



U.S. COMMODITY FUTURES TRADING COMMISSION

Office of Inspector General

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January 13, 2016

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

FROM: A. Roy Lavik *ARL*
Inspector General

SUBJECT: Follow-Up Report on the Office of the Chief Economist

My Office has completed a follow-up to our 2014 report on the Office of the Chief Economist (OCE) (attached).¹ We are pleased to report that OCE has made progress in each of the areas where our 2014 report recommended improvement. Nevertheless, I wish to emphasize that OCE remains understaffed. Between December 2012 and January 2014, we estimate OCE economists (including contractors and consultants) decreased from 39 to 11, a decrease of 72%.² The Chief Economist was allotted \$200,000 in FY2015 to hire outside academics as contractors, but chose to allocate these funds elsewhere. Currently we believe OCE employs 12 full time economists (not including the Director) and five economist consultants (three unpaid), with two additional economist consultants currently in the works. Seventeen economists in OCE is an improvement but it is not enough in our view to assure a robust research environment.

I am pleased that the Chief Economist informed my office that he anticipates adding eight additional outside academic economists to OCE within the next few months. This anticipated staff increase certainly appears feasible as it is not unusual for academic economists to work in OCE for no pay, in exchange for the unique market research capabilities available only at CFTC. My office will follow up on staffing in OCE which, hopefully, will result in an increase of journal scholarship.

Management issued a response to this report which did not motivate amendment to our review. The Management response and our brief rebuttal are also attached.

As always, I appreciate your continuing support of my Office.

Attachments

Cc (with attachments): Sayee Srinivasan, Director, OCE

¹ By way of background, in 2013 then-Chairman Gensler requested that my Office review concerns "regarding the use of non-public data by OCE and visiting academics," and related administrative issues. In February 2014, we issued our first review of OCE. We found no evidence of improper use or disclosures of non-public data by or related to OCE, but did issue findings and recommendations regarding the OCE economic research program, which CFTC had halted in December 2012 in response to its concerns. We promised to revisit those issues. See, Review of the Commodity Futures Trading Commission's Response to Allegations Pertaining to the Office of the Chief Economist (Feb. 21, 2014) (http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/cftc_046841.pdf).

² Id., at iii.

**Follow Up Report:
Review of the Commodity Futures Trading
Commission's Response to Allegations Pertaining to the
Office of the Chief Economist**

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

January 13, 2016

This CFTC OIG Report is subject to the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, and has been redacted as determined by the Commodity Futures Trading Commission. The redactions are not determined by the CFTC OIG.

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Introduction

In December 2012, the Chicago Mercantile Exchange (CME) accused CFTC economists of improper access to and publication of confidential trade data.¹ We issued our first review of this matter in February 2014; there, we examined both the CME's allegations and the CFTC's response.² We found that, after a preliminary review, the CFTC shut down the Office of the Chief Economist's research program, halted publication of completed research, eliminated approximately two dozen visiting academic economists, and removed the server that visiting academics had used to access CFTC trade data. At the time of our 2014 review, neither the CFTC nor our office had found evidence that trade data had been published improperly. No evidence has been found since then either. While problems were found with personnel records of certain CFTC economists who had otherwise properly been hired or appointed, the problems were neither the fault of the economists themselves nor of OCE management.

Our review determined that the CFTC should do the following: (1) restart the Office of the Chief Economist's research program as soon as feasible; (2) resolve the deficiencies in personnel records (including security clearances) in OCE in a like fashion as resolved for other CFTC employees; (3) assure the legality of any pre-publication review process for OCE research papers and presentations; and (4) streamline any pre-publication review undertaken by the Agency.

We noted that we would follow up in approximately one year. Accordingly, CFTC OIG has completed a follow-up review to determine the current status of the OCE.

Objective, Scope, and Methodology

Our objective was to (1) review the efficiency and effectiveness of current publication procedures for OCE research papers; (2) determine if staffing issues in OCE have been resolved, including whether outside academics have been allowed to return to pursue research; and (3) determine if OCE economists have the IT infrastructure—both hardware and software—necessary to do their jobs efficiently. We began fieldwork for this review in June 2015. During our fieldwork, information came to light which prompted our Office to expand the scope of our review to include the independence of OCE economists to select research topics.

To complete our review, we interviewed over 20 individuals within the CFTC in OCE, OGC, and the Office of Data and Technology (ODT). To better ascertain the effectiveness of the approval procedures, we sought out best practices in the field by speaking with former CFTC Chief Economists and individuals in an equivalent position at other federal financial regulatory

¹ Letter from Mark Young and Jerrold Salzman on behalf of CME to Dan Berkovitz, dated December 14, 2012, available at

² Review of the Commodity Futures Trading Commission's Response to Allegations Pertaining to the Office of the Chief Economist (Feb. 21, 2014) [hereinafter, "OIG's 2014 OCE Review"], available at http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/cftc_046841.pdf.

agencies. We also obtained and reviewed policies, procedures, research paper publication approval emails, and other relevant records from OCE, OGC, and the Office of the Executive Director (OED).

Findings

OCE Has Reestablished Its Research Program

At the time of the 2014 review, OCE continued to have a substantial backlog of research papers awaiting clearance,³ and economists were not yet allowed to publish new research.⁴ Since that time, the backlog has been eliminated and OCE has begun working on new research again. In 2014, five new papers were submitted for review, and all five completed the clearance process. In 2015, one new paper was submitted for review and completed the clearance process.⁵

Unfortunately, the CFTC had no formal tracking system in place for prior years, and so no direct comparison of academic productivity is possible. However, we note that 24 research papers were either in the CFTC's approval process or had recently been approved at the time the CFTC shut down academic research and publication in December 2012.⁶ To our knowledge, no research initiated since that time, by OCE economists or by outside academics using CFTC data, has been published in an academic journal.⁷

OCE and OGC Have Improved the Review Process

OCE research papers flow through a two-part clearance process. First, the research paper and supporting documentation are submitted to an internal OCE review committee.⁸ During OCE's internal review, economists search for possible improper section 8 data usage. The OCE review committee then produces an approval report and submits the report and research paper to OGC for a secondary review.

The stated value of OGC's review is two-fold. First, OGC looks for section 8 data. An OGC attorney explained that although OGC does not have expertise in the aggregation of section 8 data, it is beneficial as a safety precaution to have an additional review.⁹ Second, OGC reviews each author's on-boarding documentation prior to permitting publication.¹⁰ Much of OGC's

³ *Id.* at 5-6, 29.

⁴ *Id.* at 15.

⁵ Our interviews revealed that a second paper was submitted to the OCE Review Committee and but was not reviewed due to incomplete materials.

⁶ OIG's 2014 OCE Review, at 5-6, 29. Our records indicate that the 24 papers dated back to 2010.

⁷ For comparison, one economist estimated that a half-dozen papers had been successfully published in peer reviewed journals in 2012 prior to the shutdown.

⁸ The supporting documentation requires the authors to detail the paper's use of section 8 data.

⁹ OGC currently has an attorney on detail within OCE. However, this attorney does not have the authority to perform OGC's legal review and may not clear papers for publication. An OGC attorney explained that a single detailee may not have all the necessary knowledge to clear papers, and that OGC oversight is necessary. We note that this concern was not about expertise with respect to detecting confidential data under section 8, but rather with respect to the Human Resource paperwork.

