



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
Inspector General

June 18, 2015

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

FROM: A. Roy Lavik *ARL*
Inspector General

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

Attached is our review of leased space in the New York Regional Office. It is brief and self-explanatory; we found that the CFTC is renting more space than it is using in NYC, and recommended it take steps to decrease the expenditure of taxpayer funds on unused office space.

The Executive Director asked us to amend our report to include certain management conclusions. We were requested to state or acknowledge:

- “[T]he agency has determined that it has extremely limited ability to sublease its space and that any return of space would have to be by mutual agreement.”

The Agency notes that it obtained “very favorable lease rates” for its ten-year lease. We are pleased that the CFTC apparently negotiated low rental rates. However, since the CFTC successfully negotiated such favorable rates, it would appear to make a return of space to the landlord feasible; the landlord can re-lease the property at the current market rates and turn an immediate profit. Accordingly, we emphasize our recommendation that the Agency seek to decrease amounts paid for unused space.

- “CFTC, though not required to, complied with FAR requirements of openly competing the NYRO lease and also complied with its own rules and on the award and administration of CFTC office space leases as set forth in *Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC’s Office Space Leases*.”

We chose not to examine the bidding processes for this lease. Because we did not engage in fact finding, we have no opinion on whether CFTC’s procurement process complied with the FAR. Our focus is where the CFTC is now, and we find that it is renting more space than it is using and should seek to alleviate the expenditure of taxpayer funds on unoccupied office space.

- “CFTC did carefully consider its needs for space prior to making its leasing decisions at its main and regional offices.”

Again, the planning and procurement processes simply were beyond the scope of this review.

- “Based on the updated drawings and staffing plans, the NYRO’s space utilization rate is approximately 88% (16 of 134 total seats are available as of May 27, 2015).”

On releasing our review for management comment, we reported that the NY Regional Office occupancy rate was 62%. During the period our review was with management, the Agency altered its space planning system to eliminate sixteen workstations. Instead of 150 workstations, the NY Regional Office now has 134. This has increased the appearance of occupancy.

The majority of this change occurred by removing eleven Enforcement intern workstations from their previous workspace and re-naming that space as a conference room. Our interviews with staff indicated a wide-spread belief that the number of available conference rooms was adequate. We are uncertain why one was added. Further, we believe that the Agency should be maximizing the number of workstations so as to make the most efficient use of space. We are uncertain why sixteen were eliminated. In addition to eleven Enforcement intern workstations, it appears five spaces formerly counted as “occupiable” were converted to “non-occupiable” space.

As of June 15, 2015, the CFTC’s electronic space system shows that even taking into account the reduced number of workstations and counting all of the on-board interns, the NY Regional Office is at 78% occupancy. But CFTC stated on May 27, 2015 they were at an 88% utilization rate. We believe that CFTC is counting offices that are presently vacant but labeled “reserved” for incoming interns, employees, consultants, or contractors.

CFTC also asked us to:

- Count interns in calculating occupancy rates, noting that this summer CFTC is implementing a “recently announced paid intern program.”

The Agency states that it is selecting 21 interns for this summer; at that level, interns will account for approximately 20% of total NY staff. Because the Agency does not always have the funds to sponsor a paid intern program, and because interns work full-time only during the summer, we do not believe counting interns makes sense. Specifically, we do not believe it is an efficient use of taxpayer dollars to reserve anywhere near 20% of workstations at NYC commercial lease rates for seasonal interns that the CFTC may or may not be able to bring on year to year. We are interested in ascertaining how many of those offices are occupied full time during the non-summer months.

In response to our recommendation that CFTC seek to reduce the use of space used for paper storage by implementing 100% electronic filing and record-keeping, the Executive Director stated:

- “IT budget constraints have slowed the pace of electronic systems development and co-requisite business process reengineering necessary for this migration.”
- CFTC now accepts at least six separate report types through electronic filing. The rest “continue to be emailed or scanned.”

CFTC’s carve out for IT spending was \$50 million for FY2015. We believe enabling 100% electronic filing should be a priority and its accomplishment should be feasible with those funds.

Conclusion

We thank management for their comments and maintain our recommendation that the Agency seek to reduce funds spent on unoccupied office space by seeking a return of unused space to the landlord (or by staffing up in NYC).

We are very pleased with the level of cooperation received from staff and management in Logistics and Operations, and in the New York Regional Office. We appreciate your continuing support of this Office.

