 15 level, and 62.22% at the CT 16 and above level.
- Employees identifying as female made up 67.39% of permanent employees at the CT 12 and below level, 40.00% at the CT 13 level, 41.33% at the CT 14 level, 37.06% at the CT 15 level, and 37.78% at the CT 16 and above level.

Fiscal Year 2022

Demographic information from Fiscal Year 2022 is still being analyzed and finalized. Initial numbers indicate that out of 710 total CFTC employees (permanent and temporary):

- 67.89% (482 employees) identified as White, a decrease in percentage compared to FY 2021;
- 16.90% (120 employees) identified as African American or Black, a decrease in percentage compared to FY 2021;
- 11.27% (80 employees) identified as Asian American, an increase in percentage compared to FY 2021;

[3] The Americans with Disabilities Act Amendments Act of 2008 define disability as a physical or mental impairment that substantially limits one or more major life activities.

[4] Targeted disabilities are a subset of the larger disability category and are defined as developmental disabilities; traumatic brain injuries; deafness or serious difficulty hearing; blindness or serious difficulty seeing even when wearing glasses; missing extremities (e.g., arm, leg, hand and/or foot); significant mobility impairments, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports; partial or complete paralysis (any cause); epilepsy and other seizure disorders; intellectual disabilities; significant psychiatric disorders, (e.g., bipolar disorder, schizophrenia, PTSD, or major depression); dwarfism; and significant disfigurement (e.g., disfigurements caused by burns, wounds, accidents, or congenital disorders).

[5] For these purposes, minority is defined as any individual indicating a racial or ethnic identity other than White.

- 3.66% (26 employees) identified as Hispanic, an increase in percentage compared to FY 2021;
- Less than one percent (<10 employees) identified as Native Hawaiian, Native American, or Two or More Races, holding constant compared to FY 2021;
- 58.30% (414 employees) identified as male, an increase in percentage compared to FY 2021, and 41.69% (296 employees) identified as female, a decrease in percentage compared to FY 2022.
- 5.92% (42 employees) identified as a person with a disability, an increase in percentage compared to FY 2021, and less than one percent (<10) of the workforce identified as a person with a targeted disability, a decrease compared to FY 2021.

b. Could you speak to how the lack of authorization hampers your efforts to create a more inclusive Commission?

Response: Creating a genuinely inclusive workplace goes beyond recruitment and working to diversify an organization's workforce. An inclusive workplace is a workplace where diversity, equity, inclusion and accessibility (DEIA) are reflected in the norms and values of the agency, integrated into and across agency functions and into organizational planning documents. As articulated in the November 2021 Government-Wide Strategic Plan to Advance DEIA in the Federal Workforce, prioritizing DEIA across functions requires senior leadership involvement and commitment at all levels. To create an inclusive environment where everyone can thrive and grow requires an understanding of and recognition that not all employees experience the same workplace challenges. Focusing on the employee experience requires collecting and analyzing data and metrics that provide insight into the employee experience, identifying areas of inequities and supporting leadership teams by providing actionable insights to support culture change and to address negative behaviors. OMWI offices that are statutorily authorized are uniquely positioned with the appropriate resources and expertise to collect and analyze data, develop strategies to increase employee engagement and inclusion, upskill leaders on inclusive behaviors and practices, and create ongoing voice of the employee feedback loops to ensure employees feel that their experiences are valued, seen and considered in decisions related to policy, processes, and overall agency and organization-specific strategies.

3. Chairman, in a letter to you last October, I wrote to you about my concerns with the rapidly growing voluntary carbon offset market, which enables corporations to make claims about emission reductions while – in reality – taking little action to address the climate and environmental justice impacts of their industry. Carbon offsets, as they currently stand, are not compatible with climate justice goals, as they enable wealthy corporations to continue emitting while using fraught tactics that prioritize their bottom line over the health and well-being of vulnerable communities.

a. Does the CFTC need additional authorities in order to thoroughly investigate fraud underlying greenhouse gas emission offset claims in the futures market?

Response: The CFTC has regulatory and enforcement authority over carbon offset futures listed on designated contract markets (DCMs), which are required to comply with the Commodity Exchange Act (CEA) and the Commission's regulations thereunder. DCMs must either self-certify to the Commission that new futures contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before offering them for trading on their respective exchange. Particularly relevant here, Core Principle 3 for DCMs requires that these entities list only contracts that are not readily susceptible to manipulation. In addition, Appendix C to Part 38 of the CFTC's regulations provides non-binding guidance for use in determining whether a contract is readily susceptible to manipulation.

