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Description of document: Council of the Inspectors General on Integrity and Efficiency (CIGIE) Investigation of Misconduct against Commodity Futures Trading Commission (CFTC) Inspector General (OIG) A Roy Lavik and Deputy IG Judith Ringle 2015-2023

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**OFFICE OF
INSPECTOR GENERAL**
FEDERAL COMMUNICATIONS COMMISSION

45 L Street NE, Washington, DC 20554
www.fcc.gov/inspector-general

May 2, 2025

VIA ELECTRONIC MAIL

Re: FOIA Control No. 2025-000795

This letter responds to your Freedom of Information Act (FOIA) request for “[a] copy of the closing report, final report, closing memo, report of investigation, etc. for FCC Office of Inspector General investigation OIG-I-19-0009” that should include “the case number, the subject of the investigation, the category of the investigation, the open date, and the closing date” from the FCC Office of Inspector General (OIG). Your request was received April 29, 2025, and perfected on April 30, 2025, and has been assigned FOIA Control No. 2025-000795.

Documents responsive to your request are publicly available at:

<https://www.ignet.gov/sites/default/files/files/Integrity-Committee-ROI-986.pdf>

We are required by both the FOIA and the Commission’s own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.¹ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.²

¹ See 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

² 47 C.F.R. § 0.470.

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes under category (3) as an "all other requester."³ As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.⁴ The production in response to your request required fewer than two hours of search time, and was provided in electronic form. Therefore, you will not be charged any fees.

You may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁵ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission
Office of the Managing Director
Performance Evaluation and Records Management
45 L Street NE, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

³ 47 CFR § 0.466(a)(8).

⁴ 47 CFR § 0.470(a)(3)(i).

⁵ 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road—OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
<https://www.archives.gov/ogis>

Thank you for your interest in FCC OIG's work.

Sincerely,



FARA
DAMELIN

Digitally signed by
FARA DAMELIN
Date: 2025.05.02
09:12:14 -04'00'

Fara Damelin
Inspector General
Federal Communications Commission

cc: FCC FOIA Office



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

February 13, 2023

Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St NW
Washington, DC 20581

Report of Findings for Integrity Committee Case 986

Dear Chairman Behnam:

This letter sets forth the findings, conclusions, and recommendations of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) regarding allegations of misconduct against Inspector General (IG) A. Roy Lavik and Deputy Inspector General (DIG) Judith Ringle, Commodity Futures Trading Commission (CFTC) Office of the Inspector General (OIG).

Executive Summary

After thoroughly reviewing the evidence, the IC finds by a preponderance of the evidence that IG Lavik engaged in substantial misconduct by wrongfully disclosing whistleblower identities and violating CFTC Information Technology (IT) security policy; wasting more than \$165,000 in government funds by hiring a consultant who did minimal work; grossly mismanaging the CFTC OIG by flagrantly disregarding well-established oversight standards; and engaging in conduct undermining the independence and integrity reasonably expected of an IG by demeaning and disparaging CFTC employees.¹ The IC also finds by a preponderance of the evidence that DIG Ringle engaged in substantial misconduct by wrongfully disclosing whistleblower identities and violating CFTC IT security policy.

¹ “Substantial misconduct” includes gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation. Integrity Committee Policies and Procedures (ICP&P) (2018), Section 7.A. “Gross mismanagement” means action or inaction that creates a substantial risk of significant adverse impact on the OIG’s ability to accomplish its mission. It does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing. There must be an element of willful misconduct or gross and wanton negligence. (ICP&P) (2018), Appendix A. “Gross waste of funds” means an expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government; it is more than a debatable expenditure. *Id.*

Accordingly, the IC recommends appropriate disciplinary action for IG Lavik—up to and including removal. The IC recommends appropriate disciplinary action for DIG Ringle, and appropriate training in whistleblower protection law.²

Below is a synopsis of the case history of this matter, which includes the specific allegations, the resulting investigation, and the IC’s analysis, findings, and recommendations. Also attached is the detailed Report of Investigation (ROI), which was conducted by an independent OIG, and IG Lavik and DIG Ringle’s responses to the ROI.

IC Jurisdiction and Case History

Congress designated the IC, which is composed of four IGs, a representative from the Federal Bureau of Investigation, and a representative from the Office of Government Ethics, to be the independent mechanism that ensures senior officials in the IG community “perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.”³

As background, IG Lavik has served as the CFTC’s IG for more than 30 years and leads a relatively small oversight staff. He managed eight professional staff during the time covered by this investigation.⁴

From December 2018 – March 2019, the IC received multiple complaints alleging IG Lavik and DIG Ringle abused their authority; wasted government funds; violated the IG Act by compromising whistleblower anonymity; lacked independence and integrity; and engaged in gross mismanagement of the CFTC OIG. Pursuant to its procedures, the IC investigated the allegations with the assistance of the Federal Communications Commission (FCC) Office of Inspector General (IC investigators).⁵ Specifically, the IC investigators were asked to determine:

1. Whether IG Lavik and DIG Ringle mismanaged the OIG and abused their authority by inappropriately prioritizing “management reviews” over investigations, including those with allegations of criminal misconduct.
2. Whether IG Lavik and DIG Ringle abused their authority by using management reviews to inappropriately target and disparage OIG and agency employees.
3. Whether IG Lavik and DIG Ringle violated section 7(b) of the IG Act by unnecessarily compromising whistleblower anonymity and witness identities in OIG reports.

² The IC notes that the IG or Acting IG, as appropriate, has the sole authority to make personnel decisions regarding subordinate OIG employees. Section 6(a)(7), Inspector General Act of 1978, as amended (IG Act).

³ U.S. House Committee on Oversight and Government Reform, *Improving Government Accountability Act*, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

⁴ DIG Ringle, four audit staff, and three attorney/economists. Enclosure (Encl.) 1 at 6.

⁵ Pursuant to the IG Act and the ICP&P (2018), and in the absence of its own investigators, the IC secures uninvolved OIGs to serve as its investigators.

Specifically, it is alleged that they deliberately named witnesses and complainants without their consent and, in some cases, after they specifically requested to remain anonymous due to fear of retaliation.

4. Whether IG Lavik and DIG Ringle failed to follow CIGIE standards in the CFTC OIG report titled, “CFTC Stress Testing Development Efforts.” Specifically, it is alleged that they failed to present factual data accurately, fairly, and objectively and ignored substantive relevant input from agency subject matter experts and/or exculpatory evidence or information contrary to the report’s conclusions.
5. Whether IG Lavik and DIG Ringle engaged in conduct that undermines the independence and integrity reasonably expected of a covered person by taking active steps to avoid oversight of OIG operations.
6. Whether IG Lavik and DIG Ringle wasted government funds by paying a consultant to be “available” without any work assigned and without any work product.
7. Whether IG Lavik abdicated his responsibilities and authority due to an impairment.⁶

On June 14, 2021, the IC expanded the scope of its investigation and asked IC investigators to also determine:

1. Whether IG Lavik allowed other individuals, including a contractor, to use his username and password to log into government systems to perform official actions.
2. Whether DIG Ringle used IG Lavik’s username and password to log into government systems and perform official actions.
3. Whether IG Lavik and DIG Ringle engaged in conduct undermining the integrity reasonably expected of their positions when they provided conflicting information regarding the use of the IG’s username and password.⁷

At the conclusion of their fieldwork, the IC investigators provided a draft ROI to the IC on June 6, 2022.⁸ The IC investigators determined by a preponderance of the evidence that IG Lavik engaged in conduct undermining the integrity reasonably expected of his position; grossly mismanaged the OIG; and improperly shared his usernames and passwords with CFTC OIG staff and contractors, including DIG Ringle, who used that information to log into a government system and perform official actions in violation of CFTC IT rules prohibiting the sharing of

⁶ Encl. 1 at 2.

⁷ *Id.*

⁸ The IC investigators provided the first draft ROI to the IC on December 17, 2021. The IC determined additional work was required and asked the investigators to supplement the draft report. The IC received the second draft ROI on April 1, 2022, and again concluded that additional work was required to enable the IC to make findings. The IC investigators provided the third draft ROI to the IC on June 6, 2022. After receiving and reviewing the subjects’ comments, IC investigators provided the final ROI to the IC on September 29, 2022.

passwords. Further, the IC investigators determined by a preponderance of the evidence that both IG Lavik and DIG Ringle wrongfully compromised whistleblower anonymity and wasted government funds by approving payment to a consultant who did not produce any work products.⁹

The IC investigators did not substantiate the allegations that IG Lavik and DIG Ringle took active steps to avoid oversight of OIG operations; provided conflicting information regarding the use of IG Lavik's username and password; or that IG Lavik abdicated his responsibilities and authority due to an impairment.¹⁰

On July 14, 2022, in accordance with section 11(d) of the IG Act, the IC provided IG Lavik and DIG Ringle the opportunity to respond to the draft ROI before the IC made its findings and conclusions.¹¹ Their responses, the last of which was received by the IC on September 2, 2022, are enclosed.¹²

Investigative Findings and Analysis

After thoroughly reviewing the evidence and the subjects' comments, the IC agrees, by a preponderance of the evidence, with the IC investigators findings of wrongdoing pertaining to IG Lavik and DIG Ringle. The IC did not, however, find that DIG Ringle committed wrongdoing as to her role in hiring and paying a consultant. Below is a brief analysis of the IC's specific findings of wrongdoing by IG Lavik and DIG Ringle.

⁹ Encl. 1 at 2-5.

¹⁰ *Id.*

¹¹ Encls. 2-3. Pursuant to the ICP&P (2018), on July 14, 2022, the IC provided the redacted draft ROI to the subjects with a deadline of July 29, 2022, for any comments. On July 27, 2022, the IC Chairperson approved DIG Ringle's request for an extension, with a new deadline of August 19, 2022. The IC Chairperson approved a second request for an extension on August 16, 2022, with a new deadline of August 29, 2022. On July 29, 2022, IG Lavik requested an extension until November 29, 2022. The IC Chairperson approved his request, in part, by extending the deadline to September 9, 2022. The IC received DIG Ringle's comments on August 29, 2022. The IC received IG Lavik's comments on September 2, 2022.

¹² In his response to the draft ROI, IG Lavik objected to the IC Chairperson's denial of his full extension request so that IG Lavik had adequate time to "respond to an investigative report that took over three years to produce, resulting in a 90-page, single-spaced document, plus a separate 86-page, single-spaced 'Technical Appendix'." Under the ICP&P (2018), once a subject has received the draft ROI, he or she has ten business days to submit a response to the IC. The IC may grant additional time to submit a more complete response; however, absent extraordinary circumstances, no further extensions will be granted. IG Lavik received the draft ROI on July 14, 2022, and requested an additional 123 calendar days past the original deadline to respond. The IC Chairperson gave IG Lavik an additional 42 calendar days to respond, consistent with past practice with other IC investigations that have been impacted by, among other factors, the COVID-19 work environment. The IC notes that, despite his objection to the denial of his full extension request, IG Lavik submitted his response 7 days earlier than the new deadline.

1. *IG Lavik grossly mismanaged the OIG by failing to effectively implement professional oversight standards.*

The IC finds that IG Lavik grossly mismanaged his office by creating, promoting, and executing a climate of non-compliance with professional oversight standards. IG Lavik's flawed philosophy and approach to oversight standards is discussed below.

a. *IG Lavik's Philosophy Regarding CIGIE Standards.*

IG Lavik's duties and responsibilities—as for all IGs—are set forth by a combination of laws, regulations, policies, and a requirement to conduct OIG oversight responsibilities in accordance with professional standards. His foremost statutory foundation is the IG Act, which created independent and objective IGs and vested them with the authority to prevent and detect waste, fraud, and abuse and to promote economy, efficiency, and effectiveness within their respective federal departments, agencies, and designated federal entities such as the CFTC.¹³

The IG Act also gives IGs wide latitude and discretion in accomplishing their oversight mission such as determining the specific audits, investigations, and inspections and evaluations that they conduct and report upon.¹⁴ An IG's latitude and discretion, however, is not unfettered, as it also comes with the responsibility to conduct their work in accordance with applicable professional standards. It is by following these standards that OIG work products, among other factors, promote public trust because they are factual and verifiable.¹⁵

These standards come from many sources. In addition to the IG Act's overarching requirements for independence and objectivity, Congress tasked CIGIE with developing professional standards that govern how OIGs accomplish their respective areas of oversight. Each OIG is then responsible for ensuring their work adheres to these established standards of professional performance for the audits, investigations, and inspections and evaluations they perform. In pertinent part, these standards include the *Government Auditing Standards* (“*Yellow Book*”), the *Quality Standards for Federal Offices of Inspector General* (“*Silver Book*”), the *Quality Standards for Inspection and Evaluation* (“*Blue Book*”), and the *Quality Standards for Investigations*.¹⁶

¹³ See, IG Act, sections 2 and 8G.

¹⁴ See, IG Act, sections 4 and 6.

¹⁵ *Quality Standards for Federal Offices of Inspector General* (2012) at 39 (noting all issued OIG products should comply with applicable professional standards and conform to the OIG's established policies and procedures and should be adequately supported by the evidence).

¹⁶ IG Act, section 11. For example, CIGIE requires that audits be conducted in accordance with the Government Accountability Office's *Government Auditing Standards* (“*Yellow Book*”); inspections or evaluations must be conducted in accordance with CIGIE's *Quality Standards for Inspection and Evaluation* (“*Blue Book*”); and investigations must be conducted in accordance with CIGIE's *Quality Standards for Investigations*. <https://ignet.gov/content/quality-standards>. Notably, CIGIE offers assistance to OIGs to better understand and comply with these standards, which includes functional committees, such as the Inspections and Evaluation Committee, to allow leadership to improve agency program effectiveness by maintaining professional standards;

Nevertheless, the attached ROI describes a troubling “tone at the top” by IG Lavik and his subsequent performance regarding his obligation to follow these well-known and universally practiced standards within the IG community. IC investigators found significant evidence that IG Lavik was not only dismissive regarding such standards, but also acted contrary to their requirements.

When interviewed, IC investigators were struck by IG Lavik’s view that CIGIE standards were essentially beneath him, stating he does not focus on “artificial” standards, because he is a lawyer and “knows what is right.” and “gets a sense of how to conduct matters.”¹⁷ When asked if he even knew CIGIE had established applicable professional standards and whether those standards were to be followed, IG Lavik disconcertedly responded that they (CFTC OIG) follow the “simple ass standards of counting the number of people and the number of offices.”¹⁸ Without further defining these “simple” standards, IG Lavik explained these are the kind of standards that “find the facts,” stating it is important “not to put process over substance” and that he “does not want to get caught up in process.”¹⁹ IG Lavik also told IC investigators that he views himself as the “court of appeals” or the “Supreme Court” of OIG matters, and he only looks at the “final product” and delegates the task of complying with standards to DIG Ringle.²⁰

DIG Ringle corroborated IG Lavik’s philosophy of avoiding “artificial standards” by telling IC investigators that IG Lavik prefers that all OIG projects be called “reviews” because reviews are not subject to professional standards.²¹ When investigators asked IG Lavik whether he has the ultimate discretion to decide what professional standards to follow and how to follow them, IG Lavik stated, “That is why they call them reviews,” which the IC interpreted as more evidence of his resistance to submit to external standards.²² As for developing internal CFTC OIG standards, IG Lavik stated he does not believe that written policies and procedures for inspections and evaluations are needed in a small agency, telling IC investigators, “if you have been in law and are smart, you can do inspections and evaluations.”²³

foster awareness of evaluation and inspection practice in OIGs; and provide input on the training and the development needs of the CIGIE Inspection and Evaluation community. <https://ignet.gov/content/inspections-evaluation-0>. The CIGIE committees and CIGIE leadership, per the IG Act, meet monthly with its membership (74 IGs), to discuss IG-related issues, to include applicable oversight standards. Another key CIGIE function is to oversee periodic external peer reviews of the OIGs’ investigations and audit work by another OIG. These peer reviews ensure that these core OIG activities are conducted in accordance with professional standards. IG Act, section 11.

¹⁷ Encl. 1, Ex. A.19 at 5.

¹⁸ Encl. 1, Ex. A.19 at 29.

¹⁹ Encl. 1, Ex. A.19 at 13 and 29.

²⁰ Encl. 1, Exhibit (Ex.) A.19 at 34.

²¹ Encl. 1, Ex. A.28.

²² Encl. 1, Ex. A.19 at 29.

²³ Encl. 1, Ex. A.19 at 19.

IG Lavik's lack of commitment to ensure CFTC OIG's work was done in accordance with professional standards was most notably demonstrated in CFTC OIG's report entitled "*Inspection & Evaluation: CFTC Stress-Testing Development Efforts*" (*Stress Testing Report*), which attempted to evaluate CFTC's decision-making related to the development, from 2011 to the end of 2017, of stress-testing capabilities and related issues germane to the overall stress-testing program, a key approach market regulators use to protect markets from systemic risk.²⁴

b. *IG Lavik Used a Significantly Flawed Process to Produce the Stress Testing Report.*

Although the *Stress Testing Report* states the "evaluation was conducted in accordance with the [CIGIE] *Quality Standards for Inspection and Evaluation*," IC investigators found that the process leading up to this report and its issuance was significantly flawed and biased. Noting that the inspection and report was purportedly conducted under IG Lavik's direct supervision, investigators concluded that IG Lavik's inspection team did not have a clear understanding of the purpose of the inspection and what it was expected to accomplish. In addition, they found that the resulting *Stress Testing Report* did not present factual data accurately, ignored high level substantive input from agency experts, and failed to include or address evidence or information contrary to the report's conclusions.²⁵

IG Lavik acknowledged that he supervised the stress testing project, but conceded he performed few, if any, of the duties or responsibilities set forth in the *Blue Book* or those normally expected from a supervisor.²⁶ In fact, neither IG Lavik nor DIG Ringle closely read the draft *Stress Testing Report*, nor did they ensure that the factual statements were supported by evidence in the inspection record.²⁷

IC investigators also concluded that IG Lavik's unconcerned attitude regarding compliance with professional standards likely influenced the report's production and outcome. Indeed, the two OIG employees that conducted the *Stress Testing Report* inspection appeared to have also adopted IG Lavik's dismissive views on professional standards, telling IC investigators, "there is

²⁴ https://www.cftc.gov/sites/default/files/2018-12/oig_ie_CFTCStressTest_022618.pdf. A supervisory stress test is designed to assess the resilience of the market infrastructure and market participants by looking at the impact on risk of a set of financial shocks, looking both at futures and swaps over many industries and across multiple clearing members and multiple clearinghouses simultaneously. Encl. 1 at 44.

²⁵ See, *Blue Book* at 13-18.

²⁶ The *Blue Book* standards recognize a key aspect of inspection quality control is adequate supervision, which provides important judgment and an additional level of oversight to the work done by subordinate, often less experienced staff. It further recognizes that "supervisory reviews help ensure that: the inspection is adequately planned; the inspection workplan is followed, unless deviation is justified and authorized; the inspection objectives are met; and the inspection findings, conclusion, and recommendations are adequately supported by the evidence." *Blue Book* at 13-14. <https://ignet.gov/sites/default/files/files/iestds12.pdf>

²⁷ Encl. 1, Ex. A.19 at 15; Ex. A.28 at 7.

no substance to CIGIE’s Inspection & Evaluation standards” and “I read through the CIGIE IE stuff, its bureacratic [sic] stupidity.”²⁸

IG Lavik had ample notice that the CFTC believed the report was flawed but took little action. IG Lavik confirmed that CFTC management complained to him about his OIG inspectors during the pendency of the report. This included a 95-page close-in-time litany of inaccuracies from CFTC subject matter experts, which according to IG Lavik, “gave him pause.” Nevertheless, he did not independently review these complaints, but instead relied on his inspectors’ characterization of them as “BS,” stating he had “confidence” in his employees and a high opinion of their abilities.²⁹

The *Stress Testing Report* was then finalized and distributed to the Senate Agriculture Committee, the CFTC Chairman, the Commissioners, and five senior agency employees.³⁰ However, according to IC investigators, even that aspect of the report was problematic, as the names of whistleblowers and witnesses were wrongfully made public, which we discuss below.

2. *IG Lavik and DIG Ringle wrongfully disclosed names of whistleblowers.*

Employees who report information to oversight bodies play an important role in helping to identify and assist their agencies in addressing wrongdoing, such as fraud, waste, and abuse. It is for this reason that Congress has passed numerous laws, including the Whistleblower Protection Act of 1989, which was later expanded by the Whistleblower Protection Enhancement Act of 2012, to establish clear rules for ensuring witnesses can come forward without fear of reprisal. OIGs play an important role in this process. Through various means such as websites, posters, town halls, briefings, business cards, and other forms of outreach, OIGs advertise and encourage employees to come forward when they reasonably believe they have evidence of a possible violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to the public health and safety. To guard this function, the IG Act protects the individuals who perform this important service to their agencies and the public by requiring OIGs to protect the confidentiality of such disclosures.³¹

Employees who come forward to disclose information to OIGs do not have to request confidentiality—it is automatic.³² Also, there is no requirement under the law for an employee

²⁸ Encl. 1, Ex. A.32 at 5 and Ex. 4.5. The OIG inspectors told IC investigators they “tried” to mirror the *Blue Book* standards in their work on the *Stress Testing Report*. IC investigators found little evidence in support of this claim.

²⁹ Encl. 1, Ex. A.15 at 9; Ex. A.19 at 12.

³⁰ Encl. 1, Ex. 3.3.

³¹ IG Act, section 7(b). *See also*, Whistleblower Protection Act of 1989, as amended by the Whistleblower Protection Enhancement Act of 2012, codified at 5 U.S.C. § 2301 et seq.; and U.S. House Subcommittee on Government Operations, *Protecting Those Who Blow the Whistle on Government Wrongdoing* (January 28, 2020), <https://oversightdemocrats.house.gov/legislation/hearings/protecting-those-who-blow-the-whistle-on-government-wrongdoing> (“Whistleblower disclosures promote an effective and efficient civil service and benefit the public interest by ‘assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures.’”).

³² IG Act, section 7(b).

to tell the OIG *why* they wish to have their identity remain confidential and thereby protected from disclosure; the law inherently assumes there are myriad reasons, to include a real or perceived risk of retaliation. The importance of this point is underscored by the fact that, under the IG Act, only an IG, and not OIG staff, may disclose an employee's identity without consent, and only then under extremely limited circumstances in which the IG determines that such disclosure is unavoidable during the course of the investigation.³³

Courts have also recognized whistleblowers' interests "in remaining anonymous both in the context of the [IG Act] and beyond."³⁴ In *United America Financial, Inc. v. Potter*, the Court upheld redactions in emails "made to protect identity of USPS employees who provided information to the OIG," reasoning the IG Act "provides that the Inspector General 'shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee' without that employee's consent"³⁵ In *Kloeckner v. Perez*, the court denied a motion to compel disclosure of the identity of an anonymous OIG whistleblower to a plaintiff because the "interest in protecting the anonymity of the OIG whistleblower outweighs whatever probative value [the plaintiff] believes would result from disclosure."³⁶

Moreover, pursuant to the *Blue Book* standards underpinning products such as the *Stress Testing Report*, "Confidentiality, as appropriate, should be afforded to sources of information consistent with the Inspector General Act of 1978... [which] states that the Inspector General shall not, without the consent of the employee or unless the Inspector General determines that such a disclosure is unavoidable, disclose the identity of a Department/Agency employee providing a complaint or information concerning the possible violation of law, rules, or regulations; mismanagement; waste of funds; abuse of authority; or a substantial and specific danger to public health or safety."³⁷ The *Blue Book* also states OIGs "should develop and implement procedures for maintaining the confidentiality of individuals providing information" and "carefully monitor their actions and words to not inappropriately reveal the source of information."³⁸

³³ *Id.*

³⁴ *Iglesias v. United States Agency for International Development*, 2018 U.S. Dist. LEXIS 175806, at *22.

³⁵ 667 F.Supp.2d 49, 61 (D.D.C. 2009) (citing section 7(b) of the IG Act). *See also, Accord, Am. Civil Liberties Union v. U.S. Dep't of Homeland Sec.*, 738 F. Supp. 2d 93, 110 (D.D.C. 2010) (§ 7(b) of the IG Act "provid[es] for confidentiality of employee disclosures to the Inspector General."); *Braun v. United States Postal Serv.*, 317 F. Supp. 3d 540, 548 (D.D.C. 2018), ("The Inspector General Act . . . provides that OIG, after receipt of a complaint from an employee, shall not disclose the identity of the employee without the consent of the employee."); *McCutchen v. U.S. Department of Health and Human Services*, 30 F.3d 183, 189 (D.C. Cir. 1994) (allowing HHS "to withhold the names of the whistleblowers" based on their "strong privacy interest in remaining anonymous because, as 'whistle-blowers,' they might face retaliation if their identities were revealed."); and *Iglesias v. United States Agency for International Development*, *supra*, at *22 ("[T]he 'protection of the whistleblower's identity is essential . . . to assure a free flow of information to the [Inspector General]' and 'it is expected [that] the disclosure of a [whistleblower's] identity will be necessary only in the rarest of circumstances.'").

³⁶ 2014 U.S. Dist. LEXIS 138009, at *3 (E.D. Mo. Sept. 30, 2014).

³⁷ *See, Blue Book* at 11-12.

³⁸ *Id.*

Nevertheless, IC investigators found that, on more than one occasion, both IG Lavik and DIG Ringle improperly disclosed whistleblower and witness identities in OIG reports without their consent. For example, on March 12, 2018, IG Lavik sent an unredacted copy of the draft *Stress Testing Report* via email to the CFTC Chairman and (b) (6), (b) (7)(C).³⁹ On July 30, 2018, DIG Ringle sent an unredacted copy of the final *Stress Testing Report* to the Senate Agriculture Committee, the CFTC Chairman, the Commissioners, and five senior agency employees.⁴⁰

At the time that both IG Lavik and DIG Ringle provided unredacted versions of the *Stress Testing Report*, CFTC OIG had not yet requested permission from any of the CFTC whistleblowers and witnesses to disclose their identities.⁴¹ It was not until August 9, 2018, that CFTC OIG sought consent from whistleblowers and selected witnesses to disclose their names in the *Stress Testing Report*.⁴² Additionally, IC investigators found no evidence that IG Lavik had determined that disclosure of the identities of witnesses who requested confidentiality was unavoidable.

IG Lavik concedes that whistleblower and employee identities were revealed to Congress and the CFTC Commissioners, but asserts those disclosures were authorized.⁴³ IG Lavik disputes the IC's finding that providing unredacted copies of OIG reports is improper because he believes Congress and the Commissioners are entitled to unredacted reports from his office, so they can properly oversee the work of the OIG and its staff.⁴⁴

The IC disagrees. The fact that an IG has a duty to keep Congress and their agency informed does not relieve them of their obligation to protect the identities of employees who provide complaints or information to the OIG. The IG Act strictly prohibits an IG from providing to Congress or the public any information that reveals the personally identifiable information of such employees without their consent.⁴⁵

DIG Ringle also disputes the IC's findings, stating if source identities were disclosed, she has no

³⁹ Encl. 1, Ex. 3.3.

⁴⁰ Encl. 1, Ex. 3.4. and Ex. A.28 at 17.

⁴¹ The unredacted versions of the *Stress Testing Report* contained the names of two whistleblowers (Encl. 1, Ex. 3.9 and Ex. 4.6) and fifteen witnesses (Encl. 1, Ex. 4.17, Ex. 4.18, Ex. 4.19, Ex. 4.21, Ex. 4.26, Ex. 4.31, Ex. 4.32, Ex. 4.35, Ex. 4.36, Ex. 4.54, Ex. 4.57, Ex. 4.63, Ex. 4.65, Ex. 4.68, Ex. 4.71, Ex. 4.72, and Ex. 4.73). When asked, one whistleblower and three witnesses declined consent to have their identities disclosed; however, this was after IG Lavik and DIG Ringle had already distributed unredacted versions of the report. Encl. 1, Ex. 3.9, Ex. A.35 at 4, Ex. 3.10, Ex. 3.17.

⁴² Encl. 1, Ex. 3.5 and Ex. 3.6. Moreover, the only staff who were asked to provide consent for their names to be included in the redacted *Stress Testing Report* were staff who would be expected to have a favorable view of the report's conclusions. Encl. 1 at 32.

⁴³ Encl. 2 at 5-6.

⁴⁴ *Id.*

⁴⁵ IG Act, section 5(e)(5).

knowledge whether consent was obtained or whether the IG determined that disclosure of source identities was “unavoidable.”⁴⁶ Further, DIG Ringle states it is not clear that the *Stress Testing Report* is subject to section 7(b) of the IG Act, because it was an inspection and evaluation report, and she cannot be held responsible for disclosures in a report over which she had no supervisory authority and for which she had no meaningful input.

The IC finds these arguments lack merit. The IC notes DIG Ringle was actively involved in the redaction of the *Stress Testing Report* and was responsible for answering CFTC staff questions about the redaction and distribution process. Moreover, DIG Ringle authorized other OIG employees to disclose the unredacted report to other witnesses to “ensure its accuracy.”⁴⁷ The IG Act contains no exception that would allow DIG Ringle to disclose employee identities to ensure a report’s accuracy, and the IC finds her actions to be directly contrary to the principles of whistleblower protection.

Additionally, DIG Ringle’s argument that, as an inspection and evaluation report, the *Stress Testing Report* was not subject to section 7(b) of the IG Act lacks merit. All CIGIE member OIGs must follow CIGIE Quality Standards, including the *Blue Book* standards, which state, “Confidentiality, as appropriate, should be afforded to sources of information consistent with the Inspector General Act of 1978... [which] states that the Inspector General shall not, without the consent of the employee or unless the Inspector General determines that such a disclosure is unavoidable, disclose the identity of a Department/Agency employee providing a complaint or information concerning the possible violation of law, rules, or regulations; mismanagement; waste of funds; abuse of authority; or a substantial and specific danger to public health or safety.”⁴⁸

3. IG Lavik grossly wasted government funds.

OIGs derive much of their credibility to perform their work by demonstrating the ability to efficiently and effectively use and account for public funds. Moreover, because OIGs evaluate how well agency programs and operations are functioning, they inherently have a special responsibility to ensure that their own operations are fiscally responsible. The IC finds IG Lavik ignored this responsibility and grossly wasted government funds when he paid a consultant, who had produced little to no work, but instead was available for “consultation” as if they were on retainer.

On March 29, 2018, a CFTC OIG employee resigned from their position, effective April 5, 2018, because the CFTC would not allow them to continue employment via telework from Miami,

⁴⁶ Encl. 3 at 6.

⁴⁷ Encl. 1, Ex. A.28 at 17.

⁴⁸ See, *Blue Book* at 11-12. The IC notes that CFTC OIG’s request for consent from multiple witnesses to disclose their identity is evidence of their belief that witnesses provided information under circumstances where confidentiality would otherwise be afforded. Encl. 1, Ex. 3.5 and Ex. 3.6. Moreover, it appears that DIG Ringle relied on the privacy interest exemption under the Freedom of Information Act (FOIA), instead of the IG Act, to determine which witness identities to disclose. While the FOIA exemption allows for disclosure if the public interest outweighs the attendant privacy interests, section 7(b) of the IG Act does not.

Florida.⁴⁹ That same day, DIG Ringle prepared a form requesting an OIG Consultant position with a duty station in Miami, Florida.⁵⁰ The justification for the position stated, “the new consultant will permit us to undertake economic analysis of the CFTC’s implementation of relevant statutes on an ongoing basis, rather than on an occasional basis as has been our practice in the past due to staff limitations” and indicated the impact on the mission if the position is not filled would be that “workload will become unmanageable, resulting in delays in completion and release of work products.”⁵¹

After the employee resigned from the CFTC, they accepted an excepted appointment as a temporary employee consultant under 5 U.S.C. § 3109 and 5 C.F.R. § 304.103.⁵² The effective date was May 12, 2018, with a rate of pay of \$77.66 per hour, and the position had a not-to-exceed date of May 12, 2020.⁵³ The employee’s duties as a consultant were the same as their duties when they were an OIG employee.⁵⁴ According to IG Lavik, the employee was to be paid the agreed amount whether or not they had performed any work, just as a consultant on an annual retainer would be paid. IG Lavik believed it was legitimate for the former employee to be paid when they were a consultant—even if there was no work for them to do—so they would be available to chat or discuss ideas.⁵⁵ The former employee served as a consultant with the CFTC OIG from May 12, 2018 – March 27, 2020.⁵⁶ During that time, the consultant sought compensation for 2,162 hours and was paid more than \$165,000.92.⁵⁷

The *Silver Book* sets forth the overall quality framework for managing, operating, and conducting the work of an OIG, stating, “Public office carries with it a responsibility to apply and account for the use of public resources economically, efficiently, and effectively.”⁵⁸

Instead, IC investigators found evidence that the consultant performed little to no work from

⁴⁹ Encl. 1, Ex. 6.1.

⁵⁰ Encl. 1, Ex. 6.2.

⁵¹ Encl. 1, Ex. 6.2 at 2.

⁵² 5 U.S.C. § 3109(b) states, “When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services.” 5 C.F.R § 304.103(a)(1) states, “When authorized by an appropriation or other statute to use 5 U.S.C. § 3109, an agency may appoint a qualified expert or consultant to an expert or consultant position that requires only intermittent and/or temporary employment. Such an appointment is excepted from competitive examination, position classification, and the General Schedule pay rates.”

⁵³ Encl. 1, Ex. 6.8.

⁵⁴ Encl. 1, Ex. A.19 at 20; Ex. A.32 at 12.

⁵⁵ Encl. 1, Ex. A.19 at 33.

⁵⁶ Encl. 1, Ex. 6.11.

⁵⁷ Encl. 1, Ex. 6.12.

⁵⁸ See, *Silver Book* at 3-4.

January 25, 2019, until they resigned as a consultant on March 27, 2020.⁵⁹ Nonetheless, IG Lavik routinely certified the consultant's timesheets.⁶⁰ IG Lavik told IC investigators that he wanted "someone smart" like the consultant to advise him and to just have the consultant available was worth it because they had worked for CFTC and produced quality reports.⁶¹ IG Lavik was not concerned that the consultant was getting paid when they were not producing work because IG Lavik needed to have staff that knew price theory and microeconomics and he felt that with the consultant, "God had given us a golden hen."⁶²

Both IG Lavik and DIG Ringle were on notice that the consultant was performing little to no work, but was still getting paid. Multiple employees became concerned that the consultant was receiving improper payments after they attended a March 27, 2019, staff meeting where DIG Ringle said she had not seen the consultant do any work since January 26, 2019, and that the IG should find them some.⁶³ Variations of this conversation were confirmed by both IG Lavik and DIG Ringle.⁶⁴ Moreover, the consultant's description of their work corroborates DIG Ringle's statement that they did not perform any work from the end of January 2019 through March 2020.⁶⁵

After she was notified of the IC's investigation, DIG Ringle began to question the consultant about their work product; however, the consultant was minimally responsive to her efforts.⁶⁶ DIG Ringle stated she was concerned about the lack of response and she shared those concerns with IG Lavik. IG Lavik did not share DIG Ringle's concerns, stating the consultant, "works for me."⁶⁷ DIG Ringle told IC investigators that she did not think time and attendance fraud had been committed because she trusted IG Lavik.⁶⁸ The consultant told IC investigators about efforts they made to perform work for the CFTC OIG while they were a consultant, but their

⁵⁹ For example, while the consultant claimed to have participated in conference calls with the new director of the Risk Surveillance Branch, the consultant did not provide any dates of these calls, nor could they provide an estimate of time they spent working on the implementation of the *Stress Testing Report's* recommendations while they were a consultant. Encl. 1, Ex. 6.16. Similarly, while the consultant may have read economic articles in their search for new CFTC OIG projects during this time, because their work product, if any, would have been an oral recitation of what they read, it is difficult to conclude that this work was accomplished during this period without further specificity. Encl. 1, Ex. 6.18.

⁶⁰ Encl. 1, Ex. 6.2.

⁶¹ Encl. 1, Ex. A.19 at 33.

⁶² Encl. 1, Ex. A.19 at 24.

⁶³ Encl. 1, Ex. A.12 at 12; Ex. A.2 at 10.

⁶⁴ Encl. 1, Ex. A.28 at 26; Ex. A.19 at 20.

⁶⁵ Encl. 1, Ex. 6.15 attachment.

⁶⁶ Encl. 1, Ex. 6.19; Ex. 6.20; Ex. 6.22.

⁶⁷ Encl. 1, Ex. A.28 at 27.

⁶⁸ Encl. 1, Ex. A.28 at 31.

efforts were rebuffed by IG Lavik and CFTC OIG.⁶⁹

IG Lavik disputes the IC investigators' finding that little to no work was completed and produced by the consultant. IG Lavik states he has no doubt that the consultant worked the hours they were paid for, and he says the ROI fails to recognize the agency's interference with the operation of his office by not allowing him to have a remote worker on staff.⁷⁰ The IC finds IG Lavik's assertions to be unsupported by the evidence and contradicted by IG Lavik's statements to IC investigators.⁷¹ The consultant's work product, as described by IG Lavik, DIG Ringle, and the consultant themselves, as well as the lack of written work product located in the investigative files, clearly supports, by a preponderance of the evidence, the IC's finding that IG Lavik grossly wasted government funds.

4. IG Lavik inappropriately demeaned CFTC employees under review by the OIG.

Several OIG staff complained to IC investigators that, on multiple occasions, IG Lavik made wholly inappropriate comments about two senior CFTC employees prior to and during OIG management reviews into those employees' conduct.

One staff member told IC investigators that IG Lavik will say things the staff member would not expect one to say in an office.⁷² The staff member also noted that he has never seen IG Lavik make a decision based on his personal feelings, but he is transparent about how he feels about people and is not shy about expressing his opinion. Another employee recalled IG Lavik making derogatory comments about two CFTC employees, including questioning their competency and skill level.⁷³ DIG Ringle also heard IG Lavik making derogatory or negative comments about CFTC employees in her presence.⁷⁴ Specifically, DIG Ringle heard IG Lavik comment on an employee's fitness for her job and was present when IG Lavik angrily stated, "I want to fuck her." DIG Ringle told IC investigators that IG Lavik was angry and that she does not know what he meant. She was also present when IG Lavik made comments about an employee's sexual orientation, but believes IG Lavik was "joking."⁷⁵ Another employee recalled the discussion when IG Lavik stated, "I want to fuck her" and stated that he witnessed IG Lavik making this comment in DIG Ringle's presence more than once.⁷⁶

IG Lavik admitted to IC investigators that he made disparaging or negative comments about the

⁶⁹ Encl. 1, Ex. A.32 at 15.

⁷⁰ Encl. 2.

⁷¹ Encl. 1, Ex. A.19 at 24.

⁷² Encl. 1, Ex. A.25 at 10.

⁷³ Encl. 1, Ex. A.5 at 2.

⁷⁴ Encl. 1, Ex. A.28 at 14.

⁷⁵ Encl. 1, Ex. A.28 at 13.

⁷⁶ Encl. 1, Ex. A.12 at 7.

competency of CFTC employees, but denied commenting on an employee's sexual orientation.⁷⁷ When asked if he made the comment "I want to fuck her" in front of CFTC OIG staff, IG Lavik said that is not a word he would use. IC investigators were taken aback when he then asked, "Have you seen her?"⁷⁸

In his response to the draft ROI, IG Lavik disputes this finding, stating his private discussions with his staff must remain private and noting there was no evidence to suggest that he lacked integrity.⁷⁹ The IC disagrees. As the senior-most person responsible for oversight of the CFTC, it is critical that IG Lavik ensure that both he and his staff adhere to the highest ethical principles by ensuring their work is, and perceived to be, conducted with integrity and in an unbiased manner.⁸⁰ The IC finds IG Lavik's disparagement of CFTC staff prior to and during CFTC OIG management reviews, and in the presence of the employees conducting those reviews, is not only appallingly wrong in any setting, but contrary to CIGIE standards and the professionalism expected of IGs and calls into question the impartiality of the OIG's work. As such, it is conduct undermining the integrity reasonably expected of an IG.

5. *IG Lavik and DIG Ringle violated CFTC IT Security Policy by sharing passwords.*

IC investigators also found evidence that IG Lavik and DIG Ringle violated CFTC IT Security Policy.⁸¹ Specifically, IG Lavik improperly shared his usernames and passwords with CFTC OIG staff and contractors, who used that information to log into CFTC IT systems and perform official actions, and DIG Ringle accessed a federal training site using IG Lavik's login credentials.⁸²

IG Lavik denied that CFTC OIG staff and contractors managed his login credentials to government systems, despite evidence and witness statements to the contrary.⁸³ IG Lavik was also unconcerned about DIG Ringle having his password because he can trust her, and he would not give his password to someone he did not know.⁸⁴ DIG Ringle also knows it violates CFTC policy to share passwords but does not think helping IG Lavik calls this directive into question

⁷⁷ Encl. 1, Ex. A.19 at 10.

⁷⁸ Encl. 1, Ex. A.19 at 9.

⁷⁹ Encl. 2.

⁸⁰ *See, Silver Book and Blue Book.*

⁸¹ These rules state CFTC employees are required to "Protect your smartcard PIN and/or passwords and do not share them with anyone." Encl. 1, Ex. 8.1. CFTC employees are required to attend annual training on the IT Rules of Behavior and both IG Lavik and DIG Ringle completed this requirement in 2018-2020. *Id. See also*, Encl. 1, Ex. 8.2.

⁸² Encl. 1, Ex. 9.1, Ex. 9.2, and Ex. 9.3.

⁸³ Encl. 1, Ex. 20 at 4.

⁸⁴ *Id.*

and notes she only used IG Lavik's password with his advance and explicit approval.⁸⁵

Moreover, in her response to the draft ROI, DIG Ringle states this allegation should be unsubstantiated because it involves a "technicality" with no actual harm to the CFTC or the integrity of its systems.⁸⁶ The IC finds IG Lavik and DIG Ringle's indifference regarding their violation of the IG Act and CFTC IT security policy to be further evidence of the "above the rules" culture they have fostered in the CFTC OIG.

Conclusions and Recommendations

The IC finds by a preponderance of the evidence that IG Lavik engaged in substantial misconduct when he wrongfully disclosed the names of whistleblowers and witnesses in an OIG report; violated CFTC IT security policy; wasted more than \$165,000 in government funds by hiring a consultant who did minimal work; grossly mismanaged the CFTC OIG by not operating in accordance with professional standards; and engaged in conduct undermining the integrity reasonably expected of an IG by demeaning and disparaging CFTC employees. Accordingly, the IC recommends that IG Lavik be subject to appropriate disciplinary action, up to and including removal.

The IC also finds by a preponderance of the evidence that DIG Ringle engaged in substantial misconduct when she wrongfully disclosed the names of whistleblowers and witnesses in an OIG report and violated CFTC IT security policy. Accordingly, the IC recommends appropriate disciplinary action, as well as training on whistleblower protections.

The IC also provided its findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosures:

1. FCC OIG Report to the Integrity Committee
2. IG Lavik's Response to the FCC OIG Report
3. DIG Ringle's Response to the FCC OIG Report

⁸⁵ Encl. 1, Ex. A.29 at 3.

⁸⁶ Encl. 3.

Enclosure 1



UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 29, 2022

TO: Kevin H. Winters
Integrity Committee Chairperson
(b) (6)

FROM: David L. Hunt
Inspector General, Federal Communications Commission

SUBJECT: A. Roy Lavik, Inspector General
Judith A. Ringle, Deputy Inspector General
Commodity Futures Trading Commission - Case Number 986

REPORT OF INVESTIGATION

EXECUTIVE SUMMARY

The following Report of Investigation presents the results of a multi-year investigation into ten allegations of misconduct against A. Roy Lavik, Inspector General (IG) of the Commodity Futures Trading Commission (CFTC) and the Deputy Inspector General (DIG) Judith A. Ringle.

On May 20, 2019, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested that the Office of the Inspector General of the Federal Communications Commission (FCC OIG) investigate various allegations of wrongdoing against IG Lavik and DIG Ringle, CFTC. On June 3, 2021, the IC expanded the scope of the investigation to include three more allegations.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith A. Ringle
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REPORT OF INVESTIGATION (continuation sheet)

The IC takes action on allegations of wrongdoing that involve an abuse of authority in the exercise of official duties or while acting under color of office, substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.¹ Specifically, the IC asked the FCC OIG to investigate the following allegations and determine whether they are supported by the evidence.

Allegation 1: *Whether the IG and DIG mismanaged OIG and abused their authority by prioritizing "management reviews" over investigations, including those with allegations of criminal misconduct.*

FCC OIG found evidence that IG Lavik and DIG Ringle prioritized a "management review" over an investigation into allegations of misconduct. Upon receipt of allegations of misconduct by the former CFTC (b) (6), (b) (7)(C), IG Lavik and DIG Ringle assigned the allegations to Attorney-Economists, instead of CFTC OIG's trained investigator, and instructed them to conduct a management review. Even when IG Lavik later authorized an investigation, he persisted in prioritizing the management review over the investigation. Although there were reasonable grounds to believe there had been a violation of Federal criminal law, IG Lavik did not expeditiously report the misconduct allegation as required by Section 4(d) the Inspector General Act of 1978.

Allegation 2: *Whether the IG and DIG abused their authority by using management reviews to inappropriately target and disparage OIG and agency employees.*

Although FCC OIG did not find evidence supporting the claim that IG Lavik or DIG Ringle inappropriately targeted OIG and agency employees using management reviews, FCC OIG found evidence that IG Lavik made derogatory and/or disparaging comments about CFTC management and staff prior to and during management reviews by OIG. These actions are contrary to the requirements and guidelines in both the CIGIE *Quality Standards for Federal Offices of Inspector General ("Silver Book")* and the CIGIE *Quality Standards for Inspection and Evaluation*.

Allegation 3: *Whether the IG and DIG violated section 7(b) of the IG Act by unnecessarily compromising whistleblower anonymity and witness identities in OIG reports. Specifically, it is alleged that they deliberately named witnesses and complainants without their consent and, in some cases, after they specifically requested to remain anonymous due to fear of retaliation.*

¹ Integrity Committee Policies and Procedures (ICP&P)(2018)

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith A. Ringle
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REPORT OF INVESTIGATION (continuation sheet)

The FCC OIG found evidence that both IG Lavik and DIG Ringle improperly compromised whistleblower and witness identities in OIG reports. On at least three occasions, IG Lavik and DIG Ringle distributed and approved OIG staff distribution of the *Stress Testing Report* containing the names of CFTC whistleblowers and witnesses before asking these individuals for consent to disclose their identities in the *Stress Testing Report*. Unredacted copies of the *Stress Testing Report* were distributed to the Senate Agriculture Committee by DIG Ringle and to CFTC staff with DIG Ringle's approval before all witnesses replied to emails seeking consent to disclose their identities, including the names of witnesses who ultimately declined to give consent. In most of these transmittals of the *Stress Testing Report*, the *Report* was neither password protected nor were the recipients asked to refrain from further disseminating the report. FCC OIG located no evidence that IG Lavik found that the disclosures of witness identities was unavoidable, rendering the disclosures a violation of the Section 7(b) of the Inspector General Act of 1978.

In addition, IG Lavik and DIG Ringle, after at least 15 years in their respective positions, have not developed and implemented procedures to protect the confidentiality of whistleblowers and witnesses as should have been done according to the Data Collection and Analysis Standard of the CIGIE *Quality Standards for Inspection and Evaluation*.

Allegation 4: *Whether the IG and DIG failed to follow CIGIE standards in the CFTC OIG report titled, "CFTC Stress Testing Development Efforts." Specifically, it is alleged that they failed to present factual data accurately, fairly, and objectively and ignored substantive relevant input from agency subject matter experts and/or exculpatory evidence or information contrary to the report's conclusions.*

FCC OIG's investigation determined that IG Lavik supervised this project but did not require compliance with numerous CIGIE professional standards during the inspection and evaluation that resulted in the CFTC OIG report entitled *Inspection & Evaluation: CFTC Stress-Testing Development Efforts*. ("Stress Testing Report"). As a result, the *Stress Testing Report* did not present factual data accurately, ignored substantive and relevant input from agency experts, and failed to include or address exculpatory evidence or information contrary to the *Stress Testing Report's* conclusions. FCC OIG also found evidence that through his actions in the *Stress Testing Report*, IG Lavik improperly engaged in management functions by supplanting agency's judgment as to how, and by whom, stress testing should be conducted. Measured against the *CIGIE Quality Standards for Federal Offices of Inspector General* ("Silver Book") and the *Quality Standards for Inspection and Evaluation*, the investigatory record compiled by FCC OIG leads to the conclusion that the entire inspection process and the *Stress Testing Report* itself, both supervised by IG Lavik, fail to comply in material aspects with eight of the fourteen Quality Standards: Competency, Independence, Professional Judgment, Quality Control, Planning,

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith A. Ringle
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REPORT OF INVESTIGATION (continuation sheet)

Evidence, Reporting and Working Relationships and Communication as well as Silver Book Sections II.C.3 and VII.B.3. The evidence gathered showed DIG Ringle did not participate in this project in a supervisory capacity and, as a result, she was not responsible for ensuring that the project was conducted in accordance with CIGIE professional standards.

Allegation 5: *Whether the IG and DIG engaged in conduct that undermines the independence and integrity reasonably expected of a covered person by taking active steps to avoid oversight of OIG operations.*

FCC OIG did not find evidence that IG Lavik and DIG Ringle acted improperly by actively taking steps to avoid a mandatory peer review of CFTC's Inspection and Evaluation or Investigations programs.

Allegation 6: *Whether the IG and DIG wasted government funds by paying a consultant to be "available" without any work assigned and without any work produced.*

FCC OIG found evidence that IG Lavik and DIG Ringle wasted government funds by approving payment to a consultant, (b) (6), (b) (7)(C), who neither had been assigned nor produced any work product, and instead was paid to be available for consultation without any work assigned or produced. Instead of assigning work to the consultant and supervising the consultant to ensure he completed and produced work products that advanced the mission of CFTC OIG, IG Lavik treated (b) (6), (b) (7)(C) as if he were on retainer and approved payment to the consultant even when the consultant produced no meaningful work. At minimum, for a two-month period, DIG Ringle approved (b) (6), (b) (7)(C) routinely-submitted timesheets for \$16,153.28, when she knew he had not been assigned any work or produced any work product. Further, as (b) (6), (b) (7)(C) first-line supervisor, IG Lavik did not effectively manage him while he was working as a consultant, or use public resources economically, efficiently, and effectively. IG Lavik also did not manage CFTC OIG in a manner that provided reasonable assurance that its operations were in compliance with applicable laws, regulations, and professional standards. For the period from the end of the government furlough until his March 27, 2020, resignation, where FCC OIG found little evidence of substantive work by (b) (6), (b) (7)(C) he was paid \$113,694.24 for the 1,466 hours claimed on his timesheets.

Allegation 7: *Whether the IG abdicated his responsibilities and authority due to an impairment.*

FCC OIG did not find evidence that IG Lavik has abdicated his responsibilities and authority due to impairment.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith A. Ringle
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REPORT OF INVESTIGATION (continuation sheet)

Allegation 8: *Whether the IG allowed other individuals, including a contractor, to use his username and password to log into government systems to perform official actions.*

FCC OIG’s investigation determined that for a number of years, IG Lavik improperly shared his usernames and passwords with CFTC OIG staff and contractors. CFTC OIG staff and contractors managed IG Lavik’s passwords for CFTC information technology systems and used IG Lavik’s username and password to log into these systems and perform official actions.

Allegation 9: *Whether the DIG used IG Lavik’s username and password to log into government systems and perform official actions.*

FCC OIG found evidence that DIG Ringle used IG Lavik’s username and password to log into a government system and perform official actions in violation of rules prohibiting the sharing of passwords.

Allegation 10: *Whether IG Lavik and DIG Ringle engaged in conduct undermining the integrity reasonably expected of their positions when they provided conflicting information regarding the use of IG Lavik’s username and password.*

FCC OIG did not find evidence that either IG Lavik or DIG Ringle intentionally communicated conflicting information to the CFTC.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith A. Ringle
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Background

I. CFTC OIG Structure

The Office of Inspector General of the Commodity Futures Trading Commission (“CFTC OIG”) was created when the Inspector General Act of 1978 was amended on October 18, 1988. Inspector General Act Amendments, Pub. Law 100-504, 102 Stat. 2015, 2523 (Oct. 18, 1988). When the events that are the subject of the FCC OIG investigation occurred, CFTC OIG had nine professional staff comprised of two managers (the IG and DIG), four audit staff and three attorney/economists. [Exhibit B.1]

IG Roy Lavik was appointed by CFTC Chairman Wendy Graham as the agency’s third IG on October 7, 1990. [Exhibit A.19 at 2; Exhibit B.2 at 2] IG Lavik has a Law and Economics background, with a focus on microeconomics. IG Lavik received his undergraduate, MBA and law degrees from the University of Chicago. IG Lavik is in the job series 0905 (Attorney-Advisor) and is grade CT-16 (on the CFTC pay scale). [Exhibit A.19 at 2; Exhibit B.1]

DIG Judith Ringle joined the CFTC in October 1988, in the Division of Enforcement. [Exhibit A.28 at 2] After one and a half years, DIG Ringle transferred to the CFTC’s Office of General Counsel (“OGC”) and remained with OGC until 1996. [Exhibit A.28 at 2] Beginning in 1991, DIG Ringle was occasionally detailed to the CFTC OIG, and then in 1996, DIG Ringle moved to the Social Security Administration’s OIG. [Exhibit A.28 at 2] In June 2007, DIG Ringle returned to the CFTC as a non-supervisory attorney in OIG and, in 2015, she became the DIG and Chief Counsel of the CFTC OIG. [Exhibit A.28 at 2] DIG Ringle is in the job series 0905 (Attorney-Advisor) and is a grade CT-16. [Exhibit A.28 at 2]

During the time period covered by this investigation, the CFTC OIG had a small Investigations program, with one full-time staff member, (b) (6), (b) (7)(C). [Exhibit B.1] (b) (6), (b) (7)(C) a complainant to CIGIE IC, was employed by CFTC OIG (b) (6), (b) (7)(C) and was (b) (6), (b) (7)(C). [Exhibit A.11 at 2] Since (b) (6), (b) (7)(C) left CFTC OIG (b) (6), (b) (7)(C), DIG Ringle has been performing the duties of DIG and (b) (6), (b) (7)(C). CFTC OIG has not hired another (b) (6), (b) (7)(C). [Exhibit A.28 at 2-3] Two other Attorney-Economists, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), were originally hired to assist (b) (6), (b) (7)(C) with Investigations, but due to personality clashes, they were assigned to work directly with IG Lavik and DIG Ringle. [Exhibit A.28 at 24; Exhibit B.1]

IG Lavik believes that because the CFTC does not distribute grant money but instead issues financial regulations, CFTC OIG needs Law and Economics attorneys to review those regulations. [Exhibit A.19 at 7] Therefore IG Lavik’s goal is to staff a CFTC OIG Law and Economics unit, preferably with George Mason University graduates. [Exhibit A.19 at 3, 7, 18] Attorney-Economist (b) (6), (b) (7)(C) joined the CFTC in August 2015 after he graduated from George Mason Law School, and worked in OIG until April 2018, when he began two details, one to (b) (6), (b) (7)(C) and the other to (b) (6), (b) (7)(C), where he was

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

eventually hired as an attorney. [Exhibit A.25 at 2] Attorney-Economist (b) (6), (b) (7)(C), who has Master's degree in Economics from George Mason University, worked three days a week with CFTC OIG from August 2015 through April 2018 when he resigned his position. [Exhibit A.32 at 2-3] On May 11, 2018, (b) (6), (b) (7)(C) was hired as a part-time Expert Consultant with CFTC OIG and resigned on March 27, 2020. [Exhibit A.32 at 3] Lavik has a high opinion of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) particularly (b) (6), (b) (7)(C) CFTC staff described IG Lavik as "infatuated" with and having a high opinion of (b) (6), (b) (7)(C) [Exhibit A.2 at 7; Exhibit A.8 at 6]

The Audit team is led by (b) (6), (b) (7)(C) and includes (b) (6), (b) (7)(C) [Exhibit B.1] (b) (6), (b) (7)(C) [Exhibit A.5 at 2] Since Ringle became DIG, (b) (6), (b) (7)(C) effectively works with and reports to her. [Exhibit A.5 at 2] Reporting to (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) [Exhibit A.8 at 2] (b) (6), (b) (7)(C) [Exhibit A.8 at 2] (b) (6), (b) (7)(C) joined the CFTC OIG, which at the time consisted only of IG Lavik, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). [Exhibit A.2 at 2] Over time, (b) (6), (b) (7)(C) has worked in practically every position at CFTC OIG. [Exhibit A.2 at 2] At the time of the FCC OIG investigation, (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) [Exhibit A.2 at 2] (b) (6), (b) (7)(C) joined the CFTC (b) (6), (b) (7)(C) [Exhibit A.26 at 2] (b) (6), (b) (7)(C) [Exhibit A.26 at 2] (b) (6), (b) (7)(C) [Exhibit A.26 at 2] (b) (6), (b) (7)(C) [Exhibit A.26 at 2]

II. CFTC OIG Operations

IG Lavik has a distinct approach to the application of CIGIE professional standards to CFTC OIG projects. IG Lavik describes himself as the court of appeals or as the "Supreme Court," and insulated from day-to-day work of CFTC OIG; he only looks at the final product, and delegates the task of complying with standards to DIG Ringle. [Exhibit A.19 at 6, 7, 34] When first asked whether CIGIE *Quality Standards for Inspection and Evaluation* were followed for a project denoted as an Inspection and Evaluation, IG Lavik replied that FCC OIG should ask DIG Ringle and told a story about Judge Henry Friendly,¹ a Harvard professor who asked, when a group in the 1930s wanted to create an esoteric code for Federal Judicial regulations, why do we need this code? IG Lavik stated he is in accord with Friendly's approach with respect to Inspection and Evaluation standards. [Exhibit A.19 at 15] The important thing to IG Lavik is that a CFTC OIG report is accepted by the decision makers- the Commissioners. [Exhibit A.19 at 29] IG Lavik stated that as for quality, he looks to see if the Commission agrees with CFTC OIG, as they did

¹ Henry Jacob Friendly (July 3, 1903 – March 11, 1986) was an American lawyer and jurist best known for his tenure as a circuit judge on the United States Court of Appeals for the Second Circuit.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

for the *Stress Testing Report*: “the proof is in the pudding.” [Exhibit A.19 at 5, 6, 12 and 17] Another example of IG Lavik’s approach to compliance with CIGIE professional standards is evident in CFTC OIG’s investigations of CFTC office leases in 2014 through 2016.² IG Lavik called these investigations “reviews” and was “semi-shocked” during his FCC OIG interview to learn they were investigations.³ [Exhibit A.19 at 29] When asked what standards were followed in these matters, IG Lavik replied that CFTC OIG was not focused on the standards followed during these investigations and followed “the kind of thing you would do any in any review.”⁴ [Exhibit A.19 at 29] IG Lavik explained that, because he is a lawyer, he gets a sense of how to conduct matters and does not focus on artificial standards, because he “knows what is right.” [Exhibit A.19 at 5] When pressed whether CIGIE had applicable professional standards and whether they were they followed by the CFTC OIG, Lavik replied that the CFTC OIG followed the “simple ass standards of counting the number of people and the number of offices.” [Exhibit A.19 at 29] According to Lavik, these are the kind of standards that “find the facts.” [Exhibit A.19 at 29] When asked whether, as the IG, he has the discretion to decide what professional standards to follow, how to follow them, and what parts to follow, IG Lavik answered “That is why they call them reviews.”⁵ [Exhibit A.19 at 29]

DIG Ringle related that IG Lavik loves the word “review” and believes all projects should be called “reviews” because reviews are not subject to professional standards. IG Lavik’s approach drives DIG Ringle “crazy” because she wants to employ professional standards. [Exhibit A.28 at 7] The CFTC OIG Audits group also had concerns about what it views as projects conducted without compliance with standards. [Exhibit A.5 at 2-3 and 7] (b) (6), (b) (7)(C) clashed with IG Lavik over the use of “Review” because attorneys use “Review” as a verb or a noun, while “Review” has a distinct meaning in Audits, and the CFTC OIG Audits group conducts Yellow Book audits

² Review of Leasing and Occupancy Levels in Kansas City at the Commodity Futures Trading Commission dated June 4, 2014; A Review of Space Utilization of the Chicago Regional Office of the Commodity Futures Trading Commission dated February 26, 2015; A Review of Space Utilization of the New York Regional Office of the Commodity Futures Trading Commission dated September 1, 2015; and A Review of Space Utilization of the Washington D.C. Office of the Commodity Futures Trading Commission dated April 25, 2016

³ DIG Ringle stated the Kansas City, Chicago, New York City and Washington, D.C lease projects were conducted following the CIGIE *Quality Standards for Investigation*, and CFTC OIG staff leading those matters should have known these were the standards to follow. [Exhibit A.28 at 4] DIG Ringle thought IG Lavik knew they were investigations. [Exhibit A.28 at 4]

⁴ DIG Ringle correctly thought the leasing investigation reports did not identify the professional standards applicable to the projects, and noted the culture of the CFTC OIG is to not to be overly formalistic. [Exhibit A.28 at 4]

⁵ IG Lavik’s desire to conduct reviews probably stems from difficulties the CFTC OIG Audit group has faced in the past when it received rating of “fail” for the system of quality controls in a March 31, 2011 peer review report, Final Report and Comment Letter for the Audit Peer Review of the U.S. Commodity Futures Trading Commission’s Office of Inspector General, which resulted in additional Congressional scrutiny of CFTC OIG operations. [Exhibit B.3; Exhibit A.11 at 10-11] Additionally, the CFTC OIG audit program received a “rating of pass with deficiencies” in a peer review reported in April 2014. April 22, 2014 System of Quality Control for the Audit Organization of the Commodity Futures Trading Commission Office of the Inspector General in effect for period April 1, 2010 through March 31, 2013, OIG of the Export-Import Bank. Copies of Peer Reviews of CFTC OIG are available on the CFTC OIG website, <https://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm>. After the second problematic peer review, two new staff members were added to the CFTC OIG audit team, who professionalized the OIG Audit unit and transformed Audits from a group into a group that produces audit reports that regularly pass peer reviews. [Exhibit A.11 at 10]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

and reviews. [Exhibit A.5 at 3] Ultimately, IG Lavik agreed the term “Review” would only be used by CFTC OIG Audits to describe applicable work projects. [Exhibit A.5 at 3] Consequently, the CFTC OIG Audit unit keeps somewhat separate from the attorney/economists and follows the Yellow Book standards. [Exhibit A.5 at 2-3, 7]

Additionally, IG Lavik does not believe written policies and procedures for Inspection and Evaluation are needed in a small agency. [Exhibit A.19 at 19] IG Lavik believes it is important not to put process over substance and he does not want to get caught in process. [Exhibit A.19 at 13] At one point, when asked whether the CFTC OIG has its own Inspection & Evaluation policies, IG Lavik did not answer the question, stating “if you have been in law and are smart, you can do inspections and evaluations.” [Exhibit A.19 at 15] IG Lavik also stated there are short and open-ended written policies and procedures for Inspection and Evaluations but he does not keep up with them. [Exhibit A.19 at 6] IG Lavik suggested the FCC OIG should ask DIG Ringle about the CFTC OIG’s written policies and procedures for Inspection & Evaluation. [Exhibit A.19 at 6, 19]

In late 2017, at the recommendation of a CFTC OIG auditor, DIG Ringle began drafting an internal CFTC OIG Inspections and Evaluations guide and an internal quality assurance program for Inspections and Evaluations. [Exhibit A.28 at 36] DIG Ringle did not believe that the CIGIE *Quality Standards for Inspection and Evaluation* required internal OIG procedures, but if they were going to be required for a peer review, DIG Ringle thought CFTC OIG should have them. [Exhibit A.28 at 24] On December 11, 2017, DIG Ringle circulated draft CFTC OIG Inspection and Evaluation Standards to IG Lavik, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).⁶ [Exhibit B.4] However, IG Lavik said he was unaware of and never approved any CFTC OIG policies and procedures for Inspections & Evaluations. [Exhibit A.19 at 19] DIG Ringle found no indication in her files that IG Lavik reviewed the CFTC OIG Inspection and Evaluation standards before she finalized them, and she did not recall asking IG Lavik to review them.⁷ [Exhibit A.28 at 20]

Also, IG Lavik thought CFTC OIG had a quality assurance program for Inspection and Evaluation but he had not looked at it in a while and suggested the FCC OIG ask DIG Ringle about the quality assurance program. [Exhibit A.19 at 6] When asked whether the CFTC OIG reviewed internal controls as part of its Stress Testing inspection, as required by the CIGIE *Quality Standards for Inspection and Evaluation*, IG Lavik replied “sure they did, look at the report.” [Exhibit A.19 at 30] When asked who was responsible for assuring the CIGIE quality assurance steps were followed for another June 2017 Inspection and Evaluation, IG Lavik replied that he looked at the report, it hung together and made sense. [Exhibit A.19 at 29]

⁶ FCC OIG examined this document and determined that it appears to follow some of the standards addressed in the CIGIE *Quality Standards for Inspection and Evaluation* but does not address several important standards including Quality Control, Performance Measurement, and Working Relationships and Communication. The December 11, 2017, draft is the most recent version of the CFTC OIG Inspection and Evaluation internal guide located in the Stress Testing project inspection files.

⁷ DIG Ringle was interviewed by FCC OIG on August 28 and 31, 2020. When she could not recall an answer to a question posed by FCC OIG, DIG Ringle often offered to check her files and provide a follow up response to FCC OIG. The follow up responses were provided through her attorney on October 1, 2020.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

DIG Ringle was not responsible for quality assurance work for Inspection and Evaluations or investigations and only had quality assurance responsibilities when IG Lavik assigned them to her.⁸ [Exhibit A.28 at 20] When [REDACTED] and [REDACTED] worked on Law and Economics projects, IG Lavik supervised the projects and did not give DIG Ringle much to do. [Exhibit A. 19 at 34; Exhibit A.28 at 20] For example, CFTC OIG relied on supervision of [REDACTED] and [REDACTED] by IG Lavik to assure quality control during the Stress Testing Inspection. [Exhibit A.28 at 36] According to DIG Ringle, she did not include quality control mechanisms in the initial CFTC OIG December 2017 Inspections and Evaluations guide.⁹

⁸ DIG Ringle also explained that when she prepares a report, her process is to check every statement and legal citation against her notes. [Exhibit A.28 at 5] For reports written by CFTC OIG staff, DIG Ringle expects CFTC OIG staff to do the same and check all the report's statements against notes, interviews and legal citations. [Exhibit A.28 at 5] DIG Ringle "trusts them" to do this and does not go back and do these tasks herself. [Exhibit A.28 at 5]

⁹ At a later date, DIG Ringle amended the CFTC OIG Inspections and Evaluations procedures to include an internal quality assurance program, requiring the supervisor for each Inspection and Evaluation (at the Assistant Inspector General level or higher) to document in writing that the inspection is adequately planned, the plan is followed unless departure from it is justified and authorized, the inspection objectives are met, the inspection findings, conclusions and recommendations are adequately support by evidence, and that all contributors to the inspection possess sufficient experience, training, and character; and have no conflicts of interest. [Exhibit A.28 at 36] Another amendment requires the internal CFTC OIG Inspections and Evaluations guide to be reviewed in its entirety and approved every two fiscal years at the AIG or DIG level. [Exhibit A.28 at 36]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 1

Whether the IG and DIG mismanaged OIG and abused their authority by prioritizing "management reviews" over investigations, including those with allegations of criminal misconduct.

FCC OIG found evidence that IG Lavik and DIG Ringle intentionally prioritized a "management review" over an investigation. Upon receipt of allegations of misconduct by the former CFTC (b) (6), (b) (7)(C), IG Lavik and DIG Ringle assigned the managerial misconduct allegations to Attorney-Economists, instead of CFTC OIG's trained investigator, and instructed them to conduct a management review. Even after IG Lavik authorized CFTC OIG's trained investigator to investigate the alleged criminal misconduct, IG Lavik persisted on prioritizing the management review that CFTC OIG Attorney-Economists conducted, over the investigation.¹⁰

I. BACKGROUND

Between March 11, 2019 and March 27, 2019, (b) (6), (b) (7)(C), sent numerous email messages and documents to the CIGIE IC including a document summarizing allegations including an allegation that "(t)he IG and Deputy IG Prioritize Management Reviews at the Expense of Investigations." Based on the information provided by the complainant to support the allegations and information obtained during complainant interviews, FCC OIG focused on the *Management Advisory: Office of Financial Management ("Management Advisory: OFM")* dated July 5, 2018.

II. INVESTIGATION RESULTS

On November 30, 2017, CFTC management met with CFTC OIG management to discuss allegations of misconduct by (b) (6), (b) (7)(C). [Exhibit 1.1] The alleged misconduct by (b) (6), (b) (7)(C) included directing staff to backdate a document to avoid a potential violation of the Anti-Deficiency Act, directing staff to take actions that may violate federal procurement regulations, disclosing private health information about an employee, improperly requesting travel reimbursement for staff, suggesting that a staff member improperly record time, and unprofessional behavior towards subordinates (e.g., yelling at subordinates, performing yoga on the floor of a subordinates office, "shushing" a subordinate during a meeting, and "badmouthing" Office of General Counsel personnel in front of subordinates). [CIGIE Complaint 986-437; Exhibit 1.1]

As part of its investigation, FCC OIG obtained and reviewed the electronic case file for the *Management Advisory: OFM* conducted by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).¹¹ This file

¹⁰ In its analysis and this Report, FCC OIG used the CIGIE *Quality Standards* in effect at the time the events being analyzed occurred.

¹¹ FCC OIG's investigation concluded that only the conduct of the *Management Advisory: OFM* supported sustaining this Allegation.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

contained copies of statements prepared by CFTC staff in mid-November 2017 related to the allegations against [REDACTED]. Three of these statements describe a meeting on October 1, 2015, during which [REDACTED] allegedly directed (b) (6), (b) (7)(C) [REDACTED], to create a document deobligating funds from a contract and then to backdate that document to the previous fiscal year. [Exhibit 1.2 at 1-2; Exhibit 1.3 attachment at 3-4; Exhibit 1.4 at 1] According to the allegations in the case file, [REDACTED] later prepared a backdated document directing staff to de-obligate funds from the contract (creating the appearance that she had provided timely direction in the previous fiscal year) and provided that document to [REDACTED]. [Exhibit 1.4 at 1] After returning to his office, (b) (6), (b) (7)(C) [REDACTED] noticed the document was backdated and wrote a note on that document explaining that it was backdated. [Exhibit 1.4 at 1]

In his FCC OIG interview, CFTC (b) (6), (b) (7)(C) [REDACTED] stated three staff under [REDACTED] jurisdiction made similar complaints about the backdating of documents, that these complaints were presented to (b) (6), (b) (7)(C) [REDACTED], who said that the IG should get involved, and that when the allegations were referred to the IG, it was known that there could have been criminal conduct. [Exhibit A.10 at 3] Similarly, CFTC (b) (6), (b) (7)(C) [REDACTED], the CFTC management official who referred the matter to CFTC OIG, told FCC OIG the referral he made to CFTC OIG was broad and general, focusing on misconduct, with the sense that OIG would figure out whether the conduct was criminal. [Exhibit A.34 at 2]

During his FCC OIG interview, IG Lavik stated OIG does not have criminal jurisdiction, and he wanted to handle the matter efficiently. [Exhibit A.19 at 7] To IG Lavik, who wanted to get something done quickly because [REDACTED] had done a series of small things that [REDACTED] should not do, the easiest way to resolve the allegations was to substantiate the issues raised by [REDACTED] staff. [Exhibit A.19 at 7, 31] Accordingly, IG Lavik assigned two CFTC OIG Attorney/Economists to conduct a management review of the management misconduct allegations.¹² [Exhibit A.19 at 7] It should be noted that CIGIE has not defined any professional standards for management reviews, which means the work will not be subject to Peer Reviews in accordance with CIGIE Investigative, Audit, or Inspection and Evaluation standards.

In a December 1, 2017, memorandum to file prepared by DIG Ringle, she provides the following summary of her conversation with [REDACTED]

(b) (6), (b) (7)(C), (b) (5)

¹² CFTC OIG Attorney (b) (6), (b) (7)(C) [REDACTED] described the allegations as a laundry list of complaints, of which one or two looked bad, but that IG Lavik wanted a management review instead of an investigation because he thought it sounded really bad if OIG commenced with an investigation. [Exhibit A.32 at 5-6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)



[CIGIE Complaint 986-431]

IG Lavik instructed (b) (6), (b) (7)(C) not to investigate the criminal allegations. [Exhibit 1.5] DIG Ringle supported IG Lavik’s decision to conduct a management review instead of a criminal investigation. [Exhibit 1.6]

The Inspector General Act states an IG “shall report expeditiously” to DOJ when there is a reasonable basis to believe there have been violations of federal criminal law. Inspector General Act, 5a U.S.C. §4(d); Sections VII.A and VII.G CIGIE *Quality Standards for Federal Offices of Inspector General* (“Silver Book” published August 2012) at 35, 38. As noted below, the criminal allegations were not reported to the Department of Justice for more than ten months after they were received.