Attachments: Review of Space Utilization of the New York Regional Office, and CFTC Response

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

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

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

April 16, 2015

Executive Summary

In June 2014, we issued the first in a series of four reviews of CFTC leasing and space utilization rates.¹ We noted that over the life of the CFTC's leases, at current occupancy rates, the CFTC would spend in approximately \$74,000,000 for the lease of vacant offices. On February 26, 2015, we issued our second review, focused on the regional office in Chicago.²

This review is the third in the series and focuses on the New York Regional Office. New York's utilization rate is presently 62%, compared with 80%, 73%, and 33%, for Chicago, Washington DC, and Kansas City, respectively.³ The New York office is located in the heart of the financial district, and the price per square foot is estimated at [REDACTED] for the first five years of the lease, and [REDACTED] for the second five years.⁴ Overall, and at current occupancy rates, approximately \$8.8 million will be spent on vacant offices in New York over the life of the ten-year lease.⁵

Because New York utilizes a relatively low percentage of its office space, and presently exists on two and one-half floors, we believe there is an opportunity to reduce the cost of spending on vacant offices. It is our understanding that the CFTC plans to hire no more than three new staff in New York through the remainder of FY 2015; the bulk of new hires are to be distributed to the other regions, and particularly to Washington DC. Accordingly, we recommend that the CFTC consolidate staff on the two full floors and sublease or negotiate a return of the half floor to the landlord.

Staff appear widely content with the space configuration; they have few complaints and we identified few common areas that are poorly utilized. Nevertheless, better utilization of these few areas would increase office efficiency and permit addition hiring without resorting to further

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

² The Chicago lease review is currently with management for preparation of a management response.

³ The CFTC uses a space management system called FOXfms. Our calculations and statistics are derived in large part from that system, and we have received assurance that it is up to date. According to FOXfms, these rates are accurate as of April 6, 2015.

⁴ Some confusion exists with respect to the total price per square foot. The price listed in the lease is [REDACTED] for the first five years, and [REDACTED] for the second five years. The figure of [REDACTED] was provided by CFTC management and includes various add-ons, including operational costs and taxes. However, we were also provided a figure of [REDACTED] by CFTC management, and that figure was also supposed to represent the current price per square foot. We were unable to reconcile the difference prior to publication. If the higher figure is accurate, the costs associated with vacant office space would rise accordingly.

⁵ The first five years of the NY lease cost the CFTC approximately \$11 million. After the lease price increases in year six, approximately \$12.2 million will be spent in the second five years. Over the life of the lease, the CFTC will spend approximately \$23.3 million. This estimate assumes that current utilization rates persist over the life of the lease, and does not include the costs or credits associated with entering the lease.

expansion of the lease. Accordingly, a portion of this review focuses on potential improvements to existing space.

Background

The CFTC entered into an amended lease at its existing location of 140 Broadway, New York, New York, 10005, on September 2, 2011; the amendment expanded the CFTC's office space from approximately 40,000 SF to 61,510 SF.

The CFTC expanded in every region during this period, and the impetus for the New York expansion appears to be the same as elsewhere. In brief, the CFTC anticipated expanded jurisdiction into the swaps and derivatives markets, and expected substantial and immediate increases in appropriations from Congress to accomplish its expanded regulatory mission. It entered into long-term leases on the basis of these expectations. When the CFTC's expectations proved incorrect, the CFTC was left paying substantial sums for vacant office space. The scale of expansion in New York appears to have been relatively modest, at least compared to other CFTC field offices, at approximately 55%.⁶

Scope and Methodology

To complete our review, we interviewed over 20 staff including staff in all Divisions and Offices in the New York region as well as a few key individuals in the Washington DC office. This included individuals in the Divisions of Enforcement, Swap Dealer and Intermediary Oversight, and Market Oversight, as well as in the Offices of Data and Technology and the Executive Director including individuals within the sub-offices of Financial Management, Logistics and Operations, and Procurement. Some witnesses were interviewed on multiple occasions. We requested and reviewed the relevant leasing documents, procurement documents, and architectural drawings, as well as other documents and CFTC communications concerning the New York Regional Office. We researched pertinent legal principals including federal leasing rules and standards, independent leasing authority, Government Accountability Office ("GAO") reports and testimony, and government-wide efforts to increase agency efficiency with respect to real estate. Finally, we reviewed the recent history of CFTC leasing. Our method for calculating utilization rates and the related costs follows.

The FOX system shows 150 total workstations, and that 93 of those are occupied.⁷ This leads to a utilization rate for workstations of 62%. We use this same utilization rate of 62% to calculate the overall utilization rate; we reason that common areas are intended for full occupancy, and that under occupancy of workstations leads to an equal under occupancy of common areas.⁸

⁶ The scale of expansion in Chicago was approximately 50%, and in Kansas City approximately 300%.

⁷ When calculating total available workstations, FOX does not distinguish between corner offices and cubicles.