While the CFTC does not have regulatory authority over the voluntary carbon offset markets, it does have enforcement authority to bring a civil enforcement action against a person deemed to have engaged in carbon-offset derivative market or cash market fraud or manipulation. As the CFTC does not conduct ongoing surveillance of the underlying carbon markets, the CFTC agency relies on tips, complaints, or referrals submitted to the CFTC's Whistleblower Office as a catalyst to begin an anti-fraud or anti-manipulation enforcement action. The CFTC's Whistleblower Office issued an alert on June 20, 2023 to notify the public on how to identify and report potential Commodity Exchange Act (CEA) violations connected to fraud or manipulation in the carbon markets (available: https://www.cftc.gov/PressRoom/PressReleases/8723-23).

b. **Are there additional data points or resources the CFTC needs to effectively oversee carbon offset futures contracts?**

Response: The agency has not identified any additional data points that it needs to oversee the carbon offset futures trading. The agency looks forward to supporting the work of the Agriculture Committees and Congress to bring any additional, appropriate authorities to the CFTC to ensure that these underlying carbon markets have integrity and are accomplishing their intended goals.

4. **Given the reports outlined in our letter, which suggest that the voluntary carbon market you think that self-certification of greenhouse gas emission offset contracts is appropriate, given the issues raised around market integrity?**

Response: As mentioned above, DCMs are required to either self-certify to the Commission that new contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before listing them for trading. DCMs must submit a new or amended contract pursuant to the Commission's regulations in Part 40 and the contracts must be consistent with the DCM Core Principles, including DCM Core Principle 3, which requires a DCM to only list contacts that are not readily susceptible to manipulation, and the Commission regulations applicable to DCMs. Appendix C to Part 38 of the CFTC's regulations also provides non-binding guidance for how a DCM can demonstrate compliance that a contract is readily susceptible to manipulation. A DCM may self-certify or receive approval for a new contract as long as it complies with the CEA and Commission's regulations thereunder. The Commission may not deny or revoke a product listing on grounds beyond its statutory mandate within the CEA.

Senator Ben Ray Luján

1. **In the past, the CFTC's diversity and Hispanic representation has been criticized for falling behind the relevant civilian workforce. In an evaluation conducted in the Commission's MD-715 report for FY19 concluded that the Commission had "No Commission wide D&I (Diversity and Inclusion) Strategy".**

   Does the Commission currently have a strategic plan for improving equity through its mission operations, and attracting and retaining a diverse workforce?

   Response: This year, the CFTC's OMWI is leading a project team that includes liaisons from all CFTC divisions and offices to develop and implement an actionable, data-driven diversity, equity, inclusion and accessibility (DEIA) strategic plan that will be the first stand-alone DEIA Strategic Plan in the history of the CFTC. The CFTC's DEIA Strategic Plan will include goals, objectives, strategies, and performance measures that align with the CFTC's overarching 2022-2026 agency strategic plan, my commitment to integrating DEIA into every aspect of the CFTC's talent and business operations, and with the administration's guidance in Executive Orders 14035 and 13985, and the Government-Wide Plan to Advance DEIA in the Federal Workforce. The plan will include metrics for measuring success and accountability and will consist of two parts. The first part is intended to strengthen the CFTC's ability to recruit, hire, develop, and retain a workforce that reflects the diversity of America. The second part is intended to advance equity and remove barriers across all of the CFTC's policies and programs, so that the CFTC can advance equity for historically underserved communities through education about derivatives markets, managing risk, and avoiding fraud. The CFTC anticipates issuing its DEIA Strategic Plan, which will be subject to Commission approval, by the end of FY 2023.

2. **In your testimony, you summarize the potential benefits from statutorily authorizing the CFTC's Office of Minority and Women Inclusion.**

   Please elaborate on how establishing the Commission's OMWI office in statute will better enable the CFTC to reach its long-term goals for diversity and inclusion.

   Response: Statutory authorization of the CFTC's OMWI office would: 1) place its scope of responsibility and authority on par with the CFTC's peer financial regulators; 2) allow the CFTC to seek and allocate additional resources and staffing for its OMWI to execute the broader mandates of Section 342 of the Dodd-Frank Act; 3) insulate the OMWI from any future Commission who may seek to abolish the office or narrow its scope of authority;

and 4) strengthen the CFTC's ability to advance and promote diversity and inclusion within the CFTC and the financial industry overall through: a) increased transparency and accountability through the reporting requirements to Congress; b) establishment of standards for the utilization of minority and women-owned businesses in the agency; c) enhanced ability to staff and resource the CFTC's OMWI to develop and engage in proactive partnerships, outreach and recruitment initiatives on par with peer OMWI offices; and d) development of standards to assess diversity policies and practices of entities regulated by the CFTC, allowing the CFTC to monitor trends and highlight best practices.