However, as he explained to FCC OIG interviewers, IG Lavik believed he had the prosecutorial discretion to issue an investigative report or send criminal allegations to the Department of Justice. [Exhibit A.19 at 31] DIG Ringle also believed IG Lavik had the discretion to “treat this as a management review/inspection or a criminal investigation,” and believed “Roy’s current approach [Management Review] is supportable.” [Exhibit 1.6]

As their management review proceeded, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) themselves thought the allegations should be investigated because they understood there were credible allegations of misconduct (backdating of documents) that had to be reviewed as an investigation. [Exhibit A.32 at 6] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) told this to IG Lavik, who persisted in wanting a management review, and told them if anything was found, the matter would be given to (b) (6), (b) (7)(C) for investigation. [Exhibit A.32 at 6]

The criminal nature of the allegations was discussed in an email exchange that began on January 4, 2018, between DIG Ringle, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). During that discussion, (b) (6), (b) (7)(C) stated, “Assuming it is potentially a crime to unsuccessfully instruct a subordinate to falsify a

¹³ During her August 2020 FCC OIG interview, DIG Ringle remarked that her December 2017 memorandum should have said “potentially” criminal in the memorandum to file and explained that, at the time, she thought the allegations concerned “management issues” and that OIG needed to get (b) (6), (b) (7)(C) side of the story. [Exhibit A.28 at 9] Nevertheless, in a January 5, 2018 Email exchange with (b) (6), (b) (7)(C) Ringle admits: “(b) (6), (b) (7)(C) clearly describe criminal activity.” [Exhibit 1.6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

government contract—and Roy decides he does not want us to contact DOJ—that still leaves two outstanding issues when dealing with [REDACTED]” and asked “How do [REDACTED] and I respond if [REDACTED] asks some variation of the following question: Am I potentially subject to criminal prosecution?” and “how do we respond if [REDACTED] asks whether she has to speak with us?” [Exhibit 1.7] DIG Ringle responded, “The answer to the first question is yes and answer to the second question is no” and that “I would state that you are not performing an investigation, but Roy may determine to open an investigation if appropriate.” [Exhibit 1.8] DIG Ringle further stated, “Here we have alleged management issues & incompetency coupled with alleged misconduct. The misconduct allegations are less serious than the overall management incompetency issues in my view” and, “Moreover, in my experience, misconduct such as that alleged here is usually handled internally. I am not aware of any criminal prosecutions in similar fact situations.” [Exhibit 1.8] During that exchange, DIG Ringle provided the following explanation for the decision to conduct a “more casual inspection/evaluation” as opposed to an investigation:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 1.8] [REDACTED] continued to question the decision to conduct an inspection and evaluation as opposed to an investigation in the following response to DIG Ringle’s message:

(b) (6), (b) (7)(C), (b) (5)



Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 1.9] DIG Ringle provided the following response:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 1.10] DIG Ringle added this thought the next day (January 5, 2018):

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 1.11] In his response to this message, ██████████ points out that, “Re ██████████ : ██████████ do actually characterize some of the actions has potentially illegal/fraudulent.” [Exhibit 1.6] DIG Ringle provided the following response to that statement and ends the discussion:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 1.6] On January 31, 2018, two months after the potential criminal allegations against ██████████ were received by CFTC OIG, IG Lavik prepared a memorandum to file with the subject “(b) (6), (b) (7)(C)” which states, “During the course of an ongoing OIG Management Review, it has come to my attention that various allegations of potential misconduct alleged against ██████████ may violate Federal law” and, “I therefore have instructed my staff to convert the Management Review to an OIG Investigation.” [Exhibit 1.12]

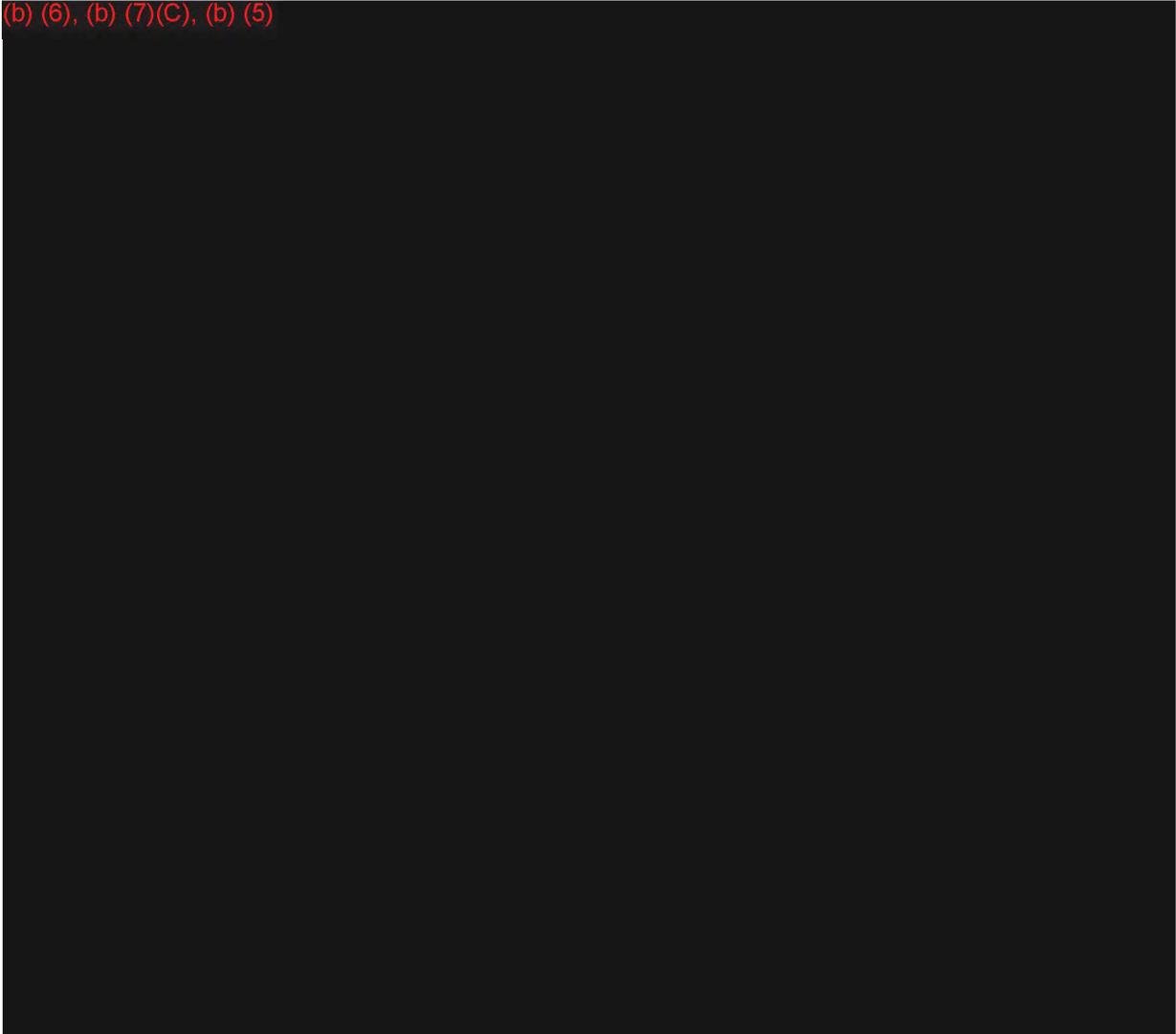
The decision by IG Lavik to authorize an investigation into the backdating allegations appears to be a result of a referral prepared by ██████████ On February 1, 2018, ██████████ sent an email message to DIG Ringle including an attached document with the file name “Memo ██████████.doc.docx.” [Exhibit 1.13] This undated document provided a statement of fact and legal analysis of the question “Whether ██████████ backdated memo constitutes a false statement

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

under 18 U.S.C. 1001.” [Exhibit 1.13, attachment at 2] Although the conclusion section of the document is incomplete,¹⁴ the document contains the following conclusions:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 1.13] (b) (6), (b) (7)(C) noted in a timeline of these events that in January 2018, (b) (6), (b) (7)(C) wrote a referral to investigations based “solely on subject of backdating and potential violation of 18 USC 1001,” that he accepted the referral, and that “Roy agrees.” [Exhibit 1.14] (b) (6), (b) (7)(C) referral appears to have been provided to IG Lavik on or around January 31, 2018, the same date

¹⁴ FCC OIG was unable to determine if this document was completed (no completed versions were identified in the investigation record). We were also not able to confirm that this document was provided to IG Lavik although FCC OIG believes that the timing of this document, provided to DIG Ringle one day after IG Lavik prepared a January 31, 2018 memorandum to file in which he states that it has “has come to my attention that various allegations of potential misconduct alleged against (b) (6), (b) (7)(C) may violate Federal law,” it is likely that IG Lavik either reviewed (b) (6), (b) (7)(C) referral memorandum or was briefed on its contents. [Exhibit 1.13]

¹⁵ U.S.C. 1341 (a)(1)(A).

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

IG Lavik wrote the memorandum to the file noting that various allegations of potential misconduct alleged against (b) (6), (b) (7)(C) may violate Federal law. (b) (6), (b) (7)(C) sent a copy of the memorandum to file prepared by IG Lavik to (b) (6), (b) (7)(C) on January 31, 2018. [Exhibit 1.15]

Nevertheless, even when allowing an investigation into allegations of criminal misconduct, IG Lavik continued to prioritize the management review over the investigation. (b) (6), (b) (7)(C) timeline indicates that, in February 2018, “Roy [IG] instructs (b) (6), (b) (7)(C) to not prioritize investigation” that “Roy [IG] states that priority is management review, and repeatedly states that he is unsure whether to do an investigation at all.” [Exhibit 1.14] This prioritization of the management review by IG Lavik continued for months. In an April 3, 2018 meeting, IG Lavik, while confirming that the allegations relating to backdating documents should be investigated, was adamant that he wanted “OIG to handle the management issues and prioritize those over the investigative angle.”¹⁶ [CIGIE Complaint at 986-429 – 986-430] (b) (6), (b) (7)(C) told FCC OIG even with his strong dislike of (b) (6), (b) (7)(C), IG Lavik instructed me (b) (6), (b) (7)(C) not to do anything on the investigation for months. [Exhibit A.11 at 9]

On April 25, 2018, (b) (6), (b) (7)(C) reported to IG Lavik and DIG Ringle on his conversation with DOJ concerning the allegations that (b) (6), (b) (7)(C) directed her staff to backdate documents, and DOJ’s decision not to prosecute. [Exhibit 1.16]

On July 5, 2018, CFTC OIG issued a report entitled *Management Advisory: Office of Financial Management (“Management Advisory: OFM”)*. [Exhibit 1.17] In that report, CFTC OIG states, “OIG believes (b) (6), (b) (7)(C) continued service (b) (6), (b) (7)(C) is untenable” and, “(w)e recommend that (b) (6), (b) (7)(C) be removed (b) (6), (b) (7)(C).” [Exhibit 1.17 at 4] On August 22, 2018, CFTC OIG issued a Report of Investigation entitled *Investigation into an Allegation that (b) (6), (b) (7)(C) Made and Instructed Staff to Make False Statements in an Effort to Avoid an ADA Violation. (“Investigation into (b) (6), (b) (7)(C) Allegations”)* [Exhibit 1.18 at 1] In the *Investigation into (b) (6), (b) (7)(C) Allegations*, CFTC OIG states “(t)he Inspector General determined to notify an Assistant U.S. Attorney of the preliminary facts developed during the management review” and the “AUSA declined to consider prosecution.” [Exhibit 1.18 at 3] This report recommended that “the Commission take appropriate action.”¹⁷ [Exhibit 1.18 at 24]

The review of all managerial allegations was initially assigned to Attorney-Economists (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) was initially told he would not be involved in the review of any of the allegations. When asked specifically why this matter was assigned to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) instead of to (b) (6), (b) (7)(C), IG Lavik stated OIG was lucky to find people like (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in Government and that bright people like (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who were lawyers, do not usually join the government. [Exhibit A.19 at 7] IG Lavik also stated he believed (b) (6), (b) (7)(C) and

¹⁶ (b) (6), (b) (7)(C) agreed to follow the IG’s direction to prioritize the management review: “And Roy’s the boss, so I say sir, yes sir.” [CIGIE Complaint at 986-429]

¹⁷ The criminal allegations were formally referred to the Securities and Financial Fraud Unit, Fraud Section, Criminal Division of the U.S. Department of Justice on October 24, 2018. [Exhibit 1.19] DIG Ringle’s April 15, 2019 closing memorandum prepared states “(w)e spoke with the AUSA on December 21, 2018” and “learned that DoJ was declining to take up the matter.” [Exhibit 1.20]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

██████████ were best for the ██████████ matter [*Management Advisory: OFM project*] even though they did not have training in investigations or in inspections and evaluations. [Exhibit A.19 at 7] During her FCC OIG interview, DIG Ringle noted ██████████ and ██████████ did not have investigative training. [Exhibit A.28 at 5] DIG Ringle further stated she did not have investigative training until years after she started conducting investigations and she was not concerned about assigning ██████████ and ██████████ to investigations because she did not get training for years. [Exhibit A.28 at 5]

DIG Ringle explained that ██████████ could not objectively conduct the review because of the “adversarial relationship” he had developed with ██████████ staff related to a dispute involving the calculation of OIG overhead. [Exhibit A.28 at 9] FCC OIG obtained and reviewed a considerable amount of email correspondence related to the dispute concerning the calculation of OIG overhead and did not identify email correspondence suggesting that ██████████ had an adversarial relationship with ██████████. Moreover, ██████████, her staff and ██████████ were all trained professionals and should have been counted on to act professionally during an investigation. Any concerns about ██████████ bias or behavior could have been addressed through supervision by IG Lavik and DIG Ringle. Most importantly, ██████████ ultimately did open and conduct an investigation.

The *Silver Book* states “Each OIG shall conduct, supervise, and coordinate its audits, investigations, inspections, and evaluations in compliance with the applicable professional standards.” *Silver Book*, Section III.A at 19. Notably, there are no staff qualification requirements for the management reviews conducted by CFTC OIG because such management reviews are not recognized as an appropriate IG tool to evaluate allegations made to an OIG. The *Silver Book* also states Investigations should be conducted in accordance with the CIGIE *Quality Standards for Investigations*. *Silver Book*, Section III.A at 19. The first General Standard of the CIGIE *Quality Standards for Investigations* states “Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the tasks required.” CIGIE *Quality Standards for Investigations* at 2. This standard places upon the investigative organization the responsibility for ensuring that investigations are conducted by personnel who collectively have the knowledge and skills required to perform the investigative activities. ██████████ was ██████████ at the time the management review staffing assignment was made. ██████████ had attended the twelve-week Criminal Investigations Training Program (CITP)¹⁸ at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA and was a trained investigator. Had IG Lavik prioritized investigation of the criminal allegations, the *Silver Book* indicates the allegations should have been assigned to ██████████ in the first instance.

Additionally, the text of the *Management Advisory: OFM* does not indicate what professional standards were followed during the conduct of the review.¹⁹ As part of FCC OIG’s investigation,

¹⁸ ██████████ attended CITP-607 at FLETC from January 12, 2016 through March 31, 2016. [Exhibit 1.21]

¹⁹ FCC OIG did not attempt to determine if the review was conducted in accordance with the CIGIE *Quality Standards for Inspection and Evaluation* since CFTC OIG did not make that representation until the our investigation was largely completed. However, during our review of documents and email related to this matter, FCC OIG found little evidence that the CIGIE *Quality Standards for Inspection and Evaluation* were followed

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

CFTC OIG semiannual reports covering the period from October 1, 2009 through March 31, 2019 were obtained and reviewed. During that review, FCC OIG identified language in some CFTC OIG semiannual reports indicating CFTC OIG also conducts “inspections, evaluations, and reviews” and implying or directly stating that these are conducted in accordance with the CIGIE *Quality Standards for Inspection and Evaluation*.²⁰ During our investigation, FCC OIG initially used the language in the semiannual report to determine the professional standards followed in the conduct of various projects. However, FCC OIG determined the project name or report title does not necessarily indicate which professional standards were followed in the conduct of the review. For example, CFTC OIG conducted a series of lease reviews for CFTC offices. These projects are referred to as reviews but, according to DIG Ringle, the CIGIE *Quality Standards for Investigations* were followed for these matters. [Exhibit 1.22]

Thereafter, FCC OIG requested a list of audit, inspections and evaluations, and investigations completed by CFTC OIG since 2010, and asked CFTC OIG to identify the professional standards followed for each project listed. In response to that request, DIG Ringle provided a schedule of Inspection and Evaluation projects that included the *Management Advisory: OFM* but indicated that no professional standards were followed in the conduct of that matter. On October 1, 2020, DIG Ringle provided the following written explanation:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit A.28 at 6]

during the conduct of this review.

²⁰ The statement is not included in all of the semiannual report during this period and the semiannual language changes slightly over time. For semiannual reports for the period from October 1, 2009 through September 30, 2014, the statement is “The OIG also conducts inspections, evaluations, and reviews from time to time” and includes the definition of an inspection from the CIGIE *Quality Standards of Inspection and Evaluation*. Beginning with the semiannual report for the period ending March 31, 2015, the language was changed to “The OIG also conducts inspections, evaluation, and reviews in accordance with the *Quality Standards for Inspection and Evaluation*” issued by CIGIE. Beginning with the semiannual report for the period ending March 31, 2018, the language was changed to “OIG conducts inspections, evaluation, and other covered products in accordance with the *Quality Standards for Inspection and Evaluation*” issued by CIGIE. The semiannual report does not define what is meant by “other covered products.”

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 2

Whether the IG and DIG abused their authority by using management reviews to inappropriately target and disparage OIG and agency employees.

Although FCC OIG did not find evidence supporting the claim that IG Lavik or DIG Ringle inappropriately targeted OIG and agency employees using management reviews, FCC OIG found evidence that IG Lavik, but not DIG Ringle, made derogatory and/or disparaging comments about CFTC management and staff prior to and during management reviews by OIG, which called into question the impartiality of the reviews.

I. BACKGROUND

Between March 11, 2019 and March 27, 2019, (b) (6), (b) (7)(C) sent numerous email messages and documents to the CIGIE IC including a document summarizing his allegations. This document contained an allegation that “Management Reviews Target Disliked Staff and Appear Biased.” [CIGIE Complaint at 986-359 – 986-360 and 986-361 – 986-368] Based on this and the above-stated CIGIE allegation, the FCC OIG focused on the following three CFTC OIG projects: (A) *Management Advisory: Office of General Law* dated June 19, 2015 (“*Management Advisory: OGL*”), and (B) *Management Advisory: Office of Financial Management* dated July 5, 2018 (“*Management Advisory: OFM*”).

II. INVESTIGATION RESULTS

A. Management Advisory: Office of General Law dated June 19, 2015

The *Management Advisory: OGL* provides the following explanation for initiating the review:

(b) (6), (b) (7)(C), (b) (5)



[CIGIE Complaint 986-411] The report further states that “During our fieldwork, we received an anonymous allegation that any issue with productivity in OGL was the fault of (b) (6), (b) (7)(C)” and that “This was not the first time we had received complaints regarding (b) (6), (b) (7)(C) in OGL.” [CIGIE Complaint 986-411] The *Management Advisory: OGL* recommended restructuring OGC’s Office of General Law by establishing additional lines of authority to facilitate processing and resolution of OGL issues. For (b) (6), (b) (7)(C), the *Management Advisory: OGL*

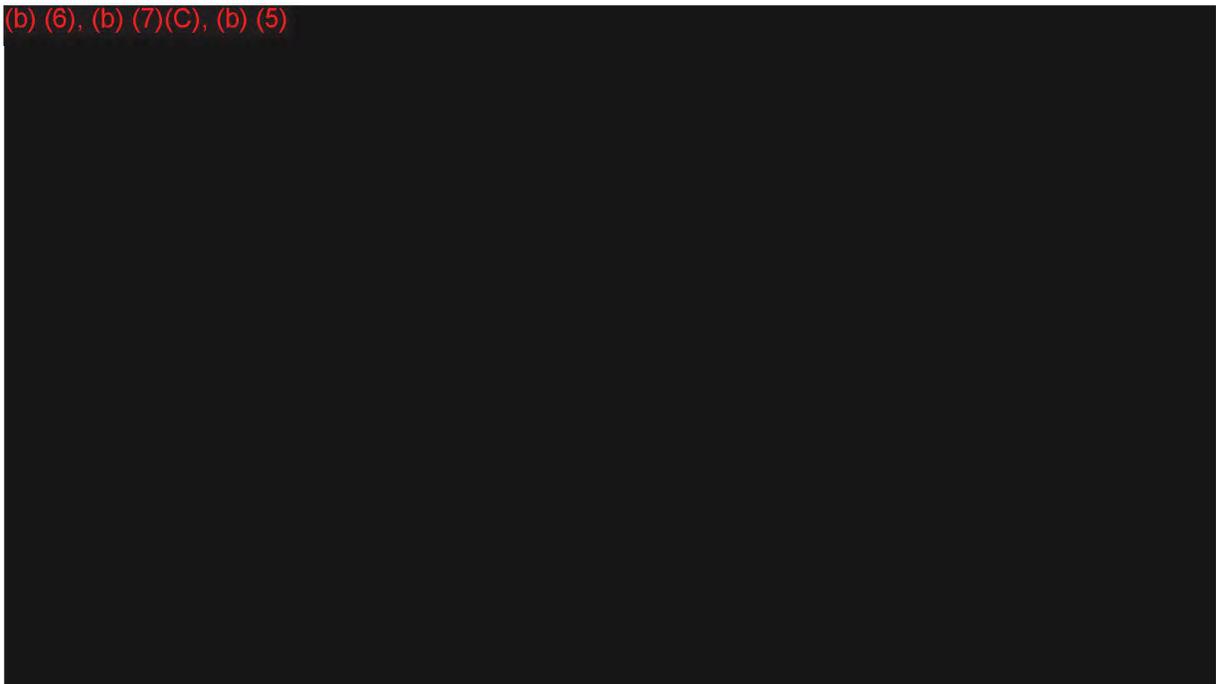
Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

recommended she be assigned to work primarily on ethics matters and receive leadership and management training. [CIGIE Complaint at 986-412]

In his allegations, (b) (6), (b) (7)(C) provided background information regarding IG Lavik's "Pre-existing Dislike for the Target" of the *Management Advisory: OGL*, (b) (6), (b) (7)(C). According to (b) (6), (b) (7)(C) the pre-existing dislike arose during CFTC OIG's work resulting in the February 21, 2014, report titled *Review of the Commodity Futures Trading Commission's Response to Allegations Pertaining to the Office of the Chief Economist*. This project was opened by CFTC OIG as a preliminary investigation and did not find evidence of illegal disclosures of confidential information by OCE employees in economic research papers or otherwise. However, CFTC OIG, concerned that OCE research and publication had ground to a halt, converted the preliminary investigation into a review of research and publication processes in the OCE. (b) (6), (b) (7)(C) described the source of IG Lavik's dislike in his complaint:

(b) (6), (b) (7)(C), (b) (5)



[CIGIE Complaint 986-361]

1 I avi evelo ed a egative ie o (b) (6), (b) (7)(C)

Although FCC OIG did not obtain and review the case file related to CFTC OIG's *Review of the Commodity Futures Trading Commission's Response to Allegations Pertaining to the Office of the Chief Economist*, FCC OIG asked questions about this project during interviews to determine if there was evidence that IG Lavik developed a dislike for (b) (6), (b) (7)(C) as a result of that *Review*. IG Lavik stated he did not have a negative opinion of (b) (6), (b) (7)(C) because of her position on shutting down the sharing of economic data outside the agency. [Exhibit A. 19 at 8] While IG Lavik did not agree with (b) (6), (b) (7)(C) decision, he thought the real problem was that she alienated her staff.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit A.19 at 8] DIG Ringle stated [REDACTED] did not stop the economic research, she did not know whether [REDACTED] was involved in making the decision, and it was her understanding that the decision came from the Chairman. [Exhibit A.28 at 13]

While it is unclear whether IG Lavik developed a negative view of [REDACTED] as a result of the February 2014 CFTC OIG *Review* involving the use of economic research, FCC OIG determined IG Lavik developed a negative view of [REDACTED] sometime prior to the project resulting in the June 2015 *Management Advisory: OGL*. During his interview, [REDACTED] stated IG Lavik did not like [REDACTED] and IG Lavik is older and he will say things [REDACTED] would not expect one to say in an office. [Exhibit A.25 at 10] [REDACTED] also stated that he has never seen Lavik make a decision based on his personal feelings, but that IG Lavik is transparent about how he feels about people and is not shy about expressing his opinion. [Exhibit A.25 at 10] (b) (6), (b) (7)(C) stated he recalls IG Lavik making derogatory comments about [REDACTED] but does not recall the time frame. [Exhibit A.5 at 2] [REDACTED] further stated that the comments were generic and questioned [REDACTED] competency. [Exhibit A.5 at 2]

(b) (6), (b) (7)(C) recalled that when decisions by the Office of General Law impacted CFTC OIG they were never well received by IG Lavik and he was neither happy nor interested in the legal merit of appropriations decisions or other decisions. [Exhibit A.14 at 3] With respect to the project resulting in the *Management Advisory: OGL*, [REDACTED] believes the project resulted from a dispute during which the Office of General Law supported (b) (6), (b) (7)(C) and did not support an OIG position. [Exhibit A.14 at 3] [REDACTED] stated she was told that (b) (6), (b) (7)(C) was out to get [REDACTED], that [REDACTED] and IG Lavik were buddies and the CFTC OIG review was a pretext. [Exhibit A.14 at 3] [REDACTED] further stated that her interview and the ultimate result were “gotchas” and not about policies. [Exhibit A.14 at 3] [REDACTED] also related that CFTC is a very gossipy place and the consequences of the OIG review were humiliating and devastating. [Exhibit A.14 at 3]

2. IG Lavik Did Not Initiate a Review of OGC’s OGL to Target [REDACTED] but Started a Review after Receiving Numerous Staff Complaints

FCC OIG obtained and reviewed email correspondence related to the *Management Advisory: OGL* and obtained and reviewed the electronic case file created by CFTC OIG related to this project. Although FCC OIG was not able to find evidence that CFTC OIG received “verbal complaints that administrative policies developed in OED were lagging in the Office of General Counsel (OGC), Office of General Law (OGL),” FCC OIG was able to identify email correspondence indicating the review was initiated because of concerns about delays related to administrative policies. [Exhibit 2.1; Exhibit 2.2] In addition, FCC OIG determined that CFTC OIG began receiving allegations of administrative misconduct involving [REDACTED] as far back as 2013. A memorandum to file prepared by DIG Ringle documents complaints from seven individuals involving poor management and inefficiencies. [Exhibit 2.2] DIG Ringle characterizes these allegations as a “possible hostile work environment.” [Exhibit 2.2] In January 2015, the CFTC OIG hotline received an anonymous complaint about [REDACTED] alleging “Abusive behavior towards general law staff,” “Wasteful lengthy meetings,” “Inability or incapacity to

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

help the Commission solve problems” and “Ruined relationships within OGC and throughout the building.” [Exhibit 2.1]

IG Lavik told FCC OIG (b) (6), (b) (7)(C) alienated everyone on her staff and he decided to conduct a management advisory to look into (b) (6), (b) (7)(C) behavior because the CFTC OIG was getting “buzzed” by her staff complaining about the terrible morale.²¹ [Exhibit A.19 at 8] In her interview, DIG Ringle stated IG Lavik decided this project should be a Management Advisory and she agreed with him. [Exhibit A.28 at 8] DIG Ringle also stated that she thought (b) (6), (b) (7)(C) was mentally ill and viewed her as sick and not a bad actor. [Exhibit A.28 at 8] DIG Ringle further explained that the matter started as a review of administrative procedures but OIG already knew of the allegations against (b) (6), (b) (7)(C) and the project morphed into a review of misconduct by (b) (6), (b) (7)(C) [Exhibit A.28 at 8]

(b) (6), (b) (7)(C) provided the FCC OIG a description of her understanding of the project. She stated:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit A.14 at 3]

3 I avi made derogatory and disparaging Comments about (b) (6), (b) (7)(C)

IG Lavik admitted he made disparaging or negative comments about (b) (6), (b) (7)(C) in front of CFTC OIG staff. [Exhibit A.19 at 9] DIG Ringle recalls IG Lavik making comments about (b) (6), (b) (7)(C) fitness for her job. [Exhibit A.28 at 13] DIG Ringle was also present when IG Lavik angrily stated “I want to fuck her.” [Exhibit A.28 at 13] DIG Ringle stated IG Lavik was angry and that she does not know what he meant. [Exhibit A.28 at 13] (b) (6), (b) (7)(C) also recalled the discussion when IG Lavik stated “I want to fuck her” and stated that he witnessed IG Lavik making this comment about (b) (6), (b) (7)(C) in DIG Ringle’s presence more than once. [Exhibit A.12 at 7] DIG Ringle also stated she was present when IG Lavik made comments about (b) (6), (b) (7)(C) sexual orientation and believes IG Lavik was joking when he made these comments. [Exhibit A.28 at 13] DIG Ringle does not recall if these comments were made before or during the *Management Advisory: OGL* review. [Exhibit A.28 at 13]

IG Lavik admitted that he might have said “I think (b) (6), (b) (7)(C) is a terrible manager” and that he believes (b) (6), (b) (7)(C) was unfit for her job. [Exhibit A.19 at 9] But IG Lavik maintained he did not

²¹ During the interview, IG Lavik asked FCC OIG investigators to ask DIG Ringle if the review “the CFTC OIG conducted was for Office of General Law or (b) (6), (b) (7)(C).” [Exhibit A.19 at 8]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

make comments about [REDACTED] sexual orientation. [Exhibit A.19 at 9] IG Lavik was asked directly if he made the comment “I want to fuck her” in reference to [REDACTED] in front of CFTC OIG staff. IG Lavik responded to this question by stating that this is not a word he would use and asking FCC OIG staff “Have you seen her?” [Exhibit A.19 at 9]

FCC OIG also interviewed CFTC OIG staff during this investigation. Several OIG staff recall IG Lavik making derogatory or negative comments about [REDACTED]. [REDACTED] recalls attending a meeting IG Lavik and [REDACTED] attended. According to [REDACTED] IG Lavik became angry with [REDACTED] during this meeting and slammed his hand on the table. [Exhibit A.12 at 7] [REDACTED] recalled this incident during her interview. [Exhibit A.14 at 3] [REDACTED] stated that, after that meeting, IG Lavik would raise his voice and turn red when he spoke of [REDACTED] [Exhibit A.12 at 7] [REDACTED] also recalls IG Lavik making derogatory comments about [REDACTED] during weekly staff conferences but could not recall the timeframe for these comments. [Exhibit A.5 at 2] [REDACTED] recollection is that the comments were generic and questioned [REDACTED] competency. [Exhibit A.5 at 2] [REDACTED] does not recall DIG Ringle making derogatory comments, but IG Lavik’s comments stand out to him. [Exhibit A.5 at 3] [REDACTED] stated it was hard for him to judge DIG Ringle’s and [REDACTED] objectivity, and whether IG Lavik’s comments colored their objectivity or created bias. [Exhibit A.5 at 3] CFC OIG [REDACTED] was familiar with the *Management Advisory: OGL* project but was not involved. [Exhibit A.8 at 3] When [REDACTED] was asked if this project was objective and unbiased, [REDACTED] stated that if IG Lavik had a negative opinion of you professionally, he will in turn have a negative opinion of you personally. [Exhibit A.8 at 3] [REDACTED] also stated that IG Lavik would go after professional staff who looked weak to him but IG Lavik does not fit the mold of someone who creates a blacklist of problem employees. [Exhibit A.8 at 3]

CFTC OIG [REDACTED] recalled the CFTC OIG review of the Office of the Chief Economist. Although he was not involved in this project, he witnessed IG Lavik making derogatory comments about [REDACTED] related to this project. [Exhibit A.2 at 3-4] [REDACTED] believes IG Lavik’s opinion of [REDACTED] is the result of DIG Ringle’s disagreements with [REDACTED] and IG Lavik’s support of DIG Ringle. [Exhibit A.2 at 3-4] [REDACTED] also believes that the *Management Advisory: OGL* project was initiated because IG Lavik was unhappy with [REDACTED] as a result of the Office of the Chief Economist review and that the review was an ad hominem attack on [REDACTED].²² [Exhibit A.2 at 4]

CFTC [REDACTED] finds OIG’s conduct related to this allegation most egregious, using CFTC OIG’s *Management Advisory: OGL* as an example. [Exhibit A.34 at 4] [REDACTED] stated he tries to identify issues before they bloom into problems. [Exhibit A.34 at 4] [REDACTED] was slow in her processes, was only interested in high profile political things, and allowed other things to languish. [Exhibit A.34 at 4] To manage the workflow, [REDACTED] and [REDACTED] set up an administrative timeline to try and keep items moving and on schedule. [Exhibit A.34 at 4] CFTC OIG became aware they were doing this and started an investigation looking into OGC not doing things in timely fashion, turning its

²² [REDACTED] was not involved in the *Management Advisory: OGL* project and this was the only comment FCC OIG received suggesting that the review was influenced by IG Lavik or DIG Ringle’s personal opinion of [REDACTED]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

investigation into a management review with a personal focus on [REDACTED] not asking questions related to the timeline, but engaging in inappropriate questioning, looking for dirt on staff. [Exhibit A.34 at 4] [REDACTED] was appalled by the direction of the report; [REDACTED] was difficult, but IG Lavik took a prominent role in having her removed. [Exhibit A.34 at 4] [REDACTED] noted CFTC OIG worked hard to get negative sentiment about the person on the record, but questioned whether this means the person should be removed. [Exhibit A.34 at 4] The result of the review was a report based on numerous and prominent personal attacks and statements, rather than an investigation of whether OGC was meeting the timeline established for deliverables. [Exhibit A.34 at 4]

B. Management Advisory: Office of Financial Management dated July 5, 2018

This Management Advisory focused on allegations of misconduct by former CFTC [REDACTED], who was [REDACTED] when the *Management Advisory: OFM* review and subsequent investigation were initiated. The matter was first referred to OIG on November 30, 2017, by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) seeking review of three complaints against [REDACTED] concerning backdating official documents and pressuring staff to do the same, pressuring subordinates to improperly approve procurement expenditures, unnecessary disclosure of medical information and “skirting” CFTC time and travel policies. [CIGIE Complaint 986-437] The July 5, 2018 *Management Advisory: OFM* found the complaints supported by credible testimony and the documentary evidence and recommended [REDACTED] be removed from her position. [CIGIE Complaint 986-437]

1. IG Lavik Developed a Negative View of (b) (6), (b) (7)(C)

Beginning in approximately 2015, CFTC OIG had frequent arguments with the CFTC budget office about “overhead.” [CIGIE Complaint 986-366] The CFTC charges OIG for use of certain resources including space. [CIGIE Complaint 986-366] CFTC pro-rates these charges across all divisions at the agency. [CIGIE Complaint 986-366] OIG is the only portion of the agency with an independent line-item budget from Congress. [CIGIE Complaint 986-366] While the CFTC OFM claims OIG is simply paying its share like every other division, in fact, the impact on OIG is a removal of hundreds of thousands of dollars from its separate line-item budget. [CIGIE Complaint 986-366]

[REDACTED] was the CFTC OIG point of contact on matters related to the calculation of overhead for CFTC OIG. According to [REDACTED] DIG Ringle was irritated about it and IG Lavik developed a dislike for [REDACTED] and took it personally. [Exhibit A.12 at 9; CIGIE Complaint 986-367] CFTC OIG staff are familiar with this dispute. (b) (6), (b) (7)(C) characterized it as a dispute with the agency about the amount charged OIG for overhead, and [REDACTED] observed that it had been a long battle. [Exhibit A.5 at 4; Exhibit A.26 at 3] [REDACTED] stated it was DIG Ringle’s view that OIG should not have to pay overhead and that the process of determining overhead was biased against OIG and hampered OIG efforts. [Exhibit A.2 at 4] According to [REDACTED] IG Lavik adopted DIG Ringle’s views. [Exhibit A.2 at 4] CFTC OIG hired a consultant focused on the overhead methodology and how it is calculated by the CFTC.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit A.5 at 4; Exhibit A.2 at 5; Exhibit A.26 at 3] (b) (5), (b) (7)(C) further stated that in his view DIG Ringle entered into an adversarial relationship with the agency over the calculation of overhead, and if the agency did not give OIG what it wanted, OIG would write a negative report. [Exhibit A.2 at 4] (b) (5), (b) (7)(C) added that IG Lavik and DIG Ringle had an internal hatred of (b) (5), (b) (7)(C) which fed into the overhead dispute. [Exhibit A.2 at 4]

2. The OFM Project was Initiated Because of Staff Complaints and not to Target (b) (5), (b) (7)(C)

CFTC management brought allegations involving misconduct by (b) (5), (b) (7)(C) to the CFTC OIG on November 30, 2017. Most of the allegations involved administrative misconduct by (b) (5), (b) (7)(C), but there was an allegation that (b) (5), (b) (7)(C) directed staff to falsely date a document to conceal a violation of the Anti-Deficiency Act (ADA). [CIGIE Complaint 986-437 – 986-440] These allegations were detailed and substantial and many were found to be supported in the *Management Advisory: OFM*. [CIGIE Complaint 986-435 – 986-446] According to (b) (5), (b) (7)(C) the Advisory had its beginnings in a dispute between the CFTC and OIG about the calculation of overhead. [Exhibit A.2 at 4] Regardless of OIG’s budgetary disputes, these allegations were an independent and reasonable basis for the initiation of a review of OFM.

IG Lavik did not recall whether (b) (5), (b) (7)(C) was involved in the discussions about overhead charged to OIG. [Exhibit A.19 at 10] IG Lavik also denied the review of the Office of Financial Management was influenced by OIG’s dispute with the CFTC about overhead charged to OIG. [Exhibit A.19 at 10] According to (b) (5), (b) (7)(C) IG Lavik’s feeling about (b) (5), (b) (7)(C) did not influence the *Management Advisory: OFM*. [Exhibit A.32 at 7] FCC OIG asked (b) (5), (b) (7)(C) and (b) (5), (b) (7)(C) directly about whether IG Lavik or DIG Ringle inappropriately targeted OIG or agency employees. (b) (5), (b) (7)(C) stated that IG Lavik never wanted to target or “get” anyone, he would not characterize anything that IG Lavik has done as motivated by animus and IG Lavik’s personal opinions have not motivated him to initiate an OIG review. [Exhibit A.32 at 14] (b) (5), (b) (7)(C) explained that IG Lavik is transparent about how he feels about people and is not shy about expressing his opinion but he has never seen IG Lavik make a decision based on his personal feelings. [Exhibit A.25 at 10]

3. IG Lavik made Derogatory or Disparaging Comments about (b) (5), (b) (7)(C) to OIG Staff

When asked whether he made derogatory comments to OIG staff about (b) (5), (b) (7)(C) such as she was incompetent, IG Lavik admitted he told staff about (b) (5), (b) (7)(C) ability to do her job. [Exhibit A.19 at 10] IG Lavik stated he thinks (b) (5), (b) (7)(C) was in the wrong place and her attitude was not good. [Exhibit A.19 at 10] DIG Ringle also recalls IG Lavik making derogatory or negative comments about (b) (5), (b) (7)(C) in DIG Ringle’s presence and IG Lavik agreeing with DIG Ringle’s comments about (b) (5), (b) (7)(C) behavior. [Exhibit A.28 at 14] According to DIG Ringle, IG Lavik did not initially state that (b) (5), (b) (7)(C) was incompetent but, by the end of the project, IG Lavik said (b) (5), (b) (7)(C) was incompetent and should be removed from her job. [Exhibit A.28 at 14] (b) (5), (b) (7)(C) related IG Lavik made derogatory comments about (b) (5), (b) (7)(C) in front of everyone all the time, saying that

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

she was incompetent due to her disagreement with IG Lavik about the overhead charges. [Exhibit A.12 at 9] [REDACTED] also recalled that IG Lavik repeatedly expressed that [REDACTED] was terrible at her job and needed to be replaced. [CIGIE Complaint 986-367] According to [REDACTED] IG Lavik did not think [REDACTED] was very smart but held no animus toward her. [Exhibit A.32 at 7]

[REDACTED] also heard IG Lavik make negative comments about [REDACTED] and thought the comments about [REDACTED] competency and skill level were more derogatory than his other comments. [Exhibit A.5 at 4] These comments came out when overhead battles started, and IG Lavik started making negative comments. [Exhibit A.5 at 4] IG Lavik often made negative comments about [REDACTED] and they were made during staff conferences in front of other OIG staff, including DIG Ringle, [REDACTED] and [REDACTED]. [Exhibit A.5 at 4] [REDACTED] did not witness IG Lavik making negative comments about [REDACTED] outside of the OIG office. [Exhibit A.5 at 4] [REDACTED] also recalled IG Lavik and DIG Ringle making negative comments about [REDACTED] including that she was completely unfair toward OIG in the overhead allocations. [Exhibit A.2 at 4]

(b) (6), (b) (7)(C) [REDACTED] stated that IG Lavik had a negative opinion of [REDACTED] before the allegations involving the backdating of documents were made, arising from the dispute over the calculation of overhead charged against OIG's budget, which was the responsibility of [REDACTED] and the Office of the Executive Director. [Exhibit A.8 at 4] According to [REDACTED] IG Lavik had already reached the conclusion that [REDACTED] was incompetent when the first staff complaint came in, and there were three whistleblowers.²³ [Exhibit A.8 at 5] [REDACTED] also indicated that IG Lavik made comments about [REDACTED] in OIG staff conferences. However, [REDACTED] stated that IG Lavik's comments at staff level meetings were not derogatory but questioned her competence and suggested that [REDACTED] was "chasing her tail." [Exhibit A.8 at 4]

The *Silver Book* defines integrity as the "cornerstone of all ethical conduct, ensuring adherence to accepted codes of ethics and practice" and that "Objectivity, independence, professional judgment, and confidentiality are all elements of integrity." *Silver Book* at 7. The *Silver Book* further states that objectivity "imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest." *Silver Book* at 7. Additionally, the Professional Judgement Standard of the CIGIE *Quality Standards for Inspection and Evaluation* "requires inspectors to exercise reasonable care and diligence and to observe the principles of serving the public interest and maintaining the highest degree of integrity, objectivity, and independence in applying professional judgment to all aspects of their work." CIGIE *Quality Standards for Inspection and Evaluation* at 6. The CIGIE *Quality Standards for Inspection and Evaluation Working Relationship and Communication Standard* urges inspectors to strive to act with professionalism and respect toward those being inspected and interested parties. CIGIE *Quality Standards for Inspection and Evaluation* at 19. As the individual responsible for conducting and supervising audits, inspections and evaluations, and investigations of agency programs and operations, it is critical that IG Lavik ensure that both he and CFTC OIG staff adhere to the highest ethical principles by conducting his work with integrity.

²³ [REDACTED] explained that IG Lavik's wife was a CPA and that this provided IG Lavik with a "special perspective to support his conclusion that [REDACTED] is not the right person for the job." [Exhibit A.8 at 4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 3

Whether the IG and DIG violated section 7(b) of the IG Act by unnecessarily compromising whistleblower anonymity and witness identities in OIG reports. Specifically, it is alleged that they deliberately named witnesses and complainants without their consent and, in some cases, after they specifically requested to remain anonymous due to fear of retaliation.

The investigation determined that this allegation is substantiated for IG Lavik and DIG Ringle. On at least three occasions, IG Lavik and DIG Ringle distributed and approved OIG staff distribution of the CFTC OIG report entitled “*Inspection & Evaluation: CFTC Stress Testing Development Efforts*” (“*Stress Testing Report*”) that contained the names of CFTC whistleblowers and witnesses before asking these individuals for consent to disclose their identities in the *Stress Testing Report*. Unredacted copies of the *Stress Testing Report* were distributed to the Senate Agriculture Committee by DIG Ringle and to CFTC staff with DIG Ringle’s approval before all witnesses replied to emails seeking consent to disclose their identities, including the names of witnesses who ultimately declined to give consent. In most of these transmittals of the *Stress Testing Report*, the *Report* was neither password protected nor were the recipients asked to refrain from further disseminating the report. Although FCC OIG does not know how widely unredacted versions of the *Stress Testing Report* was distributed within CFTC, we know that the unredacted *Stress Testing Report* was provided to a number of management and staff of CFTC’s Risk Surveillance Branch (“RSB”). Not until August 9, 2018 did CFTC OIG seek and obtain consent to disclose the names of whistleblowers and selected witnesses in the redacted version of the *Stress Testing Report*. Additionally, during the course of the investigation FCC OIG found no evidence that IG Lavik found the *Stress Testing Report*’s disclosure of the identities of witnesses who requested confidentiality was unavoidable thus establishing a violation of Section 7(b) of this Inspector General Act as well as non-compliance with Section VII.B.3 of the CIGIE *Quality Standards for Federal Offices of Inspector General* (“*Silver Book*”) at 36.

Particularly troubling is IG Lavik’s and DIG Ringle’s failure to develop and implement procedures to protect the confidentiality of whistleblowers and witnesses consistent with Section 7 of The Inspector General Act of 1978 and the Data Collection and Analysis Standard of the CIGIE *Quality Standards for Inspection and Evaluation*. Particularly troubling is CFTC OIG’s practice of submitting CFTC OIG reports that will be made public to the agency’s Office of General Counsel (“OGC”) and allowing OGC to have the final word on report redactions, particularly because OGC is not bound to comply with IG Act and CIGIE professional standards when redacting CFTC OIG reports. For example, after the final *Stress Testing Report* was sent to CFTC leadership and management on July 30, 2018, CFTC OIG worked with CFTC OGC to redact a copy of the final *Report* for public distribution. Also questionable is the practice of publishing the names of CFTC senior management in OIG reports based on their position alone.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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I. AC R

Between March 11, 2019 and March 27, 2019, (b) (6), (b) (7)(C) sent numerous email messages and documents to the CIGIE IC including a document summarizing his allegations including an allegation that “Management Reviews Target Disliked Staff and Appear Biased” (CIGIE Complaint 986-359 to 986-366). In the discussion of “management reviews” that target disliked staff and appear biased, (b) (6), (b) (7)(C) alleges that the reports for these projects disclosed whistleblower and witness identities.

Additionally, (b) (6), (b) (7)(C) provided the following statement:

(b) (6), (b) (7)(C), (b) (5)



[CIGIE Complaint 986-366] Additionally, (b) (6), (b) (7)(C) with CFTC’s Division of Clearing and Risk (“DCR”) filed a complaint with CIGIE claiming in part that he was neither asked to provide nor provided consent for his name to be used in the *Stress Testing Report*. [CIGIE Complaint 986-273] During his interview with the FCC OIG, (b) (6), (b) (7)(C) complained that even though his name was redacted from the public version of the *Stress Testing Report*, both CFTC staff and industry representatives could easily figure out that the *Stress Testing Report* was discussing him, because he manages (b) (6), (b) (7)(C) for the CFTC. [Exhibit A.35 at 4]

II. ES I A I RES S

A. Ins ection Evaluation CF C Stress esting evelo ment E orts

1. nredacted co ies o t e *Stress Testing Report* ere distri uted y I avi I Ringle and I sta rior to as ing itnesses or consent to discloset eir identities

On three occasions, unredacted copies of the *Stress Testing Report* were distributed to CFTC senior management and staff by IG Lavik, DIG Ringle and CFTC OIG staff prior to asking the

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

individuals who provided information to CFTC OIG whether they wanted their identities to be withheld from the public version of the *Stress Testing Report*. As FCC OIG found no evidence that IG Lavik found disclosure of witness identify was unavoidable, disclosure of witness names without their consent unnecessarily compromised whistleblower anonymity and witness identities, and resulted in a violation of Section 7(b) of the IG Act. Further, distribution of the unredacted *Stress Testing Report* to CFTC management was inconsistent with Section VII.B.3 of the *Silver Book*, which directs Inspector Generals to timely alert agency heads of egregious misconduct, consistent with confidentiality requirements. *Silver Book* at 36.

First, on March 12, 2018, IG Lavik sent an email message to CFTC Chairman Giancarlo and (b) (6), (b) (7)(C) attaching an unredacted draft copy of the *Stress Testing Report* dated February 26, 2018. [Exhibit 3.1] This draft *Report* did not mask any names and was neither encrypted nor password protected. IG Lavik did not include any direction in this email message regarding redistribution of the *Stress Testing Report* by Giancarlo or [REDACTED]. At the time this draft *Report* was provided to Giancarlo and [REDACTED] CFTC OIG had not yet requested permission from any of the CFTC whistleblowers and witnesses identified in this report to disclose their identities, including those witnesses who ultimately declined to give consent to disclose their identities in the *Stress Testing Report*.

FCC OIG was not able to determine how widely this draft *Stress Testing Report* was distributed within CFTC. However, the evidence gathered establishes the *Stress Testing Report* was distributed at least to Chicago RSB staff who used a copy of the *Report* to prepare a response. [Exhibit A.15 at 8-9]

Second, on July 30, 2018, DIG Ringle sent an email message to CFTC Chairman Giancarlo, Commissioner Quintenz, Commissioner Benham and copied to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C). [Exhibit 3.2] This email message included a final version of the *Stress Testing Report* dated February 26, 2018 (the date was unchanged from the draft *Report* date). The version of the *Stress Testing Report* included with this email message was unredacted (not masking the names of whistleblowers and witnesses) but was encrypted and password protected. [Exhibit 3.2] The password was provided in separate email message from DIG Ringle. [Exhibit 3.3] No warning against further distribution of the unredacted *Stress Testing Report* was provided by DIG Ringle in either email message. At the time this final version of the *Stress Testing Report* was distributed, CFTC OIG had not requested permission from any of the CFTC whistleblowers and witnesses identified in this *Report* to disclose their identities in the report, including those witnesses who later declined to provide such consent.

Third, on August 8, 2018, [REDACTED] sent an email message to (b) (6), (b) (7)(C) with Chicago RSB. [Exhibit 3.4] This email message included an unredacted copy of the *Stress Testing Report* that was not encrypted or password protected. [Exhibit 3.4] In his email message, [REDACTED] stated that "I am attaching the OIG report, which I have already shown you, along

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

with (b) (6), (b) (7)(C) response²⁴” and asked “Please take a look and let (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) know if you would like to respond. They are putting together their own separate response.” [Exhibit 3.4] (b) (6), (b) (7)(C) did not caution (b) (6), (b) (7)(C) about redistributing the *Stress Testing Report*. Since this version of the *Stress Testing Report* was also unredacted, it did not mask the names of whistleblowers and witnesses. At the time this final version of the *Report* was distributed, CFTC OIG still had not requested permission from any of the CFTC whistleblowers and witnesses identified in this *Report* to disclose their identities in the *Stress Testing Report*, including those witnesses who later declined to provide such consent.

FCC OIG was unable to find any evidence that (b) (6), (b) (7)(C) requested authorization to provide the *Stress Testing Report* to (b) (6), (b) (7)(C) or that processes had been put in place by OIG management to protect the confidentiality of witness identities disclosed in OIG reports when the reports were disseminated prior to whistleblowers and witnesses being asked for consent to disclose their identities in OIG reports. Additionally, although FCC OIG was unable to find any evidence that (b) (6), (b) (7)(C) provided a copy of the unredacted *Stress Testing Report* to (b) (6), (b) (7)(C) with the Margin Modeling Group (“MMG”) within DCR, and (b) (6), (b) (7)(C) of RSB, the statements in (b) (6), (b) (7)(C) August 8, 2018, email to (b) (6), (b) (7)(C) makes clear that copies of the unredacted *Stress Testing Report* had been provided earlier both to (b) (6), (b) (7)(C) and to at least two other CFTC staff. [Exhibit 3.4] These distributions of the *Stress Testing Report* were all prior to whistleblowers and witnesses being asked for consent to disclose their identities in this *Report*.

During his interview, IG Lavik stated he could not imagine CFTC OIG would send the unredacted report to Washington, D.C. staff, MMG, and if it was provided to Washington D.C. staff, it was only to see if the report was accurate. [Exhibit A.19 at 11] When IG Lavik was told that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) shared the unredacted *Stress Testing Report* with MMG staff, IG Lavik told FCC OIG to talk with Ringle about this point. [Exhibit A.19 at 11]

During her interview, DIG Ringle was asked about (b) (6), (b) (7)(C) sharing the unredacted *Stress Testing Report* with CFTC staff. DIG Ringle stated she was not aware that (b) (6), (b) (7)(C) shared the unredacted *Stress Testing Report* with (b) (6), (b) (7)(C) and noted that (b) (6), (b) (7)(C) was on a detail with (b) (6), (b) (7)(C) at the time the *Report* was shared with (b) (6), (b) (7)(C) [Exhibit A.28 at 17] DIG Ringle was asked if she was concerned about the unredacted *Stress Testing Report* being shared with CFTC staff and she stated that “it depended on the purpose” and that if (b) (6), (b) (7)(C) distributed the report to confirm its accuracy, it could have been fine for him to do so. [Exhibit A.28 at 17]

²⁴ This is the response to the draft *Stress Testing Report* prepared by Chicago RSB managers. [CIGIE Complaint 986-177 – 986-267]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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2. Unredacted Copies of the *Stress Testing Report* Were Distributed on Two Separate Occasions Before All Witnesses Replied to Emails Seeking Consent to Disclose Their Identities

First, on August 9, 2018, CFTC OIG staff sent an email request to select CFTC Washington D.C. staff asking for consent to disclose their identities in the *Stress Testing Report*.²⁵ [Exhibit 3.5; Exhibit 3.6] While some CFTC whistleblowers and witnesses promptly responded to the CFTC OIG staff request, others, including two witnesses who requested that their identities not be disclosed, did not reply until August 27, 2018. [Exhibit 3.7; Exhibit 3.8] Nevertheless, on the same date that the request went out, [REDACTED] sent an email message to the IG Lavik, DIG Ringle and [REDACTED] requesting permission to send an unredacted copy of the *Stress Testing Report* to (b) (6), (b) (7)(C) with the Risk Surveillance Branch within DCR. In this email message, [REDACTED] states the following:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 3.9] In her response to this request, DIG Ringle states the following:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 3.10] After receiving this response from DIG Ringle, [REDACTED] sent an email message to [REDACTED] that included an unredacted copy of the *Stress Testing Report*. The *Stress Testing Report* was not encrypted or password protected and no instructions were provided about redistributing the *Stress Testing Report*. [Exhibit 3.11] Since this version of the *Stress Testing Report* was unredacted, it did not mask the names of CFTC whistleblowers and witnesses and since the request for permission only was sent out that day, CFTC OIG had not received consent from all of the CFTC whistleblowers and witnesses identified in this report for permission to disclose their identities in the *Stress Testing Report*, including those two witnesses who later declined to provide such consent. [Exhibit 3.7; Exhibit 3.8] This distribution of the *Stress Testing Report* is inconsistent with the principles outlined in the Data Collection and Analysis Standard of the CIGIE *Quality Standards for Inspection and Evaluation* that OIGs “should develop and implement procedures for maintaining the confidentiality of individuals providing information”

²⁵ The only staff who were asked to provide consent for their names to be included in the redacted *Stress Testing Report* were staff who would be expected to have a favorable view of the Report’s conclusions: [REDACTED]

[REDACTED], FCC OIG found no evidence that staff were pressured to provide consent for their names to be included in the redacted *Stress Testing Report*. [Exhibit 3.5]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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and “must carefully monitor their actions and words to not inappropriately reveal the source of information.” *CIGIE Quality Standards for Inspection and Evaluation* at 11-12.

Second, on August 15, 2018, pursuant to a request from the Committee Chairman, DIG Ringle distributed an unredacted copy of the *Stress Testing Report* to the Senate Agriculture Committee (minority and majority staff).²⁶ [Exhibit A.28 at 17] Since this version of the *Stress Testing Report* was unredacted, it did not mask the names of CFTC whistleblowers and witnesses. At the time this final version of the *Stress Testing Report* was distributed, CFTC OIG had not received consent from all of the CFTC whistleblowers and witnesses identified in this *Report* for permission to disclose their identities in the *Stress Testing Report*, including those two witnesses who later declined to provide such consent. [Exhibit 3.7; Exhibit 3.8]

**3 Claims that the *Stress Testing Report* as distributed to Ensure its Accuracy
Accuracy in Fact and Even if True do not Excuse Non-compliance with
Section 7 of the IG Act**

During the investigation, both IG Lavik and DIG Ringle stated that it was acceptable for an IG report to be distributed to ensure its accuracy. Here, the distribution of the unredacted *Stress Testing Report*, without first obtaining consent from all CFTC whistleblowers and witness to disclose their identities in this *Report*, even to ensure accuracy, was contrary to law. Additionally, the accuracy rationale for the distribution advanced by IG Lavik and DIG Ringle appear to lack a factual basis.

At the outset, it must be noted that Section 7(b) of the IG Act provides an IG “shall not” disclose the identity of an employee who provides information to the IG “without consent of the employee.” The Inspector General Act of 1978, as amended, Section 7(b). IG Lavik and DIG Ringle apparently believe that the goal of producing an accurate report excuses compliance with Section 7(b). As noted above, IG Lavik stated in his interview if a complete unredacted OIG report was distributed to CFTC staff, it would only be to confirm the accuracy of the report. [Exhibit A.19 at 11] Because DIG Ringle was actively involved in response to the CFTC staff questions about and redaction and distribution of the *Stress Testing Report*, she was specifically asked about the Chicago RSB response CFTC OIG received the day the final *Stress Testing Report* was issued, July 30, 2018. DIG Ringle responded that she does not know why Chicago RSB staff provided a response to the *Stress Testing Report*. [Exhibit A.28 at 22]

DIG Ringle reviewed the Chicago RSB staff response to the *Stress Testing Report* and reached out to them and told them to file their concerns with CIGIE IC. [Exhibit A.28 at 22] DIG Ringle was not concerned about Chicago RSB staff’s claims of factual inaccuracy and thought [REDACTED] and (b) (6), (b) (7)(C) brought good facts to the Commission, and to the extent to which DIG Ringle was “exposed to their work, it sounded solid to me.” [Exhibit A.28 at 22] DIG Ringle objected to the tone of the report when it was given to her, but she thought the facts were useful. [Exhibit A.28 at 22] CFTC (b) (6), (b) (7)(C) told DIG Ringle that RSB staff asked to meet with her,

²⁶ While the Privacy Act could permit distribution of an unredacted OIG report to Congress, submission of the *Stress Testing Report* to Congress would still be subject to the restrictions contained in the IG Act.

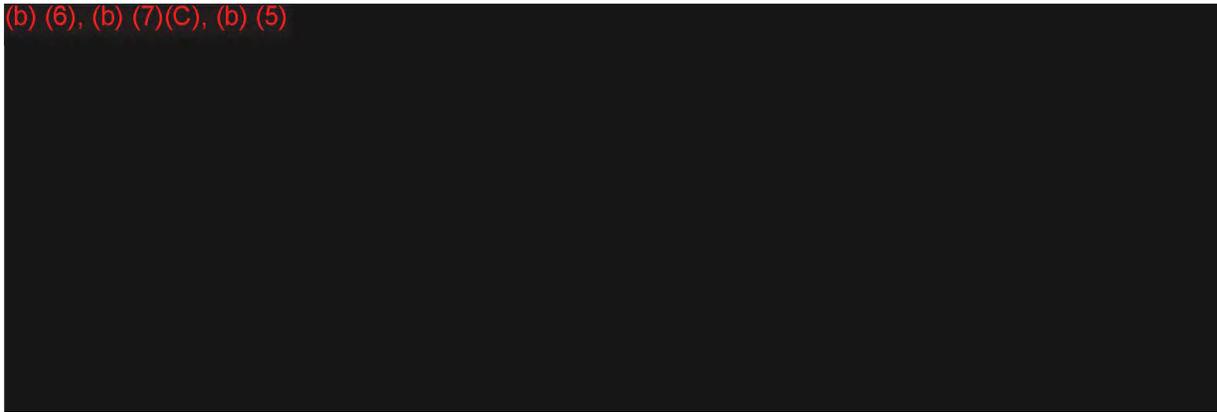
Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

but she did not meet with them because the *Stress Testing Report* already had been issued. [Exhibit A.28 at 22] DIG Ringle was not in a position to tell IG Lavik, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to change the *Stress Testing Report*, so she told RSB staff to file the complaints with CIGIE IC. [Exhibit A.28 at 22]

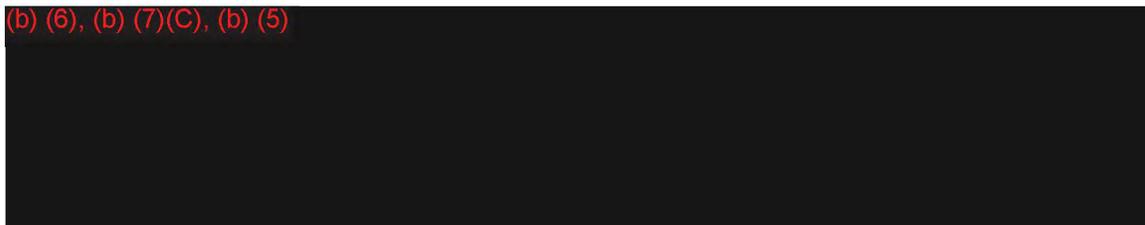
Also, during DIG Ringle's interview, she was shown a copy of her August 9, 2018, email message to (b) (6), (b) (7)(C) authorizing the disclosure of the unredacted *Stress Testing Report* to (b) (6), (b) (7)(C).²⁷ [Exhibit A.28 at 17] In her follow-up written response to the interview (provided through her attorney on October 1, 2020), DIG Ringle provided the following additional information:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit A.28 at 17] DIG Ringle's contemporaneous statements about the finality of the *Stress Testing Report* paint a different picture and seemingly contradict her 2020 interview statements that she approved distribution of this *Report* to ensure its accuracy. CFTC OIG issued the final *Stress Testing Report* on July 30, 2018. Chicago RSB management provided a written response to the *Stress Testing Report* on that same date claiming the *Stress Testing Report* was not factually accurate. [CIGIE Complaint 986-177 – 986-266] DIG Ringle's contemporaneous response to Chicago RSB management strongly indicates she considered the *Stress Testing Report* final and not subject to change when it was issued on July 30, 2018. In an August 7, 2018 Email to (b) (6), (b) (7)(C) DIG Ringle stated:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 3.12] Absent from DIG Ringle's response to Chicago RSB management's 90+ page submission is any concern about the possible factual inaccuracies in the *Stress Testing Report*

²⁷ As described above, CFTC OIG staff, in one instance with permission of IG Lavik and DIG Ringle, shared both the unredacted *Stress Testing Report* and the Chicago RSB management response with CFTC staff shortly after the response was received. The Chicago RSB staff response was distributed by CFTC OIG staff without requesting approval to distribute the response from its authors.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

detailed in the submission. Instead, the only way DIG Ringle's response can be interpreted is that CFTC OIG would not be opening a dialog with Chicago RSB management to determine whether the *Stress Testing Report* contained any inaccuracies.

Indeed, this is how DIG Ringle's August 7 response was interpreted by Chicago RSB management. By way of background, Chicago RSB management submitted a written response to a draft of the *Stress Testing Report* only after DIG Ringle refused to meet with Chicago RSB management to discuss their concerns and told RSB management to put their concerns in writing. [CIGIE Complaint 986-3] Chicago RSB staff "received no response other than a thank you and a sentence from Ms. Ringle that we were aware of our rights to refer our concerns to CIGIE." [CIGIE Complaint 986-4; Exhibit 3.12]

Similarly, in a chat conversation between DIG Ringle and [REDACTED] on August 7, 2018 (the day before [REDACTED] shared the unredacted *Stress Testing Report* with [REDACTED]), DIG Ringle states that "anyway, very impressed with [REDACTED] he consulted with witnesses. looks nobody else is questioning the paper except the authors of hte [sic] response" and "if they issue something that's up to them," "we can post it with our report when we get it but it is final as far as i'm concerned" and "like, we're not changing the report at htis [sic] point." [Exhibit 3.13] Based on this discussion, it does not appear that DIG Ringle approved transmission of the *Stress Testing Report* to CTFC staff to ensure its accuracy, because at that time, she considered the *Stress Testing Report* final and not subject to change.

These statements compel the conclusion that DIG Ringle considered the *Stress Testing Report* final on August 7, 2018, thus rendering the accuracy justification for her August 9, 2018 approval to distribute a complete copy of the unredacted *Stress Testing Report* to MMG staff questionable, at best. DIG Ringle's 2020 explanation is not consistent with her 2018 statements to [REDACTED] and Chicago RSB management days after the *Stress Testing Report* was issued. The final *Report* had been issued and DIG Ringle had already reached a conclusion about the factual accuracy of the *Stress Testing Report* as is evidenced by her August 7 statement to [REDACTED] "nobody else is questioning the paper except the authors of hte [sic] response" and "like, we're not changing the report at htis [sic] point." [Exhibit 3.13] By August 7, 2018, DIG Ringle had already concluded that the *Stress Testing Report* was final and would not be changed. As such claims that the *Stress Testing Report* was distributed later in August to ensure accuracy are questionable, because if the *Stress Testing Report* was final and not subject to change, there would be no reason to distribute it to ensure its accuracy. Thus, even if Section 7(b) allowed the distribution of an unredacted OIG report to ensure its accuracy, it would not excuse the distribution here, because when the *Stress Testing Report* was distributed, it was considered final and not subject to change.

CFTC OIG worked with OGC attorney [REDACTED] to redact and produce a public version of the *Stress Testing Report*. This redacted *Report* was published in December 2018. [Exhibit 3.14] Although FCC OIG found no evidence that CFTC OIG applied pressure on those individuals who did give permission to release their names, the redacted *Stress Testing Report* does not comply with the standard established in the IG Act permitting disclosure.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

The *Stress Testing Report* contains the names of staff that were never asked if their identities could be disclosed. Neither [REDACTED] nor (b) (6), (b) (7)(C) [REDACTED] who gave evidence to CFTC OIG staff in interviews and ultimately were targets of criticism in the *Stress Testing Report*, and whose names appear in the *Report*, were ever asked whether their names could be disclosed in the public version of the *Stress Testing Report* and thus never gave their consent. Indeed, other Chicago RSB staff who were criticized in the *Stress Testing Report* were never asked whether they agreed to their names appearing in the public version of the *Stress Testing Report* ([REDACTED] and [REDACTED]), while another specifically requested during his interview that his name not be publicly disclosed ([REDACTED]).²⁸

Moreover, the CFTC staff names are redacted inconsistently.²⁹ The names [REDACTED] and [REDACTED] were redacted in parts of the *Stress Testing Report* and revealed in other parts of the public version. Specifically, their names are redacted in the first 16 pages of the *Stress Testing Report*, in instances where their emails and witness interview material was cited, and in other portions where their behavior and actions were described by other CFTC staff, including CFTC OIG staff. While it is understandable that [REDACTED] and [REDACTED] names were revealed in reference to an article they wrote that was cited in the public *Stress Testing Report*, in other instances [REDACTED] name is made public in discussions of his emails and actions taken after he became [REDACTED]. *Stress Testing Report* at 17, 21, 23-25. DIG Ringle explained that once [REDACTED] was promoted (b) (6), (b) (7)(C) in January 2017, his name no longer needed to be redacted. [Exhibit A.28 at 16] Additionally, when describing an open meeting where staff made presentations, the redacted *Stress Testing Report* reveals one staff presenter's name at the beginning of a paragraph but redacts this name at the end of the same paragraph. *Stress Testing Report* at 24.

B. The CFTC OIG's General Approach to Confidentiality is Inconsistent With the IG Act and CIGIE *Quality Standards for Inspection and Evaluation*

Section 7(b) of the IG Act mandates that an IG shall not disclose the identity of an employee who provides information to the IG without the consent of the employee or unless the IG determines, during the course of the investigation, disclosure is unavoidable. The legislative

²⁸ In an email message from [REDACTED] to [REDACTED] on August 14, 2018, [REDACTED] asked "If my name is currently included in the report, will it be redacted in the public version?" and stated that "I would like it to be." [Exhibit 3.15] In his response, [REDACTED] states that "I'm attaching what we received from OGC last week" and stating that "The redactions have not yet been finalized, but your name has been redacted and I'm not aware of any reason why that would change." [Exhibit 3.16] In a response to DIG Ringle and [REDACTED] on August 16, 2018, [REDACTED] states that "I understand that the attached is not final, but my name has not been fully redacted as I see it in the report five times" and "I'll reach out to [REDACTED] in OGC." [Exhibit 3.17]

²⁹ In the redacted *Stress Testing Report*, whistleblower [REDACTED] and witness [REDACTED] names were redacted in some parts of the *Stress Testing Report*, but not others. [REDACTED] and [REDACTED] gave consent for their names to be used in the *Stress Testing Report* so the inconsistent handling is not problematic. The CFTC OIG honored the confidentiality requests of other witnesses who gave information favorable to CFTC OIG's point of view, and their names (b) (6), (b) (7)(C) [REDACTED] are redacted in the public version of the *Stress Testing Report*. [Exhibit 3.7; Exhibit 3.8]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

history of section 7(b) emphasizes the importance of assuring and maintaining confidentiality to federal employees who provide information to the IG:

protection of the complainant's identity is essential not only to prevent retaliation against the employee, but to assure a free flow of information to the (inspector and auditor general) . . . It is expected the disclosure of a complainant's identity will be necessary only in the rarest of circumstances.

S. Rept. 95-969, at 33; S. Rep. No. 1071, 95th cong., 2nd sess. 1978, 1978 u.s.c.c.a.n. 2676, 1978 wl 8639 (leg.hist.) (Aug. 5, 1977), page 36. This requirement is echoed in the Data Collection and Analysis Standard of the CIGIE *Quality Standards for Inspection and Evaluation*, which also states “IGs should develop and implement procedures for maintaining the confidentiality of individuals providing information.” *CIGIE Quality Standards for Inspection and Evaluation* at 11-12.

The evidence strongly suggests CFTC OIG neither complied with the statutory mandate nor developed and implemented procedures for maintaining witness confidentiality. During the course of the investigation, other than maintaining confidential OIG project files, the FCC OIG did not find evidence that CFTC OIG developed and implemented procedures to maintain witness confidentiality. Even if CFTC OIG had developed and implemented such procedures, these procedures could not ignore the requirements of either the IG Act or other laws and adopt policies inconsistent with them. More importantly, CFTC OIG does not redact either confidential information or whistleblower or the identity of witnesses who provide information from the published versions of its reports. Instead, CFTC OIG relies on the agency’s OGC to redact CFTC OIG reports. OGC will consult with OIG about redactions, but the final decision on redactions is made by OGC, as is evidenced by the statement on the cover of the *Stress Testing Report*: “OIG does not agree with the redaction on page 24.” *Stress Testing Report* cover page; [Exhibit A.28 at 15; Exhibit A.25 at 10; Exhibit A.32 at 12] When redacting a CFTC OIG report, OGC may be applying different criteria or for an entirely different set of reasons, instead of applying Section 7(b) requirements. However, the IG Act makes it clear that the IG, not the agency’s OGC, is responsible for ensuring OIG compliance with the IG Act and protecting witness identities. By outsourcing redaction responsibility to OGC, it is difficult to understand how CFTC OIG complies with Section 7(b) of the IG Act, the CIGIE *Quality Standards for Federal Offices of Inspector General* and the CIGIE *Quality Standards for Inspection and Evaluation*.³⁰

FCC OIG found no evidence that IG Lavik found during the investigation that resulted in the *Stress Testing Report* that disclosure of witness identities in the *Stress Testing Report* was unavoidable. When asked specific questions about the inclusion and redaction of witness identities in OIG reports, IG Lavik stated he had no idea how to answer this question and referred the questions to DIG Ringle. [Exhibit A.19 at 10-11] IG Lavik also remarked he does not have “much use for the Privacy Act.” [Exhibit A.19 at 11] IG Lavik also noted that Ringle talks a lot to (b) (6), (b) (7)(C) from the CFTC General Counsel’s Office about redactions. [Exhibit A.19 at 11]

³⁰ See, CIGIE *Quality Standards for Federal Offices of Inspector General*, Section II.D Confidentiality at 17.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

In her interview, DIG Ringle acknowledged Section 7(b) of the IG Act prohibits disclosing the name of an individual whistleblower or witness who tells OIG about actions and events. [Exhibit A.28 at 15] But, according to DIG Ringle, Section 7(b) does not require the redaction of the names of the actors; only the names of the sources of information must be redacted. [Exhibit A.28 at 15] When describing an act or an event, OIG never asks for permission from the “actor” to include his or her name in a report; OIG only asks for permission to name an individual when the individual is a source. [Exhibit A.28 at 16] DIG Ringle also takes the position that identities of CFTC employees with the rank Division director or higher no longer need to be shielded from disclosure in CFTC OIG reports. [Exhibit A.28 at 16] DIG Ringle believes if CFTC OIG finds an employee doing something wrong, the CFTC has a right to know, and if the discovery is based on CFTC OIG fieldwork, CFTC OIG can include the name of someone in the public report without asking for permission. [Exhibit A.28 at 17-18] Interestingly, the approach described by DIG Ringle is not consistently applied in CFTC OIG public reports. While the names of the targets of the *Stress Testing Report* are stated in the public version of the *Stress Testing Report*, the name of (b) (6), (b) (7)(C), who is the target of the *Management Advisory: Office of Financial Management* (“*Management Advisory: OFM*”) and who the CFTC OIG recommends be removed from her position based on wrongdoing, is redacted throughout the public version of the *Management Advisory: OFM*. [Compare Exhibit 3.18 with Exhibit 3.19]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 4

Whether the IG and DIG failed to follow CIGIE standards in the CFTC OIG report titled, "CFTC Stress Testing Development Efforts." Specifically, it is alleged that they failed to present factual data accurately, fairly, and objectively and ignored substantive relevant input from agency subject matter experts and/or exculpatory evidence or information contrary to the report's conclusions.

The investigation produced evidence that IG Lavik exhibited disregard for and failed to follow the CIGIE professional standards during the inspection that resulted in the CFTC OIG report entitled "*Inspection & Evaluation: CFTC Stress-Testing Development Efforts.*" ("*Stress Testing Report*") https://www.cftc.gov/sites/default/files/2018-12/oig_ie_CFTCStressTest_022618.pdf The evidence also shows IG Lavik improperly engaged in management functions and decisions for the agency by supplanting its own judgment as to how, and by whom, stress testing should be conducted.

We further determine that the investigation did not produce sufficient evidence to support the allegation for DIG Ringle, who did not participate in this project in a meaningful way, including in a supervisory capacity and, as a result, was not responsible for ensuring that the project was conducted in accordance with CIGIE professional standards. A fulsome explanation of the facts gathered by FCC OIG supporting these findings are detailed in the Technical Appendix.

I A C R

The CFTC OIG's Stress Testing Inspection started with a complaint to the CFTC OIG by an employee who was unhappy with a management decision of the CFTC's Division of Clearing and Risk ("DCR") to discontinue work on a number of projects, including a stress testing project that was not the primary task of his unit, the Margin Model Group ("MMG"). The CFTC OIG took this complaint as an invitation to examine a core agency function and its management, as well as several other tangentially related areas.

For this allegation, FCC OIG measured the inspection process and report against the CIGIE *Quality Standards for Inspection and Evaluation* and found evidence that shows the CFTC OIG's entire inspection process and the *Stress Testing Report* itself, both supervised by IG Lavik, failed to comply in material aspects with eight of the 14 *Quality Standards*: Competency, Independence, Professional Judgment, Quality Control, Planning, Evidence, Reporting and Working Relationships and Communication.³¹ FCC OIG also found evidence of noncompliance with CIGIE *Quality Standards for Federal Offices of Inspector General* ("*Silver Book*" published August 2012) Sections II.C.3 (Independence) and VII.B.3 (Keeping the Head of the Agency Informed). IG Lavik, in his supervisory role for this report and as head of CFTC OIG, did not

³¹ FCC OIG did not believe this assignment required it to master the fine points of stress testing to substantively analyze the *Stress Testing Report*.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

undertake a careful, in-depth review of the *Stress Testing Report's* assertions to ensure that they were both accurate supported by the inspection record. During the inspection, evidence contrary to the *Stress Testing Report's* conclusions was consistently provided, corroborated and repeatedly explained to CFTC OIG inspectors, who disregarded it. Consequently, the negative consequences resulting from the lack of compliance with these eight *Quality Standards* and provisions of the *Silver Book* are manifest in the *Stress Testing Report* itself.

After the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted in 2010, participants in the CFTC-regulated markets were required to submit transaction data to the CFTC. (b) (6), (b) (7)(C) in Chicago, and (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) manager in Washington, D.C., developed stress testing using this data to calculate daily risk. As the market evolved, Chicago RSB stress testing also evolved and staff with specialized expertise were hired. In time, a group of “quants” (experts in the field of quantitative analysis) became part of MMG in Washington, D.C., whose primary job was to support CFTC risk surveillance efforts by examining the industry’s margin models. MMG’s secondary task included work on stress testing, and MMG’s (b) (6), (b) (7)(C) was tasked with ensuring that MMG’s stress tests were developed in a manner that would allow them to be transferred to risk analysts outside MMG.