⁸ The CFTC FOX system includes as workstations eleven desks intended for summer interns in a large conference room on the 20th floor. The CFTC also uses the room as a library. Management would calculate usage with all of the interns in place, resulting in an occupancy rate of 68%, rather than 62%. Because interns are not on site during much of the year, we decline, and use actual occupancy. Currently two of these 11 workstations are occupied. We also believe the space could be used for CFTC employees or contractors.

The cost of the New York lease stays constant for five years and then rises for the second five years of the lease. We average the cost of the ten years of lease payments, and then divide that average by the under occupancy rate. This results in an estimate of the total spending on unutilized space over the course of an average year.

Legal Background

The problem of empty and underutilized office space is by no means limited to the CFTC.⁹ Congressional inquiries, committee hearings, as well as numerous articles in the press have discussed this issue; indeed, some agencies are apparently not aware of all of the real estate they own or lease.¹⁰

In January 2003, the GAO designated federal real property as a high-risk area, citing the government's overreliance on costly, long-term leasing as one of the major reasons.¹¹ More recently, GAO declared that, "[t]he federal government faces long-standing problems in managing real property, including an overreliance on leasing, and excess and underutilized property."¹² With regard to excess and underutilized space, GAO stated that "agencies often do not have a strong understanding of the real property held by other agencies and may lack the authority or expertise to lease their own underutilized property to other federal agencies."¹³ GAO noted that the agencies it reviewed "have taken some actions to dispose of and better manage these properties, including using excess and underutilized property to meet space needs, consolidating offices to use space efficiently, and reducing employee workspace to use space more efficiently."¹⁴

The General Services Administration ("GSA") is responsible for creating rules and standards governing federal leasing, and it assists agencies by negotiating leases on their behalf.¹⁵ Some

⁹ See GAO report, *Federal Real Property: Excess and Underutilized Property Is an Ongoing Challenge* (<http://www.gao.gov/products/GAO-13-573T>).

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

¹¹ *Federal Real Property: Strategy Needed to Address Agencies' Long-standing Reliance on Costly Leasing*, GAO-08-197 (January 2008) (<http://www.gao.gov/assets/280/271449.pdf>).

¹² *Federal Real Property: High-Risk Designation Remains due to Persistent Management Challenges*, GAO-13-422T (February 2013) (<http://www.gao.gov/products/GAO-13-422T>).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Comptroller General has described the process by which the government leases real property as follows:

Congress has centralized in GSA the authority to lease real property and facilities for the use of federal agencies. The Federal Property and Administrative Services Act of 1949 (FPASA) transferred to GSA the authority to lease real property and facilities on behalf of the federal government, subject to several exceptions not relevant here. FPASA, ch. 288, § 3, 63 Stat. 377, 378 (June 30, 1949), as amended, codified in 40 U.S.C. § 585. As presently written, this authority allows GSA, on behalf of all federal agencies, to

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agencies, like the CFTC, have independent leasing authority and negotiate their own leases without reference to GSA.¹⁶ But independent leasing authority is more than the ability to separately negotiate leases; it also includes independence from GSA rules and regulations designed to, for instance, minimize government waste. Exercising that independence, the CFTC declined until February of 2011 to develop any written leasing standards or procedures of its own. Consequently, there appear to have been no CFTC or other written rules that directly governed the CFTC's leasing process.¹⁷

Over the years, however, Presidents of the United States have issued executive orders to reform and improve federal leasing standards. In general, these require government agencies to efficiently utilize space.¹⁸ Some are more specific, requiring agencies to reduce the amount of work space to that which is essential for known agency missions, and ensuring that the amount of office space per person is the minimum necessary to accomplish the task.¹⁹ For instance, in February of 2004, the President signed Executive Order 13327 (EO 13327) which, among other things, established a Federal Real Property Council to address issues in property acquisition and management, including adding as a performance measure for covered Agencies "changes in the amounts of vacant Federal space."²⁰ Similar in purpose to the Executive Orders, President Obama issued a Presidential Memorandum on June 10, 2010, requiring agencies to dispose of

enter into leases of real property and facilities to meet the government's needs for periods of up to 20 years and to obligate fiscal year funds without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B). 40 U.S.C. § 585. *See* B-309181, Aug. 17, 2007.

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

¹⁶ Without specific statutory authority and absent a delegation of authority from GSA, a federal agency may not lease real property or facilities for its own use or on behalf of any other government entity. Matter of: Interagency Agreements -- Use of an Interagency Agreement between the Counterintelligence Field Activity, Department of Defense, and GovWorks to Obtain Office Space, B-309181, 2007 U.S. Comp. Gen. LEXIS 143, Aug. 17, 2007, (<http://www.gao.gov/decisions/appro/309181.htm>).

¹⁷ The amended lease in New York was negotiated in part prior to February of 2011 and signed on September 2, 2011. CFTC Management states that it followed the same standards prior to 2011, but had not reduced them to writing. We note that the written standards focus on the initial leasing process, and do not address any circumstances under which the CFTC should reassess its space needs – due, for instance, to underutilization or changed budgetary circumstances.