¹⁰ In a memo submitted to our Office in response to a document request, the Office of Human Resources (OHR) revealed that two current OCE economists had documents missing from their files. OHR stated that these documents

review consists of the analysis of human resource documents. OGC explained that this part of the review needs to be done only once per author, and that subsequent publications by the same author proceed more quickly.¹¹

Although both OCE and OGC reviews look for improper section 8 data usage, we note that multiple interviewees stated that neither OCE nor OGC have written policies for how section 8 data must be aggregated in research papers. Further, some OCE economists reported that they do not receive any additional training on section 8 data outside of what is required to be completed by all agency employees. However, the Chief Economist reported that OCE has held section 8 training at research meetings.

Clearance Times Have Improved Since Our Last Review

Beginning with papers submitted for review in 2014, OCE tracked author submission, OCE approval, and OGC approval dates. Since September 2014, six papers have been reviewed.¹²

Category	Days for OCE Committee approval ¹³	Days for OGC approval	Total days for final approval
Longest approval	110	52	162
Shortest approval ¹⁴	14	13	39
Average approval	52	33	85

Since our initial OCE review, clearance times have improved from as long as 14 months to an average of three.¹⁵ Most OCE economists find current clearance times to be acceptable. Some OCE economists view the current clearance process as an improvement to the voluntary review process in place prior to 2012, because it provides a more detailed review for confidential information.

likely were completed but misplaced. The missing documents were not identified by OHR—or OGC—until our Office’s document request was made. One individual was missing an Employment Eligibility Verification form, while the other was missing the CFTC Code of Ethical Conduct Agreement. These two items are not part of OGC’s review process. OGC informed us that its review only involves the Form SF-52. We are not clear why legal expertise is required to review a Form SF-52, or why this expertise cannot lie with the attorney detailed to OCE. We believe OGC continues to conflate improper administrative on-boarding paperwork with improper appointment status. See OIG’s 2014 OCE Review, at 16-20.

¹¹ We note that OGC will attempt to expedite its review if notified by OCE of a presentation or other deadline authors wish to meet. This expedited process was utilized by one OCE economist to enable him to attend a conference.

¹² September 2014 is the month when OCE started tracking the OCE approval date, thus enabling us to make the comparison.

¹³ This day count includes weekends and holidays.

¹⁴ While the shortest OCE approval period was 14 days, and the shortest OGC approval period was 13 days, these were not for the same paper. The shortest overall approval period is not, therefore, 27 days.

¹⁵ The 85-day average is generated by dates provided by OCE.

Although economic research paper clearance times have improved at CFTC, other financial regulatory agencies clear papers for publication much faster.¹⁶ The clearance time at one FIRREA¹⁷ agency was reportedly just two to three weeks.¹⁸ The salient difference is that research papers are reviewed at that agency by subject-matter experts,¹⁹ and there is no secondary legal review.

Research

OCE Prohibited Relevant But Potentially Controversial Research

CFTC interprets the Dodd-Frank Act²⁰ to mandate the establishment of position limits throughout the futures and swaps industry.²¹ During the fieldwork for our review, several OCE economists identified position limits as an example of a topic on which economic research is no longer permitted. As one OCE economist put it, “you can’t write a report on something that destroys three years of (CFTC) work.”²²

This issue arose—unasked—during an interview with an OCE economist. We immediately broadened the scope of our review and began asking other OCE economists about the issue. Several other economists confirmed their impression that OCE is now censoring research topics that might conflict with the official positions of the CFTC. Some of this censorship occurs on the part of individual staff economists themselves—when selecting potential topics, they now choose non-controversial ones. However, multiple OCE economists also reported that the Chief Economist has declined to permit research on certain topics relevant to the CFTC mission,²³ including position limits.

¹⁶ Note that our Office does not intend to imply that OCE must follow the procedures of other financial regulatory agencies. Rather, where those agencies have seen positive results, we think those procedures are worth noting.

¹⁷ FIRREA stands for Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183.

¹⁸ The fastest clearance reported by an OCE economist was three weeks.

¹⁹ The research paper is first presented to an in-house seminar panel for critique, and then it is submitted for review by a management-level Ph.D. economist.

²⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, 111 Pub. L. 203, 124 Stat. 1376 (2010).

²¹ Position Limits for Derivatives, 78 Fed. Reg. 75680 (Oct 12, 2013) (“Congress directed, i.e., mandated, that the Commission ‘shall’ establish limits on the amount of positions, as appropriate, that may be held by any person in agricultural and exempt commodity futures and options contracts traded on a DCM. Similarly, ... in amended CEA section 4a(a)(5), Congress mandated that the Commission impose position limits on swaps that are economically equivalent to the agricultural and exempt commodity derivatives for which it mandated position limits in CEA section 4a(a)(2).” (citations omitted)).

²² While OCE economists expressed myriad views on whether censorship—self- or imposed—was appropriate, its existence was a consistent theme. OCE economists had various reasons for taking self-censoring measures. One concern was that the research program may be shut down if the Office publishes papers with results not supporting Commission policy. Another OCE economist expressed fear of personal retaliation from the Chief Economist if his research resulted in conclusions that might offend Commissioners.

²³ Research paper topics originate in multiple ways. Intermittently, OCE holds research meetings to discuss topic ideas. Some ideas are generated by observing interesting trends in data, some ideas are proposed by the Commission, and other ideas stem from outside suggestions. All topics flow through the Chief Economist before any research project proceeds past the idea-genesis stage.

Some OCE economists expressed uncertainty as to the purpose of OCE's research program if the Office is prevented from studying topics relevant to current CFTC rulemaking. Yet OCE economists reported that the Chief Economist has rejected or delayed research paper topic ideas if they were related to pending rulemaking or could challenge the validity of agency regulations. One OCE economist described the policymaking process as one in which a decision is made and then analysis is done in a fashion designed to support the decision. There is a perception within OCE that the Chief Economist is "more Commission-friendly," and that he discourages research that might offend Commissioners.

Although it is not unheard of for financial regulatory agencies to discourage research that conflicts with their policies,²⁴ our fieldwork revealed that OCE economists were not historically subjected to prohibitions on politically controversial but timely and relevant research. We spoke with two former CFTC Chief Economists who worked under six different Chairmen or acting Chairmen. According to the former Chief Economists, the Chairmen supported the Office's ability to publish conclusions that were contrary to current Agency policy. Both Chief Economists stated that during their tenures, OCE published at least one research paper with results that called into question agency policy. Both also stated that so long as the intended research related to the Commission's mission, the Chairman would support the paper's publication.²⁵

We discussed this concern on multiple occasions with the current Chief Economist. He agreed that he had initially rejected a research proposal on position limits on the basis that it was politically controversial. The Chief Economist later stated his belief that the CFTC did not have the data or the in-house expertise to do this project in any event. The Chief Economist explained that this was a matter of discretion, and that he did in fact permit research into politically controversial topics. He provided an example of research into high-frequency trading and instances of self-trading. When asked, the Chief Economist agreed that the Chairman actively supported this line of research. The Chief Economist also stated that he wanted to be able to take to the Chairman and Commissioners anything he or OCE did.

OCE Can Better Inform the CFTC about Ongoing Research

In our interview with the research director of a FIRREA agency, we learned that he tries to keep agency staff abreast of current research by issuing quarterly reports. His office allows agency staff to read in-progress research and welcomes questions. This communication allows the agency to be prepared to respond to public comments.

According to the Chief Economist, OCE does not currently provide the Commission or OGC with a comprehensive list of ongoing research projects. However, the Chief Economist

²⁴ One research program director from another agency explained, "[W]e're not in academics; we work for the government. There isn't any academic freedom in the government." Further, it was explained that the other agency does not publish research that is directly contrary to the agency's positions. We report these observations for purposes of transparency and make no judgment regarding the economics research program at any other financial regulatory agency.

