



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the Inspector General

Semiannual Report to Congress

October 1, 2020 – March 31, 2021

U.S. Commodity Futures Trading Commission



U.S. COMMODITY FUTURES TRADING COMMISSION

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April 30, 2021

TO: Rostin Behnam, Acting Chairman
Brian Quintenz, Commissioner
Dawn Stump, Commissioner
Dan Berkovitz, Commissioner

FROM: A. Roy Lavik *ARL/R*
Inspector General

SUBJECT: Semiannual Report of the Office of the Inspector General

Attached is the Office of the Inspector General's Semiannual Report for the period from October 1, 2020, through March 31, 2021. This report is submitted to you in accordance with the requirements of Section 5 of the Inspector General Act of 1978, as amended, and summarizes issued reports and ongoing projects during the reporting period.

I appreciate your continuing support of this office.

SEMIANNUAL REPORT
OF THE U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)
OFFICE OF THE INSPECTOR GENERAL (OIG)

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
CFTC PROGRAMS and OPERATIONS	4
CFTC OIG RESPONSIBILITIES, RESOURCES, ORGANIZATION, and INDEPENDENCE.....	5
CFTC OIG RESPONSIBILITIES	5
CFTC OIG RESOURCES	6
OIG INDEPENDENCE	7
REQUIRED STATEMENT REGARDING INFORMATION ACCESS AND ASSISTANCE	7
AUDIT OPERATIONS	7
COMPLETED AUDITS, INSPECTIONS, EVALUATIONS, AUDIT REVIEWS, AND OTHER AUDIT PROJECTS	7
<i>Federal Information Security Management Act Review: FY 2020.....</i>	<i>7</i>
<i>Audit of the CFTC’s FY 2020 Annual Financial Report</i>	<i>8</i>
<i>Audit of the CFTC’s FY 2020 Customer Protection Fund Financial Statements Report.....</i>	<i>8</i>
ONGOING AUDITS, AUDIT REVIEWS, AND OTHER AUDIT PROJECTS	9
AUDIT REPORTS AND REVIEWS OVER SIX MONTHS OLD; REQUIRED STATEMENTS	10
<i>Required Statements Regarding Commission Response Exceeding 60 Days, and Regarding Management Decisions Not Made</i>	<i>10</i>
<i>Required Statements Regarding Revised Management Decisions, and Regarding Inspector General Disagreement</i>	<i>10</i>
<i>Required Statements Regarding Significant Recommendations that have not been Completed; and Audit Reports for which there are any Outstanding Unimplemented Recommendations, Including Aggregate Potential Cost Savings.....</i>	<i>10</i>
Table 1: Unimplemented Recommendations	10
Table 2: Detail of Unimplemented Recommendations.....	11
INVESTIGATIVE OPERATIONS.....	11
SUMMARY	11
DETAILS OF OIG INVESTIGATIVE ACTIVITY	12
ONGOING INVESTIGATIVE MATTERS AND REQUIRED DISCLOSURES	13
Table 3: Investigative Statistics for Referrals and Whistleblower Retaliation	13

INSPECTIONS AND EVALUATIONS	13
<i>Inspection and Evaluation of CFTC’s Compliance with Executive Order 13950, Combating Race and Sex Stereotyping.....</i>	<i>13</i>
LEGAL AND ECONOMIC REVIEW	14
LEGISLATIVE and REGULATORY PROJECTS	14
PEER REVIEWS	15
<i>Peer Review Report of CFTC OIG Audit Function</i>	<i>15</i>
<i>Peer Review Report of CFTC OIG Investigative Function</i>	<i>15</i>
SUMMARY of FINAL REPORTS NOT MADE PUBLIC.....	16
GAO LIAISON.....	16
STRATEGIC PLAN for the OFFICE of INSPECTOR GENERAL	16
MISSION, VISION, AND VALUES	16
STRATEGIC GOALS FOR THE COMING YEAR.....	17
STRATEGIC GOAL 1: EVALUATE THE ECONOMIC IMPACT OF CFTC REGULATORY ACTIONS THROUGH LEGAL ANALYSIS, WHITE PAPERS, INSPECTIONS AND EVALUATIONS, MANAGEMENT REVIEWS, AND OTHER PRODUCTS	17
<i>Office of Legal and Economic Review (OLER): Legislative, Economic, and Regulatory Review Agenda.....</i>	<i>17</i>
STRATEGIC GOAL 2: ADDRESS HIGH IMPACT ISSUES IN CFTC ADMINISTRATIVE AND MISSION PERFORMANCE.....	18
<i>Office of Audits: Audit and Review Agenda.....</i>	<i>18</i>
STRATEGIC GOAL 3: ADDRESS EMPLOYEE AND CONTRACTOR MISCONDUCT PROMPTLY, THOROUGHLY, AND RELIABLY	19
<i>Office of Investigations: Investigative Agenda</i>	<i>20</i>
CONTACTING the OFFICE of the INSPECTOR GENERAL.....	20
APPENDICES	21
Appendix 1 – Reports Issued with Questioned Costs	21
Appendix 2 – Reports Issued with Recommendations That Funds Be Put to Better Use....	22
Appendix 3 - Index of IG Act Reporting Requirements	23

EXECUTIVE SUMMARY

This semiannual report is issued by the Commodity Futures Trading Commission (CFTC) Office of the Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended.¹ It summarizes OIG's activities and accomplishments for the period October 1, 2020, through March 31, 2021. During this period, the OIG Office of Audits completed three audits and three technical assessments. With the exception of information security reports, they are posted to our [webpage](#). In addition, we began or continued work on two audits and a collaborative survey. On the investigations side, we began the reporting period with one pending investigation and seven allegations pending development. We finished the reporting period with two investigations and two allegations pending. We began and completed one Inspection and Evaluation. Finally, the Office of Legal and Economic Review started one whitepaper project.