¹⁸ Executive Order 13576--Delivering an Efficient, Effective, and Accountable Government, June 13, 2011, (*requiring* "frequent data driven reviews" of, among other things, "improving the management of Federal real estate"). Available at: <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>; Executive Order 13589 -- Promoting Efficient Spending, November 9, 2011, (*requiring* agencies to "act in a fiscally responsible manner, including by minimizing their costs..."). Available at: <http://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending>.

¹⁹ Executive Order 12411 -- Government work space management reforms, March 28, 1983, (*requiring* agencies "to institute fundamental changes in the manner in which Federal work space is managed to ensure its efficient utilization.") Available at: <http://www.archives.gov/federal-register/codification/executive-order/12411.html>.

²⁰ EO 13327 is available here: <http://www.gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf>. EO 13327 did not apply to CFTC. The other Executive Orders cited in this paper did apply to CFTC.

unneded federal real estate.²¹ This included a specific directive to “take immediate steps to make better use of remaining property assets as measured by utilization and occupancy rates....”²²

Finally, we have the OIG’s own regulatory mandate to detect and prevent waste and abuse, and to recommend policies designed to promote economy, efficiency, and effectiveness in connection with programs and operations of the Agency.²³ In sum, despite the absence of written rules requiring minimum levels of utilization or reassessment of leases in light of changed budgetary assumptions, the CFTC must still strive to limit waste in this area.

New York Lease Expenditures on Vacant Offices

Over the life of its lease ending on April 30, 2022, the CFTC will pay an average of approximately \$2.3 million/year.²⁴ The CFTC has 150 offices in New York, of which 57 are vacant. At 62% occupancy, this means that the CFTC will pay an average of approximately \$880,000/year for vacant office space. Because some swing space is desirable for visitors, or to accommodate minor staffing changes, we use a 95% target for occupancy.²⁵ Given this target, the CFTC’s payments for unnecessarily vacant offices in New York are reduced to approximately \$770,000/year. Using this metric, the CFTC will spend approximately \$7.7 million over the term of the lease on empty offices in New York.

Because the CFTC occupies 62% of two and one-half floors, it is possible to eliminate excess space by subleasing or returning space to the landlord. The 18th floor contains 29 offices; accordingly, the elimination of the half floor would reduce the number of unoccupied offices²⁶ from 56 to 27 and result in substantial savings.²⁷

Eliminating the 18th floor would lower the total offices from 150 to 121, and lower the unoccupied offices from 56 to 27. The new underutilization ratio would be 121:27, or 78% occupied. Three new hires would change the ratio to 121:24, or approximately 80% occupied. Even if we were to discount the eleven offices that NY management prefers to reserve for

²¹ Presidential Memorandum--Disposing of Unneeded Federal Real Estate, June 10, 2010, available at: <http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate>. This memorandum applied to CFTC.

²² *Id.*

²³ 5 USC App. 3, § 2(1).

²⁴ As explained, this estimate excludes up-front costs and benefits, such rental abatement, construction costs, negotiation costs, etc.

²⁵ We used an equal occupancy target in our space reviews of Chicago and Kansas City.

²⁶ None of the intern desks are on the half-floor, and the figure of 27 remaining offices therefore includes eleven workstations presently dedicated to use by interns.

²⁷ It is beyond the scope of this review to conduct an analysis of the NY commercial rental market in the financial district. Potential savings would depend on the current state of the market compared to the rate the CFTC negotiated back in 2011. If CFTC negotiated a favorable lease, then the current market price exceeds the rate the CFTC is presently paying. In this circumstance, potential savings increase. If CFTC negotiated an unfavorable lease, then the current market price is below the rate the CFTC is presently paying; potential savings would then be less.

interns,²⁸ the ratio reaches only 121:13, or approximately 91% occupied – still short of our target of 95%.

The remainder of our review focuses on recommendations, all of which come from staff interviews, to better utilize certain common areas. We note that better utilization of space may free up additional space for offices.

Underutilized Space

We have attached three floor maps, which correspond to the 18th-20th floors occupied by the CFTC. The highlighted common areas have been identified as underutilized. Because these areas lack official usage statistics²⁹ – and indeed, we do not believe that tracking such figures would be an efficient use of CFTC resources – we arrived at utilization estimates by interviewing staff. We address below those common areas staff identified as underutilized.

