U.S. Commodity Futures Trading Commission

The Inspector General's Statement on the CFTC's Management and Performance Challenges Office of the Inspector General

Fiscal Year 2023
Management and Performance Challenges

November 13, 2023

OIG
OFFICE OF THE INSPECTOR GENERAL
- COMMODITY FUTURES TRADING COMMISSION -
CFTC

Contents

Commodity Futures and Trading Commission

The mission of the Commodity Futures Trading Commission (CFTC) is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. In the aftermath of the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) expanded the CFTC's regulatory authority to oversee the more than $400 trillion swaps market.

The CFTC organization consists of the offices of the Chairman and Commissioners as well as the agency's 13 operating divisions and offices. The CFTC's Executive Leadership Team consists of the heads of each operating division and office, the agency's Chief of Staff/Chief Operating Officer, and the CFTC Chairman in his or her capacity as the agency's Chief Executive. These individuals are responsible for carrying out the CFTC's administrative, regulatory, and enforcement agenda.

OIG Mission and Authority

The Office of the Inspector General (OIG) mission is to detect waste, fraud, and abuse and to promote integrity, economy, efficiency, and effectiveness in the CFTC's programs and operations. As such it has the ability to review all of the Commission's programs, activities, and records. OIG was established as an independent unit to:

- Promote economy, efficiency, and effectiveness in the administration of CFTC programs and operations, and detect and prevent fraud, waste, and abuse in such programs and operations;

- Conduct and supervise audits and, where necessary, investigations relating to the administration of CFTC programs and operations;

- Review existing and proposed legislation and regulations, and make recommendations concerning their impact on the economy and efficiency of CFTC programs and operations or the prevention and detection of fraud and abuse;

- Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations; and

- Keep the Commission and Congress fully informed about any problems or deficiencies in the administration of CFTC programs and operations and provide recommendations for correction of these problems or deficiencies.

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

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

CFTC Management and Performance Challenges for FY 2023

The CFTC faces several management challenges that potentially hinder its ability to fulfill its mission effectively. For FY 2023, we have identified five challenges; three with opportunities for improvement. Recognizing CFTC’s leadership initiatives for data harmonization completed and underway, for FY 2023 we focused on areas where the CFTC must adapt its regulatory framework to keep pace with technological advancements for risk intelligence and capitalizing on existing resources. In particular:

1. Maturing Enterprise Risk Management Practices
2. The Customer Protection Fund
3. Lease Space Savings
4. Maintaining Cyber Security Successes
5. Preparing for its Role for Regulating Digital Assets

Mastering these opportunities can further transform the CFTC to anticipate and mitigate risks impacting the fulfillment of its mission.

Challenge 1: Maturing Enterprise Risk Management Practices

Enterprise risk governance is a shared responsibility at the highest levels of executive leadership. Applied to CFTC, Enterprise Risk Management (ERM) is a Commission-wide strategy to identify and prepare for risks to business objectives. More specifically, ERM provides a framework for risk management, which typically involves identifying particular events or circumstances relevant to the CFTC objectives (threats and opportunities), assessing them in terms of likelihood and magnitude of impact, determining a response strategy, and monitoring process.

CFTC's current Strategic Plan recognizes that "[a] robust and mature ERM program is central to achieving the CFTC mission." CFTC's ERM program vision "integrates risk identification, risk management, strategic planning, and performance monitoring so that risks that potentially threaten achievement of the CFTC mission are anticipated, analyzed, and systematically addressed." However, CFTC's Chief Risk Officer departed in March 2023; currently one CFTC employee is tasked with risk management oversight. Therefore, in the short-term the Commission has opportunities to mature its ERM program through skilled staff acquisition, developing policies and procedures, employing data-driven metrics, and integrating risk management practices CFTC-wide.