Highlights of all completed and ongoing audits, investigations, and other projects follow as listed below:

AUDIT OPERATIONS

Completed

Information Technology Management and Security

- Federal Information Security Management Act (FISMA) Review: FY 2020 – The objective of this review was to evaluate CFTC's information security program and practices as required by FISMA.² This report was not made public due to information technology sensitivity concerns. In addition, the following technical assessments were completed by contracted information security professionals in coordination with OIG:
 - Cyber Testing: New York File Servers – We contracted independent information security professionals to evaluate backup and recovery IT controls of New York file servers.
 - Cyber Testing: Active Directory Controls – We contracted independent information security professionals to evaluate the Microsoft Server Active Directory program.
 - Cyber Testing: FY 2019 Information Security Continuous Monitoring (ISCM) follow-up. We contracted independent information security professionals to evaluate the management response and follow-up to FY 2019 ISCM findings.

Management's information security program was evaluated as effective, with low and medium risks identified, and management addressed the previous year's high and medium risks.

¹ P.L. 95-452, 92 Stat. 1101 (1978).

² P.L. 107-347 (Title III), 116 Stat. 2946 (2002).

Financial

- Audit of the CFTC’s FY 2020 Annual Financial Report (AFR) – The objective of this Congressionally mandated audit³ was to render an opinion on the agency financial report (financial statements) in accordance with *Generally Accepted Government Auditing Standards* ([GAGAS](#)).
- Audit of the CFTC’s FY 2020 Customer Protection Fund (CPF) – The objective of this Congressionally mandated audit⁴ was to render an opinion on customer protection fund financial statements in accordance with [GAGAS](#).

In both instances, management received an unqualified or “clean” opinion.

Ongoing

Financial

- Audit of the CFTC’s FY 2021 Annual Financial Report (AFR) – The objective of this Congressionally mandated audit⁵ is to render an opinion on the agency financial report (financial statements) in accordance with [GAGAS](#).
- Audit of the CFTC’s FY 2021 Customer Protection Fund (CPF) – The objective of this Congressionally mandated audit⁶ is to render an opinion on customer protection fund financial statements in accordance with [GAGAS](#).
- FY 2021 CFTC’s Compliance Audit with the Digital Accountability and Transparency (DATA) Act of 2014⁷ - The DATA Act, in part, requires Federal agencies to report financial and award data in accordance with established Government-wide financial data standards. The audit objectives are to: (1) review a statistically valid sampling of the fiscal year 2021 spending data submitted, and (2) submit to Congress and make publicly available a report assessing the completeness, timeliness, quality, and accuracy of the data sampled and the implementation and use of data standards.

³ The Accountability of Tax Dollars Act, P.L. 107-289, 116 Stat. 2049 (2002).

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 748, 124 Stat. 1739 (2010) (“Dodd-Frank Act” or “Dodd-Frank”).

⁵ See fn. [3](#).

⁶ See fn. [4](#).

⁷ P.L. 113-101, 128 Stat. 1146 (2014).

Other

- Council of Inspectors General on Financial Oversight (CIGFO) – The Dodd-Frank Act created the Financial Stability Oversight Council (FSOC),⁸ as well as the Council of Inspectors General on Financial Oversight (CIGFO).⁹ CIGFO is charged with evaluating the effectiveness and internal operations of FSOC. During this reporting period CIGFO convened a working group to compile guidance for preparing for a crisis, along with crisis response lessons learned, based on detailed survey responses from the FSOC member agencies. This project was ongoing at the close of the reporting period, and we commented on a draft report prior to the close of this reporting period.

INVESTIGATIVE OPERATIONS

We began the reporting period with one pending investigation and seven allegations pending development. We completed the pending investigation and closed the seven allegations during this reporting period. During this reporting period we received 69 new allegations. We closed 67 of the new allegations: 62 were referred to the CFTC Division of Enforcement (DOE) or to other entities, two were closed due to lack of evidence or jurisdiction, and three were closed with the opening of the three new investigations. We completed one of the three new investigations during this reporting period. We finished the reporting period with two pending investigations and two pending allegations.

INSPECTIONS and EVALUATIONS

During this reporting period OIG began and completed an Inspection and Evaluation of the CFTC's compliance with EO 13950 (*Combating Race and Sex Stereotyping* (September 2020)). We found that CFTC was compliant in all respects. Our [report](#), dated December 31, 2020, was published to our [webpage](#).

LEGAL and ECONOMIC REVIEW

The OIG Office of Legal and Economic Review (OLER) gained one new attorney and opened one new project, a new white paper. The OLER white paper has three principal goals: (1) Provide general background information regarding the requirements of the Administrative Procedure Act (APA);¹⁰ (2) Provide the general public and Congress a taxonomy of the CFTC's panoply of regulatory tools; and (3) Critically evaluate whether the CFTC's regulatory tools and implementation comply with the APA. This analysis will include an evaluation of whether CFTC provides guidance that appears to be non-legislative in form but in substance attempts to bind the public.

⁸ P.L. 111-203, § 111, 124 Stat. 1392 (2010).

⁹ P.L. 111-203, § 989E, 124 Stat. 1946 (2010).

¹⁰ P.L. 79-404, 60 Stat. 237 (1946), as amended (codified at 5 U.S.C. § 551, *et seq.*).