²⁵ We note that the Commission requires all papers published by OCE economists to contain a disclaimer stating "the analyses and conclusions expressed" are "those of the authors and do not reflect the views of other members of the Office of Chief Economist, other Commission staff, or the Commission itself." See 5 C.F.R. § 2635.807(b).

explained that he does take steps to inform the CFTC of ongoing research. Internally, the team uses a SharePoint site and spreadsheet for tracking purposes. To keep the rest of the agency apprised of ongoing research topics, the team hosts research seminars discussing both topics intended for publication and those strictly for internal purposes. The Chief Economist also believes that OCE's white papers, which might serve as precursors for longer-term projects, can be viewed as a method of educating the public and the Commission on OCE research.

Staffing

OCE Has Not Restarted the Visiting Scholars Program

The Visiting Scholars Program remains inoperative. The Chief Economist was allotted \$200,000 in FY2015 to hire outside academics as contractors, but chose to allocate the funds elsewhere. He explained his belief that OCE would not be able to provide a collaborative infrastructure due to the limited size of its current staff of full-time employees (FTEs). The Chief Economist explained that under a previous Chief Economist, OCE staff devoted significant time to handling administrative tasks on behalf of visiting academics; OCE's responsibilities were reduced to showing visiting academics how to find and access data, without participating in the analysis.²⁶ The Chief Economist concluded that this damaged staff morale. The Chief Economist would prefer a more collaborative relationship in which OCE economists teach the visiting academics about the CFTC's data, and the visiting academics further enhance the OCE staff's economic-analysis skills.

Our interviews with economic research directors at other financial regulatory agencies revealed strong support for collaboration with academics. Agencies that devote substantial resources to economic analysis might hire the academic on a full-time basis for a period of years to conduct research. One Director suggested that agencies with less of a budgetary focus on long-term research could efficiently utilize outside academic through the use of undergraduates who work as research assistants. The research assistants are responsible for accessing data on behalf of short-term visiting academics as well as staff economists.

When we suggested this option to the Chief Economist, he clarified that permitting outside academics to conduct research independent of full-time staff would not benefit the agency. He believes that the administrative and morale costs of permitting data access to outside academics exceed the benefits of independent, peer-reviewed academic research relevant to markets regulated by the CFTC.²⁷

²⁶ In a follow-up interview shortly before releasing this Review, the Chief Economist clarified that earlier during the visiting scholar program, only the former Chief Economist and possibly an administrative assistant dealt with the administrative issues involving visiting scholars. He stated that, at the time, he was a staff economist and had no knowledge of whether the scholars posed an administrative burden on OCE full-time economists. He stated that his concerns about administrative burdens were only forward-looking.

²⁷ We note that some previous OCE administrations also required visiting academics to work in collaboration with OCE economists. The philosophy behind this collaboration was to balance concerns regarding data access and the belief academics should not be allowed to use Commission resources without direct Commission benefit. Alternately, there were also OCE administrations that were significantly more liberal with allowing academics access to data. As a previous Chief Economist explained, under his tenure OCE would accept requests from outside

OCE economists generally did not express concern that the Visiting Scholars Program damaged staff morale or turned staff economists into administrative assistants. Staff economists expressed a different concern—if visiting academics were allowed to return and research independently, the Commission might attempt to further limit full-time economists' opportunities for long-term academic research. The staff economists believed that limiting staff research solely to short-term support for the Commission and other Divisions (while visiting scholars performed scholarly research) would further damage morale.

While the Chief Economist apparently did not intend to re-create the once-robust Visiting Scholars Program, two new academics were anticipated to start during the fall of 2015. In addition, the Chief Economist was developing the administrative infrastructure necessary to support these economists; for instance, he was revising the contracts used to bring on outside academics to be more flexible given that research does not always conclude on a predictable timeline.

In a follow-up interview shortly before this review was released, the Chief Economist provided an update: eight visiting scholars, many from top universities, will be entering the CFTC as unpaid consultants within the next three months.²⁸ We are pleased with the development and we plan to revisit this issue in the future.

OCE Has Had Difficulty Filling Available FTE Positions

At the time of our initial 2014 review, OCE staff had dropped to nine FTEs (including the Chief Economist) and two part-time consultants.²⁹ That number has slowly begun to climb. Currently OCE has 12 FTEs, one academic contractor, and two part-time consultants.³⁰ This past summer, OCE also hosted four interns.

In March 2015, OCE received authorization to hire four FTEs for FY2015. According to the Chief Economist and a number of staff, the Office struggled to fill these positions. OCE economists suggested several reasons why. First, OCE has not been present at academic hiring events to establish a presence in the community, nor has it been able to post positions and conduct recruiting efforts consistent with the standard academic hiring schedule. Academic hiring typically occurs with jobs posted in October, initial interviews in January, and final interviews in February. OCE, on the other hand, most recently posted positions in March, after many potential Ph.D. candidates had already accepted positions elsewhere.

academics for datasets to be utilized in research taking place entirely outside of the CFTC. OCE would anonymize the requested data and provide it to the academics for their use.

²⁸ In addition, one academic had been working for CFTC on a contract. This individual was recently converted to an unpaid consultant after the contract expired.

²⁹ OCE previously maintained a robust staff, with a mixture of FTEs, paid consultants, unpaid consultants and contractors. An employee snapshot from September 30, 2012 revealed OCE had 13 FTEs, 4 paid consultants, 6 unpaid consultants, and 16 contractors. OCE's staffing numbers continued to decrease from FY 2012 to FY 2015. OIG's 2014 OCE Review, *at iii*, note 10.

³⁰ These figures are according to a spreadsheet received from OCE. The consultants are FTEs but work only part-time.

Second, many qualified economists are located in New York or Chicago and are unwilling to relocate to Washington, D.C. One interviewee noted that OCE may now be considering opening positions in those cities, despite past reservations to do so.

Third, staff economists expressed a concern that the most qualified economic talent is attracted to positions with protected research time. The CFTC does not currently emphasize long-term academic research or publication in peer-reviewed journals. As noted above, 24 academic papers were pending approval for publication in 2012, while five papers were approved in 2014 and just one paper has been cleared thus far in 2015. Full-time OCE staff must currently prioritize support of the Commission and other Divisions over long-term research. As one staff economist phrased the dilemma, OCE is “mortgaging the future to pay for the present.”

Finally, staff economists reported that the academic community may still have a negative view of the agency resulting from the OCE research program shutdown in 2012. According to one member of OCE, there is a perception that the CFTC is a “hostile place for research” and that other economic regulatory agencies “value” research more than the CFTC does. We received reports that academic careers suffered because of the shutdown when access to CFTC data was revoked; the halting of OCE’s research program forced visiting academics to abandon projects and start new research elsewhere. A couple of interviewees mentioned a potential hire for a Research Director who turned down the position because of his experience with the shutdown.³¹

However, in our final interview with the Chief Economist, he stated that all four full-time positions had been filled. Further, the Chief Economist stated that academics still believe OCE is a viable place to perform research. The Chief Economist explained that academics who have worked with OCE in the past continue to work with the Office, and that he intended to bring on as many as eight unpaid visiting academics as consultants within the next three months.

OCE Economists Have Sufficient Technology

During our fieldwork, OCE economists expressed satisfaction with the hardware and software used within the Office. OCE economists are now offered access to a high-performance computing environment. According to members of ODT and OCE, this is a substantial improvement; economists can now run regressions and other data analyses in a fraction of the time it used to take.

Current OCE economists who were hired by OCE prior to 2012 reported that they presently have the same level of data access. If an OCE economist requires data that is inaccessible, he requests the data from ODT and it is provided after an approval process.