The Missing Rooms (18150, 18220)

The CFTC occupies slightly over one-half of the 18th floor. On the floor map attached as Exhibit 3, rooms 1805 and 1806 appear as belonging to the CFTC, and we confirmed this with the Office of Logistics and Operations. Together, these rooms occupy approximately 493/SF, making each the size of a larger office.³⁰ At a current cost of \$35.80/SF, this space will cost the CFTC approximately \$180,000 over the term of the lease. However, interviews with most staff, including management, revealed a lack of awareness that these rooms were part of the CFTC's New York Office.

Upon entering the room, we saw that it was unfinished, and contained what appeared to be leftover construction supplies as well as some trash. In an interview with Logistics staff, we learned that the construction company hired to set up the CFTC's new space on the 18th and 19th floors had used the room as a staging area. After they completed the work, the room was abandoned. The CFTC has never used it. Though the room is presently unfinished, and is outside of the major CFTC area on the 18th floor, it is certainly a usable space. A staff person in New York has suggested that it could serve as a supply room, freeing up a current, furnished supply room to be used for other purposes. We agree.

While we recommend that CFTC consider negotiating a return of the 18th floor to the landlord, if CFTC determines to maintain the 18th floor we recommend that they find a use for rooms 18150 and 18220, and to remain mindful of the totality of its leased space.

²⁸ See fn.8.

²⁹ Though conference rooms are usually reserved online through a system that does track usage, no interview identified the conference rooms in New York as underutilized. Accordingly, we did not attempt to estimate usage statistics for conference rooms.

³⁰ The Logistics Office observed that not all of this space is usable; the building maintains a closet area in one of the rooms that contains various equipment that does not belong to the CFTC. However, a substantial majority of the space is useable, and the FOXfms system does not estimate the size of the closet area for purposes of inclusion in our calculation of total space in these rooms.

Training Room (20213)

The 20th floor includes a training room, approximately 480 SF, that staff estimated they use very rarely. We recommend that the training room be converted to offices or a conference room. Most training at the CFTC now occurs on desktop computers in staff's individual offices, and staff indicated a preference for training on the desktop computer they use every day. To the extent training for larger groups remains necessary, in which many people must simultaneously work on computers in the same room, we recommend that laptops or desktops be set up and taken down as needed; permanent reservation of space for such limited use is inefficient.³¹

Our most recent information is that the NY office has made progress in better utilizing this room. The office of Logistics and Operations is in the process of installing multi-purpose furniture and has been experimenting with ways to fit all staff from the Division of Enforcement in the room for conferences and presentations. We compliment the CFTC on their efforts in this regard.

File Room (19120)

This file room is approximately 283 SF and is, predictably, filled with files. Interviews with staff indicated that it is rarely used, though management stated that such a room remained necessary.

As we noted in our space review on the Chicago regional office, the CFTC apparently continues to require some forms to be filed by fax or hard copy. We understand that progress has been made towards electronic filing of all documents, and we understand that further progress is planned. Nevertheless, we do not believe it is appropriate in 2015 for the CFTC to be accepting hard copies of documents in anything but extraordinary circumstances.³² Presently, forms filed in hard copy or fax must then be individually scanned and uploaded as PDFs into a CFTC system. Others are never scanned; they are simply physically stored in the file room in case they are one day needed.

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

³¹ A staff person observed that the CFTC's training rooms are uniquely set up with additional power outlets and electricity to support multiple computers running at the same time. We do not suggest that the NY training room must never be used for training; rather, we recommend that the room be able to support multiple functions, so as to increase the presently low rate of utilization. We recommend that the CFTC consult with NY staff including Logistics and Operations staff to determine the best way to convert this room into a multipurpose space.

³² For instance, some victims and witnesses in cases brought by the Division of Enforcement are not represented by counsel and do not have access to the technology necessary to scan their paper documents. In such a circumstance, it is of course incumbent upon the CFTC to accept production in whatever means are available to the victim or supporting witness.

alternative uses for this area. In the short term, we recommend the CFTC consider off-site storage as appropriate.

A Future Market Watch Room

Washington DC and Chicago each have a room designated as the “Market Watch Room” in which a permanent video feed links staff from the two regions. In an interview with the head of Market Oversight, we learned that the permanent video link is intended to help the staff of Washington DC and Chicago coordinate their work. While there is no current push to construct a similar room in New York, the head of Market Oversight has expressed a desire for staff in all three regions to be linked in this manner. We do not make a formal recommendation on this issue, but we note it given that our other recommendations may result in an increase in the space available for such a room to be constructed.

Conclusions and Recommendations

The New York Regional Office has an occupancy rate of approximately 62% on two and one-half floors. Based on current staffing levels, and the fact that the CFTC does not plan to appreciably increase staff through the end of FY 2015, we recommend that the CFTC seek to reduce lease expenditures by subleasing or negotiating a return of space to the landlord. The 18th half-floor seems most logical.