Tensions developed between the younger and more technically-savvy MMG staff, and the industry-savvy, somewhat older Chicago RSB team, which led to a lack of trust, unhealthy competition and management issues. MMG started spending less time reviewing margin models, leaving portions of their main tasks incomplete, and more time on stress testing. MMG began developing some basic systemic and full revaluation stress testing, while Chicago RSB was also acquiring the talent to develop these new products. The initial MMG supervisory stress test, which MMG insisted on presenting to upper CFTC management before it was closely reviewed by MMG’s Chicago RSB managers, had numerous flaws and was judged “not ready for prime time” by (b) (6), (b) (7)(C) of the CFTC’s Division of Clearing and Risk (“DCR”). Meanwhile, Chicago RSB management was working with CFTC’s Human Capital Unit (“HR”) to resolve the personnel issues with MMG. This situation set the stage for the complaint filed with CFTC OIG by the MMG staff.

From the outset and throughout the inspection, until it concluded with the drafting of the *Stress Testing Report*, CFTC OIG either disregarded the CIGIE *Quality Standards for Inspection and Evaluation* entirely or disparaged them.

Instead of exploring Chicago RSB’s attempt to resolve matters through HR, CFTC OIG attorney/economists appeared to prematurely determine that MMG’s new technical approach was superior to the established Chicago RSB stress-testing methodology before they even interviewed Chicago RSB staff. CFTC OIG also ignored information that conflicted with their initial determination and Chicago RSB’s offers to help CFTC OIG understand the totality of the complex risk surveillance program, of which stress testing was only one part. The *Stress Testing Report* repeatedly disregards evidence contrary to its conclusions, an error that should have been caught by IG Lavik, had he appropriately responded to CFTC feedback while the report was in

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

draft and/or otherwise effectively supervised the inspection and drafting process. Instead, the result was an unprofessionally produced and biased *Report* that not only chose the “winning” side on a core agency function but also criticized the “losing” side and inaccurately described both their actions and motives. Prior to the issuance of the *Stress Testing Report*, then-CFTC Chairman J Christopher Giancarlo told IG Lavik that “he did not know why they [OIG] were taking sides on this conflict, but to advocate one side over the other with such emotion, to disparage individuals on the Chicago team was not smart, up to date or competent.” (b) (6), (b) (7)(C) [REDACTED] was similarly direct, stating that “the IG was unprofessional and wrong,” and “in retrospect thinks the IG should have been told that the report was bogus and nothing would be done.”

After the draft *Stress Testing Report* was provided to the Chairman in February 2018, the Chicago RSB staff drafted a thorough and lengthy 95-page response pointing out inaccuracies in the draft *Report*. Although the Chicago RSB response was not adopted by CFTC management, on the day the *Stress Testing Report* was finalized in July 2018, (b) (6), (b) (7)(C) [REDACTED] told Chicago staff to forward their response to CFTC OIG. IG Lavik, relying on the CFTC OIG inspectors’ representations that there was nothing to worry about in the staff response, ignored the Chicago staff response and made no substantive changes to the *Stress Testing Report*.

The *Stress Testing Report* was published on the CFTC website in December 2018, days before the 2019 government shutdown. The *Stress Testing Report* never received much public attention. When Chicago RSB staff complained to CFTC OIG about the published *Stress Testing Report*, the CFTC OIG told Chicago staff they could make their complaints to the Commission or CIGIE IC, because the report had already been issued, their critique had not been adopted by CFTC management, and DIG Ringle did not feel the *Stress Testing Report* could be changed at that point. Chicago staff presented their complaints to CIGIE IC during the 2019 government shutdown.

Prior to and after the *Report* was finalized, IG Lavik inserted himself into agency personnel matters and recommended specific personnel actions; he frequently told CFTC leadership they should not promote an internal Chicago RSB candidate to replace (b) (6), (b) (7)(C) [REDACTED], and publicly aired concerns about the lack of mid-level management changes in CFTC OIG’s Semi-Annual Reports to Congress.

The IG’s purported basis for the inspection and the subsequent *Stress Testing Report*, was to promote efficiency in the operations of the CFTC; however, the evidence shows IG Lavik used this as a platform to improperly insert himself into management decisions that witnesses, including the former CFTC Chairman, (b) (6), (b) (7)(C) [REDACTED], and (b) (6), (b) (7)(C) [REDACTED], agreed were well within the purview of CFTC management. Equally troubling is the CFTC OIG’s taking sides in a core agency function, and supplanting its own judgment as to how, and by whom, stress testing should be conducted.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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II I E S I A I R E S S

Contrary to the *CIGIE Quality Standards for Inspection and Evaluation* Quality Control Standard, CFTC OIG did not develop and implement written policies and procedures for internal controls over its inspection work or have quality control mechanisms that provided an independent assessment of inspection processes and work. IG Lavik does not believe written policies and procedures for Inspection and Evaluation are needed in a small agency. When asked whether the CFTC OIG has its own Inspection & Evaluation policies, IG Lavik did not answer and deflected the question by stating “if you have been in law and are smart, you can do Inspections & Evaluations.”

A CFTC OIG internal guide for Inspections and Evaluations was not created until November 2017, after an Inspection and Evaluation peer review was scheduled. These written internal procedures were created to satisfy the CFTC OIG’s responsibility, as an organization that conducts Inspections and Evaluations, to develop internal written policies and procedures to ensure that all such work complies with the *CIGIE Quality Standards for Inspection and Evaluation*.

The most recent version of CFTC OIG Inspections and Evaluations policies and procedures, dated December 11, 2017, was circulated to CFTC OIG staff after the Stress Testing inspection and *Report* were practically complete. IG Lavik was not asked to review these policies and procedures before they were finalized. This document appears to follow some of the standards addressed in the *CIGIE Quality Standards for Inspection and Evaluation* but does not address several important standards including Quality Control, Performance Measurement, and Working Relationships and Communication.

IG Lavik thought CFTC OIG had a quality assurance program for Inspections and Evaluations but when questioned by FCC OIG investigators, noted he had not looked at it in a while and suggested the FCC OIG ask DIG Ringle about the quality assurance program. IG Lavik stated that as for quality, he looks to see if the Commission agrees with OIG, as they did for the *Stress Testing Report*. When asked who was responsible for assuring the CIGIE quality assurance steps were followed for another June 2017 Inspection and Evaluation, IG Lavik replied that he looked at the *Report*, to see if it hung together and made sense. The important thing to IG Lavik was that this *Report* was accepted by the decision makers- the Commissioners.

IG Lavik directed questions asking whether *CIGIE Quality Standards for Inspection and Evaluation* were followed for the Stress Testing Inspection to DIG Ringle, who stated CFTC OIG used the *CIGIE Quality Standards for Inspection and Evaluation* standards when conducting the Stress Testing Inspection. A CFTC OIG inspector stated he and the other CFTC OIG inspector looked at the *CIGIE Quality Standards for Inspection and Evaluation* and tried to mirror those standards in their work. However, while preparing the November 2017 draft of the CFTC OIG Inspection and Evaluation internal guide, one CFTC OIG inspector commented “I

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

read through the CIGIE IE stuff its bureacratic [sic] stupidity,” and the other CFTC OIG inspector also felt there was no substance to CIGIE’s Inspection and Evaluation standards.

The Planning Standard of the CIGIE *Quality Standards for Inspection and Evaluation* requires inspections to be adequately planned, and a workplan should be developed that clearly defines the inspection objective(s), scope and methodology. IG Lavik stated no workplan was created for the Stress Testing inspection, as workplans are not relevant to an economic review like the Stress Testing inspection. When IG Lavik was asked whether he made sure that the requirements in the CIGIE *Quality Standards* requiring inspection plans, a referenced report, and evidence of supervisory review, were followed in that inspection, IG Lavik stated he reviewed and understood those reports because they involved Law and Economics and checked whether the reports “made sense.”

The only work plan located in the inspection files for the Stress Testing inspection lacks many of the attributes contained in Planning Standard of the CIGIE *Quality Standards for Inspection and Evaluation*. The one-page work plan is more akin to a timeline, or a plan for collecting and reviewing documents and the order in which the unnamed members of CFTC units will be interviewed. There is no indication that the listed topics of the inspection- DCR data-related activities, improper stress testing of market participants and mismanagement by management- had been researched or that the objectives of the inspection had been considered or defined. This work plan, which was never revised as the inspection progressed, allowed for a wide- ranging investigation into a variety of topics not reflected in the plan. The resulting *Stress Testing Report* appears analyzes many areas not reflected in the original plan.

The CIGIE *Quality Standards for Inspection and Evaluation* Quality Control Standard recognizes a key aspect of inspection quality control is adequate supervision, which provides important judgment and an additional level of oversight to the work done by subordinate, often less experienced staff. The Quality Control Standard further recognizes that “supervisory reviews help ensure that: the inspection is adequately planned; the inspection workplan is followed, unless deviation is justified and authorized; the inspection objectives are met; and the inspection findings, conclusion, and recommendations are adequately supported by the evidence.”

The review by FCC OIG found little, if any, evidence of supervision as described by the Quality Control Standard. IG Lavik acknowledged that he supervised the stress testing project, but he performed few, if any, of the duties or responsibilities set forth in the CIGIE Inspection and Evaluations standards or those normally expected from a supervisor. It is clear from the record that the inspection team did not have a clear understanding of the purpose of the inspection and what it was expected to accomplish, resulting from the lack of supervision by IG Lavik. Additionally, IG Lavik admitted complaints about the assigned CFTC OIG inspectors gave him pause, but he did not respond to them. Instead, contrary to *Silver Book* Section VII.B.3 which requires an OIG to make special efforts to keep program managers informed of the purpose, nature and content of OIG activity, IG Lavik decided not to respond to management questions about the nature of CFTC OIG’s inquiry into stress testing, in order to see whether there would be an attempt to impede the CFTC OIG inspectors. IG Lavik was not concerned by claims that

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

the CFTC OIG inspectors were being aggressive, because IG Lavik had overwhelming confidence in the CFTC OIG inspectors. IG Lavik was satisfied by the inspectors' characterization of the CFTC management's complaints as "BS."

With respect to supervision of the actual drafting of the *Stress Testing Report*, IG Lavik stated he had the CIGIE standards in mind when reviewed the draft *Report*, asked questions and, as IG Lavik has been apparently doing for years, looked to see if the report "hung together and made sense." The evidence gathered by FCC OIG indicates that neither IG Lavik nor DIG Ringle, who IG Lavik apparently expected to review the draft *Report*, closely read the draft *Stress Testing Report*, nor did they ensure that the factual statements were supported by evidence in the inspection record. According to DIG Ringle, at the time of the Stress Testing Inspection CFTC OIG relied on supervision to assure quality control for Inspection & Evaluations. DIG Ringle explained that when she prepares a report, her process is to check every statement and legal cite against her notes and expects CFTC OIG staff to do the same when they write reports and does not go back and do these tasks herself.

The Stress Testing Inspection and the *Stress Testing Report* did not follow the Evidence, Professional Judgment and Reporting Standards of CIGIE *Quality Standards for Inspection and Evaluation*. Consequently, CFTC OIG's *Stress Testing Report* does not have a firm factual foundation and makes unsupported assertions.

For example, the *Stress Testing Report* reaches a conclusion that the Chicago RSB leadership was motivated by territoriality when it asked a Chicago RSB staff member to create daily stress testing tools, which according to the *Stress Testing Report* were unnecessary because they were duplicative of fully functional MMG daily stress testing tools. However, a complete review of the CFTC OIG inspection record shows the Chicago RSB stress test was not duplicative because it was flexible, quick, and accurate.

The conclusion that the direction to MMG to cease work on stress testing was pretextual and territorial is another example of the *Stress Testing Report*'s reaching conclusions based on an inaccurate and incomplete presentation of the inspection record. The *Stress Testing Report*'s conclusion is based on an analysis of MMG's "Proof of Concept" supervisory stress test.³² (b) (6), (b) (7)(C) who reviewed MMG's "Proof of Concept" told MMG and CFTC OIG inspectors the "Proof of Concept" had methodology issues and had not undergone a complete review by MMG's DCR managers. The CFTC OIG inspector who heard (b) (6), (b) (7)(C) concerns appeared more interested in telling (b) (6), (b) (7)(C) how the CFTC OIG inspector had worked with MMG to correct the methodology issues. These methodology issues were not detailed in the *Stress Testing Report*, and the "Proof of Concept" (b) (6), (b) (7)(C) described as "not ready for prime time" was presented in the *Stress Testing Report* as innovative and "first of its kind."³³

³² A supervisory stress test is designed to assess the resilience of the market infrastructure and market participants by looking at the impact on risk of a set of financial shocks, looking both at futures and swaps over many industries and across multiple clearing members and multiple clearinghouses simultaneously.

³³ A complete review of the CFTC's supervisory stress testing capabilities should have included Chicago RSB's November 2016 highly praised supervisory stress test, which was presented to the Financial Security Oversight

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Attempts to enhance the *Stress Testing Report's* conclusions by an independent economic consulting firm hired by CFTC OIG to objectively compare MMG's and Chicago RSB's supervisory stress tests were tainted from the outset by CFTC OIG inspectors' bias. The consulting firm did not conduct an "apples to apples" comparison of MMG and Chicago RSB abilities, and its conclusion is misstated in the *Stress Testing Report*.

(b) (6), (b) (7)(C) did not think the reasons for shutting down MMG's stress testing efforts were pretextual or as he told CFTC OIG inspectors "a self preservation or kind of a turf thing." (b) (6), (b) (7)(C) told CFTC OIG inspectors that MMG was not fulfilling its core mission by doing everything that it could to make DCR's margin model program a world class program. Instead, MMG was more focused on developing an alternate stress testing methodology, while Chicago RSB had a fully functioning risk surveillance program that included effective daily stress testing. According to Chicago RSB management and confirmed by (b) (6), (b) (7)(C), having a second unit devoting significant time to stress testing was not a good use of the CFTC's limited resources. MMG had been permitted to work on stress testing, with the hope that its work would lead to valuable advances, but only with the requirement and understanding that MMG would create a program that could easily be transferred outside MMG and would turn over what they developed to Chicago RSB. However, the stress testing program developed by MMG did not meet these requirements.

Moreover, CFTC managers have the authority to make decisions how the agency's limited resources should be deployed and how its work should be done, and *Silver Book* Section II.C.3 cautions that OIG staff should not perform management functions or make management decisions for the agency. The CFTC Chairman affirmed it was the agency's job, and not the IG's job, to select the best method for stress testing and told IG Lavik on several occasions that CFTC OIG was not set up or equipped to decide which is the better analytical model. (b) (6), (b) (7)(C) told CFTC OIG it was entirely appropriate for and well within the authority of RSB managers to direct MMG's and Chicago RSB's scope of work.

All these facts were told to CFTC OIG inspectors and documented in the inspection record and undercut the *Stress Testing Report's* conclusion that direction to MMG to stop stress work was pretextual and motivated by turf protection. Facts contrary to the *Stress Testing Report's* conclusions were not detailed or addressed in the *Stress Testing Report*. A complete, accurate, fair and objective presentation of the record, as required by the CIGIE *Quality Standards for Inspection and Evaluation's* Reporting and Professional Judgment Standards, should have included these facts.

Other sections of the *Stress Testing Report* omit a variety of evidence collected during the Inspection and in one instance the inspectors' own knowledge, to reach conclusions that Chicago RSB management made poor decisions and undermined the efficiency and effectiveness of CFTC programs. With respect to the *Stress Testing Report's* discussion of swaps data repository ("SDR") data, CFTC inspectors failed to take basic steps to investigate the facts upon which they

Council, which included the heads of the Federal Reserve, the Treasury Department, and the Securities and Exchange Commission, among others.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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base their assertions, including interviewing staff with first-hand knowledge of events and critical information about the events they were writing about. CFTC inspectors overlooked their own knowledge about the reasons uncleared swaps data cannot be used in stress testing. Instead, the *Stress Testing Report* bases its conclusions about SDR data on an incomplete inspection and a narrow view of the inspection record. The *Stress Testing Report* questions the Chicago RSB managers' decision to discontinue SDR data quality review, which the *Stress Testing Report* states could inform potential data quality improvements and has research value. However, the *Stress Testing Report* does not include what appear to be credible explanations provided by Chicago RSB management to CFTC OIG of their decision, including how MMG's efforts, asking a few firms to report the missing data fields on a small number of positions, could be scaled up to correct incomplete SDR submissions by over 1,700 firms, who on average report, for three asset classes, approximately 443,000 uncleared transactions to SDRs each week. Similarly, the *Stress Testing Report's* criticism of Chicago RSB's use of SIMM margin model sensitivities in stress testing omits evidence collected during the Inspection. Contrary to the *Stress Testing Report's* statements, Chicago RSB managers explained to CFTC OIG inspectors that they had considered the gaps created by using SIMM margin model, and Chicago RSB had instituted a pilot program to better understand those gaps. Mention of this pilot program and SIMM research plans are omitted from the *Stress Testing Report*. Criticism of Chicago RSB management's direction to MMG to stop analyzing the SIMM margin model, based on CFTC OIG's view that all margin models should be analyzed by MMG, ignores numerous witness statements that the SIMM model was the responsibility of a different CFTC Division, and it was inappropriate for MMG to insert itself into that Division's work.

The *Stress Testing Report's* discussion of potentially misleading statements made by Chicago RSB staff rests on incomplete quotes and inaccurate statements to reach its conclusions. For example, the *Report's* conclusions that certain statements were misleading could only be reached by omitting a portion of the question posed at the June 2017 Market Risk Advisory Meeting and rejecting the authors' explanations of their theory of regulation and the independence of Chicago RSB's stress testing. Additionally, a monthly DCR status report is not misleading because it does not include discussion of work discontinued five months earlier.

Finally, CFTC OIG included an unnecessary Dilbert cartoon in the *Stress Testing Report*, which is not supported by the Inspection record or a complete presentation of the factual record and is unusual and unprofessional.

The Competency Standard of the CIGIE *Quality Standards for Inspection and Evaluation* requires "The staff assigned to perform inspection work should collectively possess adequate professional competency for the tasks required." IG Lavik assigned two CFTC OIG attorney/economists who are very well educated, but had no formal inspection and evaluation training and did not receive the minimal 40 hours of training biennially, as suggested by the Competency Standard. This is not surprising as IG Lavik believes "specific training in Inspections & Evaluations is unnecessary for attorneys" and that "a lawyer ought to be able to conduct an inspection." Accordingly, the CFTC OIG inspectors lacked the knowledge of

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

evaluation methodologies and knowledge of Inspector General statutory requirements and directives as required by the Competency Standard.

IG Lavik’s dismissive approach to training, his assignment of untrained staff to an inspection and evaluation and the lack of attention to the training requirements is reflected in the *Stress Testing Report’s* failure to meet numerous CIGIE *Quality Standards for Inspection and Evaluation*. If IG Lavik set training requirements standards for CFTC OIG, ensuring that CFTC OIG staff receive appropriate training, or adequately supervised the CFTC attorney/economists by insisting they get specific inspection and evaluation training, the flaws in the *Stress Testing Report* could have been avoided.

The Independence Standard for inspection work is: “In all matters relating to inspection work, the inspection organization and each individual inspector should be free both in fact and appearance from personal, external and organizational impairments to independence.” IG Lavik and CFTC OIG staff did not fulfill the “responsibility to maintain independence so that opinions, conclusions, judgments and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties” as required by the Independence Standard. Further, the inspection organization and inspectors need to consider personal impairments, including “having preconceived ideas towards individuals, groups, organization, or objectives of a particular program that could bias the inspection.” The personal biases of the CFTC OIG inspectors as well as IG Lavik, were not considered or resolved.

Here, the inspection organization and the inspectors were not independent, objective or impartial. The inspectors adopted a biased view of the facts that was manifest to those interviewed, to CFTC management and to knowledgeable third parties. Concerns about the independence and impartiality of the inspectors were raised to IG Lavik and he took no steps to review or resolve claims of bias and a lack of objectivity. Notably, IG Lavik chose to accept statements made by inspectors who had bias complaints raised against them, while fostering an atmosphere that elevated economic background over practical experience, underscoring a lack of objectivity. Additionally, as a supervisor, IG Lavik should have acted to ensure the independence and objectivity of the CFTC OIG inspectors. Because IG Lavik did not, the *Stress Testing Report* lacks objectivity, impartiality and the independence required by the Independence Standard of the CIGIE *Quality Standards for Inspection and Evaluation*.

The CIGIE *Quality Standards for Inspection and Evaluation* for Working Relationships and Communication requires that “Each inspection organization should seek to facilitate positive working relationships and effective communication with those entities being inspected and other interested parties.” The Positive Working Relationship Standard instructs the OIG to strive to foster open communication at all levels, interact with professionalism and respect, and “to appropriately communicate information about the process and the nature of the inspection to the various parties involved to help them understand such things as the inspection objectives, time frames, data needs and reporting process.”

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

IG Lavik did not comply with or supervise CFTC OIG inspectors in a manner that would advance the goals of the Quality Standard for Working Relationships and Communication. Chicago RSB management requested that IG Lavik explain “the basics” of the OIG’s inspection of stress testing, but he refused to do so, contrary to *Silver Book* Section VII.B.3. The inspectors did not interact respectfully with the Chicago RSB staff or perform work objectively, with consideration to the agency’s point of view. OIG staff, consistent with IG Lavik’s views, unnecessarily threatened Chicago RSB staff who showed any reluctance to immediately respond to CFTC OIG inspectors’ requests and questions. Appropriate supervision by IG Lavik should have toned down these aggressive responses. These omissions resulted in a climate of mistrust of CFTC OIG by Chicago RSB staff and produced the opposite of the relationship envisioned by the Quality Standard for Working Relationships and Communication.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 5

Whether the IG and DIG engaged in conduct that undermines the independence and integrity reasonably expected of a covered person by taking active steps to avoid oversight of OIG operations.

FCC OIG did not find evidence that IG Lavik and DIG Ringle acted improperly by actively taking steps to avoid a mandatory peer review of CFTC’s Inspection and Evaluation or Investigations programs.

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Between March 11, 2019 and March 27, 2019, (b) (6), (b) (7)(C) [REDACTED], sent numerous email messages and documents to the CIGIE IC including a document summarizing his allegations including an allegation that “The IG and Deputy IG Avoid External Oversight” [CIGIE Complaint 986-360 – 986-361 and 986-371 – 986-373] In the discussion of this allegation, (b) (6), (b) (7)(C) explained that CFTC OIG has cancelled or postponed investigative and inspection and evaluation peer reviews.

Although this investigation focused on recent peer reviews of the CFTC OIG investigation and inspection and evaluation programs, FCC OIG obtained and reviewed peer reviews of the CFTC OIG audit program conducted since 2010. In a March 31, 2011, peer review report, the Federal Election Commission (FEC) OIG gave CFTC OIG a “rating of fail” for the system of quality controls in effect for the period October 1, 2006 through March 31, 2010. This peer review resulted in additional Congressional scrutiny of CFTC OIG operations, including a critical letter from Senator Grassley in 2011. [Exhibit 5.1; Exhibit A.11 at 10] The CFTC OIG audit program received a “rating of pass with deficiencies” for the system of quality controls in effect for the period April 1, 2010 through March 31, 2013 in a peer review reported in April 2014.³⁴

After the second problematic peer review, two new staff members were added to the CFTC OIG audit team, and they professionalized the OIG Audit unit. [Exhibit A.11 at 10] According to (b) (6), (b) (7)(C) the new staff worked to improve CFTC OIG-Audits, and transformed Audits from a group that produced nonstandard products to one that produces audit reports that regularly pass peer reviews. [Exhibit A.11 at 10] Thereafter, CFTC OIG received a “rating of pass” for the system of quality controls in place for the period ending March 31, 2016, during an Audits peer review reported in August 2016. August 16, 2016 External Peer Review Report of the U.S. Commodity Futures Trading Commission Office of Inspector General Audit Organization at 2, <https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/oigpeerreview081616.pdf>. During these peer reviews, IG Lavik and DIG Ringle were both in the same leadership positions with CFTC OIG that they held during the FCC OIG investigation of CFTC OIG.

³⁴ The reports of the CFTC OIG peer reviews are available on the CFTC OIG website. <https://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm>

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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A CFTC OIG audit program staff member explained the events leading to the peer review ratings of the CFTC OIG audit program. At the time of the 2010 CFTC OIG-Audit peer review, CFTC OIG had not conducted audits under the correct Yellow Book standards. But, a CFTC OIG auditor told DIG Ringle a particular project had been conducted under the relevant Yellow Book standards, and a statement was added to the report that the project complied with Yellow Book standards. [Exhibit A.2 at 8-9] However, when the project was later characterized as an audit, the compliance language in the report was not deleted as it should have been, since as an audit, the project did not in fact comply with the Yellow Book standards. [Exhibit A.2 at 8-9] During the Audit peer review, the reviewers thought CFTC OIG was lying about compliance with Yellow Book standards, and the reviewer “went to town.” [Exhibit A.2 at 8-9] Another requirement noted during the peer review was CPE training. CFTC OIG auditor (b) (6), (b) (7)(C) passed this requirement, but IG Lavik did not take the course needed to satisfy this requirement. [Exhibit A.2 at 8-9] Two prior peer reviewers told IG Lavik to take CPEs, but IG Lavik did not. [Exhibit A.2 at 8-9] During the third peer review, IG Lavik still had not taken the CPE course. [Exhibit A.2 at 8-9] Between the Yellow Book compliance issue and IG Lavik’s failure to complete the CPE course, the CFTC OIG failed the peer review. [Exhibit A.2 at 8-9] This failure created anxiety in the CFTC OIG about peer reviews, and CFTC OIG picked ambiguous titles like “project” for their work, instead of identifying them as audits, to avoid oversight and peer reviews. [Exhibit A.2; Exhibit A.12 at 3] CFTC OIG staff’s perception of anxiety about compliance with standards and peer review failures is consistent with IG Lavik’s response when asked whether he has discretion to decide what professional standards to follow, how to follow them, and what parts to follow: “That is why they call them reviews.” [Exhibit A.19 at 29]

II I E S I A I R E S S

A I n s p e c t i o n a n d E v a l u a t i o n P e e r R e v i e w s

The CIGIE *Quality Standards for Inspection and Evaluation* (published in January 2012) recognizes that “Within the Inspector General community, inspections and evaluations have long afforded OIGs a flexible and effective mechanism for oversight and review of Department/Agency Programs” and that “these Quality Standards for Inspection and Evaluation have been developed as a framework for performing both inspection and evaluation work.” CIGIE *Quality Standards for Inspection and Evaluation* at ii. The CIGIE Guide for Conducting Peer Reviews of Inspection and Evaluation Organizations of Federal Offices of Inspector General (published in January 2017³⁵), states that “OIGs with an I&E organization³⁶ that

³⁵ The CIGIE Inspection and Evaluation Committee approved a revised document entitled “Guide for Conducting Peer Reviews of Inspection and Evaluation Organizations of Federal Offices of Inspector General” in July 2019 after this investigation was initiated. The new version of the Guide supersedes the January 2017 version. However, FCC OIG used the language from the January 2017 guide since this was the guide in effect when CFTC OIG was scheduled for peer review. The requirement for mandatory peer reviews of Federal Office of Inspector General who issue reports in accordance with the CIGIE *Quality Standards for Inspection and Evaluation* did not change between the two versions of the Peer Review guide.

³⁶ The term ‘I&E organization’ is used throughout the Guide to designate the entity or staff performing Inspection and Evaluations regardless of size. OIGs may have a single organization performing both Inspection and Evaluations and audits.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

conducts I&Es in accordance with the Blue Book must undergo an external peer review every three years.” CIGIE Guide for Conducting Peer Reviews of Inspection and Evaluation Organizations at 3.

On October 25, 2017, as a “CCIG OIGs with 0-10 FTEs in I&E Shop and cited for 4 or fewer reports,” CFTC OIG was scheduled for a peer review for the period ending December 31, 2017. [Exhibit 5.2] The peer review was to be conducted by SEC OIG and the Federal Maritime Commission (FMC) OIG and the due date of the peer review report was June 30, 2018. [Exhibit 5.2]

According to the CIGIE Inspection and Evaluation Peer Review Working Group, OIGs were not given an opportunity to opt-out of a scheduled Inspection and Evaluation peer review. [Exhibit 5.3] However, OIGs were given an opportunity to explain and request a delay or a forbearance if their circumstances had changed or were such that they believed an external peer review would be inappropriate, including no longer conducting Inspections and Evaluations, not issuing reports in accordance with Blue Book standards, recent changes in policies and procedures with no new reports issued under these recent changes, or a new unit that had not issued reports following Blue Book standards. [Exhibit 5.3] The Working Group reviewed all requests for delay and in some cases, the Working Group allowed a modified peer review or a pass on the first round but rescheduled a peer review for the second round. [Exhibit 5.3]

During our review of email correspondence for selected CFTC OIG staff during the period from October 25, 2017 (when the peer review schedule was published) through December 13, 2017 (when CFTC OIG was removed from the peer review schedule), FCC OIG identified a large volume of email correspondence indicating CFTC OIG started to prepare for the peer review and discovered weaknesses in the CFTC OIG Inspection and Evaluation program.³⁷

On November 28, 2017, (b) (6), (b) (7)(C), a CFTC OIG auditor, sent an email to DIG Ringle and (b) (6), (b) (7)(C) identifying the results of his review of *A Review of the Cost-Benefit Consideration for the Margin Rule for Uncleared Swaps* (“*Cost-Benefit Review*”),

https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/oig_rcbcm_rus060517.pdf. The *Cost-Benefit Review* itself states “CFTC OIG adhered to the principles laid out in Council of Inspectors General on Integrity and Efficiency, Quality Standards for Inspection and Evaluation (January 2012).” *Cost-Benefit Review* at 1, fn 6. (b) (6), (b) (7)(C) after measuring the *Cost-Benefit Review* against the CIGIE Guide for Conducting Peer Reviews of Inspection and Evaluation Organizations of Federal Offices of Inspector General review, found number of items that were missing from the *Cost-Benefit Review*:

- Documented Policies and Procedures
- Evidence of supervisory review
- Review of Internal Controls

³⁷ Initially, DIG Ringle appears to have misapprehended the Inspection and Evaluation peer review requirement and believed Inspection and Evaluation peer reviews were optional. [Exhibit 5.4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Organization of project files

Proper identification of all the elements of a Findings in the Report

(b) (6), (b) (7)(C) stated that for the *Cost-Benefit Review* to meet the requirements for the Peer Review Standards, these items would need to be addressed. [Exhibit 5.5]

On November 28, 2017, DIG Ringle forwarded this message to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) the authors of the *Cost-Benefit Review* and (b) (6), (b) (7)(C) forwarded this message to IG Lavik. [Exhibit 5.6] But the authors of the *Cost-Benefit Review* did not believe the *Cost-Benefit Review* was an Inspection and Evaluation. In response to DIG Ringle's forwarded message, (b) (6), (b) (7)(C) drafted but did not send the following message:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 5.7; Exhibit 5.8]

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discussed the matter during a Lync chat on November 28, 2017. (b) (6), (b) (7)(C) stated the *Cost-Benefit Review* was not discussed as being an Inspection and Evaluation, noting that the *Inspection & Evaluation: CFTC Stress-Testing Development Efforts* is really the first Inspection and Evaluation. (b) (6), (b) (7)(C) also observed "they didn't name us the Office of I & E. they named us the office of legal and economic analysis, and the margin report is listed on our webpage as a 'law and economic review'." [Exhibit 5.9]

To address the first deficiency noted by (b) (6), (b) (7)(C) the lack of internal policies and procedures, DIG Ringle decided the CFTC OIG should create policies and procedures for Inspection and Evaluations. [Exhibit A.28 at 24] DIG Ringle did not see that CIGIE Inspection and Evaluation standards included a requirement for internal OIG procedures, but if the peer review required this, DIG Ringle thought the CFTC OIG should have them. [Exhibit A.28 at 24] DIG Ringle did not address the other deficiencies listed by (b) (6), (b) (7)(C) and only addressed the first one concerning internal policies and procedures. [Exhibit A.28 at 24; Exhibit 5.5]

Initially, (b) (6), (b) (7)(C) was charged with drafting CFTC OIG's written policies for Inspection and Evaluation. In a chat message, (b) (6), (b) (7)(C) commented to (b) (6), (b) (7)(C) "I read through the CIGIE IE stuff its bureaucratic [sic] stupidity if the point of the committee is to opine about the independence of an org and/or the efficacy of the reports, then analyze the substance or track down allegations of impropriety this is saying 'create the appearance of independence.'" [Exhibit

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

5.9] On November 28, 2017, (b) (6), (b) (7)(C) sent an email message to DIG Ringle, (b) (6), (b) (7)(C) and IG Lavik with the message “I reviewed the Audit/Investigations standards, along with the CIGIE requirements—the attached is what I have so far. I saved the doc in the O drive. Please let me know if any changes or additions are needed.” [Exhibit 5.10]

The attachment to this message “Office of the Inspector General OIG Inspection & Evaluations,” appears to be a copy of the CFTC OIG Investigations Manual with a few minor changes. The body of the manual makes numerous references to investigations and investigators. The title page of the document is “OIG INVESTIGATIONS MANUAL” and the preface states:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 5.10, Attachment at 3] On December 11, 2017, DIG Ringle circulated to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and IG Lavik a document entitled “Office of the Inspector General OIG Inspections & Evaluations.” [Exhibit 5.11] This document appears to follow some of the standards addressed in the CIGIE *Quality Standards for Inspection and Evaluation* but does not address several important standards including Quality Control, Performance Measurement, and Working Relationships and Communication. FCC OIG found no further versions of the written policies and procedures for inspections and evaluations during our investigation. IG Lavik was neither asked to nor did he approve any CFTC OIG policies and procedures for Inspections & Evaluations. [Exhibit A.19 at 19; Exhibit A.28 at 6]

In early December 2017, the idea of seeking a delay of the CFTC OIG Inspection and Evaluation peer review was discussed among CFTC OIG staff. On December 11, 2017, in his response to DIG Ringle’s draft Inspection and Evaluation policies and procedures, (b) (6), (b) (7)(C) asked DIG Ringle whether HHS responded to DIG Ringle’s request to delay the Peer Review. [Exhibit 5.12]

On December 12, 2017, DIG Ringle emailed (b) (6), (b) (7)(C)³⁸, HHS OIG, with a request to delay the CFTC OIG Inspection and Evaluation peer review:

(b) (6), (b) (7)(C), (b) (5)



³⁸ At the time of the email message, (b) (6), (b) (7)(C) was a member of the CIGIE I&E Peer Review Implementation Review Committee. IG Lavik does not recall being involved in the decision to cancel this peer review but thinks he would remember if he had any involvement in the decision to cancel the peer review. [Exhibit A.19 at 18]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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(b) (6), (b) (7)(C), (b) (5)

[Exhibit 5.13]

The Working Group discussed the CFTC OIG’s request during a regularly scheduled meeting held the day it received CFTC OIG’s request and the request for a delay was honored.³⁹ [Exhibit 5.3 attachment at 3; see also Exhibit 5.13; Exhibit 5.14]

While CFTC OIG would naturally want to present its Inspection and Evaluation program in the best light, certain underlying facts were omitted from DIG Ringle’s request, rendering the request somewhat inaccurate.

IG Lavik told FCC OIG the reasons contained in DIG Ringle’s email seeking postponement of the Inspection and Evaluation peer review were accurate, but his recollection was different from DIG Ringle’s recollections. [Exhibit A.19 at 19] According to IG Lavik, CFTC OIG only completed one inspection in 2010 and one in 2012 before discontinuing inspections in favor of audits, and then established a working group of 1.5 full time employees for inspections and evaluations in October 2016. [Exhibit A.19 at 19] The working group consisted of [REDACTED] and [REDACTED] who were the only staff conducting Inspections & Evaluations, and [REDACTED] did not want to be involved. [Exhibit A.19 at 19] IG Lavik was unaware whether the working group had produced Inspection and Evaluation policies and procedures and told FCC OIG to ask DIG Ringle about them. [Exhibit A.19 at 19] IG Lavik thinks these policies and procedures are not needed in a small agency, and never approved any CFTC OIG policies and procedures for Inspections & Evaluations. [Exhibit A.19 at 19]

Moreover, it is not at all clear that the *Cost-Benefit Review* cited in the email was conducted as an Inspection and Evaluation. The *Cost-Benefit Review* itself states that it is an Inspection and Evaluation and DIG Ringle recalls discussing with [REDACTED] and [REDACTED] that the CIGIE *Quality Standards for Inspection and Evaluation* would apply to the *Cost-Benefit Review* project.⁴⁰ [Exhibit A.28 at 23-24] But, the *Cost-Benefit Review*’s authors were apparently unaware they had conducted an Inspection and Evaluation and questioned whether the *Cost-Benefit Review* was an Inspection and Evaluation. [Exhibit 5.7; Exhibit 5.8] As [REDACTED] indicated in his draft email message on November 28, 2017, he and [REDACTED] were not even aware that they were conducting an Inspection and Evaluation when they conducted the *Cost-Benefit Review*:

³⁹ At one point, IG Lavik claimed that he and SEC IG Carl W. Hoecker cancelled the peer review. [Exhibit A.19 at 33] When [REDACTED] stated it was cancelled at the CFTC OIG’s request because of the reasons stated in DIG Ringle’s December 12, 2017 email to [REDACTED], IG Lavik responded “sounds right to me.” [Exhibit A.19 at 33-34]

⁴⁰ DIG Ringle was not involved with insuring that [REDACTED] and [REDACTED] followed the CIGIE *Quality Standards for Inspection and Evaluation* during the *Cost Benefit Review* project and advised FCC OIG to ask IG Lavik about supervision of the *Cost Benefit Review* project. [Exhibit A.28 at 24] IG Lavik vaguely recalled the *Cost Benefit Review* but did not recall what CIGIE standards were followed for this project. [Exhibit A.19 at 18]

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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(b) (6), (b) (7)(C), (b) (5)



[Exhibit 5.7; Exhibit 5.8] If CFTC OIG management “established our current working group for inspections and evaluations in October of 2016,” it is clear from this statement that this was not communicated to the CFTC OIG attorney-economists who would be conducting Inspections and Evaluations and that these attorney-economists did not understand they were to follow the CIGIE *Quality Standards for Inspection and Evaluation* during the *Cost-Benefit Review* project.

Further, the statement in DIG Ringle’s December 12, 2017 Email to (b) (6), (b) (7)(C) that the “current working group for inspections and evaluation” has “produced one report, published in June 2017” is questionable as it implies that the *Cost-Benefit Review* project was conducted in accordance with the CIGIE *Quality Standards for Inspection and Evaluation* and would pass a peer review. [Exhibit 5.13] At the time that DIG Ringle made this statement, she knew, from (b) (6), (b) (7)(C) assessment the *Cost-Benefit Review* project and report had significant weaknesses that needed to be addressed “in order for it to meet the requirements for the Peer Review Standards.” [Exhibit 5.5] The record shows that CFTC OIG started to address only one of the weaknesses identified (documented policies and procedures) but this effort was not completed.

The statement that CFTC OIG “established our current working group for inspections and evaluations in October of 2016” is also not consistent with CFTC OIG semiannual reports. These reports suggest CFTC OIG conducted inspections and evaluations prior to October 2016. As discussed in Allegation #1, CFTC OIG indicated in its semiannual reports going back at least as far as the semiannual report for the period from October 1, 2009, through March 31, 2010, that CFTC OIG also conducts “inspections, evaluations, and reviews.” This statement implies, and some of the reports themselves directly state, these projects were conducted in accordance with CIGIE *Quality Standards for Inspection and Evaluation*. Indeed, FCC OIG initially used the language in the semiannual report to determine the professional standards followed in the conduct of various projects. However, FCC OIG quickly determined that the project name or report title did not necessarily indicate which professional standards were followed in the conduct of the review.⁴¹

A more fulsome explanation of the reasons for the requested delay would have disclosed that CFTC OIG was not prepared for a peer review because it did not have written Inspection and Evaluation policies and procedures and had not completed any projects that complied with CIGIE *Quality Standards for Inspection and Evaluation*. Rather, DIG Ringle took advantage of the opportunity provided by CIGIE to delay the Peer Review by somewhat overstating the robustness of the CFTC OIG’s Inspection and Evaluation program. The omissions in the request

⁴¹ For example, CFTC OIG conducted a series of lease reviews for CFTC offices. These projects are referred to as reviews implying that CIGIE *Quality Standards for Inspection and Evaluation* were followed but, according to DIG Ringle, the CIGIE *Quality Standards for Investigations* were followed when these reviews were conducted.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

to delay the Inspection and Evaluation peer review and the suggestion that CFTC OIG had completed an Inspection and Evaluation that was ready to be peer reviewed may seem to support the notion that CFTC OIG was seeking to avoid by delaying the scheduled Inspection and Evaluation peer review. However, the record does not contain evidence to support a finding that DIG Ringle intentionally misled [REDACTED], even if there are questions about the credibility of request for a postponement. Moreover, there is no indication that the outcome of CFTC OIG's request to delay the peer review would have been any different if CFTC OIG had in fact provided all reasons for the requested delay.

B. Investigative Peer Reviews

The CIGIE *Quality Standards for Investigations* (published on November 15, 2011) "provide a framework for conducting high-quality investigations for Offices of Inspector General (OIGs) affiliated with the Council of Inspectors General on Integrity and Efficiency (CIGIE)." CIGIE *Quality Standards for Investigations* at 1. The CIGIE Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General (published in July 2017) states that "Newly established OIGs or those that do not have statutory law enforcement authority but conduct investigations in accordance with the QSI are strongly encouraged to participate voluntarily in an investigative peer review program." CIGIE Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General at 5.

Although CFTC OIG does not have statutory law enforcement authority, OIGs without statutory law enforcement authority are "strongly encouraged" to participate voluntarily in an investigative peer review program, they are not required to do so. A voluntary Investigative peer review was conducted by the Federal Trade Commission ("FTC") OIG. FTC OIG "reviewed the system of internal safeguards and management procedures for the investigative function of the Office of Inspector General for the Commodity Futures Trading Commission (CFTC) in effect for the period ending January 31, 2013." March 27, 2013, Report on the Quality Assessment Review of the Investigative Operations of the Office of Inspector General of the Commodity Futures Trading Commission. In this Report, FTC OIG states that "the system of internal safeguards and management procedures for the investigative function of the CFTC OIG in effect for the year ended January 31, 2013, is compliant with the quality standards adopted by CIGIE" and "these safeguards and procedures provide reasonable assurance of conforming with professional standards in the conduct of its investigations." March 27, 2013, Report on the Quality Assessment Review of the Investigative Operations of the Office of Inspector General of the Commodity Futures Trading Commission cover letter at 1. The CFTC OIG had a small Investigations program, and had one full-time staff member, (b) (6), (b) (7)(C) [REDACTED]. Since (b) (6), (b) (7)(C) [REDACTED] left CFTC OIG (b) (6), (b) (7)(C) [REDACTED], CFTC OIG has not hired another [REDACTED] [Exhibit A.28 at 23]

When CFTC OIG was not on the July 30, 2014 CIGIE Investigations Peer Review schedule, DIG Ringle sent an email message to (b) (6), (b) (7)(C) [REDACTED], Treasury Inspector General for Tax Administration, stating "I noticed CFTC OIG

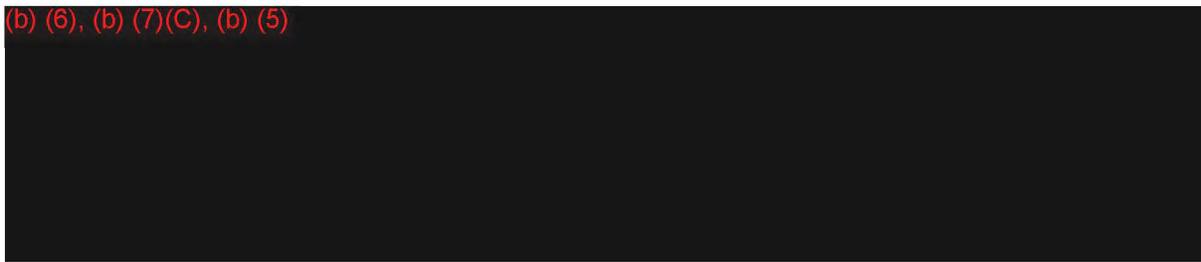
Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

isn't on the matrix ... We were peer reviewed by the FCC OIG⁴² in 2013,” and “I would like us to remain in the loop.” [Exhibit 5.15, Exhibit 5.16] On October 8, 2014, and on July 10, 2015, updated versions of the CIGIE Investigations Peer Review schedule indicated CFTC OIG would be the subject of an investigative peer review from FTC OIG in the third quarter of 2015. [Exhibit 5.17; Exhibit 5.18] DIG Ringle responded to the July 2015 message, requesting that CFTC OIG be added to the schedule for 2016 and indicating “we would be happy to perform a peer review of the investigative function for another small IG.” [Exhibit 5.19]

In a July 29, 2015, follow up message, DIG Ringle indicated “my boss [IG Lavik] got a phone call from the SEC IG and it looks like we will be peer reviewed in November by FTC and will review the NEH OIG investigative function in Jan 2016.”⁴³ [Exhibit 5.20] However, in an August 13, 2015, email message from Carl Hoecker, SEC Inspector General to IG Lavik, IG Hoecker states:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 5.21] On August 17, 2015, IG Lavik responded to IG Hoecker with the message “Carl Looks good to me” and “Thanks for your work.” [Exhibit 5.22]

IG Lavik told FCC OIG he thought the peer review was cancelled because the CFTC OIG had just hired (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) a year or so before the peer review, and because they were new on the job, the peer review was cancelled. [Exhibit A.19 at 18] During her interview, FCC OIG asked DIG Ringle why this peer review was cancelled, and she stated that she requested that the CFTC OIG be removed from the schedule because (b) (6), (b) (7)(C) was just getting promoted and she wanted give (b) (6), (b) (7)(C) time to “get it going,” and revamp the investigations manual. [Exhibit A.28 at 22-23]

In his March 11, 2019, referral to CIGIE IC, (b) (6), (b) (7)(C) states that “the IG canceled the scheduled investigative peer review in 2016 over my objection.” [CIGIE Complaint 986-371] However, FCC OIG found no evidence in the record to support the claims that the IG cancelled the Investigative peer review scheduled for 2016 “over my objection” as (b) (6), (b) (7)(C) indicated in the allegation. Regardless, investigative peer reviews are not mandatory for OIGs who do not have statutory law enforcement authority.

⁴² The CFTC OIG Investigations function was peer reviewed by FTC OIG in 2013, not by FCC OIG.

⁴³ It is unclear whether this message was ever received by CIGIE as it appears DIG Ringle replied to the July 16, 2015 Email she had sent to (b) (6), (b) (7)(C). Consequently, DIG Ringle’s July 29, 2015 reply email appears to have been sent by DIG Ringle to herself.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

In February 2016, DIG Ringle again attempted to get CFTC OIG onto the investigative peer review schedule. On February 9, 2016, DIG Ringle sent an email message to the Chairman of the CIGIE Investigations Committee with the message “Hi there [REDACTED] and [REDACTED] I will RSVP in accord with the instructions but just wanted to let you know that we still would like to be added to the peer review schedule to perform a review and to be reviewed.” [Exhibit 5.23] On July 27, 2016, [REDACTED] sent an email message to IG Lavik, DIG Ringle, [REDACTED] and [REDACTED] stating that “They are trying to schedule us for investigative peer review” that [REDACTED] expressed that it is difficult to get someone to volunteer since we cancelled our scheduled slot and all volunteers already have commitments” and that “they’re working on it, and scheduling our office will be discussed in September.” [Exhibit 5.24] However, FCC OIG was unable to find any additional information in the record related to CFTC being added back to the investigative peer review schedule or a 2016 CFTC OIG Investigations peer review.

On May 13, 2018, [REDACTED] sent an email message to [REDACTED], FHFA OIG, with the following message:

[REDACTED] (b) (6), (b) (7)(C), (b) (5)



[Exhibit 5.25] [REDACTED] replied that Amtrak OIG staff had volunteered to conduct the basic/pre-peer of CFTC that you requested.” [Exhibit 5.26] On June 21, 2018, the CIGIE Investigations Peer Review schedule for 2020 to 2022 included CFTC OIG and indicated the next Investigation peer review of CFTC OIG would be conducted by Smithsonian OIG in the Summer of 2020. [Exhibit 5.27]

On June 22, 2018, [REDACTED] sent an email message to IG Lavik and DIG Ringle informing them a peer review by the Smithsonian OIG of the CFTC OIG Investigation program was scheduled for the Summer, 2020. [Exhibit 5.28] [REDACTED] also informed IG Lavik and DIG Ringle that

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Amtrak OIG had volunteered to conduct a pre-peer review, which he explained was an off-the-record review by experts who can help to make sure we are doing things right before the real peer review in 2020, and this pre-peer review was scheduled for September 2018. [Exhibit 5.28] DIG Ringle responded “A pre-peer review sounds like a VERY good idea. We can blame Amtrak if we have any problems later.....)” [Exhibit 5.29]

The CFTC OIG Investigation pre-peer review by Amtrak OIG began in September 2018 and was ongoing when this investigation was initiated.

In his allegations, (b) (6), (b) (7)(C) stated the “IG and Deputy IG appeared unhappy that I had taken this initiative [scheduled a pre-peer review] but commented that any problems with investigations are now my responsibility.” [CIGIE Complaint 986-371] (b) (6), (b) (7)(C) further explained that CFTC OIG recently received a small budget increase in their 2018 budget, and that the IG was considering hiring another attorney/economist. [CIGIE Complaint 986-371] (b) (6), (b) (7)(C) was concerned the pre-peer review would recommend additional staff for CFTC OIG Investigations. [CIGIE Complaint 986-371]

(b) (6), (b) (7)(C) shared his impression with IG Lavik and DIG Ringle that CFTC OIG Investigations was failing in three respects, specifically that 1) case management was archaic and inadequate, 2) policies and procedures were missing and inadequate, and 3) CFTC OIG had an inadequate Investigations staff in terms of both number and series. [CIGIE Complaint 986-371] While DIG Ringle stated that a case management system would be easy to implement and should be done, IG Lavik grew visibly upset when discussing the final two concerns. [CIGIE Complaint 986-371]

The IG reiterated his long-held view that implementing policies and procedures would be emphasizing form over function, and that they were a waste of time. [CIGIE Complaint 986-371] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) frequently attempted to get policies written and approved to govern elements of the office and IG Lavik typically declined to approve them, stating repeatedly he does not like written policies for OIG. [CIGIE Complaint 986-371]

According to (b) (6), (b) (7)(C) IG Lavik raised his voice and changed his tone at the idea that CFTC OIG needed more investigative staff and stated that the Amtrak OIG special agents were after “full-employment,” and if Amtrak OIG recommended that CFTC OIG hire criminal investigators it would only be because it meant more jobs for special agents. [CIGIE Complaint 986-371] IG Lavik stated that the Amtrak agents had no idea what an OIG at an economic regulator does, that Amtrak OIG was a poor choice to conduct a peer review, and that management reviews done by attorney economists were what was needed. [CIGIE Complaint 986-371] (b) (6), (b) (7)(C) emphasized that these were his impressions of Amtrak OIG’s concerns, and that this was a “pre” peer review, with the purpose of anticipating and addressing problems before the real peer review, not to embarrass our office or publish the various failure that may be noted at this time. [CIGIE Complaint 986-371] DIG Ringle commented that this pre-peer review “would never see the light of day” and IG Lavik agreed. [CIGIE Complaint 986-371]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

During his FCC OIG interview, IG Lavik provided the following comments about the pre-peer review conducted by Amtrak OIG:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit A.19 at 18] According to DIG Ringle, the Amtrak OIG pre-peer review of CFTC OIG's Investigation program was not completed. [Exhibit A.28 at 23] DIG Ringle does not know why the pre-peer review was not completed, and her impression after a meeting with Amtrak OIG was that Amtrak OIG did not want to tell her their conclusions. [Exhibit A.28 at 23]

As part of our investigation, FCC OIG interviewed Amtrak OIG (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) explained that no written report was completed for the pre-peer review but that a verbal report on the results was provided to DIG Ringle. [Exhibit A.22 at 1] (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) wanted a written report at the completion of the pre-peer review but that Ringle did not want a written report. [Exhibit A.22 at 1] (b) (6), (b) (7)(C) further stated that CFTC OIG has no case management system and that case documents are dumped in a directory on the shared drive and that Amtrak OIG would have formally recommended a case management system if this were a peer review. [Exhibit A.22 at 1] (b) (6), (b) (7)(C) also stated that CFTC OIG does not have a manual of policies and procedures for investigations. [Exhibit A.22 at 2] CFTC OIG has a single document that describes policies but this document does not provide detail and that Amtrak OIG would have formally recommended a manual of policies and procedures for CFTC OIG if this were a peer review. [Exhibit A.22 at 2] In addition, (b) (6), (b) (7)(C) stated that CFTC OIG does not have adequate resources to conduct investigations. [Exhibit A.22 at 1] (b) (6), (b) (7)(C) also stated that Ringle indicated that CFTC OIG may not fill the position (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) departure and that DIG Ringle remarked that CFTC OIG "doesn't need OI staff" during the exit briefing. [Exhibit A.22 at 2]

Amtrak OIG told DIG Ringle that if she was taking over CFTC OIG's Investigations program she should get investigations training, which she did at the two-week investigations training course in August 2019. [Exhibit A.28 at 23] DIG Ringle's discussions with Amtrak OIG occurred after (b) (6), (b) (7)(C) left the CFTC OIG, and DIG Ringle stated there will be no peer review for CFTC OIG's Investigation program in 2020 because the Smithsonian IG pushed back against the request. [Exhibit A.28 at 23] DIG Ringle does not know when the Investigations peer review will occur and suggested the FCC OIG talk to IG Lavik about this. [Exhibit A.28 at 23] There is no evidence to support a finding that the delay of the CFTC OIG Investigations peer review was a result of intentional action by CFTC OIG.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 6

Whether the IG and DIG wasted government funds by paying a consultant to be "available" without any work assigned and without any work produced.

FCC OIG found evidence that IG Lavik and DIG Ringle wasted government funds by approving payment to a consultant, (b) (6), (b) (7)(C), who neither had been assigned nor produced any work product, and instead was paid to be available for consultation without any work assigned or produced. Instead of assigning work to the consultant and supervising the consultant to ensure he completed and produced work products that advanced the mission of CFTC OIG, IG Lavik treated (b) (6), (b) (7)(C) as if he were on retainer and approved payment to the consultant even when the consultant produced no meaningful work. For the period from the end of the government furlough until his March 27, 2020 resignation, where FCC OIG found little evidence of substantive work by (b) (6), (b) (7)(C) he was paid \$113,694.24 for the 1,466 hours claimed on his timesheets.

I A C R

(b) (6), (b) (7)(C) was a CT-0905-14 Attorney-Economist with CFTC OIG from August 10, 2015, through April 5, 2018. In January 2017, (b) (6), (b) (7)(C) told CFTC OIG management that his wife had accepted a position in Miami, FL and he would like to telework from that location. On July 24, 2017, (b) (6), (b) (7)(C) started working part-time from Miami, FL. On March 29, 2018, (b) (6), (b) (7)(C) signed an SF-52 resigning his Attorney-Economist position effective April 5, 2018. On May 13, 2018, (b) (6), (b) (7)(C) was hired by CFTC OIG as a consultant. (b) (6), (b) (7)(C) resigned from his consultant position on March 27, 2020.

On March 27, 2019, (b) (6), (b) (7)(C), sent an email message to the CIGIE IC providing an "Update to complaints re: CFTC OIG." [CIGIE Complaint 986-524] In that email, (b) (6), (b) (7)(C) recounted that he attended a CFTC OIG staff conference on March 27, 2019, and that during the staff conference, DIG Ringle stated "since the furlough, (b) (6), (b) (7)(C) had had no work to do and had done no work" and "the Deputy IG added that the IG and Deputy IG should think about getting him some." [CIGIE Complaint 986-524] DIG Ringle confirmed (b) (6), (b) (7)(C) was being paid over those weeks. [CIGIE Complaint 986-524] (b) (6), (b) (7)(C) spoke confidentially with a contact in CFTC Workforce Relations ("HR") and learned a consultant cannot be paid for merely being "available" and that "intermittent employees" (b) (6), (b) (7)(C) was a consultant employee during this period) are "only paid for the hours actually worked." [CIGIE Complaint 986-524] Consequently, FCC OIG's investigation focused on work performed by (b) (6), (b) (7)(C) from January 26, 2019, until he resigned as a consultant on March 27, 2020.

II I E S I A I R E S S

On March 29, 2018, (b) (6), (b) (7)(C) signed an SF-52 (Request for Personnel Action) resigning as a CT-0905-14 Attorney-Advisor from CFTC OIG effective April 5, 2018. [Exhibit 6.1] Under the section entitled "Reasons for Resignation/Retirement" (b) (6), (b) (7)(C) stated "The Commission will not

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

allow me to continue employment via telework from Miami, despite the Inspector General's approval, and is therefore threatening to classify me as AWOL after 04/05/2018." [Exhibit 6.1]

On March 29, 2018, DIG Ringle prepared a CFTC Hiring Request Business Case (CFTC Form 440) requesting a CT15 Consultant position with a duty station in Miami, FL.⁴⁴ [Exhibit 6.2] The Hiring Request Business Case indicates this was an external recruitment and a new requirement, and IG Lavik signed the Hiring Request Business Case on April 5, 2018. [Exhibit 6.2 at 1] The narrative explaining the business requirement states that "the new consultant will permit us to undertake economic analysis of the CFTC's implementation of relevant statutes on an ongoing basis, rather than on an occasional basis as has been our practice in the past due to staff limitations" and indicates the impact on the mission if the position is not filled will be that "workload will become unmanageable, resulting in delays in completion and release of work products." [Exhibit 6.2 at 2]

On April 5, 2018, IG Lavik and DIG Ringle signed a Justification and Approval of Employment of Expert/Consultant form selecting [REDACTED] for the position of Legal and Economic Consultant with a requested salary of \$172,831.32. [Exhibit 6.3] On April 10, 2018, IG Lavik signed a Position Description for a Consultant position (position number 010213) with a duty station in Miami, FL. [Exhibit 6.4] On May 11, 2018, (b) (6), (b) (7)(C), Talent Management, signed a Notification of Personnel Action (SF-50) selecting [REDACTED] for the position of Consultant (position number 010213) with CFTC OIG. [Exhibit 6.5] The effective date was May 13, 2018, the rate of pay was \$77.66 per hour and the position had a not-to-exceed date of May 13, 2019. [Exhibit 6.5]

On March 28, 2019, (b) (6), (b) (7)(C), prepared a Hiring Request Business Case (CFTC Form 440) requesting a CT15 Consultant position with a duty station in Washington, DC. [Exhibit 6.6] The Hiring Request Business Case indicates this was an external recruitment and is a new requirement and was signed by IG Lavik on March 28, 2019 and by (b) (6), (b) (7)(C), on April 10, 2019. [Exhibit 6.6] The narrative explaining the business requirement in 2019 is the same as the narrative in the Hiring Request Business Case document prepared in 2018. [Compare Exhibit 6.2 with Exhibit 6.6]

On March 28, 2019, IG Lavik signed a Justification and Approval of Employment of Expert/Consultant form selecting [REDACTED] for the position of Legal and Economic Consultant with a requested salary of \$77.66/hour. [Exhibit 6.7] The narrative under the section entitled "Summary of Duties" is the same as the narrative in the Justification and Approval of Employment of Expert/Consultant form signed in 2018. [Compare Exhibit 6.3 with Exhibit 6.7]

On May 12, 2019, (b) (6), (b) (7)(C), Talent Management, signed a Notification of Personnel Action (SF-50) selecting [REDACTED] for the position of Consultant (position number

⁴⁴ The investigation located two versions of this form. In one version, the duty station was listed as Washington, D.C. In another version, the duty station Washington, D.C. was crossed out by hand, and Miami, FL was handwritten in as the duty station.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

010213) with CFTC OIG. [Exhibit 6.8] The effective date was May 12, 2019 and the rate of pay was \$77.66 per hour, and the position had a not-to-exceed date of May 12, 2020. [Exhibit 6.8]

After [REDACTED] resigned from the CFTC, [REDACTED] accepted an excepted appointment as a temporary employee consultant under 5 U.S.C. § 3109 and 5 C.F.R. § 304.103.⁴⁵ [Exhibit 6.5] When hired as an employee consultant, [REDACTED] was sent a memorandum from (b) (6), (b) (7)(C) [REDACTED] outlining his ethical obligations as an employee of the CFTC. [Exhibit 6.9] The message also stressed that “the CFTC is committed to the highest ethical standards,” and “as a public servant and employee of the CFTC, your commitment to ethical service is a vital part of performing your work and supporting the CFTC’s mission.”⁴⁶ [Exhibit 6.9] The opening paragraph of that Memorandum stated the ethical obligations imposed upon [REDACTED] as a CFTC employee:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 6.9 attachment] As a federal government employee subject to *The Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R Part 2635, [REDACTED] was required to comply with Subpart A of the *Standards of Ethical Conduct for Employees of the Executive Branch*, entitled “General Provisions.” This Subpart identifies the basic obligations of public service and recognizes that “Public service is a public trust,” and that “Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.” This Subpart further establishes that “To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section.” The General principles include the principle that “Employees shall put forth honest effort in the performance of their duties.”

⁴⁵ 5 U.S.C. § 3109(b) provides in pertinent part “When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services.” 5 C.F.R § 304.103(a)(1) provides in pertinent part “When authorized by an appropriation or other statute to use 5 U.S.C. § 3109, an agency may appoint a qualified expert or consultant to an expert or consultant position that requires only intermittent and/or temporary employment. Such an appointment is excepted from competitive examination, position classification, and the General Schedule pay rates.”

⁴⁶ Because [REDACTED] had completed the CFTC’s annual ethics training on December 15, 2017, he was not required to take New Entrant and Annual Ethics training. [Exhibit 6.9] [REDACTED] was required to complete the 2019 Annual Ethics training with the regular training cycle for other employees, and he completed this training on November 13, 2019. [Exhibit 6.10]

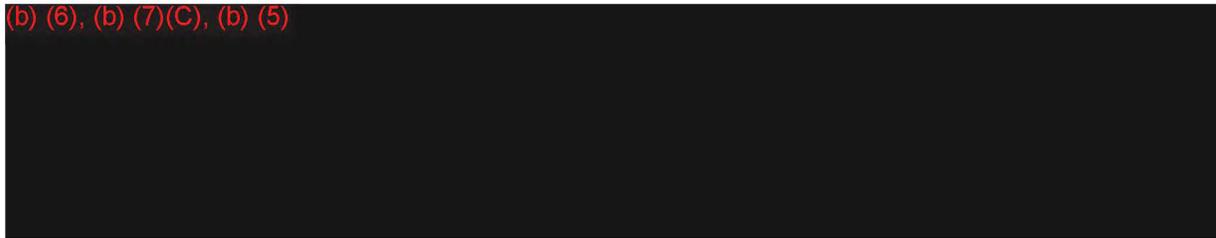
Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Subpart G of the *Standards of Ethical Conduct for Employees of the Executive Branch*, entitled “Misuse of Position” contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. Part 2635.705, entitled “Use of official time” states that “Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.”

(b) (6), (b) (7)(C) substantive duties and responsibilities as a CFTC OIG consultant are encompassed in the documents employing him as a consultant. The section entitled “Summary of Duties” in the Justification and Approval of Employment of Expert/Consultant states:

(b) (6), (b) (7)(C), (b) (5)



[Exhibits 6.3, 6.7] The section entitled “Duties” in the April 10, 2018 Position Description for a Consultant states:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 6.4] Under the section entitled “Expectations regarding performance and work product” the Position Description defines the “Key expectations regarding performance and work product” as follows:

(b) (6), (b) (7)(C), (b) (5)



Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 6.4]

IG Lavik stated [REDACTED] duties as a consultant did not really change from [REDACTED] duties as an employee. [Exhibit A.19 at 20] Indeed, [REDACTED] understood his duties as a CFTC OIG consultant were to be the same as his duties as a CFTC OIG employee.⁴⁷ [Exhibit A.32 at 12] According to IG Lavik, [REDACTED] was to be paid the agreed amount whether or not [REDACTED] had performed any work, just as a consultant on an annual retainer would be paid. [Exhibit A.19 at 33] IG Lavik believed it was legitimate for [REDACTED] to be paid when [REDACTED] was a consultant even if there was no work for him to do, so he would be available to chat or discuss ideas with IG Lavik. [Exhibit A.19 at 33] See more detailed discussion below, Section II.A.3.

As a part-time consultant employee, [REDACTED] tour of duty was three days a week for eight hours per day. On March 18, 2020, [REDACTED] resigned from his position as a consultant with CFTC OIG effective March 27, 2020. [Exhibit 6.11] Timesheets submitted by [REDACTED] as a consultant during the period from June 1, 2018 through March 27, 2020 reflect [REDACTED] sought compensation for 2,162 hours and was paid \$167,900.92 for those 2,162 hours. [Exhibit 6.12]

During the period from the end of the government furlough through August 16, 2019, [REDACTED] charged 696 hours at \$77.66/hour for a total charge of \$54,051.36. [Exhibit 6.12] [REDACTED] timesheets were certified by DIG Ringle for the period from June 1, 2018 through June 7, 2019. During this period from the end of the government furlough through June 7, 2019, [REDACTED] charged 458 hours at \$77.66/hour for a total charge of \$35,568.28. [Exhibit 6.12] After that time, [REDACTED] timesheets were certified by IG Lavik. During the period from the June 7, 2019 until [REDACTED] resigned as a CFTC OIG consultant effective March 27, 2020, [REDACTED] charged 1008 hours at \$77.66/hour for a total charge of \$78,281.28.⁴⁸ [Exhibit 6.13]

In his allegations, [REDACTED] recounted that he attended a CFTC OIG staff conference on March 27, 2019 and that, during the staff conference, DIG Ringle stated “since the furlough, [REDACTED] had had no work to do and had done no work”⁴⁹ and “the Deputy IG added that the IG and Deputy IG should think about getting him some.” [CIGIE Complaint 986-524] In his May 13, 2020, FCC OIG interview, [REDACTED] expanded on his allegation explaining that in response to DIG Ringle’s statement, strange looks were exchanged between the auditors and [REDACTED] [Exhibit A.12 at 12] During this meeting, (b) (6), (b) (7)(C) asked DIG Ringle if OIG was paying [REDACTED] and she replied “yes, absolutely.” [Exhibit A.12 at 12] After this meeting, [REDACTED] spoke to [REDACTED] and learned that [REDACTED] was submitting time sheets and DIG Ringle was approving them as she normally did. [Exhibit A.12 at 12] [REDACTED] also spoke confidentially to (b) (6), (b) (7)(C).

⁴⁷ It should be noted that it is “inappropriate” to use a consultant to do work performed by the agency’s regular employees. 5 C.F.R. § 304.103(b)(5).

⁴⁸ During this period, IG Lavik certified all of these timesheets except the timesheet for pay period 13 (6/24/2019 to 7/5/2019) which was certified by [REDACTED]. [Exhibit 6.14]

⁴⁹ The U.S. Government furlough occurred from midnight EST on December 22, 2018, until January 25, 2019.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Workforce Relations, about payments to [REDACTED] and she said [REDACTED] could not be paid for just being available, but only for work he completed. [Exhibit A.12 at 12]

DIG Ringle recalled the discussion about [REDACTED] lack of work at the March 27, 2019, staff conference and she recalled conveying, that as far she knew, she had not seen [REDACTED] doing any OIG work since the January 26, 2019, end of the government furlough. [Exhibit A.28 at 26] DIG Ringle recalled [REDACTED] submitted timesheets for January through March 27, 2019, that she approved [REDACTED] timesheets and that [REDACTED] was paid by the CFTC for time claimed on his timesheets. [Exhibit A.28 at 26] DIG Ringle did not recall the further comment about getting [REDACTED] some work, but stated it sounded like something she would say.⁵⁰ [Exhibit A.28 at 26] During this period, [REDACTED] was supervised by IG Lavik. [Exhibit A. 28 at 26; Exhibit A.19 at 32] DIG Ringle was signing off on the hours [REDACTED] submitted on his consultant timesheet, as well as all OIG staff timesheets, because IG Lavik did not like the WebTA system. [Exhibit A.28 at 26; Exhibit A.19 at 32] Ringle felt like she was being kept in the dark about [REDACTED] lack of work and was getting angry about it. [Exhibit A.28 at 26] When asked about the March 27, 2019, OIG staff meeting during which DIG Ringle allegedly stated that since the furlough, [REDACTED] had no work to do and had done no work, IG Lavik stated he recalls DIG Ringle saying the IG and DIG should get [REDACTED] some work. [Exhibit A.19 at 20]

The admission by DIG Ringle that [REDACTED] had no assigned work was confirmed by other CFTC OIG staff who attended the March 27, 2019, meeting. CFTC OIG [REDACTED] (b) (6), (b) (7)(C) [REDACTED] stated he recalls the March 27, 2019, post-furlough OIG meeting when Ringle stated [REDACTED] has no work. [Exhibit A.2 at 10] [REDACTED] also reported that Ringle began developing anxiety about signing [REDACTED] time sheets because she did not know what he was working on. [Exhibit A.2 at 10] [REDACTED] added that [REDACTED] contract hardly passed “the laugh test.” [Exhibit A.2 at 10] Although he did not recall the specific OIG meeting when DIG Ringle stated [REDACTED] had no work, [REDACTED] (b) (6), (b) (7)(C) stated the audit side of OIG expressed concern about the arrangement with [REDACTED] [Exhibit A.5 at 7] [REDACTED] also did not explicitly recall the OIG meeting when DIG Ringle stated [REDACTED] had no work but also remarked that this sounds like something Ringle would say. [Exhibit A.26 at 5] [REDACTED] stated he recalled discussions about what [REDACTED] was working on with [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] [Exhibit A.26 at 5] [REDACTED] stated IG Lavik said [REDACTED] was working on reading law reviews and economist reviews, things that [REDACTED] said were over his head and that questions about what [REDACTED] was working on were asked at most of OIG staff meetings, and Lavik would give basically the same answer. [Exhibit A.26 at 5] [REDACTED] recalled several conversations prior to the 2018/2019 furlough noting that OIG could not contact [REDACTED] and had no emails relating to the work performed by [REDACTED] [Exhibit A.8 at 7] According to [REDACTED] no one could reach [REDACTED] and [REDACTED] would not return staff calls. [Exhibit A.8 at 7]

[REDACTED] own description of his work as a consultant is consistent with DIG Ringle’s statement that [REDACTED] performed no work from the end of January 2019 through March 2019. In neither the

⁵⁰ DIG Ringle did not recall being asked by CFTC OIG staff at this March 2019 meeting whether [REDACTED] was getting paid during period when he was not working. [Exhibit A.28 at 26]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

description of his work provided to IG Lavik,⁵¹ nor in his FCC OIG interview, does [REDACTED] identify any specific work product, written or oral, produced during this two-month period. Much of the work [REDACTED] claims to have done while a consultant was completed before this period. For example, [REDACTED] claims to have drafted the *Management Advisory: Office of Financial Management* (“*Management Advisory: OFM*”).⁵² [Exhibit 6.15 attachment at 1] The drafting of this report was completed by July 2018, when the report was finalized. DIG Ringle stated there was no significant work on the *Management Advisory: OFM* project after October 2018, and IG Lavik stated [REDACTED] did not do anything on the project after the report was issued, other than brief CFTC Chairman Tarbert at the end of 2019. [Exhibit A.28 at 29; Exhibit A.19 at 22]. Similarly, researching issues related to [REDACTED] details occurred in 2018, while [REDACTED] was on detail.⁵³ [Exhibit 6.15 attachment at 2] While [REDACTED] asserts he worked on follow up tasks from the *Inspection & Evaluation: CFTC Stress-Testing Development Efforts* (“*Stress Testing Report*”) and *Management Advisory: OFM*, as well as advising IG Lavik and DIG Ringle and reading economic literature to generate ideas for new projects and his PhD thesis, no specific work assignment resulting in an identifiable work product produced during this period was identified by [REDACTED] [Exhibit 6.15 attachment] Indeed, while DIG Ringle stated that [REDACTED] in connection with the *Stress Testing Report* proposed a cover memo that IG Lavik decided not to include and consulted with CFTC OIG regarding redactions and notifications to Congressional staff, all these efforts were undertaken and completed in 2018. [Exhibit 6.16]

FCC OIG obtained and reviewed email correspondence for the period from January 25, 2019 through March 27, 2020. We identified very little substantive email from [REDACTED] related to the “Key expectations regarding performance and work product” described in the position description for the position (i.e., related to the production of “technically accurate quality work, drafting technically correct memoranda and other documents,” or finalizing and drafting “written summaries of all research”). In fact, the vast majority of email correspondence in [REDACTED] mailbox during this period was related to the circulation of Seriatim associated with CFTC business or routine administrative email (e.g., timesheets, travel office, Office of Government Ethics financial disclosure, requests to complete required training, requests to reset expired

⁵¹ After DIG Ringle responded to FCC OIG’s January 27, 2020, request for specific information about [REDACTED] consultant work by directing FCC OIG to IG Lavik, FCC OIG sent a request for information to IG Lavik on March 4, 2020, seeking the same information previously sought from DIG Ringle, namely specific information about the work conducted by [REDACTED] as a consultant with CFTC OIG including a schedule of projects and documents associated with those projects. [Exhibit 6.16; Exhibit 6.17] IG Lavik forwarded this request to [REDACTED] and he replied with a list of his projects, omitting the detail and the copies of his work that had been requested. [Exhibit A.32 at 13] [REDACTED] expected IG Lavik and DIG Ringle to provide the full response, and that he was only trying to jog their memories. [Exhibit A.32 at 13] On April 14, 2020, IG Lavik responded to FCC OIG’s request, forwarding a four-page description of [REDACTED] CFTC OIG consultant work as prepared by [REDACTED] himself. [Exhibit 6.15] [REDACTED] was surprised IG Lavik and DIG Ringle did not provide their own responses. [REDACTED] explained that IG Lavik is at a loss when he has to do something by himself, and he relies on DIG Ringle a lot to do anything that requires serious work. [Exhibit A.32 at 13]

⁵² DIG Ringle recalled she worked fairly regularly on the *Management Advisory: OFM* with [REDACTED] from May to July 2018, when it was issued. [Exhibit A.28 at 29] According to DIG Ringle, [REDACTED] contributed to the drafting of the *Management Advisory: OFM* and reviewed the first and second drafts of the report. [Exhibit A.28 at 29]

⁵³ IG Lavik stated [REDACTED] was involved in issues involving [REDACTED] because [REDACTED] and [REDACTED] were personal friends. [Exhibit A.19 at 22]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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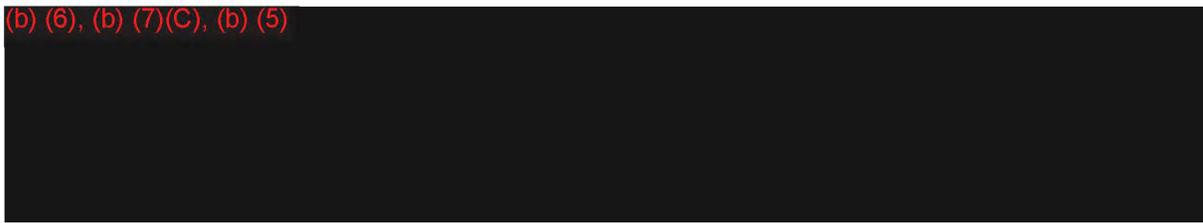
REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

passwords, spam notices, etc.). There is very little substantive email correspondence. FCC OIG also identified a series of email messages from DIG Ringle attempting to determine what work was being performed by (b) (6), (b) (7)(C). These messages are discussed in more detail below.