3. **We must ensure institutional bad actors who take advantage of consumers or participate in crimes like money laundering are held accountable for their action. Institutional bad actors too often see fines as the cost of doing business, and it's important that regulators are empowered to enact appropriate fines to deter future illegal activity.**

   Are there statutory changes that would help the CFTC better hold bad actors, particularly repeat offenders and egregious violators, accountable when they break the law?

   <u>Response:</u> We must ensure institutional bad actors who take advantage of consumers or participate in crimes like money laundering are held accountable for their action. Institutional bad actors too often see fines as the cost of doing business, and it's important that regulators are empowered to enact appropriate fines to deter future illegal activity.

   Are there statutory changes that would help the CFTC better hold bad actors, particularly repeat offenders and egregious violators, accountable when they break the law?

   <u>Response</u>: As outlined in the CFTC's Division of Enforcement's Civil Monetary Penalty Guidelines, the CFTC may consider a number of factors in setting civil monetary penalties for violation of the CEA and Commission regulations. See https://www.cftc.gov/media/3896/EnfPenaltyGuidance052020/download. While its current precedent and practice provide the CFTC with discretion in fashioning the appropriate relief for violations, amendment of its statutory penalty authority, and substantive and procedural CEA provisions would bolster its ability to deter future illegal activity.

   - **Enhanced Penalty Provisions**. While the CFTC's general penalty amounts have been adjusted for inflation, they were last statutorily modified in 2010 when $1 million penalties were established for manipulation violations. However, the deterrent effect of the Commission's enforcement program would be bolstered by statutory increases in the base penalty amounts with enhanced penalties for particularly harmful conduct, e.g., violations involving substantial harm, and violations affecting the conduct in markets. Further, because violators may either engage in repeated conduct in CFTC and related markets, stronger penalties for recidivists (i.e., persons or entities that have engaged in related criminal violations or willful violations of the Commodity Exchange Act (CEA) and/or securities statutes).

- **Statute of Limitations**. The CFTC enforcement program has found its ability to address misconduct limited by a 5-year statute of limitations for civil monetary penalties. Enlarging the statute of limitations to 10 years would empower the CFTC enforcement program by denying violators financial benefit from obscuring facts sufficient to give the Commission notice that a violation has occurred.
- **Obstruction of Justice in Commission Investigation or Enforcement Action.** Enactment of this provision will allow the Commission to charge persons who engage in any effort to prevent the execution of lawful process or the administration of justice in a civil matter under the CEA. Civil enforcement agencies face the same obstructive acts by persons of interest that criminal enforcement authorities do. With a civil obstruction provision, the CFTC may be able to more swiftly address conduct that seeks to under the CFTC's mission to ensure market integrity and protect customers by detecting and prosecuting violations of the CEA.

4. **For new technologies like digital assets, if Congress doesn't give regulators the tools to do their jobs, consumers will continue bearing the costs of fraud, scams, and reckless behavior.**

   What measures has the CFTC taken to ensure it has the technological expertise and knowledge within its workforce to effectively oversee modern financial products under its jurisdiction?

   Response: The CFTC has invested significant time and resources into ensuring that our workforce understands and can effectively oversee modern financial products in our jurisdiction. For over five years, we have had a dedicated office focused on technology innovation, originally called LabCFTC and now called the Office of Technology Innovation. This office conducts research and educates staff on cutting edge technical topics. Moreover, agency staff has significant experience through overseeing registrants and through enforcement investigations with understanding modern financial products. In the event that Congress decides to give the CFTC additional authority over portions of the digital asset market, we expect that we will request additional resources so that we have the means necessary to play that role.