In our prior review, we recommended that the stand-alone computer network known as OCEnet be revitalized (or replaced with comparable research capabilities) as soon as feasible.³² Our interviews during this follow-up review revealed that OCE full-time staff did not use OCEnet; rather, OCEnet was used primarily by outside academics. In addition to providing a

³¹ No interviewees expressed opposing views, that is, that the OCE maintains the reputation it enjoyed prior to the 2012 shut down.

³² See OIG’s 2014 OCE Review, at 33.

segregated environment for outside researchers and the general benefit of faster data processing, OCEnet hosted some specialized data processing programs specifically requested by outside academics that are not utilized by OCE economists or any other CFTC groups. With few outside academics currently at the CFTC, a stand-alone network is unnecessary. Moving forward, our interviews suggest that even if the Visiting Scholars Program were to be reinstated in full, a stand-alone network would not be needed given the current state of the agency's IT infrastructure and the ability of administrators to reliably restrict network access on a per-user basis.

Conclusions and Recommendations

Our prior review had many elements, but its focus was to ensure that the CFTC maintained a robust economic research program. This remains our focus today. OCE has made unambiguous progress in terms of faster administrative review of papers for publication, additional hiring, and available technology. Though each of these areas could still use improvement, we have two more serious concerns. The first is the diminished academic productivity of the Office of the Chief Economist. As noted above, to our knowledge, the CFTC has not published a single paper in a peer-reviewed journal based on research initiated since the shutdown in 2012. Our second concern is that some academic research relevant to the CFTC's mission may be off-limits on the grounds that it may conflict with the Commission's current policy goals.

- We recommend that the CFTC reestablish the Visiting Scholars Program to enhance the quality and quantity of long-term academic research and publications.

CFTC has the opportunity to employ top academic talent from prestigious universities at no direct cost to the Commission. These economists are willing to work for free. In exchange for access to CFTC data and administrative support, they research and publish peer-reviewed academic articles that help the CFTC, Congress, and the public to understand economic issues essential to our economy—everything from the costs and benefits of high-frequency trading, to the utility of position limits in futures markets, to the consequences of the pronounced consolidation among Futures Commission Merchants that has occurred over the past seven years.³³ Regardless of the conclusions reached on these issues and others, the problem is that this sort of top-quality, peer-reviewed research is occurring at the CFTC to such a limited degree that there have been no publications in an academic journal since late 2012.

We believe such research is central to what Congress intended when it included section 18 in the Commodity Exchange Act, requiring the CFTC to “establish and maintain, as part of its ongoing operations, research and information programs to . . . carry out the general purposes of [the] Act.”³⁴ In some sense, every Division at the CFTC does “research.” Lawyers do legal research, and the various Divisions constantly analyze the markets and market participants they

³³ The number of FCMs has fallen in the past 8 years: from 154 in 2007 (before the 2008 financial crisis and 2010 passage of Dodd-Frank) to 71 in 2015. See, CFTC, Selected FCM Financial Data as of December 31, 2007, <http://www.cftc.gov/files/tm/fcm/fcmdata1207.pdf>; CFTC, Selected FCM Financial Data as of September 30, 2015, <http://www.cftc.gov/idc/groups/public/@financialdataforfcms/documents/file/fcmdata0915.pdf> (excludes firms registered solely as retail foreign exchange dealers and/or swaps dealers).

³⁴ Commodity Futures Trading Commission Act of 1974 § 415, 7 U.S.C. § 22. See discussion at OIG's 2014 OCE Review, at 6-8.

oversee, etc. But we distinguish these types of research from the sort of long-term academic research—published in peer-reviewed academic journals—in which only the Office of the Chief Economist historically has excelled. That focus no longer exists in OCE, and consequently it no longer exists at the CFTC as a whole. This is a primary concern.

We note that the Chief Economist has expressed his intent to bring in as many as eight new outside academics within the next three months to contribute to long-term research within OCE.³⁵ We believe this is a great start, and we will revisit this issue in the future.

- We recommend that the CFTC provide economists in OCE with protected research time.

Since our last review, OCE has focused almost exclusively on short-term research and economic analysis in support of other Divisions and the Commission. We recognize that such research and analytical support is a vital role of OCE, and we endorse those efforts fully. Nevertheless, whether due to the relatively limited number of full-time positions CFTC has currently devoted to OCE, or due to the increased reliance by the Commission and other CFTC Divisions on expertise from OCE staff, little time is being devoted to long-term research. Our interviews revealed that this not only damages morale but also likely contributes to OCE's difficulty in filling open positions for new staff. Ph.D. economists from the best universities must publish or perish; to the extent the CFTC wishes to obtain the services of such individuals, we believe the current emphasis on only short-term research in support of other Divisions will inhibit hiring.

- We recommend that OCE not prohibit research topics relevant to the CFTC mission.

Within government research programs, there is the potential for agency officials to interfere with researchers' topics in two ways. The first, which is always problematic, involves interference with publication of results after research is complete based on political concerns or a desire to avoid controversy. We have not heard allegations of this occurring within OCE or at the Commission.

The second involves prior approval of topics to be researched using government money or time. The extent to which such interference is appropriate can vary. Certainly, government resources should only be spent conducting research both timely and relevant to the CFTC's mission. It would not, for instance, be appropriate for an economist to research cattle prices in the 19th Century, assuming they have no current relevance to CFTC policy.

However, it is not the role of OCE's long-term research to protect the CFTC from criticism. If anything, its role is to improve discussion about topics the Commission is currently or will in the future be regulating. For instance, the CFTC currently has a proposed rule open to

³⁵ As noted, visiting academics used to access data through OCEnet, a stand-alone computer network. While we do not make any recommendations regarding what technology should be used moving forward, we believe ODT should be involved early in the process, to help ensure protection of confidential CFTC data, including data protected under section 8.

public comment on the topic of position limits.³⁶ Accordingly, it is entirely appropriate for an OCE economist to research and publish on this subject as a part of his or her duties. We fear that preventing agency economists or future visiting scholars from researching relevant topics based on political concerns will limit informed public debate³⁷ and deter highly-qualified economists from working with, or joining, the CFTC.

We emphasize that there has been no allegation that the Chairman or Commissioners have attempted to prevent certain topics from being researched or to alter conclusions. However, our interviews nevertheless revealed a perception of institutional censorship occurring, with the issue of position limits most commonly cited as a topic for which research was not permitted. We believe that this is not acceptable; OCE economists should not be prevented from researching current topics of interest related to the CFTC's mission.

- We recommend that the OCE Review Committee and OGC adopt standardized review deadlines (and follow them).

An analysis of OCE Review Committee and OGC approval dates for papers submitted since 2014 revealed a wide variance in approval times at both stages of the process. Uncertain clearance times have the potential to negatively impact OCE economists' publication and presentation opportunities, as well as to limit OCE's attractiveness to outside academics. We recommend that OCE use other FIRREA and FSOC agencies as a guide to establishing review deadlines.³⁸

- We recommend that OCE prepare a quarterly research report to inform the Commission of ongoing research.

OCE does not provide a comprehensive list of ongoing research topics to the Commission. We learned in interviews with other economic regulatory agencies that keeping senior leadership informed about upcoming research enabled the agency to prepare for potentially controversial articles. Our interviews also indicated that academic research papers are cleared faster when those involved in the process are aware of all ongoing research. Accordingly, we believe OCE would benefit from tracking its ongoing research and disseminating that information to the Commission.

³⁶ See Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013); Aggregation of Positions, 80 Fed. Reg. 58365 (Sept. 29, 2015). The closing date for comment is November 13, 2015.