No written work product was identified by (b) (6), (b) (7)(C) or located in CFTC OIG files for this period. Further, no specific work conducted either orally or independently during this period was identified, strongly suggesting (b) (6), (b) (7)(C) did not keep records of his work, as required by his Position Description. For example, while (b) (6), (b) (7)(C) claimed to have participated in conference calls with the new director of RSB, (b) (6), (b) (7)(C) did not provide any dates of these calls, nor could he provide an estimate of time he spent working on the implementation of the *Stress Testing Report's* recommendations while he was a consultant. [Exhibit A.32 at 14] Similarly, while (b) (6), (b) (7)(C) may have read economic articles in his search for new CFTC OIG projects during this time, because his work product, if any, would have been an oral recitation of what he read, it is difficult to conclude that this work was accomplished during this period without further specificity. [Exhibit 6.15 attachment at 3-4; Exhibit A. 32 at 13; Exhibit A.19 at 23] DIG Ringle's efforts to identify and review (b) (6), (b) (7)(C) work product were largely unsuccessful. In addition to (b) (6), (b) (7)(C) work on redaction, publication and distribution of the *Stress Testing Report*, DIG Ringle stated she was unaware of any formal projects or OIG publications that (b) (6), (b) (7)(C) worked on during the period May 11, 2018, through May 20, 2019, other than to provide language to place in the Semiannual Report for the period ending September 30, 2018.⁵⁴ [Exhibit 6.16]

DIG Ringle sent emails to (b) (6), (b) (7)(C) in May and June 2019 with the goal of having (b) (6), (b) (7)(C) show her his work. DIG Ringle began to question (b) (6), (b) (7)(C) in late May 2019 about his work product. A few days after receiving the May 20, 2019, letter from CIGIE IC notifying her of this investigation and containing the allegation "Whether the IG and DIG wasted government funds by paying a consultant to be 'available' without any work assigned and without any work produced," DIG Ringle asked (b) (6), (b) (7)(C) to provide her with information on the work he was performing for CFTC OIG. On May 23, 2019, DIG Ringle sent an email message to (b) (6), (b) (7)(C) with the following message:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 6.18]

⁵⁴ As noted below, CFTC travel records and (b) (6), (b) (7)(C) Work Rundown indicate that he participated in person in CFTC OIG's April 25, 2019 briefing with the Senate Committee on Agriculture, Nutrition, and Forestry, however no written work product was identified or located by FCC OIG related to this matter. [Exhibit 6.15, Work Rundown.docx attachment]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C) was minimally responsive to DIG Ringle’s efforts. On May 28, 2019, (b) (6), (b) (7)(C) responded “I have been reading the literature on a) certain types of market manipulation in financial markets, and b) decision rules and opportunities for manipulation in prediction/decision markets.” [Exhibit 6.19] This is (b) (6), (b) (7)(C) only substantive response DIG Ringle’s requests for information about his CFTC OIG work product as a consultant.⁵⁵ [Exhibit A.28 at 27]

On May 28, 2019, DIG Ringle responded to (b) (6), (b) (7)(C) May 28, 2019 email message:

(b) (6), (b) (7)(C), (b) (5)

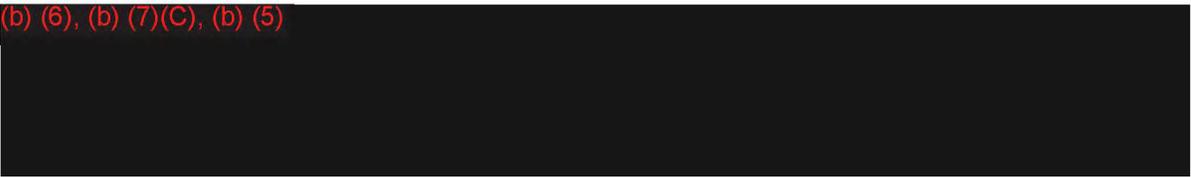


[Exhibit 6.20] FCC OIG did not locate a response to this message from (b) (6), (b) (7)(C) in the investigation record. On May 29, 2019, DIG Ringle sent a screenshot from a directory of “informational memos” to (b) (6), (b) (7)(C) with the following message “Hi, (b) (6), (b) (7)(C) – I figured I’d click the link for informational memos and send them to you. Let me know if you want to see any. Please write up your thoughts so I have some documentation of the work you do for us. I am hoping you will come up with a topic Roy will want to contract a study on, or conduct ourselves.” [Exhibit 6.21]

On June 10, 2019, DIG Ringle sent an email message to (b) (6), (b) (7)(C) stating “I am going to ask Roy to instruct me to sign your time and attendance. I will note I am approving your time and attendance at his instruction.” [Exhibit 6.22] In response to (b) (6), (b) (7)(C) reply asking whether he had validated his timesheet, DIG Ringle first responded, “I don’t feel comfortable signing because I can’t prove that you are doing anything,” and a few hours later DIG Ringle provided a further explanation: “I got an email from OHR asking me to please certify you. So I’ll do it. I really do want you to document what you’re doing for us. I don’t want to get in trouble. And I don’t want Roy to get in trouble.” [Exhibit 6.23] FCC OIG did not locate a response to this message from (b) (6), (b) (7)(C) in the investigative record.

On June 16, 2019, DIG Ringle sent an email message to (b) (6), (b) (7)(C) forwarding various CFTC confidential informational memoranda (since (b) (6), (b) (7)(C) was denied access to the CFTC system containing this material):

(b) (6), (b) (7)(C), (b) (5)



⁵⁵ DIG Ringle does not believe she received any further response from (b) (6), (b) (7)(C) other than some indication of his work projects when he visited the CFTC OIG office, but DIG Ringle does not recall whether (b) (6), (b) (7)(C) visited OIG around the time of this email exchange. [Exhibit A.28 at 27]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit 6.24] FCC OIG did not locate a response to this message from [REDACTED] in the investigative record.

DIG Ringle was concerned [REDACTED] was not being responsive to her inquiries about his CFTC OIG work as a consultant. Ringle shared her concerns with IG Lavik, but IG Lavik was not concerned and told Ringle that [REDACTED] “works for me.” [Exhibit A.28 at 27] Ringle does not know how often IG Lavik spoke with [REDACTED] noting IG Lavik would ask DIG Ringle for [REDACTED] telephone number a lot, but DIG Ringle does not specifically recall how often he did so. [Exhibit A.28 at 27] When DIG Ringle asked IG Lavik to describe the work [REDACTED] had done for the CFTC OIG, IG Lavik was alternately saying [REDACTED] was working (but gave no details) or that he was basically available. IG Lavik would say “[REDACTED] is on staff.” [Exhibit A.28 at 27] DIG Ringle told IG Lavik she did not feel comfortable signing [REDACTED] timesheets, but if IG Lavik felt comfortable, IG Lavik should sign [REDACTED] timesheets. [Exhibit A.28 at 27]

IG Lavik did not recall [REDACTED] rebuffing DIG Ringle’s efforts to determine what work [REDACTED] was conducting for CFTC OIG during this period, and that [REDACTED] ignored DIG Ringle’s requests for information. [Exhibit A.19 at 21] IG Lavik was surprised [REDACTED] never responded to DIG Ringle’s requests to [REDACTED] to document his CFTC OIG work product, for brief notes of [REDACTED] thoughts on a Seriatim, and to DIG Ringle’s statement that the only thing worse than paying [REDACTED] to not do anything would be paying [REDACTED] for reading confidential information and [REDACTED] not writing anything. [Exhibit A.19 at 21] IG Lavik was surprised [REDACTED] ignored DIG Ringle’s efforts but stated that he was always much closer to [REDACTED] professionally than was Ringle. [Exhibit A.19 at 21] IG Lavik did not have trouble getting information from [REDACTED] about what he was doing. [Exhibit A.19 at 21]

The CIGIE *Quality Standards for Federal Offices of Inspector General* (“*Silver Book*”) sets forth the overall quality framework for managing, operating, and conducting the work of Office of Inspector General. The *Silver Book* recognizes that “Public office carriers with it a responsibility to apply and account for the use of public resources economically, efficiently, and effectively” and the “OIGs have a special need for high standards of professionalism and integrity in light of the mission of the Inspectors General under the Act.” *Silver Book* at 3-4. The *Silver Book* further establishes that “The IG and OIG staff should follow the *Standards of Ethical Conduct for Employees of the Executive Branch*⁵⁶ (Ethical Standards) and the Federal conflict of interest laws.” *Silver Book* at 8.

The *Silver Book* also states that “The IG and OIG staff shall direct and control OIG operations consistent with the Standards for Internal Control in the Federal Government issued by GAO”⁵⁷ and that “these standards require that internal control be part of an entity’s management infrastructure to provide reasonable assurance that (1) operations are efficient and effective; (2) financial reporting is reliable; and (3) operations are in compliance with applicable laws, regulations, and professional standards.” *Silver Book* at 20. DIG Ringle’s certification of

⁵⁶ Codified in 5 C.F.R. Part 2635.

⁵⁷ The Federal Managers; Financial Integrity Act of 1982 requires GAO to issue standards for internal control in government. The Office of Management and Budget issues implementing guidelines and specific requirements.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

██████ timesheets with the knowledge that ██████ had no work assignments and produced no work product from the end of the government furlough through both the March 27, 2019, meeting and until May, 2019 when DIG Ringle was no longer responsible for certifying ██████ timesheets as described below, was inconsistent with these principles.

For the period beginning after the 2018/2019 government furlough through March 27, 2019, DIG Ringle approved payment to ██████ for 208 hours in the amount \$16,153.28. [Exhibit 6.12, ██████ timesheets for 2019 pay period 02 through 2019 pay period 11, January 20, 2019 through June 8, 2019]

DIG Ringle was concerned ██████ was being paid and not doing work, although it appeared to DIG Ringle that ██████ was working directly with IG Lavik. DIG Ringle did not think time and attendance fraud had been committed because DIG Ringle trusted IG Lavik. [Exhibit A.28 at 31] Nevertheless, DIG Ringle considered referring the matter to CIGIE, prior to receiving the May 2019 letter from CIGIE about this investigation, which appears to conflict with her previous statement that she did not think there was time and attendance fraud. [Exhibit A.28 at 31] DIG Ringle was relieved to see the allegation about ██████ when she got the letter from CIGIE and that the ██████ issue was on CIGIE's radar. [Exhibit A.28 at 31] Thereafter, DIG Ringle did not consider referring ██████ to the CIGIE IC for getting paid for work he did not do, because she thought it would be inefficient to have two CIGIE investigations. [Exhibit A.28 at 31] At same time, OIG staff was very concerned; the OIG auditors never liked ██████ to begin with. [Exhibit A.28 at 31] The OIG auditors would come to DIG Ringle and tell her she "better do something about ██████ or we will do something about you." [Exhibit A.28 at 31] DIG Ringle was concerned about respecting OIG staff, and told them she was no longer certifying ██████ timesheets and that IG Lavik assured DIG Ringle that ██████ was working. [Exhibit A.28 at 31-32] After May 2018, DIG Ringle knew the problem would be handled through CIGIE. [Exhibit A.28 at 31]

According to IG Lavik, DIG Ringle never raised the concern to IG Lavik that ██████ was being paid for no work. [Exhibit A.19 at 33] DIG Ringle did not suggest to IG Lavik that ██████ manner of charging time should be investigated. [Exhibit A.19 at 33] IG Lavik believed DIG Ringle felt uncomfortable about signing ██████ timesheets, because IG Lavik held 95% of the conversations with ██████ when he was a consultant. [Exhibit A.19 at 33] The CFTC OIG accountants would grouse about ██████ and ask what ██████ was doing, and that ██████ had no work. [Exhibit A.19 at 33] IG Lavik paid more attention to ██████ than he did to the OIG accountants and IG Lavik thought the CFTC OIG accountants might be jealous, although the accountants seem less unhappy lately because IG Lavik has tried to stroke them. [Exhibit A.19 at 33]

DIG Ringle had herself removed as the person certifying timesheets for ██████ on June 19, 2019. [Exhibit 6.25] DIG Ringle decided to remove herself because if ██████ was to work with IG Lavik directly, it was "crazy" for DIG Ringle to sign ██████ timesheets because she was "not in the loop." [Exhibit A.28 at 27] DIG Ringle signed ██████ timesheets when he reported to

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

IG Lavik directly, but the difference was that because [REDACTED] was in the office, DIG Ringle had interactions with him, and DIG Ringle knew what [REDACTED] did. [Exhibit A.28 at 27]

When FCC OIG questioned IG Lavik why, in June 2019, DIG Ringle asked to no longer certify [REDACTED] timesheets, IG Lavik guessed that because he had more contact with [REDACTED] than DIG Ringle, it made sense for him to certify [REDACTED] timesheets. [Exhibit A.19 at 21] IG Lavik does not actually go into the WebTA system and certify timesheets. [Exhibit A.19 at 21] Instead, he would get the timesheets, review them and see what was reported and then get staff assistance, first from [REDACTED], and then from [REDACTED], to actually “push the button.” [Exhibit A.19 at 21] IG Lavik certified timesheets for [REDACTED] from June 2019 through March 27, 2020 when [REDACTED] resigned his consultant position. [Exhibit 6.13]

For the period beginning after the 2018/2019 government furlough through the last [REDACTED] timesheet DIG Ringle certified on May 24, 2019, DIG Ringle approved payment for 410 hours to [REDACTED] in the amount \$31,840.60. [Exhibit 6.12, [REDACTED] timesheets for 2019 pay period 02 through 2019 pay period 11, January 20, 2019 through June 8, 2019]

IG Lavik told FCC OIG that he considered [REDACTED] as being continuously paid, even when he had no work assignment or did not produce a written work product, as if [REDACTED] were on retainer so he was available to discuss matters with CFTC OIG when called upon to do so. IG Lavik explained he wanted someone like smart like [REDACTED] to advise him. [Exhibit A.19 at 33] IG Lavik found [REDACTED] very valuable and tried to use him for writing and as an idea man. [Exhibit A.19 at 33] IG Lavik stated [REDACTED] was not considered by the CFTC as under a retainer, but as a consultant OIG could use. [Exhibit A.19 at 33] Just to have [REDACTED] be available to Lavik was worth it, because [REDACTED] had been at the CFTC, and because of the quality of the reports [REDACTED] produced and the quality that the Commissioners assigned to those reports. [Exhibit A.19 at 33]

When the concept of an annual retainer was explained to IG Lavik, as someone who is paid whether they are used or not, or only used when needed and otherwise received the agreed amount if no work was performed, IG Lavik agreed this was how [REDACTED] was to be paid. [Exhibit A.19 at 33] IG Lavik likened the hiring of [REDACTED] as a consultant to be available to IG Lavik if even there was no specific project, to that of expert consultants hired by CFTC chairmen, citing a consultant hired by former CFTC Chairman Giancarlo who was an expert on swaps and futures. [Exhibit A.19 at 33] According to IG Lavik, it was legitimate for [REDACTED] to still be paid when there is no work, so he would be available to chat with Lavik, or for Lavik to run ideas by. [Exhibit A.19 at 33] IG Lavik was not concerned that [REDACTED] was being paid for not doing anything because IG Lavik needed to have staff that knew price theory and microeconomics. [Exhibit A.19 at 24] IG Lavik remarked that in [REDACTED] “God had given us a golden hen.” [Exhibit A.19 at 24]

DIG Ringle explained that IG Lavik believes [REDACTED] can get paid to be available to discuss issues and possible projects (i.e., to be paid on a “retainer”). [Exhibit A.28 at 26] To DIG Ringle, a CFTC consultant is paid for time working on CFTC projects, but IG Lavik disputed Ringle’s position. [Exhibit A.28 at 26] IG Lavik and Ringle argued over this. DIG Ringle’s position is

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

that a CFTC consultant is not on a retainer, yet IG Lavik treated [REDACTED] as if he were on retainer. [Exhibit A.28 at 26] DIG Ringle does not know what the agency's position is on whether a CFTC consultant should be treated as if they were on a retainer. [Exhibit A.28 at 26]

According to (b) (6), (b) (7)(C) Workforce Relations, OIG is responsible for managing the consultant and assigning work to the consultant. [Exhibit A.6 at 12] If OIG has knowledge that a consultant not working, OIG should not certify the consultant's time sheets. [Exhibit A.6 at 12] If HR had knowledge that timesheets were being certified but the consultant was not working, HR could refer this conduct for a criminal investigation. [REDACTED] confirmed that if there was no work assigned to [REDACTED] and he was not producing any work, OIG should not have been paying him. [Exhibit A.6 at 12]

CFTC (b) (6), (b) (7)(C) was not aware of allegations that [REDACTED] was not working and concerns about [REDACTED] not working but being paid as if he were working were not brought to (b) (6), (b) (7)(C) attention.⁵⁸ [Exhibit A.34 at 7] [REDACTED] stated the IG should have evidence of [REDACTED] work product, such as assignments, work product timelines, etc. [Exhibit A.34 at 7] [REDACTED] as a consultant, would be given assignments and should have work product and be able to provide evidence of the things he has been asked to do and what he has done. [Exhibit A.34 at 7] For each hour charged, noted (b) (6), (b) (7)(C), [REDACTED] would have had to work, not just to be available or waiting around to answer questions as they came up. [Exhibit A.34 at 7] (b) (6), (b) (7)(C) believes (b) (6), (b) (7)(C) would have worked out the details of the consulting arrangement with Lavik. [Exhibit A.34 at 7] (b) (6), (b) (7)(C) believes both IG Lavik and DIG Ringle would have understood the requirements of the [REDACTED] engagement. [Exhibit A.34 at 7]

To investigate this allegation, FCC OIG interviewed current and former CFTC management and staff, obtained and reviewed email correspondence, timesheets, travel records, telephone records, and network drives for the period beginning at the end of the federal government furlough in January 2019, through [REDACTED] resignation in March 2020. FCC OIG also requested information on the work done by [REDACTED] during this period from IG Lavik and DIG Ringle. FCC OIG found little evidence that [REDACTED] performed any meaningful work during the period from the end of the government furlough (January 25, 2019) until his resignation on March 27, 2020.⁵⁹ Yet, beginning in June 2019 through (b) (6), (b) (7)(C) March 2020 resignation, IG Lavik routinely certified the timesheets submitted by [REDACTED] while he was a consultant, thus, in many instances, authorizing payment for no meaningful work. These payments resulted from IG Lavik's not following the requirements of the *Silver Book*, not effectively and efficiently managing the resources of CFTC OIG, and not ensuring that [REDACTED] complied with the *Standards of Ethical Conduct for Employees of the Executive Branch* and used official time in an honest effort to perform official duties.

⁵⁸ Because of the IG's role and independence, [REDACTED] cannot press the IG to find out the work [REDACTED] is doing. DIG Ringle would have basically said that the IG did not have to tell HR what work [REDACTED] was doing. [Exhibit A.34 at 7]

⁵⁹ Payments to [REDACTED] for the period from the end of the 2018/2019 government furlough through May 2019 are addressed in Section II.A.2 above.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

FCC OIG interviewed [REDACTED] on June 23, 2020, approximately three months after [REDACTED] resignation from his CFTC OIG consultant position. During the interview, [REDACTED] made the following comments about the work that he performed as a consultant.

(b) (6), (b) (7)(C), (b) (5)



Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)

[Exhibit A.32 at 13-14]

After almost three hours, [REDACTED] ended his FCC OIG interview during questioning about the work that he performed as a consultant claiming he had another commitment. FCC OIG made several attempts to schedule an additional time to complete the interview, but [REDACTED] declined the requests. [Exhibit A.32 at 15] [REDACTED] asked FCC OIG to send written questions, but FCC OIG advised [REDACTED] that conducting an interview by written questions is not a procedure that FCC OIG follows and [REDACTED] had not provided any justification for an exception to FCC OIG procedures. [Exhibit A.32 at 15] In responding to this notification, [REDACTED] sent an email message that included the following statement about the work he performed as a consultant.

(b) (6), (b) (7)(C), (b) (5)

[Exhibit A.32 at 15] Thus, according to [REDACTED] he made efforts to perform work for the CFTC OIG while he was a consultant, but states quite clearly that his efforts were rebuffed by IG Lavik and CFTC OIG.⁶⁰

⁶⁰ IG Lavik confirmed (1) [REDACTED] offer to help [REDACTED] with investigations was rejected; (2) [REDACTED] offered to help DIG Ringle complete investigations opened by [REDACTED] (3) [REDACTED] agreed to assist in the missing laptop project but “the project died;” and (4) [REDACTED] offer to look into [REDACTED] set aside was never approved because it was subsumed by other CFTC action. Lavik confirmed that OIG was considering using [REDACTED] in a project to determine if

Case Number:
CIGIE Case IC 986

Case Title:
Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

As described above, FCC OIG's request, first to DIG Ringle and then to IG Lavik, about work performed for CFTC OIG by ██████ while he was a CFTC OIG consultant, was ultimately answered by ██████ himself. The description of his CFTC OIG consultant work provided by ██████ to IG Lavik, which in turn was provided by IG Lavik to FCC OIG as IG Lavik's complete response to the FCC OIG's request for information, both fails to provide the requested schedule of ██████ projects and associated documents, and lacks specificity and detail about ██████ consultant work product and the dates the items described occurred.⁶¹ ██████ sent the following note to IG Lavik when he supplied the four page Work Rundown:

(b) (6), (b) (7)(C), (b) (5)



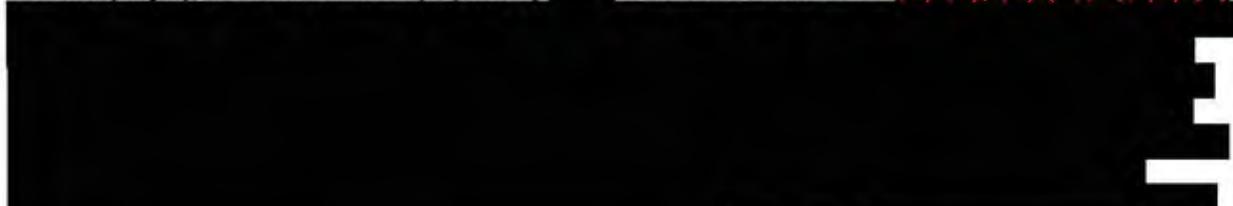
[Exhibit 6.15] IG Lavik did not prepare anything himself in response to the FCC OIG request for information, but instead forwarded a document written by ██████ to be used as an aid in preparing a formal response.⁶² The Work Rundown provided by ██████ does not identify any significant or lengthy projects, or any written work product that ██████ researched and wrote while he was a CFTC OIG consultant.

██████ own description of his CFTC OIG consultant work in the Work Rundown is largely consistent with the descriptions of his work provided to FCC OIG by ██████ himself, IG Lavik and DIG Ringle. At the outset, ██████ acknowledges his efforts result in oral summaries, advice and counsel, not written or published work. [Exhibit 6.15, Work Rundown.docx attachment at 1] While ██████ was involved in the follow up to *Stress Testing Report* and the *Management Advisory: OFM*, as described above, both IG Lavik and DIG Ringle noted that ██████ work on these matters was not substantial, particularly after the reports were issued. The work ██████ did

CFTC Divisions were effectively being served by HR, but that project was never launched. [Exhibit A.19 at 24]

⁶¹ Although the Work Rundown was provided in response to an inquiry asking for detail about ██████ CFTC OIG consultant work from May 11, 2018 until August 17, 2019, it appears to describe ██████ CFTC OIG consultant work throughout his employment as a CFTC OIG consultant. [Exhibit 6.15, Work Rundown.docx attachment] In their interviews and in the follow up email from ██████ after he terminated his interview, no specific work product by ██████ was identified by either ██████ or IG Lavik or DIG Ringle from August 18, 2019 through the end of ██████ employment as a CFTC OIG consultant in March 2020. Even ██████ email to ██████ in which ██████ had the opportunity to identify additional work projects, ██████ only described work projects he proposed to IG Lavik but IG Lavik elected not to pursue. [Exhibit A.32 at 15]

⁶² Accompanying the Work Rundown prepared by ██████ was a note from IG Lavi (b) (6), (b) (7)(C), (b) (5)



[Exhibit 6.26]

Case Number:
CIGIE Case IC 986

Case Title:
Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(no date provided) inquiring about changes in the CFTC’s Office of the Chief Economist and reporting on what he found to IG Lavik resulted in no written product, and the work described could have been accomplished in a single work day.⁶³ [Exhibit 6.15, Work Rundown.docx attachment at 2] The issues with [REDACTED] detail discussed by [REDACTED] again did not result in a significant written product, and [REDACTED] did not describe with specificity when he did the work or the amount of time he spent on these issues. [Exhibit 6.15, Work Rundown.docx attachment at 2] Again, no significant written work product was produced.

With respect to CFTC OIG draft reports reviewed at the request of IG Lavik and DIG Ringle, [REDACTED] does note he reviewed a draft of the Missing Computers write up by CFTC OIG auditors, but fails to identify any other specific article or news report that he reviewed or reported on at their request. [Exhibit 6.15, Work Rundown.docx attachment at 2-3] IG Lavik did not recall any projects where [REDACTED] was asked to review the work of other OIG staff. [Exhibit A.19 at 23] Again, no significant written work product was produced. No dates, specific topics or time periods of [REDACTED] discussions with IG Lavik about background, commentary or CFTC developments were provided in the Work Rundown. [Exhibit 6.15, Work Rundown.docx attachment at 3] Again, no significant written work product was produced. While [REDACTED] claims to have assisted with CFTC OIG’s efforts to hire more attorney/economists, no details of the dates or the time [REDACTED] spent working on this project were provided. [Exhibit 6.15, Work Rundown.docx attachment at 3]

In the Work Rundown, [REDACTED] also describes how he looked for ideas for new projects predominantly while reading economic papers, thinking about economic models, and reading law journals, CFTC publications and news articles. [Exhibit 6.15, Work Rundown.docx attachment at 3] With IG Lavik’s permission, [REDACTED] searched for projects that could be both CFTC OIG projects and PhD dissertation topics.⁶⁴ [Exhibit 6.15, Work Rundown.docx attachment at 3; Exhibit A.19 at 23] [REDACTED] further claims he suggested to IG Lavik economic projects that could keep CFTC OIG’s Office of Legal and Economic Review busy for year, and shared rubrics about these projects with IG Lavik on “multiple occasions.” [Exhibit 6.15, Work Rundown.docx attachment at 3-4] While [REDACTED] does list a number of topics that were suggested to IG Lavik, the dates that these suggestions were made and the rubrics that were shared were not provided. IG Lavik recalled the rubrics were delivered orally and IG Lavik only discussed potential projects with [REDACTED]; [REDACTED] did not provide written rubrics or work.⁶⁵ [Exhibit A.19 at 23, 32] The only new project identified that IG Lavik asked [REDACTED] to work on, a review of the services provided by CFTC HR to CFTC business divisions, was started but no substantial work was completed. [Exhibit 6.15, Work Rundown.docx attachment at 3]

⁶³ Contrary to [REDACTED] statement that the Office of Chief Economist inquiry was self-initiated, IG Lavik recalled [REDACTED] made these inquiries at IG Lavik’s suggestion. [Exhibit A.19 at 22] Both IG Lavik and [REDACTED] agree that [REDACTED] provided an oral briefing on the results of his inquiries to IG Lavik, and that no written document was prepared about this matter. [Exhibit A.19 at 22]

⁶⁴ [REDACTED] decided not to work toward a PhD in December, 2019. [Exhibit 6.15, Work Rundown.docx attachment at 3]

⁶⁵ Similarly, DIG Ringle was not aware of any rubrics written by [REDACTED] [Exhibit A.28 at 30]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

IG Lavik and DIG Ringle both stated they discussed work projects with ██████ on the telephone when ██████ was a CFTC OIG consultant living in Miami. IG Lavik described ██████ work product as verbal, and IG Lavik talked with ██████ often when ██████ was a consultant, not daily conversations, but not monthly either. [Exhibit A.19 at 32] It is questionable, however, how frequently ██████ communicated with IG Lavik during this period, particularly in the Fall of 2019. Even after DIG Ringle shifted the responsibility to certify ██████ timesheets to IG Lavik, ██████ was not diligent about providing oral updates to IG Lavik or keeping up with routine CFTC requirements. As a result, ██████ access to the CFTC network was terminated. On October 27, 2019, six months after DIG Ringle had observed that ██████ had no work assignments and had produced no work, DIG Ringle sent the following email message to ██████

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 6.27]

IG Lavik stated his conversations with ██████ were longer than five minutes, but these conversations did not last for hours. [Exhibit A.19 at 32] IG Lavik spoke to ██████ more than DIG Ringle did, and IG Lavik would call ██████ from time to time and they would discuss issues. [Exhibit A.19 at 20] ██████ would also call IG Lavik for the same reason, but IG Lavik did not think the calls were daily or monthly, and observed that the frequency of IG Lavik’s calls with ██████ depended on what issues were facing CFTC OIG at the time. [Exhibit A.19 at 20] IG Lavik thought he spoke to ██████ on a weekly basis for approximately one to three hours a week. [Exhibit A.19 at 20] From May 2018 through March 2020, IG Lavik and ██████ discussed issues at the Commission and what ██████ thought about them, but there was no written work product produced by ██████ about these issues. [Exhibit A.19 at 20] IG Lavik made the calls from IG Lavik’s CFTC desk phone to ██████ personal phone because the CFTC had difficulties getting ██████ a CFTC cell phone and computers. [Exhibit A.19 at 20]

DIG Ringle stated she would speak with ██████ on the telephone about his work, but DIG Ringle did not recall ██████ telephone number. [Exhibit A.28 at 28] ██████ would call IG Lavik and Ringle on their desk telephones, and the OIG conference bridge and the telephone in the OIG conference room were used to speak to ██████ [Exhibit A.28 at 28] After December 2018, ██████ did not provide oral summaries to DIG Ringle about his CFTC OIG work. [Exhibit A.28 at 28]

FCC OIG obtained phone records for IG Lavik’s desk and cell phones, DIG Ringle’s desk and cell phones, and ██████ CFTC-issued cell phone. FCC OIG also used Thomson Reuters Clear and LexisNexis Accurint to obtain information on personal cell phone numbers associated with ██████ Because of the timing of our request for telephone records and the availability of such records from CFTC, FCC OIG focused its review on the period from the end of the government furlough (January 28, 2019) through September 2019. IG Lavik stated that he “thought he spoke to ██████ on a weekly basis for approximately one to three hours a week.” [Exhibit A.19 at 20]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

However, during that eight-month period, FCC OIG identified only 15 phone calls between IG Lavik, DIG Ringle, and [REDACTED] using [REDACTED] CFTC-issued cell phone and only one call involving [REDACTED] personal cell phone. [Exhibit 6.28] Most of these calls were one to three minutes in length and the total time associated with these calls for the entire eight-month period is one hour and 20 minutes. [Exhibit 6.28] FCC OIG also identified 14 calls from the “CFTC Exchange in DC” to [REDACTED] CFTC-issued cell phone that could be calls from IG Lavik and/or DIG Ringle using the “OIG conference bridge and the telephone in the OIG conference room” as indicated by DIG Ringle; IG Lavik stated that he did not use the conference bridge to speak with [REDACTED] [Exhibit 6.28; Exhibit A.19 at 32; Exhibit A.28 at 28] The total time associated with all calls among [REDACTED] IG Lavik, and/or DIG Ringle during this eight-month period is four hours and 46 minutes. [Exhibit 6.28]

FCC OIG obtained a copy of the network share drive used by [REDACTED] when he was a CFTC employee and consultant, and reviewed the network share drive for files created, accessed, and modified during the period from January 25, 2019 through July 2019 (when the network share was obtained from CFTC). During that period, FCC OIG did not identify any substantive written documents that were created, accessed, or modified by [REDACTED]

IG Lavik recalled that when [REDACTED] was a consultant, [REDACTED] would come to Washington, D.C. and discuss work with IG Lavik. [Exhibit A.19 at 22] [REDACTED] visits to Washington were sporadic, because [REDACTED] was homeschooling his children. IG Lavik wanted [REDACTED] to come to Washington, D.C. monthly, but according to IG Lavik, [REDACTED] only came to Washington, D.C. every three months. [Exhibit A.19 at 22]

FCC OIG obtained and reviewed travel records for [REDACTED] during his time as a CFTC OIG consultant. According to CFTC travel records, [REDACTED] visited CFTC OIG headquarters in Washington, DC four times during the period in which he served as a consultant. FCC OIG reviewed email correspondence to determine the purpose for these visits.

Dates		Purpose
4/24/2019	4/26/2019	Participate in a briefing on April 25, 2019 with the Senate Committee on Agriculture, Nutrition, and Forestry.
8/4/2019	8/7/2019	“Meet and Greet” with new CFTC Chairman Heath P. Tarbert.
11/4/2019	11/6/2019	Unable to determine any specific reason for this visit.
2/25/2020	2/28/2020	Unable to determine any specific reason for this visit. Email correspondence indicates that the visit may have been related to hiring a new Attorney-Economist in CFTC OIG.

[Exhibit 6.29; Exhibit 6.30; Exhibit 6.31; Exhibit 6.32; Exhibit 6.33; Exhibit 6.34; Exhibit 6.35]

In summary, [REDACTED] work product as a consultant during this period, as described by IG Lavik, DIG Ringle and [REDACTED] as well as the lack of written work product located in the investigative files does not meet the definition of the type of work CFTC (b) (6), (b) (7)(C) describes as what is expected from a CFTC consultant, or the work described in the Duties and

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Key Expectations sections of [REDACTED] consultant Position Description. More importantly, IG Lavik did not satisfy his responsibility “to apply and account for the use of public resources economically, efficiently, and effectively” or “to provide reasonable assurance that (1) operations are efficient and effective; (2) financial reporting is reliable; and (3) operations are in compliance with applicable laws, regulations, and professional standards” as set forth in the *Silver Book*.

For the period beginning June 10, 2019 (when IG Lavik became responsible for certifying [REDACTED] timesheets) through [REDACTED] resignation as a CFTC OIG consultant on March 27, 2020, [REDACTED] was paid for 1,008 hours in the amount \$78,281.28. [Exhibit 6.13]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 7

Whether the IG abdicated his responsibilities and authority due to an impairment.

FCC OIG's investigation found no evidence that IG Lavik has abdicated his responsibilities and authority due to impairment.

I A C R

Between March 11, 2019 and March 27, 2019, (b) (6), (b) (7)(C) [REDACTED], sent numerous email messages and documents to the CIGIE IC related to allegations involving IG Lavik and DIG Ringle. During discussions between (b) (6), (b) (7)(C) and CIGIE IC, (b) (6), (b) (7)(C) indicated he has observed IG Lavik has trouble remembering things and frequently needs to be reminded of matters on which he has recently been briefed.

II I E S I A I R E S S

IG Lavik has been the CFTC Inspector General since October 1990, when he was appointed IG by CFTC Chairman Wendy Graham. [Exhibit A.19 at 2] IG Lavik has a law and economics background, with a focus on microeconomics. He received his undergraduate, MBA, and law degrees from the University of Chicago. [Exhibit A.19 at 2]

As part of our investigation, FCC OIG interviewed IG Lavik for approximately eight hours over four sessions on August 17, August 27, September 2, 2020 and August 6, 2021. [Exhibit A.19] IG Lavik, born on July 9, 1936, was 84 years old at his first FCC OIG interview in 2020, and 85 years old at his second FCC OIG interview in 2021. All of the interviews were conducted in the CFTC OIG conference room located on the 10th floor in the CFTC headquarters facility at 1155 21st Street, N.W., Washington, DC. The interviews were conducted in person by FCC OIG staff (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and by (b) (6), (b) (7)(C) via teleconference. Overall, FCC OIG did not observe any impairments during our interviews that would unduly impede IG Lavik's ability to perform the duties and exercise the responsibilities of the position of Inspector General.

IG Lavik reported he had no memory loss or disorientation and that no one has raised concerns about IG Lavik's memory or other impairments to IG Lavik. [Exhibit A.19 at 24] IG Lavik clearly understood the questions posed to him during his FCC OIG interviews and provided coherent responses. There were several times during the interview where IG Lavik did not recall certain details or did not accurately recall events based on details identified during our examination of documents, email correspondence or other records. There were also times during the interview where IG Lavik did not recall the names of individuals, and IG Lavik admitted he had memory issues in that he did not recall names. [Exhibit A.19 at 4, 6, 11, 14 and 24] However, we attributed these instances to the normal difficulties everyone has remembering events in detail particularly events that have taken place, in some instances, several years earlier. [Exhibit A.19 at 5 (did not recall whether 2014 and 2015 lease reviews were investigations), 7

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

and 31 (did not recall whether Garrity warnings were read to (b) (6), (b) (7)(C) during 2017 and 2018 interviews or telling (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to read Garrity warnings), and 13 (recalled the 2018 RSB staff response to the *Stress Testing Report* but not whether CFTC OIG discussed the staff response or provided a written reply).

During the investigation, FCC OIG interviewed many current and former CFTC leadership, management and staff. Former Chairman J. Christopher Giancarlo noted he met with IG Lavik approximately once a quarter and did not know of or notice any impairment. [Exhibit A.9 at 8] Giancarlo did not recall anyone raising a concern that Lavik had an impairment. [Exhibit A.9 at 8; see also Exhibit A.10 at 9] Some of the individuals interviewed indicated they have noticed IG Lavik is sometimes forgetful. [Exhibit A.12 at 12; Exhibit A.2 at 10 (IG Lavik is not impaired); Exhibit A.25 at 11 ((b) (6), (b) (7)(C) does not think Lavik is impaired, but is sometimes forgetful); Exhibit A.6 at 11 (not aware that IG Lavik has any physical or mental impairments)] However, none of the individuals interviewed believes he has memory issues that impair his ability to perform his duties as the IG.⁶⁶ Several of the individuals interviewed were complimentary of the IG's grasp of issues. [Exhibit A.6 at 11 (not aware that Lavik has any physical or mental impairments); Exhibit A.12 at 12 (Lavik is a "smart guy" and well read); Exhibit A.2 at 11 (Lavik is over 80 years old and is smart and intelligent; he reads two books a week and The Economist magazine); Exhibit A.25 at 11 (does not think Lavik is impaired)]

⁶⁶ (b) (6), (b) (7)(C) believes IG Lavik has short term memory loss and this memory loss impedes IG Lavik's ability to do his job. [Exhibit A.8 at 8] But, (b) (6), (b) (7)(C) thinks IG Lavik's short-term memory is really great, but his long-term memory is not as good. [Exhibit A.5 at 7]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 8

Whether Inspector General (IG) Lavik allowed other individuals, including a contractor, to use his username and password to log into government systems to perform official actions.

FCC OIG's investigation determined that for a number of years, IG Lavik shared his usernames and passwords with CFTC OIG staff and contractors. CFTC OIG staff and contractors managed IG Lavik's passwords for CFTC information technology systems and used IG Lavik's username and password to log into these systems and perform official actions. IG Lavik's acts of sharing his confidential usernames and passwords and directing CFTC staff and contractors to take official actions on his behalf are contrary to CFTC's Information Technology Rules of Behavior and the *Silver Book*.

I. BACKGROUND

On June 3, 2021, CIGIE IC asked FCC OIG to investigate three (3) additional allegations of misconduct involving IG Lavik and DIG Ringle. The new allegations resulted from an April 29, 2021, complaint filed with CIGIE IC by (b) (6), (b) (7)(C). In that complaint, (b) (6), (b) (7)(C) alleged "Between at least April 2017 and March 2021, Mr. Lavik allowed at least two individuals (Ms. Ringle and a contractor assigned to OIG) to use his username and password to log into at least two government systems to perform official actions."

II. INVESTIGATION RESULTS

Password security is a fundamental component of any organization's information security program. Passwords are frequently the only form of authentication preventing unauthorized access to an information system. Developing strong passwords and keeping them confidential are universally recognized information security "best practices." CFTC has established Information Technology ("IT") Rules of Behavior stating clearly that CFTC employees are required to "Protect your smartcard PIN and/or passwords and do not share them with anyone." [Exhibit 8.1] CFTC employees are required to complete IT Rules of Behavior training annually and to acknowledge the CFTC IT Rules of Behavior each year as part of that annual training. [Exhibit 8.1] IG Lavik completed the IT Rules and Behavior training in 2018-2020 and acknowledged the CFTC IT Rules of Behavior in each of those years. [Exhibit 8.1; Exhibit 8.2]

A. OIG Staff and Contractors Managed IG Lavik's Passwords for CFTC Information Technology Systems

Since at least 2018, CFTC OIG and contract administrative staff have managed IG Lavik's login credentials to numerous government systems including the CFTC network. DIG Ringle, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), all confirmed they managed IG Lavik's usernames and passwords for government systems. [Exhibit A.29 at 2; Exhibit A.27 at 3; Exhibit A.3 at 3; Exhibit A.7 at 2]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

According to DIG Ringle, [REDACTED] and DIG Ringle started managing IG Lavik's CFTC passwords in 2018. [Exhibit A.29 at 2] Prior to 2018, only DIG Ringle managed IG Lavik's passwords. [Exhibit A.29 at 2]

Shortly after [REDACTED] joined CFTC OIG in 2018, she was told by [REDACTED] and Ringle that IG Lavik had difficulty remembering his passwords.⁶⁷ [Exhibit A.3 at 3; Exhibit 8.3] [REDACTED] was further told there was a list of IG Lavik's passcodes that was maintained by DIG Ringle and IG Lavik. [Exhibit A.3 at 3] If IG Lavik was having issues getting access to a system, [REDACTED] would help IG Lavik by giving him his user IDs and password. [Exhibit A.3 at 3] DIG Ringle knew [REDACTED] had IG Lavik's usernames and passwords for a number of systems, because when [REDACTED] would change one of IG Lavik's passwords, she would email the updated password information to both DIG Ringle and IG Lavik. [Exhibit A.3 at 3] [REDACTED] rarely used IG Lavik's User ID and password information for any CFTC online system other than WebTA.⁶⁸ [Exhibit A.3 at 3] When [REDACTED] did use IG Lavik's information to log into a government system, she did not log in arbitrarily without direction from IG Lavik.⁶⁹ [Exhibit A.3 at 3]

Between October 16, 2018 and July 30, 2019, FCC OIG identified 16 email chains between DIG Ringle, [REDACTED] and [REDACTED] in which updated passwords and security questions were distributed among CFTC OIG and contract administrative staff. Many of the email chains included an attached document entitled "UpdatedRoycodes.docx" containing IG Lavik's passwords and security questions. [Exhibit 8.4] The document attached to these emails included IG Lavik's passwords for the WebTA time and attendance system and the E2 travel system, BitLocker encryption for IG Lavik's CFTC-issued computer, IG Lavik's CFTC network login credentials, access code for his CFTC-issued cellphone, and pin for his Personal Identity Verification (PIV) card. [Exhibit 8.4] The "UpdatedRoycodes" document was updated when passwords were changed and a printed copy was provided to IG Lavik.⁷⁰ [Exhibit A.20 at 3-4] According to [REDACTED] the document was printed and the hard copy was handed directly to IG Lavik. [REDACTED] stated that the document was "never just left it on his desk without his knowledge." [Exhibit 8.5] IG Lavik claimed he was not aware [REDACTED], [REDACTED] and [REDACTED] had a document with his passwords and circulated it regularly among themselves; IG Lavik thought only DIG Ringle assisted in managing his CFTC system passwords. [Exhibit A.20 at 3-4]

⁶⁷ When [REDACTED] became a CFTC OIG contractor, IG Lavik was her supervisor and instructed [REDACTED] to take certain actions. [Exhibit A.3 at 7] [REDACTED] understood that the supervisor could change her job status if she did not comply. [Exhibit A.3 at 7] Although [REDACTED] did not receive any threats, she was told this was her duty and she understood that maintaining the passwords and signing into WebTA using IG Lavik's credentials to validate and certify timesheets was something she had to do. [Exhibit A.3 at 7]

⁶⁸ On June 16, 2021, [REDACTED] forwarded [REDACTED] an email containing the list of User IDs and passwords she maintained for IG Lavik. The one-page list includes IG Lavik's User IDs and passwords for the E2 travel system, WebTA, Desktop, Device Code, Windows Passcode and PIV Pin. [Exhibit 8.6]

⁶⁹ [REDACTED] recalled one instance where she signed into E2 using IG Lavik's credentials to look for his travel information and set up his travel documents. This occurred before [REDACTED] got her own E2 account in early 2019. [Exhibit A.2 at 4]

⁷⁰ [REDACTED] admitted she was responsible for managing IG Lavik's usernames and passwords, but recalled IG Lavik's username and passwords were handwritten, and not stored in a Word document. [Exhibit A.7 at 2] [REDACTED] also recalled she had IG Lavik's CFTC network credentials and used them to sign into IG Lavik's computer. [Exhibit A.7 at 2]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

CFTC OIG staff and contractors also helped IG Lavik change his password in CFTC online systems. DIG Ringle explained that IG Lavik would call [REDACTED], [REDACTED] or DIG Ringle into his office when IG Lavik needed to change a password, and they would go into IG Lavik's office and help him. [Exhibit A.29 at 2] Since 2018, [REDACTED] took the lead on helping IG Lavik on every system except WebTA, which is managed by [REDACTED]. [Exhibit A.29 at 3] IG Lavik would tell [REDACTED] what he wanted his new password to be and [REDACTED] would change it. [Exhibit A.29 at 3] According to [REDACTED] IG Lavik would ask [REDACTED] DIG Ringle or [REDACTED] to assist him with changing the password and to keep a record of it because IG Lavik forgets his password "every other day." [Exhibit A.27 at 3] By 2018, IG Lavik wanted DIG Ringle, [REDACTED] and [REDACTED] to type the password in for him. [Exhibit A.29 at 2] IG Lavik would ask DIG Ringle to log him in and then "get out of his chair," and sometimes IG Lavik would ask DIG Ringle to complete actions if he failed to succeed. [Exhibit A.29 at 3]

Since the March 2020 government shutdown due to the COVID-19 pandemic, DIG Ringle is certain that [REDACTED] and possibly [REDACTED] have managed IG Lavik's passwords for him. [Exhibit A.29 at 2] DIG Ringle tried to help IG Lavik with his passwords over the telephone, but she could not do it, so now [REDACTED] helps IG Lavik with his passwords.⁷¹ [Exhibit A.29 at 5] IG Lavik's password changes are now accomplished over the telephone, and DIG Ringle is no longer involved in changing IG Lavik's passwords. [Exhibit A.29 at 2] IG Lavik claimed to have changed his WebTA password on his own three weeks prior to his August 26, 2021, interview. [Exhibit A.20 at 3]

IG Lavik denied that CFTC OIG staff and contractors managed his login credentials to government systems. [Exhibit A.20 at 2] IG Lavik stated he was not aware DIG Ringle, [REDACTED] and [REDACTED] had a document with his passwords and circulated it regularly among themselves. [Exhibit A.20 at 4] This is directly contrary to the evidence and statements from [REDACTED], [REDACTED] and DIG Ringle described above. IG Lavik stated he would change the password and put it on the "damn sheet." [Exhibit A.20 at 3] When IG Lavik changed his password, he would tell DIG Ringle the new password and DIG Ringle would type the new passwords onto the document he uses for tracking passwords after he changed the passwords (directly contradicting his previous statement that he was not aware that DIG Ringle was involved in maintaining a document with his passwords). [Exhibit A.20 at 3] IG Lavik stated that as far as he knows, the only other person involved with managing IG Lavik's passwords is DIG Ringle, who would type the new one on a sheet after IG Lavik told her the new password. [Exhibit A.20 at 3-4] The only passwords for CFTC systems that DIG Ringle helped IG Lavik track of are the ones on his password sheet- E2,

⁷¹ In a June 2020 interview of [REDACTED], [REDACTED] described himself as IG "Lavik's personal help desk" and that he interacts with IG Lavik daily helping IG Lavik with computer access and interacting with electronics. [Exhibit A.27 at 5] When [REDACTED] had IG Lavik's passwords, it used to take [REDACTED] an hour to help IG Lavik. [Exhibit A.27 at 5] In a June 2020 interview of [REDACTED], [REDACTED] told FCC OIG he spent his entire mornings on Mondays and Tuesdays helping IG Lavik, like IG Lavik's "personal help desk or secretary." [Exhibit A.29 at 5]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Desktop, Device Code, Windows Password, and PIV PIN.⁷² [Exhibit A.20 at 4] IG Lavik insisted the only password that changed regularly was the time and attendance password. [Exhibit A.20 at 3]

IG Lavik is familiar with the CFTC IT Rules of Behavior and takes the course covering password security every year. [Exhibit A.20 at 4] IG Lavik understands the rule that had to be checked to pass the course: “Protect your smartcard PIN and/or passwords and do not share them with anyone.” [Exhibit A.20 at 4] IG Lavik thinks he, as IG, would follow the policy of the agency. [Exhibit A.20 at 4] IG Lavik was asked whether giving DIG Ringle his password was following this rule, and whether IG Lavik was concerned he was violating this rule. [Exhibit A.20 at 4] IG Lavik was not really concerned with DIG Ringle having his password because he can trust her, but he would not give his password to someone else he did not know. [Exhibit A.20 at 4] Prior to learning of the concerns from CFTC Human Resources staff and the CFTC Acting Chairman, IG Lavik was not concerned about sharing his WebTA password, since he only shared it with one person. [Exhibit A.20 at 4] But since March 2021, when Lavik learned that password sharing was a big concern of HR and the Acting Chairman, Lavik was a bit concerned, but he only had so much concern about an acting CFTC chairman, and “you know the IG Act.” [Exhibit A.20 at 4]

DIG Ringle knows it violates CFTC policy to share passwords but does not think helping IG Lavik calls this directive into question. [Exhibit A.29 at 3] If IG Lavik needs help, then either DIG Ringle, (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) would need to help him, or else CFTC’s Office of Data and Technology (“ODT”) would have to change IG Lavik’s password every time he has to sign in. [Exhibit A.29 at 3] DIG Ringle was not concerned she was violating CFTC policy or was required to notify ODT that IG Lavik’s passwords had been shared. [Exhibit A.29 at 5] DIG Ringle was somewhat surprised when she got the letter from CIGIE IC, because CFTC staff (b) (6), (b) (7)(C) said her understanding of how timesheet were certified was all wrong, and the situation seemed to be so thoroughly addressed by the CFTC Acting Chairman’s March 15, 2021, letter to IG Lavik. [Exhibit A.29 at 5]

CF C I Contractors Accessed e A sing I avi s e A Credentials and er ormed icial Actions

IG Lavik is responsible for approving leave slips and certifying timesheets for DIG Ringle. [Exhibit A.20 at 2] Beginning in 2018 through spring of 2021, IG Lavik relied on (b) (6), (b) (7)(C) to complete time and attendance actions in WebTA that were IG Lavik’s responsibility.⁷³ [Exhibit

⁷² Additionally, FCC OIG recovered three lists of login credentials for personal and government accounts for IG Lavik from DIG Ringle’s Outlook Mailbox. [Exhibit 8.7] These documents appear to have been created in 2012 and deleted from DIG Ringle’s Outlook Mailbox in 2019. [Exhibit 8.7] Both IG Lavik and DIG Ringle admitted DIG Ringle helped IG Lavik with login credentials to personal accounts but that she did this on her personal time. [Exhibit A.20 at 7-8; Exhibit A.29 at 5-6]

⁷³ DIG Ringle knew (b) (6), (b) (7)(C) approved DIG Ringle’s leave slips and timesheets, but DIG Ringle was surprised to learn that (b) (6), (b) (7)(C) had to log in as IG Lavik to accomplish this task. [Exhibit A.29 at 4] DIG Ringle believed (b) (6), (b) (7)(C) as a timekeeper had the ability to certify DIG Ringle’s leave slips and timesheets using (b) (6), (b) (7)(C) timekeeper account: (b) (6), (b) (7)(C) had the ability as a timekeeper to enter Lavik’s certification.” [Exhibit A.29 at 4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

A.20 at 3] When CFTC OIG staff regularly went into the office, [REDACTED] would show IG Lavik a paper copy of DIG Ringle's timesheet and leave requests. IG Lavik would review them and initial them, signifying approval. [Exhibit A.20 at 3; Exhibit 8.8] [REDACTED] using IG Lavik's WebTA username and password, would sign into WebTA and certify DIG Ringle's timesheet and approve her leave requests.⁷⁴ [Exhibit A.3 at 5]

IG Lavik described a slightly different scenario for pre-pandemic certification of DIG Ringle's timesheet and leave request approvals. According to IG Lavik, prior to the pandemic government shutdown, DIG Ringle would provide IG Lavik with her time and attendance information at the end of the pay period. [Exhibit A.20 at 2] IG Lavik would review this information, and if he approved, IG Lavik would let a woman, whose name IG Lavik could not recall, plug the information into the time and attendance system.⁷⁵ [Exhibit A.20 at 2] She did this for several years. When asked whether he knew if [REDACTED] or [REDACTED] used IG Lavik's password to access WebTA and perform official actions such as approving DIG Ringle's leave requests and certifying DIG Ringle's timesheets, IG Lavik stated all he knows is that he approves DIG Ringle's leave and timesheet, and this would be communicated to the right people. [Exhibit A.20 at 4] When pressed on whether the person who was entering information in the time and attendance system was using IG Lavik's username and password to log in and enter the approval or certification, IG Lavik stated she would bring the information to IG Lavik, he would approve it and "she would put it into the damn computer and send to who needed to get it." [Exhibit A.20 at 2] IG Lavik does not know whose username and password this woman used to log into the time and attendance system and told FCC OIG that they would have to ask the woman whose credentials she used. [Exhibit A.20 at 2]

In addition to using IG Lavik's username and password to access WebTA, [REDACTED] had her own WebTA timekeeper account that was assigned to her when she joined CFTC OIG. [Exhibit A.7 at 3] Using her timekeeper account, [REDACTED] can view leave requests and timesheets and make minor corrections to the timesheets. [Exhibit A.3 at 3] [REDACTED] cannot approve leave requests or certify timesheets using her own WebTA timekeeper account. [Exhibit A.3 at 3] According to IG Lavik, prior to the March 2020 government shutdown, IG Lavik did not believe [REDACTED] used her WebTA timekeeper account to certify and approve DIG Ringle's timesheets. [Exhibit A.20 at 4-5]

Since September 2020, every two weeks when timesheets were due, [REDACTED] signed into WebTA using IG Lavik's credentials to approve DIG Ringle's leave requests and certify her timesheets. [Exhibit A.7 at 5] The process of obtaining IG Lavik's approval entailed [REDACTED] verifying the

[REDACTED] was uncertain whether DIG Ringle knew [REDACTED] was using IG Lavik's WebTA credentials to approve DIG Ringle's leave requests or certify DIG Ringle's timesheets. [Exhibit A.7 at 5]

⁷⁴ DIG Ringle has never taken actions in WebTA on behalf of IG Lavik; those actions are always taken by

(b) (6), (b) (7)(C). [Exhibit A.29 at 3]

⁷⁵ Initially, IG Lavik did not recall the name of (b) (6), (b) (7)(C). [Exhibit A.20 at 2]

Later in his interview, IG Lavik recalled that pre-pandemic shutdown, [REDACTED] presented DIG Ringle's timesheets and leave requests to IG Lavik, and he would initial them, signifying approval. [Exhibit A.20 at 5] [REDACTED] told FCC OIG that, IG Lavik approved DIG Ringle's timesheet, [REDACTED] signed into the WebTA system using IG Lavik's username and password and entered the certifications of DIG Ringle's timesheets for IG Lavik. [Exhibit A.3 at 5]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

hours with IG Lavik verbally and getting his approval to certify DIG Ringle's timesheet. [Exhibit A.7 at 5] Using IG Lavik's credentials and with his permission, [REDACTED] would then sign into WebTA using IG Lavik's credentials and certify DIG Ringle's timesheets and approve her leave requests. [Exhibit A.7 at 5] Often [REDACTED] discussions with IG Lavik would occur over the telephone, and IG Lavik would not see the timesheet, but [REDACTED] would tell him the leave time DIG Ringle requested and he would approve it. [Exhibit A.7 at 5] [REDACTED] noted FCC OIG had reviewed DIG Ringle's March 2020 through March 2021 timesheets and that they all indicate they had been certified by IG Lavik. [Exhibit A.7 at 6] [REDACTED] stated she was the one who certified DIG Ringle's timesheets during this period by signing into WebTA using IG Lavik's username and password. [Exhibit A.7 at 6]

According to IG Lavik, for the period after the March 2020 government shutdown until March 2021, DIG Ringle would call IG Lavik and tell IG Lavik her leave plans. [Exhibit A.20 at 4] IG Lavik would then sign onto WebTA and approve DIG Ringle's leave and timesheet. [Exhibit A.20 at 4] When asked whether it was possible that during this period, IG Lavik would tell [REDACTED] this information and [REDACTED] would log into WebTA with IG Lavik's username and password and enter the approvals, IG Lavik stated he did not recall what was done during that period. [Exhibit A.20 at 4] When [REDACTED] told IG Lavik the CFTC network logs and the U.S. Department of Agriculture logs for IG Lavik's WebTA account showed IG Lavik did not access WebTA, but showed [REDACTED] logging in with IG Lavik's username and password, and entering approvals, IG Lavik did not provide an explanation of how this happened. [Exhibit A.20 at 4] Instead, IG Lavik stated he was "more concerned with outputs than inputs."⁷⁶ [Exhibit A.20 at 4]

At some point CFTC Human Resources group ("HR") told IG Lavik they wanted the person actually approving leave or certifying a timesheet to enter the approval itself into WebTA. [Exhibit A.20 at 2] After IG Lavik got the March 15, 2021, letter from the CFTC Acting Chairman addressing sharing of his username and password and learned of HR's concerns, IG Lavik has been signing into WebTA every two weeks and approving DIG Ringle's leave requests and certifying her timesheets. [Exhibit 8.9; Exhibit A.20 at 5] Prior to this change, IG Lavik thinks [REDACTED] "sent in" the information after IG Lavik saw DIG Ringle's timesheets. [Exhibit A.20 at 4] If IG Lavik needs any help with logging into WebTA, IG Lavik speaks to [REDACTED] on the phone and [REDACTED] walks IG Lavik through the process. [Exhibit A.20 at 5] Since March 15, 2021, [REDACTED] does not have IG Lavik's passwords. [Exhibit A.20 at 5]

In June 2019, IG Lavik took over the responsibility for certifying [REDACTED] timesheets from DIG Ringle who, after the CIGIE investigation was initiated, no longer wanted to certify [REDACTED] timesheets because she was uncertain of the work he was performing. [Exhibit 8.10; Exhibit A.28 at 27; Exhibit A.19 at 21] At the time IG Lavik took over responsibility for certifying [REDACTED] timesheets, [REDACTED] was a CFTC OIG consultant and worked from his Florida home until March 2020 when [REDACTED] resigned from his CFTC OIG consultant position. [Exhibit A.20 at 5] At IG Lavik's August 6, 2021, FCC OIG interview, when asked who logged in and

⁷⁶ Based on the context of the interview, FCC OIG believes that IG Lavik was referring to the "output" of the office versus the "inputs" like time and attendance.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

certified [REDACTED] timesheets, IG Lavik stated he did not recall who signed into WebTA and certified the timesheets. [Exhibit A.20 at 5] At IG Lavik's August 27, 2020, FCC OIG interview, IG Lavik explained that he did not actually go into WebTA and certify [REDACTED] timesheets when [REDACTED] was a consultant. [Exhibit A.20 at 21] Instead, he would get the timesheets, review them and see what was reported and then get staff assistance, first from [REDACTED], and now from [REDACTED], to actually "push the button." [Exhibit A.20 at 21] IG Lavik certified timesheets for [REDACTED] from June 2019 through March 27, 2020, when [REDACTED] resigned his consultant position. [Exhibit 8.11]

[REDACTED] confirmed that during the period IG Lavik was responsible for certifying [REDACTED] timesheets, IG Lavik would not log into WebTA and certify [REDACTED] timesheet. Instead, [REDACTED] signed into WebTA using IG Lavik's username and password and certified [REDACTED] timesheet every two weeks after it became IG Lavik's responsibility to certify [REDACTED] timesheets. [Exhibit A.3 at 6] Prior to certifying [REDACTED] timesheets on behalf of IG Lavik, [REDACTED] always had a conversation with IG Lavik to verify [REDACTED] hours and get direction.⁷⁷ [Exhibit A.3 at 6] Prior to the closing of the CFTC offices in March 2020 because of the Covid-19 pandemic, these conversations were in person, and [REDACTED] obtained IG Lavik's initials on [REDACTED] timesheets reflecting his approval of the work time claimed by [REDACTED]. [Exhibit A.3 at 6; Exhibit 8.11] After the CFTC offices were closed in March 2020 and until [REDACTED] left his CFTC OIG consultant position, these conversations were over the telephone. [Exhibit A.3 at 6]

[REDACTED] stated that IG Lavik never entered his time in WebTA, so [REDACTED] regularly signed into WebTA using IG Lavik's login credentials to make entries on his timesheet and validate his timesheets. [Exhibit A.7 at 2] According to [REDACTED] she was directed to enter IG Lavik's time into his timesheet by DIG Ringle. [Exhibit A.7 at 3] [REDACTED] also recalled DIG Ringle knew [REDACTED] was signing into WebTA with IG Lavik's username and password to accomplish these tasks. [Exhibit A.7 at 3] [REDACTED] remarked that before [REDACTED] joined CFTC OIG, DIG Ringle was acting in place of [REDACTED] and entering IG Lavik's time into his timesheets and consequently, DIG Ringle may have been signing into IG Lavik's WebTA account with IG LAVIK's username and password. [Exhibit A.7 at 3]

During her first year at CFTC OIG, [REDACTED] was also consistently validating and affirming IG Lavik's timesheets in the same manner as [REDACTED] would first confirm all IG Lavik's hours with him verbally, then using IG Lavik's username and password, [REDACTED] would sign into WebTA and populate, validate and affirm Lavik's timesheet. [Exhibit A.3 at 4] After [REDACTED] first year with CFTC OIG, [REDACTED] was still signing into WebTA using IG Lavik's credentials to record IG Lavik's time in WebTA and validate his timesheet, but not as consistently as she did during her first year at the CFTC OIG. [Exhibit A.3 at 4] [REDACTED] believes there were many occasions when IG Lavik was validating his timesheet himself in WebTA if the timesheet was simple. [Exhibit A.3 at 4] [REDACTED] is not aware of anyone else helping IG Lavik with his timesheet during this period; [REDACTED] was the only backup for IG Lavik's WebTA access.

⁷⁷ The process of [REDACTED] having a conversation with IG Lavik before she takes any action on his behalf was ongoing until March 2021. [Exhibit A.3 at 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit A.3 at 4] When (b) (6), (b) (7)(C) started working from home, IG Lavik and (b) (6), (b) (7)(C) would speak on the telephone and she would obtain Lavik’s approval during these telephone conversations. [Exhibit A.3 at 4]

When asked about his own timesheet, IG Lavik stated his timesheet is approved by CFTC (b) (6), (b) (7)(C). [Exhibit A.20 at 5] According to IG Lavik, (b) (6), (b) (7)(C) has been approving IG Lavik’s timesheets for three years and (b) (6), (b) (7)(C) is concerned with the amount of leave IG Lavik takes, so IG Lavik himself inputs his work time and his leave. [Exhibit A.20 at 5-6] Prior to receiving the March 15, 2021 letter, IG Lavik does not recall if he would enter any annual or sick leave himself. [Exhibit A.20 at 5-6] Since March 2021, IG Lavik has been preparing and validating his own timesheets. [Exhibit A.20 at 5-6] (b) (6), (b) (7)(C) has not signed into WebTA using IG Lavik’s credentials or taken any action on IG Lavik’s behalf in WebTA since March 2021. [Exhibit A.3 at 6]

The CIGIE *Quality Standards for Federal Offices of Inspector General* (“*Silver Book*”) recognizes that “Public office carries with it a responsibility to apply and account for the use of public resources economically, efficiently, and effectively” and that “OIGs have a special need for high standards of professionalism and integrity in light of the mission of the Inspectors General under the Act.” *Silver Book* at 3-4. Providing guidance for accomplishing these requirements, the *Silver Book* references *The Standards for Internal Control in the Federal Government*.⁷⁸ *Silver Book* at 20. The Internal Control Standards define internal control as an integral component of an organization’s management that provides reasonable assurance that the following objectives are being achieved: (1) effectiveness and efficiency of operations, (2) reliability of financial reporting, and (3) compliance with applicable laws and regulations. GAO-14-704G, *Federal Internal Control Standards* at 5. IG Lavik’s acts of providing his CFTC OIG usernames and passwords to CFTC OIG staff and contractors and having them perform official actions in CFTC IT systems using IG Lavik’s login credentials is inconsistent with these principles as well as well as the CFTC’s Information Technology Rules of Behavior.

⁷⁸ *The Standards for Internal Control in the Federal Government* were published by the U.S. General Accounting Office through the Comptroller General of the United States in September 2014.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 9

Whether Deputy Inspector General (DIG) Ringle used IG Lavik's username and password to log into government systems and perform official actions.

FCC OIG found evidence that DIG Ringle used IG Lavik's username and password to log into a government system and perform official actions. This appears to be a technical violation of rules prohibiting the sharing of passwords and a misuse of DIG Ringle's authority.

I. BACKGROUND

On June 3, 2021, CIGIE IC requested that FCC OIG investigate three (3) additional allegations of misconduct involving IG Lavik and DIG Ringle. The new allegations resulted from an April 29, 2021 complaint filed with CIGIE IC by (b) (6), (b) (7)(C). In that complaint, (b) (6), (b) (7)(C) states that, while investigating the matter reported in Allegation #8, CFTC became aware of an email message from 2017 showing that DIG Ringle had accessed the Federal Acquisition Institute Training Application System (FAITAS) using IG Lavik's login credentials. FAITAS is a system that was operated by the Federal Acquisition Institute⁷⁹ to manage acquisition training.

II. INVESTIGATION RESULTS

To investigate this allegation, FCC OIG obtained and reviewed the email chain referenced by (b) (6), (b) (7)(C) in the CFTC's referral to CIGIE. In that email chain, DIG Ringle makes the following statement to (b) (6), (b) (7)(C), CFTC Contracting Officer:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 9.1] (b) (6), (b) (7)(C) responded with the following message:

(b) (6), (b) (7)(C), (b) (5)

⁷⁹ The Federal Acquisition Institute (FAI) is an organization under the U.S. General Services Administration (GSA) that was Established in 1976 under the Office of Federal Procurement Policy Act and charged with fostering and promoting the development of a federal acquisition workforce. FAITAS was recently replaced by the FAI Cornerstone OnDemand (CSOD) system.

Case Number:
CIGIE Case IC 986

Case Title:
Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle

[Exhibit 9.2] DIG Ringle responded with the following message to (b) (6), (b) (7)(C):

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 9.3]

During her FCC OIG interview, DIG Ringle was shown the email exchange between herself and (b) (6), (b) (7)(C) in which she stated she maintains IG Lavik's account details, approves requested training in FAITAS at IG Lavik's direction, and admits she has logged in as IGLavik.

Initially, DIG Ringle recalled IG Lavik had trouble with the FAITAS system, but she did not think she logged in as IG Lavik. [Exhibit A.29 at 4-5] However, as she was reading the 2017 email exchange, DIG Ringle stated that, although she had no specific memory of the events stated in the emails, she was sure she did what was reflected in the emails. [Exhibit A.29 at 5] IG Lavik remembered DIG Ringle bringing him training requests but does not recall DIG Ringle using his login credentials to access FAITAS. [Exhibit A.20 at 6]

The CIGIE *Quality Standards for Federal Offices of Inspector General* ("Silver Book") recognizes "Public office carries with it a responsibility to apply and account for the use of public resources economically, efficiently, and effectively," and "OIGs have a special need for high standards of professionalism and integrity in light of the mission of the Inspectors General under the Act." *Silver Book* at 3-4. Password security is a fundamental component of any organization's information security program as passwords are frequently the only form of authentication preventing unauthorized access to an information system. Developing strong passwords and keeping them confidential are universally recognized information security best practices. CFTC has established Information Technology (IT) Rules of Behavior and CFTC employees are required to complete IT Rules of Behavior training annually and as part of that annual training, acknowledge and agree that the terms of the IT Rules of Behavior apply and are a condition to their accessing CFTC IT systems. [Exhibit 9.4] The CFTC IT Rules of Behavior clearly state that CFTC employees are required to "Protect your smartcard PIN and/or passwords and do not share them with anyone." [Exhibit 9.4] DIG Ringle completed the CFTC IT Rules of Behavior training and acknowledged and agreed to their terms and conditions on September 12,

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

2018, October 25, 2019 and October 20, 2020. [Exhibit 9.5; Exhibit A.29 at 3] DIG Ringle's use of IG Lavik's FAITAS password, which IG Lavik shared with DIG Ringle, to enter the FAITAS system and take official actions on behalf of IG Lavik is inconsistent with both the *Silver Book's* professionalism and integrity standards and the CFTC IT Rules of Behavior. DIG Ringle's using IG Lavik's password to sign into and make entries in CFTC IT systems is not excused by any direction for her to do so by IG Lavik, because IG Lavik is bound by the CFTC IT Rules of Behavior and cannot authorize actions contrary to those Rules.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Allegation 10

Whether IG Lavik and DIG Ringle engaged in conduct undermining the integrity reasonably expected of their positions when they provided conflicting information regarding the use of IG Lavik's username and password.

The investigation did not find evidence that either IG Lavik or DIG Ringle intentionally communicated conflicting information to the CFTC.

I A C T

On June 3, 2021, CIGIE IC requested that FCC OIG investigate three additional allegations of misconduct involving IG Lavik and DIG Ringle. The new allegations resulted from an April 29, 2021 complaint filed with CIGIE IC by (b) (6), (b) (7)(C). In that complaint, (b) (6), (b) (7)(C) alleged that the CFTC's incident response team (IRT) received conflicting information about whether IG Lavik shared his username and password. Specifically, CFTC asserted it received conflicting information from IG Lavik in voicemail messages left with staff in the Office of the Acting CFTC Chairman and from (b) (6), (b) (7)(C) Ringle about CFTC OIG timesheet certifications.

II I N T E R V I E W S

A I L A V I

On March 15, 2021, Acting CFTC Chairman Rostin Behnam sent a letter to IG Lavik stating "It has come to my attention that on perhaps many occasions, you may have shared your WebTA username and password with (b) (6), (b) (7)(C), a contractor in the Office of the Inspector General, for the purpose of allowing her to certify your subordinates' time and attendance reports in your name." and, "If true, this is a serious security breach and misuse of the WebTA system." [Exhibit 10.1]

On March 17, 2021, IG Lavik telephoned (b) (6), (b) (7)(C) in the office of Acting Chairman Behnam, in response to that letter and left a voicemail message in which IG Lavik made several statements that could be considered misleading:

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 10.2] On March 19, 2021, IG Lavik telephoned (b) (6), (b) (7)(C) in the office of Acting Chairman Behnam, and left a voicemail message in which IG Lavik made several statements that could be considered misleading:

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)



[Exhibit 10.3 at 1]

These voicemails contain two statements that are not entirely accurate. First, the statement in both voicemails that IG Lavik only signs T&A for DIG Ringle is not entirely accurate. During the period from June 10, 2019 through March 27, 2020, IG Lavik was also responsible for certifying CFTC OIG consultant (b) (6), (b) (7)(C) timesheets. [Exhibit A.20 at 5] Second, while IG Lavik states in the voicemail to (b) (6), (b) (7)(C) he sees the “timesheet and approve it,” this has not been the case since the COVID-19 shutdown in March 2020. Since that time, IG Lavik does not actually view DIG Ringle’s timesheets and leave requests, but discusses them with (b) (6), (b) (7)(C) over the telephone. [Exhibit A.3 at 5]

In his FCC OIG interview, IG Lavik vehemently denied that he intended to mislead the Acting Chairman’s office (“hell no”). [Exhibit A.20 at 7] IG Lavik was offended that the letter made it appear he was responsible for certifying the timesheets of many CFTC OIG staff, when he only regularly certified DIG Ringle’s timesheet. [Exhibit A.20 at 7] IG Lavik did not believe it was a big concern that he had told (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) he signed a timesheet for one person, but forgot about signing (b) (6), (b) (7)(C) timesheet. [Exhibit A.20 at 7] (b) (6), (b) (7)(C) told IG Lavik that there was no evidence of IG Lavik accessing WebTA from September 2020 to March 2021. [Exhibit A.20 at 7] IG Lavik did not recall this, and reiterated he had no intent to mislead the Acting Chairman’s office (“hell no”). [Exhibit A.20 at 7] IG Lavik thinks this fuss is “bureaucracy at its silliest.” [Exhibit A.20 at 7] Instead of concentrating on major things, like whether economic regulation is good or bad, they are chatting about silly things like time and attendance. [Exhibit A.20 at 7] IG Lavik stated he was not overly concerned, and is not concerned about the time and attendance process he used: he just delegated it. [Exhibit A.20 at 7]

Based on our review of the record and interviews with IG Lavik and (b) (6), (b) (7)(C) FCC OIG does not believe IG Lavik was trying to be misleading or provide inaccurate information in the voicemail messages he left for (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C). Instead, it appears IG Lavik was trying to make the point that he reviews the timesheets before they are submitted in WebTA (i.e., he approves the time charges before the timesheets are submitted) and is not claiming he “signs off” on the timesheets in WebTA, which he clearly did not. In the voicemails, IG Lavik also was pointing out that the CFTC Acting Chairman’s letter suggested he was responsible for WebTA certification for numerous CFTC OIG staff, while his WebTA responsibilities are limited to DIG Ringle. FCC OIG believes IG Lavik honestly did not recall being responsible for certifying timesheets for

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

██████████ for a nine-month period in 2019-2020, although IG Lavik's casual and dismissive approach to fulfilling his responsibilities to certify timesheets in WebTA is troubling.

