



**U.S. Commodity Futures Trading Commission**

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The President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President:

The purpose of this letter is to officially report violations of the Antideficiency Act, as required by section 1351 of Title 31, United States Code. The violations pertain to budgetary obligations incurred for multiple-year contracts to lease real property and the acceptance of voluntary services by the Commodity Futures Trading Commission (CFTC or the Commission) from fiscal year (FY) 1995 to 2015.

In September 2015, after reviewing and responding to a series of questions from the Government Accountability Office (GAO) regarding its leasing practices, the Commission became aware that the budgetary accounting for its leases may be inconsistent with the requirements of OMB Circular A-11, *Preparation, Submission and Execution of the Budget*; 31 U.S.C. § 1501(a)(1) (the recording statute); and certain GAO decisions. CFTC staff then notified relevant Congressional Committees, the Office of Management and Budget (OMB), the CFTC Office of Inspector General and the CFTC's independent auditors of the underlying facts of this issue, and provided requested copies of the relevant agency records, including CFTC's letter to the GAO dated September 28, 2015. These violations were also disclosed in CFTC's FY 2016 financial statements and accompanying notes, dated November 14, 2016.<sup>1</sup> Those financial statements were audited and CFTC received an unmodified opinion, with no material weaknesses or significant deficiencies. Following the FY 2016 financial statement audit, CFTC utilized the audited methodology to finalize the necessary estimates contained in this report.

These violations resulted from the CFTC's historical practice of recording obligations arising under the agency's contracts to lease real property for office space in Washington, D.C., New York, Chicago, Kansas City and the CFTC continuity of operations site. Beginning in FY 1995, the Commission only obligated the lease payments due in that fiscal year, consistent with the amount funded by each year's annual appropriation, rather than the full amount of the Commission's legal liability under its contracts to lease real property. The CFTC disclosed the remaining balance of rental payments for all leases in the notes to its financial statements, but did not record the full multi-year obligations, or appropriate annual rental payment obligation plus

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<sup>1</sup> *Commodity Futures Trading Commission Agency Financial Report, Fiscal Year 2016, Note 10, Leases.*



termination costs, in the year in which the lease documents were signed. Further, the CFTC's failure to provide notification of available appropriations to its Chicago and New York landlords in accordance with Federal Acquisition Regulation (FAR) 52.232-18, *Availability of Funds (1984)*, resulted in the acceptance of voluntary services.

On February 4, 2016, the GAO issued Comptroller General Decision B-327242, *Commodity Futures Trading Commission – Recording of Obligations for Multiple-Year Leases* (“Decision”). This Decision concluded that while the CFTC had the legal authority to enter into multiple-year leases, the agency violated the recording statute, 31 U.S.C. § 1501(a)(1), because it did not record the total legal liability for each of its leases when it entered into contracts to lease real property with the landlords at the CFTC's Washington, D.C., New York, Chicago and Kansas City offices. More specifically, the Decision held that the authority to enter into multiple-year leases did not obviate the need for the CFTC to obligate the full multi-year obligations, or appropriate annual rental payment obligation plus termination costs, when it entered into its contracts to lease real property, and the CFTC did not have specific statutory authority to record its contracts to lease real property on an annual basis. The GAO further explained that the agency should determine whether the “failure to properly record these obligations resulted in the obligation of funds in excess of appropriations in violation of the Antideficiency Act.” *Decision* at 16.

These practices spanned a period of over 20 years, which significantly limited the CFTC's ability to recreate a complete historical record of its budgetary and accounting records related to its real property leases. The CFTC carefully reviewed available historical agency records both on-site and off-site in an effort to calculate the amount of the violations of the Antideficiency Act. Using all records and information available, the Commission estimates that the full amount of the lease obligations for the entire historical period of more than 20 years was \$437,949,235. The CFTC is reporting that entire amount as the amount of its violations of 31 U.S.C. § 1341(a) and 31 U.S.C. § 1342, and the relevant account is *95-1400 – Expenses, CFTC*.<sup>2</sup> After reviewing available records and information about the CFTC's contracts to lease real property, and consulting with GAO, OMB and the CFTC's independent auditors, and the Commission recorded unfunded lease obligations in its Statement of Budgetary Resources as of September 30, 2016, and 2015, of \$194,378,658 and \$210,042,824, which represents the full amount of obligations remaining on the CFTC's current leases at the end of FY 2016 and 2015, respectively.

The Commission took steps to (1) correct errors in its recording of obligations for its contracts to lease real property that date back to FY 1995 and (2) prevent errors in recording and the unauthorized acceptance of voluntary services from occurring again in the future. The Commission worked with the Committees on Appropriations of the House and Senate, and the

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<sup>2</sup> The Commission is reporting the full amount of the total lease obligations as the deficiency amount, rather than offsetting with unobligated balances, because CFTC's FY 2016 appropriations language and language in the subsequent continuing resolutions for FY 2017 specifically notes that the canceled accounts may be reopened to record the obligations, but are not available to liquidate the obligations. *Consolidated Appropriations Act, 2016, P.L. 114-113, (Jan. 6, 2015) (FY 2016 Act); Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, P.L. 114-223, (Sept. 29, 2016) (FY 2017 First CR); Further Continuing and Security Assistance Appropriations Act, 2017, P.L. 115-254, (Dec. 10, 2016) (FY 2017 Second CR).*



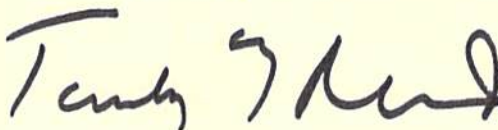
Commission's FY 2016 appropriation language permitted the Commission to use FY 2016 funds to make payments on its existing lease obligations due in FY 2016 regardless of the year in which the original obligation should have been recorded, without regard to the limitations set forth in 31 U.S.C. § 1553. *FY 2016 Act*. This authority continued into FY 2017 by continuing resolution. *FY 2017 First CR; FY 2017 Second CR*.

Since the discovery of these issues, the Commission has also taken steps to implement new internal controls and to ensure proper legal and financial oversight of all future leasing matters. In addition, in FY 2016, the Commission signed a memorandum of understanding with the General Services Administration (GSA) so that the Commission can work with and rely on GSA's expertise in procuring cost-effective and sustainable workplaces for all of the CFTC's future space needs. Further, the Commission provided 32 hours of Federal Appropriations Law training addressing, among other issues, the proper recording of obligations under the recording statute to all personnel involved in financial management and legal review of leases. Based on these actions, the Commission's independent auditors did not identify any material weaknesses in the CFTC's internal controls for FY 2016, noted that the Commission closed the prior year's material weakness related to the recording of lease obligations and issued an unmodified audit opinion on the Commission's FY 2016 financial statements.

Due to the lack of complete historical records dating back to FY 1995, the CFTC was unable to identify all individuals responsible for these violations, but based on a review of available information, could identify eight employees who were involved in executing these transactions. Additionally, the CFTC was able to determine that none of the eight employees knowingly or willfully acted to violate the Antideficiency Act. Therefore, the Commission does not believe administrative discipline is appropriate for any of the employees identified.

Identical reports will be submitted to the Speaker of the House, President of the Senate and Comptroller General.

Most respectfully,

A handwritten signature in black ink, appearing to read "Timothy G. Massad". The signature is written in a cursive, flowing style.

Timothy G. Massad