³⁷ Including Congressional hearings. See, *High Frequency and Automated Trading in Futures Markets: Hearings Before the Senate Comm. On Agriculture, Nutrition & Forestry*, 113th Cong., 2d Sess. (May 13, 2014) (statement of Dr. Andrei Kirilenko, Professor of the Practice of Finance, MIT Sloan School of Management).

³⁸ See, 12 U.S.C. § 1833b (listing the FIRREA agencies) and the Dodd-Frank Wall Street Reform and Consumer Protection Act, sec. 111, P.L. 111-230 (July 21, 2010) (listing the FSOC or Financial Stability Oversight Council agencies).

**Management Response to the Draft IG Follow-Up Report Dated November 16, 2015
Regarding a Review of the CFTC's Response to
Allegations Pertaining to the Office of the Chief Economist**

Dated: December 18, 2015

CFTC Management is pleased to have the opportunity to review and respond to the CFTC's Office of the Inspector General's (OIG) November 16, 2015, follow-up report on the status of the Office of the Chief Economist (OCE) (OIG Follow-Up Report). The OIG's Follow-Up Report recognizes many of the improvements that CFTC Management has made since the OIG issued its February 21, 2014 report.¹ For example, the OIG Follow-Up Report states that the Commission has made "unambiguous progress in terms of faster administrative review of [research] papers for publication, additional hiring, and available technology."² The OIG Follow-Up Report also offers several recommendations that relate to the Commission's OCE research program, OCE's hiring efforts, and OCE's selection and distribution of work assignments. CFTC Management has considered these recommendations and wishes to respond. First, CFTC Management will discuss OCE's role in relation to the Commission's regulatory responsibilities.³ Second, CFTC Management will address the specific recommendations proposed by the OIG in its Follow-Up Report.

¹ The OIG February 21, 2014 report is titled, "Review of the Commodity Futures Trading Commission's Response to Allegations Pertaining to the Office of the Chief Economist."

² OIG Follow-Up Report at p. 9.

³ In 2010, after a major financial crisis in the United States, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-2-3, 124 Stat. 1376 (Dodd-Frank Act or Dodd-Frank). The Dodd-Frank Act amended the Commodity Exchange Act, among other things.

I. The Office of the Chief Economist's Responsibilities and Resources

While CFTC Management agrees on the importance of a robust economic research program, the OIG's view of what should be the priorities of the Commission's OCE do not sufficiently account for OCE's paramount role in helping the Commission meet all of its responsibilities under the Commodity Exchange Act (CEA) as well as the limited resources of OCE and the Commission generally. The OIG continues to advance an agenda for OCE and its economic research that we do not believe is practical. The OIG has articulated its desire for the Commission's OCE to increase its productivity through long-term academic research, as expressed on page nine of the OIG Follow-Up Report: the OIG "believes [that peer-reviewed research] is central to what Congress intended when it included section 18 of the Commodity Exchange Act, requiring the CFTC to 'establish and maintain, as part of its ongoing operations, research and information programs to ... carry out the general purposes of [the] Act.'"⁴ The OIG also has stated that it is concerned about "the diminished academic productivity" of OCE.⁵ Despite the fact that OCE remains engaged in rigorous economic analysis of a wide range of issues without necessarily targeting publications in peer-reviewed journals, in OIG's view, "the problem is that this sort of top-quality, peer-reviewed research is occurring at the CFTC to such a limited degree that there have been no publications in an academic journal since late 2012."⁶ It is concerned that the emphasis on long-term academic research "no longer exists in OCE, and

⁴ OIG Follow-Up Report at p. 9. The OIG report references CEA section 18, which is located at 7 U.S.C. § 22.

⁵ OIG Follow-Up Report at p. 9.

⁶ OIG Follow-Up Report at p. 9.

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consequently it no longer exists at the CFTC as a whole. This is a primary concern.”⁷ In order to correct this perceived “problem,” the OIG believes it appropriate that long-term, academic research should be given a higher priority within OCE—a goal made even more explicit by recommending that “the CFTC provide economists in OCE with protected research time.”⁸

CFTC Management recognizes that rigorous study of issues of relevance to the Commission is vital, and could result in publications in peer-reviewed journals. But the Commission and its operating Divisions have extensive responsibilities under the CEA for which OCE is critical, and the priority given to research that is not directly tied to current responsibilities and activities must be considered in that light. OCE is currently an office of 14 employees.⁹ The Chairman has been committed to increasing the size of the division—it has gone up from 10 employees in 2014. However, given resource constraints, CFTC Management must be judicious in defining OCE’s role so that the economic knowledge, analytical skills, and market and technical expertise that reside within OCE are utilized efficiently to fulfill the Commission’s statutory responsibilities.

The following describes some of OCE’s responsibilities in various priority areas of Commission activity:

- *Cost-Benefit Considerations:* OCE is responsible for providing economic advice and counsel on Commission regulations and orders. For example, since the passage of Dodd-Frank, the Commission has issued 74 proposed rules and 57 final rules, and the Commission was required to consider the costs and benefits of each rule. Each cost-benefit consideration requires considerable time and effort on the part of OCE staff.

⁷ OIG Follow-Up Report at p. 10.

⁸ OIG Follow-Up Report at p. 10.

⁹ OCE is currently in the process of back-filling an economist position.

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- *Concept Releases and Other Studies.* In addition to rules, OCE staff members have played a central role in the development of concept releases, reports and similar documents issued by the Commission and staff from various Divisions that are used to gather information from the public on market developments or explore areas of rulemaking. Examples include the “Concept Release on Risk Controls and System Safeguards in Automated Trading Environments,”¹⁰ and a request for comment on draft technical specifications for certain swap data elements.¹¹ Along with the Division of Swap Dealer and Intermediary Oversight (DSIO), OCE co-authored the recently released Preliminary Report on the *de minimis* exception as required under Commission rules.¹²
- *Registrations and Product Reviews.* OCE staff work closely with the Commission’s other Divisions on registration applications, product reviews and similar actions. For example, OCE staff has worked on projects concerning execution methods, the made-available-for-trade rules, mandatory clearing rules, economic analysis to study the impact of various rules on market participants, and proposals by Designated Clearing Organizations (DCOs) to clear new products. A number of economists from OCE have been working closely with Division of Market Oversight (DMO) staff for the past two years in the review process to grant permanent registration to Swap Execution Facilities (SEFs), a new category of regulated trading platforms mandated by the Dodd-Frank Act.¹³
- *Data.* A major aspect of the reforms implemented by Dodd-Frank was to require the reporting of data on all swaps. OCE has played a key role in developing and refining a weekly swaps report from big data sets, and preparing staff reports, white papers, and research papers on both futures and swaps markets. There is consistent focus within OCE on integrating information from multiple data sources to help develop better insight and deeper understanding of the markets and participants the Commission regulates. In addition, OCE has worked with other Divisions on the development and implementation

¹⁰ See Concept Release, 78 Fed. Reg. 56542 (September 12, 2013), located at, < <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-22185a.pdf> > [link accessed on December 16, 2015].

¹¹ The request for comment is currently under review by the Chairman and Commissioners; it has yet to issue publicly.

¹² The “Swap Dealer *De Minimis* Exception Preliminary Report” is located at, < http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf > [link address as of December 7, 2015].

¹³ In Sections 721, 723, and 733 of the Dodd-Frank Act, Congress added SEFs, among other things, to the Commission’s oversight duties. (See Public Law 111-2-3, 124 Stat. 1376.) The Commission’s rules regulating SEFs are located in Parts 37 and 38 of the Code of Federal Regulations. There are currently a number of SEFs temporarily registered with the Commission, and Commission staff, including OCE staff, is reviewing these applications.