B. DIG Ringle

In February 2021, DIG Ringle disclosed to ██████████ CFTC HR, that DIG Ringle's timesheet was being certified in WebTA by ██████████ at the direction of IG Lavik. [Exhibit 10.4] ██████████ interpreted DIG Ringle's statement to mean that DIG Ringle understood ██████████ was logging into WebTA using IG Lavik's username and password and taking an official action, namely certifying DIG Ringle's timesheet. [Exhibit 10.5] ██████████ informed DIG Ringle that it was a security violation for IG Lavik to give ██████████ his WebTA username and password, and further explained that IG Lavik himself had to approve DIG Ringle's leave requests and certify DIG Ringle's timesheets. [Exhibit 10.5] Immediately thereafter, ██████████ was instructed not to log into WebTA as IG Lavik. [Exhibit A.3 at 6-7]

CFTC OIG staff ██████████ (b) (6), (b) (7)(C) responded to ██████████ explaining DIG Ringle did not mean ██████████ was signing into WebTA using IG Lavik's credentials. [Exhibit 10.6] ██████████ further explained to ██████████ that DIG Ringle believed, albeit incorrectly, that ██████████ as a timekeeper, had the ability to certify DIG Ringle's timesheets for IG Lavik, by logging herself into WebTA using ██████████ timekeeper account. [Exhibit 10.6; Exhibit A.29 at 5] When DIG Ringle replied to ██████████ DIG Ringle did not understand ██████████ could not certify DIG Ringle's timesheet as a timekeeper. [Exhibit 10.4; Exhibit A.29 at 5; Exhibit A.27 at 5]

According to DIG Ringle, her misunderstandings arise from statements made to her by CFTC OIG ██████████ (b) (6), (b) (7)(C) when WebTA was first rolled out. ██████████ told DIG Ringle that ██████████ could use her WebTA timekeeper account to certify DIG Ringle's timesheets for IG Lavik. [Exhibit A.29 at 3] At the time, ██████████ told DIG Ringle that ██████████ could not certify timesheets for DIG Ringle in WebTA because DIG Ringle was only a deputy inspector general. [Exhibit A.29 at 5] DIG Ringle explained to FCC OIG that in her mindset, ██████████ enters certifications for her boss; IG Lavik is not going to stamp everything. [Exhibit A.29 at 5] ██████████ told DIG Ringle everything she thought about certification of her timesheets was incorrect. [Exhibit A.29 at 3]

After DIG Ringle responded to ██████████ DIG Ringle explained to ██████████ that she was unsure who was supposed to and able to certify timesheets. [Exhibit A.27 at 5] DIG Ringle assumed the timekeepers could certify timesheets, and DIG Ringle did not understand that a timekeeper, such as ██████████ could not use their timekeeper account to certify employee timesheets. [Exhibit A.29 at 4] DIG Ringle thought she was telling ██████████ that ██████████ was using her timekeeper account to certify DIG Ringle's timesheets. [Exhibit A.29 at 4-5] But DIG Ringle's message was understood as describing what ██████████ was actually doing: logging in as IG Lavik and approving DIG Ringle's timesheets and leave requests. [Exhibit 10.5; Exhibit 10.4] After speaking to DIG Ringle, ██████████ clarified DIG Ringle's response to ██████████ explaining DIG Ringle didn't mean that ██████████ was logging in as IG Lavik; DIG Ringle thought timekeepers had the ability to certify for employees." [Exhibit 10.6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

DIG Ringle explained to FCC OIG that she knew [REDACTED] approved DIG Ringle's leave slips and timesheets. [Exhibit A.29 at 4] DIG Ringle stated she was surprised to learn [REDACTED] had to log in as IG Lavik to accomplish this task. [Exhibit A.29 at 4] DIG Ringle believed [REDACTED] as a timekeeper had the ability to certify DIG Ringle's leave slips and timesheets using [REDACTED] timekeeper account: "[REDACTED] had the ability as a timekeeper to enter IG Lavik's certification." [Exhibit A.29 at 4] DIG Ringle also believed that "as a timekeeper, [REDACTED] could enter the data, prepare it and validate it." [Exhibit A.29 at 4] Prior to the government shutdown for the COVID 19 pandemic, DIG Ringle thought [REDACTED] obtained written approval from IG Lavik and would enter the certification of DIG Ringle's timesheets logged in as [REDACTED] using her timekeeper account. [Exhibit A.29 at 4] After the March 2020 government shutdown, DIG Ringle understood that [REDACTED] obtained verbal approval from IG Lavik to certify DIG Ringle's timesheet. [Exhibit A.29 at 4]

[REDACTED] is uncertain how DIG Ringle would not know she was using IG Lavik's credentials to sign into various CFTC systems, especially WebTA. [Exhibit A.3 at 5] But [REDACTED] was not certain whether DIG Ringle knew [REDACTED] was using IG Lavik's WebTA account to approve DIG Ringle's leave requests or certify Ringle's timesheets. [Exhibit A.3 at 5] [REDACTED] thought DIG Ringle knew [REDACTED] used IG Lavik's WebTA credentials, based on 1) [REDACTED] sending IG Lavik's updated passwords to DIG Ringle, and 2) discussions between DIG Ringle and [REDACTED] to confirm DIG Ringle's leave requests. [Exhibit A.3 at 5] DIG Ringle was aware [REDACTED] was confirming DIG Ringle's leave requests for IG Lavik. [Exhibit A.3 at 5] DIG Ringle never asked [REDACTED] to approve her leave requests, and IG Lavik would always be in the conversations about approving DIG Ringle's leave requests.⁸⁰ [Exhibit A.3 at 5] Further, using her WebTA timekeeper account, [REDACTED] is notified that a leave request is pending, but cannot access the substance of DIG Ringle's leave requests using [REDACTED] WebTA timekeeper account. [Exhibit A.3 at 5-6] [REDACTED] also believes [REDACTED] was aware that [REDACTED] was using IG Lavik's WebTA credentials to take official actions in WebTA. [Exhibit A.3 at 6]

Based on our review of the record and interviews with DIG Ringle, [REDACTED] and [REDACTED] FCC OIG does not believe DIG Ringle provided conflicting information to [REDACTED] and [REDACTED] or, through [REDACTED] to CFTC HR. Instead, it appears to FCC OIG that DIG Ringle honestly believed [REDACTED] was able to approve DIG Ringle's leave slips and certify her timesheets using her WebTA timekeeper account. FCC OIG was unable to locate any evidence that DIG Ringle received WebTA training or other guidance that would have made it clear that [REDACTED] or any other WebTA timekeeper did not have authority to approve leave requests or certify timesheets using a WebTA timekeeper account. DIG Ringle also stated that for the timesheets which she was responsibility for certifying, she never relied on a backup timekeeper for certification and was unaware of any limitations on a timekeeper's ability to certify timesheets. [Exhibit A.29 at 6] Further, [REDACTED] is uncertain whether DIG Ringle knew [REDACTED] was using IG Lavik's account to certify DIG Ringle's timesheet.

⁸⁰ On matters involving her own leave and timesheets, DIG Ringle did not get involved and left approval and certification to IG Lavik and [REDACTED]. [Exhibit A.29 at 3-4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Technical Appendix Allegation 4

Whether the IG and DIG failed to follow CIGIE standards in the CFTC OIG report titled, "CFTC Stress Testing Development Efforts." Specifically, it is alleged that they failed to present factual data accurately, fairly, and objectively and ignored substantive relevant input from agency subject matter experts and/or exculpatory evidence or information contrary to the report's conclusions.

FCC OIG's investigation determined that IG Lavik did not require compliance with numerous CIGIE professional standards during the inspection and evaluation that resulted in the CFTC OIG report entitled *Inspection & Evaluation: CFTC Stress-Testing Development Efforts*. ("Stress Testing Report"). As a result, the *Stress Testing Report* did not present factual data accurately, ignored substantive and relevant input from agency experts, and failed to include or address exculpatory evidence or information contrary to the *Stress Testing Report's* conclusions. Measured against the CIGIE *Quality Standards for Inspection and Evaluation*, the investigatory record compiled by FCC OIG leads to the conclusion that the entire inspection process and the *Stress Testing Report* itself, both supervised by IG Lavik, fail to comply in material aspects with eight of the 14 Quality Standards: Competency, Independence, Professional Judgment, Quality Control, Planning, Evidence, Reporting and Working Relationships and Communication. The evidence gathered showed DIG Ringle did not participate in this project in a supervisory capacity and, as a result, was not responsible for ensuring that the project was conducted in accordance with CIGIE professional standards.

I A C R

On December 20, 2018, (b) (6), (b) (7)(C) Risk Surveillance Sector 1 of the CFTC Division of Clearing and Risk, sent an email message to the CIGIE IC that included a complaint alleging misconduct by CFTC IG Lavik and DIG Ringle associated with the *Stress Testing Report* project. Between December 20, 2018 and June 1, 2019, (b) (6), (b) (7)(C) sent numerous email messages and documents to the CIGIE IC in support of his complaint.

On December 21, 2018, (b) (6), (b) (7)(C) Risk Surveillance Sector 1 of the CFTC Division of Clearing and Risk, sent an email message to the CIGIE IC including a complaint alleging misconduct by CFTC IG Lavik and DIG Ringle associated with the *Stress Testing Report* project. In his email message, (b) (6), (b) (7)(C) alleged the report was "biased, partisan and unfair."

On January 28, 2019, (b) (6), (b) (7)(C) Risk Surveillance Sector 2 of the CFTC Division of Clearing and Risk, sent an email message to the CIGIE IC including a complaint alleging misconduct by CFTC IG Lavik and DIG Ringle associated with the *Stress*

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

Testing Report project. (b) (6), (b) (7)(C) stated that the public report specifically names him and contends that he misled the CFTC and public. (b) (6), (b) (7)(C) denies this conclusion as presented in the report and points out that, as a certified public accountant (b) (6), (b) (7)(C), a “public statement by a government entity impugning my character could be used by the State of (b) (6), (b) (7)(C) to bring sanctions against me.”

II I E S I A I

A Introduction

The CIGIE *Quality Standards for Federal Offices of Inspector General* (“*Silver Book*”) contains quality standards for the management, operation, and conduct of Federal Office of Inspector General. Section III of the *Silver Book*, entitled “Professional Standards” states that “Each OIG shall conduct, supervise, and coordinate its audits, investigations, inspections, and evaluations in compliance with the applicable professional standards” and, for Inspections and Evaluations, references the *Quality Standards for Inspection and Evaluation* issued by CIGIE. *Silver Book* at 19. The CIGIE *Quality Standards for Inspection and Evaluation*, dated January 2012, provide a framework for performing both inspection and evaluation work.¹ The Standards include requirements for Competency, Independence, Professional Judgment, Quality Control, Planning, Evidence, Reporting and Working Relationships and Communication.

When first asked whether CIGIE *Quality Standards for Inspection and Evaluation* were followed for the Stress Testing inspection, IG Lavik replied that FCC OIG should ask DIG Ringle. [Exhibit A.19 at 15] When asked whether, as the IG, he has the discretion to decide what professional standards to follow, how to follow them, and what parts to follow, IG Lavik answered “That is why they call them reviews.”² [Exhibit A.19 at 29]

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IG Lavik does not believe written policies and procedures for Inspection and Evaluation are needed in a small agency. [Exhibit A.19 at 19] At one point, when asked whether the CFTC

¹ The Inspector General Reform Act of 2008 (“Reform Act”) recognized the longstanding practice of the IG community to conduct inspections and evaluations. The Reform Act also statutorily established CIGIE as an independent entity with the executive branch, defined the mission of CIGIE, and defined membership including “All Inspectors General.” Section 11 (c) (2) (a) of the Reform Act states that “To the extent permitted under law, and to the extent not inconsistent with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, program, activities, and functions, each member of the Council, as appropriate, shall adhere to professional standards developed by the council.”

² DIG Ringle related that IG Lavik loves the word “review” and believes all projects should be called “reviews” because reviews are not subject to professional standards. IG Lavik’s approach drives DIG Ringle “crazy” because she wants to employ professional standards. [Exhibit A.28 at 7]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

OIG has its own Inspection & Evaluation policies, IG Lavik did not answer and deflected the question by stating smart people in law can do inspections and evaluations. [Exhibit A.19 at 15] IG Lavik delegates the task of complying with standards to DIG Ringle and suggested the FCC OIG should ask DIG Ringle about the CFTC OIG's written policies and procedures for Inspection & Evaluation. [Exhibit A.19 at 6, 19] IG Lavik also stated there are short and open-ended written policies and procedures for Inspection and Evaluations but he does not keep up with them. [Exhibit A.19 at 6] IG Lavik suggested the FCC OIG ask DIG Ringle about them. [Exhibit A.19 at 6]

In 2017, a CFTC OIG auditor recommended the creation of an internal CFTC OIG Inspections and Evaluations guide and an internal quality assurance program for Inspections and Evaluations. [Exhibit A.28 at 36] DIG Ringle did not see that the CIGIE *Quality Standards for Inspection and Evaluation* required internal OIG procedures, but if they were going to be required for a peer review, DIG Ringle thought CFTC OIG should have them. [Exhibit A.28 at 24] A CFTC OIG internal guide for Inspections and Evaluations was created in November 2017 by CFTC OIG attorney/economist (b) (6), (b) (7)(C).³ [Exhibit A.28 at 5; Exhibit A.25 at 4] These written internal procedures were to be created to satisfy the CFTC OIG's responsibility, as an organization that conducts Inspections and Evaluations, to develop internal written policies and procedures to ensure that all such work complies with the CIGIE *Quality Standards for Inspection and Evaluation*. [Exhibit A.28 at 36] On November 28, 2017, (b) (6), (b) (7)(C) sent an email to (b) (6), (b) (7)(C) DIG Ringle and IG Lavik with the message "I reviewed the Audit/Investigations standards, along with the CIGIE requirements-the attached is what I have so far" and an attachment with the title "Office of the Inspector General" and "OIG Inspections & Evaluations." [Exhibit 4.1] FCC OIG examined this document and determined that it appears to be a copy of the CFTC OIG investigations manual with the title changed and minor to changes to some of the standards. [Exhibit 4.2; Exhibit 4.1 Attachment]

On December 11, 2017, DIG Ringle sent an email, with an attachment titled "Office of the Inspector General-I&E Standards jr markup.docx." to (b) (6), (b) (7)(C) and IG Lavik with the message, "Nothing is set in stone here" and "Let me know what you think." [Exhibit 4.3] FCC OIG examined this document and determined that it appears to follow some of the standards addressed in the CIGIE *Quality Standards for Inspection and Evaluation* but does not address several important standards including Quality Control, Performance Measurement, and Working Relationships and Communication. The December 11, 2017, draft is the most recent version of the CFTC OIG Inspection and Evaluation internal guide located in the Stress Testing project inspection files. IG Lavik was unaware of and never approved any CFTC OIG policies and procedures for Inspections & Evaluations. [Exhibit A.19 at 19] DIG Ringle indicated she did not

³ IG Lavik did not remember (b) (6), (b) (7)(C) asking if he could write Inspection and Evaluation policies and procedures for CFTC OIG, [Exhibit A.19 at 19] (b) (6), (b) (7)(C) wanted to standardize the CFTC OIG Inspection and Evaluation process, and thinks he began writing Inspection and Evaluation standards while he was at the CFTC. [Exhibit A.25 at 4] He did not complete the standards before he left the CFTC, and he did not think they were completed after he left the CFTC in 2018. [Exhibit A.25 at 4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

find anything in her files indicating IG Lavik reviewed the CFTC OIG Inspection and Evaluation standards before she finalized them, and she did not recall asking IG Lavik to review them.⁴ [Exhibit A.28 at 20]

The Quality Control standard in the CIGIE *Quality Standards for Inspection and Evaluation* states that “Each organization that conducts inspections should have appropriate internal quality controls for that work.” CIGIE *Quality Standards for Inspection and Evaluation* at 8. The standard further states that “Each OIG organization that conducts inspections should develop and implement written policies and procedures for internal controls over its inspection processes/work to provide reasonable assurance of conformance with organizational policies and procedures, the ‘Quality Standards for Inspection and Evaluation,’ and other applicable policies and procedures.” CIGIE *Quality Standards for Inspection and Evaluation* at 8. The Quality Control Standard recognizes that “The nature and extent of these internal controls and their associated documentation will be dependent on a number of factors, such as the size and structure of the organization and cost-benefit considerations.” CIGIE *Quality Standards for Inspection and Evaluation* at 8. The Quality Control Standard also states “As appropriate, organizations should seek to have quality control mechanisms that provide an independent assessment of inspection processes/work.” CIGIE *Quality Standards for Inspection and Evaluation* at 8.

IG Lavik thought CFTC OIG had a quality assurance program for Inspection and Evaluation but he had not looked at it in a while and suggested the FCC OIG ask DIG Ringle about the quality assurance program. [Exhibit A.19 at 6] When asked whether the CFTC OIG reviewed internal controls as part of its Stress Testing inspection, as required by the CIGIE *Quality Standards for Inspection and Evaluation*, IG Lavik replied “sure they did, look at the report.” [Exhibit A.19 at 30] IG Lavik stated that as for quality, he looks to see if the Commission agrees with OIG, as they did for the *Stress Testing Report*. [Exhibit A.19 at 5] When asked who was responsible for assuring the CIGIE quality assurance steps were followed for another June 2017 Inspection and Evaluation, IG Lavik replied that he looked at the report and “it hung together and made sense.” [Exhibit A.19 at 29] The important thing to IG Lavik was that this report was accepted by the decision makers- the Commissioners. [Exhibit A.19 at 29]

According to DIG Ringle, CFTC OIG relied on supervision to assure quality control during the Stress Testing Inspection and did not include quality control mechanisms in the initial CFTC OIG December 2017 Inspections and Evaluations guide.⁵ [Exhibit A.28 at 36] DIG Ringle also

⁴ DIG Ringle was interviewed by FCC on August 28 and 31, 2020. When she could not recall an answer to a question posed by FCC OIG, DIG Ringle often offered to check her files and provide a follow up response to FCC OIG. The follow up responses were provided through her attorney on October 1, 2020.

⁵ At a later date, DIG Ringle amended the CFTC OIG Inspections and Evaluations procedures to include an internal quality assurance program, requiring the supervisor for each Inspection and Evaluation (at the Assistant Inspector General level or higher) to document in writing that the inspection is adequately planned, the plan is followed unless departure from it is justified and authorized, the inspection objectives are met, the inspection findings, conclusions and recommendations are adequately support by evidence, and that all contributors to the inspection possess

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

explained that when she prepares a report, her process is to check every statement and legal cite against her notes. [Exhibit A.28 at 5] For reports written by CFTC OIG staff, DIG Ringle expects CFTC OIG staff to do the same and check all the report's statements against notes, interviews and legal cites.⁶ [Exhibit A.28 at 5] DIG Ringle "trusts them" to do this and does not go back and do these tasks herself. [Exhibit A.28 at 5]

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During a second interview with IG Lavik on August 27, 2020, (prior to interviewing DIG Ringle), IG Lavik was asked if the CIGIE *Quality Standards for Inspection and Evaluation* were followed during the Stress Testing inspection. IG Lavik again stated that FCC OIG should ask Ringle. [Exhibit A.19 at 15] This is consistent with the position IG Lavik feels he occupies in CFTC OIG, repeatedly described as being the "court of appeals" uninvolved in the day-to-day operations of CFTC OIG, and only getting involved if it was "something major." [Exhibit A.19 at 7, 14, 15 and 34] IG Lavik stated he only looks at the written product, and delegates the task of complying with standards to DIG Ringle, and that, although Law and Economics are not DIG Ringle's specialty, DIG Ringle has good judgment and Lavik relies on her a lot. [Exhibit A.19 at 6]

IG Lavik also stated the decision that the OIG review of CFTC stress testing would be in the form of an Inspection and Evaluation was made jointly by IG Lavik, [REDACTED] and [REDACTED] [Exhibit A.19 at 15] The *Stress Testing Report* itself states the "evaluation was conducted in accordance with the *Quality Standards for Inspection and Evaluation*." *Stress Testing Report* at 1-2] DIG Ringle stated that CFTC OIG used the CIGIE *Quality Standards for Inspection and Evaluation* when conducting the Stress Testing inspection.⁷ [Exhibit A.28 at 6, 20] Prior to

sufficient experience, training, and character; and have no conflicts of interest. [Exhibit A.28 at 36] Another amendment requires the internal CFTC OIG Inspections and Evaluations guide to be reviewed in its entirety and approved every two fiscal years at the AIG or DIG level. [Exhibit A.28 at 36]

⁶ In 2015, [REDACTED] explained to CFTC OIG new-hires [REDACTED] and [REDACTED] that for every project, the goal was to create a referenced report that had citations to the record. [Exhibit A.11 at 2] This version was provided to DIG Ringle for review so she could confirm that the documents broadly supported the statements in the report, but [REDACTED] does not know exactly what DIG Ringle did with the referenced reports. [Exhibit A.11 at 2]

⁷ It was clear to DIG Ringle, at the start of the Stress Testing project, that CFTC OIG did not have its own Inspection and Evaluation standards, and she did not take the opportunity to suggest that CIGIE standards be followed for the Stress Testing inspection when discussing them with the inspectors. On July 17, 2017, shortly after the Stress Testing project was opened, DIG Ringle emailed [REDACTED] and [REDACTED] and included a copy of "Quality Control Checklist for Inspections (Reviews) and Evaluations" she had obtained from a CFTC OIG auditor. [Exhibit 4.4] It is not clear who created the checklist or how it was obtained. DIG Ringle's message describes the attachment as a check-off evaluation/inspection compliance list and notes OIG organizations take these documents very seriously, and that CFTC OIG needs to be prepared for that kind of approach if peer reviewed. DIG Ringle opines that the June 5, 2017 *Cost-Benefit Review* complies with the CIGIE Inspection and Evaluation standards, but not the checklist, and makes no mention of following those CIGIE Inspection and Evaluation standards or the checklist for the Stress Testing inspection. [Exhibit 4.4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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beginning the Stress Testing inspection, DIG Ringle requested the CFTC OIG inspectors review, and believes they did review, the CIGIE *Quality Standards for Inspection and Evaluation* during the process of determining what standards to follow.⁸ [Exhibit A.28 at 36] According to [REDACTED] he and [REDACTED] looked at the CIGIE *Quality Standards for Inspection and Evaluation* and tried to mirror those standards in their work. [Exhibit A.25 at 6] [REDACTED] stated he and [REDACTED] were not directed to do this, but decided to do it on their own. [Exhibit A.25 at 6]

While preparing the November 2017 draft of the CFTC OIG Inspection and Evaluation internal guide, [REDACTED] and [REDACTED] discussed the CIGIE *Quality Standards for Inspection and Evaluation* and their applicability to prior CFTC OIG written reports. First, [REDACTED] observed that the Stress Testing Project was the first CFTC OIG project that was an Inspection and Evaluation, claiming the June 5, 2017, *A Review of the Cost-Benefit Consideration for the Margin Rule for Uncleared Swaps* (“*Cost-Benefit Review*”) “was not discussed as being an I&E.” [Exhibit 4.5] The *Cost-Benefit Review*, authored by the same two CFTC OIG inspectors who conducted the Stress Testing inspection, states the “CFTC OIG adhered to the principles laid out in [CIGIE] *Quality Standards for Inspection and Evaluation*.” *Cost-Benefit Review* at 1, https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/oig_rcbcmr_us060517.pdf. On the same day, [REDACTED] commented “I read through the CIGIE IE stuff its bureaucratic [sic] stupidity.” [Exhibit 4.5] [REDACTED] also feels there is no substance to CIGIE’s Inspection & Evaluation standards. [Exhibit A.32 at 5] Considering the CFTC OIG inspectors’ low opinions of the CIGIE Inspection and Evaluation standards, as well as IG Lavik’s lack of respect for CIGIE Inspection and Evaluation standards, [REDACTED] claim that the CFTC OIG inspectors tried on their own to mirror the Inspection and Evaluation standards in their work lacks credibility. [Exhibit A.25 at 6] The strength of this claim is further weakened upon review of the Stress Testing inspection and Report, as discussed below.

D. The Stress Testing Project was Not Planned or Supervised in the Manner Required by the CIGIE *Quality Standards for Inspection and Evaluation*

1. The Minimal Planning for the Stress Testing Project Did Not Meet CIGIE *Quality Standards for Inspection and Evaluation* Standard for Planning

The CIGIE *Quality Standards for Inspection and Evaluation* Planning Standard requires “Inspections are to be adequately planned.” CIGIE *Quality Standards for Inspection and Evaluation* at 9. This is intended to ensure that appropriate care is given to selecting topics, preparation to conduct the inspection, and coordinating to avoid duplication, as well as to ensure the inspection topics are properly researched and the objectives of the inspection are clearly

⁸ As of August 2021, CFTC OIG did not perform independent referencing of Inspection and Evaluation reports. [Exhibit A.28 at 7] The CIGIE *Quality Standards for Inspection and Evaluation* did not appear to address independent referencing and the CFTC OIG policies and procedures do not have an independent reference process for investigations and inspection and evaluations. [Exhibit A.28 at 7 and 20] The CFTC OIG inspectors reference their facts as they drafted the *Stress Testing Report* and the project file includes several drafts with facts referenced. [Exhibit A.28 at 20] Prior to issuance of the report, the references were removed.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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understood. CIGIE *Quality Standards for Inspection and Evaluation* at 9. “An inspection workplan should be developed that clearly defines the inspection objective(s), scope and methodology. It may also include time frames and work assignments. Adequate planning also entails ensuring that sufficient staff with the appropriate collective knowledge, skills, abilities, and experience is assigned to the inspection effort. As work on an inspection progresses, the work plan may need revision to address new information.” CIGIE *Quality Standards for Inspection and Evaluation* at 10.

IG Lavik did not identify a written workplan for the Stress Testing Inspection. [Exhibit A.19 at 15, 30] IG Lavik explained that no workplan was created for the stress testing review, as workplans are not relevant to an economic review, like the Stress Testing inspection. [Exhibit A.19 at 15] IG Lavik used this approach in another economic review, *Cost-Benefit Review* published in June 2017. When IG Lavik was asked whether he made sure that the requirements in the CIGIE *Quality Standards for Inspection and Evaluation* requiring inspection plans, a referenced report, and evidence of supervisory review, were followed in that inspection, IG Lavik stated he reviewed and understood those reports because they involved Law and Economics and he checked whether the reports “made sense.” [Exhibit A.19 at 29]

The only work plan located in the inspection files for the Stress Testing inspection lacks many of the attributes contained in Planning standard of the CIGIE *Quality Standards for Inspection and Evaluation*. The one-page work plan is more akin to a timeline, or a plan for collecting and reviewing documents and the order in which the unnamed members of CFTC units will be interviewed. [Exhibit 4.6] The work plan opens with a three-sentence description of complainant’s allegations and closes with a projection of staff resources needed to complete the project. There is no indication that the listed topics of the inspection- DCR data-related activities, improper stress testing of market participants and mismanagement by management- had been researched or that the objectives of the inspection had been considered or defined. This work plan, which was never revised as the inspection progressed, allowed for a wide-ranging investigation into a variety of topics not reflected in the plan. The resulting *Stress Testing Report* appears to address many topics not reflected in the original plan, such as the withholding of resources and potentially misleading statements made at a CFTC Market Risk Advisory Committee meeting.

2 e Stress esting Ins ection and Re ort ere ot Su ervised E ectively

IG Lavik acknowledged that he supervised the stress testing project.⁹ [Exhibit A.19 at 30] The CIGIE *Quality Standards for Inspection and Evaluation* Quality Control Standard states: “A key

⁹ According to DIG Ringle, she had a limited role in the Stress Testing inspection and the FCC OIG’s investigation confirmed DIG Ringle’s limited role. Other than some limited substantive input at the start of the Stress Testing Inspection, IG Lavik and the two CFTC OIG inspectors gave DIG Ringle report drafts to read, but they did not follow DIG Ringle’s recommendations on this matter. [Exhibit A.28 at 18] DIG Ringle further stated that she did not review working papers, supporting documents, or witness interview recordings, except for one interview at the request of a paralegal. [Exhibit A.28 at 18]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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aspect of inspection quality control is adequate supervision. Supervision provides important judgment and an additional level of oversight to the work done by subordinate, often less experienced staff. Supervisors should work with inspection team members to reach agreement as to the work the team will do and how they are to proceed. The teams should also have a clear understanding of the purpose of the inspection and what it is expected to accomplish.” CIGIE *Quality Standards for Inspection and Evaluation* at 8. The Quality Control Standard further recognizes that “supervisory reviews help ensure that: the inspection is adequately planned; the inspection workplan is followed, unless deviation is justified and authorized; the inspection objectives are met; and the inspection findings, conclusion, and recommendations are adequately supported by the evidence.” CIGIE *Quality Standards for Inspection and Evaluation* at 8-9. The review by FCC OIG of the inspection record and the FCC OIG interviews of IG Lavik and DIG Ringle found little, if any, evidence of supervision as described by the Quality Control Standard described above.

IG Lavik performed few, if any, of the duties or responsibilities set forth in the CIGIE *Inspection and Evaluations* standards or, in FCC OIG’s opinion, those normally expected from a supervisor. As the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard notes, supervision and oversight is important when an inspection is conducted by subordinate, less experienced staff, like the CFTC OIG inspectors. IG Lavik deflected answering whether the CFTC OIG inspectors knew the stress testing project would be handled as an inspection and evaluation when they started the review. [Exhibit A.19 at 30] It is clear from the record that the inspection team did not have a clear understanding of the purpose of the inspection and what it was expected to accomplish. As discussed above, there was no plan identifying the purpose and goals of the inspection. This lack of direction resulting from the lack of supervision is acknowledged in the *Stress Testing Report* itself. Six weeks after the inspection began, no “specific subject matter, or the scope or the direction of [OIG’s] inquiry had been identified.” *Stress Testing Report* at 17. At this point in the inspection and after numerous interviews of CFTC’s Risk Surveillance Branch (“RSB”) units focused on risk surveillance, both the Margin Model Group (“MMG”) staff and RSB staff in Chicago (“Chicago RSB”), appropriate supervision and compliance with the CIGIE *Quality Standards for Inspection and Evaluation* would have guided the team to identify the purposes and goals of the inspection and plan accordingly.

FCC OIG’s investigation revealed several examples of IG Lavik’s questionable approach to supervision in his handling of complaints, questions and concerns regarding the Stress Testing inspection. On July 28, 2017, both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) emailed IG Lavik raising numerous concerns about the Stress Testing inspection. [Exhibit 4.7; Exhibit 4.8; CIGIE Complaint 986-165 – 986-169] (b) (6), (b) (7)(C) was concerned DCR staff had been contacted and had not been given a written explanation of the scope and objectives of the examination, as would typically be sent to a derivatives clearing organization when a CFTC examination was initiated. [Exhibit 4.7] More generally, (b) (6), (b) (7)(C) also suggested that due to resource constraints, it did not appear to be a good use of DCR’s or OIG’s time to pursue a stress testing inspection, noting that DCR’s systemic

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

stress testing exercise had been presented by the Chairman at a press conference, to other U.S. and foreign leading financial regulators, and offered to demonstrate the high quality of the program to CFTC OIG. [Exhibit 4.7]

(b) (6), (b) (7)(C) email provided background on a management situation faced by DCR, namely that (b) (6), (b) (7)(C) had been pursuing duplicative work for which he had no responsibility at the expense of his other work responsibilities and had made misstatements about his work responsibilities in his speaker profile. [Exhibit 4.8; CIGIE Complaint 986-165 – 986-169] Additionally, (b) (6), (b) (7)(C) explained the involvement by CFTC’s Human Capital office (“HR”) to address the ongoing management challenges presented by the actions of (b) (6), (b) (7)(C), and the praise (b) (6), (b) (7)(C) had received from HR for the manner in which he handled those challenges. [Exhibit 4.8; CIGIE Complaint 986-165 – 986-169]

IG Lavik recalls receiving messages from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) asking about the process of the review and describing bullying by CFTC OIG staff and hostile RSB staff interviews.¹⁰ [Exhibit A.19 at 12] IG Lavik viewed (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) complaints as coming from bureaucrats trying to protect their turf. [Exhibit A.19 at 12] IG Lavik did not get a sense at all that Chicago RSB management was being reflective about their actions. [Exhibit A.19 at 12] Instead, IG Lavik thought (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were being supercilious and IG Lavik was not going to tell the CFTC OIG inspectors to stop. [Exhibit A.19 at 12]

IG Lavik does not recall responding to (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) messages or talking with them about their concerns.¹¹ [Exhibit A.19 at 12-13] IG Lavik’s failure to respond is inconsistent with the Silver Book’s admonition that “OIG should make a special and continuing effort to keep program managers and their key staff informed, if appropriate, about the purpose, nature and content of OIG activity associated with the manager’s programs.” Section VII.E, *Silver Book* at 37. IG Lavik noted the complaints in the (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) emails gave him pause, but IG Lavik was not concerned by the claim that the CFTC OIG inspectors were being aggressive, likely because IG Lavik had a demonstrated predilection for the OIG inspectors, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) evidenced by numerous statements made throughout his interviews.¹² [Exhibit A.19 at 12] In response to questions regarding this particular matter, IG Lavik noted that (b) (6), (b) (7)(C) “sold his company for \$10 million, which was lucky for him, and the CFTC was very lucky to have (b) (6), (b) (7)(C)” because other lawyers make track records while working for the government and then leave to go to law firms. [Exhibit A.19 at 13] IG Lavik further extolled the inspectors, noting that (b) (6), (b) (7)(C) left government to work for a big Silicon Valley firm, and (b) (6), (b) (7)(C) resigned in March

¹⁰ Although the emails from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) do not mention bullying by OIG staff, IG Lavik raised and responded to this claim on his own, indicating he heard these claims of bullying from another source.

¹¹ A CFTC OIG auditor said that if he had acted the way (b) (6), (b) (7)(C) acted, IG Lavik would have “called him out.” [Exhibit A.2 at 7] This auditor thought IG Lavik’s failure to respond to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) July 28, 2017 emails was a shame, because IG Lavik “is more intelligent than this.” [Exhibit A.2 at 7]

¹² Throughout IG Lavik’s FCC interview, he repeatedly emphasized how accomplished the CFTC OIG inspectors were and how lucky the government was to have them as employees, referring to one inspector as a “valuable asset,” a “treasure,” and a “golden hen.” [Exhibit A.19 at 2-3, 7, 12, 13, 14, 16, 19, 20, 24, 27, 30, and 32]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

2020, because he was approached to run a private school.¹³ [Exhibit A.19 at 13] IG Lavik asked these CFTC OIG inspectors what was going on and the one word used in the response to describe [REDACTED] and [REDACTED] complaints was “BS,” and Lavik was satisfied. [Exhibit A.19 at 13]

DIG Ringle wrote a Memorandum to the file containing CFTC OIG’s considerations and thoughts about the July 28, 2017, emails from [REDACTED] and [REDACTED] [Exhibit 4.9] The Memo states that DIG Ringle met with IG Lavik and [REDACTED] on July 31, 2017, saying “it would be a good idea to reach out to [REDACTED] and [REDACTED] let them know that there is no requirement to formally announce this project ([REDACTED] stated he checked this in the CIGIE guide), and state that we are very interested in their assertions, and that we are working independently of the administration. I also suggested mentioning this to [REDACTED].” [Exhibit 4.9] Instead of adopting DIG Ringle’s suggestion, IG Lavik said he did not want DIG Ringle to reach out, but “wanted to take a wait and see approach, and see if [REDACTED] or [REDACTED] attempt to impede [REDACTED] and [REDACTED] or stop CFTC staff from cooperating with us.” [Exhibit 4.9]

[REDACTED] recalled that IG Lavik never responded to [REDACTED] email. [Exhibit A.21 at 8] Instead, [REDACTED] responded and told [REDACTED] to ask him any questions he had. [Exhibit A.21 at 8] But [REDACTED] did not see the point of discussing the issues with the same individual who was the subject of his concerns regarding how OIG staff was treating RSB staff, so [REDACTED] never shared his concerns with [REDACTED].¹⁴ [Exhibit A.21 at 8] IG Lavik told [REDACTED] he was not going to tell OIG staff to stop looking at stress testing. [Exhibit A.19 at 12]

Directing [REDACTED] the most junior member of and a recent addition to the CFTC OIG staff, to respond to complaints made by senior CFTC management about that inspector’s behavior indicates a failure by IG Lavik to appropriately supervise the stress testing inspection.¹⁵ Not everyone is familiar with the inspector general process; [REDACTED] and [REDACTED] raised appropriate questions about a process they were not familiar with. IG Lavik should, at a minimum and as recommended by DIG Ringle, have explained the inspection process to [REDACTED] and [REDACTED] instead of directing one of the CFTC OIG inspectors to offer to answer questions. IG Lavik should have followed up with the CFTC HR staff to verify the statements made by [REDACTED] and considered the impact the inspection would have on the management of DCR staff and ongoing

¹³ IG Lavik routinely expressed similar and more emphatic praise of the CFTC OIG inspectors throughout the FCC OIG interviews whenever their names came up. [REDACTED] rejoined CFTC OIG in April, 2021.

¹⁴ At some point, [REDACTED] raised his concerns with the IG investigation to CFTC [REDACTED]. [Exhibit A.21 at 8] [REDACTED] response was “we are trying to deal with it,” and [REDACTED] did not pursue his concerns further with [REDACTED] [Exhibit A.21 at 8]

¹⁵ A CFTC OIG staff member noted [REDACTED] used investigative interview techniques to gather information during the Stress Testing inspection and seriously questioned why [REDACTED] was using the technique developed for matters involved with breaking the law for a review/white paper approach. [Exhibit A.8 at 6] It was thought that [REDACTED] got little direction from IG Lavik and took this aggressive approach due to his lack of maturity and knowledge of how an IG should function based on the type of action being undertaken, an investigation verses a review. [Exhibit A.8 at 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

efforts by the HR office to address a management problem. Additionally, a thoughtful and engaged supervisor would have explored the complaints about OIG staff actions with the complainants, instead of relying solely on OIG staff's characterizations of the complaints and directing the accused staff member to respond to the senior manager lodging the complaints. Such actions left the complaints unaddressed. While a supervisor's loyalty to staff in the face of behavioral complaints may help build morale, IG Lavik's failure to take the complaints of agency senior management seriously, to accept a one word "BS" response from junior staff, and to fail to contact the complainants indicates that IG Lavik did not supervise the CFTC OIG inspectors as required by the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control Standard.

The hiring of an economic consultant to review CFTC stress testing is another area where IG Lavik did not supervise the CFTC OIG inspectors. As part of the inspection of stress testing, CFTC OIG hired an economic consulting firm, NERA Economic Consulting ("NERA") to review the Chicago RSB and MMG approaches to supervisory stress testing. Stress Testing Report, *Review of CFTC DCR Stress Testing Programs* ("NERA Review"), https://www.cftc.gov/sites/default/files/2018-12/oig_NERA_DCRStressTesting020818_0.pdf. During his interview, IG Lavik stated he assumed the two CFTC OIG inspectors were in charge of the process, and they talked to IG Lavik about the selection because IG Lavik knew people in the industry who would have the skills needed for the project. [Exhibit A.19 at 25] After it was explained to IG Lavik what a technical evaluation committee did, IG Lavik did not recall whether (b) (6), (b) (7)(C) was on the contract's technical evaluation committee. [Exhibit A.19 at 25] IG Lavik stated he did not know whether (b) (6), (b) (7)(C) signed a Personal Conflict of Interest form. IG Lavik thinks (b) (6), (b) (7)(C) might have evaluated quotes, and remembers chatting with the CFTC OIG inspectors about NERA Economic Consulting. [Exhibit A.19 at 25] Considering the limited experience of the CFTC OIG inspectors in hiring consultants, closer supervision, as suggested by the CIGIE *Quality Standards for Inspection and Evaluation*, would have been appropriate to insure they followed the correct contracting processes. A review of inspection records establishes that the CFTC inspectors were the main points of contact with NERA, met with NERA representatives and directed their work. There is limited, if any, evidence of any supervision by IG Lavik of the CFTC OIG inspectors with respect to their work with NERA as NERA developed its evaluation plan, gathered material from the CFTC, analyzed CFTC stress testing and drafted the expert report.

With respect to supervision of the actual drafting of the *Stress Testing Report*, IG Lavik stated he had the CIGIE standards in mind when reviewed the draft report, and asked questions. [Exhibit A.19 at 30] IG Lavik looked at the draft report to see if it "hung together and made sense." [Exhibit A.19 at 15] If there was something he was interested in, Lavik would look to the appendix. [Exhibit A.19 at 15] When asked if there was a referenced report indexed to supporting documents created for the stress testing project, IG Lavik replied at one point he looked at the report to see if made sense, and at another that he thinks there was a long appendix, which he thinks he glanced through. [Exhibit A.19 at 15, 30] IG Lavik would have asked DIG Ringle to look at the referenced report if there was one. [Exhibit A.19 at 15] Although the draft

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Stress Testing Reports reviewed by DIG Ringle included references to the record, she only reviewed the draft for overall clarity, and not for the purpose of checking the references for factual and legal citations. [Exhibit A.28 at 20]

IG Lavik looked at supporting documentation if he had a question about statements in the report and insisted he “did not just sign off on the damn thing.” [Exhibit A.19 at 29] It appears IG Lavik may have felt that the CFTC OIG staff who conducted the Stress Testing inspection did not need much supervision, because, as noted above, he had huge confidence in them and a high opinion of their abilities. The evidence gathered by FCC OIG indicates that neither IG Lavik nor DIG Ringle, who IG Lavik apparently expected to review the draft report, closely read the draft *Stress Testing Report*, nor did they ensure that the factual statements were supported by evidence in the inspection record.¹⁶

IG Lavik remarked that it is important not to put process over substance and he does not want to get caught in process. [Exhibit A.19 at 13] IG Lavik wants to look at substantive issues, and appointed CFTC management agreed with the CFTC OIG: “I keep coming back to this: it does not make a difference what I think, it is what the Commission believed and did.” [Exhibit A.19 at 13] IG Lavik wants OIG’s work to catch the attention of the people who run the agency. [Exhibit A.19 at 29] In his responses to questions about the professional standards followed during the Stress Testing inspection, as well as many other topics, IG Lavik responded that the “proof is in the pudding.” [Exhibit A.19 at 12] According to IG Lavik, CFTC OIG staff can make comments, but an OIG recommendation does not go anywhere unless the people on top agree. [Exhibit A.19 at 12] With the *Stress Testing Report*, the people at the top agreed, there were changes and people decided to retire.¹⁷ [Exhibit A.19 at 12-13, 30] This focus on gaining the attention and approval of agency management is not consistent with the Quality Control standard of the CIGIE *Quality Standards for Inspection and Evaluation*.

To IG Lavik, the important thing was that the report was accepted by the decision makers- the Commissioners - even though it may not have been accepted in a peer review [Exhibit A.19 at 29] the errors described below, both superficial and substantive, establish that the conduct of the Stress Testing inspection and the *Stress Testing Report* were not carefully reviewed by a

¹⁶ If IG Lavik or DIG Ringle had reviewed the referenced report, they would have found it lacking. The final referenced draft of the *Stress Testing Report* identified by DIG Ringle, Working Narrative.v10.2, cites to lengthy interview transcripts without citing to page numbers. See, [Exhibit 4.10, notes I, vii, x, xiv, xviii, xx, xxviii, xxxi, xxxii, xxxiii, xxxiv, xxxv, xxxvi, xli, xlii, xlvi, xlix, and lii] Often the material referenced in the complete cites do not support the statements made in the *Stress Testing Report*. See [Exhibit 4.10 notes xxi, xxvi, xxxi, xxxii, xxxvii and xxxix] Other statements that should be referenced are not. See e.g., Stress Testing Report at 13 (description of use of Firm Risk and CFTC licenses) and at 23 (discussion of SIMM as a new margin model and the reasons that MMG’s SIMM review was shut down).

¹⁷ IG Lavik described the changes as “a guy” from New York was brought in to take over, and [REDACTED] who was critical of RSB processes is [REDACTED]. [Exhibit A.19 at 30] Additionally, IG Lavik believes that [REDACTED] retired because of the *Stress Testing Report*. [Exhibit A.19 at 12-13, 30] To the contrary, [REDACTED] had planned to retire in 2016, but delayed his retirement, at CFTC Chairman J. Christopher Giancarlo’s request, to take the position of (b) (6), (b) (7)(C), until Chairman Giancarlo hired a permanent [REDACTED] [Exhibit A.21 at 2; Exhibit A.9 at 4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

supervisor as required by the Quality Control Standard of the CIGIE *Quality Control Standards for Inspection and Evaluation*. In many instances, the inspection’s findings and conclusions were not adequately supported by evidence, as required by the Quality Control Standard of the CIGIE *Quality Standards for Inspection and Evaluation*. As discussed below, this lack of supervision led to the *Stress Testing Report* not following the CIGIE *Quality Standards for Inspection and Evaluation*, including but not limited to the Quality Standards for Professional Judgment, Evidence and Reporting.

E e *Stress Testing Report* oes ot eet t e Re uirements o t e CI IE *Quality Standards for Inspection and Evaluation*

CFTC OIG’s disregard for the CIGIE *Quality Standards for Inspection and Evaluation* is evident not only in its failure to adopt conforming policies for conducting inspections and evaluations but led, to the creation and publication of a flawed report that does not meet the CIGIE standards. Following an organizational description is an analysis of how the *Stress Testing Report*, and the inspection that produced it, both failed to comply with many of the enumerated CIGIE *Quality Standards for Inspection and Evaluation*.

The *Stress Testing Report* asserts that Chicago RSB management “retarded” the CFTC’s development of stress testing capabilities by forcing MMG to abandon its stress testing efforts. *Stress Testing Report* at ii-iii. The Report further claims that the direction to MMG to cease work on stress testing was pretextual and the actual reason for the termination was Chicago RSB leadership’s territoriality and the belief that MMG was trying to take over Chicago RSB’s stress testing responsibilities. *Stress Testing Report* at 12. To better understand the context of these and other claims in the *Stress Testing Report*, an organizational description is provided.

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a Formation o t e Ris Surveillance ranc

The CFTC established RSB in 2005 to support the Commission in fulfilling its objective to “ensure the financial integrity of all transactions subject to [Commodity Exchange] Act and the avoidance of systemic risk.” *Risk Surveillance Activities*. Division of Clearing and Risk, Risk Surveillance Branch, Market Advisory Committee. June 20, 2017 PowerPoint presentation at 3. https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac062017_risksurvpres.pdf The RSB, part of the Division of Clearing and Risk (DCR) within the CFTC, conducts independent assessments of the risks posed by market participants. Specifically, it aims to identify cleared derivative positions that pose significant financial risk, estimates the magnitude of said risk, and compares risks to assets. Essentially, RSB examines firms and their resources to determine whether the firms can deal with risks and cover any possible defaults and look for outliers. [Exhibit A.17 at 2] For example, if a trader puts up a larger position than is usually the case, RSB would examine this situation more carefully to ensure any drastic moves in the market can be covered. [Exhibit A.17 at 2] RSB will contact the clearinghouse and ask if it is

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

comfortable with the risk, and typically, the clearinghouse will request the trader to put up more money or else carefully monitor the situation. [Exhibit A.17 at 2] RSB's risk surveillance program is designed to confirm the risks are properly managed. Supervisory Stress Testing of Clearinghouses. *A Report by the Staff of the U.S. Commodity Futures Trading Commission* (November 2016) at 11, <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/cftcstress111516.pdf>. One element of this surveillance is stress testing. Stress testing is "a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of the financial resources of such entities." 17 CFR § 39.2. Both the CFTC and the Federal Reserve require stress tests. [Exhibit A.31 at 4] Stress tests have to be "extreme but plausible events" and should be approximately the most a position has ever moved in one day, and takes the asset value change beyond a real event, either in dollar amount or percentage amount. [Exhibit A.31 at 4] It is also very common to conduct a stress test based on a historical event, such as replicating what happened a specific day, such as 9/11. [Exhibit A.31 at 4] With a stress test, one wants to shake the financial system and see if it "kills" anyone. [Exhibit A.31 at 4] If the firm can cover its two biggest losses generated in an appropriate stress test, then the firm is considered to have passed the stress test. [Exhibit A.31 at 5]

Under (b) (6), (b) (7)(C) leadership, (b) (6), (b) (7)(C) was "singularly responsible for developing risk surveillance" and the RSB was formed. [Exhibit 4.11] While attending a 2005 Futures Industry Association conference, (b) (6), (b) (7)(C) observed a demonstration of a Chicago Mercantile Exchange application known as SPAN Risk Manager (SRM). [CIGIE Complaint 986-216] (b) (6), (b) (7)(C) believed SRM could be used to stress test large trader positions. [CIGIE Complaint 986-216] This demonstration prompted (b) (6), (b) (7)(C) to develop an application called Stressing Positions at RISK (SPARK) with the help of a contractor. [CIGIE Complaint 986-216] In 2005, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) began stress testing at the CFTC. [Exhibit 4.12] These stress tests were run using data collected prior to the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or "DFA"). [Exhibit A.15 at 2] Noteworthy, this process was being developed during the time when natural gas-related defaults of hedge funds occurred, and the CFTC was able to provide necessary analysis. [CIGIE Complaint 986-216]

The RSB took a unique approach in its oversight of the markets. At the time, most regulators conducted audits and produced results and documentation. [Exhibit A.15 at 2] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) took a different approach, deciding to share their analyses with the market in a more proactive, rather than reactive, manner. [Exhibit A.15 at 2]; Supervisory Stress Testing of Clearinghouses. *A Report by the Staff of the U.S. Commodity Futures Trading Commission* (November 2016). (b) (6), (b) (7)(C) "revolutionary idea was to piggy-back on large trader reporting to conduct risk surveillance." [Exhibit 4.11] At the beginning, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) would conduct the stress tests and then share their analysis of the risk of the clearing house's position with the clearing house itself. [CIGIE Complaint 986-216] The firm would then explain how it viewed and analyzed risk, and whether it agreed or disagreed with the RSB's analysis. [CIGIE

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Complaint 986-216] This feedback was helpful in perfecting the analysis and validity of the RSB program and allowed RSB’s risk surveillance program to continually improve. [CIGIE Complaint 986-216] Ultimately, the stress testing developed by RSB allows it to independently

assess the risk and then work with the firm to compare how the firm itself also evaluated the risk, better enabling the firm to prepare for changes in the market. [Exhibit A.13 at 4]

By 2017, RSB’s risk surveillance identified significant positions, estimated the magnitude of the risks of those positions using stress tests, and compared the potential losses to available assets such as initial margin and excess net capital of the clearing firm. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 16, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf RSB regularly contacted traders, clearing members, and DCOs, and implemented monitoring and escalation procedures if this analysis uncovered accounts with the potential for concern. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 16, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf At the beginning of the risk surveillance program, not only would staff conduct the stress tests and share the results with the firms, but also approximately once a month, the staff would present its findings and analysis to the Commission. [Exhibit A.15 at 2] While the presentations to the Commission have tapered off in recent years, RSB continues to present and meet with the market participants. [Exhibit A.15 at 2]

b. RSB Management, Growth and Responsibilities

According to former CFTC Chairman Giancarlo, the “DCR was the crown jewel of the CFTC.” It was on the forefront of oversight on derivatives clearing and was almost the exclusive regulator, which attracted some of the smartest and most capable people to work in the DCR. [Exhibit A.9 at 4] The CFTC knew how to “more effectively provide oversight over clearing derivatives than other agencies and foreign regulators.” [Exhibit A.9 at 4] The RSB has the “ability to aggregate stress test results across DCOs [Derivatives Clearing Organization] and CMs [Clearing Members], giving [it] the highest level of surveillance in the industry.” *Risk Surveillance Activities*. Division of Clearing and Risk, Risk Surveillance Branch, Market Advisory Committee. June 20, 2017 PowerPoint presentation at 12, https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac062017_risksurvpres.pdf.

(b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) from 2006 to 2015, when (b) (6), (b) (7)(C) was the (b) (6), (b) (7)(C). After (b) (6), (b) (7)(C) retired and (b) (6), (b) (7)(C) was Acting (b) (6), (b) (7)(C) for a few months, (b) (6), (b) (7)(C) was named (b) (6), (b) (7)(C), and when he left the CFTC, (b) (6), (b) (7)(C) became Acting (b) (6), (b) (7)(C). At the time he was the Acting (b) (6), (b) (7)(C) in 2017, (b) (6), (b) (7)(C) had responsibility over the Examination Branch, (b) (6), (b) (7)(C) (who focused on international agreements and was assisted by a small unit of attorneys), the RSB, the Product Review Branch, and the Clearing Policy Branch (which had the responsibility for all clearinghouse rules and rule changes, clearinghouse disciplinary actions and

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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rulemakings for clearinghouses after the DFA). [Exhibit A.21 at 2] [REDACTED] reported directly to Chairman Giancarlo and typically met with the CFTC [REDACTED] (b) (6), (b) (7)(C). [Exhibit A.21 at 3] Both as [REDACTED] (b) (6), (b) (7)(C) and as Acting [REDACTED] (b) (6), (b) (7)(C), [REDACTED] had the authority to decide what stress tests the CFTC would conduct and who would do them. [Exhibit A.21 at 3]

To conduct risk surveillance, the RSB “needs to be able to run hundreds of stress tests per day” and ingest a large amount of futures and commodity swaps data. [CIGIE Complaint 986-194] For instance, in 2017, RSB received over 60 million records daily, from 19 DCOs across multiple market segments. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 15, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf. This makes the RSB unique, as it can see trader positions across trading members and across DCOs. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 15, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf. RSB uses an automatic stress test process that produces more than 5 million records daily. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 19, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf. This process uses 23 stress tests on over 7,000 portfolios with over 1,000 products, and has the ability to execute up to 100 stress tests. June 20, 2017 Market Risk Advisory Committee Meeting transcript at 19, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf.

After the passage of Dodd-Frank, when the CFTC was given additional funding and responsibilities, the RSB’s risk surveillance program’s success led to the program’s growth and RSB was able to make its first new hires. [Exhibit A.21 at 3; CIGIE Complaint 985-216] Most RSB staff were hired after 2011, and many were hired from the industry.¹⁸ [Exhibit A.21 at 3] Though the RSB initially consisted of mostly accountants and auditors, the group was trying to broaden the experience of its staff and hired people with market and trading knowledge who could oversee the risk of traders. [Exhibit A.13 at 2; Exhibit A.31 at 3]

c. Formation of the Margin Model Group

The RSB continuously strives to refine the stress testing scenarios for a wide range of markets. Supervisory Stress Testing of Clearinghouses. *A Report by the Staff of the U.S. Commodity Futures Trading Commission* at 12 (November 2016), <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/cftcstress111516.pdf>. After some time, it became apparent to the CFTC that it needed expertise to further analyze the models used by clearinghouses to determine how much to hold in reserve to support their positions. [Exhibit A.15 at 3-4] The Commission was receiving many new margin model submissions for new models and amendments of existing models. To analyze those models, in 2014 the MMG was created within RSB. [CIGIE Complaint 986-218; Exhibit 4.12]

¹⁸ At the time, due to financial stress and turmoil in the financial markets, excellent candidates were available and interested in the stability of a government job. [Exhibit A.21 at 3]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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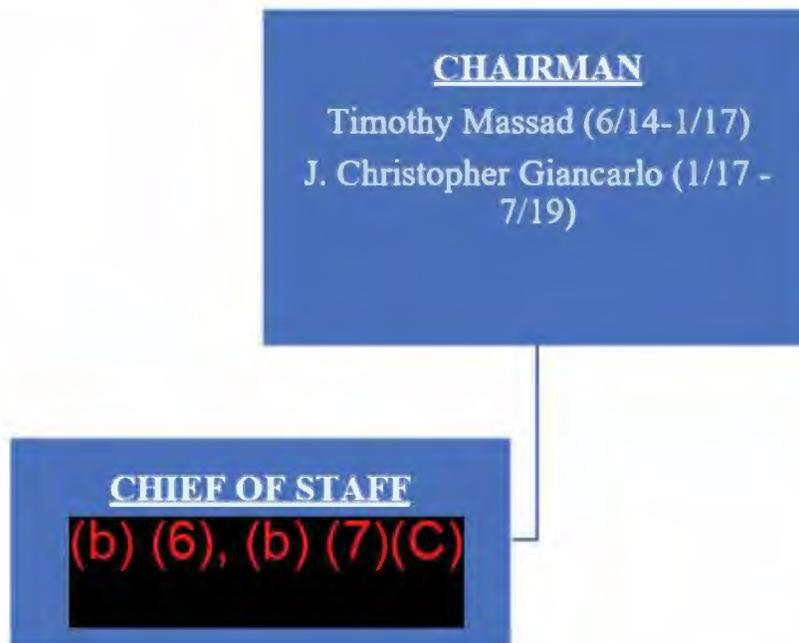
REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

An additional reason for forming MMG was “the margin models review work was/is a priority for prudential regulators and non-US regulators... [CFTC] should have staff with the same level of knowledge as other regulators.” [CIGIE Complaint 986-218] Staff with a deep understanding of quantitative analysis were hired for MMG. [Exhibit 4.11]

The RSB staff was in two separate locations, one group in Chicago headed by [REDACTED] and MMG at the CFTC’s Washington D.C. headquarters, headed by (b) (6), (b) (7)(C). MMG reviews new models, as well as changes to the models, when they are presented to the CFTC. [Exhibit A.21 at 4] When new products are created, it is MMG’s responsibility to understand the margin models to ensure the margin is appropriate. [Exhibit A.21 at 4] MMG is also responsible for reviewing and understanding the margin models used by foreign exchanges desiring to be clearinghouses. [Exhibit A.21 at 4] Additionally, the head of MMG’s duties include the development of a swaps stress testing program in a manner that would allow for transitioning the program to risk analysts outside of MMG. [CIGIE Complaint 986-233 – 986-234]

The following are charts of the relevant CFTC organizational structures from 2016 through 2018.

OFFICE OF THE CHAIRMAN



Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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DIVISION OF CLEARING AND RISK



Case Number:
CIGIE Case IC 986

Case Title:
Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle

d. RSB Staff Merit Awards

RSB staff received a multitude of awards over the years due to their extensive success in the development of stress testing. Both [REDACTED] and [REDACTED] received the Chairman’s Award for Excellence (in 2010 and 2016 respectively). [Exhibit 4.13] [REDACTED] also received the 2014 Management Excellence Award, and Chicago RSB staff [REDACTED] won the 2017 Distinguished Service Award. [Exhibit 4.13] Chicago RSB staff [REDACTED] received the Chairman’s Award for Distinguished Service in 2018. [Exhibit 4.14] Additionally, both Chicago RSB staff [REDACTED] and [REDACTED] received the Staff Excellence Award. [Exhibit 4.13] Chicago RSB staff [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and MMG staff [REDACTED] and [REDACTED] all received cash awards as well as time off awards in recognition of their work. [Exhibit 4.13]

2. The Stress Testing Inspection and Report Do Not Comply with the Evidence, Professional Judgment, Quality Control and Reporting Standards of the CIGIE Quality Standards for Inspection and Evaluation

As is described in the detailed factual analysis of the *Stress Testing Report* below, FCC OIG’s investigation has revealed CFTC OIG’s *Stress Testing Report* does not have a firm factual foundation and does not comply with the requirements of several CIGIE *Quality Standards for Inspection and Evaluation* that address Evidence, Professional Judgment, Quality Control and Reporting standards.

a. Chicago RSB’s Development of a CDS Stress Testing Was Not Duplicative

The *Stress Testing Report* reaches a conclusion that the Chicago RSB leadership asked a Chicago RSB staff member to engage in duplicative work to “recreate from scratch various swaps stress-testing tools.” *Stress Testing Report* at 12, 26. The foundation of this claim is Chicago RSB programmer [REDACTED] development of the tool she created for daily stress testing credit default swaps (“CDS”).¹⁹ A complete review of the inspection record discloses many of these statements are either without support or are contrary to the facts in the CFTC OIG’s inspection record. Closer supervision by IG Lavik following the CIGIE Inspection and Evaluation Quality Control standard during the inspection and drafting of the report would likely have resulted in a complete and more objective and accurate presentation of the facts.²⁰ Consequently, not only are

¹⁹ Although [REDACTED] is physically located in CFTC’s Washington D.C. headquarters, she is part of Chicago RSB and is managed by Chicago RSB leadership.

²⁰ One of the first factual issues is the *Stress Testing Report*’s claim, without cites to supporting facts in the Report itself or in the referenced version, that [REDACTED] hired [REDACTED] for RSB away from MMG. [Exhibit 4.15] [REDACTED] stated Chicago RSB did not hire [REDACTED] or task her with recreating stress testing, particularly a full revaluation stress test that MMG had already developed. [Exhibit A.1 at 9-10] Notably, CFTC OIG did not ask [REDACTED] or [REDACTED] about the circumstances of her hiring by Chicago RSB.

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
---	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

the *Stress Testing Report's* conclusions unwarranted, but also the *Stress Testing Report* does not follow the CIGIE *Quality Standards for Inspection and Evaluation* for Evidence, Professional Judgment and Reporting Standards.

As the *Stress Testing Report* recognizes, the CFTC faced challenges conducting risk surveillance and stress testing when Dodd Frank was passed in 2010 and expanded CFTC's jurisdiction. *Stress Testing Report* at 2. As explained by one Chicago RSB staff member whose main responsibility has been CDS risk surveillance since he joined the CFTC in 2010, when the CFTC first started to get data in 2010-2011, he had no tools to evaluate it. [Exhibit A.13 at 2-3] The initial years of his risk surveillance of CDS was spent developing tools of any kind so positions could be reviewed and the amount of risk held by a DCO could be determined. [Exhibit A.13 at 3] CDS stress tests could not be run for the first few years, until the rudimentary functionality was developed in SPARK. [Exhibit A.13 at 3] This functionality allows staff to look at the CDS data and get risk calculations, which was the best the CFTC could do at the time. [Exhibit A.13 at 3]

██████████ the supervisor for CDS risk surveillance at the time, suggested to the Chicago RSB staff member mentioned above that RSB staff ██████████ may be able to help develop a CDS stress test. [Exhibit A.13 at 3] On January 29, 2015, ██████████ was asked if she could develop a CDS stress test. [Exhibit 4.16] This was the first indication that someone could develop a stress testing tool for CDS. [Exhibit A.13 at 3] After this initial contact, Chicago RSB staff spent two to three months on the phone with ██████████ to help her develop a useful tool. [Exhibit A.13 at 3] During this time, there were many conversations with ██████████ and they exchanged approximately 50 or 60 emails. [Exhibit A.13 at 3] Because ██████████ was not familiar with CDS, much time was spent explaining CDS products to ██████████. CDS contracts are complicated because these contracts can be quoted and priced differently. [Exhibit A.13 at 3-4] Also, to stress test CDS, part of the problem that had to be overcome was to move 40 different CDS contracts at same rate, so the move would result in a parallel shock. [Exhibit A.13 at 3-4]

██████████ focused on what Chicago RSB staff wanted and designed the stress test for them. Initially, ██████████ stress tests on all the contracts could be run in 45 minutes, but ██████████ was ultimately able to reduce that time. [Exhibit A.13 at 3-4] Basically, ██████████ tool is used in an Excel program, that then accesses an SAS function to process the data and the stress test. [Exhibit A.13 at 3-4] Chicago RSB staff could review and evaluate the results in the Excel program, because they do not have access to SAS to run the stress tests themselves. [Exhibit A.13 at 3-4] Chicago RSB staff can run the stress tests using the Excel program without assistance from ██████████ but occasionally ██████████ is asked to run a mass stress test for a big project, for example running eight independent stress tests. [Exhibit A.13 at 3-4] By fall 2015, the CDS stress test was operational and was used to create the CDS stress test numbers for RSB's November 2016 Supervisory Stress Test. [Exhibit A.13 at 3] Chicago RSB staff considers ██████████ stress test as a full revaluation stress test because it is revaluation of CDS contracts at two different spread levels,

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

and the difference is the profit and loss. [Exhibit A.13 at 4] (b) (6), (b) (7)(C) stress test was used until 2020, when a new tool was created. [Exhibit A.13 at 4]

The *Stress Testing Report* provides the following detail about (b) (6), (b) (7)(C) work on developing a stress test for credit default swaps:

(b) (6), (b) (7)(C), (b) (5)

Stress Testing Report at 6.

The *Stress Testing Report* also claims that Chicago RSB’s development of alternative daily stress testing was not the result of “any shortcomings in the work of the MMG but rather of the territoriality of Chicago [RSB] leadership.”²¹ Stress Testing Report at 12.

A complete review of the CFTC OIG inspection record discloses why (b) (6), (b) (7)(C) was asked to develop CDS stress testing. Originally, MMG staff (b) (6), (b) (7)(C) worked to develop a CDS stress test in 2015.²² [Exhibit A.30 at 2-3] Chicago RSB staff recalls receiving the CDS stress test results from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) recounted to CFTC OIG inspectors that (b) (6), (b) (7)(C) results:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.17 at 13-14] (b) (6), (b) (7)(C) further explained: “I don’t know where in the process it went wrong. And we said: ‘Hey we’re willing to help you look into this to see where the problem was

²¹ To the extent the *Stress Testing Report* suggests the review by NERA Economic Consulting found MMG’s daily stress tests of “high quality” reliance on the NERA Review is misplaced. Stress Testing Report at 10. NERA only examined MMG’s and Chicago RSB’s supervisory stress tests, not the daily stress tests produced by MMG staff. Stress Testing Report, NERA Review at 1.

²² Chicago RSB staff thought it was unusual that the *Stress Testing Report* said MMG had a CDS stress testing tool, because practically the only CFTC staff who worked on CDS stress testing never saw it. [Exhibit A.13 at 5] If Chicago RSB management was aware of a useful MMG CDS stress testing tool, they would have made Chicago RSB staff with responsibility for CDS stress testing aware of the tool. [Exhibit A.13 at 5]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

and help fix this.’ So I don’t know, if the model was wrong, I don’t know if they were interpreting the data wrong. I don’t know where it went wrong. But as I said, we offered to help and they were not interested, or he was not interested in taking us up on our offer.” [Exhibit 4.17 at 19]

(b) (6), (b) (7)(C) responses to CFTC OIG inspectors were consistent with (b) (6), (b) (7)(C) explanation. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) “might have created the capability but it did not work.” [Exhibit 4.18 at 24; See also CIGIE Complaint 986-146] According to (b) (6), (b) (7)(C) Chicago RSB staff worked with (b) (6), (b) (7)(C) to try to make changes and they exchanged emails a couple of times: “They would go back to him and say this directional risk is different and explain and then he would try to make changes and then they would go back I think it just stopped.” [Exhibit 4.18 at 24-25]

At one point, the Chicago RSB staff member with principal responsibility for CDS stress testing was asked by (b) (6), (b) (7)(C) to look at one report he believes MMG had generated. [Exhibit A.13 at 2 and 5] There was one email and one spreadsheet, and the values on the spreadsheet did not look correct or accurate; the losses were showing the wrong way. [Exhibit A.13 at 5] The losses should have been gains, and the gains should have been losses, but they were all going the wrong way on the spreadsheet, and the Chicago RSB staff member could not make sense of it. [Exhibit A.13 at 5]

Another concern with the CDS stress test developed by (b) (6), (b) (7)(C) was the time it took to generate results. (b) (6), (b) (7)(C) admitted this stress test took time to run, because for non-linear products like CDS, he needed to use the MATLAB program to develop a tool to reprice positions so he could conduct a stress test. [Exhibit A.30 at 2-3] Chicago RSB staff stated that “MMG’s software can only produce a single stress test in about a day, which is far too slow to be useful in a risk surveillance program.” [CIGIE Complaint 986-193] Even MMG staff noted that it was questionable whether one needed to run a full revaluation stress test every day because it took a long time to run “a full suite of stress tests over 6-700,000 records that CME [Chicago Mercantile Exchange] has [and] 2 million records that LCH s [London Clearing House] has and that’s just for IRS.” [Exhibit 4.19 at 20]

(b) (6), (b) (7)(C) stated she knew of (b) (6), (b) (7)(C) CDS stress testing work, but (b) (6), (b) (7)(C) code was not “essentially complete” until March 2015. [Exhibit 4.20] It would have been difficult, if not impossible, for (b) (6), (b) (7)(C) at the beginning of her work on the CDS stress test in January 2015, to use (b) (6), (b) (7)(C) work which would not be completed for another two months. Neither the *Stress Testing Report* itself nor the referenced report provides a cite to the *Report’s* claim that (b) (6), (b) (7)(C) was not allowed to collaborate with (b) (6), (b) (7)(C) or modify his program. (b) (6), (b) (7)(C) told CFTC OIG inspectors that he asked that a completely new CDS stress test be created because (b) (6), (b) (7)(C) effort did not produce accurate results. [Exhibit 4.17 at 16] An objective presentation, as required by the CIGIE *Quality Standards for Inspection and Evaluation Reporting* standard, by the *Stress*

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

Testing Report of all the facts would have included this explanation instead of an unsupported allegation.²³

(b) (6), (b) (7)(C) did at some point ask Chicago RSB staff why she was being asked to create another CDS stress test. (b) (6), (b) (7)(C) explained to CFTC OIG inspectors the differences between the reports produced by her stress test and (b) (6), (b) (7)(C) stress test. (b) (6), (b) (7)(C) report was a “can report” [Exhibit 4.21 at 8] and Chicago RSB “wanted a more interactive tool to do CDS risk analysis and stress test. They wanted the similar way with my IRS stress test form.” [Exhibit 4.22 at 1] (b) (6), (b) (7)(C) explained the differences between (b) (6), (b) (7)(C) CDS report program and her CDS stress testing analysis tool to the CFTC OIG inspectors as follows:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.21 at 8-10]

(b) (6), (b) (7)(C) explained to the CFTC OIG inspectors the features built into her reporting tool. She explained that she did not create the model from scratch, but used the International Swaps and Derivatives Association (“ISDA”) standard model and worked to use a C-based library with the ISDA model. [Exhibit 4.21 at 7-8] Further:

(b) (6), (b) (7)(C), (b) (5)

²³ The Reporting standard for inspection work is “Inspection reporting shall present factual data accurately, fairly, and objectively and present findings, conclusions and recommendations in a persuasive manner. *CIGIE Quality Standards for Inspection and Evaluation* at 16.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.21 at 8]

In comparing the ultimate differences between her approach and [REDACTED] approach, [REDACTED] observed:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.21 at 10]

[REDACTED] view of the flexibility of her CDS Stress test was confirmed on August 15, 2017, when she reviewed [REDACTED] CDS stress testing program and noted “there are some automations and scenarios capabilities she has built out that are not yet built into [REDACTED] work.” [Exhibit 4.20] Thus, on many levels, the CDS stress test created by [REDACTED] was not duplicative: [REDACTED] CDS stress test was flexible, quick and most importantly accurate. Although these facts are part of the evidence gathered by CFTC OIG inspectors, they were not acknowledged or presented in the *Stress Testing Report*, contrary to the Reporting standard of the CIGIE *Quality Standards for Inspection and Evaluation*.

Ultimately, [REDACTED] was asked not to work on CDS or interest rate swap stress testing any further because Chicago RSB had functional interest rate swap and CDS stress tests. [Exhibit 4.23 at 13; Exhibit 4.17 at 32] [REDACTED] reflected that when [REDACTED] started his work on CDS stress testing a CDS stress test was needed, but when it was no longer needed, any work he would have done would have been duplicative and he was told to stop. [Exhibit 4.23 at 13]

The *Stress Testing Report*'s statement that “Chicago leadership, due to their limited technical abilities were unable to run the Margin Model Group’s program on their own” relies on statements allegedly made by [REDACTED] at her July 5, 2017 interview. [Exhibit 4.10 at page 6, footnote xiii] But [REDACTED] responses to CFTC OIG inspectors do not support the text of the *Stress Testing Report*. At her July 5, 2017 interview, [REDACTED] was asked whether it was fair to say “that if [REDACTED] group had the quantitative expertise that [REDACTED] has that they could simply take his model and interact with it to get the results they needed?” [REDACTED] response was not included in the *Stress Testing Report*: “That one I do not know, I don’t want to say something I really do not know because I don’t see his program or see his report.” [Exhibit 4.21 at 9] [REDACTED] response to this question about Chicago RSB staff’s quantitative expertise cannot be

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

read to support the *Stress Testing Report's* conclusion that Chicago RSB leadership had limited technical capabilities and could not run MMG's program.

A similar problem undercuts *Stress Testing Report's* statements that Chicago RSB wanted the stress test to be "push button simple." *Stress Testing Report* at 3, 12. [REDACTED] was also asked "when they ask you to make the model more interactive is it fair to say that means make it simpler so they can use it" but [REDACTED] never responded to this question.²⁴ [Exhibit 4.21 at 9-10] This lack of response does not provide the evidentiary foundation for the *Stress Testing Report's* assertion that Chicago RSB wanted the stress test to be "push button simple." Moreover, one cannot expect a manager to have all the same skills as the staff in the group he manages. [REDACTED] recalled that [REDACTED] was hired because Chicago RSB staff wanted to have more data science and analytical staff to build the regulator of the future. [Exhibit A.1 at 10] As [REDACTED] explained, workers each have their own strengths and management is supposed to collaborate all this work together. [Exhibit 4.21 at 4] The fact that an award-winning manager lacks the substantive skills of another employee with two masters degrees is not grounds for statements denigrating the work of his entire group especially when an examination of the facts, as described above, indicates that there was no objective support for the statement.²⁵

Additionally, CFTC OIG inspectors probed [REDACTED] answers about the MMG stress tests and asked "if the Margin Model Group had presented and developed their stress testing capabilities ... and it was clear that they were only doing it for the purpose of getting it to the point where it's a pushbutton automated capability that you guys can run and they would transfer it over to you at that point, do you think it's fair to say that they'd still be allowed to be developing it further?" [REDACTED] responded:

(b) (6), (b) (7)(C), (b) (5)

²⁴ FCC OIG is unable to confirm this lack of response with the recording of the interview. FCC OIG requested the entire stress testing inspection file from CFTC OIG, but the interview recordings were not produced. Additionally, a memo of a later interview indicates [REDACTED] apparently contradicted her earlier statements about [REDACTED] and [REDACTED] grasp of risk and want interfaces to be user-friendly. [Exhibit 4.24] But this statement contradicts her earlier assessments of Chicago leadership: [REDACTED] "I think he understand the [technical] concept ...the overall risk because he's managing he started the swap group and the swap products;" [REDACTED] "I don't know [his technical skills and understanding of risk], [REDACTED] is my direct supervisor." [Exhibit 4.25 at 7] The negative slant given to this event should not have been drawn from this inconclusive and inconsistent record.

²⁵ [REDACTED] received the Chairman's Award for Excellence in 2016 and the 2014 Management Excellence Award. [REDACTED] has a Master of Science degree in Industrial Management and a Master of Art degree in Economics. [Exhibit 4.21 at 1]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.23 at 12]

The suggestion that the MMG stress tests had to be “a push button automated capability” overlooks MMG’s requirements and responsibilities in developing stress tests. It was understood, and required, that any stress tests that MMG developed were to be turned over to Chicago RSB. [Exhibit 4.17 at 21-22] Indeed, the position description for (b) (6), (b) (7)(C) of the Margin Model Group includes a specific “Duty and Responsibility” section addressing stress testing:

(b) (6), (b) (7)(C), (b) (5)

[CIGIE Complaint 986-234]

Apparently, [REDACTED] was not familiar with this aspect of his responsibilities. His concern about transferring MMG developed stress testing tools to Chicago RSB staff was that the Chicago RSB team would take credit for the stress testing tools; “Basically Chicago wanted to steal our work.” [Exhibit A.24 at 6, 9] This concern overlooks his responsibilities as (b) (6), (b) (7)(C) and places his own interests over the interests of the CFTC.