CFTC PROGRAMS and OPERATIONS

Established by statute as an independent agency in 1974, the CFTC assumed responsibilities previously belonging to the U.S. Department of Agriculture since the 1920s.¹¹ The mission of the Commodity Futures Trading Commission is: “To promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.”¹² The CFTC and its predecessor were established to protect market participants and the public from fraud, manipulation, and other abusive practices in the commodity futures and options markets. After the 2008 financial crises and the subsequent enactment of the Dodd-Frank Act, the CFTC’s mission expanded to include oversight of the swaps marketplace.¹³

The Commission consists of five Commissioners appointed by the President, with the advice and consent of the Senate, who serve staggered five-year terms. The President appoints one of the Commissioners to serve as Chairman. No more than three Commissioners may be from the same political party.¹⁴ The CFTC maintains offices in Washington, D.C.; New York, NY; Chicago, IL; and Kansas City, MO. As of March 31, 2021, the CFTC organization consisted of the following Divisions and Offices (not including OIG):¹⁵

- Division of Clearing and Risk (DCR)
- Division of Enforcement (DOE)
- Division of Market Oversight (DMO)
- Market Participants Division (MPD)
- Division of Data (DD)
- Legal Division (LD)
- Division of Administration (DA)
- Office of the Chief Economist (OCE)
- Office of International Affairs (OIA)
- Office of Public Affairs (OPA)
- LabCFTC
- Office of Legislative and Intergovernmental Affairs (OLIA)
- Office of Minority and Women Inclusion (OMWI)

¹¹ U.S. Commodity Futures Trading Commission, *Strategic Plan FY 2020-2024* (May 2020), page 4, available at: https://www.cftc.gov/media/3871/CFTC202024_2024StrategicPlan/download.

¹² *Id.*, page 3.

¹³ U.S. Commodity Futures Trading Commission, *Strategic Plan FY 2020-2024* (May 2020), *supra*, page 4.

¹⁴ 7 U.S.C. § 2(a)(2).

¹⁵ <https://www.cftc.gov/About/CFTCOrganization/index.htm>; See, CFTC reorganization announcement, [Release Number 8297-20](#), October 28, 2020.

CFTC OIG RESPONSIBILITIES, RESOURCES, ORGANIZATION, and INDEPENDENCE

CFTC OIG RESPONSIBILITIES

The CFTC OIG was created in 1989 in accordance with the 1988 amendments to the Inspector General Act of 1978.¹⁶ OIG was established as an independent unit to:

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

The IG is appointed by the full Commission in accordance with the applicable laws and regulations governing appointments within the CFTC, and may be removed upon the written concurrence of a 2/3 majority of the Commission.¹⁷

The IG is a member of the Counsels of Inspectors General on Financial Oversight ([CIGFO](#)), created under the Dodd-Frank Act to examine the work of the Financial Stability Oversight Council ([FSOC](#)).

The IG is also member of the Counsel of the Inspectors General on Integrity and Efficiency ([CIGIE](#)), an independent entity established within the executive branch to address integrity, economy and effectiveness issues that transcend individual Government agencies and to aid in the establishment of a professional, well-trained and highly skilled workforce in the Offices of Inspectors General. The IG is a member of the CIGIE Legislation Committee, which

¹⁶ The Inspector General Act Amendments of 1988, P.L. 100-504, 102 Stat. 2515 (1988).

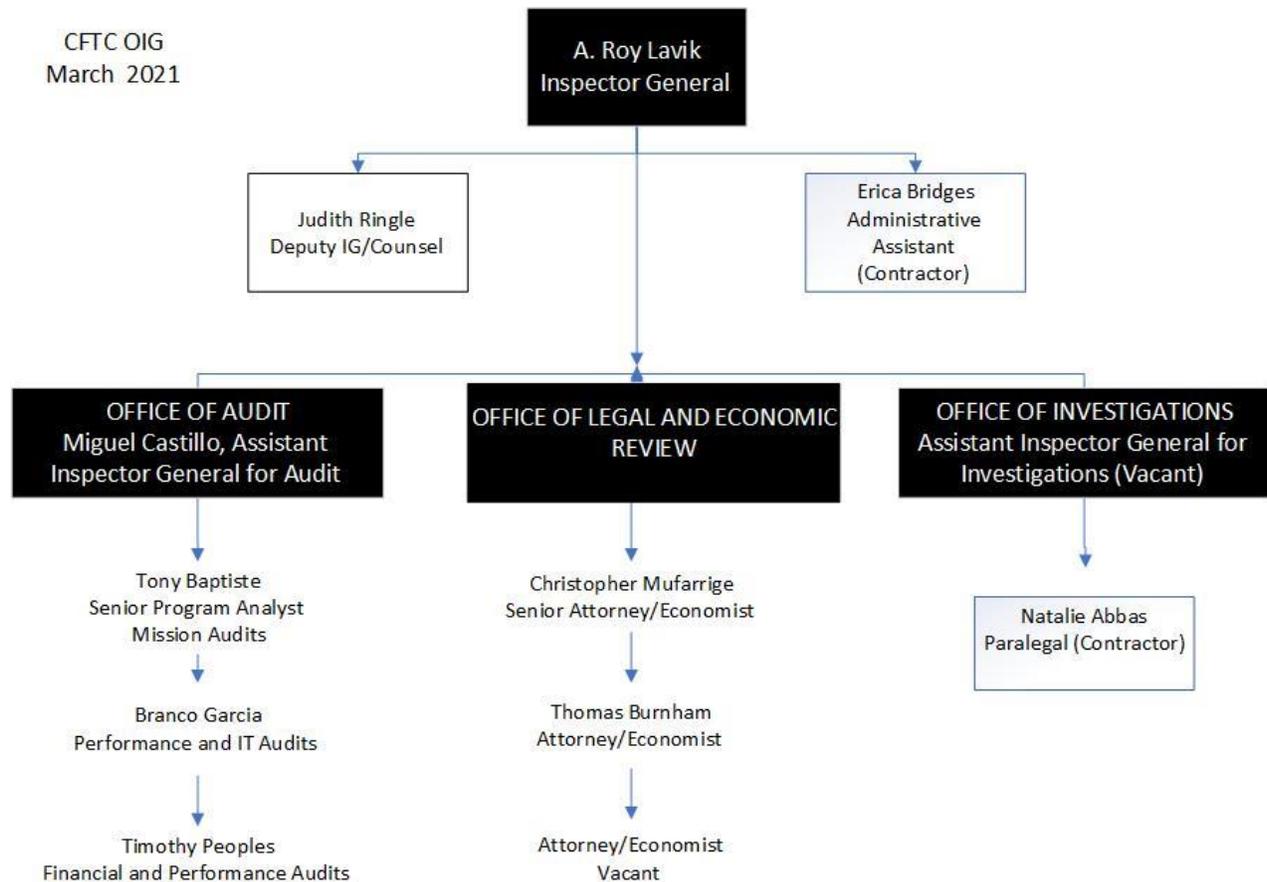
¹⁷ 5 U.S.C. App. §§ 8G(c), 8G(e)(1).

