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February 3, 2016

The Honorable Timothy Massad, Chairman
United States Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Chairman Massad:

On January 15, 2016, the Commodity Futures Trading Commission (CFTC) Office of Inspector General (OIG) released an audit report concerning the CFTC's financial statements showing multiple transgressions. This report compliments OIG's other audit reports concerning the leases of CFTC's Regional Offices in Kansas City, Chicago and New York. The January 2016 report raises serious questions about CFTC's leasing and accounting practices that go beyond issues relating to the regional offices. The Senate Agriculture Committee is investigating and monitoring the issues raised in the January 2016 report and are in communication with the CFTC Office of the Inspector General (OIG) to ascertain the depth and breadth of the problems. Further, the Committee has been in contact with the Government Accountability Office (GAO), and it is my understanding that GAO's Office of General Counsel intends to issue a legal opinion concerning CFTC's alleged violation of the Anti-Deficiency Act (ADA). At this time, regardless of the GAO's findings, I have serious concerns about the manner in which CFTC is managing and accounting for their leases, and the CFTC's management practices deserve greater scrutiny.

In order to accomplish the audit, CFTC OIG contracted with the independent certified public accounting firm KPMG LLP (KPMG). KPMG performed CFTC's audits during 2005-2008 and 2010-2015. The most recent audit outlines multiple infractions, all of which are concerning, and the majority of which CFTC concurs. Specifically, KPMG identifies "material weaknesses in internal control over financial reporting and non-compliance with applicable laws and regulations." In addition, KPMG alleges CFTC's errant accounting practices conflict with U.S. generally accepted accounting principles (GAAP) and have culminated in the improper recording of its lease obligations. Why KPMG's discovery took place recently, as opposed to when it began auditing CFTC is both peculiar and puzzling. Specifically, KPMG finds that CFTC's FY 2015 and 2014 financial statements understate obligations in the hundreds of millions of dollars. Interestingly, CFTC does not concur with this specific finding and is sitting back waiting on GAO's legal opinion to define whether their practices are improper and in violation of the ADA.

What I find particularly troubling is in 2011 the U.S. Securities and Exchange Commission (SEC) faced a similar dilemma concerning its leasing practices and how it

accounted for its leases. SEC's OIG issued a 96-page report in May 2011, and GAO issued a legal opinion in October 2011, wherein GAO found "[w]hen SEC entered into a multiple-year lease, it was required to record an obligation equal to the government's total liability over the term of the lease." In addition, GAO found that "SEC should adjust its accounts accordingly...and if SEC lacks sufficient budget authority to make this adjustment, it should report a violation of the [ADA]." In addition, in the summer of 2011 former SEC Chairman Mary L. Schapiro and current SEC Chief Operating Officer Jeffrey Heslop separately testified on the SEC's lease of the Constitution Center that involved the SEC's accounting practices. They did so before the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management. Considering the similarity between the agencies, the similarity of the issues, the public Congressional inquiries and the gravity of errant accounting, I am bewildered as to how CFTC finds itself in this current state of affairs.

As far as I can tell, even if remedies for CFTC's accounting practices are applied, CFTC's current D.C. office lease remains problematic. Because of CFTC's misrepresentations, KPMG can no longer stand behind its prior audits of 2005-2008 and 2010-2015. Further, the manner in which CFTC is accounting for its leases is it at odds with proper Senate appropriation procedure. Obligating funds and indebting the federal government without possessing the appropriated funds is a serious matter. Thus, I am interested in gaining a clearer perspective of the circumstances surrounding how and why CFTC's errant accounting practices have materialized. Specifically, I request prompt responses to the following inquiries:

1. Why does the CFTC not have "a formal accounting policy" specifically related to the recognition of lease obligations?
2. Does CFTC follow GAAP? If so, why are CFTC practices contrary to those standards when accounting for its real property leases?
3. What information did CFTC provide to KPMG for audit years 2005-2008, 2010-2015, and did it provide sufficient information regarding CFTC's full lease obligations? If not, why not?
4. Please identify all guidance KPMG has provided CFTC related to correcting the accounting practices.
5. What, if any, specific financial reporting guidance did CFTC receive from OMB?
6. Did CFTC ever seek any guidance, including legal opinions, from GAO and/or KPMG about its accounting obligations relating to real property leases? If so, please identify such requests and the responses.
7. Please identify all communications between CFTC OIG and CFTC Office of General Counsel concerning CFTC's accounting practices prior to OIG's January audit report?
8. Please identify any and all communications between CFTC and SEC concerning CFTC's accounting practices. Please include all such communications both prior to 2011 and after the October 2011 GAO legal opinion.
9. Please identify all actions taken by CFTC to analyze its "historical" accounting practices after the SEC's accounting practices were found to be errant in 2011.
10. Please produce the CFTC financial audit report for FY2009.

11. Please produce all memoranda, communications, opinions or other documentation supporting CFTC's current accounting practices as they relate to real property leases.

Please provide the responses to these inquiries by February 17, 2016. In conjunction with the production, please coordinate with my staff to provide a detailed briefing to be held at some point after the aforementioned production.

With every best wish.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Roberts', written over a horizontal line.

Pat Roberts
Chairman

cc: The Honorable Debbie Stabenow, Ranking Minority Member