During FY 2023, CFTC responded to several unexpected risks impacting markets and operation such as crypto currency failures[1] and malware impacting registrant reporting.[2] A robust ERM program enhances CFTC's posture to better anticipate, prioritize, and respond to risk.

Management conveyed they:

Completed Actions	Ongoing Actions
• Conducted interviews with multiple Financial Institutions Reform, Recovery, and Enforcement (FIRREA) and Financial Services agencies as part of a benchmarking exercise to help assess CFTC's current level of maturity and consider best practices moving forward. • Based on the interviews, the CFTC planned a strategic pragmatic approach to develop an ERM program that is effective and sustainable by focusing on one division at a time. • Established an informal ERM Committee to provide guidance and feedback on the implementation strategy of the ERM program.	• Establish a formal ERM Committee building from the informal committee. • Develop a mature ERM program to identify and respond to enterprise risks.

[1] See, e.g., CFTC Customer Advisory: Use Caution When Buying Digital Coins or Tokens; Keynote Address of Commissioner Kristin Johnson at UC Berkeley Law Crypto Regulation Virtual Conference, Post Crypto-Crises: Pathways for Protecting Customers and Preserving Market Integrity, Feb 8, 2023.
[2] See, Reuters, U.S. CFTC traders report delayed by ransomware attack on data firm ION, Feb. 2, 2023.

Challenge 2: The Customer Protection Fund

Currently, the CPF is available to CFTC for the payment of awards to whistleblowers and the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of the Commodity Exchange Act. The CFTC could assert its use of the CPF for increased educational initiatives, such as education of registrants and market professionals, and could interpret existing legislation to permit the CPF to fund education activities beyond fraud avoidance for customers. Customer education regarding registration and customer disclosure requirements, for instance, could protect customers from violations in addition to the fraud prohibitions under the Commodity Exchange Act and regulations. Risk management and cyber security training could benefit customers, registrants and market participants, while strengthening measures against fraud or other violations of the Commodity Exchange Act. In short, expanded use of CPF funds to finance additional education initiatives could benefit the CFTC ecosystem as a whole.

Management stated:

Completed Actions	Ongoing Actions
• The CFTC has identified the CEA provisions relevant to education. The CEA allows use of the CPF for the funding of "customer education initiatives designed to help customers protect themselves against fraud or other [CEA] violations . . . or . . . [related] rules and regulations. . . . ." 7 U.S.C. § 26(g)(2)(B). The CEA also calls for other educational expenses to be carried out through appropriations. 7 U.S.C. § 22(a). • The CFTC has sought two opinions from GAO as to the use of the CPF for customer education and market participant education, and one opinion from the CFTC's General Counsel. (GAO, B-321788, at 4; GAO, B-324469, at 6). • The Whistleblower Office (WBO) is also funded by the CPF and is part of the Division of Enforcement (Division). The WBO works with the Director of the Division and relevant Division Task Forces to publish whistleblower alerts, and to conduct outreach efforts to potential whistleblowers. [Whistleblower Alerts | Whistleblower.gov]	• The WBO will continue to work with the Division and its Task Forces to educate potential whistleblowers about Division priorities, which include cyber security. • OCEO will explore within the CFTC the use of CPF funds to expand the remit of its educational efforts. • The Chairman will continue to advocate for amendments to the CEA to expand the permitted uses of the CPF in support of implementing a host of new investor protection programs and systems and information aimed at ensuring Americans not only protect themselves from fraud and manipulation, but may more fully engage with the Commission and the markets it oversees.[3]

[3] *See, e.g.,* Rostin Behnam, Chairman, CFTC, Testimony of Rostin Behnam, Chairman, Commodity Futures Trading Commission "Oversight of the Commodity Futures Trading Commission," U.S. Senate Committee on Agriculture, Nutrition, & Forestry (Mar. 8, 2023), Testimony of Chairman Rostin Behnam Before the U.S. Senate Committee on Agriculture, Nutrition, & Forestry | CFTC.