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of the reporting requirements, the ongoing extensive harmonization efforts with other jurisdictions including establishment of new standards like Unique Product Identifier (UPI), and the development of analytical tools and reports to use this data.¹⁴

- *Responses to Requests from Market Participants.* OCE has assisted the other Divisions in evaluating requests from market participants seeking relief from or interpreting regulatory obligations. For example, OCE has worked on no-action letters and other requests related to real time reporting, mandatory clearing, execution methods on SEFs and DCMs, and made-available-for-trade rules.
- *Surveillance and General Monitoring of Market Developments.* OCE staff assists in surveilling markets, and monitoring trends and market developments. OCE works closely with DMO Surveillance on various technical aspects pertaining to our markets. Many of these projects leverage the staff reports and white papers authored by OCE economists. The work on automated trading is a good example. Insights from OCE staff help DMO surveillance and other Divisions and Offices, such as DSIO and the Office of International Affairs, execute their responsibilities. In addition, OCE has provided counsel to the Commission's Agricultural Advisory Committee and other advisory committees on industry trends concerning futures commission merchants and other issues; OCE's role is thus helpful in monitoring market developments and keeping market participants and the public informed.
- *Assistance to Enforcement Division.* OCE works closely with the Commission's Enforcement Division on various technical aspects pertaining to our markets and data and analytics. Recent notable enforcement actions where OCE provided counsel include the LIBOR and other benchmark actions.
- *Other Oversight Activities.* OCE assists with the general oversight activities of the agency in other ways as well, such as in working with the Division of Clearing and Risk (DCR) on central counterparty resilience issues or with DSIO on oversight of swap dealers and use of Volcker data. OCE economists also actively contribute to CFTC's Learning Circles Initiative by leading continuing-education sessions on various aspects of the futures and swaps markets as well as methods to analyze data.
- *Special Reports and Projects.* OCE, on behalf of the Commission, has produced joint reports for the public with domestic regulatory agencies. A recent example is the Joint Report on activities in the Treasury Markets on October 15th, 2014.¹⁵ OCE also has worked on international benchmark studies.¹⁶

¹⁴ Keynote Remarks of Chairman Timothy Massad before the Futures Industry Association Futures and Options Expo dated November 4, 2015, located at, < <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-33> > [link address as of December 7, 2015].

¹⁵ The report is titled, "Joint Staff Report: The U.S. Treasury Market on October 15, 2014," is located at, < <https://www.treasury.gov/press-center/press->

- *Interagency Activities and Multi-lateral initiatives.* OCE also represents the Commission in various multi-lateral initiatives, both domestic and international—FSOC and its sub-committees, IOSCO, FSB—and collaborates with other domestic regulatory agencies including the SEC, the Fed, and the Treasury.¹⁷

In short, OCE has had extensive responsibilities over the last few years to support the Commission in carrying out its mission critical activities. As a result, long-term academic research, while one among many ways to disseminate educational and informational material as provided in CEA section 18, cannot be OCE's primary focus.

II. Responses to Recommendations in the OIG's Follow-Up Report

A. OCE Engages in Research Important to the CFTC's Mission

The OIG's Follow-Up Report states that, "OCE economists should not be prevented from researching current topics of interest related to the CFTC's mission," and asserts that based on OCE staff interviews, there is a "perception of institutional censorship."¹⁸ In short, the OIG recommends that OCE should not prohibit research topics relevant to the Commission's mission.

CFTC Management agrees that Commission employees should be able to research and conduct rigorous economic analysis on topics and issues related to the CFTC's mission, irrespective of whether or not these are published in peer reviewed journals. Research topics,

[releases/Documents/Joint_Staff_Report_Treasury_10-15-2015.pdf](#) > [link address as of December 7, 2015].

¹⁶ See, e.g., "Reforming Major Interest Rate Benchmarks," issued by the Financial Stability Board in July 2014, and located at, < http://www.financialstabilityboard.org/2014/07/r_140722/ [link address as of December 15, 2015].

¹⁷ For example, OCE provides critical input towards the FSOC's annual report. See, e.g., "FSOC 2014 Annual Report," located at, < <https://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf> > [link address as of December 16, 2015].

¹⁸ OIG Follow-Up Report at p. 11.

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however, cannot be pursued in a vacuum; the Commission's many statutory commitments and resource limitations should not be ignored for the sake of performing any economic research which happens to be of personal interest to an individual. OCE management has the right and responsibility to assign work and to prioritize research projects on behalf of the Commission. Moreover, OCE management has a duty to evaluate projects and exercise prudent judgment when it assigns tasks and when it approves or rejects projects proposed by staff. OCE management's failure to exercise such managerial authority will cause OCE to fail to deliver on its responsibility to support the Commission's mission.

With regard to research projects, OCE management's approach to selecting topics is driven by a few critical and objective considerations, especially in the context of any empirical analysis:

- (i) is the scope of the project well-defined so as to justify the investment of scarce resources such as labor, time, and expertise;
- (ii) does staff have access to the appropriate data; and
- (iii) can the project be completed in a timely manner, especially in the context of analysis associated with a specific rulemaking or other time sensitive project?

Such factors are core components of any reasoned decision-making process, and do not necessarily support a conclusion that institutional censorship exists within OCE.

In addition, OCE management does not prohibit research on politically-sensitive or controversial topics. Much of the research that is conducted by OCE is on matters of relevance to the Commission that typically generate a multiplicity of opinions and views, often conflicting with each other. OCE has been, and will continue to be, thoughtful in selecting projects, in designing and conducting economic analysis, and in articulating findings, without preordaining

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any result. Given its critical role in providing economic advice to the Commission, as well as supporting policy development and the rulemaking process, OCE has conducted and will continue to conduct economic analysis on so-called politically-sensitive topics, and share those findings with the Commission, agency staff, and the public, as well as academic experts. Recent examples are the ongoing research pertaining to various aspects of automated or algorithmic trading (also known as high-frequency trading) as well as the *de minimis* exception to the swap dealer definition.

The OIG seems to suggest that CFTC Management ought to adopt a less controlled approach to economic research at the Commission. CFTC Management believes that such an approach would be unwise and inconsistent with its statutory responsibilities. To ensure that resources are expended in a manner consistent with the responsibilities of the Commission under the CEA, OCE must have the ability to set priorities and to determine those topics which warrant research and further study based on objective criteria as noted above.

B. The Commission has a Robust Research Program that Includes OCE Staff and Academics

The OIG Follow-Up Report recommends that OCE re-establish the Visiting Scholars Program as a means to produce “long-term academic research—published in peer-reviewed academic journals...”¹⁹ The OIG Follow-Up Report also states that there would be “no direct cost to the Commission” to have academic economists work on CFTC research projects.²⁰ CFTC Management continues to believe that collaboration with academic experts is a sound approach to enhancing the quality of economic analysis conducted by Commission staff. At the time of drafting this response, OCE has initiated a set of projects across both futures and swaps

¹⁹ OIG Follow-Up Report at p. 10.

²⁰ OIG Follow-Up Report at p. 9.

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markets on issues of interest to both CFTC and the academic community, identified experts who are willing and able to participate, and started the process of onboarding them.²¹ And, as noted in the Follow-Up Report, OCE intends to “bring in as many as eight new outside academics within the next three months to contribute to long-term research within OCE.”²²

We have sought and are seeking experts who strive to advance interesting and challenging discussion on derivatives markets-related topics of interest to the Commission. This coincidence in interests and expectations is important because recruiting and onboarding places significant resource demands on offices outside of OCE, such as the Office of Human Resources (for completing personnel requirements), the Office of Financial Management (for contracting services), the Office of Data and Technology (for providing secure access to data), and the Office of the General Counsel (for legal and ethics counsel). In addition, collaborating with such experts requires a commitment by CFTC and OCE management to allocate management, staff, and technology resources for each of the different projects.