monitors legislation impacting the IG community and creates a yearly legislative agenda for the IG community.

CFTC OIG conducts audits engagement in accordance with the *Generally Accepted Government Auditing Standards (GAGAS)* issued by the Government Accountability Office (GAO). OIG conducts inspections, evaluations, and other covered products in accordance with the *Quality Standards for Inspection and Evaluation* issued by the CIGIE. OIG investigations are performed in accordance with the *Quality Standards for Investigations* issued by the CIGIE. The Office of Legal and Economic Review may conduct inspections, evaluations, and other covered products in accordance with the CIGIE standards cited above, and may produce white papers and other studies in accordance with internal standards. Our webpage is located at <https://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm>.

CFTC OIG RESOURCES

CFTC OIG maintains an Office of Audits, Office of Investigations, and Office of Legal and Economic Review (OLER). At the end of the reporting period, the CFTC OIG consisted of nine FTEs, and we were in the process of backfilling two OLER Attorney/Economists, in order to restore OLER to 2017 staffing levels. During this reporting period, we added one additional attorney to our OLER team. OLER attorneys assisted investigations as needed during the reporting period. Our organizational chart follows:



OIG INDEPENDENCE

OIG operates independently of the Agency and has not experienced any interference from the CFTC Chairman or Commissioners in connection with the conduct of any investigation, inspection, evaluation, review, or audit. Our investigations have been pursued regardless of the rank or party affiliation of the target. OIG also has conducted audits, inspections, evaluations, and reviews without interference where it has perceived the opportunity to recommend improvement to futures regulation efforts, again without regard to the party affiliation of any Chairman or Commissioner.¹⁸

REQUIRED STATEMENT REGARDING INFORMATION ACCESS AND ASSISTANCE

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

During the semimanual reporting period, there were no direct or intentional attempts by CFTC to interfere with Inspector General independence through:

Type	Number	Explanation
Budget constraints	0	N/A
Resistance to oversight	0	N/A
Delayed information access	0	N/A
Other	0	N/A

AUDIT OPERATIONS

COMPLETED AUDITS, INSPECTIONS, EVALUATIONS, AUDIT REVIEWS, AND OTHER AUDIT PROJECTS

Information Technology Management and Security

Federal Information Security Management Act¹⁹ Review: FY 2020

- The objective of this audit was to determine CFTC’s compliance with select information security controls prescribed by the National Institute of Standards and Technology (NIST) and as outlined by the Inspector General Federal Information Security Modernization Act of 2014 Reporting Metrics.²⁰ This year’s scope included a

¹⁸ The Inspector General Act of 1978, as amended, states: “[T]he head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation....” 5 U.S.C. App. 3 § 8G(d)(1).

¹⁹ See [fn. 2](#).

²⁰ The Inspector General Federal Information Security Modernization Act of 2014 (P.L. 113-283, 128 Stat. 3073 (2014)) Reporting Metrics for FY2020 are available here: https://www.cisa.gov/sites/default/files/publications/FY_2020_IG_FISMA_Metrics.pdf.

concentrated assessment of cloud controls reported in our previous semiannual, New York file servers, active directory program management, and follow-up to FY 2019 ISCM findings. We contracted information security professionals to assist in these areas of focus. This compilation report is not made public due to information technology sensitivity concerns. The following technical engagements were also completed by contracted information security professionals in coordination with OIG:

- Cyber Testing: New York File Servers – We contracted independent information security professionals to evaluate backup and recovery IT controls of New York file servers given loss of data and availability incidents.
- Cyber Testing: Active Directory Controls – We contracted independent information security professionals to evaluate the Microsoft Server Active Directory program.
- Cyber Testing: FY 2019 Information Security Continuous Monitoring (ISCM) follow-up. We contracted independent information security professionals to evaluate the management response and follow-up to FY 2019 ISCM findings.

Overall, management’s information security program was considered effective, with low and medium risks identified; management addressed the previous year’s high and medium risks. We made three recommendations with which management concurred and are taking corrective action.

Financial

Audit of the CFTC’s FY 2020 Annual Financial Report

The objective of this Congressionally mandated audit²¹ was to render an opinion on the agency financial report (financial statements) in accordance with Generally Accepted Government Auditing Standards (GAGAS). Management achieved an unqualified or “clean” opinion.

Audit of the CFTC’s FY 2020 Customer Protection Fund Financial Statements Report

The objective of this Congressionally mandated audit²² was to render an opinion on customer protection fund financial statements in accordance with GAGAS. Management achieved an unqualified or “clean” opinion.