Challenge 3: Leased Space Savings

During Fiscal Years (FY) 2020-22 CFTC completed the relocation of its three regional offices to facilities managed by the General Services Administration (GSA). During that period, and in response to observed declines in employee office attendance due to the novel COVID-19 (coronavirus) pandemic, CFTC has maintained its four (total) leased facilities with low occupancy levels since March 2020. When CFTC determines its post-pandemic return to work policy and updates office space requirements accordingly, significant cost savings may become available to support operational needs through right-sizing leased space. Specifically, opportunities exists to re-evaluate its current space needs and inform GSA of unused space at its Kansas City, Chicago, and New York offices. In addition, because its Washington D.C. headquarters lease expires in 2025, CFTC also has the opportunity to right-size headquarters space requirements. Through CFTC action, GSA may facilitate amended leases in the regions and a new headquarters lease that serves the CFTC's prospective space needs. The opportunity to re-evaluate leased space remains throughout a GSA lease, but CFTC should seize the opportunity as soon as feasible.[4]

Management expressed:

Completed Actions	Ongoing Actions
• During Fiscal Years (FY) 2020-22, CFTC completed the relocation of its three regional offices to facilities managed by the General Services Administration (GSA). • CFTC proposed a space reduction of 49% from current levels in the future lease for DC office space.	• Currently in negotiations with the union to determine the CFTC's future work posture (e.g., telework). • Work with GSA to evaluate proposals on the DC office space plan and design.

[4] See Occupancy Agreement between Commodity Futures Trading Commission and General Services Administration Financial Terms clause "[The] tenant agency may relinquish space upon four (4) months' notice at any point after the first twelve (12) months of occupancy". Identical clause is found in KCRO, NYRO, and CHRO Occupancy Agreements.

Challenge 4: Maintaining Cyber Security Effectiveness

A technological area of success for CFTC has been the growth and effectiveness of cyber security operations. At present security operations are able to monitor and respond to threats in real-time. In addition, CFTC has successfully migrated to a cloud environment and its security posture is effective. However, CFTC must devote vigilance and resources to maintaining talent and leading-edge tools to remain effective in its cloud environments. Cloud-conscious adversaries, which abuse cloud-specific features to achieve their goals, pose significant risk to cloud environments. They have a deep understanding of cloud infrastructure and continue to refine their tactics, including artificial intelligence, to abuse cloud services and exploit cloud vulnerabilities and misconfigurations. We noted during FY 2023 that while CFTC cyber controls were effective and in line with the organization's established policy and procedures, an improvement opportunity existed to mitigate or accept the risk of aging critical and high vulnerabilities associated with its network servers and workstations.

Management communicated they:

Completed Actions	Ongoing Actions
• Updated CFTC's vulnerability management processes and procedures to establish a more aggressive patching timeframe to protect the network against urgent and active threats. • Conducted 12 phishing exercises to reduce the risk posed by phishing attacks by increasing user awareness through continuous exercises and detailed debriefs. • Implemented several 3rd party patch management tools to deploy security updates.	• Explore additional alternatives to improve patching timeframe for the aging critical and high vulnerabilities identified in CFTC information systems. • Explore modifications to the network architecture (e.g., network segmentation) to reduce the attack surface and limit lateral movement to better safeguard CFTC information and information systems.

Challenge 5: Preparing for its Role for Regulating Digital Assets

Digital Assets include cryptocurrency, virtual currency, digital currency, crypto tokens, virtual tokens, digital tokens, utility tokens, crypto assets, stablecoins, central bank digital currency, non-fungible tokens, and many other possible terms referring to "assets on the blockchain."

Over the past decade, digital assets have gone from an obscurity to a generally unregulated medium of finance. As with any new technology, there is great potential for society, but there are also significant risks. As society awaits Congressional action for clear regulatory jurisdictions, many federal agencies have begun acting within their powers. The President has ordered[5] federal agencies to begin coordinating and refining their responses with the hopes that the U.S. will not miss the opportunity to be a leading jurisdiction for digital assets, and equally to ensure that the U.S. remains at the forefront of responsible development and design of digital assets and the technology that underpins new forms of payments and capital flows in the international financial system.