CFTC Management has pursued a deliberative approach in developing a framework for engagement with academic experts that is, it believes, in line with the Commission’s mission as it implements the CEA, post Dodd-Frank. It also reflects a disciplined approach to managing available resources to leverage such collaboration. The framework will include a research agenda designed and managed by OCE staff. It is important to emphasize that Commission data is complex, and external researchers will need regular support and assistance from CFTC staff to do any economic analysis with it. A less controlled approach wherein external researchers have unfettered access to Commission data would neither be efficient nor consistent with the

²¹ Numerous scholars continue to express interest in collaborating with the Commission’s OCE, and we expect these engagements to expand in a judicious manner.

²² OIG Follow-Up Report at p. 10.

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Commission's legal requirement to protect and prevent the unauthorized disclosure of information protected by Section 8 of the CEA or information which is otherwise considered confidential or non-public.²³ It would impose a heavy burden on OCE staff to explain CFTC data sets and their structures; indeed, such an approach would require OCE staff to continually support external researchers as they try to wade through the data, reducing OCE economists' roles to largely providing technical support.²⁴ This would not be a prudent allocation of government resources, nor would it enable the Commission to recruit and retain highly competent and motivated staff for OCE.

Retaining academics for OCE research must also be conducted with the goal of informing the Commission and the public on matters pertaining to the agency's mission, and not with the primary goal of producing papers for publication in peer-reviewed journals. While we appreciate the value gained from producing papers for publication in peer-reviewed journals, we have to be mindful of the various binding resource and other constraints specific to government work.

The framework for academic research also includes the expectation of active collaboration between staff and visiting scholars; given staffing constraints, any engagement with visiting scholars will be limited to a relatively small number because management believes strongly that collaborations with academic experts ought to be collaborative both in letter and in spirit. Such engagements serve the interests of OCE and the Commission, and potentially, the larger public. OCE's approach is to have staff and academic experts share the work-load by working together to jointly define research questions, and then partner to leverage competitive

²³ CEA Section 8, 7 U.S.C. § 12.

²⁴ The Commission receives considerably more data than before the Dodd-Frank Amendments to the CEA, which greatly expanded the Commission's regulatory authority. The Commission receives approximately 6-10 gigabytes of compressed data daily.

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advantages to ensure that the findings are relevant to the Commission (through internal presentations that might include confidential data), the public (through white papers) and the academic community (through publications in peer-reviewed journals).

In sum, CFTC Management believes that OCE management and its staff should drive its research agenda. We also expect that OCE will actively collaborate with visiting academics in conducting economic analysis. Our goal is to focus on the quality of the research, measured not in terms of publications in academic journals, but in terms of current relevance to the Commission and the public.

C. CFTC Will Continue to Ensure that OCE Economists Work on a Range of Projects Including Research

The OIG Follow-Up Report recommends protected research time for OCE staff. Presumably, OIG is referring to its desire to have OCE research aimed at generating reports for publication in peer-reviewed journals. This recommendation appears not to recognize the importance of the work performed by OCE economists that does conform with the OIG's stated preference for long-term academic research. CFTC Management takes a different perspective, one that recognizes that research is integral to other Commission activities.

Like all other CFTC staff, OCE employees are hired to conduct Commission work. OCE staffers are expected to work on a range of projects in many areas as outlined earlier, including rulemaking, registrations, data collection and analysis, surveillance, enforcement and other matters. Frequently, projects come from individual staff members' suggestions and initiative. Recent examples include the ongoing work on particular aspects of automated trading, including self-trading, and research into the variance derivatives markets.²⁵ The Commission encourages

²⁵ See, e.g., "Anticipatory Traders and Trading Speeds," by R. Fische, R. Haynes, and E. Onur, Dated March 26, 2015, located at,

and supports individual initiative; yet, at the same time, agency employees must operate within the parameters of the Commission's mission and pending needs.

It would not be a practical to allocate limited Commission resources such that individual staff can pursue research that is not related to current Commission needs. CFTC Management has a strong interest in ensuring that OCE leverages its strengths to conduct thorough economic analysis and research on issues important to the Commission, public and the academic community while respecting the Commission's resource constraints. Publications in peer-reviewed journals are a positive result of rigorous economic analysis conducted to inform the Commission and the public, but they are not, nor should they be, the sole or even primary focus of OCE staff.

D. Standardized Deadlines for Paper Review are Unwarranted Because the OCE and OGC Paper Review Process is Effective and Efficient

Over the past three years, OCE and OGC have implemented a robust approval process for OCE research papers. That process is designed to ensure both compliance with statutory requirements and efficient reviews. The OIG Follow-Up Report acknowledges "unambiguous progress in terms of faster administrative review of [research] papers for publication . . ." ²⁶ The review process has sufficient flexibility to accommodate any special requests from OCE staff to meet any timelines for submission of papers for presentation at conferences, or for submission to academic journals. And the process also accounts for OCE and OGC staffing demands and managerial discretion to allocate resources for different projects including reviewing papers.

< http://www.cftc.gov/About/EconomicAnalysis/ResearchPapers/ssLINK/occe_anticipatorytraders > [link accessed on December 16, 2015]; "Volatility Derivatives in Practice: Activity and Impact," by S. Mixon and E. Onur, Dated November 2014, located at, < http://www.cftc.gov/About/EconomicAnalysis/ResearchPapers/ssLINK/occe_volderivatives > [link accessed on December 16, 2015].

²⁶ OIG Follow-Up Report at p. 9.

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Because of these positive features, the iterative nature of paper review, and the realities of operating with limited resources and competing priorities, CFTC Management respectfully disagrees with the OIG's recommendation that standardized deadlines for the review of OCE papers by the agency should be implemented.

A standardized deadline for review of OCE papers fails to take into account the iterative nature of the paper review process. At the initial stage of review, the Paper Review Committee engages with the author(s) of a paper and this engagement can range from discussions with the author(s) to the redrafting of some or all of the paper in order to ensure compliance with CEA Section 8 or other legal requirements. And the iterative process continues once the Paper Review committee provides its conclusions to OGC. On many occasions, an OGC attorney may have questions for OCE, the Paper Review Committee and/or the paper's author(s) which must be addressed before the paper can be cleared. This iterative process does not lend itself to standardized deadlines especially given the difference in the length and complexity of the papers submitted for review and the expectation from Congress and market participants that the agency will faithfully comply with its statutory obligation to protect Section 8 data from unauthorized disclosure.

A standardized deadline for the review of papers also ignores the competing priorities of the agency as a whole and also within OCE and OGC. In terms of OCE staffing, we rely on the same staff who are tasked with all the other Commission activities described above. As we discussed earlier, OCE management has to manage its resources efficiently to ensure that it does the best it can with the resources that it has. This means the Commission must have the flexibility to temporarily shift resources from paper reviews to other more time sensitive projects if necessary.

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Additionally, attorneys in OGC's General Law Branch are involved in the review of all OCE papers. They ensure compliance with the ethics regulations, confidentiality regulations, the Privacy Act, and Section 8. Other OGC staff members are sometimes involved in such reviews as well. OGC's General Law Branch is also responsible for providing guidance to the CFTC on a variety of important and sensitive issues such as: appropriations; ethics; the Federal Advisory Committee Act; the Freedom of Information Act; labor relations issues; employee relations issues; equal opportunity laws; and government contracting/procurement. Due to the broad area of work handled by the General Law Branch, imposing a standardized deadline for paper review could compromise OGC's ability to properly respond to competing priorities. For this reason, and because of the iterative nature of the review process discussed above, CFTC Management believes establishing a standardized deadline would be unwise.