This portion of [REDACTED] position description was highlighted to CFTC OIG inspectors in July 2017 as documentation of the idea that MMG’s stress testing work should be capable of a “knowledge transfer to the other stress testing teams.”²⁶ [Exhibit 4.26 at 7] Further, it was never suggested to [REDACTED] that it was not possible for another group to implement MMG’s stress testing features, techniques or “best practices.” [Exhibit 4.27 at 6, 8] To the contrary, (b) (6), (b) (7)(C) instructions were to “make sure that happened.” [Exhibit 4.27 at 8]

Thus, it was incumbent upon MMG to develop a stress test that could be transitioned to the Chicago RSB risk analysts. These risk analysts were hired for their industry experience and familiarity with financial products, not their ability to create and run sophisticated and complicated stress tests. Nevertheless, that such sophisticated stress tests could be created and refined, and then used by Chicago RSB risk analysts is clear: [REDACTED] created CDS, interest rate swaps and other daily stress tests that were successfully used by Chicago RSB staff. Had MMG

²⁶ The *Stress Testing Report* recognizes in passing the requirement to transition swaps stress testing programs to CFTC risk analysts outside MMG, but translates, without evidentiary foundation, the “development” requirement as a responsibility to turn over the programs when operationally the programs were “push button simple.” *Stress Testing Report* at 3, 6.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

staff worked closely with Chicago RSB staff to develop stress tests, and had (b) (6), (b) (7)(C) fulfilled the requirements of his position description, perhaps there would have been a different outcome to MMG's daily stress testing efforts. Rather than suggesting it was Chicago RSB staff's lack of technical skill that inhibited the transfer of MMG stress tests to RSB staff, a review of (b) (6), (b) (7)(C) position description, as well as the entire inspection record, by CFTC OIG inspectors and their inspection supervisor, IG Lavik, would have avoided the *Stress Testing Report's* statements that lack the evidentiary foundation required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence standard.²⁷

e termination of Stress Testing Activities as not pretextual

Another series of events detailed in the *Stress Testing Report* to support its claims that the direction to MMG to cease work on stress testing was pretextual involve MMG's 2016 creation of a supervisory stress test. The core of this claim is based on the directions MMG was given after it emailed (b) (6), (b) (7)(C) what it called a "Proof of Concept" systemic stress test on May 24, 2016. A full review of the investigative record indicates that there were substantive concerns, not pretextual justifications, that resulted in MMG being directed to stop working on stress testing. Many of the rationales for this decision are contained in the CFTC OIG inspection record but were not detailed or analyzed in the *Stress Testing Report*.

1 Background

Underlying this portion of the *Stress Testing Report's* analysis is work MMG staff did to produce a preliminary supervisory stress test which MMG called a "Proof of Concept." (b) (6), (b) (7)(C) explained that a supervisory stress test, sometimes called a systemic stress test, was a specific term of art within CFTC. A supervisory stress test "looks at the impact of a set of shocks across multiple clearing members and multiple clearinghouses simultaneously." [Exhibit 4.26 at 2] A supervisory stress test is designed to assess the resilience of the market infrastructure and market participants- who is holding what risk and what happens when a stressful event happens, looking at futures and swaps over many industries. [Exhibit A.1 at 3] This exercise selects a common set of risk or stress scenarios, imposes them on a series of positions, both different financial products covering different industries, at a specific moment in time, so one could see the impact stressful events would have on all clearing members or a clearinghouse. [Exhibit A.1 at 3] When a supervisory stress test is conducted, one looks at every product as of a certain day, for example, 15 different agricultural products and the different financial products based upon them. [Exhibit A.1 at 3] Then, through modeling, stresses

²⁷ The Evidence standard for inspection work is: "Evidence supporting inspection findings, conclusions, and recommendations should be sufficient, competent, and relevant and should lead a reasonable person to sustain the findings, conclusions, and recommendations." *CIGIE Quality Standards for Inspection and Evaluation* at 12. The Evidence standard guidelines suggest "Evidence should be sufficient to support the inspection findings. In determining the sufficiency of the evidence, inspectors should ensure that enough evidence exists to persuade a reasonable person of the validity of the findings." *CIGIE Quality Standards for Inspection and Evaluation* at 13.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

are applied to see how the market reacts and whether and when there is a default. [Exhibit A.1 at 3-4] One benefit of this approach is that it takes members' positions at different clearinghouses into account. [Exhibit A.1 at 3-4]

██████████ explained that this type of test of interdependencies was first conducted by European regulators in mid-2016. ██████████ thought DCR could do a better job, because DCR had extensive access to data that European regulators did not. [Exhibit A.1 at 4] The culmination of this effort was a supervisory stress test conducted by the Chicago RSB group under ██████████ and ██████████ and summarized in a paper published in November 2016, *Supervisory Stress Test of Clearinghouses*. [Exhibit A.1 at 4] The CFTC Chairman presented this work to the Financial Security Oversight Council, which included the Chairman of the Federal Reserve (Fed), the Secretary of the Treasury, and the Chairman of the Securities and Exchange Commission (SEC). [Exhibit A.1 at 4; Exhibit 4.7] The paper and the presentation were received very well, and ██████████ recalls this presentation as one of the highlights of his career. [Exhibit A.1 at 4] ██████████ also recalled that ██████████ came to Washington, D.C. to present this work, and Chicago RSB presented this work to the Fed, the SEC, and the Bank of England. [Exhibit A.1 at 4] ██████████ reported that the Chicago RSB team's presentation was commended by Treasury Secretary Lew, Federal Reserve Chair Janet Yellen, SEC Chair Mary Jo White and Richard Berner, Director of the Office of Financial Research. [Exhibit 4.28] Jerome Powell, Federal Reserve Board Governor (later Chairman) called the 2016 CFTC Supervisory Stress Test "innovative and necessary work." Politico Pro: Powell: Regulators Should Conduct Liquidity Stress Test for Clearinghouses, June 23, 2017, by Victoria Guida. Then Treasury Secretary Jacob Lew issued a press release on the CFTC's Supervisory Stress Tests of Clearinghouses applauding the CFTC's efforts in pursuit of transparency and the reduction of risks to the financial system.²⁸ November 16, 2016 Treasury Secretary Jacob J. Lew Statement on Commodity Futures Trading Commission Supervisory Stress Tests of Clearinghouses. [Exhibit 4.28] Notably, the Chicago RSB November 2016 Supervisory Stress Test and the praise it received is not mentioned in the *Stress Testing Report*.²⁹

According to ██████████ (b) (6), (b) (7)(C), the CFTC led the world's regulators in supervisory stress testing. [Exhibit A.4 at 6] The CFTC stress testing could have been better, but the CFTC was head and shoulders above the rest of the world. [Exhibit A.4 at 6] Because of this, ██████████ thought the world of ██████████ and ██████████ and thought the Chicago RSB staff should have been applauded. [Exhibit A.4 at 6] ██████████ also thought ██████████ and ██████████ "accomplished an enormous amount in terms of developing a really leading highly effective risk surveillance program and enormous personal integrity." [Exhibit 4.27 at 9]

²⁸ A CFTC OIG auditor observed that if Chicago RSB's approach to stress testing was so bad, why didn't other financial agencies have problems with it. [Exhibit A.2 at 7]

²⁹ ██████████ appeared not to comprehend the praise given to Chicago RSB's November 2016 Supervisory Stress Test: "I'm sorry industry wide acclaim what does that mean?" [Exhibit 4.29 at 4]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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2) MMG’s May 2016 Proof of Concept- Systemic Risk Analysis

During his FCC OIG interview, [REDACTED] was asked to review a 14-page PowerPoint presentation titled “Systemic Risk Analysis by MMG” dated May 24, 2016, which had been emailed to [REDACTED] by [REDACTED] on that date.³⁰ [Exhibit A.1 at 6] As the *Stress Testing Report* describes, and [REDACTED] and [REDACTED] agree, it was the transmission of this presentation that resulted in [REDACTED] harshly expressing his displeasure with [REDACTED] [Exhibit 4.30; Exhibit 4.15 at 8; Exhibit 4.31 at 15-16; Exhibit 4.32 at 6]

The *Stress Testing Report’s* criticism of [REDACTED] in relation to MMG’s Proof of Concept begins with the assertion that [REDACTED] had not kept [REDACTED] apprised of this MMG effort. [Exhibit 4.15 at 8] The CFTC inspection record reflects that MMG neither kept its supervisor [REDACTED] apprised of its stress testing efforts nor had [REDACTED] reviewed and vetted the presentation before it was transmitted to [REDACTED] as is customary at the CFTC. [REDACTED] explained to CFTC OIG inspectors that he had “never laid eyes on this presentation” which was emailed by [REDACTED] to [REDACTED] and [REDACTED] simultaneously. [Exhibit 4.31 at 15-16; Exhibit A.21 at 6] [REDACTED] presumed there were multiple drafts of this presentation, but [REDACTED] had “not even state[d] that such a thing existed” and never provided [REDACTED] with a draft. [Exhibit 4.31 at 16] To [REDACTED] [REDACTED] went over his head went to (b) (6), (b) (7)(C) and demanded to present this to the Commission and “that was not the way things are supposed to work.” [Exhibit 4.31 at 15] Consequently, [REDACTED] was unable to keep [REDACTED] apprised of [REDACTED] work because [REDACTED] never told [REDACTED] about it.³¹ [REDACTED] explanation to CFTC OIG inspectors was not included in the *Stress Testing Report*.

3) CFTC Management Identified Numerous Issues with MMG’s Proof of Concept Systemic Stress Test

The *Stress Testing Report* briefly outlines the exchanges between MMG and Chicago RSB about the quality of MMG’s Proof of Concept, and without detail asserts that the Chicago RSB’s criticism was strongly and unanimously rebuffed. While it is not the purpose of this report to determine whether MMG’s stress testing approach was valuable or Chicago RSB’s observations were correct, the insights of senior CFTC leadership are helpful in understanding the issues. [REDACTED] told CFTC OIG that he had a number of methodology questions about MMG’s Proof

³⁰ The *Stress Testing Report* presents conflicting evidence about when the Systemic Risk Analysis by MMG PowerPoint was transmitted to [REDACTED]. The Report text states that after a June 2016 meeting, [REDACTED] sent [REDACTED] the PowerPoint. *Stress Testing Report* at 8. But, the exhibit relied upon for this statement is an Email, with the PowerPoint attached, from [REDACTED] to [REDACTED] dated May 24, 2016. [Exhibit 4.30] A cursory review of the *Stress Testing Report* and the factual record it cites by a supervisor should have prevented this superficial error.

³¹ During this period, [REDACTED] stopped attending weekly staff meetings with [REDACTED] where he would have had the opportunity to provide [REDACTED] with information about MMG’s systemic stress test project. [Exhibit 4.33 at 7-8; Exhibit 4.23 at 7-8]

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
---	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

of Concept.³² [Exhibit 4.27 at 4] (b) (6), (b) (7)(C) explained to CFTC OIG some of the problems he saw with MMG's Proof of Concept, and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) how (b) (6), (b) (7)(C) had worked with MMG to fix those issues. First, (b) (6), (b) (7)(C) explained that the Proof of Concept "lists sort of the four core elements of the Risk Surveillance program and so one part is to sort of to identify the parties and calculate kind of risks/exposures. So it appears that this methodology has done this. But then the second is to compare the exposures against the available financial resources." [Exhibit 4.27 at 10] (b) (6), (b) (7)(C) acknowledged that this came up in his discussions with MMG and offered to send (b) (6), (b) (7)(C) the follow up: "Its very simple. It's a five minute thing where they added on the amount of IM, VM guaranty fund it's all very simple...they did it in five minutes for me in front of me. We validated it."³³ [Exhibit 4.27 at 10] Second, (b) (6), (b) (7)(C) identified a problem with the systemically important firms which he thought would have been identified in a more rigorous review process. [Exhibit 4.27 at 10-11] (b) (6), (b) (7)(C) did not acknowledge or explain how this issue had been addressed, but stressed that it was the models, from "our" perspective, that were important. [Exhibit 4.27 at 11] (b) (6), (b) (7)(C) also told (b) (6), (b) (7)(C) that CFTC OIG had validated the MMG models and thought that (b) (6), (b) (7)(C) knew they were good models.³⁴ [Exhibit 4.27 at 2-3, 7]

(b) (6), (b) (7)(C) provided his insights to FCC OIG investigators on the problems with MMG's Systemic stress test. Initially, after reviewing the Systemic Stress Test PowerPoint when he received it in 2016, (b) (6), (b) (7)(C) was not certain that MMG was using the term "systemic risk" correctly. [Exhibit A.1 at 6] (b) (6), (b) (7)(C) explained that it appeared that in this presentation, MMG was trying to pull together a broad set of products overseen by CFTC, both cleared and uncleared trades, futures and options in one portion, interest and other interest products in another, and credit default swaps; agricultural products were not included. [Exhibit A.1 at 6] (b) (6), (b) (7)(C) further explained the presentation looks unclear and sloppy. For example, the presentation only shows risk exposures, but does not show the collateral the clearinghouse held against the risk. [Exhibit A.1 at 6] (b) (6), (b) (7)(C) stated he is accustomed to seeing risk expressed against the assets that offset the risk.

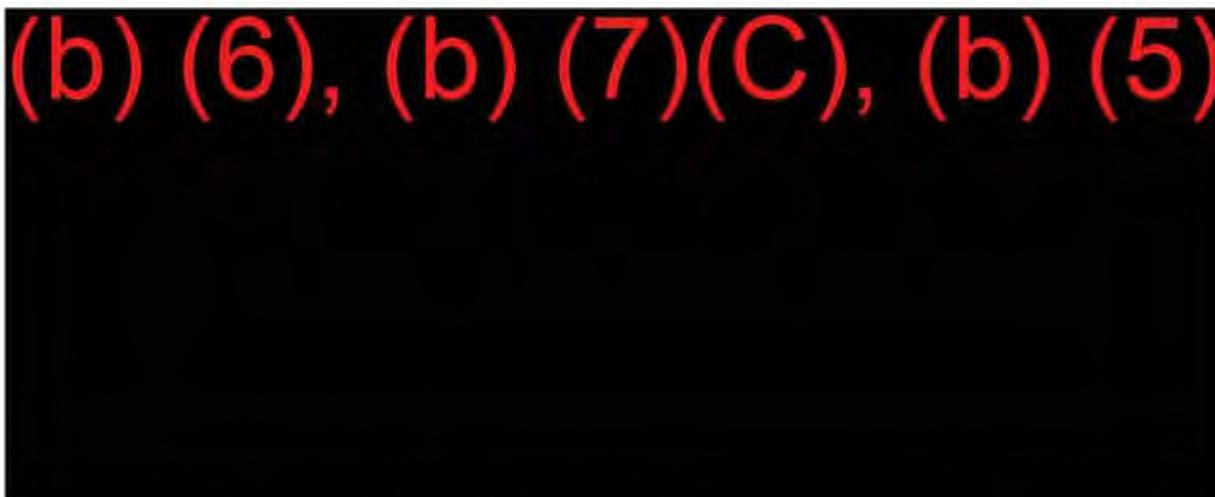
(b) (6), (b) (7)(C), (b) (5)

³² (b) (6), (b) (7)(C) was also told that it had not been reviewed by staff so that their questions about the PowerPoint would not have been answered. [Exhibit 4.27 at 4; Exhibit 4.34 at 4]

³³ Additionally, MMG staff acknowledged to CFTC OIG inspectors that the "stress test results were wrong." because the Part 39 data it used was wrong. [Exhibit 4.35] (b) (6), (b) (7)(C) did not share this information with (b) (6), (b) (7)(C)

³⁴ J. Christopher Giancarlo became CFTC Chairman in 2017, and while admitting he was not an expert in stress testing, he was aware of the differences between MMG's and Chicago RSB's approaches to stress testing. [Exhibit A.9 at 2, 4] MMG had an academic and scientific approach, which was quite objective, but their fundamental understanding of the market was flawed. [Exhibit A.9 at 5] Chicago RSB's approach was more subjective because they knew clearinghouses intimately, and there was a concern about regulatory capture. [Exhibit A.9 at 5]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--



[Exhibit A.1 at 6-7] ██████████ also recalled believing this presentation was “not ready for prime time.” [Exhibit A.1 at 7] ██████████ thought there was some promising material and errors would have been corrected in the review process. ██████████ would have asked questions before showing the presentation to his CFTC superiors. [Exhibit A.1 at 7]

It is questionable whether it is appropriate, during the course of an inspection, for CFTC OIG inspectors to work to correct the substantive product of an agency unit when both the project and the unit are at the center of the matters being inspected. Supervisory guidance from IG Lavik should have refocused the inspection on the topic of whether management made the correct decision in 2016 to instruct MMG to work on margin models, not stress testing; that the MMG Proof of Concept could be corrected by an CFTC OIG inspector a year later is not probative of this issue. More importantly, the corrections demonstrate that there were issues with the MMG Proof of Concept, and this point and ██████████ concerns with the Proof of Concept were omitted from the *Stress Testing Report*. The lack of supervision by IG Lavik, as required by the CIGIE *Quality Standards for Inspection and Evaluation Quality Control* standard, led to a failure to present evidence objectively, as required by the CIGIE *Quality Standards for Inspection and Evaluation Reporting and Professional Judgment* standards.

4) NERA’s Evaluation of CFTC’s Supervisory Stress Tests is Flawed

CFTC OIG sought to bolster the claim that reasons for shutting down MMG’s stress testing were false and pretextual with an examination by NERA Economic Consulting of Chicago RSB’s November 2016 Supervisory Stress Test and MMG’s Proof of Concept Supervisory Stress Test.

³⁵ ██████████ recalled that in another presentation by ██████████ in the spring or summer of 2015, prior to ██████████ becoming acting ██████████, the methodology and naming conventions were problematic. [Exhibit A.1 at 7]
³⁶ ██████████ also told CFTC OIG inspectors that when he reviewed MMG’s supervisory stress test, MMG had listed a firm incorrectly and had other items “in there that was a little nonsensical.” [Exhibit 4.36 at 29]

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
---	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

The *Stress Testing Report* asserts CFTC contracted with NERA “to provide an objective third party assessment of RSB sections’ stress testing capabilities.” *Stress Testing Report* at 1.

It is questionable whether NERA’s assessment was objective. According to (b) (6), (b) (7)(C) NERA was hired to evaluate the different models on a blank slate, and to report on what each model could do and was capable of, by reviewing the literature on stress testing and measuring what had been done against the literature.³⁷ [Exhibit A.25 at 9] In one of its first messages to NERA, (b) (6), (b) (7)(C) forwarded the write-up of the CFTC’s November 2016 Supervisory Stress Test of Clearinghouses, with a note that “we found a number of issues with it.” [Exhibit 4.37] Shortly thereafter, (b) (6), (b) (7)(C) forwarded the November 2016 Supervisory Stress Test to another NERA representative, noting that in discussions “a number of problematic issues were brought up.” [Exhibit 4.38] Attached to this October 5 email were questions drafted by CFTC OIG staff which OIG staff hoped would “illuminate some of the problems we are concerned with.”³⁸ [Exhibit 4.38] Thus, CFTC OIG’s view of Chicago RSB’s supervisory stress test was made clear to NERA at the outset of the project. Additionally, (b) (6), (b) (7)(C) on two separate occasions solicited criticism of the CFTC November 2016 Supervisory Stress test from MMG. [Exhibit 4.39; Exhibit 4.40] One MMG staff member responded with a detailed criticism, which was forwarded to NERA. [Exhibit 4.41] NERA staff replied that the analysis “looks salient.” [Exhibit 4.42] There is no indication in the CFTC OIG inspection files that Chicago RSB staff were asked to provide any criticism of MMG’s Proof of Concept or that (b) (6), (b) (7)(C) 12 page Memorandum titled “‘Systemic Risk Analysis’ of the Margin Model Group” was provided to NERA. [CIGIE Complaint 986-203 – 986-215] CFTC OIG staff actions are inconsistent with the CIGIE *Quality Standards for Inspection and Evaluation* Professional Judgment standard, which requires evidence to be “gathered and reported in a fair, unbiased, and independent manner and report findings, conclusions, and recommendations are valid and supported by adequate documentation. CIGIE *Quality Standards for Inspection and Evaluation* at 7. Appropriate supervision by IG Lavik, as required by the CIGIE *Quality Standard for Inspection and Evaluation* Quality Control Standard should have required compliance.

The NERA Review itself states that NERA was asked to provide an analysis of the Chicago RSB’s November 2016 Supervisory Stress Test and an undated “Proof of Concept” by MMG Stress Testing Report, NERA Review at 1. The NERA Review clearly identifies it is examining Chicago RSB’s November 2016 Supervisory Stress Test, but only describes the MMG product it is analyzing as a “Proof of Concept.” *Stress Testing Report*, NERA Review at 1. From the text of the NERA Review, is unclear what “Proof of Concept” NERA analyzed. It is unlikely that NERA was provided with the MMG “Proof of Concept” PowerPoint provided to (b) (6), (b) (7)(C) in

³⁷ On a number of points, NERA measured Chicago RSB’s November 2016 Supervisory Stress Test of Clearinghouses against 2017 guidance, issued after Chicago RSB’s 2016 supervisory stress test. NERA Review at 7-8, 22 (“the scenarios of the November 26 Stress Test approach... depart from BIS’s and IOSCO’s [2017] guidance”), and 26. Appropriate supervision would have limited reliance on this portion of NERA’s analysis in the *Stress Testing Report*. *Stress Testing Report* at 11, fn 44.

³⁸ These draft questions were incorporated into the questions NERA posed to Chicago RSB and MMG staff. [Exhibit 4.39]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

May 2016. The May 2016 Proof of Concept PowerPoint was refined based on ██████████ Summer 2016 analysis of the MMG PowerPoint.³⁹ ██████████ described additional changes made to the original Proof of Concept at ██████████ suggestion. [Exhibit 4.27 at 10] A review of the inspection file indicates that CFTC OIG provided NERA with a supervisory stress test created by MMG in Fall 2017 specifically for NERA.

Ultimately, MMG ran two different Supervisory Stress Tests and those results were submitted to NERA: first, the results of a Supervisory Stress Test run using the same data that Chicago RSB used, the Chicago RSB scenarios, but using MMG’s model; and second, MMG’s results using Part 39 data, MMG models and MMG’s preferred scenarios. [Exhibit 4.43; Exhibit 4.44] Discussions about the stress test results produced by MMG make it clear that the stress test submitted to NERA showing MMG’s results was not the Proof of Concept presented to ██████████ in May 2016. The MMG process to generate the supervisory stress tests for NERA was described as a scenario they were creating [Exhibit 4.44] and as a recent stress test. [Exhibit 4.45] There is no indication in the inspection file that the May 2016 PowerPoint that ██████████ gave to ██████████ was ever provided to NERA. As such, the NERA analysis sheds little insight into whether ██████████, when presented with the highly praised Chicago RSB November 2016 Supervisory Stress Test and the May 2016 MMG Proof of Concept PowerPoint, made a wise decision when deciding on the future of MMG’s supervisory stress testing efforts or whether the decision to discontinue MMG’s supervisory stress testing efforts was false and pretextual.

While CFTC OIG sent NERA an October 2017 supervisory stress test specially created for NERA by MMG, CFTC OIG failed to provide NERA with Chicago RSB’s most recent 2017 Supervisory Stress Test, titled *Evaluation of Clearinghouse Liquidities*, https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dcr_ecl1017.pdf. On October 16, 2017, the CFTC published the results of DCR’s 2017 Supervisory Stress Test, which was conducted by Chicago RSB staff.⁴⁰ As Chicago RSB staff observed, stress tests are constantly improving over time and Chicago RSB’s stress testing program had improved greatly since 2016.⁴¹ [CIGIE Complaint 986-250 – 986-51] Indeed, this 2017 Supervisory Stress Test incorporated a subset of the enhancements described in the “Next Steps” section of the CFTC’s November 2016 Supervisory Stress Test. *Evaluation of Clearinghouse Liquidities* at 1. Instead, NERA, at the direction of CFTC OIG, reviewed Chicago RSB’s 2016 supervisory stress test, which was run in April, 2016, and MMG’s Proof of Concept, which had been revised and refined during the 17 months since it had been presented to ██████████ CFTC OIG’s failure to provide NERA with Chicago RSB’s 2017 Supervisory Stress Test resulted in a Review that did

³⁹ After receiving ██████████ criticism of the May 24, 2016 Proof of Concept PowerPoint, ██████████ revised the presentation. [Exhibit 4.46]

⁴⁰ https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dcr_ecl1017.pdf <https://www.cftc.gov/PressRoom/PressReleases/7630-17> CFTC OIG should have been aware of this supervisory stress test as it is discussed in Appendix 32 of the Stress Testing Report, the May 2017 DCR Monthly Report. [Exhibit 4.47 at 8-9]

⁴¹ Chicago RSB provided a detailed criticism of the NERA Review that was never responded to by CFTC OIG. [CIGIE Complaint at 986-249 – 986-251]

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
---	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

not accurately reflect Chicago RSB's capabilities. This flaw in the NERA Review was compounded by CFTC OIG providing NERA with a MMG supervisory stress test run in October 2017 for the specific purpose of being reviewed by NERA, instead of providing NERA with MMG's May 2016 Proof of Concept.

Additionally, NERA planned to compare MMG's supervisory stress test results with the results of Chicago's November 2016 Supervisory Stress Test. [Exhibit 4.48] On October 27, 2017, MMG's replication of Chicago RSB's November 2016 Supervisory Stress Test was provided to NERA. [Exhibit 4.49] MMG, however did not use the same "as of" date for positions and margins as Chicago RSB used in its 2016 Supervisory Stress Test. In its 2016 Supervisory Stress Test, Chicago RSB used the positions and margins as reported by the clearinghouses as of April 29, 2016. November 2016 Supervisory Stress test at 13 and 19. MMG ran its replication stress test using position data from December 2, 2016, positions which did not exist in April 2016 when Chicago RSB generated its stress testing results. [Exhibit 4.50] The use of different position data when MMG "replicated" Chicago RSB's Supervisory Stress Test would necessarily generate an outcome different from Chicago RSB's 2016 Supervisory Stress Testing results. It is questionable whether NERA could have gleaned any insights into Chicago RSB's 2016 Supervisory Stress Test from MMG's "replicated" results.

The *Stress Testing Report* claims that NERA concluded MMG's work is of "high quality." Stress Testing Report at 10. The MMG Proof of Concept is not described in the NERA Review using the words "high quality."⁴² NERA found that the Proof of Concept approach provides "a technically sound, independent, innovative, and complementary approach to the November 2016 Stress Test" and "value-added regulatory oversight capability."⁴³ Stress Testing Report, NERA Review at 4 and 30. Perhaps a different conclusion was expressed in an earlier draft of the NERA Review. On February 8, 2018, the date the NERA Review was finalized, CFTC OIG staff wrote to NERA asking why some of the language with respect to comparing the two programs had "changed slightly" from the previous draft.⁴⁴ [Exhibit 4.51] NERA replied that "as part of our final checking process, we made a small number of slight wording changes to ensure that every statement was objectively supported and factually correct." [Exhibit 4.52] Giancarlo was not surprised that NERA's analysis supported OIG's point of view. [Exhibit A.9 at 7] OIG had already made up their minds and hired NERA to do an analysis and back up its point of view. [Exhibit A.9 at 7] To Giancarlo, the whole thing "stunk." [Exhibit A.9 at 7] Even if MMG's work was of high quality, limited resources and the existence of a long term, industry vetted daily stress testing program that also produced, under tight deadlines, a highly-praised

⁴² To ██████████ the NERA Review confirmed the high quality of MMG's approach to stress testing. [Exhibit A.30 at 6] But, ██████████ found the NERA Review rhetorical, had too much information and was a reiteration of what was already known. [Exhibit A.30 at 6]

⁴³ The CFTC has only published three supervisory stress test results, one in 2016, one in 2017 (https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dcr_ecl1017.pdf) and one in 2019 (<https://www.cftc.gov/system/files?file=2019/05/02/cftcstresstest042019.pdf>). All three supervisory stress tests were conducted by Chicago RSB.

⁴⁴ No drafts of the NERA Review were produced in the CFTC OIG inspection files.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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supervisory stress test does not suggest that MMG should be allowed to proceed with an independent supervisory stress testing program.

5) The Direction to MMG to Cease Stress Testing Activities

Ultimately, ██████ met with MMG staff and told them after reviewing the May 2016 PowerPoint and identifying its problems, it was not a good use of their time to continue this work. [Exhibit 4.31 at 24] ██████ also told MMG that there was “an awful lot of margin model work that needs to be done” and that appeared to have been neglected as everyone spent all their time on stress testing. [Exhibit 4.31 at 24] That MMG was spending all its time on stress testing became manifest in August 2016. On August 16, 2016, ██████ sent a document titled “Margin Model Group Upcoming Projects” to ██████ who at the request of ██████ had asked MMG for a status of MMG projects. [CIGIE Complaint 986-189, 986-240 – 986-244; Exhibit 4.31 at 24; Exhibit 4.27 at 2] This document described MMG’s future work plans for MMG’s five staff members.⁴⁵ Only one staff member is listed with a margin model-related assignment, and only half of that staff’s work would be on margin model matters. The plans for the rest of the MMG staff were to work on stress testing related items, which were estimated to take years to complete. The August 2016 “Margin Model Upcoming Projects” is consistent with what ██████ had told ██████ earlier that summer: all MMG wanted to do was stress testing.⁴⁶ [Exhibit 4.33 at 32]

██████ told CFTC OIG that MMG was spending more than 90% of its time on stress testing, which did not seem to him to be an appropriate allocation of resources. [Exhibit 4.31 at 24] ██████ also told CFTC OIG that MMG staff were spending “a very low percentage of their time actually working on margin model[s].” [Exhibit 4.26 at 5] Although this MMG-prepared summary was emailed to CFTC OIG on August 4 and on August 15, 2017 [CIGIE Complaint 986-190], the *Stress Testing Report* does not mention either MMG’s desire to only work on stress testing, or this document, its contents, and testimony related to it all gathered during the CFTC OIG inspection. The *Stress Testing Report* did not objectively present all facts as required by the CIGIE *Quality Standards for Inspection and Evaluation* for Reporting and Professional Judgment.

⁴⁵ When CFTC OIG inspectors asked ██████ why MMG staff was not disciplined for not working on margin model tasks, ██████ explained “It’s because the people in that group were doing things that their manager ██████ was telling them to do and nobody thought it would be fair to punish if you’re doing what your boss tells you are the priorities and then it turns out that he was out of sync with his boss.” [Exhibit 4.26 at 6]

⁴⁶ Although the *Stress Testing Report* notes that ██████ instructed MMG to stop working on stress testing without notifying ██████ the August 2016 MMG project status list, detailing all the stress testing work planned by MMG establishes that ██████ direction to MMG had little effect. [Exhibit 4.15] ██████ knew that ██████ had told the MMG team not to work on stress testing, but they continued work on it. [Exhibit A.10 at 7] As a result, any failure of ██████ to inform ██████ was of no consequence, because MMG continued to work on and planned to continue to work on stress testing in the coming years.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

To the contrary, what is supported by evidence in the inspection records, is that on December 23, 2016, [REDACTED], with [REDACTED] approval and with assistance from HR, formalized his instructions by sending [REDACTED] an email directing MMG to stop working on stress testing and explaining the basis for his decision.⁴⁷ [Exhibit 4.53; Exhibit A.21 at 7] [REDACTED] observed that MMG had been allowed to work on stress testing, so the entire division could benefit from MMG's expertise. However, in August, 2016, [REDACTED] learned that four of the MMG staff were working exclusively on stress testing. [Exhibit 4.53] [REDACTED] explained that in his professional judgment, "it makes no sense to devote scarce resources to develop a second stress testing program to be conducted by the margin model group when (i) an effective stress testing program is already in place and (ii) there is substantial work that needs to be done in the area of margin models... There will not be a separate margin model group stress testing program. Just as neither of the (b) (6), (b) (7)(C) for daily risk surveillance has responsibility for margin models, the (b) (6), (b) (7)(C) for the margin model group does not have responsibility for ongoing stress testing." [Exhibit 4.53] Indeed, as [REDACTED] emphasized to CFTC OIG inspectors: "I'll just repeat there was never any intention or authorization to create a standalone margin model stress testing program." [Exhibit 4.31 at 14; Exhibit 4.53] MMG staff were given the opportunity to present their work product, make recommendations on how to incorporate their work into Chicago RSB's existing program and to raise any ideas for enhancing the stress testing program.⁴⁸ [Exhibit 4.31 at 14; Exhibit 4.53]

6) The *Stress Testing Report* Fails to Recognize or Present the Reasons CFTC Management Directed MMG to Cease Stress Testing Efforts

[REDACTED] did not think, as stated in the *Stress Testing Report*, [REDACTED] stated reasons for shutting down MMG's stress testing efforts were pretextual.⁴⁹ [Exhibit A.1 at 10] [REDACTED] told

⁴⁷ [REDACTED] told CFTC OIG that [REDACTED] had wanted to send this email earlier, but [REDACTED] asked [REDACTED] to delay until [REDACTED] had developed an overall plan for MMG. Because this took longer than [REDACTED] expected and it was creating a distraction, [REDACTED] withdrew his objection and the December 23, 2016, email was sent to [REDACTED] [Exhibit 4.34 at 5] Another reason the email to MMG was delayed was that [REDACTED] considered bringing an EEO action against [REDACTED] on the grounds that he stifled innovation on the basis of class, citing (b) (6), (b) (7)(C) ancestry. [Exhibit A.21 at 7] The CFTC brought in a mediator, who interviewed [REDACTED] and [REDACTED] [Exhibit A.21 at 7] The CFTC (b) (6), (b) (7)(C) advised [REDACTED] not to share issues about the substance of [REDACTED] work with [REDACTED] while the EEO investigation was pending. [Exhibit A.21 at 7]

⁴⁸ One of [REDACTED] repeated criticisms of Chicago RSB was that they did not have the technical capabilities to run his program. While [REDACTED] did not claim to be a "quant" himself, he brought in others who had skills sets that others on the Chicago team did not have. As [REDACTED] observed- [REDACTED] hired staff with capabilities that he lacked, such as [REDACTED] [Exhibit A.1 at 10]

⁴⁹ The conclusion in the *Stress Testing Report* that the reasons MMG's stress testing efforts were false, pretextual and based on bureaucratic territoriality relies on private and candid 2015 and 2016 email exchanges between [REDACTED] and [REDACTED] about MMG's focus on stress testing work. [Exhibit 4.15 at 7] These messages contain strong feelings about the action of [REDACTED] who 1) instead of focusing on MMG's core responsibilities directed staff to expend great effort on another group's principle task, 2) had been disciplined by the CFTC for improperly accepting travel reimbursements, and 3) ultimately acted in a manner considered insubordinate. The existence of these messages do not effectively overcome the reasons MMG was directed to stop stress testing: MMG was not focusing on margin model tasks, which only MMG had the skills to complete, and DCR did not need two separate groups devoted to

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
---	--

CFTC OIG inspectors that he did not think “it was just kind of a self preservation or kind of a turf thing.” [Exhibit 4.34 at 10] (b) (6), (b) (7)(C) impression was that (b) (6), (b) (7)(C) was asked to do one thing, but preferred to do another. [Exhibit 4.34 at 10] (b) (6), (b) (7)(C) explained, both to CFTC OIG and FCC OIG, that one unique aspect of the Chicago RSB stress testing approach was going to the entities in the market and getting feedback on their stress testing analyses. [Exhibit A.1 at 6; Exhibit 4.34 at 8 and 10] Chicago RSB would gather information about specific banks and clearinghouses, present their analysis of a trading firm’s or swap dealer’s portfolio and ask “is this right” and “tell us what we did right and what we did wrong.” [Exhibit 4.34 at 8 and 10; Exhibit A.1 at 6] With this in mind, (b) (6), (b) (7)(C) thought Chicago RSB staff were intellectually honest and were trying to learn, and he saw Chicago RSB do this many times on multiple projects. [Exhibit 4.34 at 10-11] In contrast, (b) (6), (b) (7)(C) noted MMG “did have their sort of full reval[uation stress test] but you know I don’t think its [sic] been fully tested and I don’t think they developed [a] methodology for comparing risk to financial resources.” [Exhibit 4.34 at 8] In contrast to MMG, the Chicago RSB team seemed to have a rigorous process and subjected themselves to third party verification and feedback. The MMG group had not subjected their work to this process. [Exhibit 4.34 at 8; Exhibit A.1 at 6]

CFTC OIG does not appear to comprehend or include in the *Stress Testing Report*, the two central reasons, from (b) (6), (b) (7)(C) point of view, why MMG was directed not to continue its work on stress testing. First, to (b) (6), (b) (7)(C), MMG was not fulfilling its mission. (b) (6), (b) (7)(C) told CFTC OIG inspectors that he came to the view that MMG was not doing everything that it could to make DCR’s margin model program a world class program, and asked (b) (6), (b) (7)(C) to look at what MMG needed to do, including reallocating personnel.⁵⁰ [Exhibit 4.26 at 4] This detail is not mentioned in the *Stress Testing Report*. (b) (6), (b) (7)(C) goal was to define from the ground up what MMG was doing and should be doing as he thought the CFTC should have a world leading margin model analysis team. But, after talking to other CFTC Division heads and reviewing their work, (b) (6), (b) (7)(C) concluded MMG was not focused on carrying out the core MMG duties and was more focused on developing an alternate stress testing methodology. [Exhibit 4.26 at 5; Exhibit A.1 at 5] (b) (6), (b) (7)(C) goals for MMG were not discussed in the *Stress Testing Report*.

From what (b) (6), (b) (7)(C) learned from other CFTC Division heads, it seemed that there was a sense that MMG should be and could be doing more with margin modeling to be “best in class.”

stress testing. These reasons were explained to CFTC OIG by a number of CFTC managers, but do not appear in or are resolved in the *Stress Testing Report*.

⁵⁰ The *Stress Testing Report* focuses on the efforts to transfer to Chicago RSB two MMG staff, who as (b) (6), (b) (7)(C) learned in August 2016, were working almost exclusively on stress testing. [Exhibit 4.15 at 10] The *Stress Testing Report* asserts the proposed move contradicts the notion that MMG was not doing its margin model review. *Stress Testing Report* at 10. This conclusion lacks foundation and consequently does not support the suggestion that (b) (6), (b) (7)(C) was manufacturing a reason to shut down MMG’s stress testing efforts. Upon discovering that the majority of MMG staff was working exclusively on stress testing, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) thought it made sense to put them in the group with responsibility for stress testing. [Exhibit 4.31 at 30-31] When (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) learned that the two staff members wanted to remain in MMG, the idea was dropped. [Exhibit 4.31 at 31] More importantly, as described by (b) (6), (b) (7)(C) MMG was not fulfilling its mission, so keeping the staff in MMG would provide an opportunity for them to focus on margin model analysis.

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit A.1 at 5; Exhibit 4.26 at 7] Part of MMG’s function, along with CFTC staff in the Examinations branch and the Clearing Policy branch, was to perform and document the review of margin models presented to the CFTC when there was a new clearinghouse or an existing clearinghouse wanted to introduce a new model. When MMG performs an initial assessment of a margin model, staff is looking at the model’s mathematical and technical proponents of each testing them before the model is used. MMG is also responsible for testing margin models they had previously reviewed. [Exhibit 4.34 at 6] It is important for MMG to go back and look at margin models after they have been in use to see if the margin model is performing as envisioned. [Exhibit 4.34 at 6] This is critical because the clearinghouse could be performing well, but one could discover that even though there had been no disaster, the margin model had not performed as intended. Only MMG had the technical expertise to do this ongoing review, but MMG was not doing this at all, and this was critical.⁵¹ [Exhibit A.1 at 5] (b) (6), (b) (7)(C) view of MMG’s margin model work and its failure to undertake critical tasks is not mentioned in OIG’s *Stress Testing Report*.⁵² This omission creates an incorrect impression of the reasons underlying the direction given to MMG to stop work on stress testing.⁵³

Second, Chicago RSB had a fully functioning daily stress testing program, and having a second unit devoting significant time to stress testing was not a good use of the CFTC’s limited resources. While MMG had been permitted to work on stress testing, with the hope that its work would lead to valuable advances, it was only with the understanding that MMG would turn over what they developed to Chicago RSB. [Exhibit 4.31 at 14-15; Exhibit 4.18 at 23; Exhibit 4.33 at 21-22; Exhibit 4.17 at 21; Exhibit 4.27 at 6; Exhibit 4.53] It is manifest from the position description for (b) (6), (b) (7)(C) that while part of MMG’s responsibilities included development of CDS and interest rate swaps stress testing program, “The program should be developed in a manner that will allow for the transitioning of the program to risk analysts outside of the margin model group.”⁵⁴ [CIGIE Complaint 986-233 – 986-234]

Apparently, the stress testing program developed by MMG was not created in a manner that would allow it to be easily transferred outside MMG. At one point, an MMG staff member had

⁵¹ (b) (6), (b) (7)(C) view of MMG was shared by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) described how a volatile options margin model, which had not been reviewed by MMG, “blew out” in February 2018. [Exhibit A.4 at 5] To (b) (6), (b) (7)(C) MMG was not doing the work it should be doing first and foremost, and instead was looking to get involved in other interesting work. [Exhibit A.4 at 5]

⁵² (b) (6), (b) (7)(C) also explained to CFTC OIG inspectors that engagement with the industry on margin models was envisioned as part of MMG’s responsibilities. [Exhibit 4.33 at 22-23] This ongoing review of margin models was never embraced by MMG. [Exhibit 4.33 at 22-23] This detail is not mentioned in the *Stress Testing Report*.

⁵³ Apparently, even after MMG was told to stop work on stress testing by (b) (6), (b) (7)(C) in December 2016, MMG did not undertake an acceptable level of margin model work. On June 7, 2017, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to cease work on stress testing, uncleared data, and the SIMM margin model, and to commence work on five different margin model evaluation tasks, and report on his work at the weekly supervisors meeting. [Exhibit 4.54] On June 19, 2018, (b) (6), (b) (7)(C) told CFTC OIG staff that there were “problems” with MMG, “essentially they are not doing enough margin modeling.” [Exhibit 4.55]

⁵⁴ According to the *Stress Testing Report*, MMG exceeded its mandate and developed, in addition to stress tests for IRS and CDS, stress tests for swaptions and futures and options. *Stress Testing Report* at 4.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

discussions with Chicago RSB staff about the code he had written for swaption stress testing. [Exhibit 4.56 at 15; CIGIE Complaint 986-220] To use the MMG swaption stress testing program, Chicago RSB staff would have to learn MATLAB, which, according to MMG staff, would probably be a “big lift.” [Exhibit 4.56 at 15] MMG’s stress testing tools were not developed as contemplated by RSB management and as expressed in (b) (6), (b) (7)(C) position description. Directing MMG to stop the development of programs that were not developed in a manner so that they could be transferred to CFTC staff responsible for risk surveillance and instead return their focus to their core responsibility- evaluating margin models- can hardly be seen as pretextual and turf protection. A complete, accurate, fair and objective presentation of the record, as required by the CIGIE Inspection and Evaluation Quality Standard for Reporting, would not have led a reasonable person to sustain the *Stress Testing Report’s* conclusions that the termination of MMG’s stress testing efforts were pretextual and motivated by a desire to protect turf.

Finally, CFTC managers have the authority to make decisions how the agency’s limited resources should be deployed and how its work should be done.⁵⁵ CFTC Chairman Giancarlo affirmed that it was outside the OIG’s role to choose the CFTC’s stress testing methodology. [Exhibit A.9 at 7] Giancarlo firmly stated that it was the agency’s job, and not the IG’s job to select the best method for stress testing. [Exhibit A.9 at 7] According to (b) (6), (b) (7)(C) it was entirely appropriate for (b) (6), (b) (7)(C) to direct MMG on what to work on. [Exhibit 4.34 at 6] Similarly, when (b) (6), (b) (7)(C) became acting (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) was elevated to acting (b) (6), (b) (7)(C), it was entirely appropriate for (b) (6), (b) (7)(C) to direct MMG work assignments. This was all normal operating procedure for the division. [Exhibit A.1 at 6] Further, (b) (6), (b) (7)(C) explained to CFTC OIG inspectors that it was entirely appropriate for (b) (6), (b) (7)(C) to make the decisions within DCR about the work assignments of MMG and the Chicago team. [Exhibit 4.27 at 6] Recognizing the tensions between MMG and Chicago RSB, (b) (6), (b) (7)(C) told CFTC OIG inspectors that he viewed this as (b) (6), (b) (7)(C) situation to fix. [Exhibit 4.26 at 6] (b) (6), (b) (7)(C) thought stress testing staffing decisions were:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.34 at 6; See also Exhibit 4.27 at 8]

⁵⁵ The *Silver Book* states that OIG staff and others under OIG direction should not make management decisions for the agency. Section II.C.3, CIGIE *Quality Standards for Federal Offices of Inspector General* at 16.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Similarly, Chairman Giancarlo told the IG on several occasions that OIG was not set up or equipped to decide which is the better analytical model. [Exhibit A.9 at 5] These top management concerns about OIG's role in the agency's decision process were not reflected in the *Stress Testing Report*.

Additionally, it is questionable whether an IG should be picking winners and losers for an agency's inherently programmatic function. The selection of a stress testing methodology for either a daily stress test or supervisory stress test periodically run by the CFTC is a core policy choice by CFTC management. While there may be different and perhaps better ways to accomplish a task, the *Stress Testing Report* did not comprehensively analyze and objectively present all the facts CFTC OIG staff gathered during the investigation as required by the CIGIE *Quality Standards for Inspection and Evaluation*. The *Stress Testing Report* does not contain the factual basis to criticize the managers who made decisions to preserve resources by stopping duplicative work on an extra project by a unit that was not fulfilling its basic function. Had the complete record been presented, a reasonable person would not sustain the *Stress Testing Report's* conclusion that the termination of MMG's stress testing was pretextual, as required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence Standard.

c e *Stress Testing Report's* Discussions of SDR Data Are Not Supported by the Inspection Record

Although not directly related to stress testing, the *Stress Testing Report* attempts to bolster its conclusions about RSB management deficiencies by including an analysis of decisions relating to SDR (Swaps Data Repository) data, specifically uncleared swaps transactional data. The *Stress Testing Report* reviews two presentations made by Chicago RSB staff (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) at CFTC's Data Steering Committee ("Steerco") meetings in February and March 2017, and (b) (6), (b) (7)(C) decision in May, 2017 to halt an MMG staff member's efforts to resolve data quality issues with SDR uncleared swaps data. [Exhibit 4.15 at 17-20] To reach the conclusion that questionable decisions were made by Chicago RSB managers, CFTC inspectors failed to take basic steps to investigate the facts upon which they base their assertions, and overlooked their own knowledge about the reasons uncleared swaps data cannot be used in stress testing. Instead, the *Stress Testing Report* bases its conclusions about SDR data on an incomplete inspection and a narrow view of the inspection record, which add to the overall tone of the *Stress Testing Report*.

1 Background

SDRs were created by Dodd-Frank. When the CFTC implemented Section 728 of Dodd-Frank in 2011, these new entities were established with the goal of providing a central facility for swap data reporting and recordkeeping.

An SDR is "any person that collects and maintains information or records with respect to transactions or positions in, or the terms or conditions of, swaps entered into by third parties for

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

the purpose of providing a centralized recordkeeping facility for swaps.” 17 C.F.R §1.3. The SDR’s services are designed to allow market participants to meet their reporting obligations under Dodd-Frank. Section 21 of the Commodities Exchange Act governs the registration and regulation of SDRs, and establishes SDR requirements, core duties and responsibilities, such as real-time public reporting of swap transaction and pricing data. 7 U.S.C. §24a. SDRs must report this detailed and comprehensive data to the CFTC for it to monitor and analyze. 7 U.S.C. §24a. To collect swap data from market participants, the CFTC has provisionally approved three SDRs –Chicago Mercantile Exchange Inc.⁵⁶ (“CME”), DTCC Data Repository⁵⁷ (“DTCC”), and ICE Trade Vault⁵⁸ (“ICE”).

Under Dodd-Frank, all swaps, whether cleared or uncleared, are required to be reported to registered SDRs. 7 U.S.C. §2(a)(13)(G). Part 45 regulations implement the swap reporting rules, requiring swap execution facilities, designated contract markets and reporting counterparties to report swap data to SDRs. A “cleared swap” means “any swap that is, directly or indirectly, submitted to and cleared by a derivative clearing organization registered with the Commission.” 7 U.S.C. §1a(7). A cleared swap also includes “any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.” 17 C.F.R. §45.1(a). On the other hand, an uncleared swap is one that “is not cleared by a registered derivatives clearing organization, or by a clearing organization that the Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Act.” 17 C.F.R. §23.151.

It should be noted that CFTC OIG inspectors, during CFTC staff interviews, admitted that they knew there were quality issues surrounding the uncleared swaps data required to be reported to the SDR. At one Chicago RSB staff interview, the CFTC OIG inspector stated “I guess just very quickly is the ST[D]R data, so we wrote about the ST[D]R data, so we’re familiar that there are issues about it.” [Exhibit 4.17 at 10] At another interview, a CFTC OIG inspector advised the witness “we spoke with other folks we heard similar issues with the SDR data. And we ourselves actually know the issue of the SDR data in our cost benefit analysis ... so... we did a review of the rule and the rule has a number of exemptions for example inter affiliates.”⁵⁹ [Exhibit 4.31 at 9] The CFTC OIG inspectors wrote about the problems with using uncleared swaps data for stress testing in their June 5, 2017 *Cost-Benefit Review* inspection report. To support its

⁵⁶ The CME provides services to over 48 clearing firms and generates nearly one billion data points daily. The CME deals in 6 major asset classes: agricultural commodity, interest rates, equity index, foreign exchange, energy, and metals. <https://www.cmegroup.com/#analyze-market-data>.

⁵⁷ DTCC serves as a data repository for interest rates, equity, credit, foreign exchange, and other commodity asset classes. sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories.

⁵⁸ ICE serves as a SDR for other commodity and credit asset classes and has over 200 participating counterparties and more than 50 participating brokers. icetradevault.com/#; sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories.

⁵⁹ In a prior interview, the witness, in response to a question about SDR data issues, told CFTC OIG inspectors “We all know [SDR data] has issues... It is fixable but it’s going to take a long time. Because currently the firm report SDR position, but firm don’t use SDR data to value their risk... They know their risk position they definitely have to because they are dealers. ... the dealer don’t use that [SDR] data to value their risk so they don’t serious treating [the reporting].” [Exhibit 4.25 at 6 and 18]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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conclusion that CFTC staff believe there was a general institutional failure to pursue high quality data, the same CFTC OIG inspectors cited with approval a 2016 DCR Uncleared Data Quality Report:

(b) (6), (b) (7)(C), (b) (5)

Cost-Benefit Review at 28. The *Cost-Benefit Review* also notes the effects of poor quality data go beyond the Margin Rule, which was the subject of the *Cost-Benefit Review*, noting DCR’s periodic stress testing and related surveillance activities in the cleared space, but “the agency’s blindness to the risks associated with a particular firm’s uncleared positions leaves the agency hamstrung when attempting to monitor the swaps market in a holist manner.” Cost-Benefit Review at 28.

Problems with the SDR data have been publicly reported. A 2017 Risk.net article contained in the CFTC OIG inspection files noted reporting swaps to SDRs has long been problematic, and that at the end of May, 2017, 36% of commodity trade reports for 2017 were missing key information, with 16% not revealing the underlying commodity asset and 20% not identifying the instrument.⁶¹ The article also quotes a managing director at a U.S. swap dealer calling SDR data “completely unusable,” and the head of trading at a large hedge fund stating “its [sic] just not clean enough” to incorporate SDR data into the firm’s investment process. The article suggests the source of the SDR data problems was the CFTC’s failure to provide specific guidance on how market participants should report the trades, resulting in disparate reporting practices that left the market confused and the SDR data unusable.

The core of the SDR reporting problem and the impact the reporting problem had on daily stress testing was explained to CFTC OIG inspectors by Chicago RSB staff. The problem, in large part, is jurisdictional- non-U.S. entities are exempt from reporting certain swap transactions to the

⁶⁰ The notional is the underlying value (face value), normally expressed in U.S. dollars, of the financial instrument or commodity specified in a futures or options on futures contract. (Daniels Trading Glossary) Notional value (also known as notional amount or notional principal amount) is the face value on which the calculations of payments on a financial instrument (e.g., swap) are determined. In other words, the notional amount indicates how much money is controlled by a position on a particular financial instrument.

<https://corporatefinanceinstitute.com/resources/knowledge/valuation/notional-value/>

⁶¹ DeFrancesco, Dan CFTC Commodity Swap Data Goes from Bad to Worse, July 7, 2017, available at <https://www.risk.net/commodities/5297671/cftc-commodity-swap-data-goes-from-bad-to-worse>

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

CFTC.⁶² Consequently, only one side of the swap is captured by the SDR data, which can lead to an incorrect view of a DCO's positions. [Exhibit 4.17 at 11] Another RSB manager explained that one of the problems with SDR data for daily stress testing arises from trying to build position data out of SDR transaction data, and the resulting position data derived from the SDR transaction data is not always correct. [Exhibit 4.31 at 8-9, 11] SDR was originally developed by people who were primarily interested in transaction data. [Exhibit 4.31 at 8] "Transaction data is different from positions data. On the cleared side DCR has never looked at transaction data" but uses Part 39 data which provides the end of day positions of all the firms the CFTC's Division of Market Oversight ("DMO") is looking to see whether are playing games in the market or trying to manipulate the market. [Exhibit 4.31 at 8] As an example, [REDACTED] explained, that looking at the SDR data, it appears that a firm's position is X. "[CFTC staff] call a firm and say you know we're puzzled here's your cleared position it's directional long, here's your uncleared position it's also directional long. And let's say well you got our cleared position exactly right our uncleared position is in fact directional short." [Exhibit 4.31 at 8]

Chicago RSB was tasked with creating an uncleared risk surveillance program by [REDACTED] in 2016. [Exhibit 4.17 at 8] "So we began working with the ST[D]R data reviewing it for accuracy and completeness and we could tell pretty early on that just looking at the data and based on what we knew about the positions from talking to firms that it did not look complete." [Exhibit 4.17 at 8] Chicago RSB did a study and contacted 12 or 13 firms and asked them for their complete CDS positions. [Exhibit 4.17 at 8] These positions were compared to the positions in the Depository Trust and Clearing Corporation ("DTCC") database. [Exhibit 4.17 at 8] Chicago RSB found the reporting was fairly accurate and firms reported what they needed to report, "but a lot of what is needed to actually value their complete position is not required to be reported for various reasons. There's various exemptions from reporting and so on. So what's in the ST[D]R does not give you a complete picture of the risk of a firm or trader of their swap positions. We've also talked to a number of dealers and they've told us that using ST[D]R data for only cleared swap risk surveillance purposes is pretty much a lost cause." [Exhibit 4.17 at 8] As an example, [REDACTED] explained that Deutsche Bank trades with UBS⁶³ are not required to be reported to the SDR even though Deutsche Bank is a CFTC registrant, because Deutsche Bank is exempt from reporting single name CDS and from reporting deals with other foreign dealers. [Exhibit 4.17 at 11] "If you just looked at Deutsche Bank's CDS risk, using ST[D]R data, you're going to be way off. I mean it's not even going to be close." [Exhibit 4.17 at 11] Another source of the problems with SDR data arises from mistakes made by firms when they report transactions to the SDR. [Exhibit 4.33 at 42]

⁶² As an example, [REDACTED] explained, that CDS (credit default swaps) CFTC registrants are "exempt from reporting single name CDS and they're exempt from reporting deals with other foreign dealers." [Exhibit 4.17 at 11]

⁶³ UBS Group AG is a Swiss multinational investment bank and financial services company founded and based in Switzerland.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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2 *e Stress Testing Report s* discussion o t e Fe ruary and arc 2017 eetings resent an Incom lete icture o t e Events

The *Stress Testing Report* is critical of the presentations made by Chicago RSB staff at February and March 2017 CFTC Steerco meetings. [Exhibit 4.15 at 18-19] The information in these presentations was gathered by Chicago RSB staff in furtherance of (b) (6), (b) (7)(C) assignment to create a risk surveillance program incorporating uncleared transaction risk. The *Stress Testing Report* describes reactions to the presentation in vivid terms and suggests that Chicago RSB tried to hide criticism and revisions to the presentation. [Exhibit 4.15 at 18-20] This recitation only relates a part of the events surrounding these presentations. Had the CFTC OIG inspectors taken a few basic inspection steps or reviewed the responses submitted to the *Stress Testing Report* by Chicago RSB staff or been subject to close supervision by IG Lavik as required by the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard, a more accurate and fuller description of the events would have emerged.

While the *Stress Testing Report* is highly critical of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) the CFTC OIG inspectors never asked them about the Steerco presentations, the purpose of the presentations, the discussions they had with the Division of Market Oversight staff, the revision of the February, 2017 presentation and the resolution of disagreements over the initial presentation.⁶⁴ Had the CFTC OIG inspectors asked the presenters about the presentation or read the Chicago RSB response to the *Stress Testing Report*, they would have learned that the purpose of the project was to evaluate whether uncleared transaction data reported to the SDRs could be used for risk surveillance purposes. [Exhibit A.35 at 5; CIGIE Complaint 986-196] It appears that by describing this project as a “validation,” some attendees at the February 2017 presentation interpreted the project as an exercise to determine whether firms were complying with reporting requirements for uncleared credit default swap transactions. [Exhibit 4.57 at 22, 24] Without querying the Chicago RSB presenters, CFTC OIG inspectors adopted this approach in the *Stress Testing Report* and concluded that by not correcting the data by removing swaps not required to be reported to the SDRs and correcting for swap transactions later sent to the clearing houses, the Chicago RSB presentation was “erroneous,” “in bad faith” and “misleading.” [Exhibit 4.15 at 18-19]

A review of the presentation, as well as the explanations provided by Chicago RSB staff dispels this notion. Chicago RSB staff compared the data they collected from the clearing houses to data collected and data processed by the CFTC in an attempt to correct for data issues. [CIGIE Complaint at 986-261 to 986-262] That the focus of the presentation was on non-reportable transactions, instead of data quality or clearing house reporting compliance is made clear by multiple references on each of the six pages of the February 2017 displaying analysis of clearing house and swap dealer data. Contrary to the *Stress Testing Report’s* assertions that the February

⁶⁴ (b) (6), (b) (7)(C) mentioned the Steerco presentation in passing in his first CFTC OIG interview, but the CFTC OIG inspectors never asked him about any of Steerco-related events described in the *Stress Testing Report*. [Exhibit 4.17 at 9] CFTC OIG inspectors never asked (b) (6), (b) (7)(C) about the Steerco meetings or presentations. [Exhibit A.35 at 5-6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

2017 Presentation was misleading and erroneous because it failed to account for “swaps not reported to an SDR,” the “Highlights” slide of the February 2017 presentations clearly notes the impact on the use of SDR data on risk surveillance due to non-reportable transactions: “Non-reportable positions – especially single name exposure – prevents comprehensive risk assessment for uncleared credit swaps.” [Exhibit 4.58 at 11] This language, and numerous statements by the presenters, indicate that the *Stress Testing Report’s* conclusion that Chicago RSB presenters were trying to mislead by omission lacks an evidentiary foundation.⁶⁵ [CIGIE Complaint at 986-263] This repeated acknowledgment of the CFTC jurisdictional limitations resulting in the non-reportable positions dispels the *Stress Testing Report’s* assertions that Chicago RSB staff were advancing the position that SDR data quality raised concerns about using that data for daily stress testing, or that Chicago RSB staff were omitting the CFTC jurisdictional limitations from their presentation.

After Chicago RSB’s February 2017 Steerco presentation, DMO staff obtained and conducted its own analysis of the data collected by Chicago RSB and discussed its findings with Chicago RSB staff. [Exhibit 4.57 at 2-3; Exhibit A.35 at 6] As a result of these discussions, Chicago RSB staff resolved the disagreement with DSO and clarified the presentation, by substituting the word “analysis” for “validation” in the Presentation’s title, incorporating DMO suggestions about the presentation of foreign exposure.⁶⁶ [Exhibit 4.59⁶⁷] While the wording and the organization of the February 2017 presentation may not have been as clear as it could have been, a reasonable person would not sustain the *Stress Testing Report’s* conclusion that the presentation was misleading.

Further, the February 2017 presentation was not “implicitly retracted” by Chicago RSB, implicitly or otherwise, as stated in the *Stress Testing Report*. [Exhibit 4.15 at 19] Had CFTC OIG inspectors asked Chicago RSB staff about the presentations, CFTC OIG inspectors would have learned that changes to the February presentation were made for clarity and brevity. In addition to the changes for clarity described above, the March 2017 presentation was shortened from 11 to four slides. [Compare Exhibit 4.58 with Exhibit 4.59] After the first presentation in February, a new CFTC Chairman had been nominated, and (b) (6), (b) (7)(C) represented the Chairman at Steerco meetings. [CIGIE Complaint 986-265 – 986-266; Exhibit 4.59; Exhibit 4.60] At the second presentation in March 2017, with (b) (6), (b) (7)(C) in attendance, Chicago

⁶⁵ While the adjustments made by DMO served to check the accuracy of the transaction data reported to the SDR, this was not the point of the Chicago RSB exercise. [Exhibit 4.59] The Chicago RSB exercise and presentation were to show what information about uncleared CDS transactions was missing from the SDR data, because CFTC rules did not require reporting. That the March presentation “elided mention of data validation,” *Stress Testing Report* at iii, is not surprising and demonstrates CFTC OIG’s misunderstanding of the Chicago RSB project.

⁶⁶ An example of the cordial email exchange between DMO and Chicago RSB staff containing DMO’s suggestions and acceptance thereof was provided to CFTC OIG, but are absent from the *Stress Testing Report*. [CIGIE Complaint 986-265]

⁶⁷ In the text of the *Stress Testing Report*, [Exhibit 4.59] is denoted Appendix 29. *Stress Testing Report* at 19, footnote 71. In the Appendix itself, this is mislabeled as Appendix 28. Similarly, the Appendix denoted as Appendix 28 in the text of the *Stress Testing Report*, actually appears as Appendix 29 to the *Stress Testing Report*. The Review of SDR Validation Project was not presented at a Steerco meeting. [Exhibit 4.57]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

RSB staff delivered a shorter version of the first presentation, which streamlined the description of the project, removed the definition slide and only included one clearinghouse example instead of five.⁶⁸ [Exhibit A.35 at 6; Exhibit 4.58, with Exhibit 4.59] Most importantly, the underlying conclusion in the February presentation was the same as the March presentation's conclusion, (although stated more clearly): "Non-reportable positions - especially single name exposure and foreign dealer to foreign dealer exposure – prevents DCR-Risk from using SDR data for comprehensive risk assessment on uncleared credit swaps." [Exhibit 4.59 at 4] Thus, the second presentation was not a retraction of the first presentation as the *Stress Testing Report* claimed, but restated and reinforced the conclusions. The second March presentation just focused on and clarified the limited point that for risk surveillance, SDR data was not useful.

Finally, the *Stress Testing Report's* description of the reaction to the RSB staff presentations at Steerco as "stunning in its intensity," and its assertion that several members felt Chicago RSB staff was "disingenuous" and "in bad faith" by calling the February 2017 presentation a "validation" lacks a solid foundation. *Stress Testing Report* at iii and 19. The inspection files indicate that only one CFTC staff member was interviewed about the two 2017 Steerco meetings, and this staff member did not attend the initial February 2017 Steerco meeting. [Exhibit 4.57 at 6] CFTC OIG inspectors apparently did not interview other attendees at the February and March 2017 Steerco meetings. As a result, the *Stress Testing Report* relies on the recollection of one witness and hearsay in its description of the reactions to the Steerco meetings. Additional inspection steps, such as questioning other Steerco meeting participants and Chicago RSB staff about the 2017 Steerco presentations, should have been taken before making strong negative assertions about those reactions in the *Stress Testing Report*.⁶⁹

⁶⁸ The *Stress Testing Report* criticizes Chicago RSB staff for referring (b) (6), (b) (7)(C) and CFTC OIG to the February 2017 presentation instead of the March presentation. *Stress Testing Report* at 19-20. This criticism is unwarranted. It is not surprising that (b) (6), (b) (7)(C) was referred to the more comprehensive February 2017 presentation because it contains many more examples, five instead of one, of analysis of data received from clearinghouses. The *Stress Testing Report's* claim Chicago RSB staff did not provide the March 2017 presentation to CFTC OIG is unsupported by cites to the investigatory record asking for the March 2017 (or the February 2017) presentation. Furthermore, both presentations were distributed electronically and in hard copy to meeting attendees and were obtained by CFTC OIG staff from an attendee at the March 2017 Steerco meeting. [CIGIE Complaint 986-265; Exhibit 4.61]

⁶⁹ Another example of the failure to fully investigate and objectively report the evidence is the *Stress Testing Report's* discussion of the effort to revise data-reporting rules and harmonize SDR standards with international and domestic regulators. *Stress Testing Report* at 20-21. According to the *Stress Testing Report*, DCR staff failed to respond to the Division of Market Oversight's Data and Reporting Branch ("DMO") inquiries in connection with the revisions of these rules and standards. One CFTC staff witness told CFTC OIG inspectors that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were unresponsive to DMO's requests because they were trying to develop a new data stream for stress testing uncleared swaps that would be far enough along so that after (b) (6), (b) (7)(C) retired, his replacement would be unable or unwilling to terminate the effort. [Exhibit 4.62 at 1-2] There is no record of these assertions being fully investigated by CFTC OIG. There are two memos to the file concerning an October 18, 2017 conversation between a CFTC OIG inspector and another CFTC staff member, but the Memos are vague, appear to contain hearsay and lack sufficient detail to support the claim that Chicago RSB was trying to quickly develop an alternate data stream. [Exhibit 4.63; Exhibit 4.64] More importantly, there is no evidence in the record that CFTC OIG ever discussed this issue with (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) all who had offered to provide additional information to CFTC OIG upon

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

Had the CFTC OIG inspectors asked Chicago RSB staff about their presentations at the February and March 2017 Steerco meetings, they would have had a more complete and accurate understanding of the meetings, the presentations and the reactions to the presentations. After the March 2017 Steerco meeting, there were other attendees who had positive responses to the Chicago RSB staff presentation, and one CFTC staff member, who was critical of the presentation in general, confirmed one of the highlights about the CFTC's ability to use SDR data for firm-level risk surveillance. [CIGIE Complaint at 986-265 – 986-266] Additionally, according to Chicago RSB staff, this staff and (b) (6), (b) (7)(C) clarified their initial misunderstanding and reached an agreement concerning the limitations of SDR data. [CIGIE Complaint 986-197] Further steps by CFTC OIG inspectors would have brought these claims by Chicago RSB staff to light. These assertions should have been thoroughly explored, as required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence standard, prior to making such statements in the *Stress Testing Report*. Review by IG Lavik, as required by the CIGIE *Quality Standard for Inspection and Evaluation* Quality Control Standard, would have brought to light that the inspection findings were not adequately supported by the evidence.

3) The *Stress Testing Report's* Misapprehends the Reasons MMG was Directed to Stop SDR Work

In 2016, with the approval of (b) (6), (b) (7)(C), MMG staff member [REDACTED] implemented his idea to work with the uncleared swaps data to try to understand the missing positions in the data. [Exhibit 4.33 at 34] [REDACTED] was supportive of this effort and Chicago RSB staff initially thought this was good topic. [Exhibit 4.33 at 34] [REDACTED] thought it was important for DCR to be deeply involved in this project because DCR looks at risk and needs notional value and all the pricing fields, while others at the CFTC only need the notional value. [Exhibit 4.65 at 7] [REDACTED] was taking the "very first step in diagnosing" what the problems were. [Exhibit 4.65 at 6] [REDACTED] explained to CFTC OIG inspectors what the source of some of the data quality issues could be. One simple way to identify data quality issues is a missing value analysis, namely looking for blanks that have not been filled in two necessary fields. [Exhibit 4.65 at 6] [REDACTED] identified a mismatch error, arising from a wrong notional value on a trade, and one would need to compare a dealer's book to the data set to really understand whether there were mismatches. [Exhibit 4.65 at 6] [REDACTED] also noted the issue of having the DTCC act as a third party, and relying on DTCC to have some sort of data validation. [Exhibit 4.65 at 6-7]

[REDACTED] sent out four letters seeking information on the missing elements in December 2016 and had communications with the bank compliance staff. [Exhibit 4.65 at 8, 12] The compliance staff clarified that most of the blanks were not actually missing values, but either an error on DTCC's end or with [REDACTED] data filter not necessarily looking at the correct fields when it

request. Advancing the uncorroborated claims of one CFTC staff member without asking for an explanation from Chicago RSB management and others further demonstrates the lack of sufficient evidence, objectivity and supervision as required by the CIGIE *Quality Standards for Inspection and Evaluation*.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

identified blanks. [Exhibit 4.65 at 12] Based on these conversations, (b) (6), (b) (7)(C) learned that approximately 10% of these missing values were actually errors by the firms. [Exhibit 4.65 at 12] (b) (6), (b) (7)(C) thought it was useful to have this exchange and wanted to continue it. [Exhibit 4.65 at 12] In April 2017 discussions with Chicago RSB staff, (b) (6), (b) (7)(C) stated he was looking at individual position notionals that are mismatched/erroneous by USI (unique swap identifier). [Exhibit 4.66] On May 8, 2017, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to stop analyzing the data quality. [Exhibit 4.67; Exhibit 4.33 at 35] According to the *Stress Testing Report*, this discontinuance “helped insulate the Chicago teams from Margin Model Group criticism and competition regarding the development of its uncleared swaps risk-surveillance tools, which involves the use of SIMM-generated sensitivities.” *Stress Testing Report* at 17.

The *Stress Testing Report* does not include the explanations provided by Chicago RSB management to CFTC OIG as to why (b) (6), (b) (7)(C) was told to stop his uncleared swaps data quality analysis. For example, CFTC OIG inspectors asked (b) (6), (b) (7)(C) whether the SDR data could be used for stress testing if all the data errors were removed. [Exhibit 4.17 at 27-28] (b) (6), (b) (7)(C) acknowledged there was “value in working with the data but not for determining what is someone’s risk in uncleared swaps.” [Exhibit 4.17 at 27-28] (b) (6), (b) (7)(C) clarified, using Deutsche Bank as an example, that if a stress test was run using Deutsche Bank SDR uncleared data, the result could be far off because the non-US portion of the swap is not reported and “there are so many pieces of information that you don’t have.” [Exhibit 4.17 at 27-28]

(b) (6), (b) (7)(C) was familiar with (b) (6), (b) (7)(C) data validation efforts, and while admitting (b) (6), (b) (7)(C) effort may be “a piece” of validating the data, it did not do what Chicago RSB was trying to do, which was to have an entire uncleared swap program. [Exhibit 4.33 at 38-9] CFTC OIG explained to (b) (6), (b) (7)(C) its understanding that (b) (6), (b) (7)(C) looked at a certain subset of products within the SDR data that was not representative of the entire product, instead of going through the entire customer base. [Exhibit 4.33 at 37-38] (b) (6), (b) (7)(C) related to CFTC OIG inspectors that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) compared the reported CDS positions to the actual positions for the CDS held by the firm. [Exhibit 4.33 at 37-38] According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) got access to the CDS positions data that came in from the firms and the Chicago RSB report, and there were many discussions about it. [Exhibit 4.33 at 39-40] (b) (6), (b) (7)(C) disagreed with the analysis and conclusions in the report. (b) (6), (b) (7)(C) believed the SDR data could be cleaned up, and maintained the issues were not jurisdictional. [Exhibit 4.33 at 35]

(b) (6), (b) (7)(C) was hesitant to say (b) (6), (b) (7)(C) complaints had merit because (b) (6), (b) (7)(C) efforts just addressed a small piece of the problem.⁷⁰ (b) (6), (b) (7)(C) gave two examples to CFTC OIG inspectors of the inconclusive nature of (b) (6), (b) (7)(C) efforts. First, (b) (6), (b) (7)(C) picked a firm, looked at the trades and asked the firm to report the missing data fields on a small number of positions and to price all the positions that lacked pricing data. [Exhibit 4.33 at 38-39] MMG staff was not verifying all SDR reported data for thousands of swaps reported to SDRs by all firms that submit data to the

⁷⁰ (b) (6), (b) (7)(C) told CFTC OIG inspectors he wanted to continue his work because he did not have a good idea of what the issues were. [Exhibit 4.65 at 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

SDR. [Exhibit 4.33 at 38-39] Additionally, MMG staff efforts would not catch trades that should have been reported to the SDR but were not. [Exhibit 4.33 at 38-39] Second, (b) (6), (b) (7)(C) further example was Chicago RSB analysis showing JP Morgan had a very large notional cross currency position (30%), which was a very small number, 2%, of their trades. [Exhibit 4.33 at 41-42] JP Morgan went back and after many exchanges with Chicago RSB staff, JP Morgan told Chicago RSB there was a mistake in their currency reporting. [Exhibit 4.33 at 41-42] According to (b) (6), (b) (7)(C) this never would be uncovered by (b) (6), (b) (7)(C) efforts to fill in missing fields. (b) (6), (b) (7)(C) concluded that the only way to do a full reevaluation of uncleared positions using the SDR data would be to get the data from each firm, which was not tenable. [Exhibit 4.33 at 43-44] Without a more systemic and expansive look at the actual data, (b) (6), (b) (7)(C) piecemeal efforts would not result in making the uncleared SDR data of sufficient quality to use in stress testing.

Even if MMG were able to fill in missing data fields, the SDR data would still be incomplete. (b) (6), (b) (7)(C) corrected CFTC OIG inspectors when they asked why he stopped someone from trying to fix the data. [Exhibit 4.33 at 43-44] It was a “misnomer” that MMG was fixing the data, because even with all the work, this effort would not obtain critical information: The non-U.S. portion of the swap that is not required to be reported under CFTC rules. [Exhibit 4.33 at 43-44] (b) (6), (b) (7)(C) was trying to develop a long-term plan, and what (b) (6), (b) (7)(C) was doing could be part of it going forward [Exhibit 4.33 at 41-42] Because (b) (6), (b) (7)(C) did not yet know how what (b) (6), (b) (7)(C) was doing would fit into the plan, (b) (6), (b) (7)(C) did not want to continue with efforts that may not have matched the long term approach.