We identified only a few areas where limited remodeling or construction might increase office efficiency, including two rooms on the 18th floor that had apparently been abandoned or forgotten by Agency management in New York.³³ We recommend that the CFTC be mindful of its existing space, and if it determines to maintain leased space on the 18th floor, to convert that area into something useable.³⁴

As we noted in our review of Kansas City:

We believe that the CFTC should strive to lease only the space that it has the current budget and staff to fill. Future appropriations cannot be predicted with certainty. It may be that immediately after downsizing, the CFTC will receive an appropriation sufficient to completely fill the space that it no longer has. This would not change our reasoning; we believe that the CFTC and public are better served by the risk of a temporary shortage of space, than a 100% certainty of spending substantial taxpayer dollars on the lease of vacant offices.

³³ We note that although apparently unknown to staff and management in NY, Logistics and Operations staff was aware of these rooms, knew their history, and had immediate suggestions for putting them to use. We are unsure why the rooms had not been utilized (or finished) after construction was completed.


³⁴ Should the CFTC act on our recommendation to reduce its spending on vacant offices, a negotiated return of the 18th half-floor would include these two unused rooms.



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To: A. Roy Lavik, Inspector General
From: Anthony C. Thompson, Executive Director 
Date: June 12, 2015
Subject: Revised CFTC Comments on the OIG Review of Leasing and Occupancy Levels in New York City – Discussion Draft

The Commodity Futures Trading Commission (CFTC or Commission) appreciates the opportunity to review and comment on the *Review of Space Utilization of the New York Regional Office of the Commodity Futures Trading Commission (Review)* prepared by the CFTC Office of Inspector General (OIG). The following comments revise those previously submitted on June 2, 2015, and are intended to clarify and provide additional context to the issues discussed in the *Review*.

General Comments

The primary recommendation contained in the *Review* is, “that the CFTC seek to reduce lease expenditures by subleasing or negotiating a return of space to the landlord.” *Review* at 9.

In response to the OIG’s recommendation, the CFTC would like to note that it is currently working with the landlord and property manager to reduce leased space at the Kansas City Regional Office, and is evaluating potential reductions in leased space at its other locations, including the New York Regional Office (NYRO). Furthermore, with regard to the subleasing of CFTC space, the agency has determined that it has extremely limited ability to sublease its space and that any return of space to the landlord would need to be executed by mutual agreement.

Accordingly, in light of these additional facts, the CFTC respectfully requests that the OIG revise the *Review* to reflect this additional information.

The *Review* also notes that the CFTC’s independent leasing authority authorizes it to negotiate leases without reference to GSA rules and regulations. *Review* at 5. Further, it notes that “the CFTC declined until February of 2011 to develop any written leasing standards or procedures of its own,” “there appear[s] to have been no CFTC or other written rules that directly governed the CFTC’s leasing process,” and “the written standards focus on the initial leasing process, and do not address any circumstances under which the CFTC should reassess its space needs . . .” *Review* at 5; fn. 17.

In response to these statements in the *Review*, the CFTC would like to note that while it is not required to adhere to GSA rules and regulations because it is given independent leasing authority in 7 U.S.C. § 16(b)(1)(3), and the Federal Acquisition Regulation (FAR) does not apply to the lease of office space, the CFTC nevertheless followed the FAR requirements of conducting a competitive acquisition for the NYRO lease. As the OIG's review of procurement documents should have revealed, the CFTC publically advertised its New York office space requirement on FedBizOpps and received and evaluated offers from twelve properties. Of the twelve offers received, the CFTC chose 140 Broadway because its offer had the highest technical ranking and the lowest price of all offers received. Further, when procuring the NYRO, the CFTC did have in place the following rules on leasing office space, *Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases* (see Attachment 1), and did comply with these rules at the time. These rules on leasing space were previously provided to OIG in May of 2014 and were in place prior to the signing of the NYRO lease. Please note that the Commission's procedures for Administration of Leases (Attachment 1, paragraph III) have since been revised so that the Logistics and Operations staff is responsible for analyzing rent-related charges and authorizing payments.

Therefore, the CFTC respectfully requests that the OIG revise the *Review* to include that the CFTC, although not required to, complied with FAR requirements of openly competing the NYRO lease and also complied with its own rules on the award and administration of CFTC office space leases as set forth in *Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases*.

Space Utilization

The *Review* further states that the CFTC has been underutilizing space at the NYRO and it bases its recommendations for the CFTC to better utilize certain common areas solely on "staff interviews." *Review* at 7.