²¹ See [fn. 3](#).

²² See [fn. 4](#).

ONGOING AUDITS, AUDIT REVIEWS, AND OTHER AUDIT PROJECTS

Financial

Audit of the CFTC’s FY 2021 Annual Financial Report (AFR)

The objective of this Congressionally mandated audit²³ is to render an opinion on the agency financial report (financial statements) in accordance with *Generally Accepted Government Auditing Standards* ([GAGAS](#)).

Audit of the CFTC’s FY 2021 Customer Protection Fund (CPF)

The objective of this Congressionally mandated audit²⁴ is to render an opinion on customer protection fund financial statements in accordance with [GAGAS](#).

FY 2021 CFTC’s Compliance Audit with the Digital Accountability and Transparency (DATA) Act of 2014

The DATA Act, in part, requires Federal agencies to report financial and award data in accordance with the established Government-wide financial data standards. The audit objectives are to: (1) review a statistically valid sampling of the fiscal year 2021 spending data submitted, and (2) submit to Congress and make publicly available a report assessing the completeness, timeliness, quality, and accuracy of the data sampled and the implementation and use of data standards.

Other

Council of Inspectors General on Financial Oversight (CIGFO)

The Dodd-Frank Act created the Financial Stability Oversight Council (FSOC),²⁵ as well as the Council of Inspectors General on Financial Oversight (CIGFO).²⁶ CIGFO is charged with evaluating the effectiveness and internal operations of FSOC. During this reporting period CIGFO convened a Working Group to compile guidance for preparing for a crisis, along with crisis response lessons learned, based on detailed survey responses from the FSOC member agencies. We commented on a draft report prior to the close of this reporting period, and work was ongoing on this project at the close of the reporting period.

²³ See [fn. 3](#).

²⁴ See [fn. 4](#).

²⁵ See [fn. 8](#).

²⁶ See [fn. 9](#).

AUDIT REPORTS AND REVIEWS OVER SIX MONTHS OLD; REQUIRED STATEMENTS

Required Statements Regarding Commission Response Exceeding 60 Days, and Regarding Management Decisions Not Made

There were no audit reports issued during the reporting period lacking Commission response within 60 days, and no instances of an audit report issued before the commencement of the reporting period for which a management decision had not been made by the end of the reporting period.

Required Statements Regarding Revised Management Decisions, and Regarding Inspector General Disagreement

No management decisions were revised during the reporting period, and the Inspector General did not disagree with any management decisions on OIG audit recommendations during the reporting period.

Required Statements Regarding Significant Recommendations that have not been Completed; and Audit Reports for which there are any Outstanding Unimplemented Recommendations, Including Aggregate Potential Cost Savings

There were no audit reports, with a management action date over six months old, where the recommendation for corrective action had not been completed. Outstanding recommendations are relayed in the two tables that follow, with explanatory text.

Table 1: Unimplemented Recommendations

Fiscal Year	Number of Reports with Unimplemented Recommendations	Number of Unimplemented Recommendations	Dollar Value of Aggregate Potential Cost Savings	No Comment Returned w/in 60 days
2021	1	3	0	0
2020	1	1		
Totals	2	4	0	0

Table 2: Detail of Unimplemented Recommendations

Fiscal Year	Audit Report	Unimplemented Recommendations
2021	Federal Information Security Management Act Review: FY 2020*	<ul style="list-style-type: none"> Two recommendations to mitigate medium and low risks identified and one to enhance CFTC’s privacy program.
2020	CFTC’s Policies and Procedures Regarding Oversight of Cybersecurity Safeguards by Registered Entities **	<ul style="list-style-type: none"> Increase the number of dedicated employees to the divisions’ System Safeguard Examination (SSE) teams, in order to continuously assess cybersecurity risks at CFTC registrants.

* The Commission continues to actively work on updating its privacy policies and procedures to ensure that they reflect current requirements in law and government-wide policies. Estimated completion date is September 2021. The Commission is actively working towards completing technical security actions by June 2021.

** Due to budget constraints and other budget priorities determined by the Commission, DMO has not yet been able increase the number of dedicated employees to the divisions’ System Safeguard Examination (SSE) teams. Recognizing the recommendation’s importance, DMO is requesting an additional Systems Risk Analyst in this year’s unfunded budget request.

INVESTIGATIVE OPERATIONS

SUMMARY

We began this reporting period with one pending investigation, and opened three new investigations during this reporting period. We completed the pending investigation and one of the three new investigations during the reporting period. Both completed investigations resulted in no findings of inappropriate activity by a CFTC employee or contractor. We ended the reporting period with two pending investigations.

We began the reporting period with seven allegations under development. We closed all seven allegations during this reporting period, and received 69 new allegations, three of which resulted in three new investigations (above). We closed the balance of the new allegations except for two, which were held open pending the receipt of evidence and additional development. We ended the reporting period with two pending allegations.

We began a cooperative effort with the CFTC to update our allegation intake processes. 62 of the 69 allegations received during this reporting period were referred to the CFTC Division of Enforcement (DOE) or to other CFTC Divisions or Offices, or other federal or state entities, a rate that is generally consistent with past years. Our new allegation intake webpage, once complete, should help visitors to find the correct entity for a complaint.