An unbiased and complete presentation of the evidence should have included these explanations in the *Stress Testing Report*. It is puzzling that CFTC OIG, based on prior work and reliance on DCR’s 2016 analysis of the inability to use SDR data for stress testing because of its poor quality, omitted Chicago RSB management’s explanations about the impact of jurisdictional limitations on the completeness of SDR data, and concluded that RSB management made a questionable decision which “undermined the efficiency and effectiveness of agency programs.” *Stress Testing Report* at 26. Further, it is difficult to comprehend how (b) (6), (b) (7)(C) efforts with a few firms that report trades to SDRs could have been scaled up to correct the SDR submissions by over 1,700 firms,⁷¹ who on average report for three asset classes approximately 443,000 uncleared transactions to SDRs each week.⁷² The decision to discontinue (b) (6), (b) (7)(C) work and

⁷¹ In 2020, the CFTC stated that 1,732 firms consistently reported trades to the SRDs and anticipated that number could grow when the new reporting rule was finalized. Federal Register, Volume 85 Issue 232 (Wednesday, December 2, 2020) [Pages 77435-77437] (“Furthermore, through the Commission’s eight years of experience in administering Part 45, the Commission believes that the 1,732 reporting entities are a relatively consistent group, such that most entities that are currently reporting entities under Part 45 will continue to be reporting entities under the final rule, and few entities that are not currently reporting entities under Part 45 will become reporting entities under the final rule.”) Available at

<https://www.cftc.gov/LawRegulation/FederalRegister/publicinformationcollectionrequirements/2020-26556.html>

⁷² For a five week period during October-November 2020, the CFTC reported that on average, 443,360 uncleared transactions involving interest rate swaps, credit default swaps and foreign exchange swaps were reported to SDRs weekly. <https://www.cftc.gov/MarketReports/SwapsReports/L1ActVolCS.html> The actual number of swaps reported to SDRs is higher, because this average does not include two other asset classes, equity swaps and

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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conclusions based on a minimal subset of these submissions had little impact on the CFTC's programs and efforts to incorporate uncleared swaps data in risk surveillance.

CFTC OIG's conclusion is contrary to the impression of (b) (6), (b) (7)(C). According to (b) (6), (b) (7)(C) the discontinuation of (b) (6), (b) (7)(C) efforts did not have the impact that the *Stress Testing Report* suggests. (b) (6), (b) (7)(C) noted that incorporating uncleared swaps into risk analysis was one of biggest data challenges faced by DCR. [Exhibit A.1 at 9] There was further work to be done to make uncleared swap data useable and to use it, but it was never apparent to (b) (6), (b) (7)(C) that the Chicago RSB team was undermining efforts to make improvements.⁷³ [Exhibit A.1 at 9] Additionally, these CFTC OIG conclusions, based on incomplete evidence, further the negative narrative of the *Stress Testing Report*. Moreover, the *Stress Testing Report* discussions relating to SDR data again fail to comply with the CIGIE *Quality Standards for Inspection and Evaluation* Quality Reporting standard by not reporting facts fairly and objectively. Had the facts been reported as required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence and Professional Judgment standards, a reasonable person would not sustain the *Stress Testing Report's* findings and conclusions on this matter.

d. The *Stress Testing Report's* Discussion of the SIMM Margin Model is Flawed

The *Stress Testing Report's* discussion of the Chicago RSB's use of the International Swaps and Derivatives Association's Standard Initial Margin Model ("SIMM") in daily stress testing does not include a complete and objective recitation of the record and makes statements that are not supported by the cited evidence. *Stress Testing Report* at 22-23. The *Stress Testing Report* describes the jurisdictional problem that led to the use of SIMM sensitivities in stress testing. The CFTC does not have jurisdiction over all a firm's uncleared swaps; swaps between two non-U.S. entities do not have to be reported to the CFTC. *Stress Testing Report* at 22. [Exhibit 4.32 at 17] See also, SDR Data discussion, *supra*. To compensate for this well-known flaw in the data, the CFTC adopted the approach of using SIMM sensitivities in its stress testing. [Exhibit 4.25 at 5-6, 18, 27-28]

commodity swaps, which are both required to be reported to SDRs.

⁷³ (b) (6), (b) (7)(C) did not agree with the report's statement that MMG had developed a full revaluation stress test for cleared and uncleared swaps. [Exhibit A.1 at 9; see also Exhibit A.18 at 3: "In 2017, CFTC did not include uncleared swaps data or Part 45 data in its daily stress tests."] As of April and August, 2021, Part 45 data containing uncleared positions is not accurate and is not usable for stress testing because stress testing results using Part 45 data are not accurate [Exhibit A.18 at 3; Exhibit A.13 at 6] Work is being done to use Part 45 data in daily stress testing but as of August 2021, that work is incomplete. [Exhibit A.18 at 3] On September 17, 2020, the CFTC adopted amendments to rules governing swap data recordkeeping and reporting requirements and to regulations relating to certain swap data repository and data reporting requirements.

<https://www.cftc.gov/PressRoom/Events/opaeventopenmeeting091720>

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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1 Background

The SIMM is a common methodology used to help market participants calculate initial margin on non-cleared derivatives under the framework developed by the International Swaps and Derivatives Association. <https://www.isda.org/a/HXuTE/Implementing-Initial-Margin-Model-vs.-Grid-18.03.20-Update.pdf>. SIMM is a risk-sensitive model, able to recognize netting, hedging and diversification benefits, and uses portfolio sensitivities as its inputs. *Id.* SIMM’s sensitivity-based approach is based on the Federal Reserve’s capital model, with modifications that are necessary for calculating initial margin instead of capital. *Id.* The Common Risk Interchange Format is the standard for used to input risk sensitivities in the SIMM methodology. *Id.* These inputs are determined by firms using the clearly defined standards in the SIMM methodology. *Id.* The SIMM model applies a sensitivity-based calculation across four product groups: interest rates and foreign exchange rates, credit, equity and commodities. *Id.*

2 The Stress Testing Report’s Criticism of the Use and Evaluation of SIMM Sensitivities by Chicago RSB Staff

The *Stress Testing Report* acknowledges the use of SIMM may have the advantage of covering any uncleared swaps not reported to SDRs. *Stress Testing Report* at 22. Indeed, MMG staff observed that there was nothing wrong with using SIMM sensitivities for stress testing. [Exhibit 4.65 at 12-13] But, the *Stress Testing Report* criticizes the use of SIMM sensitivities for a variety of reasons. First, the *Stress Testing Report* notes that SIMM potentially fails to cover a substantial portion of uncleared swaps.⁷⁴ It also notes that due to an exception in the CFTC’s Margin Rule for Uncleared Swaps, an initial margin is not always required, so there may not be SIMM sensitivities available to the CFTC. *Stress Testing Report* at 22. The Report further claims, without citing evidence gathered during the inspection, that Chicago RSB management had not thought about these gaps in data, but the inspection record indicates otherwise.

Chicago RSB management explained to CFTC OIG staff that there were many gaps in the SIMM data, and that they could spend much time explaining those gaps. [Exhibit 4.17 at 9-10] To better understand SIMM sensitivities, Chicago RSB initiated a pilot program with the six largest dealers. [Exhibit 4.31 at 8-9] [REDACTED] explained to CFTC OIG that Chicago RSB had started to think about gaps and recognized “that certainly at the start you’re missing big pieces of the market you’re missing the inter affiliate you’re also missing all the third party trades... So we recognize that and we will have to work through going forward how to address that...” [Exhibit 4.31 at 9] [REDACTED] acknowledged that he did not have an answer for CFTC OIG in August 2017 as to how the inter-affiliate data gaps would be addressed, but explained Chicago RSB’s pilot

⁷⁴ CFTC OIG inspectors learned that the SIMM model did not cover inter-affiliate swaps, which make up 50% of the risk, during their work on CFTC OIG’s June 7, 2017 *Cost-Benefit Review*. [Exhibit 4.17 at 12, Exhibit 4.18 at 15] In their questioning about these gaps, CFTC OIG inspectors focused on these inter-affiliate gaps. [Exhibit 4.31 at 8-9; Exhibit 4.17 at 12; Exhibit 4.18 at 15]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

program and the plans to work on that issue: “this pilot program going on and I think it’s our strong belief I guess my I don’t even have an answer for that. But I do have an answer that you know we’ve contact[ed] these dealers and we have this ISDA program where they’re going to start sending us [SIMM sensitivities] data and then we’re going to... [work] on it.”⁷⁵ [Exhibit 4.18 at 15] [REDACTED] further explained that RSB was early in the process of evaluating the SIMM data and may not have thought of threshold issues yet. [Exhibit 4.17 at 12] [REDACTED] also noted while there are gaps in SIMM data, “those gaps will fill in over time as more and more dealers and firms come in under the regulations under SIMM.” [Exhibit 4.17 at 10] There is no mention of either Chicago RSB management’s acknowledgment in the gaps in the SIMM data or the pilot program and plans to study the SIMM sensitivities in the *Stress Testing Report*. Instead, the *Stress Testing Report* leaves one with the incorrect impression, not supported by evidence gathered during the inspection, that Chicago RSB management had yet to think about the gaps and had not started a pilot program to study the SIMM sensitivities.

The *Stress Testing Report* also concludes that Chicago leadership shut down MMG’s review of the SIMM model leaving RSB “with no independent assessment of SIMM’s suitability for the intended use.” *Stress Testing Report* at 23. The CFTC OIG inspectors appear to believe that MMG should examine the SIMM model because they are RSB’s margin model experts. *Stress Testing Report* at 23. As was explained to CFTC OIG inspectors by numerous witnesses, this is not the case.

MMG staff contacted CFTC OIG and complained that his work on the SIMM margin model had been discontinued in an arbitrary manner which felt retaliatory. [Exhibit 4.65 at 1-2, 17] As explained to CFTC OIG inspectors, [REDACTED] and [REDACTED] were supportive of this effort, but were concerned about internal CFTC politics surrounding SIMM. [Exhibit 4.33 at 30] When working to define the responsibilities of MMG on May 24, 2017, [REDACTED] emailed the following to all MMG staff:

(b) (6), (b) (7)(C), (b) (5)

[CIGIE Complaint 986-226]

The “Commission politics” involved was that Division of Swap Dealer and Intermediary Oversight (“DSIO”) had responsibility for the SIMM margin model. The MMG staff member

⁷⁵ A description of the work Chicago RSB was doing to understand the uncleared SIMM margin model and how it might be used in risk surveillance and RSB’s uncleared swaps effort is described in the May 1, 2017 DCR Monthly Report submitted by [REDACTED] to Chairman Giancarlo. See, [Exhibit 4.47] Chicago RSB staff had collected SIMM data, had meetings with DCOs related to the SIMM margin model, and had generated output from the SIMM margin model, the accuracy of which was confirmed by the firm. [Exhibit 4.47] Although the *Stress Testing Report* cites this DCR Monthly Report, it omits recognition of points therein that corroborate what Chicago RSB staff related to the CFTC OIG inspectors.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

who first brought the complaint about MMG being told not work on the SIMM model told the CFTC OIG inspectors that he understood the review of the SIMM model was a responsibility of DSIO. [Exhibit 4.65 at 5] Other MMG staff told CFTC OIG inspectors that the SIMM model was a DSIO project. [Exhibit 4.56 at 6; Exhibit 4.32 at 18] (b) (6), (b) (7)(C) explained to CFTC OIG inspectors that DSIO has responsibility for the SIMM model and had written the SIMM rule. [Exhibit 4.17 at 48] (b) (6), (b) (7)(C) also remarked “They’re [DSIO] pretty particular about you know who gets involved in their business and so they delegated that [SIMM model] responsibility to NFA [National Futures Association].” [Exhibit 4.17 at 48]

MMG staff told CFTC OIG inspectors that they were not going “to go full barrel” on the SIMM model review. [Exhibit 4.65 at 4] But it appears that is precisely what MMG staff did. MMG staff asked (b) (6), (b) (7)(C), who had contacts at the Fed, the National Futures Association (“NFA”) and the SEC to set up meetings to discuss their work on the SIMM model. [Exhibit 4.68 at 15] (b) (6), (b) (7)(C) learned about these contacts in early June when he was contacted by NFA and received a copy of the Fed’s email offering assistance to the CFTC. [CIGIE Complaint 986-228] DSIO contacted DCR to ask why DCR was interfering in DSIO’s work, the situation (b) (6), (b) (7)(C) sought to avoid when he told MMG to table work on the SIMM project. [CIGIE Complaint 986-60]

(b) (6), (b) (7)(C) telephoned (b) (6), (b) (7)(C) who was away when the MMG staff made the contacts, and asked him why MMG staff had contacted the Fed, SEC and NFA after he told MMG staff not to do anything on the SIMM model [Exhibit 4.33 at 31; Exhibit 4.32 at 18] During this conversation, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that all MMG wanted to do was stress test. [Exhibit 4.33 at 31-32] After learning that MMG staff had gone against his direction not to work on the SIMM model and only want to work on stress testing, which was primarily the responsibility of Chicago RSB, (b) (6), (b) (7)(C) contacted CFTC’s HR office for assistance in responding to this “crisis” created by MMG.⁷⁶ [Exhibit 4.33 at 32; Exhibit A.15 at 8] With HR’s help, (b) (6), (b) (7)(C) crafted an email that was sent to (b) (6), (b) (7)(C) on June 7, 2017, giving him a “direct order” not to perform any stress testing, uncleared data work⁷⁷, and work related to the SIMM margin model, and to commence work agreed to on May 24. [Exhibit 4.33 at 32; Exhibit A.15 at 8; Exhibit 4.54; CIGIE Complaint 986-167 thru 986-168]

The report does not mention that review of the SIMM model was the responsibility of DSIO, not MMG. Although (b) (6), (b) (7)(C) specifically told CFTC OIG that he obtained assistance from HR in handling challenges presented by MMG staff, CFTC OIG never contacted CFTC HR to learn about the support given by HR to Chicago RSB management relating to MMG and subjects covered in the *Stress Testing Report*. [Exhibit 4.33 at 32; Exhibit A.6 at 7] (b) (6), (b) (7)(C) did not

⁷⁶ According to HR, for continuing to work on projects they had been instructed to discontinue, (b) (6), (b) (7)(C) could have charged MMG staff and (b) (6), (b) (7)(C) with insubordination, and they would have been subject to disciplinary action for failure to follow clear directions. [Exhibit A.6 at 7] HR was unaware that CFTC OIG was looking into stress testing until the *Stress Testing Report* was released. [Exhibit A.6 at 7]

⁷⁷ For a discussion of the reasons why MMG was directed not to work on uncleared data, see Allegation 4, Section II.E.2.c, above.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

understand why OIG was looking into this dispute when the dispute had been settled already by HR. [Exhibit A.12 at 9] (b) (6), (b) (7)(C) raised the prior HR involvement with both IG Lavik and DIG Ringle, and asked why OIG was not talking to HR, but they were noncommittal. [Exhibit A.12 at 9] Appropriate supervision by IG Lavik as detailed in the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard should have resulted in inquiries to HR and consideration of whether it was appropriate to include in the *Stress Testing Report* criticism of Chicago RSB management's handling, with the support of HR, of MMG's failure to follow instructions relating to SIMM margin model inquiries.

Finally, the *Stress Testing Report* states that the SIMM approach imposes "further non-trivial data-reporting costs on industry," citing a June 19, 2017 Email from (b) (6), (b) (7)(C) [Exhibit 4.15 at 23, and Exhibit 4.69] The text of this email neither mentions the costs imposed on the industry from collecting SIMM models nor attempts to characterize them in any way.

The *Stress Testing Report's* omissions, without explanation, of facts reported and confirmed by several CFTC staff, along with misstatements of evidence contained in the inspection record leave the reader with the impression that RSB management lacked insight into data gaps in the SIMM model and arbitrarily stopped CFTC review of the SIMM model. A complete and objective presentation of evidence in the record, as required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence and Reporting standards, would have demonstrated that RSB management had initiated a pilot program to get a better understanding of SIMM data gaps and stopped MMG's work on the SIMM Margin model, which had to potential to duplicate the efforts of DSIO, the group with responsibility for the SIMM margin model. As the supervisor of the Stress Testing Inspection, IG Lavik should have performed a review of the evidence about the SIMM and the direction to MMG to stop work on it, to ensure the evidence was presented objectively and adequately supported the *Stress Testing Report's* conclusions.

e Evidence oes of Su ort t e Conclusion t at t e enial o Access to Firm Ris as a erritorial Act y C icago RS

To support the assertion that Chicago RSB leadership's actions were territorial, the *Stress Testing Report* details the denial of access to IT resources to MMG staff by Chicago RSB leadership and staff. [Exhibit 4.15 at 12-14] In particular, the *Stress Testing Report* claims one MMG staff member was denied access to a particular IT resource, Firm Risk, for a year and a half, and characterizes the efforts made by on MMG staff member to gain access to Firm Risk with a reference to a Dilbert cartoon.⁷⁸ *Stress Testing Report* at iv, 13. This presentation omits critical facts about the reason why the particular IT program, Firm Risk, was purchased, the

⁷⁸ Firm Risk is also known as and referred to as Global Risk by CFTC staff. The application is called Firm Risk in the *Stress Testing Report* and in this report, for consistency and clarity. Global Risk is a risk management platform that integrates hardware and software tools with data resources collected from all over the world. The Global Risk platform, is used worldwide by exchanges, banks, brokers dealers, clearing firms, regulators and professional traders. <https://globalrisk.com/>

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

process established for non-Chicago RSB staff to get access to Firm Risk, and the limitations of the CFTC's implementation of Firm Risk. Without including these critical facts, the presentation lacks objectivity and fails to acknowledge, let alone resolve, all facts gathered during the inspection.

It was explained to CFTC OIG inspectors that Firm Risk was purchased for use by Chicago RSB for its futures and options stress testing activities. [Exhibit 4.17 at 41-42; Exhibit 4.31 at 35-36; Exhibit 4.36 at 17] Over 20 members of Chicago RSB staff had access to Firm Risk in 2016-2017, but under the CFTC's license agreement for Firm Risk, only ten users can use the platform simultaneously. [Exhibit 4.17 at 39-41; Exhibit 4.36 at 8] [REDACTED] had responsibility for overseeing the operation of Firm Risk, ensuring it runs smoothly and facilitating the access of approved users of the system. [CIGIE Complaint 986-259 – 986-260; Exhibit 4.36 at 7-8, 19] As [REDACTED] supervisor, [REDACTED] screened requests for access to Firm Risk made by CFTC staff not involved in Chicago RSB's daily risk surveillance program. [Exhibit 4.17 at 40-41; Exhibit 4.36 at 7] [REDACTED] with assistance from [REDACTED] had the authority to decide on CFTC staff requests for access to Firm Risk, subject to review by [REDACTED] [Exhibit 4.31 at 36; Exhibit 4.36 at 7-9]

To ensure Chicago RSB staff had access to Firm Risk when needed, access to Firm Risk by other CFTC staff was limited and they were asked to provide an acceptable explanation of the reason they needed access to Firm Risk. [Exhibit 4.17 at 42-43; Exhibit 4.31 at 36; Exhibit 4.36 at 7-8] Another reason for the limits on Firm Risk access was explained to CFTC OIG inspectors. Firm Risk is a "thin client;" when working in Firm Risk, one user could change a parameter or risk assumption that could affect anyone else who uses the system after that user, which could ultimately have an impact on a core function of the daily risk surveillance group. [Exhibit 4.36 at 16-17] Although MMG is part of RSB, MMG staff did not automatically have access to Firm Risk because MMG was not routinely involved in stress testing futures and options, the function for which Firm Risk was purchased. [Exhibit 4.17 at 42]

These restrictions on access to Firm Risk appear to have been well placed. A Chicago RSB staff member, [REDACTED], had his access to Firm Risk terminated when he left RSB and joined MMG in July 2015. [Exhibit 4.70 at 1] When he discovered he had lost access to Firm Risk, he sought to regain access. The first time he requested access to Firm Risk in 2015, [REDACTED] admitted to CFTC OIG inspectors that there was no reason he needed access to support his MMG responsibilities. [Exhibit 4.19 at 35] This is not surprising. A margin model is designed to cover 99% of normal daily variations but not stress scenarios. [Exhibit 4.17 at 46] When evaluating a margin model, one does not need to run stress tests, which are designed to test stress scenarios. [Exhibit 4.17 at 46] Because generally, the evaluation of margin models does not involve stress testing, it was appropriate to carefully evaluate an MMG staff's request to access a limited IT resource that appears unrelated to the evaluation of margin models. Instead, this MMG staff member wanted access to Firm Risk to advance his career and be eligible for management positions that required familiarity with Firm Risk. [Exhibit 4.19 at 35]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

When [REDACTED] was not given access to Firm Risk in 2015, he “just let it slide.” [Exhibit 4.19 at 36] In May 2016, [REDACTED] made a request for access to Firm Risk for [REDACTED]. [Exhibit 4.70 at 9] [REDACTED] promptly replied, offering to run any stress tests that [REDACTED] needed. [Exhibit 4.70 at 10] [REDACTED] eventually provided a justification involving stress testing for futures and options but

[REDACTED] did not aggressively push for Firm Risk access. [Exhibit 4.70 at 10; Exhibit 4.17] At a meeting with (b) (6), (b) (7)(C), [REDACTED] asked about obtaining access to Firm Risk. [Exhibit 4.70 at 13] [REDACTED] had asked another MMG staff member about Firm Risk access for [REDACTED] and [REDACTED] was told that Firm Risk access was not necessary and as a result, [REDACTED] was not given access to Firm Risk. [Exhibit 4.70 at 13]

In October 2016, [REDACTED] submitted a request for access to Firm Risk to [REDACTED].⁷⁹ [Exhibit 4.70 at 14] A substantive justification was provided with this request. MMG was reviewing the London Clearing House and Chicago Mercantile Exchange margin models for their foreign exchange futures and foreign exchange options cross margining submissions, and [REDACTED] stated that Firm Risk would help price and back test production portfolios and validate the coverage numbers submitted by the derivatives clearing organizations. [Exhibit 4.70 at 14] Firm Risk would also help to validate the valuations for DTCC’s uncleared positions. [Exhibit 4.70 at 14] Initially, this request was deferred, as it had come to light that MMG planned to spend the majority of time on stress testing, and there was an ongoing review by RSB management of the of the proper focus of MMG’s work priorities. [Exhibit 4.70 at 17]

After management resolved the issues over MMG’s involvement in stress testing, in February 2017 [REDACTED] renewed his request for access to Firm Risk, with justification for the request. [Exhibit 4.70 at 18] The request was based on MMG’s review of the London Clearing House and Chicago Mercantile Exchange margin models, which both incorporated margining foreign exchange options, futures and other products. [Exhibit 4.70 at 18] To properly vet these models, MMG wanted to use Firm Risk to access current product portfolios and test the portfolios for margin adequacy, allowing MMG to independently validate derivative clearing organizations’ claims. [Exhibit 4.70 at 18] This request was given serious consideration by Chicago RSB staff. [REDACTED] immediately responded with questions about the proposed use because Firm Risk did not have the margin capabilities [REDACTED] described in his request. [Exhibit 4.70 at 19] Additionally, the day [REDACTED] made his February 2017 request, [REDACTED] offered to meet with [REDACTED] to get a better understanding of how [REDACTED] wanted to use Firm Risk so he could determine whether Firm Risk would help [REDACTED] with the proposed margin model review. [Exhibit 4.70 at 19; Exhibit 4.36 at 11-12]

[REDACTED] explained to CFTC OIG inspectors that he spent a significant amount of time with [REDACTED] to understand why he wanted to use Firm Risk and explained why Firm Risk was not appropriate for some margin model review tasks. [Exhibit 4.36 at 11-12] [REDACTED] observed that Firm Risk did not incorporate swaps at the time, and most of the margin models that were

⁷⁹ A CFTC OIG inspector characterized this request as a “real business justification.” [Exhibit 4.19 at 36]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

changing or being developed were on the swaps side. [Exhibit 4.36 at 13] ██████ explained to CFTC OIG inspectors that Firm Risk would not be helpful for back testing margin models. [Exhibit 4.36 at 13] To back test, one would have “to hold positions flat for a period of time that extend well beyond the capabilities of what Global Risk has in history.” [Exhibit 4.36 at 13] The CFTC’s implementation of Firm Risk is only configured to retain about three months of history, so using Firm Risk, one cannot back test “the year or two years or five years.” [Exhibit 4.36 at 13; CIGIE Complaint at 986-260] ██████ had indicated to ██████ that a larger range of historical data was preferred, and the CFTC’s implementation of Firm Risk would not provide the desired range of historical data. [CIGIE Complaint at 986-260] Additionally, because the CFTC Firm Risk users were not regularly monitoring the risk and profit/loss calculations for foreign exchange products, any inferences arising from using Firm Risk for back testing would need to be vetted to avoid using the output incorrectly. [CIGIE Complaint at 986-260] Accordingly, ██████ did not think this aspect of ██████ proposed use of Firm Risk would advance the margin model review project. [Exhibit 4.36 at 13; CIGIE Complaint at 986-260]

Further, ██████ explained that the CFTC’s Firm Risk implementation would advance one aspect of MMG’s margin model review efforts, and consequently ██████ was provided access to Firm Risk. Some of the margin model reviews MMG was conducting were for new products that would not have backwards looking data and would involve evaluating products that had not yet been cleared. [Exhibit 4.36 at 13] For this review, ██████ thought Firm Risk would be useful.

██████ recalled MMG was looking at a margin model for foreign exchange options and ██████ would derive benefit from looking at the foreign exchange pricing residing in Firm Risk. [Exhibit 4.36 at 13] After meeting with ██████, ██████ recommended that he be given access to Firm Risk. [Exhibit 4.70 at 25] ██████ concern about the inability of Firm Risk to support back testing was resolved because ██████ would obtain historical data from the clearinghouse. [Exhibit 4.70 at 25] Firm Risk would enable ██████ to change certain risk and position assumptions for a given contract offline. [Exhibit 4.70 at 25] At that time, ██████ still needed to check with the vendor and ask about using dummy positions offline and whether there was a way in the application to perform tests offline without interrupting other users. [Exhibit 4.70 at 25] ██████ was granted access to Firm Risk and the application was installed on his computer on March 2, 2017. [Exhibit 4.70 at 27; Exhibit 4.36 at 13]

A complete presentation of the evidence gathered during the inspection reveals that there were valid justifications for the delays in ██████ obtaining access to Firm Risk, and that the delays were not based on territoriality as asserted in the *Stress Testing Report*. When ██████ first requested access to Firm Risk in July 2015, he had no, and presented no, business justification for his request. Fifteen months later, ██████ made his first “real” request for Firm Risk access, a program purchased to support Chicago RSB’s daily stress testing. This request was deferred while the issue of whether MMG should devote the bulk of its time to stress testing was under consideration. Once this issue was resolved and ██████ presented a valid justification for his proposed use, the request was quickly evaluated and Firm Risk was provided when the CFTC staff member in charge of Firm Risk operational support found that Firm Risk would advance

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

MMG’s foreign exchange options project. The inclusion of a reference to a Dilbert cartoon in the *Stress Testing Report* to suggest delay and territoriality was unnecessary, not supported by the inspection record or a complete presentation of the factual record and is unusual and unprofessional. *Stress Testing Report* at 13.

Additionally, the *Stress Testing Report’s* suggestion that ██████ was not as qualified as ██████ (b) (6), (b) (7)(C) or ██████ to determine whether Firm Risk would be useful to MMG lacks support in the investigatory record. [Exhibit 4.15 at 15] ██████ detailed his experience with Firm Risk, his experience in working to enhance the program to meet the CFTC’s needs, and his daily management of Firm Risk and the team who reports to him to support the application. [Exhibit 4.36] ██████ specifically and substantively rejected a CFTC OIG inspector’s suggestion that his involvement in Firm Risk was limited. [Exhibit 4.36 at 19, 21] To the contrary, and contrary to the statement in the *Stress Testing Report*, ██████ did not have experience with Firm Risk, but had experience “with a product that was almost exactly like Global Risk.” [Exhibit 4.19 at 36; Exhibit 4.70 at 1] CFTC OIG inspectors did not ask ██████ during his interviews about his experience using Firm Risk, and there is no evidence in the inspection record that ██████ had experience using Firm Risk. While ██████ (b) (6), (b) (7)(C) and ██████ may have had more experience in evaluating margin models than ██████, the inspection record establishes that ██████ not only had more experience than ██████ (b) (6), (b) (7)(C) and ██████ with Firm Risk, but also that ██████ had more experience with the CFTC’s implementation of Firm Risk, which could be different from the version of Firm Risk used by other CFTC staff when they were traders. [CIGIE Complaint 986-260] Thus, the claims about ██████ inferior qualifications to make the assessments lack an evidentiary foundation.

f. The Claim that Chicago RSB Leadership Made Potentially Misleading Communications is Unsupported

The final section of the *Stress Testing Report* details what are claimed to be Chicago RSB leadership communications that may have given misleading impressions to the CFTC and the public about the robustness and independence of Chicago RSB’s stress testing program. *Stress Testing Report* at 23-25. The *Stress Testing Report’s* discussion of the Chicago RSB staff presentation at the June 20, 2017, CFTC Market Risk Advisory Committee meeting contains incomplete quotes and inaccurate statements. As a result, the *Stress Testing Report’s* conclusion that Chicago RSB staff may have made misleading statements about the robustness and independence of its stress testing program lacks sufficient evidentiary support as required by the CIGIE *Quality Standards for Inspection and Evaluation* Evidence standard. Similarly, the *Stress Testing Report’s* conclusion that the May 2017 DCR Monthly Report is misleading because it does not mention MMG’s work that had been discontinued five months earlier, and omitted discussion of how RSB’s work on the SIMM model did not emphasize the dependence on the industry, contrary to the “Fourth Level of Regulation,” lacks sufficient evidence to lead a

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

reasonable person to sustain the conclusion, as required in the CIGIE *Quality Standards for Inspection and Evaluation* Evidence standard.⁸⁰ Stress Testing Report at 25.

Finally, a full reading of the inspection record, with attention paid to complete statements at the June 2017 meeting, explanations of Level 4 Regulation by the authors of the article, the date of that article and the dates action was taken, establishes that factual data was not presented accurately, fairly and objectively as required by the CIGIE *Quality Standards for Inspection and Evaluation* Reporting standard. Adequate supervision by IG Lavik, as required by the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard, should have required compliance with these CIGIE *Quality Standards for Inspection and Evaluation*, and avoided the errors in this section of the *Stress Testing Report*.

1) Chicago RSB Staff Statements at the June 20, 2017 MRAC Meeting Were Not Misleading

The June 20, 2017, MRAC meeting was CFTC Commissioner Bowen's "baby" according to the person in charge of organizing it, (b) (6), (b) (7)(C). [Exhibit 4.71] (b) (6), (b) (7)(C) "wanted DCR to put on display the Commission's ability to supervise clearing organizations, and to provide examples of what we do here." According to (b) (6), (b) (7)(C), RSB was specifically asked to make a presentation on daily risk surveillance, which was consistent with (b) (6), (b) (7)(C) goals. [Exhibit 4.71; Exhibit 4.31 at 12; Exhibit 4.33 at 9] Accordingly, the title of the presentation was "Risk Surveillance Activities of CFTCs Division of Clearing and Risk."

[https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/generic/mrac_agenda062017.pdf]

First, the *Stress Testing Report* criticizes the presentations by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) for giving a high-level explanation of Chicago RSB's regulatory efforts and failing to explain which efforts fit into "Level 4" regulation. As (b) (6), (b) (7)(C) explained in the introduction to the RSB portion of the presentation, RSB "strives to conduct independent assessments of the risks posed by market participants, primarily through stress testing." CFTC Market Risk Advisory Committee meeting, June 20, 2017, transcript at 12, https://www.cftc.gov/sites/default/files/2018-08/mrac_062017_transcript.pdf. (b) (6), (b) (7)(C) further explained his aspirational statement by referring to a June 2017 article written by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) *The Four Levels of Financial Regulation*. <https://www.fia.org/articles/four-levels-financial-regulation>. To clarify what he meant by independent assessments, (b) (6), (b) (7)(C) stated: "my RSB colleagues referred to these independent assessments of these risks as the fourth level of

⁸⁰ Although the *Stress Testing Report* identifies "Chicago leadership" as making the potentially misleading communications, at the time (b) (6), (b) (7)(C) sent the DCR monthly report to Chairman Giancarlo, (b) (6), (b) (7)(C) was not part of Chicago leadership. Stress Testing Report at 25. In May 2017, (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C). [Exhibit A.21 at 2]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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financial regulation.” CFTC Market Risk Advisory Committee meeting, June 20, 2017, transcript at 12, 13.

Contrary to the statement in the *Stress Testing Report*, Level 4 regulation does not “encompass independent verification of the data and testing of assumptions by the regulator itself.” *Stress Testing Report* at 24. Nowhere in the article is Level 4 defined as including independent verification of data, as stated in the *Stress Testing Report*. Instead, Level 4 is defined more broadly and focuses on risk assessments. Level 4 “entails the use of proactive techniques by which the regulator conducts independent assessments of the risks posed by a regulated entity’s business.” *The Four Levels of Financial Regulation*; *Stress Testing Report* at 24. The article further explains that the CFTC uses Level 4 techniques in its oversight of cleared future and swaps markets, by using “information gathered at Levels 1 to 3 in combination with tools that it has obtained or developed internally to measure risks and evaluate whether these risks are being appropriately managed.”⁸¹ *The Four Levels of Financial Regulation*. The closest the article comes to discussing the independent verification concept highlighted in the *Stress Testing Report* is in the discussion of Level 3. The article states that a “potential shortcoming” of the techniques used at Level 3 is the “lack of independent verification of data and testing of assumptions by the regulator itself.”⁸² *The Four Levels of Financial Regulation*.

Next, the *Stress Testing Report* highlights in a negative fashion one of the details omitted by Chicago RSB staff. The *Stress Testing Report* is critical of the presentation because the presenters did not state Chicago RSB staff’s stress testing of certain financial products relies on sensitivities-based delta ladders received from industry. *Stress Testing Report* at 24. According to the *Stress Testing Report*, attendees were misled because the use of delta ladders supplied by the industry made Chicago RSB’s stress testing not independent according to the Level 4 rubric. *Stress Testing Report* at 23-24.

Chicago RSB staff described the delta ladder as a standardized calculation across the industry. Delta ladders are sent to the CFTC every day by DCOs (derivative clearing organizations), and it is basically what a DCO is sending its clients every day. [Exhibit 4.36 at 22] “Delta ladders are simple multiplication ... It was just the reporting to actually aggregate and view the results.” [Exhibit 4.36 at 34] A delta ladder is a fairly standard calculation, and there would not be

⁸¹ The *Stress Testing Report* attempts to bolster the assertion that the Chicago RSB staff’s stress tests are not independent assessments under the fourth level of regulation by relying on (b) (6), (b) (7)(C) belief that the use of independent analysis is misleading where stress testing relies on industry supplied ladders. [Exhibit 4.15 at 24] As noted, the fourth level of regulation is defined as including data collected from DCOs, and places its focus on the assessments performed by Chicago RSB staff. Accordingly, reliance on (b) (6), (b) (7)(C) beliefs is misplaced.

⁸² The *Stress Testing Report* misstates the article’s concerns about Level 3. The article states “a comprehensive reporting program coupled with a well-designed audit program may be insufficient to identify, measure and mitigate the risks faced by a financial institution,” and identifies “potential shortcoming of the techniques used at Level 3 is the lack of independent verification of data and testing of assumptions by the regulator itself.” *The Four Levels of Financial Regulation*. The *Stress Testing Report*, however, misstates the “potential shortcoming” of “Level 3” and concludes that “‘Level 3’ analysis is insufficient because it lacks independent verification of data and testing of assumptions by the regulator.” *Stress Testing Report* at 24, fn. 92.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

significantly different numbers if different people calculated them. [Exhibit 4.72 at 4] “I consider the Delta Ladders kind of a position. It’s just a position that’s easier to compare between firms and easier to aggregate.” [Exhibit 4.72 at 8] CFTC OIG inspectors asked why Chicago RSB staff didn’t calculate the delta ladders themselves because this would prevent the firms from failing to report information to the CFTC or to manipulate data or results. [Exhibit 4.72 at 9-10] [REDACTED] first explained that it would be hard to imagine the DCO manipulating these numbers, because the positions are the positions of traders and if the DCO manipulated those numbers, the DCO’s own numbers would not add up. [Exhibit 4.72 at 9-10] [REDACTED] further explained that because the positions were the trader’s positions, not the DCO’s positions, a DCO would have no incentive to manipulate them or fabricate information. [Exhibit 4.72 at 10] “We get the data from DCOs. I would agree that I wouldn’t receive position data from a trader who has an incentive to cover up risk.” [Exhibit 4.72 at 10]

There are numerous problems with the *Stress Testing Report’s* analysis of the independence of stress testing relying on delta ladder sensitivities. First, as explained above, contrary to the text of the *Stress Testing Report*, Level 4 does not require the independent verification of data. The article’s description of Level 4 event notes the Level 4 analysis uses the information gathered during Levels 1 through 3, which includes the delta ladders. Even if there was such a requirement as stated in the article, the article is a theoretical piece, not a regulation governing the CFTC and not binding on the CFTC or its staff.⁸³ Accordingly, Chicago RSB staff presenters were not required by CFTC rules or regulations to explain how Chicago RSB staff’s stress testing fit into fourth level of regulation described in the article written by [REDACTED] and [REDACTED]. Reference to Level 4 was purely illustrative and a refinement of [REDACTED] aspirational statement that RSB “strives to conduct independent assessments of the risks posed by market participants...” Thus, there is nothing misleading about his reference to Level 4.

More importantly, the authors of the article and others explained to CFTC OIG inspectors how Chicago RSB staff’s use of delta ladders was an independent assessment and did fit within the Level 4 theory. Specifically, [REDACTED] explained to CFTC OIG inspectors how the Chicago RSB assessments using delta ladders were independent and fit within the Level 4 concept. When asked about independence, [REDACTED] stated:

(b) (6), (b) (7)(C), (b) (5)

⁸³ Had CFTC OIG inspectors interviewed the Chicago RSB staff that were criticized, the inspectors would have learned that they were unfamiliar with [REDACTED] and [REDACTED] article, which was published 12 days before their MRAC presentations. [Exhibit A.23 at 4; Exhibit A.31; CIGIC Complaint 986-273]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.31 at 5]

When asked about the source of the delta ladders and how they fit into the Level 4 theory, [REDACTED] stated:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.31 at 6] [REDACTED] did acknowledge that the delta ladders were provided to the CFTC by the DCOs. But [REDACTED] also explained the CFTC's verification process and why the CFTC had confidence in the delta ladders:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.31 at 6]

With respect to the Level 4 theory, [REDACTED] further explained:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.31 at 7]⁸⁴

[REDACTED] while noting the delta ladders were part of the data submitted by the DCOs, offered a consistent explanation to CFTC OIG inspectors about the independence of Chicago RSB staff's

⁸⁴ [REDACTED] conceded that MRAC attendees, due to the presentation's time constraints, may not have understood everything as he explained it to CFTC OIG inspectors. [Exhibit 4.31 at 7] But to suggest that somehow the attendees were misled is not well founded.

risk surveillance: “the concept of independent is that we’re not taking the stress test results from LCH, and CME and ICE Clear Credit and ICE Europe and saying oh this is the risk we’re running our own analysis based on that and that’s the independent [analysis].” [Exhibit 4.18 at 17] [REDACTED] after noting that Chicago RSB staff does not recalculate the delta ladders, described the delta ladder validation process with two examples. First, [REDACTED] noted: “We don’t recalculate them we’ve seen cleared ones that have been provided that match up to what we’ve seen when firms provide us the delta ladders...we share analysis with firms like we share stress test analysis or we share their DVO1 with the firms we say here’s your position and then you know if they would get back to us and say no that’s not our position.” [Exhibit 4.18 at 17] [REDACTED] described another way the delta ladders were indirectly validated: “The other I think indirectly the way that we validated is we received weekly stress test results from LCH which are full revaluation so when we do our stress testing and we can compare itself immaterially I mean like LCH like say in a full revaluation we’ll get this weekly stress testing and say 1.5 billion and our results are like 1.48 billion.” [Exhibit 4.18 at 18]

Furthermore, there is apparently little difference between running a stress test using delta ladders and running a full revaluation stress test (without delta ladders). [REDACTED] described the differences between a full valuation and a sensitivities-based approach to stress testing:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.25 at 2-3]

Indeed, while recognizing that full valuation is the ideal model, [REDACTED] noted that for linear products, the sensitivity approach and full valuation stress tests are almost the same. [Exhibit 4.25 at 4-5] Consistent with [REDACTED] observation about linear products, [REDACTED] described a recent discussion with LCH (London Clearing House) [Exhibit 4.33 at 17] After [REDACTED] noted the CFTC’s stress test using delta ladders “pretty much” matched LCH’s full revaluation stress test, the head of risk management at LCH told [REDACTED] he imagined it would because “these are pretty much linear products.” [Exhibit 4.33 at 17] MMG’s [REDACTED] confirmed that stress testing of linear products relying delta ladders is an approach that “works.” [Exhibit A.30 at 3] And NERA, while acknowledging full valuation is generally preferred in the literature, “approximation using delta ladders for interest rate swaps is not unreasonable.” Stress Testing Report, NERA Review at 4.

The *Stress Testing Report* also criticizes the use of delta ladders in stress testing because they are not independently validated. As described above, both [REDACTED] and [REDACTED] explained to CFTC OIG how the delta ladders were independently validated. The delta ladders also have been

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

validated by comparing the results of a stress test using delta ladders with a full revaluation stress test. In January 2015, (b) (6), (b) (7)(C) formerly a Chicago RSB staff member now part of MMG, analyzed the effectiveness of stress testing using delta ladders. He concluded that “using delta ladders to conduct stress testing for IRS [interest rate swaps] portfolios is an acceptable and expedient alternative to conducting stress testing using full revaluation techniques. The analysis found that 100% of the accounts had delta ladder results within 10% of the DCOs full revaluation results and 90% of the accounts fell within 5% of the results despite the fact that many of the stress tests in the analysis used large shifts for the major currencies.” [CIGIE complaint at 986-232]

(b) (6), (b) (7)(C) described his confidence in the accuracy of the stress tests using delta ladders to the CFTC OIG inspectors:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.72 at 4-5]

Other Chicago RSB staff, recognizing that Chicago RSB used delta ladders in daily IRS stress testing, explained that Chicago RSB staff’s IRS stress tests were independent assessments. After CFTC OIG inspectors expressed their familiarity with the (b) (6), (b) (7)(C) article and the fourth level of regulation, CFTC OIG inspectors asked (b) (6), (b) (7)(C) how RSB’s assessments of IRS could be considered independent because Chicago RSB staff relied on delta ladders submitted by DCOs. (b) (6), (b) (7)(C) replied: “Because we determine the stress shocks... And that is when you think about it that is the big amount. I mean whether you shock at rates 100 or 150 basis point is what’s important not whether the Delta is 600 or 601. So I view the Delta estimates as a relatively trivial matter and the true the independent risk assessment comes from our actually determining which historical scenarios to use and how much to shock things... I should say we

⁸⁵ When asked whether he was confident that the full revaluation the CFTC received from the clearinghouses were accurate, (b) (6), (b) (7)(C) replied: “I am confident that the CME and LCH know how to stress test their products. They have quants and they have sophisticated software and I am confident that they can full reval[uate] as least as well as what we can do.” [Exhibit 4.72 at 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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wouldn't use Delta Ladders on uncleared exotic instruments right. We understand the limitation of Delta Ladders and it's just not a limitation for cleared IRS today." In response to CFTC OIG inspectors' continued exploration of Chicago RSB staff's reliance "on DCOs for our inputs into our model," (b) (6), (b) (7)(C) explained: "Well I mean we rely on DCO for positions too I mean we're obviously I consider the Delta Ladders kind of a position. It's just a position that's easier to compare between firms and easier to aggregate." [Exhibit 4.72 at 7-8] Similarly, MMG (b) (6), (b) (7)(C) explained to CFTC OG that using delta ladders is close to a full revaluation, "especially given that you don't have the resources to build your own full reval[uation] model, it's pretty d*** good." [Exhibit 4.19 at 17] He also explained that using delta ladders and applying "your own stresses" and "creating scenarios" is different from using the DCO's "canned" stress tests. [Exhibit 4.19 at 17]

Finally, (b) (6), (b) (7)(C) explained that in his judgment as a manager, using delta ladders was appropriate because the cost of the alternative, full revaluation, was too high:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.31 at 38]

The *Stress Testing Report* failed to present the numerous explanations CFTC OIG inspectors received from MMG and Chicago RSB staff about the independence of the stress tests run by Chicago RSB using delta ladders, and also ignored evidence pertaining to the validity, reliability and the appropriate use of delta ladders in stress testing. Also absent from the *Stress Testing Report* is any acknowledgement or basis for rejecting the explanations by the authors of the article entitled "The Four Levels of Financial Regulation" of how Chicago RSB staff's stress testing using delta ladders fit within the description of the fourth level of regulation This failure led to the conclusion that the presentation was misleading. Lastly, the *Stress Testing Report* failed to note that the presentation at the MRAC meeting was cut short due to a lack of time. [Exhibit A.33 at 4]⁸⁶ A full, fair and accurate presentation of the inspection record would have

⁸⁶ RSB staff was only given 40 minutes to present numerous topics, and the presentation exceeded this time limit [CIGIE Complaint at 986-175] To meet this time limit, (b) (6), (b) (7)(C) had to reduce the planned 47 slide presentation to 30 slides, and as a result he could not fully explain all the details of stress testing. [Exhibit A.33 at 4] (b) (6), (b) (7)(C) cannot be faulted for including what he thought was necessary to explain Chicago RSB's risk surveillance program and omitting finer details he did not have time to explain.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

shown that this conclusion lacked the sufficient evidentiary foundation required by the CIGIE *Quality Standards for Inspection and Evaluation* Professional Judgement, Evidence and Reporting standards.

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The *Stress Testing Report* also asserts that (b) (6), (b) (7)(C) was not fully forthcoming in his answer to a question posed by Marcus Stanley of Americans for Financial Reform. *Stress Testing Report* at 24. The *Stress Testing Report* only reaches this conclusion because the complete question posed was not accurately quoted. The *Stress Testing Report* describes the question posed as “asking whether risk surveillance stress testing was ‘dependent on the clearinghouse internal models in order to translate . . . the stress testing scenarios into losses’ and how RSB staff ‘check, for example, the correlation assumptions across risk classes and those models?’” *Stress Testing Report* at 24. The *Stress Testing Report* then asserts that a “fully forthcoming answer” might have mentioned Chicago RSB stress testing involves scaling estimates supplied by industry participants, and finds fault with (b) (6), (b) (7)(C) interpreting the question as a general one about clearinghouse margin models. *Stress Testing Report* at 24-25. But, the focus of the question posed was margin models. The complete question was:

(b) (6), (b) (7)(C), (b) (5)

CFTC’s Market Risk Advisory Committee meeting, June 20, 2017, recording available at <https://www.youtube.com/watch?v=9VJOkuytWcw&feature=youtu.behttps%3A%2F%2Fwww.cftc.gov%2FExit%2Findex.htm%3Fhttps%3A%2F%2Fyoutu.be%2F9VJOkuytWcw>. See also CFTC Market Risk Advisory Committee meeting, June 20, 2017, transcript at 46. (emphasis added)

After reviewing Mr. Stanley’s entire question, it is understandable that (b) (6), (b) (7)(C) interpreted the question as being about margin models; Mr. Stanley started the question by stating he would like to get a better understanding of the oversight of clearinghouse margin models.⁸⁷ (b) (6), (b) (7)(C) explained to CFTC OIG inspectors that margin models and stress testing are “very different things” and the correlation assumptions used in margin models are separate from stress testing. Because margin models “are not his area,” he did not provide a detailed answer to Mr. Stanley’s question about margin models. [Exhibit 4.72 at 14-15] Mr. Stanley did not bring up delta ladders

⁸⁷ An MMG staff member was in the audience and interpreted Mr. Stanley’s question as related to margin models. [Exhibit 4.73 at 17]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

in his question and delta ladders were not mentioned in RSB's presentation. Consequently, it was not misleading, as claimed in the *Stress Testing Report*, for [REDACTED] to attempt to respond to a question about margin models to refer to MMG and not mention delta ladders; to insert delta ladders into the response would have been out of place and could have led to confusion. Further, when in response, Chicago RSB staff [REDACTED] described the Margin Model group and their oversight of margin models, Mr. Stanley did not appear confused, but appeared satisfied with this answer and said he would follow up with [REDACTED] so he could talk to the margin model group. CFTC Market Risk Advisory Committee meeting, June 20, 2017, transcript at 47. Thus, there is insufficient evidence to support the *Stress Testing Report's* conclusion that [REDACTED] answer focusing on oversight of margin models was not fully forthcoming or misleading. As the supervisor on the Stress Testing inspection, IG Lavik should have reviewed the transcript of the June 17, 2017 MRAC meeting and compared it with the text of the *Stress Testing Report*. This review would have disclosed the incorrect slant of the *Stress Testing Report* against Chicago RSB management resulting from the incomplete quote of the question posed at the MRAC meeting. This erroneous conclusion could have been avoided if IG Lavik had followed the CIGIE *Quality Standard for Inspection and Evaluation* Quality Control Standard and adequately supervised the CFTC OIG inspectors.

Two days after his MRAC presentation, [REDACTED] received an email from CFTC [REDACTED], congratulating him on his MRAC presentation and asking [REDACTED] to go before Congress and present his presentation, along with the presentations made by [REDACTED] and [REDACTED] [Exhibit A.31 at 6-7] [REDACTED] would have liked to have done this, but he was asked on a Friday to make the three presentations the following Monday. [Exhibit A.31 at 6-7] [REDACTED] did not feel he could master the other two presentations over the weekend, so he declined. [Exhibit A.31 at 6-7] Based on the MRAC presentation and another October 2017 presentation [REDACTED] made to foreign regulators, Chairman Giancarlo awarded [REDACTED] the Distinguished Service Award.⁸⁸ [Exhibit A.31 at 6-7] As CFTC OIG inspectors never interviewed [REDACTED] this information was not included in the *Stress Testing Report*, contrary to the teachings of the CIGIE *Quality Standards for Inspection and Evaluation* Evidence and Reporting standards.

3) There Was No Attempt to Mislead the Commission in DCR's May 2017 Monthly Report

The *Stress Testing Report* concludes with criticism of a May 1, 2017, DCR Monthly Report submitted by [REDACTED] to Chairman Giancarlo. *Stress Testing Report* at 25 and [Exhibit 4.47] The report contains a summary of the work of DCR's four branches and the Chief Counsel's office. To support the claim that Chicago management made misleading statements about the stress

⁸⁸ Chairman Giancarlo told [REDACTED] he did a great job did on that presentation and the Securities and Exchange Commission Chairman Jay Clayton said it was the best presentation he saw at that conference. [Exhibit A.31 at 7] [REDACTED] believes these accolades are evidence that the presentations were good and Chicago RSB staff was not lying to the public as claimed in the CFTC OIG *Stress Testing Report*. [Exhibit A.31 at 7]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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testing program to the CFTC, the *Stress Testing Report* notes the May 2017 DCR monthly report makes no mention of MMG’s “work on independent, full-revaluation stress-testing using Part 45 data.” *Stress Testing Report* at 25. It is not surprising such work is not mentioned. On December 23, 2016, MMG was directed to discontinue all work on stress testing for cleared and uncleared products. [Exhibit 4.53] Indeed, the *Stress Testing Report* addresses this termination from multiple perspectives. There is no factual basis supporting the claim that management was attempting to mislead the CFTC because in May 2017 there was nothing to report: in December 2016 MMG had been directed to cease the very activity the *Stress Testing Report* claims should have been described in the May 2017 monthly report.

The *Stress Testing Report* also criticizes the May 1, 2017, DCR Monthly Report for mentioning Chicago RSB’s work on the uncleared SIMM margin model while discontinuing MMG’s substantive review of the SIMM Model later that month, and not emphasizing that an unidentified project depends on the industry contrary to the fourth level of regulation. *Stress Testing Report* at 25. First, as described above, the *Stress Testing Report’s* position that MMG, as the group with expertise in margin models, should review the SIMM margin model is without evidentiary foundation. As was explained to CFTC OIG, review of the SIMM model was the responsibility of a different CFTC division, the Division of Swap Dealer and Intermediary Oversight, not DCR and MMG. Second, discussion of the Level 4 theoretical approach would be out of place in a monthly report that is meant to provide the CFTC Chairman with an update of the DCR staff activities. Moreover, emphasis on Level 4 regulation would have been confusing, if not impossible, considering [REDACTED] and [REDACTED] article was not published until June 2017, a month after the May 2017 Report was submitted to Chairman Giancarlo. In any event, as described above, in [REDACTED] view, stress testing using delta ladder sensitivities is independent because Chicago RSB staff conduct their own stress tests using scenarios selected by RSB, and do not rely on the stress tests supplied by the industry. The evidence in the inspection record would not lead a reasonable person to sustain the *Stress Testing Report’s* conclusion that [REDACTED] May 2017 DCR Report may have misled the Commission about the robustness and independence of Chicago RSB’s stress testing program.

g. CFTC Management Views and Chicago RSB Staff Response to the *Stress Testing Report*

The draft of the *Stress Testing Report* was issued on February 26, 2018. [REDACTED] told [REDACTED] about the draft report, and [REDACTED] sent the draft report to [REDACTED] and [REDACTED] [Exhibit A.15 at 8] [REDACTED] was upset when he read the draft *Stress Testing Report*, and knew he had to contact the IG. After he got the draft report, the Chicago RSB [REDACTED] and [REDACTED] - met to talk about how to respond.⁸⁹ [Exhibit A.15 at 8-9] A written response was

⁸⁹ After [REDACTED] read a copy of the draft report, he sent an email to [REDACTED] in which he pointed out numerous problems. [Exhibit A.33 at 4] He also asked to see a copy of the report before it was finalized to ascertain whether the inspectors fixed the issues he identified and accurately portrayed his positions. [Exhibit A.33 at 4] [REDACTED] never saw another version of the report and the issues he identified to [REDACTED] were never corrected or addressed in

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

prepared by RSB staff and sent to [REDACTED] [Exhibit A.15 at 9] [REDACTED] knew [REDACTED] and [REDACTED] were preparing a joint response to the draft *Stress Testing Report*, so [REDACTED] decided to prepare his own separate response. [Exhibit A.35 at 5] [REDACTED] compiled a staff rebuttal to the *Stress Testing Report*, so [REDACTED] sent his final comments in a June 12, 2018 Memorandum, to [REDACTED] for him to send to the CFTC OIG. [Exhibit A.35 at 5]

[REDACTED] related a foggy memory that the Chicago RSB team looked to him for some guidance on how to respond to the *Stress Testing Report*. [Exhibit A.4 at 7] [REDACTED] approach was to be hands-off in his interactions with both Chicago RSB staff and the IG. [Exhibit A.4 at 7] [REDACTED] received the Chicago RSB response prior to July and read it but told FCC OIG he did not recall what he thought about the response. [Exhibit A.4 at 7] [REDACTED] delayed giving comments on Chicago RSB staff's written response and ultimately [REDACTED] never provided comments on the material prepared by Chicago RSB. [Exhibit A.15 at 9] According to [REDACTED] he did not want to get in the way of staff action. [Exhibit A.4 at 7]

No CFTC management response to the *Stress Testing Report* was ever written. [Exhibit A.9 at 7] The feeling was that if CFTC management provided a response, the response would highlight the *Stress Testing Report* and make it newsworthy. [Exhibit A.4 at 7] Giancarlo did not intend to issue a formal management response or formal rebuttal; Giancarlo wanted to see how much attention the *Stress Testing Report* got, and then decide how much of a response management should make. [Exhibit A.9 at 8] If the *Stress Testing Report* got little attention, a formal management response would only bring the *Stress Testing Report* to the public's attention and Giancarlo did not want attention focused on the *Stress Testing Report*.⁹⁰ [Exhibit A.9 at 8] There was also concern about the *Stress Testing Report's* impact on ongoing discussions with European regulators about stress testing. [Exhibit A.9 at 4] At the time, the European market regulator was making the case that the CFTC could not be the only entity regulating swaps, so Giancarlo was also concerned about keeping the intra-agency fight out of the public realm. [Exhibit A.9 at 4; Exhibit A.4 at 7]⁹¹

The lack of a public response by CFTC management to the *Stress Testing Report* should not be taken as a sign that CFTC management completely agreed with the *Stress Testing Report*. A kernel of the *Stress Testing Report* that CFTC management agreed with was that stress testing was not as good as it could be. [Exhibit A.10 at 7] The CFTC had asked the Chicago RSB team to come up with stress testing and they did; this was the baseline, and staff was building on it.

the final released report. [Exhibit A.33 at 4]

⁹⁰ [REDACTED] recalled that Giancarlo wanted the report to go out and make as little splash as possible. [Exhibit A.4 at 7] Based on his discussions with [REDACTED], [REDACTED] learned that Giancarlo felt that the subjects and the events of the *Stress Testing Report* were not his program nor did they occur under his leadership (the actions occurred under the prior CFTC Chairman) and [REDACTED] was uncertain whether current CFTC management wanted to defend the prior CFTC management. [Exhibit A.4 at 7]

⁹¹ There was scant media coverage of the *Stress Testing Report*, and only the outlets MLEX and LEX covered the report's release. [Exhibit A.4 at 7] Consequently, the *Stress Testing Report* did not have much impact on the discussions with the European regulators. [Exhibit A.4 at 7]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

[Exhibit A.10 at 7] Then, IG Lavik says Chicago RSB was doing stress testing incorrectly. [Exhibit A.10 at 7] CFTC management knew stress testing had to get better and wanted to work to make it better. [Exhibit A.10 at 7] [REDACTED] thought IG Lavik was unprofessional and wrong.⁹² [Exhibit A.10 at 7] In retrospect, [REDACTED] thinks IG Lavik should have been told that the report was bogus and nothing would be done. [Exhibit A.10 at 7] CFTC management did not take the *Stress Testing Report* seriously. [Exhibit A.10 at 9] IG Lavik said people needed to be moved, but [REDACTED] reply was that there were no funds available to do this. [Exhibit A.10 at 7]

The *Stress Testing Report* was consistent with the narrative that [REDACTED] thought [REDACTED] and [REDACTED] had developed - that the balance of the equities was with MMG, with [REDACTED] as the aggrieved party, and [REDACTED] and [REDACTED] as wrong-doers.⁹³ [Exhibit A.1 at 8] From what [REDACTED] saw of DCR staff, [REDACTED] did not share CFTC OIG's view. [Exhibit A.1 at 8] With respect to *Stress Testing Report's* conclusion that Chicago RSB retarded the development of CFTC's stress testing capabilities, [REDACTED] impression was the opposite. [Exhibit A.1 at 9] [REDACTED] understood [REDACTED] and [REDACTED] promoted stress testing and went above and beyond the call of duty, working long hours to develop a world class stress testing program. [Exhibit A.1 at 9] With respect to *Stress Testing Report's* conclusion that Chicago RSB undermined efforts to improve the usability of uncleared swaps data, [REDACTED] noted that incorporating uncleared swaps into risk analysis was one of biggest data challenges faced by DCR. [Exhibit A.1 at 9] While there was further work to be done, it was never apparent to [REDACTED] that Chicago RSB was undermining efforts to make improvements. [Exhibit A.1 at 9] [REDACTED] thought one could always do better at stress testing, but the *Stress Testing Report's* statement that the leadership retarded stress testing development "missed the forest for the trees." [Exhibit A.4 at 7]

Giancarlo agreed to some extent with the *Stress Testing Report's* conclusion that leadership retarded stress testing development, but not for the reasons stated in the Report. [Exhibit A.9 at 7] With the loss of [REDACTED], Chicago RSB was somewhat adrift and lost some of its effectiveness during that time. [Exhibit A.9 at 7] The loss of progress was not due to malfeasance that an IG would typically uncover; instead, it was the result of trying to find the right person for the job. [Exhibit A.9 at 7] Former CFTC Chairman Massad and Giancarlo had looked for the best leader, but it was challenging and took time to find an excellent leader like [REDACTED]. [Exhibit A.9 at 7] But Giancarlo did not agree with the *Stress Testing Report*. Reportedly, Giancarlo told a Town Hall meeting in Chicago that the *Stress Testing Report* was "complete rubbish" and that if asked, he would say that to Congress.⁹⁴ [Exhibit A.10 at 9; Exhibit

⁹² According to [REDACTED] IG Lavik thought that because [REDACTED] was working with him, IG Lavik was right. [Exhibit A.10 at 8]

⁹³ [REDACTED] agrees with the *Stress Testing Report's* narrative and believes Chicago RSB's bureaucratic territoriality led to the end of MMG's stress testing efforts. [Exhibit A.24 at 9] [REDACTED] perspective is based on his perceptions that Chicago RSB staff lacked the technical skill necessary to run stress tests, did not understand uncleared data and did not want MMG taking initiative because it would make Chicago RSB look bad. [Exhibit A.24 at 3] FCC OIG found [REDACTED] interview responses did not add probative evidence to refute the facts we found.

⁹⁴ [REDACTED] emailed Giancarlo after the Town Hall to express his appreciation for all Giancarlo had done for the

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

A.33 at 4] Giancarlo recalls discussing the *Stress Testing Report* at a Chicago CFTC Town Hall meeting prior to his departure from the CFTC but does not recall saying that the *Report* was complete rubbish. [Exhibit A.9 at 8] Giancarlo thought this statement was stronger than something he would say, but he did recall saying the *Report* had been long in the making, and that he disagreed with it. [Exhibit A.9 at 8] Giancarlo may have told the Town Hall attendees that he would have been willing to brief Congress, if Congress had asked questions, but he did not get any questions from Capitol Hill. [Exhibit A.9 at 8]

██████████ permitted the staff to respond, provided the staff response was not treated as the official CFTC management response. [Exhibit A.4 at 7] On July 30, 2018, ██████████ telephoned ██████████ and ██████████ and told them to send their response to the *Stress Testing Report* to the IG immediately, because OIG was issuing the *Stress Testing Report*. [Exhibit A.15 at 9] ██████████ sent Chicago RSB management's 95-page response to the draft *Stress Testing Report*, containing material from ██████████ ██████████ ██████████ and ██████████ to DIG Ringle on July 30, 2018, and asked to meet with her. [Exhibit A.15 at 9, CIGIE Complaint, 986-171 thru 986-266] On August 7, 2018 DIG Ringle replied to ██████████ said she had read his "paper," and told ██████████ he could either send the complaints to whoever he wanted, CIGIE or present them to the Commission.⁹⁵ [Exhibit 4.74; Exhibit A.15 at 9; Exhibit A.28 at 22]

On August 8, 2018, ██████████ replied to DIG Ringle, requesting a meeting with DIG Ringle and other Chicago RSB staff to discuss the Chicago RSB staff response. [Exhibit 4.75] DIG Ringle gave FCC OIG two reasons why she did not want to meet with Chicago RSB staff. During her FCC OIG interview, DIG Ringle stated did not want to meet with Chicago RSB staff because the report had already been issued. [Exhibit A.28 at 22] In DIG's Ringle's follow up responses, she stated she declined to meet with Chicago RSB staff in August 2018 because she would be organizationally conflicted. [Exhibit A.28 at 19-20, fn 21] No CFTC OIG staff met with ██████████ or any Chicago RSB staff to discuss their concerns. [Exhibit A.15 at 9]

IG Lavik recalled seeing and reviewing the Chicago RSB staff response, and discussing this response with ██████████ ██████████ and DIG Ringle. [Exhibit A.19 at 16] According to Lavik, ██████████ was on detail at the time but was still involved in the stress testing matter. [Exhibit

Risk Surveillance group in Chicago, and in particular "to thank you [Giancarlo] for the comments about the IG report." [Exhibit 4.76; Exhibit 4.77]

⁹⁵ CFTC OIG's response to Chicago RSB management response to the *Stress Testing Report* is similar to its response to ██████████ offer to provide further explanation to CFTC OIG about the problems he saw with MMG's May 2016 PowerPoint presentation. During his CFTC OIG interview, ██████████ offered and agreed to sit for another interview to explain his rationale for his criticism of MMG's May 2016 PowerPoint presentation [Exhibit 4.31 at 37] CFTC OIG staff told ██████████ they would get back to him for this, but CFTC OIG staff never contacted ██████████ [Exhibit 4.31 at 37; Exhibit A.21 at 9] ██████████ considers this a serious flaw. "Shouldn't CFTC OIG want to hear the explanation of the decision maker on the report?"; ██████████ thought CFTC OIG should have questioned his decision making if they were really interested in figuring out what had happened. [Exhibit 4.31 at 9] Similarly, CFTC OIG should have carefully reviewed the responses to the *Stress Testing Report* from the founders of CFTC's risk surveillance program who were conducting both daily and supervisory stress tests if they were interested in figuring out stress testing at the CFTC.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

A.19 at 16] [REDACTED] strongly and repeatedly affirmed to FCC OIG staff that he had no recollection of reviewing the Chicago RSB staff response to the *Stress Testing Report*. [Exhibit A.25 at 8 and 9] IG Lavik asked [REDACTED] to look at the Chicago RSB response, but because [REDACTED] was on detail to another agency, the CFTC's front office did not want [REDACTED] involved in stress testing. [Exhibit A.25 at 9] [REDACTED] stated he dropped the *Stress Testing Report* and focused on his detail. [Exhibit A.25 at 9] Similarly, [REDACTED] did not recall reading the July 30, 2018 Chicago RSB staff response to the *Stress Testing Report*.⁹⁶ [Exhibit A.32 at 12]

Correspondence among CFTC OIG staff discloses that the Chicago RSB staff response to the *Stress Testing Report* was read by [REDACTED] and DIG Ringle, and they formed opinions about the response. In an email message from [REDACTED] to DIG Ringle on August 1, 2018 at 8:43 pm EDT, [REDACTED] states "I just read [REDACTED] response. [sic] It is really amazing how dishonest they are. I plan on giving Roy [Lavik] a call on my way into the office tomorrow to see what he wants to do." [Exhibit 4.78] In another message from [REDACTED] to DIG Ringle on August 1, 2018 at 9:06pm EDT, [REDACTED] asks "Did you happen to read [REDACTED] response? It's riddled with lies. I can't believe they put that in print." [Exhibit 4.79] In an email message from [REDACTED] to IG Lavik, DIG Ringle, and [REDACTED] on August 3, 2018, [REDACTED] states that "I am happy to go over everything whenever you want. It's probably best I come in person so we can look through the report and the response side by side." [Exhibit 4.80] In an August 3, 2018 email message from DIG Ringle to IG Lavik, [REDACTED] and [REDACTED] DIG Ringle acknowledged reading the RSB staff response, noting that since she was not involved in the interviews and fact finding and was not a stress testing expert, she did not know whether the issues raised were well taken or not, except in a few instances, where she found their issues lacking. [Exhibit 4.81] In the same email, she indicated she would like to hear from [REDACTED] and [REDACTED] and suggested a conference call with IG Lavik. [Exhibit 4.81] On August 8, 2018, [REDACTED] also distributed the Chicago RSB response, without requesting permission from the authors, to MMG staff and [REDACTED] seeking feedback on the Chicago RSB response.⁹⁷ [Exhibit 4.82]

In response to statements in the Chicago RSB staff response that there were inaccuracies in the report, IG Lavik's examination of those points consisted of talking to [REDACTED] and [REDACTED] [Exhibit A.19 at 16] IG Lavik asked [REDACTED] and [REDACTED] if there was anything in the RSB staff response to the *Stress Testing Report* that IG Lavik should worry about. [Exhibit A.19 at 16] "[REDACTED] and [REDACTED] were not impressed with arguments from [Chicago RSB] management." [Exhibit A.19 at 14] After talking to [REDACTED] and [REDACTED] IG Lavik had no problems with the *Stress Testing Report*, and IG Lavik felt comfortable with the "important things." [Exhibit A.19 at 16] As to the specific points made by [REDACTED] and [REDACTED] according to IG Lavik, OIG

⁹⁶ [REDACTED] did not recall whether the Chicago RSB staff response pointed out factual inaccuracies in the *Stress Testing Report*, and whether MMG was asked to comment on the Chicago RSB staff response. [Exhibit A.32 at 12] [REDACTED] was not aware of anyone sharing the Chicago RSB staff response outside OIG, specifically noting he did not recall any discussions of these matters or whether any of these things occurred. [Exhibit A.32 at 12]

⁹⁷ It is unclear from the inspection record whether MMG staff or [REDACTED] provided feedback on the Chicago RSB management response to the *Stress Testing Report* to OIG, and whether any such feedback was presented to IG Lavik.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

“disregarded the response.”⁹⁸ [Exhibit A.19 at 16] Accordingly, Lavik took no action in response to these claims. [Exhibit A.19 at 14]

(b) (6), (b) (7)(C) stated that IG Lavik and DIG Ringle decided CFTC OIG would not respond to Chicago RSB staff’s claims. [Exhibit A.32 at 12] DIG Ringle advised (b) (6), (b) (7)(C) CFTC OIG did not consider or respond to Chicago RSB staff’s response because it was not the “official” response from management. [Exhibit A.17 at 4; Exhibit 4.83 at 2; Exhibit 4.84] (b) (6), (b) (7)(C) thought CFTC OIG may not have responded because his comments may have been viewed as not the official CFTC response to the *Stress Testing Report*. [Exhibit A.15 at 9] In an August 2, 2018 email message from DIG Ringle to (b) (6), (b) (7)(C) DIG Ringle states “I think it would make sense to let (b) (6), (b) (7)(C) know our thoughts; however, he previously stated the staff response was not approved by management and did not represent management’s views.” [Exhibit 4.85] Moreover, CFTC OIG considered the *Stress Testing Report* final after it was issued. In an August 7, 2018 Lync chat application discussion between DIG Ringle and (b) (6), (b) (7)(C) DIG Ringle stated the *Stress Testing Report* was final and would not be changed at that time; (b) (6), (b) (7)(C) agreed. [Exhibit 4.86] IG Lavik acknowledged that Chicago RSB staff did provide a response to CFTC OIG, but the response was not included in the *Stress Testing Report*. [Exhibit A.19 at 16] IG Lavik stated that no action was taken after the report was issued on July 30, 2018, but the Commissioners, both Republican and Democratic “bought off on it.” [Exhibit A.19 at 16]

IG Lavik’s handling of the Chicago RSB response to the *Stress Testing Report* did not follow the CIGIE *Quality Standards for Inspection and Evaluation*. The arguments and evidence provided in the Chicago RSB managers’ response is from CFTC staff who developed, refined and have complete knowledge of the CFTC risk surveillance program, in contrast to evidence relied upon by CFTC OIG from CFTC staff whose knowledge is limited to mathematical models used in stress testing. An evidentiary guideline in the CIGIE *Quality Standards for Inspection and Evaluation* states “testimonial evidence obtained from an individual who is not biased or who has complete knowledge about the area usually is more competent than testimonial evidence obtained from an individual who is biased or has only partial knowledge of an area.” CIGIE *Quality Standards for Inspection and Evaluation* at 13. Recognizing that both MMG staff and Chicago RSB management may be biased, it is clear that Chicago RSB management had more complete knowledge about stress testing and risk surveillance than MMG and provided more competent evidence. Accordingly, the detailed and lengthy Chicago RSB management response to the *Stress Testing Report* was competent evidence which should not have been “disregarded” by OIG Lavik.

The Quality Control standard of the CIGIE *Quality Standards for Inspection and Evaluation* make adequate supervision a key aspect of quality control. CIGIE *Quality Standards for*

⁹⁸ According to (b) (6), (b) (7)(C) OIG did not afford the staff response a lot of credibility because it was written by the staff being investigated. [Exhibit A.12 at 11] IG Lavik, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) thought the Chicago RSB team were “morons,” so their complaints did not have to be considered seriously because people who wrote the response were not very bright. [Exhibit A.12 at 11]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Inspection and Evaluation at 8. IG Lavik’s reading only a portion of the 95-page Chicago RSB management response and a conversation with [REDACTED] and [REDACTED] discussing the response does not appear to be the sufficient to satisfy this key aspect of Quality Control. “Being comfortable with the important things” suggests, at minimum, IG Lavik did not consider and evaluate all substantive points raised by Chicago RSB management. The breadth and depth of the Chicago RSB management response should have spurred an additional level of oversight by a supervisor which was not provided by IG Lavik; limiting oversight to talking to [REDACTED] and [REDACTED] is insufficient considering the totality of the circumstances and the detailed Chicago RSB management response. *CIGIE Quality Standards for Inspection and Evaluation* at 8. To the extent that the Chicago RSB management response to the *Stress Testing Report* was disregarded because it was not adopted by management, this approach appears inconsistent with the *CIGIE Quality Standards for Inspection and Evaluation*. Absent from those *CIGIE Quality Standards* is any suggestion that evidence should be disregarded because it is not the position of management. Moreover, the Professional Judgment standard of the *CIGIE Quality Standards for Inspection and Evaluation* cautions against presuming dishonesty on the part of those providing evidence. *CIGIE Quality Standards for Inspection and Evaluation* at 7. Presuming the dishonesty of Chicago RSB management appears to be how CFTC OIG evaluated the Chicago RSB management response to the *Stress Testing Report*. As a result of IG Lavik’s not following the *CIGIE Quality Standards for Inspection and Evaluation*, the *Stress Testing Report* does not present factual data accurately fairly and objectively as required by the Reporting Standard and the Professional Judgment standard of the *CIGIE Quality Standards for Inspection and Evaluation*. *CIGIE Quality Standards for Inspection and Evaluation* at 7, 16.

F. IG Lavik assigned Inspectors who Lacked the Competence and Training to Conduct the Stress Testing Inspection and Evaluation

The Competency Standard of the *CIGIE Quality Standards for Inspection and Evaluation* requires “The staff assigned to perform inspection work should collectively possess adequate professional competency for the tasks required.” *CIGIE Quality Standards for Inspection and Evaluation* at 1. FCC OIG did not attempt to evaluate the qualifications of [REDACTED] and [REDACTED] as they relate to knowledge of CFTC operations or economics. Clearly, both [REDACTED] and [REDACTED] are very well educated.⁹⁹ However, the standard also states that the “inspection organization needs to ensure that the personnel conducting an inspection collectively have the knowledge, skills, abilities, and expertise necessary for the assignment” and that these should include “knowledge of evaluation methodologies” and “knowledge of Inspector General statutory requirements and directives.” The standards further state:

⁹⁹ [REDACTED] has an A.B. degree in mathematics from Harvard University, an M.A.S. in mathematics from the University of Cambridge, a J.D. from the New York University School of Law, and an M.A. in economics from George Mason University. [REDACTED] has a B.S. in economics from Texas Christian University, an M.A. in economics from George Mason University, and a J.D. from the George Mason University School of Law.

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

OIGs should strive to provide inspectors with 80 hours of training biennially, but should minimally provide 40 hours of training biennially. Appropriate training may include evaluation/inspection training, such as program analysis; writing; technical training; and career development training, such as in managerial skills.

CIGIE Quality Standards for Inspection and Evaluation at 2.