The CFTC believes that the OIG's apparent reliance only on staff interviews to make these recommendations limits the usefulness of the recommendations for planning purposes. Further, the *Review* does not include any background on the planning process for space undertaken by the CFTC prior to leasing the NYRO and other office spaces. In particular, the *Review* does not include any discussion of the CFTC's utilization of the services of a professional architecture/engineering firm to develop requirements and appropriate design alternatives prior to leasing the NYRO and other spaces currently leased by the CFTC.¹

As background, the CFTC entered into its current lease agreements after an in-depth planning and requirements gathering process. Specifically, in July 2009, a year before the Dodd-Frank Wall Street Reform and Customer Protection Act of 2010 (Dodd-Frank Act), the Commission worked with a professional architecture/engineering firm, RTKL Associates, Inc., to develop a long-term Program of Requirements (POR) for CFTC staff and space in order to meet the

¹ The CFTC plans to continue this practice when considering any significant changes to existing space in the future.

agency's regulatory mission (*see* Attachment 2).² The driving forces behind this POR were the lack of available office space in CFTC's existing facilities due to recent staff increases, and the then upcoming lease expirations (District of Columbia – 2015; Kansas City – 2014; Chicago – 2012; and New York 2012). Slow leasing markets in the regional cities enabled the CFTC to obtain space in accordance with the POR at very reasonable lease rates. The CFTC's development of a POR demonstrates clearly that the CFTC worked to carefully assess its needs for space prior to making leasing decisions on office space.

Therefore, in light of these additional facts, the CFTC respectfully requests that the OIG revise the *Review* to reflect that the CFTC did carefully consider its needs for space prior to making its leasing decisions at its main and regional offices.

The CFTC would also like to note that space utilization rates at CFTC offices continually change as staffing levels, including federal employees, interns, and contractors, can fluctuate significantly due to available budgets and the time of year (*e.g.* seasonal interns). The number of available seats also changes based on space configuration, which may be altered to meet mission specific requirements. For example, room 20103 in the NYRO was recently converted into a Division of Enforcement workroom, based on the existing workrooms in Chicago and DC, to prepare and provide storage for large court filings. This room previously contained eleven seats reserved for interns, who will now be housed in other existing workstations. Additionally, because interns are typically on site in the NYRO in the spring, summer, and fall of each year, the CFTC believes it important that the *Review* take into account intern spacing needs.

Updated drawings, as of May 27, 2015, for the NYRO reflecting the change to room 20103 and current staffing plans, including the recently announced paid intern program, are attached to this letter (*see* Attachment 3). Based on the updated drawings and staffing plans, the NYRO's space utilization rate is approximately 88% (16 of 134 total seats are available as of May 27, 2015).

Accordingly, the CFTC respectfully requests that the *Review* note the fluctuations in staffing levels as a result of available budgets and the time of year. And, that the OIG consider all intern related workspaces as "Occupied" in the *Review* even though they are vacant for part of the year. Doing otherwise significantly underestimates the space demands in the NYRO. Currently, fifteen unpaid interns have been selected and six paid interns are pending selection for this summer.

Electronic Filing

The *Review* also recommends "*that the CFTC prioritize its move to electronic filing for all of its forms*" to reduce the need for file space. *Review* at 8.

² A POR considers all space regardless of lease expiration date and it is a reasonable practice to begin leasing activities two years prior to expiration. Please note that the attached POR contains personally identifiable information (PII) covered by the Privacy Act of 1974.

In response to the OIG's recommendation, the CFTC would like to note that the agency does not, as stated in the *Review*, require any forms to be filed by fax or hard copy. Further, any document or form required to be filed with the Commission may be emailed in lieu of fax or hard copy. The CFTC recognizes the importance of electronic filing and management of forms, not only to reduce the need for file space, but to increase efficiency. To this end, it has made electronic filing and storage of documents a high priority in its Information Technology (IT) operating plan over the past several years. Although we have continued to make progress toward receipt of all documents and forms via direct submission to the CFTC.gov portal, IT budget constraints have slowed the pace of electronic filing systems development and co-requisite business process re-engineering necessary for this migration.

The agency would like to note that the CFTC.gov portal now accepts the following forms or documents via direct electronic submission: DCM and SEF Product Certifications, DCM and SEF Product Terms and Condition Certifications, Rule Certifications for DCMs, DCOs, SEFs, and SDRs, Monthly and Quarterly Reporting for DCOs, DCMs, SEFs, and SDRs and Event specific reporting for regulated entities. Documents and forms not yet received directly through the portal continue to be either emailed or scanned.

The CFTC respectfully requests that the *Review* be revised to reflect the additional information provided above regarding the agency's electronic filing requirements and recent changes to the CFTC.gov portal.

In closing, the CFTC sincerely appreciates the opportunity to comment on this *Review* and looks forward to working with the OIG in increasing CFTC's space utilization in a cost effective manner. Please let me know if you have any questions about these comments.