DETAILS OF OIG INVESTIGATIVE ACTIVITY

Allegations

- Closed seven allegations pending at the close of the prior reporting period as follows:
 - Recommended the source of one allegation to private counsel
 - Closed two allegations due to lack of jurisdiction following consultation with complainants
 - Closed one allegation regarding potential misconduct in connection with an upcoming event, because the event was cancelled
 - Closed three allegations due to inadequate information upon which to proceed²⁷
- Received 69 new allegations through the OIG email hotline (66), OIG phone hotline (1), by other OIG phone (1), and other OIG email (1), with action taken as follows:
 - Referred 57 allegations to DOE
 - Referred one allegation to CFTC Division of Administration, Cyber and Physical Security Branch
 - Referred one allegation to CFTC LD, Office of General Law, ethics function
 - Referred one complainant to the CFTC Freedom of Information Act webpage
 - Referred two allegations to another entity for possible action
 - Closed one allegation due to lack of jurisdiction, which we communicated to the complainant
 - Closed one allegation due to inadequate information upon which to proceed (after reaching out to the complainant without success)²⁸
 - Held one allegation open pending receipt of evidence from the complainant
 - Held one allegation (anonymous) open pending development
 - Closed three allegations with the opening of three investigations

Investigations

- Completed one investigation that was pending at the start of the reporting period
- Opened three investigations during the reporting period
- Completed one of the three investigations opened during this reporting period

Neither of the two investigations completed during this reporting period resulted in findings of misconduct by a CFTC employee or contractor. One investigation involved an anonymous allegation of travel misconduct by a staff level CFTC employee and unrelated alleged personnel misconduct (regarding a hiring and a promotion). We found no evidence that the target was untruthful with regard to the travel filings, but referred possible errors in the travel reimbursement (some potentially in favor of the target) to the CFTC travel office within DA, Office of Financial Management. The personnel misconduct was not sustained. We briefed appropriate management on our findings. The second investigation, started and completed during this reporting period, involved an alleged leak of a non-public report (with no allegation or

²⁷ Please know that OIG retains all investigation and allegation files for a period of 10 years; if additional information or allegations are received in the future, a closed matter may be reopened.

²⁸ See [fn. 27](#).

indication that the leak involved the legitimate exercise of First Amendment rights). We reviewed over 200,000 digital communications, records and documents, and interviewed 29 individuals, but were unable to verify or discover the source of the alleged leak. We reported our findings to the Commission.

ONGOING INVESTIGATIVE MATTERS AND REQUIRED DISCLOSURES

At the close of this reporting period we had two ongoing investigations and two open allegations pending, all initiated during this reporting period.

All open investigations are confidential, as are the content of incoming allegations. It is the policy of CFTC OIG to not disclose details regarding open investigations absent good cause; if an ongoing investigation is disclosed to the public it will be listed here.

Table 3: Investigative Statistics for Referrals and Whistleblower Retaliation

October 1, 2020 – March 31, 2021		
A.	Completed investigations and preliminary investigations	0
B.	Referrals to prosecuting authorities for criminal prosecution	0
C.	Indictments from prior referrals	0
D.	Whistleblower retaliation findings	0

We compiled these statistics from a review of our digital files.

It is our practice to discuss potentially criminal investigations early with an Assistant United States Attorney (AUSA) in order to ensure matters of interest are coordinated from the outset. While we engaged with AUSAs during the reporting period as necessary to complete our work, no formal referrals for prosecution were made.

There were no findings of whistleblower retaliation during this reporting period. There were no reports of investigation involving a senior Government employee where allegations of misconduct were substantiated.

INSPECTIONS AND EVALUATIONS

Inspection and Evaluation of CFTC’s Compliance with Executive Order 13950, Combating Race and Sex Stereotyping

During this reporting period OIG began and completed an Inspection and Evaluation of CFTC’s compliance with EO 13950, *Combating Race and Sex Stereotyping* (September 2020). We found that CFTC was compliant in all respects. Our [report](#), dated December 31, 2020, is published to our webpage.

LEGAL AND ECONOMIC REVIEW

There were no completed Office of Legal and Economic Review projects at the end of this reporting period. A new attorney joined OLER in June 2020, and a second attorney came onboard in February 2021.

Ongoing

White Paper Evaluating CFTC Compliance with the Administrative Procedure Act

The CFTC regularly adopts interpretations of law and uses a wide-range of formats to present and communicate these interpretations to its supervised entities, its own personnel, and the general public. This white paper has three principal goals: (1) Provide general background information regarding the APA's requirements; (2) Provide the general public and Congress a taxonomy of the CFTC's panoply of regulatory tools; and (3) Critically evaluate whether the CFTC's regulatory tools and implementation comply with the APA. This analysis will include an evaluation of whether CFTC provides guidance that appears to be non-legislative in form but in substance attempts to bind the public. This project was in initial stages of research and development at the close of the reporting period.

LEGISLATIVE and REGULATORY PROJECTS

1. Introduction and Summary

As specified in Section 4(a)(2) of the Inspector General Act of 1978,²⁹ the Office of Legal and Economic Review (OLER) within OIG reviews the impact of existing and proposed legislation and regulations on CFTC programs and operations and makes recommendations regarding more effective or efficient alternatives or protections against fraud and abuse. The OIG also reviews exchange rule proposals circulated to senior staff at the CFTC.

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

2. Legislative Activities

OIG reviews legislation impacting programs and operations of the CFTC, and initiates contact with Congressional staff concerning various Agency and IG issues as appropriate. This work is performed by OLER. In addition, the IG serves on the legislation committee for the Council of Inspectors General on Integrity and Efficiency, which comments on proposed amendments to the IG Act and other legislation affecting the IG community. CFTC OIG participated in legislation committee efforts. No formal projects were undertaken during this reporting period.

²⁹ 5 USC App. § 4(a)(2) (made applicable to CFTC OIG at 5 USC App. § 8G(g)).