While the costs of imposing a rigid deadline would be high, it is unclear what benefit it would provide. OCE and OGC have worked successfully since 2013 to implement a paper review process that is more comprehensive to ensure compliance with Section 8, ethics rules and other applicable laws, and this enhanced process has not come at the expense of efficiency. Indeed, as noted in the OIG Follow-Up Report, there is no longer a backlog of papers under review. Not only is there no backlog, but OCE and OGC staff have shifted other work priorities to expedite the review process when notified that there is an imminent presentation or publication deadline identified by the author(s). The record demonstrates that OCE research papers are now cleared by both OCE and OGC in a reasonable time period given the many work priorities of both offices.

While CFTC Management believes the current paper review process is working well, we will continue to consider ways to more efficiently review OCE papers.

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E. OCE Informs the Commission of Pending Research when Appropriate and Continuously

In the OIG Follow-Up Report, there is a recommendation for OCE to provide the Commission with quarterly reports on research projects. The current OCE practice is to inform the Commissioners in weekly meetings regarding the status of various projects and to be available for questions. The director of OCE also meets frequently with the Chairman and provides regular written reports on OCE's activities. OCE shares findings with the Commission and its staff, and then the public, following completion of the economic analysis. CFTC Management believes that this approach is appropriate in keeping the Chairman, Commissioners, and senior leadership informed of economic analysis and the findings from such research but it will review its practices to see if improvements are needed.

III. Conclusion

We appreciate the opportunity to review and respond to the OIG Follow-Up Report, and we welcome the opportunity to discuss the recommendations with the OIG further.



January 13, 2016

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

FROM: A. Roy Lavik Judith A. Ringle
Inspector General Ringle

SUBJECT: Brief Rebuttal to the Management Response to CFTC OIG Draft Follow-Up Report on the Office of the Chief Economist

Digitally signed by Judith A. Ringle
DN: cn=Judith A. Ringle,
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Date: 2016.01.13 17:19:35 -0500

In December 2015, Management responded to our follow-up report. A few issues require comment:

- Management argues that “the OIG’s view of what should be the priorities of the Commission’s OCE do[es] not sufficiently account for OCE’s paramount role in helping the Commission meet . . . its responsibilities” and that “[t]he OIG continues to advance an agenda for OCE and its economic research that we do not believe is practical.”¹ Management repeatedly refers to “resource constraints,” “resource limitations,” “scarce resources,” etc.,² and spends three pages listing the many Commission tasks OCE supports,³ arguing that a research program involving external academics would place “significant resource demands” on other divisions and impose a “heavy burden on OCE staff to continually support external researchers as they try to wade through the data.”⁴

In our 2014 review and again in this follow-up review, we recommend that the CFTC re-establish the visiting scholars program, which flourished for decades without complaints about excessive burdens, misuse of information, or any other misconduct. Management does not explain why that program has now become impractical. Nor does it acknowledge that past and present members of its own staff appear to disagree. Indeed, Management’s assertions about resource demands of external academics are inconsistent with statements made to us by the Chief Economist himself in our final interview. Moreover, CFTC’s decision to reduce the OCE workforce in 2013 explains current resource constraints, and we recommended last year acquiring outside academics to perform scholarly research for no pay. And as we noted to the Chief Economist and note in our current review, other agencies facilitate academic research programs by, among other things, using unpaid undergraduate interns to support outside academics. In short, the CFTC argues that its administrative costs are too high to bring on and support academic economists from top universities who are willing, for no pay, to research and publish on topics relevant to CFTC’s mission. We disagree.

¹ Management Response, p. 2.

² Management Response, pp. 3, 7.

³ Management Response, pp. 3-6.

⁴ Management Response, pp. 9-10.

- Management argues that the recommendation that OCE staff economists be given protected research time “appears not to recognize the importance of the work performed by OCE economists.”⁵

Our recommendation of protected time is based on the views communicated to us by OCE economists themselves, who surely “recognize the importance of the work performed by OCE economists.” Management’s response indicates a troubling disconnect between Management and its own staff. Management expresses concern for the Commission’s ability “to recruit and retain highly competent and motivated staff for OCE,”⁶ yet ignores the fact that our recommendations communicate its own economists’ desire for protected research time. In our view, ignoring the views of the staff that Management wishes to recruit and retain may not lead to success.

- Management states that “research topics . . . cannot be pursued in a vacuum,” and that “the Commission’s many statutory commitments and resource limitations should not be ignored for the sake of . . . research . . . of personal interest to an individual.”⁷

We specifically disclaimed any suggestion that OCE economists be free to pursue irrelevant research. Rather, we stated that economists should be permitted to research and publish on topics of current interest which is the core of OCE’s research program and which Congress intended in adopting § 416 of the Commodity Futures Trading Commission Act of 1974.⁸

- Management states that various factors involved in choosing research topics “do not necessarily support a conclusion that institutional censorship exists within OCE. . . . OCE management does not prohibit research on politically sensitive or controversial topics.”⁹

Management’s response summarily dismisses specific reports by multiple OCE economists of censorship of politically sensitive research topics. In particular, staff economists noted that research on position limits would not be permitted; and this is an issue that has been the subject of political controversy (and Commission activity) since the passage of Dodd-Frank. Management’s assertion is also inconsistent with statements made to us by the Chief Economist. We stand by our report.

- Management states that “[t]he OIG seems to suggest that CFTC Management ought to adopt a less controlled approach to economic research at the Commission,”¹⁰ and that “CFTC Management takes a different perspective, one that recognizes that research is integral to other Commission activities.”¹¹

Certainly research is integral to other Commission activities—we have never suggested otherwise. And the CFTC employs economists in the Divisions with direct responsibility for those “other” activities. But unlike those Divisions, which specialize in data-heavy, day-to-day analysis of short-term market conditions, OCE has a unique ability to research and publish on long-term trends. We emphasize that no new research has been published in a peer-reviewed journal since the CFTC shut down OCE in 2012. And yet former Chief Economists successfully balanced Management’s competing priorities while utilizing outside economists to assist with scholarly research. In short, Management’s attempt to characterize this report as out of touch with the needs of the agency seems itself out of touch with the opinions of its own staff, and the still-recent practices of successful former Chief Economists.

⁵ Management Response, p. 11.

⁶ Management Response, p. 10.

⁷ Management Response, pp. 6-7.

⁸ Codified at 7 U.S.C. § 22; *See also* our original report at p 6-7.

⁹ Management Response, p. 7.

¹⁰ Management Response, p. 8.

¹¹ Management Response, p. 11.

- Management states that “[s]tandardized deadlines for paper review are unwarranted because . . . the review process is effective and efficient.”¹²

While it is true that the timeliness of the review process has improved, there have also been very few papers going through the process. The last time there were a substantial number of papers in need of review, that process frequently exceeded 14 months. As we noted in our first report, this negatively impacted not only the careers of academics but the reputation of the CFTC in the academic community. We believe a published timeline for the review process will attract economists (including academics) because it will alleviate concerns that publication will be delayed due to political considerations or bureaucratic lethargy.¹³ And once again, our recommendation reflects interviews with current and former staff and academic economists and managers.

Conclusion

Nothing in the management response has convinced us to alter our report. We believe Management is missing an opportunity to take note of and act on the reasonable views of its own staff.

As always, I appreciate your continuing support of this Office.

¹² Management Response, p. 12.

¹³ One OCE staff publication delayed for more than a year following the OCE shut down is dubbed “The paper that shall not be named” by outside economists in professional conference settings. Ameliorating an obviously negative view of OCE by outside economists is an important step in recruiting accomplished economists.