Attachments:

1. Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases – February 11, 2011
2. Program of Requirements – July 24, 2009
3. NYRO Floor Plans – May 27, 2015

Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases

I. Leasing of Space:

A. General Principles:

The general principles governing Commodity Futures Trading Commission ("CFTC" or "Commission") acquisition of office space include:

- Maximizing competition to the extent practicable;
- Avoiding conflicts of interest;
- Adhering to the requirements of Procurement Integrity; and
- Reasoned decision-making to obtain space that enables the Commission to accomplish its mission in an efficient and cost-effective manner.

Although neither the Federal Acquisition Regulation (FAR) nor the General Services Acquisition Manual (GSAM) specifically apply to the acquisition of office space by CFTC, the principles cited above are embodied in those documents. Accordingly, CFTC has chosen to comply with aspects of their requirements that facilitate these ends. This is discussed further below.

B. Applicability of Regulations and Policies:

The FAR does not apply to the acquisition of leased office space. Specifically, the scope of the FAR's coverage is defined in Section 1.104 as follows: "The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded." According to Part 2.101(b), the term "acquisition" is defined as the "acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated." The term "supplies" is defined as "all property except land or interest in land." Because a lease of real property, including a lease of office space, is an interest in land, it is not a "supply" and the FAR does not apply.

The GSAM is also inapplicable to the lease of office space by CFTC. The GSAM applies to the acquisition of leased office space by GSA and any agencies delegated independent leasing authority by GSA and so required by GSA to use the GSAM. CFTC's independent leasing authority was mandated by its authorizing legislation and not by GSA. Accordingly the GSAM is not required for use by CFTC in its acquisition of office space for lease.

In the absence of explicit regulatory direction, CFTC has chosen to comply with aspects of these documents that facilitate the principles cited above. The GSAM is used specifically for its guidance as to the considerations and findings necessary to support a lease procurement by other than full and open competition. Additional guidance and processes that may be applicable to lease acquisition are contained in CFTC's acquisition policy.

C. Acquisition Process:

The acquisition process for all lease awards begins with requirements definition and completion of market research. Market research is used to determine whether CFTC is best served by an open market competitive acquisition or a follow-on award to the incumbent lessor.

1. Steps in a competitive acquisition of leased office space are as follows:

- Develop Program of Requirements
- Conduct market survey
- Define delineated area
- Formulate an acquisition strategy
- Advertise requirement
- Review expressions of interest
- Tour properties
- Develop a solicitation list
- Draft and issue a Solicitation for Offers
- Draft a Technical Evaluation Plan
- Designate a Technical Evaluation Committee (TEC)
- Evaluate initial offers
- Complete initial TEC report
- Complete price analysis
- Complete Phase II Determination (assumes negotiation, otherwise, the Contracting Officer will draft a Source Selection Statement at this time)
- Conduct negotiations
- Solicit and evaluate revised offers
- Complete Final TEC Report
- Contracting Officer completes Source Selection Statement
- Memorialize terms of agreement between the parties in a lease document

2. Steps in award of a lease by other than full and open competition are as follows:

- Develop Program of Requirements
- Conduct market survey
- Complete Justification for Other Than Full and Open Competition
- Conduct negotiations
- Memorialize terms of agreement between the parties in a lease document

D. Acquisition Objective:

The functional objective of the acquisition process described herein is to acquire office space in a building that efficiently supports CFTC's mission; provides a high quality work environment; and offers a satisfactory breadth and variety of amenities. This outcome must be met in a manner that maximizes value to the Commission, considering price and technical factors. It must be provided at a price that is fair and reasonable.

II. Construction of Space:

CFTC's office space is constructed in accordance with the terms of its office space lease agreements. Construction contracts and trade subcontracts, as appropriate, are awarded based on a competitive process that results in fair and reasonable pricing. CFTC's Contracting Officer is privy to bid information and, in consultation with CFTC's architect, project manager, and other knowledgeable Commission personnel, approves project pricing as well as any required contract change orders.

III. Administration of Leases:

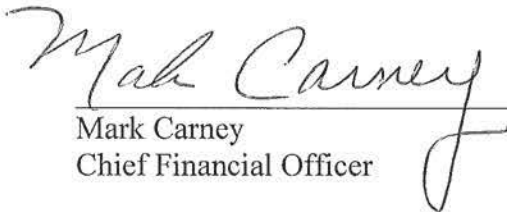
CFTC's Contracting Officer is responsible for analyzing rent-related charges and authorizing payment as appropriate. The Contracting Officer is also responsible for addressing with the landlord any issues pertaining to lease compliance. The Office of Management Operations is responsible for day-to-day facility operational matters and consults with the Contracting Officer on lease-related issues as appropriate.



Steven Grossman
Senior Procurement Executive

2 / 11 / 11

Date



Mark Carney
Chief Financial Officer

2-11-2011

Date



