



U.S. Commodity Futures Trading Commission

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The Honorable Gene L. Dodaro
Comptroller General of the United States
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

The purpose of this letter is to report a violation of the Antideficiency Act, as required by section 1351 of Title 31, United States Code. The violation pertains to a transfer of funds between two separate budgetary accounts that was executed by the Commodity Futures Trading Commission (CFTC or the Commission) in fiscal year (FY) 2013. The transfer was subsequently reversed and the Commission did not exceed its overall budget authority.

The violation resulted from CFTC's interpretation of appropriation language that was later deemed incorrect by the Government Accountability Office (GAO). GAO's view is set forth in a formal decision, *Decision B-325351 – Commodity Futures Trading Commission – Fiscal Year 2013 Transfer Authority*, issued on April 25, 2014 (see attached).

A violation of section 1341(a) of Title 31, United States Code, occurred in account 95-1400 – Expenses, CFTC in the total amount of \$3,564,752.63. As noted above, the violation stemmed from a transfer that was made from the CFTC Information Technology (IT) fund (95-1315-1400) to the CFTC Salaries and Expenses (S&E) fund (95-1314-1400) on May 22, 2013 (FY 2013). The transfer made by the Commission in FY 2013 that ultimately led to a violation of section 1341(a) was executed by the Commission's Financial Management Branch.

More specifically, in FY 2013, after consulting with its Office of the General Counsel (OGC), GAO, and the Office of Management and Budget (OMB) regarding language contained in CFTC's FY 2012 and FY 2013 appropriation acts (i.e., Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55; Consolidated Appropriations Act, 2012, P.L. 112-74; Continuing Appropriations Resolution, 2013, P.L. 112-175; and Consolidated and Further Continuing Appropriations Act, 2013, P.L. 113-6), the Commission recorded two transfers, totaling \$10 million (\$4,877,000 on March 8, 2013, during P.L. 112-174—a six-month continuing resolution (CR)—and \$5,123,000 on May 22, 2013, after P.L. 113-6—the FY 2013 full-year CR—was enacted). The Commission notified Congress in advance of these transfers, and OMB fully apportioned them.

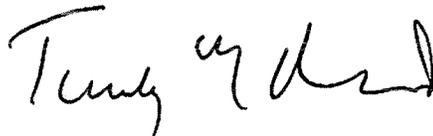
On November 13, 2013, the Honorable Richard C. Shelby, Vice Chairman of the Committee on Appropriations, United States Senate, requested that GAO determine whether CFTC's second transfer of funds on May 22, 2013, was appropriate. In Decision B-325351 issued in response to his inquiry, GAO concluded that the CFTC did not retain transfer authority for the transfer of funds made on May 22, 2013, and explained that P.L. 113-6 did not carry forward the transfer authority provided in section 744 of P.L. 112-74. B-325351 at 5. GAO further stated that "CFTC should adjust its accounts in accordance with this opinion. After making these necessary adjustments if CFTC finds that obligations in the accounts it uses for salaries and expenses exceed amounts available, CFTC should report a violation of the Antideficiency Act as required by 31 U.S.C. § 1351." *Id.* OMB disagrees with GAO's determination that the transfer authority in question was not carried forward by the Consolidated and Further Continuing Appropriations Act, 2013.

In FY 2014, after considering GAO's formal decision, the Commission adjusted its accounts by reversing the FY 2013 transfer of \$5,123,000 that was posted on May 22, 2013. While the Commission did not exceed its total budget authority of \$194,555,892 for FY 2013, the reversal of the \$5,123,000 transfer on May 22, 2013, from the 95-1315-1400 (IT) fund to the 95-1314-1400 (S&E) fund resulted in a deficiency in the available resources within the 95-1314-1400 (S&E) fund in the amount of \$3,564,752.63.

The Commission has determined that the interpretation of the appropriations language contained no willful or knowing intent to violate the Antideficiency Act. Rather, as mentioned earlier, this violation was the result of a considered interpretation of the appropriations language that was later deemed incorrect by GAO. The system of administrative controls in place at CFTC continues to operate effectively to ensure funds are expended as authorized and apportioned under normal circumstances. For the eighth consecutive year, the Commission's independent auditors have not identified any material weaknesses in CFTC's internal controls. Therefore, the Commission does not believe administrative discipline is appropriate.

Identical reports will be submitted to the President of the United States, Speaker of the House, and President of the Senate.

Sincerely yours,



Attachment