PEER REVIEWS

An important function in each agency OIG is the peer review process. [Government Auditing Standards](#) (GAS) require that audit organizations conducting audits of Federal agencies undergo peer reviews every three years. The IG community has implemented a process to meet this requirement and, in accordance with GAS and CIGIE peer review quality control and assurance standards, an OIG audit team assesses other OIGs' audit functions. The purpose of the peer review is to determine whether the reviewed audit organization's internal quality control systems are adequate and provide reasonable assurance that applicable auditing standards, policies and procedures are met. We are required to include in each OIG semiannual report:

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

The required information follows:

Peer Review Report of CFTC OIG Audit Function

The Federal Maritime Commission, Office of the Inspector General, reviewed the system of quality control for the CFTC OIG audit organization in effect for the year ending March 31, 2019. In their opinion, the system of quality control for the audit organization of CFTC has been suitably designed and complied with to provide CFTC with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. CFTC OIG received the highest external peer review rating of "pass."

Peer Review Report of CFTC OIG Investigative Function

Investigative peer reviews are conducted under CIGIE peer review [standards](#) to evaluate compliance with the requirements of the CIGIE [Quality Standards for Investigations](#) and the adequacy of internal safeguards and management procedures. Because it is a Designated Federal Entity Inspector General, the CFTC OIG investigative function is not required to undergo peer review. CFTC OIG last voluntarily submitted to a peer review of its investigative function in 2013; the Federal Trade Commission, Office of Inspector General, reviewed the system of quality control for the CFTC OIG investigative function and concluded that the system of internal safeguards and management procedures for the CFTC OIG investigative function

complied with the quality standards adopted by CIGIE, and provided a reasonable assurance of conforming with professional standards in the conduct of investigations.

SUMMARY of FINAL REPORTS NOT MADE PUBLIC

No reports of investigation were published during this reporting period. During the reporting period, one compilation audit report – Federal Information Security Management Act Review: FY 2020 – was completed and not published due to information technology sensitivity concerns.

GAO LIAISON

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

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

STRATEGIC PLAN for the OFFICE of INSPECTOR GENERAL

MISSION, VISION, AND VALUES

Mission

Our mission is to promote integrity, efficiency, and effectiveness by promoting for continuous improvement in our agencies' management and program operations of the CFTC. To accomplish our mission, we:

- Conduct independent and objective audits, reviews, and other types of engagements of the CFTC programs and operations;
- Conduct independent and objective investigations of potential criminal, civil, and administrative violations that could undermine the ability of the CFTC perform its mandated mission;

- Conduct independent and objective reviews of regulatory economic laws under the jurisdiction of the CFTC programs and operations;
- Identify maturity challenges in IT programs and make attainable recommendations to further mature them;
- Prevent and detect fraud, waste and abuse in CFTC programs and operations;
- Communicate timely and efficiently with CFTC programs and operations stakeholders by providing quick responses with value added results; and
- Keep agency chairperson, commissioners and Congress fully and currently informed of significant issues and developments.

Vision Statement

The OIG is an independent, professional organization that contributes to the success of the CFTC through audits, investigations, economic analysis, and other activities, and thereby acts as a champion for positive change in the CFTC’s programs and operations.

Values Statement

We most value integrity, accuracy, accountability, effective communication, and efficient operations. These values are fundamental to the accomplishment of our mission and our daily operations.

STRATEGIC GOALS FOR THE COMING YEAR

STRATEGIC GOAL 1: EVALUATE THE ECONOMIC IMPACT OF CFTC REGULATORY ACTIONS THROUGH LEGAL ANALYSIS, WHITE PAPERS, INSPECTIONS AND EVALUATIONS, MANAGEMENT REVIEWS, AND OTHER PRODUCTS

Office of Legal and Economic Review (OLER): Legislative, Economic, and Regulatory Review Agenda

OLER plans to continue to identify and explore areas where OIG legal and/or economic review might aid the CFTC in improving the economy and efficiency of its programs. OLER products may include white papers, management reviews, legal opinion, and other products.³⁰ These efforts are particularly important since the CFTC is an economic regulatory agency. We will continue to seek staff that possesses exceptional expertise in relevant law and economics.

³⁰ As stated in the Inspector General Act, it is our duty and responsibility to continually review existing and proposed legislation and regulations relating to CFTC programs and operations, and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in the administration of such programs. 5 U.S.C. App. § 4(a)(2) (made applicable to the designated federal entity IGs at 5 U.S.C. App. §8G(g)).

STRATEGIC GOAL 2: ADDRESS HIGH IMPACT ISSUES IN CFTC ADMINISTRATIVE AND MISSION PERFORMANCE

Office of Audits: Audit and Review Agenda

A. Introduction

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

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

B. Annual Audits. The following required audits are performed on an annual basis.

Audit of CFTC Financial Statements

In FY 2002, Congress passed the Accountability of Tax Dollars Act.³¹ The Act requires the CFTC, along with numerous other Federal entities, to have its financial statements audited annually. To this end, OIG has engaged a contractor to provide the audit effort required to enable the contractor to render an opinion on the Agency's financial statements for each fiscal year in accordance with generally accepted auditing standards, [Government Auditing Standards](#) and OMB Bulletin 19-01.

Audit of the CFTC Customer Protection Fund

Section 748 of the Dodd-Frank Act³² requires the Agency to submit to Congress a yearly report on the Commission's whistleblower award program that includes a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis. To this end, OIG has engaged a contractor to perform the audit.

³¹ See [fn. 3](#).

³² See [fn. 4](#).

C. Annual Reviews. OIG will perform the following reviews and evaluations annually.

Inspector General’s Assessment of the CFTC’s Management Challenges

The Reports Consolidation Act of 2000³³ requires the Inspector General to summarize the most serious management and performance challenges facing the CFTC and to assess the Agency’s progress in addressing those challenges.