We recognize the collective attention to digital assets and jurisdiction, and the distinction between securities and commodities in particular. Whether certain digital assets are securities or commodities remains unclear, as various subcomponents of the ecosystem challenge existing regulatory divisions. The Government Accountability Office recently issued a report recognizing that "gaps in regulators' authority" exist in this area, and summarizing the risks of unclear regulation of digital assets:

> As markets for crypto assets and other blockchain-related products and services have grown, so has the need for federal financial regulators to address the risks they pose to consumers, investors, and financial stability. Recent market turmoil and instances of fraud related to crypto assets, stablecoins, and trading platforms illustrate the significant risks to consumers and investors. [The] potential for risks to financial stability will increase as blockchain products and services continue to grow and integrate into the mainstream financial system.[6]

---

[5] See, Executive Order 14067 of March 9, 2022, "Ensuring Responsible Development of Digital Assets" (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/); Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets (https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/#:~:text=President%20Biden's%20March%209%20Executive,assets%20and%20their%20underlying%20technology).

[6] GAO-23-105346, Blockchain in Finance – Legislative and Regulatory Actions Are Needed to Ensure Comprehensive Oversight of Crypto Assets, page 55-56, June 2023.

GAO also recognized that "gaps in regulators' authority" limit their ability to effectively mitigate these risks.[7] CFTC participates in the Financial Stability Oversight Council, which is designed to monitor and address such risks. CFTC may be uniquely positioned to analyze risks posed by digital asset markets and to contribute to the work of the FSOC regarding risks posed by such markets. This presents a significant opportunity to coordinate responsibilities for spot markets, for example, as well as a significant management challenge to bolster capacity for data capture, analysis, monitoring, supervision, and regulation of crypto-asset activities.[8]

Management shared:

Completed Actions	Ongoing Actions
• Enforcement actions related to digital assets to ensure compliance with existing laws (47 actions filed in FY 2023) • Helped draft FSOC report on digital assets • Participated in drafting reports on digital assets by international bodies, including IOSCO and FSB • Provided technical assistance to Congress on proposed digital asset legislation • Drafted preliminary plan of action if legislation is enacted that would give the CFTC jurisdiction over spot trading in digital assets that are not securities	• Numerous ongoing enforcement matters related to digital assets • Ongoing participation in FSOC digital asset working group • Ongoing technical assistance to Congress for possible legislation • Coordinate directly with other governmental bodies, including the SEC, Treasury and California state regulators, on digital asset policy

[7] Id., page 56.
[8] See, FSOC, Report on Digital Asset Financial Stability Risks and Regulation, 2022 (https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf).

To Report Fraud, Waste, or Abuse, Please Contact:

The Office of Inspector General (OIG) conducts and supervises audits and investigations of programs and operations of the CFTC and recommends policies to promote economy, efficiency and effectiveness in CFTC programs and operations in order to prevent and detect fraud, waste or abuse.

Employees, contractors and members of the public may report any instance of fraud, waste, or abuse at CFTC by contacting:

- OIG Hotline at 202.418.5510
- Email to OIGComplaint@cftc.gov (you do not need to identify yourself)
- Sending a letter to:

  Commodity Futures Trading Commission
  Office of the Inspector General Three Lafayette Centre
  1155 21st Street, NW
  Washington, DC 20581

- Fax to the CFTC OIG at 202.418.5522

Comments and Suggestions

Comments can be mailed to the attention of the Assistant Inspector General for Audits at the address listed above.

Suggestions for the CFTC FY24 workplan may be emailed to OIGWorkplan@cftc.gov.

Please send general comments or questions to OIG@cftc.gov.