Senator Reverend Raphael Warnock

1. **Last year, the nickel market unraveled, causing massive price swings in a market that has generally experienced low-price volatility.[6] We later discovered that the cause of the price hike was a coordinated short squeeze against a large trader.[7] Recently, we've seen more traders look to game financial markets for quick profits. These are not so-**

[6] https://www.bloomberg.com/news/articles/2022-03-14/inside-nickel-s-short-squeeze-how-price-surges-halted-lme-trading
[7] *Ibid.*

called "meme stocks." Nickel is a critical mineral listed by the U.S. Geological Survey, serving an important role in America's national security and economic development.[8]

a. **Have price shocks and extraordinary market events, as we saw in the London Metals Exchange, had a material effect on downstream domestic industries, particularly those that rely on these commodities as inputs?**

Response: Commodity markets, including metals markets, have recently faced a period of heightened stress and volatility. Ensuring that derivatives markets remain liquid and resilient during such periods, so that they can effectively serve their risk management and price discovery functions, is central to the agency's mission. One of my main priorities as Chairman of the CFTC has been to engage the agency's historical steady hand, transparent approach, and informed decision-making to support U.S. and global market resilience. Our preeminent analytic, surveillance and enforcement staff have examined data, conducted trading analyses for manipulative, inappropriate or disruptive conduct, and leveraged the agency's enforcement authorities to root out bad actors. CFTC staff have also continued to actively monitor compliance by exchanges, clearinghouses, and intermediaries, with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets. Our regulatory framework and market structures, and the CFTC's thoughtful yet assertive approach, have served the American people and markets as intended, allowing end-users to hedge their risks during a particularly challenging period.

It is important to note that CFTC-regulated derivatives exchanges – namely, designated contract markets – are already required to incorporate several features that the London Metal Exchange is addressing in response to recommendations from its independent review of last year's events in the nickel market. In particular, these CFTC-regulated exchanges already have in place risk controls for trading such as: price-driven market halts, daily price limits, and review of large position holders, including their cash positions, during spot periods.

b. **Have you witnessed events like this in U.S. agricultural commodities markets?**

Response: As I have stated publicly, it is without question that 2022 was a challenging year across all commodity complexes, some more extreme than others. In the years to come we no doubt will recall it as a period of time that put the CFTC on highest alert.[9]

At a time when the ongoing effects of the global pandemic, monetary and fiscal policy shifts, geopolitical uncertainty, cyber threats, and technology disruptions are

[8] https://www.usgs.gov/news/national-news-release/us-geological-survey-releases-2022-list-critical-minerals
[9] *See, e.g.,* Rostin Behnam, Chairman, CFTC, Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference (Jan. 23, 2023), Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference, Fort Lauderdale, Florida | CFTC.

a mainstay in every risk scenario, it is not always possible to envision with complete clarity what could be at the end of the tail. That said the CFTC has had an opportunity in the last few years to demonstrate domestically and abroad how we tirelessly use all available resources, leverage expertise, and develop new skills to meet evolving market demands and developments – and how our core principles framework for exchanges, which contemplates the incorporation of critical risk controls for trading, helps to ensure that the derivatives markets that we regulate function with integrity and as intended.

c. **How is the CFTC monitoring these events and what signals does it look for?**

Response: The CFTC has remained vigilant during this recent period of market stress and volatility. As discussed above, the agency's analytic, surveillance and enforcement staff have examined data, conducted trading analyses for manipulative, inappropriate or disruptive conduct, and have leveraged the agency's enforcement authorities to root out bad actors. CFTC staff also have actively monitored compliance by exchanges, clearinghouses and intermediaries with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets.

CFTC staff are using every tool the agency has to ensure that commodity derivatives markets continue to fairly, effectively and transparently serve their intended price discovery and risk management functions.

2. **I was proud to work with Senator Grassley last Congress on the Anti-Money Laundering Whistleblower Improvement Act which strengthens incentives for whistleblowers to step up and report financial crimes. Language from this bill was included in the Consolidated Appropriations Act, 2023, (Pub. L. 117-328), which President Biden signed into law on December 29, 2022.[10]**

   a. **Especially as we've seen increased activity in commodities markets, is the CFTC whistleblower program prepared to handle a potentially higher volume of whistleblower cases involving market manipulation or other financial crimes?**

   b. **Are there more resources that the CFTC would like for Congress to provide the agency to ensure that whistleblower cases are properly handled?**

Response: I share your views that a strong whistleblower program is paramount to the agency's success as the chief regulator of the derivatives markets.

In each of the past two calendar years Congress, working with Chairwoman Stabenow and Senator Grassley, has passed legislation that protects the agency's Whistleblower Office

[10] https://www.congress.gov/bill/117th-congress/house-bill/2617

(WBO) and the Office of Customer Education and Outreach (OCEO). Due to the success of the WBO and increasingly higher payouts to whistleblowers, the agency and Congress have had to rethink the original construction of the Customer Protection Fund, which provides the salaries and expenses of those offices, as well as the payouts to whistleblowers. The agency looks forward to working with the Chairwoman and Committee on a permanent solution to the challenges facing the CFTC's Customer Protection Fund.