Review of Compliance with the Federal Managers' Financial Integrity Act, FMFIA³⁴

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

Evaluation of Compliance with Federal Information Security Management Act, FISMA

The Federal Information Security Management Act³⁵ requires the Inspector General or his designee to perform annual independent evaluations of the information security program and practices of the Agency. This compliance may also be performed through an audit.

D. Other Audits, Reviews, and Audit Projects; Data Analytics

OIG will focus the balance of its resources on the review of CFTC program and management operations (giving priority to activities relating to the most serious management challenges facing the CFTC), and compliance with Congressional mandates. Toward that end, OIG intends to increase the use of data analytics to enable audit operations. Data Analytics within the Office of Inspector General supports data services and analyses, and provides the competency to deliver short-turnaround projects that produce quick, valuable successes. Finally, OIG will stand ready to respond to issues and requests as they are received from Congress, the Agency, members of the public, or any other source.

**STRATEGIC GOAL 3: ADDRESS EMPLOYEE AND CONTRACTOR MISCONDUCT
PROMPTLY, THOROUGHLY, AND RELIABLY**

As a chain is only as strong as its weakest link, CFTC likewise depends on each and every employee and contractor to perform with competence, and to refrain from misconduct. CFTC OIG considers and investigates every credible allegation to ensure that CFTC employees and contractors uphold the public trust and perform their work with integrity and competence.

³³ P.L. 106-531, 114 Stat. 2537 (2000).

³⁴ P.L. 97-255, 96 Stat. 814 (1982).

³⁵ See [fn. 2](#).

Office of Investigations: Investigative Agenda

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

CFTC is an independent regulator with a mission that does not involve grants, substantial contracts, or other benefits to administer, and is therefore less likely than some agencies to generate a substantial investigative workload. Historically, OIG has conducted only a reactive investigative program, chiefly relying on unsolicited complaints as the source of investigative leads. Allegations and complaints are received primarily from CFTC staff and management, CFTC ethics officials, the general public, and Congress. We also receive referrals from other law enforcement agencies. Should further experience show areas at CFTC on which to focus proactively, we will consider establishing an investigative agenda. To ensure that employee complaints easily reach OIG, we maintain a 24-hour hotline. The hotline phone number is (202) 418-5510. We also maintain an email address, OIGComplaint@cftc.gov.

RESOURCES REQUIRED

OIG estimates that approximately four staff years of effort will be devoted over each of the next five years to the annual audit, the annual review, and the annual evaluation described above. OIG estimates three staff years of effort will be devoted over each of the next five years to the investigative, and legal and economic review functions. OIG estimates two staff years for management, administrative, and outreach efforts. Because OIG resources can be diverted at any time in order to address current issues or allegations, completed timely in order to be of assistance to the Agency or Congress, it is not possible to forecast with complete accuracy how resources will be utilized from year to year.

CONTACTING the OFFICE of the INSPECTOR GENERAL

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

APPENDICES

Appendix 1 – Reports Issued with Questioned Costs

October 1, 2020 – March 31, 2021

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

Appendix 2 – Reports Issued with Recommendations That Funds Be Put to Better Use

October 1, 2020 – March 31, 2021

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

Appendix 3 - Index of IG Act Reporting Requirements

Section 4(a)(2)	Review of legislation and regulations.....	14
Section 5(a)(1)	Significant problems, abuses and deficiencies.....	7
Section 5(a)(2)	Recommendations with respect to significant problems.....	7
Section 5(a)(3)	Significant recommendations that have not been completed.....	10
Section 5(a)(4)	Matters referred to prosecutorial authorities.....	13
Section 5(a)(5)	Summary of instances where information was refused	7
Section 5(a)(6)	Completed audit reports.....	7
Section 5(a)(7)	Significant audit reports.....	7
Section 5(a)(8)	Statistical Table—Questioned Costs.....	21
Section 5(a)(9)	Statistical Table—Funds Recommended for Better Use	22
Section 5(a)(10)	Audit reports lacking management decision	10
Section 5(a)(10)	Audit reports without Commission response after 60 days.....	10
Section 5(a)(10)	Audit reports for which there are any outstanding unimplemented recommendations, including the aggregate potential cost savings	10
Section 5(a)(11)	Significant revised management decisions	10
Section 5(a)(12)	Significant management decisions where the IG disagrees.....	10
Section 5(a)(13)	Information described under § 804(b) of the Federal Financial Management Improvement Act of 1996	N/A
Section 5(a)(14)-(16)	Peer Review information	15
Section 5(a)(17)	Statistical tables for investigations.....	13
Section 5(a)(18)	Description of metrics used to develop the statistical tables for investigations.....	13
Section 5(a)(19)	Report on each investigation involving a senior Government employee where allegations of misconduct were substantiated	13
Section 5(a)(20)	Whistleblower retaliation findings	13
Section 5(a)(21)	Attempts to interfere with OIG independence	6
Section 5(a)(22)	Summary of final reports not made public.....	16
Section 6(b)(2)	Summary of reports to Chairman where assistance was refused.....	7

A large, dark blue-bordered box contains the following elements:

- On the left side, three dark blue stars are stacked vertically.
- In the center, the letters "OIG" are written in a large, bold, dark blue sans-serif font.
- Below "OIG", the words "OFFICE OF THE INSPECTOR GENERAL" are written in a smaller, dark blue, all-caps sans-serif font.
- Below that, the text "- COMMODITY FUTURES TRADING COMMISSION -" is written in a smaller, dark blue, all-caps sans-serif font.
- At the bottom center, the CFTC logo is displayed, which includes a stylized American flag icon and the letters "CFTC" in a bold, dark blue font.