IG Lavik assigned CFTC OIG staff, [REDACTED] and [REDACTED] who received no formal inspection and evaluation training during their time with CFTC OIG. IG Lavik stated that he believes specific training in Inspections & Evaluations is unnecessary for attorneys and that he believes that a lawyer ought to be able to conduct an inspection. [Exhibit A.19 at 2] IG Lavik recognized [REDACTED] and [REDACTED] were two lawyers who worked on inspections and evaluations who did not have specific training in Inspections & Evaluations. [Exhibit A.19 at 2; Exhibit A.32 at 3] IG Lavik believed if one is intelligent, one can conduct an inspection and evaluation, and [REDACTED] and [REDACTED] are bright. [Exhibit A.19 at 14] IG Lavik also explained that CFTC OIG was lucky to have [REDACTED] noting [REDACTED] clerked for a judge on the Fifth Circuit Court of Appeals and that [REDACTED] was hired because he knew a lot about computers and had made \$10 million on the sale of a company “involved with computers.”¹⁰⁰ [Exhibit A.19 at 2-3] During her interview, DIG Ringle stated that [REDACTED] and [REDACTED] were not trained on how to conduct an Inspection and Evaluation and that she gave them a guide and told them the policies were not rigorous. [Exhibit A.28 at 6]

Additionally, neither [REDACTED] nor [REDACTED] had previous OIG experience. [REDACTED] attended a three-day course offered through CIGIE on conducting interviews and interrogations. [Exhibit A.32 at 3] [REDACTED] also attended Securities Industry and Financial Markets Association conferences while employed by CFTC OIG and learned about CFTC’s role in the financial markets and its interactions with industry. [Exhibit A.32 at 3] [REDACTED] was never told by IG Lavik or DIG Ringle to take specific training and is not aware of any specific OIG training requirements. [Exhibit A.32 at 3] When asked about formal training, [REDACTED] explained he “hates those types of things.” [REDACTED] did not care to attend training, unless forced on him, but he could have any training he wanted. [Exhibit A.25 at 2] [REDACTED] attended a deposition training class but stated that he did not take an OIG course in interview skills or criminal investigations. [Exhibit A.25 at 2] [REDACTED] worked with [REDACTED] and [REDACTED] who were both senior to him and learned from them. [Exhibit A.25 at 2]

IG Lavik’s approach to training, apparent from his statements, the assignment of untrained staff to an inspection and lack of attention to the training requirements of the Competency Standard, is reflected in the *Stress Testing Report’s* failure to meet numerous CIGIE *Quality Standards for*

¹⁰⁰ Throughout the interview, Lavik repeated that the CFTC OIG was lucky to have [REDACTED] on staff and the important contributions he made, as well as comments about [REDACTED] outstanding education and background and the \$10 million [REDACTED] made in the computer industry.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

Inspection and Evaluation. If IG Lavik set training requirements standards for CFTC OIG, ensuring that CFTC OIG staff receive appropriate training as suggested in the Competency Standard, the misstatements in the *Stress Testing Report* could have been avoided. Additionally, had IG Lavik provided the supervision outlined in the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard, IG Lavik should have required specific inspection and evaluation training, instead of assuming that because [REDACTED] and (b) (6), (b) (7)(C) were attorneys, they would know how to conduct an inspection and evaluation.

I avi and t e CF C Ins ectors ac ed t e Inde endence ecessary to Conduct t e Stress esting Ins ection and Evaluation

The Independence Standard for inspection work is: “In all matters relating to inspection work, the inspection organization and each individual inspector should be free both in fact and appearance from personal, external and organizational impairments to independence.” CIGIE *Quality Standards for Inspection and Evaluation* at 2. Pursuant to the Independence Standard, “Inspectors and inspection organizations have a responsibility to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.” CIGIE *Quality Standards for Inspection and Evaluation* at 2. The Independence Standard also teaches:

Inspection organizations and inspectors should be alert to possible impairments to independence and should avoid situations that could lead reasonable third-parties with knowledge of the relevant facts and circumstances to conclude that the inspection organization or inspectors are not independent and, thus, are not capable of exercising objective and impartial judgment in conducting and reporting on an inspection. Impairments to independence, either in fact or appearance, need to be resolved in a timely manner.

CIGIE *Quality Standards for Inspection and Evaluation* at 2-3.

Further, inspection organization and inspectors need to consider personal impairments, including “having preconceived ideas towards individuals, groups, organizations, or objectives of a particular program that could bias the inspection.” CIGIE *Quality Standards for Inspection and Evaluation* at 3-4. If an impairment affects an inspection organization or an inspector’s ability to perform and report work independently, the work should be declined or the impairment should be reported in the inspection report. CIGIE *Quality Standards for Inspection and Evaluation* at 3.

Here, the inspection organization and the inspectors were not independent, objective or impartial. The individuals who were interviewed, CFTC management and knowledgeable third parties, expressed concern that the inspectors adopted a biased view of the facts. These concerns were raised to IG Lavik who took no steps to investigate or resolve the claims of bias and a lack of objectivity. Additionally, as a supervisor, IG Lavik should have acted to ensure the independence and objectivity of the CFTC OIG inspectors. Because IG Lavik did not, the *Stress Testing Report*

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

lacks objectivity and the independence required by the Independence Standard of the CIGIE *Quality Standards for Inspection and Evaluation*.

First, it appears that after the very first interview with the whistleblower, [REDACTED] and [REDACTED] developed a point of view about the merits of MMG's stress testing.¹⁰¹ In a June 21, 2017 memo to the file, DIG Ringle, she states: "[REDACTED] and [REDACTED] think [REDACTED] [stress testing] is clearly superior, as it is designed to detect/uncover systemic risk as opposed firm-based risk or risk at the trader level."¹⁰² [Exhibit 4.87] The inspectors' lack of objectivity was therefore apparent at the start of the stress testing project and IG Lavik should have recognized and addressed this bias in accordance with the CIGIE *Quality Standards for Inspection and Evaluation*.

Second, CFTC management and staff who were interviewed by CFTC OIG inspectors did not believe they were objective and fair. [REDACTED] stated that by the time CFTC OIG inspectors interviewed him in July and September 2017, they clearly had a view as to where the balance of equities lie. [Exhibit A.1 at 8] It was clear from the questions they asked and how they asked them, that CFTC OIG inspectors had developed the view that the equities lay with MMG, which was not [REDACTED] view. [Exhibit A.1 at 8] One question he recalls OIG staff asking was "what you would say if you were told [REDACTED] [REDACTED] and [REDACTED] concealed things from you." [REDACTED] told OIG he would be surprised; this seemed to be OIG's thesis at the time. [Exhibit A.1 at 8]

Chicago RSB staff uniformly observed that during their interviews, [REDACTED] and [REDACTED] had already made up their minds and were only looking for answers that supported their views. [REDACTED] thought [REDACTED] and [REDACTED] questions to him were consistent with the notion that OIG staff had already made a decision on the merits of the CFTC's approach to stress testing. [Exhibit A.21 at 9] OIG staff asked [REDACTED] about tangential things, not the main decision, with a tone suggesting there was a conspiracy behind the scenes to suppress good work. [Exhibit A.21 at 9] It was clear to [REDACTED] that [REDACTED] and [REDACTED] had reached their conclusions prior to [REDACTED] interview, and had come to Chicago only to confirm what they had already heard. [Exhibit A.15 at 8] [REDACTED] and [REDACTED] asked [REDACTED] nothing about the stress testing program in his interview.¹⁰³ [Exhibit A.15 at 8] When [REDACTED] and [REDACTED] spoke to [REDACTED] on August 9, 2017, it was clear they did not have idea about what was going on in our office. [Exhibit A.17 at

¹⁰¹ A CFTC OIG staff member noted [REDACTED] did not conduct an unbiased review and was biased in his point of view in favor of Washington D.C. staff who came to him with the complaint. [Exhibit A.8 at 6] [REDACTED] believed MMG staff took their lead and ran with it, without direction from IG Lavik, and MMG's conclusion became [REDACTED] conclusion. [Exhibit A.8 at 6]

¹⁰² When asked about this sentence in her August 2020 interview, DIG Ringle provided the following response, which contradicts the text of her Memo: "[Ringle] never got the impression [REDACTED] and [REDACTED] had reached a conclusion about the merits of MMG's stress testing at this time, and the Memo reflects MMG's conclusion." [Exhibit A.28 at 19]

¹⁰³ Indeed, [REDACTED] asked [REDACTED] and [REDACTED] why they were not discussing the stress testing results and why MMG's results were low. [Exhibit A.15 at 8]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

3] After the first day of his interview, ██████ called OIG to express his belief that the interviewers did not understand the work being performed by the RSB and he offered to provide more explanation. [Exhibit A.17 at 3]

██████ thought the CFTC OIG inspectors came to his interview with a bias. [Exhibit A.33 at 3, 5] ██████ believed that nothing he told the inspectors had any impact on them, proven by the fact that none of his points are represented in the report. [Exhibit A.33 at 3] In hindsight, ██████ thinks ██████ and ██████ reached their conclusions in advance of his interview. [Exhibit A.33 at 3] ██████ thought ██████ and ██████ already had a story they wanted to tell and they were trying to get justifications for that story from him. [Exhibit A.35 at 4] According to RSB Chicago staff ██████ (b) (6), (b) (7)(C), ██████ was not objective, fair or balanced and appeared to have already reached a conclusion and made up his mind before ██████ talked to ██████ [Exhibit A.16 at 5] Consistent with the Chicago RSB staff's observations that OIG had reached their conclusions prior to their interviews is the failure to accept offers by ██████ ██████ and ██████ to spend more time with ██████ and ██████ to explain topics raised by ██████ and ██████ (b) (6), (b) (7)(C) during their interviews so they would fully understand the topics.¹⁰⁴ [Exhibit A.21 at 9; Exhibit A.15 at 8; and Exhibit A.17 at 3]

Additionally, it is likely that IG Lavik, ██████ and ██████ view of statements by Chicago RSB staff were colored by their overall view of the competency and ability of Chicago RSB staff. According to ██████ (b) (6), (b) (7)(C), IG Lavik, ██████ and ██████ believed that only someone with an economics background could do stress testing work. [Exhibit A.12 at 8] While the review was ongoing, IG Lavik emphasized that the targets were only accountants and did not have an economics background. [Exhibit A.12 at 8] ██████ and ██████ (b) (6), (b) (7)(C) shared this view, as they recently completed master's degrees in economics and believed MMG staff was more numbers oriented. [Exhibit A.12 at 8] ██████ was overheard at CFTC OIG headquarters making unflattering statements about Chicago RSB staff. [Exhibit A.8 at 6] This lack of respect for staff without an economics background likely influenced the weight given by IG Lavik to statements by Chicago RSB staff. Again, instead of recognizing personal impairments, IG Lavik did not act to address his own bias, or as a supervisor, to address the inspectors' bias, as required by the CIGIE *Quality Standards for Inspection and Evaluation Independence and Quality Control* standards.

Third, statements by CFTC OIG inspectors to CFTC management and CFTC management's impressions are instructive as well. ██████ (b) (6), (b) (7)(C) told ██████ (b) (6), (b) (7)(C) what "disappointed him" personally was that ██████ (b) (6), (b) (7)(C) had a mind for the mathematical approach taken by MMG and it was not given to him. [Exhibit 4.27 at 8, 11] ██████ (b) (6), (b) (7)(C) also stated it was "very upsetting" to him that, according to ██████ (b) (6), (b) (7)(C) two years had been lost. [Exhibit 4.27 at 11] The impression Chairman

¹⁰⁴ Although ██████ (b) (6), (b) (7)(C) claimed that NERA was hired to evaluate MMG and Chicago RSB stress testing models on a blank slate, ██████ (b) (6), (b) (7)(C) highlighting to NERA problems CFTC OIG had found with Chicago RSB's November 2016 Supervisory Stress Test are evidence of CFTC OIG's bias and had the potential to influence NERA's review. See discussion, Allegation 4, Section II.E.2.b.4 above.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Giancarlo got from OIG was that OIG went into the investigation having taken a side in it. Specifically, OIG appeared to favor the younger D.C. team from MMG over Chicago RSB staff. [Exhibit A.9 at 5] Giancarlo recalled telling IG Lavik that OIG staff was taking sides, becoming personally involved and was not objective. [Exhibit A.9 at 6] Giancarlo, on more than one occasion, told IG Lavik that CFTC OIG was not set up or equipped to decide which is the better analytical model and instructed him not to let OIG staff get personally close with MMG staff. [Exhibit A.9 at 5]

Chairman Giancarlo did not believe the *Stress Testing Report* and inspection were objective and nonbiased.¹⁰⁵ [Exhibit A.9 at 7] Upon reviewing (b) (5), (b) (7)(C) notes about a January 12, 2018, meeting to discuss the stress testing inspection, Giancarlo recalled the meeting. [Exhibit A.9 at 6; Exhibit 4.88] At that January 2018 meeting, Giancarlo felt and expressed his view that the OIG team was taking sides in the dispute, especially (b) (5), (b) (7)(C) [Exhibit A.9 at 6] At the January 12, 2018, meeting, (b) (5), (b) (7)(C) emotionally presented OIG views about why Chicago RSB's approach to stress testing was wrong, and why MMG's approach was correct from an economics point of view.¹⁰⁶ [Exhibit A.9 at 6] Giancarlo challenged (b) (5), (b) (7)(C) in front of IG Lavik about the authority CFTC OIG had to select the optimal process for stress testing for the agency. [Exhibit A.9 at 6] Giancarlo stated that CFTC OIG was taken aback by his challenge to their presentation. [Exhibit A.9 at 6] According to Giancarlo, (b) (5), (b) (7)(C) notes to the file do not include the vehemence of Giancarlo's statements, and the notes understate what Giancarlo said during the meeting, specifically that he did not know why OIG was taking sides in this conflict, and advocating one side over the other with such emotion. [Exhibit A.9 at 6] Giancarlo also strongly disagreed with (b) (5), (b) (7)(C) statement in the notes that Giancarlo and (b) (5), (b) (7)(C) approved of the analysis of the report. [Exhibit A.9 at 7] A July 21, 2018, email sent by (b) (5), (b) (7)(C) to (b) (5), (b) (7)(C) describes a meeting between (b) (5), (b) (7)(C) and (b) (5), (b) (7)(C) in which (b) (5), (b) (7)(C) states that (b) (5), (b) (7)(C) emphasized the *Stress Testing Report* was "really biased." [Exhibit 4.89] (b) (5), (b) (7)(C) recalled the facts of the conversation as laid out in the email, in particular expressing his concerns about bias. [Exhibit A.4 at 5] (b) (5), (b) (7)(C) did not recall IG Lavik confronting him about his comments that the report was biased. [Exhibit A.4 at 6]

IG Lavik did not recall any discussion with Giancarlo, (b) (5), (b) (7)(C) or (b) (5), (b) (7)(C) about OIG bias. [Exhibit A.19 at 14] Contrary to the recollection of Giancarlo and (b) (5), (b) (7)(C) described herein, IG Lavik stated he was not present when there was talk about bias and objectivity. IG Lavik thought (b) (5), (b) (7)(C) may have told him about a June 2018 meeting where CFTC management said the *Stress Testing Report* is biased and wrong, but IG Lavik does not specifically recall this discussion. [Exhibit A.19 at 14] IG Lavik reiterated that in the OIG structure, he is the "appellate court," and does not get involved unless "it's something major." [Exhibit A.19 at 14] IG Lavik

¹⁰⁵ In the summer of 2019, when Giancarlo and (b) (5), (b) (7)(C) went to Chicago to say goodbye to staff before they left the CFTC, Giancarlo addressed the CFTC Chicago staff and said the *Stress Testing Report* was biased. [Exhibit A.15 at 12]

¹⁰⁶ (b) (5), (b) (7)(C) recalled that the January 2018 meeting got really heated and admitted he and (b) (5), (b) (7)(C) raised their voices. [Exhibit A.32 at 10]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

was told by [REDACTED] and [REDACTED] and he knew from [REDACTED] and [REDACTED] July 2017 emails, that there was pushback against the *Stress Testing Report*. [Exhibit A.19 at 14] But, because [REDACTED] and [REDACTED] were not impressed with arguments from management, IG Lavik did not do anything in response to these pushback claims. [Exhibit A.19 at 14]

[REDACTED] explained in some detail the source of his views and comments on the *Stress Testing Report's* bias. During the winter of 2017 and spring of 2018, [REDACTED] had developed a more nuanced view of MMG and Chicago RSB staff, especially after discovering MMG had never conducted a review of Options Clearings Corporation's margin model. [Exhibit A.4 at 5] This event started [REDACTED] questioning whether MMG walked on water as described in the *Stress Testing Report*. [Exhibit A.4 at 5] [REDACTED] initial impression was that the *Stress Testing Report* was very much focused on the Chicago RSB staff's conduct, that the report made it appear that the Chicago team and [REDACTED] were wrong, and that MMG could do no wrong. [Exhibit A.4 at 5] [REDACTED] felt the *Stress Testing Report* overstated the situation, because events and actions were never 100% one way or the other. [Exhibit A.4 at 5] One Chicago RSB manager felt the OIG *Stress Testing Report* was poorly written and read more like a soap opera instead of a professional report and it was unclear whether the report used layman definitions or professional standards.¹⁰⁷ [Exhibit A.31 at 7]

[REDACTED] acknowledged that [REDACTED] commented, on multiple occasions, that the report was biased. [Exhibit A.32 at 11] [REDACTED] believes the claims of bias were just one of the many things CFTC management was saying to keep the report from being published, because in follow up calls, [REDACTED] would say that he did not disagree with anything in the *Stress Testing Report*. [Exhibit A.32 at 11] [REDACTED] claims, contrary to Giancarlo's statements noted above, that CFTC OIG pushed back against CFTC management's claims of CFTC OIG bias, and that CFTC management ultimately agreed with CFTC OIG that the report was not biased and agreed with the findings in the report. [Exhibit A.32 at 11] When [REDACTED] was asked whether any CFTC staff raised the question of whether the conduct of the stress testing project was biased or lacked objectivity, he said [REDACTED] raised these concerns much later in the process but did not specifically recall why [REDACTED] thought this.¹⁰⁸ [Exhibit A.25 at 7]

[REDACTED] observed that there was a way to have written the report without having gotten so personal and one-sided. [Exhibit A.10 at 7-8] The way the report was written looked, to [REDACTED] like an intentional effort to "screw" Chicago RSB staff. [Exhibit A.10 at 7-8] [REDACTED] thought IG Lavik should have kept personal opinions out of the report to make things less difficult for management. [Exhibit A.10 at 7-8] To [REDACTED] the basic premise of [REDACTED] and the report was

¹⁰⁷ Even MMG staff questioned the objectivity of the *Stress Testing Report*. [REDACTED] thought that in some places the language used in the report was hyperbolic and excessive, and pointed to the reference to Dilbert on page 13 of the *Stress Testing Report*. [Exhibit A.30 at 6] [REDACTED] stated that including this reference was neither professional nor demonstrated objectivity. [Exhibit A.30 at 6]

¹⁰⁸ [REDACTED] recalled learning from CFTC's Enforcement Division staff how shocked they were about how DCR staff interviews had been conducted: OIG broke every rule on how to do an investigation, showed bias, and were improperly trying to prove a point. [Exhibit A.10 at 9]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

that the team in Chicago should be fired, and that the team in DC should run stress testing. [Exhibit A.10 at 6] The reaction of CFTC management was that management, not CFTC OIG, decides the tasks of each group; the IG should not come in and tell CFTC management “that they [Chicago RSB staff] are idiots.” [Exhibit A.10 at 6] Yet, that is exactly what CFTC OIG tried to do.

Although the *Stress Testing Report* itself makes no recommendations of actions the agency should take to resolve the issues raised in the report, the laundry list of alleged errors committed by Chicago leadership articulated in the *Stress Testing Report's* Conclusion section leaves the reader with the same impression [REDACTED] had: Chicago RSB management should be fired. Stress Testing Report at 26. CFTC OIG pressed CFTC management to do just this, in a number of ways. First, in a July 20, 2018 meeting, [REDACTED] pushed [REDACTED] about his decision to keep [REDACTED] as (b) (6), (b) (7)(C) because “no reasonable person can read the report and then continue to allow [REDACTED] and [REDACTED] to have control of anything, let alone stress-testing,” and [REDACTED] being in that position was “unacceptable,” [Exhibit 4.89] [REDACTED] got angry and told [REDACTED] (b) (6), (b) (7)(C) CFTC OIG was stepping over the line by asking him about his decision making, and [REDACTED] (b) (6), (b) (7)(C) told [REDACTED] “that insofar as [REDACTED] is making decisions as [REDACTED] (b) (6), (b) (7)(C), we will continue to question him.” [Exhibit 4.89] Additionally, in June and July 2018 CFTC OIG meetings with [REDACTED] there were extensive discussions detailing the progress [REDACTED] was making filling the (b) (6), (b) (7)(C) position, including the number of candidates, the pros and cons of different candidates, and assurances by [REDACTED] that the new [REDACTED] would not be a current RSB employee. [Exhibit 4.83; Exhibit 4.90] The July 30, 2018 Cover Memo to the *Stress Testing Report* mentions that in lieu of a written response, CFTC OIG had frequent contact with [REDACTED] to hear updates on planned changes within DCR, specifically noting that a new [REDACTED] (b) (6), (b) (7)(C) [REDACTED] would be named soon. [Exhibit 4.91] And, the CFTC OIG’s Semi-Annual Report to Congress specifically notes: “Other forthcoming changes indicated by [REDACTED] (b) (6), (b) (7)(C) in July 2018 have yet to be made, and the RSB leaders responsible for mismanagement and dysfunction remain in charge of the 2018 Supervisory Stress Test,” and when that is complete, changes to RSB to address the issues CFTC OIG found will be made in 2019. CFTC OIG Semiannual Report to Congress, April 1, 2018-September 30, 2018 at 18.

This evidence demonstrates that the *Stress Testing Report* and the underlying inspection work do not comply with the Independence Standard of the CIGIE *Quality Standards for Inspection and Evaluation*. IG Lavik and CFTC OIG staff did not fulfill the “responsibility to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties” as required by the Independence Standard. CIGIE *Quality Standards for Inspection and Evaluation* at 2. Additionally, effective supervision, as required by the CIGIE *Quality Standards for Inspection and Evaluation* Quality Control standard, should have addressed and mitigated OIG staff biases.¹⁰⁹ Most importantly, IG

¹⁰⁹ This lack of independence likely infected the NERA Review, as private persons performing inspection work for an OIG are also subject to the Independence Standard. CIGIE *Quality Standards for Inspection and Evaluation* at 2. IG Lavik’s lack of supervision resulted in the potential tainting of NERA by CFTC OIG inspectors who freely

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

Lavik did not take any action to explore the validity of bias claims raised by a number of CFTC management and staff, and instead created a scenario where Chicago RSB management may have been seen as not cooperating with CFTC OIG. IG Lavik chose to accept statements made by inspectors who had bias complaints raised against them, while fostering an atmosphere that elevated economic background over practical experience, resulting in a lack of objectivity. IG Lavik should have been sensitive to both his and the inspectors' personal impairments, described in the CIGIE *Quality Standards for Inspection and Evaluation* as "having preconceived ideas towards individuals, groups, organizations, or objectives of a particular program that could bias the inspection." CIGIE *Quality Standards for Inspection and Evaluation* at 3-4. IG Lavik's failure to recognize and resolve this impairment runs contrary to the CIGIE *Quality Standards for Inspection and Evaluation*.

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The CIGIE *Quality Standards for Inspection and Evaluation* Working Relationships and Communication standard is "Each inspection organization should seek to facilitate positive working relationships and effective communication with those entities being inspected and other interested parties." CIGIE *Quality Standards for Inspection and Evaluation* at 19. The CIGIE *Quality Standards for Inspection and Evaluation* instruct the OIG to strive to foster open communication at all levels, interact with professionalism and respect, and perform work thoroughly, objectively and with consideration to the agency's point of view. CIGIE *Quality Standards for Inspection and Evaluation* at 19. Inspectors are advised that during an inspection "to appropriately communicate information about the process and the nature of the inspection to the various parties involved to help them understand such things as the inspection objective(s), time frames, data needs, and reporting process. CIGIE *Quality Standards for Inspection and Evaluation* at 20.

The evidence here demonstrates that IG Lavik did not comply with or supervise CFTC OIG inspectors in a manner that would advance the goals of the Quality Standard for Working Relationships and Communication. CFTC OIG, consistent with IG Lavik's views, unnecessarily threatened Chicago RSB staff who showed any reluctance to immediately respond to CFTC OIG inspectors' requests and questions. When asked, IG Lavik decided not to explain even the basics of the inspection to Chicago RSB management contrary to the Quality Standard for Working Relationships and Communication. The CFTC OIG inspectors did not interact respectfully with the Chicago RSB staff, perform work objectively, with consideration to the agency's point of view. These omissions resulted in a climate of mistrust of CFTC OIG by Chicago RSB staff and produced the opposite of the relationship envisioned by the Quality Standard for Working Relationships and Communication.

shared their opinions of the stress testing work of MMG and Chicago RSB.

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

As discussed in Section II.D.2 above, IG Lavik's response to [REDACTED] and [REDACTED] July 28, 2017 emails¹¹⁰ seeking information about the inspection process and its objectives is a prime example of IG Lavik's failure to follow the Quality Standard for Working Relationships and Communication. Rather than respond to [REDACTED] and [REDACTED] emails, IG Lavik decided not to respond to [REDACTED] and [REDACTED] and instructed DIG Ringle not to respond as well. [Exhibit 4.9] IG Lavik's response is contrary to both the advice in the Quality Standard for Working Relationships and Communication and DIG Ringle's advice. [Exhibit 4.9] It would have been consistent with the Quality Standard for Working Relationships and Communications for IG Lavik "appropriately to communicate" the requested "information about the process and the nature of the inspection" to [REDACTED] and [REDACTED] in response to their legitimate questions.¹¹¹ CIGIE *Quality Standards for Inspection and Evaluation* at 20. Additionally, delegating the responsibility to respond to the CFTC OIG inspector causing them concerns did not foster a positive working relationship.

A number of Chicago RSB staff felt their interviews with CFTC OIG staff were hostile and confrontational. [REDACTED] thought the tone of the CFTC OIG interview was definitely confrontational; the next day the interviewers returned and were even more hostile than they were on the first day.¹¹² [Exhibit A.17 at 3] [REDACTED] was not given any warnings about not telling the truth when he was interviewed by [REDACTED] and [REDACTED] on August 9 and 10, 2017. [Exhibit A.15 at 8] The second day of [REDACTED] CFTC OIG interview was unbelievably stressful, and [REDACTED] was asked about many documents. [Exhibit A.15 at 8]

According to [REDACTED], [REDACTED] general tone was hostile and angry, for example saying "I've heard X" in a hostile tone. [Exhibit A.16 at 5] [REDACTED] also used the approach of telling [REDACTED] that someone on his team said there is a problem with a general subject area, but then did not

¹¹⁰ These July 28, 2017 emails from [REDACTED] and [REDACTED] were described as hostile in the *Stress Testing Report*. *Stress Testing Report* at 17. This conclusion is curious. [REDACTED] offered to prepare a memorandum describing the history of RSB. [Exhibit A.15 at 7] [REDACTED] thought this would be great, so [REDACTED] prepared a seven-page history of RSB written by [REDACTED] and provided it to [REDACTED] and [REDACTED] as background prior to their in-person interviews with Chicago RSB staff. [CIGIE Complaint at 986-216 through 986-222] Additionally, [REDACTED] described [REDACTED] as cordial in his CFTC OIG interview. [Exhibit A.32 at 9] Creating a lengthy description to assist CFTC OIG in understanding the development of RSB and CFTC stress testing and being cordial in the CFTC OIG interview are inconsistent with the characterization of staff hostility in the *Stress Testing Report*. Moreover, during his two-day CFTC OIG interview, [REDACTED] was not asked one question about the material contained in the Memorandum, or any substantive questions about the work of RSB. [Exhibit A.15 at 7]

¹¹¹ At his August 9, 2017 interview, [REDACTED] asked [REDACTED] and [REDACTED] to explain the scope of the OIG project. [REDACTED] responded that OIG was looking at the risk surveillance capabilities and was not obligated to provide more information because it was not an audit. [Exhibit 4.18 at 34] As to [REDACTED] request for an explanation in writing, [REDACTED] stated "we're not at liberty to willy-nilly write something for you guys. So if you want to request something like a scope of the project we'd be happy to write that if Roy is [amenable] to it" [Exhibit 4.18 at 34] [REDACTED] responses did not facilitate a positive working relationship as required by the CIGIE Quality Standard for Working Relationships and Communication, and are disingenuous at best, because he knew IG Lavik had instructed there be no CFTC OIG response to [REDACTED] and [REDACTED] July 28, 2017, emails seeking a description of the scope of OIG's work. [Exhibit 4.9]

¹¹² At his interview, CFTC OIG staff did not advise [REDACTED] of the scope of the investigation. [Exhibit A.17 at 3]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

identify the exact problem or the person. [Exhibit A.16 at 5] [REDACTED] gave the following example of a question posed in a hostile manner:

(b) (6), (b) (7)(C), (b) (5)

[Exhibit 4.29 at 5] [REDACTED] noted that there was a smirk in [REDACTED] tone when he asked the question, which is not reflected in the transcript. [Exhibit 4.29 at 5] These examples demonstrate the CFTC OIG inspectors' approach did not promote a good working relationship with CFTC staff, as required by the CIGIE *Quality Standards for Inspection and Evaluation*.

[REDACTED] questions and tone made [REDACTED] angry and he told [REDACTED] he was fishing. [Exhibit 4.29 at 5; Exhibit A.16 at 5] Additionally, [REDACTED] took problems out of context, and questioned [REDACTED] about problems with certain tools [REDACTED] used in his analysis, but which were quickly fixed. [Exhibit A.16 at 4] As an example, [REDACTED] noted a problem he had one day many years ago with calculations for a specific product from Global Risk. [Exhibit A.16 at 4] But [REDACTED] assumed that this problem was continuing, even though the issue was resolved after one day. [Exhibit A.16 at 4]

At one point during his CFTC OIG interview, [REDACTED] pushed back against [REDACTED] questions that [REDACTED] considered fishing and asked in a hostile tone and told [REDACTED] he did not want to go into details. [Exhibit 4.29 at 5; Exhibit A.16 at 5] Rather than work with [REDACTED] to try and gain his cooperation, [REDACTED] immediately threatened to send a letter to the CFTC Chairman: "That's totally in your prerogative to not answer our questions I just need you to affirm that you don't want to answer our questions and we will be sending a letter to the Chairman within the day." [Exhibit 4.29 at 5] This angered [REDACTED] because he was only a witness and not a target, and he expressed that he did not know what details [REDACTED] wanted. [Exhibit A.16 at 5] As [REDACTED] continued the dialog and rephrased his questions, [REDACTED] provided responses that satisfied [REDACTED] But [REDACTED] threat did not facilitate a positive working relationship, as required by the Quality Standard for Working Relationships and Communication.¹¹³

A similar threat to inform the Chairman was made in connection with CFTC OIG's request to access Global Risk. [REDACTED] sent an email to [REDACTED] asking for access to Global Risk for himself and [REDACTED] [CIGIE Complaint at 986-248] [REDACTED] responded by explaining that licenses are not provided to staff who do not need them because there are a limited number of licenses, and because users could make changes that harms the system for other users, and as an alternative, offered to provide a demonstration of Global Risk capabilities. [CIGIE Complaint at

¹¹³ When he was interviewed, [REDACTED] was not a member of the union, but he joined shortly after the interview. [Exhibit A.16 at 5] [REDACTED] appeared with union counsel at his FCC OIG interview, and became emotional when describing his response to the *Stress Testing Report*. [Exhibit A.16 at 1, 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

986-247] After acknowledging the demonstration offer, [REDACTED] stated that he and [REDACTED] would not make any changes and would sign off if the number of licenses is exhausted. [CIGIE Complaint at 986-247] [REDACTED] continued: “Finally, the IG Act provides our office with broad authority to secure access to all agency related materials. If this authority is in any way obstructed, we will need to inform the Chairman and Congressional staff.” [CIGIE Complaint at 986-247] Again, [REDACTED] threat did not facilitate a positive working relationship, as required by the Quality Standard for Working Relationships and Communication.

There are other examples of threats inhibiting the positive working relationships advocated by the CIGIE *Quality Standard for Inspection and Evaluation Working Relationships and Communication Standard* between CFTC OIG and agency staff. According to [REDACTED], [REDACTED] was constantly threatening to report noncompliance with OIG requests to the CFTC Chairman and Congress if the requested information was not provided. [Exhibit A.18 at 3] An example cited by [REDACTED] was [REDACTED] request that [REDACTED] provide a list of contacts at agencies to whom Chicago RSB had presented its risk surveillance program. [Exhibit A.18 at 2] The *Stress Testing Report* details [REDACTED] failure to provide this list when it describes Chicago RSB’s hostility, calling [REDACTED] tone flippant when CFTC OIG inspectors asked him to provide Janet Yellin’s contact information. *Stress Testing Report* at 17. With respect to the requested list, many of the agencies who had seen Chicago RSB’s presentation are contained in [REDACTED] July 28, 2017 email, another document described as hostile in the *Stress Testing Report*. [REDACTED] recalls preparing the list requested by [REDACTED] and sending it to his supervisors, [REDACTED] and [REDACTED] for them to transmit to CFTC OIG. [Exhibit A.18 at 2-3] But [REDACTED] is unsure whether his supervisors sent the list on to CFTC OIG. [Exhibit A.18 at 2-3] When [REDACTED] received a request for the list in May, 2018 from [REDACTED], [REDACTED] threatened to ask the IG to contact the CFTC Chairman for him to take appropriate action if he did not provide the list of agencies. [Exhibit 4.92] [REDACTED] reply, “I have noted your aggressive stance. It will be included in my response to the report” was written at the direction of [REDACTED] management; the content of this message is not what [REDACTED] would typically send.¹¹⁴ [Exhibit 4.93; Exhibit A.18 at 3] At some point, [REDACTED] told [REDACTED] to stop corresponding with [REDACTED] because [REDACTED] no longer worked for CFTC and should not be sending [REDACTED] emails. [Exhibit A.18 at 3] Thereafter, [REDACTED] did not correspond with [REDACTED] any further.¹¹⁵ [Exhibit A.18 at 3] [REDACTED] also raised the appropriateness of [REDACTED] threat to [REDACTED] with DIG Ringle, noting the threat was particularly inappropriate in view of the Chairman’s displeasure with the manner in which the investigation was conducted, and stating [REDACTED] preference for hearing from the IG about appropriate actions prior to hearing about threats from CFTC employees. [Exhibit 4.94]

A by-product of the *Stress Testing Report* and the likely result of IG Lavik not requiring compliance with the CIGIE Quality Standard for Working Relationships and Communication

¹¹⁴ At this point, Chicago RSB managers had seen a draft of the *Stress Testing Report*. The Chicago RSB response did not include a list of agencies to whom Chicago RSB had presented their risk surveillance program.

¹¹⁵ When [REDACTED] sent the emails to [REDACTED] in May 2018, [REDACTED] was on detail to the [REDACTED]. [Exhibit A.25 at 2]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
-----------------------------------	--

REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

was a decline in the morale of Chicago RSB staff. [Exhibit A.15 at 11; Exhibit A.31 at 8] Chicago RSB staff described morale as bad, [Exhibit A.23 at 6], destroyed by the report [Exhibit A.33 at 4], and pretty dire. [Exhibit A.16 at 6] A CFTC OIG staff member observed IG Lavik comes to work for the soap opera aspect and does not understand an OIG report's impact on people. [Exhibit A.8 at 5-6] After the *Stress Testing Report* was issued, no one wanted to work at Chicago RSB. [Exhibit A.31 at 8; Exhibit A.15 at 12] RSB is not as collegial and friendly as it once was and Chicago RSB staff want specific written procedures, including what they can and cannot say. [Exhibit A.23 at 6] Staff does not want to put themselves out for the job, get reported and have the CFTC OIG come in and investigate. [Exhibit A.23 at 6; Exhibit A.16 at 6]

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

FCC I emorandum o Intervie I Ex i its

- Exhibit A.1 Memorandum of Interview (MOI) for interview with former CFTC (b) (6), (b) (7)(C) on April 9, 2020
- Exhibit A.2 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on May 28, 2020
- Exhibit A.3 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on June 16, 2021
- Exhibit A.4 MOI for interview with former CFTC (b) (6), (b) (7)(C) on April 7, 2020
- Exhibit A.5 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on May 29, 2020
- Exhibit A.6 MOI for interview with CFTC (b) (6), (b) (7)(C) on March 20, 2020
- Exhibit A.7 MOI for interview with former CFTC OIG (b) (6), (b) (7)(C) on July 19, 2021
- Exhibit A.8 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on June 2, 2020
- Exhibit A.9 MOI for interview with former CFTC Chairman J. Christopher Giancarlo on April 1, 2020
- Exhibit A.10 MOI for interview with former CFTC (b) (6), (b) (7)(C) on April 6, 2020
- Exhibit A.11 MOI for interview with former CFTC OIG (b) (6), (b) (7)(C) on August 7, 2019
- Exhibit A.12 MOI for interview with former CFTC OIG (b) (6), (b) (7)(C) on May 13, 2020
- Exhibit A.13 MOI for interview with CFTC (b) (6), (b) (7)(C) on February 4, 2021
- Exhibit A.14 MOI for interview with former CFTC (b) (6), (b) (7)(C) on June 18, 2020
- Exhibit A.15 MOI for interview with former CFTC (b) (6), (b) (7)(C) on

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

November 19, 2019

- Exhibit A.16 MOI for interview with CFTC (b) (6), (b) (7)(C) on November 20, 2019
- Exhibit A.17 MOI for interview with CFTC (b) (6), (b) (7)(C) on November 20, 2019
- Exhibit A.18 MOI for interview with CFTC (b) (6), (b) (7)(C) on August 3, 2021
- Exhibit A.19 MOI for interviews with CFTC Inspector General (IG) A. Roy Lavik conducted on August 17, 2020, August 27, 2020, and September 2, 2020
- Exhibit A.20 MOI for interview with CFTC IG A. Roy Lavik conducted on August 6, 2021
- Exhibit A.21 MOI for interview with former CFTC (b) (6), (b) (7)(C) on November 6, 2019
- Exhibit A.22 MOI for interview with Amtrak OIG (b) (6), (b) (7)(C) on July 17, 2019
- Exhibit A.23 MOI for interview with CFTC (b) (6), (b) (7)(C) on November 21, 2019
- Exhibit A.24 MOI for interview with CFTC (b) (6), (b) (7)(C) conducted on April 30, 2020 and May 22, 2020
- Exhibit A.25 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on June 10, 2020
- Exhibit A.26 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on June 1, 2020
- Exhibit A.27 MOI for interview with CFTC OIG (b) (6), (b) (7)(C) on June 28, 2021
- Exhibit A.28 MOI for interviews with CFTC Deputy Inspector General (DIG) Judith Ringle conducted on August 28, 2020 and August 31, 2020
- Exhibit A.29 MOI for interview with CFTC DIG Judith Ringle conducted on July 28, 2021
- Exhibit A.30 MOI for interview with former CFTC (b) (6), (b) (7)(C) on April 20, 2020
- Exhibit A.31 MOI for interview with former CFTC (b) (6), (b) (7)(C) on

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

November 20, 2019

Exhibit A.32 MOI for interview with former CFTC OIG (b) (6), (b) (7)(C) on June 23, 2020

Exhibit A.33 MOI for interview with CFTC (b) (6), (b) (7)(C) on November 21, 2019

Exhibit A.34 MOI for interview with CFTC (b) (6), (b) (7)(C) on March 31, 2020

Exhibit A.35 MOI for interview with CFTC (b) (6), (b) (7)(C) on November 21, 2019

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Ex i t i s t a c g r o u n d S e c t i o n

- Exhibit B.1 October 24, 2018 CFTC OIG Organization Chart
- Exhibit B.2 Inspector General Historical Data
- Exhibit B.3 July 27, 2011 Letter from Senator Charles E. Grassley to CFTC Inspector General A. Roy Lavik
- Exhibit B.4 December 11, 2017 Ringle Email to Lavik, [REDACTED] and (b) (6), (b) (7)(C) Subject: Re: Re: Office of the Inspector General-I&E Standards, with attachment OIG Inspections and Evaluations Manual

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Ex i t i s t Allegation 1

- Exhibit 1.1 December 1, 2017 Ringle Memo to Files, Re: new mgmt. allegation
- Exhibit 1.2 November 13, 2017 (b) (6), (b) (7)(C) Statement
- Exhibit 1.3 November 16, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Documentation, with attachment- document1.docx
- Exhibit 1.4 November 17, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Documented Issues, with attachments noted
- Exhibit 1.5 January 2, 2018 Lync Chat (b) (6), (b) (7)(C)
- Exhibit 1.6 January 5, 2018 9:29a Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: Re: Re: Interview
- Exhibit 1.7 January 4, 2018 Email from (b) (6), (b) (7)(C) to Ringle and (b) (6), (b) (7)(C) Subject: Interview
- Exhibit 1.8 January 4, 2018 3:38 pm Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: RE: RE: Interview
- Exhibit 1.9 January 4, 2018 4:09 pm Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and Ringle, Subject: RE: RE: interview
- Exhibit 1.10 January 4, 2018 4:16 pm Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: RE: RE: Interview
- Exhibit 1.11 January 5, 2018 7:14 am Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: RE: RE: Interview
- Exhibit 1.12 January 31, 2018 Lavik Note to File, Subject: (b) (6), (b) (7)(C)
- Exhibit 1.13 February 1, 2018 Email from (b) (6), (b) (7)(C) to Ringle, Subject: Re: Memo (b) (6), (b) (7)(C).doc, with attachment
- Exhibit 1.14 Case timeline prepared by (b) (6), (b) (7)(C) from CFTC OIG case file
- Exhibit 1.15 January 31, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: Re: Investigation, with attachment
- Exhibit 1.16 April 25, 2018 Email from (b) (6), (b) (7)(C) to Ringle and (b) (6), (b) (7)(C) Subject: OFM matter

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- Exhibit 1.17 July 5, 2018 Management Advisory: Office of Financial Management by CFTC
OIG (unredacted)
- Exhibit 1.18 August 22, 2018 Investigation into an Allegation that (b) (6), (b) (7)(C)
Made and Instructed Staff to Make False Statements in an Effort to Avoid an
ADA Violation by CFTC OIG
- Exhibit 1.19 October 24, 2018 Referral Letter from Lavik to (b) (6), (b) (7)(C), DOJ, with attachment
- Exhibit 1.20 April 15, 2019 Closing Memo by Ringle re: (b) (6), (b) (7)(C) Investigation closing memo as of
December 21, 2018
- Exhibit 1.21 Federal Law Enforcement Training Centers Certificate of Graduation, Criminal
Investigator Training Program CITP-607, (b) (6), (b) (7)(C)
- Exhibit 1.22 CFTC OIG Investigations and Investigative Reviews, Investigations 2010 –
Present, provided by DIG Ringle in response to FCC OIG information request

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Exhibit List – Allegation 2

Exhibit 2.1 January 20, 2015 Anonymous CFTC OIG Email complaint, Subject: [REDACTED]

Exhibit 2.2 March 9, 2015 Ringle Memo to Files Re: (b) (6), (b) (7)(C)
History of complaints re (b) (6), (b) (7)(C)

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

surveillance branch

- Exhibit 3.16 August 15, 2018 (b) (6), (b) (7)(C) Email to (b) (6), (b) (7)(C) Subject: RE: OIG report on the risk surveillance branch, noting redacted Stress Testing Report attached
- Exhibit 3.17 August 16, 2018 (b) (6), (b) (7)(C) Email to Ringle and (b) (6), (b) (7)(C) Subject: FW: FW: OIG report on risk surveillance branch, noting redacted Stress Testing Report attached
- Exhibit 3.18 July 5, 2018 Management advisory: Office of Financial Management by CFTC OIG (redacted)
- Exhibit 3.19 July 5, 2018 Management advisory: Office of Financial Management by CFTC OIG (unredacted)

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Exhibit List – Allegation 5

- Exhibit 5.1 July 27, 2011 Letter from Senator Charles E. Grassley to CFTC Inspector General A. Roy Lavik
- Exhibit 5.2 October 25, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: FW: FW: IE Peer Review
- Exhibit 5.3 August 12, 2019 CIGIE I&E Peer Review Working Group Responses to Questions from FCC OIG regarding CFTC OIG, with attachment to August 12, 2019 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Re: CIGIE I&E Peer Reviews
- Exhibit 5.4 November 24, 2017 Email from DIG Ringle to (b) (6), (b) (7)(C) Subject: RE: RE: CPF Coordination
- Exhibit 5.5 November 28, 2017 Email from (b) (6), (b) (7)(C) to Ringle and (b) (6), (b) (7)(C) Subject: Peer Review
- Exhibit 5.6 November 28, 2017 Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: FW: FW: Peer Review, forwarding a November 28, 2017 Email from (b) (6), (b) (7)(C) to Lavik, (b) (6), (b) (7)(C) and Ringle, Subject: RE: Peer Review
- Exhibit 5.7 November 28, 2017 draft Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: peer review stuff
- Exhibit 5.8 November 28, 2017 Email (drafted but not sent) from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject RE: RE: Peer Review
- Exhibit 5.9 November 28, 2017 Lync chat between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)
- Exhibit 5.10 November 28, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Ringle and Lavik, Subject: Office of the Inspector General-I&E Standards with Attachment: Office of the Inspector General-I&E Standards.docx
- Exhibit 5.11 December 11, 2017 Email from Ringle to (b) (6), (b) (7)(C) and Lavik, Subject: Re: Re: Office of the Inspector General-I&E Standards, with attachment Office of the Inspector General-I&E Standards jr markup.docx
- Exhibit 5.12 December 11, 2017 Email from (b) (6), (b) (7)(C) to Ringle, (b) (6), (b) (7)(C) and Lavik, Subject: RE: RE: Office of the Inspector General-I&E Standards
- Exhibit 5.13 December 12, 2017 Email from Ringle to (b) (6), (b) (7)(C), Subject: Request for postponement of I&E peer review

<p>Case Number: CIGIE Case IC 986</p>	<p>Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle</p>
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- Exhibit 5.14 December 13, 2017 Email from (b) (6), (b) (7)(C) to Ringle, Subject: RE: RE: Request for postponement of I&E peer review, with Attachment: FINAL Peer Review Schedule 12-11.pdf
- Exhibit 5.15 July 30, 2014 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: Peer Review Schedule, with attachment CIGIE Investigations Peer Review Matrix - 140728.xlsx
- Exhibit 5.16 July 31, 2014 Email from Ringle to (b) (6), (b) (7)(C), Subject: FW: Peer Review Schedule, noting attachment
- Exhibit 5.17 October 8, 2014 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: Peer Review Schedule, noting attachment
- Exhibit 5.18 July 10, 2015 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: Final Peer Review Schedule, with attachment CIGIE Investigations Peer Review Matrix - 07102015.xlsx
- Exhibit 5.19 July 16, 2015 Email from Ringle to (b) (6), (b) (7)(C), Subject: RE: Peer Review Schedule
- Exhibit 5.20 July 29, 2015 Email from Ringle to Ringle, Subject: Re: Peer Review Schedule
- Exhibit 5.21 August 13, 2015 Email from SEC IG Carl Hoecker to Lavik and (b) (6), (b) (7)(C), Subject: Investigative Peer Review
- Exhibit 5.22 August 17, 2015 Email from Lavik to SEC IG Carl Hoecker, Subject: RE: RE: Investigative Peer Review
- Exhibit 5.23 February 9, 2016 Email from Ringle to (b) (6), (b) (7)(C), Subject: FW: February AIGI Meeting Agenda, noting attachment
- Exhibit 5.24 July 27, 2016 Email from (b) (6), (b) (7)(C) to Lavik, Ringle, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), Subject: Spoke to (b) (6), (b) (7)(C)
- Exhibit 5.25 May 13, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: Re: Hi and request for assistance with CFTC investigations/peer review
- Exhibit 5.26 June 18, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), Subject: CFTC Peer
- Exhibit 5.27 June 21, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: Draft FY20-23 Peer Review Schedule, with attachment FY20-22 Draft Peer Review Schedule.xlsx

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Exhibit 5.28 June 22, 2018 Email from (b) (6), (b) (7)(C) to Lavik and Ringle, Subject: good news

Exhibit 5.29 June 22, 2018 Email from Ringle to (b) (6), (b) (7)(C) and Lavik, Subject: RE: RE: good news

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Ex i t i s t Allegation 6

- Exhibit 6.1 March 29, 2018 SF-52 Resignation executed by (b) (6), (b) (7)(C)
- Exhibit 6.2 March 29, 2018 U.S. Commodity Futures Trading Commission Hiring Request Business Case, Office of Inspector General, Judith A. Ringle, Requestor
- Exhibit 6.3 CFTC, Justification and Approval of Employment of Expert/Consultant for (b) (6), (b) (7)(C), executed April 5, 2018
- Exhibit 6.4 Position Description, Position 010213, executed on April 10, 2018
- Exhibit 6.5 SF-50, Notification of Personnel Action, (b) (6), (b) (7)(C), effective May 13, 2018
- Exhibit 6.6 March 28, 2019 U.S. Commodity Futures Trading Commission Hiring Request Business Case, Office of Inspector General, (b) (6), (b) (7)(C), Requestor
- Exhibit 6.7 CFTC, Justification and Approval of Employment of Expert/Consultant for (b) (6), (b) (7)(C), executed March 28, 2019
- Exhibit 6.8 SF-50, Notification of Personnel Action, (b) (6), (b) (7)(C), effective May 12, 2019
- Exhibit 6.9 May 21, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: Welcome Back! New Entrant Ethics Notice and OGE 450 Filing Requirement, with May 21, 2018 (b) (6), (b) (7)(C) Memorandum attachment
- Exhibit 6.10 November 13, 2019 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Training Completion Notification and Evaluation Reminder
- Exhibit 6.11 March 18, 2020 Email from (b) (6), (b) (7)(C) to Lavik and Ringle, Subject: End of Consultancy with March 18, 2020 (b) (6), (b) (7)(C) Letter attachment
- Exhibit 6.12 (b) (6), (b) (7)(C) timesheets for 2018 pay period 11 through 2020 pay period 06, May 27, 2018 through March 28, 2020
- Exhibit 6.13 (b) (6), (b) (7)(C) timesheets for 2019 pay period 12 through 2020 pay period 06, June 9, 2019 through March 28, 2020 certified by IG Lavik
- Exhibit 6.14 (b) (6), (b) (7)(C) timesheet for 2019 pay period 13, June 23, 2019 through July 6, 2019
- Exhibit 6.15 April 14, 2020 Email from Lavik to (b) (6), (b) (7)(C) Subject: FW: work rundown forwarding a March 12, 2020 Email message from (b) (6), (b) (7)(C) to Lavik with Work

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Rundown.docx attachment.

- Exhibit 6.16 March 2, 2020 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Judith Ringle with March 2, 2020 Letter to FCC IG, Re: Response to information request with attachment
- Exhibit 6.17 March 4, 2020 Letter from (b) (6), (b) (7)(C) to Lavik, Subject: Information Request for Inspector General
- Exhibit 6.18 May 23, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: RE: [EXTERNAL] Re: FW: Re: Let's talk this morning
- Exhibit 6.19 May 28, 2019 Email from (b) (6), (b) (7)(C) to Ringle, Subject: RE: [EXTERNAL] Re: FW: Re: Let's talk this morning
- Exhibit 6.20 May 28, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: RE: [EXTERNAL] Re: FW: Re: Let's talk this morning
- Exhibit 6.21 May 29, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: Sent from Snipping Tool
- Exhibit 6.22 June 10, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: FW: FW: [EXTERNAL] Re: FW: Re: Let's talk this morning
- Exhibit 6.23 June 11, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: RE: RE: [EXTERNAL] Re: FW: Re: Let's talk this morning
- Exhibit 6.24 June 16, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: RE: RE: Sent from Snipping Tool, noting attachments
- Exhibit 6.25 June 19, 2019 Email from Ringle to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) Lavik and (b) (6), (b) (7)(C) Subject: (b) (6), (b) (7)(C)
- Exhibit 6.26 April 14, 2020 Email from Lavik to (b) (6), (b) (7)(C) Subject: RE: Status of Information Request
- Exhibit 6.27 October 27, 2019 Email from Ringle to (b) (6), (b) (7)(C) Subject: Your network access
- Exhibit 6.28 Telephone Call Activity spreadsheet
- Exhibit 6.29 (b) (6), (b) (7)(C) Travel itinerary dated April 19, 2019
- Exhibit 6.30 Senate Ag. Congressional Briefing Overview dated April 25, 2019
- Exhibit 6.31 (b) (6), (b) (7)(C) Travel itinerary dated July 31, 2019

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- Exhibit 6.32 August 1, 2019 Email from Ringle to Lavik, [REDACTED] and [REDACTED] Subject: meeting with the chairman
- Exhibit 6.33 [REDACTED] Travel itinerary dated October 31, 2019
- Exhibit 6.34 [REDACTED] Travel itinerary dated February 20, 2020
- Exhibit 6.35 January 27, 2020 Email from Ringle to Lavik and [REDACTED] Subject: RE: RE: February, noting attachment

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Ex i t i s t Allegation 8

- Exhibit 8.1 CFTC Information Technology Rules of Behavior Acknowledgment
- Exhibit 8.2 Training Transcript for IG Lavik obtained from CFTC
- Exhibit 8.3 November 15, 2021 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Follow-up Questions
- Exhibit 8.4 Email correspondence (16 exchanges) with Lavik's updated passcodes
- Exhibit 8.5 August 17, 2021 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: RE: RE: Quick Questions
- Exhibit 8.6 June 16, 2021 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: RE: RE: Interview
- Exhibit 8.7 Three lists of login credentials for personal and government accounts for IG Lavik from DIG Ringle's Outlook Mailbox
- Exhibit 8.8 Ringle Timesheets initialed/signed by Lavik
- Exhibit 8.9 March 15, 2021 Letter from Acting Chairman Benham to Lavik
- Exhibit 8.10 June 19, 2019 Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: (b) (6), (b) (7)(C)
- Exhibit 8.11 (b) (6), (b) (7)(C) timesheets for 2019 pay period 12 through 2020 pay period 06, June 9, 2019 through March 28, 2020 approved by Lavik

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Ex i t i s t Allegation 9

- Exhibit 9.1 April 11, 2017 Email from Ringle to (b) (6), (b) (7)(C) Subject: FW: COR Training Reminder – Validation
- Exhibit 9.2 April 17, 2017 at 16:32 Email from (b) (6), (b) (7)(C) to Ringle, Subject: (none)
- Exhibit 9.3 April 18, 2017 Email from Ringle to (b) (6), (b) (7)(C) Subject: Re: COR Training Reminder – Validation
- Exhibit 9.4 U.S. Commodity Futures Trading Commission (CFTC) Information Technology Rules of Behavior Acknowledgement, CFTC Form 19 (September 2018)
- Exhibit 9.5 Ringle Training Transcript as of April 30, 2021

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Ex i i t i s t A l l e g a t i o n 1 0

- Exhibit 10.1 March 15, 2021 Letter from Acting Chairman Rostin Benham to Inspector General A. Roy Lavik
- Exhibit 10.2 Transcript of voicemail message left by IG Lavik for (b) (6), (b) (7)(C) Office of Acting Chairman Rostin Benham on March 17, 2021
- Exhibit 10.3 Transcript of voicemail message left by IG Lavik for (b) (6), (b) (7)(C) Office of Acting Chairman Rostin Benham on March 19, 2021
- Exhibit 10.4 February 26, 2021 Email from Ringle to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: WebTA for (b) (6), (b) (7)(C)
- Exhibit 10.5 March 1, 2021 7:15a Email from (b) (6), (b) (7)(C) to Ringle, Subject: RE: WebTA for (b) (6), (b) (7)(C)
- Exhibit 10.6 March 1, 2021 7:48a Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: RE: WebTA for (b) (6), (b) (7)(C)

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Exhibit List – Technical Appendix - Allegation 4

- Exhibit 4.1 November 28, 2017 Email from [REDACTED] to [REDACTED] Ringle and Lavik, Subject: Office of the Inspector General-I&E Standards, with Attachment Office of Inspector General OIG Inspection and Evaluation Manual November 28, 2017
- Exhibit 4.2 CFTC OIG Investigations Manual dated May 18, 2016
- Exhibit 4.3 December 11, 2017 Ringle Email to Lavik, [REDACTED] and [REDACTED] Subject: Re: Re: Office of the Inspector General-I&E Standards, with attachment OIG Inspections and Evaluations Manual
- Exhibit 4.4 July 17, 2017 Email from Ringle to [REDACTED] and [REDACTED] Subject: A quick meeting Summary from [REDACTED] with attachment Quality Control Checklist for Inspections (Reviews) and Evaluations
- Exhibit 4.5 November 28, 2017 (b) (6), (b) (7)(C) conversation using the Lync chat application
- Exhibit 4.6 CFTC OIG Inspection & Evaluation Plan, Date Opened: June 21, 2017
- Exhibit 4.7 July 28, 2017 Email from [REDACTED] to Lavik, Subject: stress testing
- Exhibit 4.8 July 28, 2017 Email from [REDACTED] to Lavik and [REDACTED] Subject: OIG DCR Stress Testing Review
- Exhibit 4.9 July 31, 2017 Memo to Files from Judy Ringle, RE: Email from [REDACTED] and [REDACTED] challenging [REDACTED] and [REDACTED] inspection/evaluation of DCR's stress testing programs
- Exhibit 4.10 Confidential Stress Testing Report Working Narrative.v10.2
- Exhibit 4.11 September 13, 2017 (b) (6), (b) (7)(C) Notes of Conversation with (b) (6), (b) (7)(C)
- Exhibit 4.12 Undated Memorandum from [REDACTED] to [REDACTED] Reallocation of Resources within the Risk Surveillance Branch
- Exhibit 4.13 February 11, 2021 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), Subject: FW: Information request (containing a list of awards presented to RSB staff from 2010 to 2017)
- Exhibit 4.14 July 27, 2021 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), Subject: RE: (b) (6), (b) (7)(C)

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- Exhibit 4.15 Unredacted Stress Testing Report
- Exhibit 4.16 January 29, 2015 Email from [REDACTED] to [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] Subject: Potential CDS Stress Testing
- Exhibit 4.17 CFTC OIG [REDACTED] I interview transcript
- Exhibit 4.18 CFTC OIG [REDACTED] I interview transcript
- Exhibit 4.19 CFTC OIG [REDACTED] interview transcript
- Exhibit 4.20 August 15, 2017 [REDACTED] Memo to File of Meeting with [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] (b) (6), (b) (7)(C) [sic]
- Exhibit 4.21 CFTC OIG July 5, 2017 [REDACTED] interview transcript
- Exhibit 4.22 July 19, 2017 Email from [REDACTED] to [REDACTED] (b) (6), (b) (7)(C) Subject: RE: RE: CDS & IRS
- Exhibit 4.23 CFTC OIG [REDACTED] II interview transcript
- Exhibit 4.24 July 26, 2017 Memo to File, Re: Interview with [REDACTED] (b) (6), (b) (7)(C) present)
- Exhibit 4.25 CFTC OIG June 29, 2017 [REDACTED] interview transcript
- Exhibit 4.26 CFTC OIG [REDACTED] I interview transcript
- Exhibit 4.27 CFTC OIG [REDACTED] III interview transcript
- Exhibit 4.28 November 17, 2016 Email from [REDACTED] to [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] (b) (6), (b) (7)(C), Subject: FW: Treasury Secretary Jacob J. Lew Statement on Commodity Futures Trading Commission Supervisory Stress Tests of Clearinghouses
- Exhibit 4.29 CFTC OIG [REDACTED] interview transcript
- Exhibit 4.30 May 24, 2016 Email from [REDACTED] to [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] Subject: Systemic Risk Analysis
- Exhibit 4.31 CFTC OIG [REDACTED] interview transcript
- Exhibit 4.32 CFTC OIG June 23, 2017 [REDACTED] (b) (6), (b) (7)(C) interview transcript

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: Memo to (b) (6), (b) (7)(C) with attachments sm stress.docx; Response to 06_10_2016 memo.docx; Systemic Risk Analysis II.pptx
- Exhibit 4.47 May 1, 2017 Memorandum from (b) (6), (b) (7)(C) to Acting Chairman Giancarlo, Subject: DCR Monthly Report
- Exhibit 4.48 October 6, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: RE: RE: Questions sent out, noting attachment (2017.10.06) NERA-draft stress questions.docx
- Exhibit 4.49 October 27, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: FW: FW: Questions relating to OIG/NERA's 2016 Supervisory Stress Test Analysis, noting attachment 2016_SST_RESULTS.xlsx
- Exhibit 4.50 November 9, 2017 Attachment to Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: FW: FW: NERA Follow-up
- Exhibit 4.51 February 8, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Re: NERA Report
- Exhibit 4.52 February 9, 2018 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: RE: NERA Report
- Exhibit 4.53 December 23, 2016 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: mmg role in stress testing
- Exhibit 4.54 June 7, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: Margin Model Branch Review work
- Exhibit 4.55 CFTC OIG staff notes of June 19, 2018, conversation with (b) (6), (b) (7)(C)
- Exhibit 4.56 CFTC OIG (b) (6), (b) (7)(C) interview transcript
- Exhibit 4.57 CFTC OIG (b) (6), (b) (7)(C) I interview transcript
- Exhibit 4.58 December 19, 2017 SDR Data Validation, Presented by: DCR - Risk in February 2017
- Exhibit 4.59 December 19, 2017 SDR Data Analysis for Uncleared Risk Surveillance Program, Presented by DCR - Risk in March 2017
- Exhibit 4.60 March 22, 2017 Email from (b) (6), (b) (7)(C) Forwarding the Chicago RSB SDR Data Analysis for Uncleared Risk Surveillance Program to the March 22, 2017 Steerco meeting attendees, including (b) (6), (b) (7)(C)
- Exhibit 4.61 August 31, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Subject: FW: Topics for Data Steering Committee Meeting – 03/22/2017, noting attachments SDR Data

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

Validation – Credit Default Swaps Summary Version (3).pptx; SDR Data Validation Project.xps; SDR Data Analysis for CDS Risk Program_Summary.pptx

- Exhibit 4.62 CFTC OIG (b) (6), (b) (7)(C) II interview transcript
- Exhibit 4.63 October 18, 2017 Memo to file Re: (b) (6), (b) (7)(C)
- Exhibit 4.64 October 19, 2017 Memo to file Re: (b) (6), (b) (7)(C)
- Exhibit 4.65 CFTC OIG (b) (6), (b) (7)(C) Interview transcript
- Exhibit 4.66 April 27, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: RE: SDR Validation Data – Credit Default Swaps.pptx
- Exhibit 4.67 May 8, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) RE: April 2017 Status Report, noting attachment April 2017 Status Report.docx
- Exhibit 4.68 CFTC OIG (b) (6), (b) (7)(C) interview transcript
- Exhibit 4.69 June 19, 2017 Email from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: FW: Data Harmonization
- Exhibit 4.70 July 2015 – March 2017 (b) (6), (b) (7)(C) Email Exchanges, Subject: Global Risk dates
- Exhibit 4.71 (b) (6), (b) (7)(C) undated Memo to File re: (b) (6), (b) (7)(C) meeting
- Exhibit 4.72 CFTC OIG (b) (6), (b) (7)(C) interview transcript
- Exhibit 4.73 CFTC OIG (b) (6), (b) (7)(C) interview transcript
- Exhibit 4.74 August 7, 2018 Email from Ringle to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: today's phone call
- Exhibit 4.75 August 8, 2018 Email from (b) (6), (b) (7)(C) to Ringle, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Subject: RE: RE: today's phone call
- Exhibit 4.76 March 20, 2019 Email from (b) (6), (b) (7)(C) to Giancarlo, Subject: (none)
- Exhibit 4.77 March 20, 2019 Email from Giancarlo to (b) (6), (b) (7)(C) Subject: RE: Thank you
- Exhibit 4.78 August 1, 2018 Email from (b) (6), (b) (7)(C) to Ringle, Subject: RE: RE: OIG staff performance award

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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REPORT OF INVESTIGATION -- OFFICIAL USE ONLY

- Exhibit 4.79 August 1, 2018 Email from [REDACTED] to Ringle, Subject: Re: Re: OIG student loan repayment program
- Exhibit 4.80 August 3, 2018 Email from [REDACTED] to Ringle, Lavik and [REDACTED] Subject: RE: RE: DCR stress test paper
- Exhibit 4.81 August 3, 2018 Email from Ringle to Lavik, [REDACTED] and [REDACTED] Subject: DCR stress test paper
- Exhibit 4.82 August 8, 2018 Email from [REDACTED] to [REDACTED] Subject: Report, noting attachment Final cover memo report and appx no password.pdf and appendixes
- Exhibit 4.83 June 19, 2018 Ringle Memo to File, Re: [REDACTED] Tuesday June 19, 2018 10 am
- Exhibit 4.84 August 7, 2018 Email from [REDACTED] to [REDACTED] cc: [REDACTED] [REDACTED] Subject: OIG Report Response
- Exhibit 4.85 August 2, 2018 Email from Ringle to [REDACTED] Subject: RE: RE: OIG staff performance award
- Exhibit 4.86 August 7, 2018 Ringle/[REDACTED] conversation using the Lync chat application
- Exhibit 4.87 June 22, 2017 Ringle Memo to File, Subject: June 21, 2017 meeting re [REDACTED] and [REDACTED] new project
- Exhibit 4.88 [REDACTED] Note to file, Subject: January 12, 2018 Meeting with [REDACTED] Chairman Giancarlo, [REDACTED], [REDACTED], [REDACTED], and Inspector General Roy Lavik
- Exhibit 4.89 July 21, 2018 Email from [REDACTED] to [REDACTED] Subject: Meeting with [REDACTED]
- Exhibit 4.90 July 12, 2018 Memo to Files from Ringle, RE: Meeting with [REDACTED]
- Exhibit 4.91 July 30, 2018 Memo from Lavik to Giancarlo, Brian Quintenz, Commissioner and Rostin Behman, Commissioner, Subject: Report on Division of Clearing and Risk (DCR) Stress-Testing Efforts, noting attachment
- Exhibit 4.92 May 14, 2018 Email from [REDACTED] to [REDACTED] Subject: Follow-up
- Exhibit 4.93 May 15, 2018 Email from [REDACTED] to [REDACTED] Subject: RE: Follow-up
- Exhibit 4.94 May 16, 2018 Email from [REDACTED] to Ringle, Subject: FW: Follow-up

Case Number: CIGIE Case IC 986	Case Title: Investigation of CFTC IG A. Roy Lavik and DIG Judith Ringle
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Enclosure 2

I write in response to the July 7, 2022, Report of Investigation, “Commodities [sic] Futures Trading Commission – Case Number 986” (hereinafter, “Report”).¹ Preliminarily, I object to the denial of my full extension request to permit me adequate time to respond to an investigative report that took over three years to produce, resulting in a 90-page, single-spaced document, plus a separate 86-page, single-spaced “Technical Appendix.” The heavily redacted report is, at best, incomprehensible for the reader to follow and, as a result, is designed so that no meaningful response defending against its faulty conclusions can be submitted in the allotted time. First and foremost, the Report fails to comply with CIGIE’s Quality for Standards for Investigations in a number of respects, not the least of which is the requirement that investigations be conducted in a timely manner,² and as such, my ability to respond effectively has been severely compromised given that much of the Report concerns events that have occurred over five years ago.

By way of background, CFTC-OIG is a small, under-resourced office with less than a dozen employees.³ Judy Ringle is the Deputy Inspector General and Chief Counsel for the office. In that capacity, she is the chief legal officer for the OIG and responsible for handling FOIA and other requests, as well as overseeing the Semiannual Report. At times, given the lack of adequate staffing in the OIG, DIG Ringle has utilized Agency resources to accomplish our mission, including requesting assistance for responding to FOIA requests, redaction services, and even legal advice.

¹ The correct name of the agency is Commodity Futures Trading Commission.

² “Timeliness—All investigations should be conducted and reported in a timely manner. This is especially critical given the impact investigations have on the lives of individuals and activities of organizations. Hence, the effectiveness of an investigator depends, in part, on the promptness of finished work products, such as prepared findings and memorialized witness interviews.” CIGIE Quality Standards for Investigations, pp 8-9.

³ CFTC-OIG has requested additional funding for FY 24 to expand staffing as well as upgrade systems. The request, if granted in full, would increase the CFTC-OIG earmark by approximately 40%.

The CFTC is a financial markets regulator and is a FIRREA Agency. Because of the complex financial and economics of the work of the CFTC overseeing the derivatives marketplace and the work of the CFTC-OIG, I seek to hire attorneys and other individuals who have experience in financial regulation or possess an economics background. At the time of most of the events contained in the Report, three attorneys, not including DIG Ringle, reported to me and were responsible for providing legal advice, writing reports and other documents, and conducting investigations. From their law school education and prior experience, each of the attorneys were experienced in how to accurately convey information in oral and written form and interview witnesses.

Specifically, with regard to [REDACTED] and [REDACTED], FCC asserts that they were not qualified to conduct an Inspection and Evaluation. [REDACTED] graduated with a law degree from a prestigious law school and clerked for a federal appellate judge at the Fifth Circuit. He is a graduate of the most prestigious science and math high schools in the country—Thomas Jefferson High School. He also holds a mathematics degree from Harvard University and has also completed coursework towards a PhD in mathematics at Berkeley and is all but dissertation in the economics PhD program at George Mason. [REDACTED] has an undergraduate bachelor of science degree in economics, a masters in economics, and a law degree. If these two are not qualified to conduct Inspections and Evaluations then no one is.

Unfortunately, the three attorneys did not always get along and a rift developed between two of the attorneys, [REDACTED] and [REDACTED] and the third, [REDACTED]. Furthermore, DIG Ringle did not always get along with the three attorneys as well which made for a poor work environment. At some point, I came to believe that [REDACTED] lacked judgment, and was brash and unnecessarily confrontational. [REDACTED] also disagreed, at time vehemently,

with my decisions on how to prioritize work and work assignments. Despite my efforts to make [REDACTED] feel that he was a valued member of CFTC-OIG, including promoting him (b) (6), (b) (7)(C), he continued to display a lack of respect toward me, DIG Ringle, [REDACTED] and [REDACTED]. More importantly, when I concluded [REDACTED] lacked good judgment, I lost all confidence in his abilities to conduct investigations. In many respects, [REDACTED] mirrored the character of Barney Fife in how he viewed his duties, and I found myself constantly operating as Andy Griffith, trying to impart upon him the five decades of experience that I had in the federal government at that time.

By the end of his career, [REDACTED] had developed contempt for me and my priorities for the office. The Report is replete with instances of [REDACTED] anger towards me and the CFTC-OIG. “Allegation 7 – Whether the IG abdicated his responsibilities and authority due to impairment,” for instance, is illustrative of how [REDACTED] viewed me and his belief that I was senile colored his interactions with me and respect for the decisions I made in running the office.⁴

The Report’s conclusion concerning Allegation 1 – whether I and DIG Ringle “abused their authority by prioritizing a management review over investigations, including those with allegations of criminal misconduct,” is indicative of the second-guessing and lack of deference shown to the decisions I made based on my extensive experience and good judgment over my entire 57-year career in Federal service. I exercised my authority in response to an allegation that came into the office and directed two of my attorneys, [REDACTED] and [REDACTED] to review the allegations, conduct needed interviews, and write a report that was ultimately entitled a “Management Advisory.” [REDACTED] felt left out when I did not include him on the project and tried to tie my hand into calling

⁴ I have served as an employee in the federal government for over 57 years and have been recognized as the longest serving Inspector General in the Federal Government.

the work that needed to be done an “investigation.” Quite simply, [REDACTED] not unlike Barney Fife, objected to the speed at which a criminal referral was made. Buried in the exegesis of Allegation 1 is the real punchline: an allegation that came into the office on November 2017 was reviewed and investigated and a referral of potentially criminal conduct was made to the Justice Department by April 2018; DOJ declined to take up the matter. (Report at 12 and n. 16). In reality, the Report fails to recognize my discretion in who to assign to matters and how to go about handling an allegation. Consequently, there can be no wrongdoing associated with Allegation 1 because there is no statutory requirement that inquiries into incoming allegations must be deemed “investigations” nor can there be any suggestion that the five-month time period from the initial allegation into misconduct to the referral to the DOJ was improper.

Two other points are noteworthy at this stage and provide insight into the failings of the Report as well as [REDACTED] personality. First, the report notes that [REDACTED] “sent numerous email messages and documents to the CIGIE IC.” This is not surprising. [REDACTED] believed that he was always right and tried to overwhelm both me (and I believe DIG Ringle as well), with information to prove his point of view. Even at times when I may have agreed with an approach [REDACTED] would recommend, I hesitated to have [REDACTED] execute it because of his lack of judgment and inability to not act like a Barney Fife and blow things out of proportion. By the end of his tenure, [REDACTED] had stowed such chaos and substantial discontent to the detriment of the operation of the office.

Second, the Report attempts to disparage the qualifications of [REDACTED] and [REDACTED] by referring to them as “attorney-economists” while referring to [REDACTED] as a “trained criminal investigator.” In my judgment, while [REDACTED] had attended the FLETC Academy, he lacked judgment and maturity, and thus, I felt [REDACTED] and [REDACTED] were better at interviewing witnesses and

gathering and synthesizing information. My staffing decisions reflected those views, which caused [REDACTED] to deeply resent me and ultimately DIG Ringle who he perceived as an ally of mine. [REDACTED] simply did not respect that I was the Inspector General and that Judy Ringle was the Deputy Inspector General and that I valued the work of [REDACTED] and [REDACTED] over [REDACTED]

With respect to Allegation 2, the Report concludes that it “did not find evidence supporting the claim that IG Lavik or DIG Ringle inappropriately targeted OIG and agency employees using management reviews.” Nevertheless, the Report spends pages discussing the fact that I openly told my Staff in OIG offices that I viewed someone at CFTC Management unfavorably. This is another Allegation where a disgruntled employee, [REDACTED] tried to make a mountain out of a molehill and, here again, the Report goes on for pages about a nonevent. Even the allegation, which states that I raised my voice in discussing this individual and stated that I could not be in the same room as her, says “to my knowledge, the IG’s personal feelings did not influence the outcome of” a particular report. Simply put, private discussions I have with my Staff necessarily must remain private and it’s important to note that there is simply no suggestion in the pages devoted to Allegation 2 that I lacked integrity.

Allegation 3 concerns instances where the Report contends that DIG Ringle and I “unnecessarily compromise[ed] whistleblower anonymity and witness identities in OIG reports.” I strongly disagree with the Report’s conclusions. First, the Report views distribution of an unredacted Inspection & Evaluation, known as the “Stress Test Report,” as somehow being improper to provide to the Senate Agriculture Committee. I disagree with the Report’s conclusion that providing unredacted copies of reports from the Office of the Inspector General is improper. To the contrary, I believe that Congress is entitled to

unredacted reports my office creates and there are ample examples of other Inspector Generals providing unredacted reports to Congress. Likewise, I believe that the Commissioners that oversee my office are entitled to receive unredacted reports in order for them to properly oversee the work of my office and staff. The Report also states that my office used the Agency's Office of General Counsel ("OGC") to help in redacting the public version of the Stress Test Report. As a small, resource-constrained office, DIG Ringle has utilized staff in OGC to perform redactions, respond to FOIA requests, and provide legal advice. I understand that she believes such procedure is proper, and I have no reason to believe otherwise. If my budgetary requests are approved for FY '24, I intend to add staff such that my office can perform such processes without OGC help.

Allegation 4, which concerns a 2018 Stress Test Report, fails for a variety of reasons, not the least of which is that the CFTC Commissioners, including Chairman Tarbert, responded by effectuating a number of personnel changes after their own investigation. Despite the Report's protestations that the primary authors of the Stress Test Report failed to include responses from the Chicago group of staffers criticized in the Stress Test Report, the Report notes that CFTC management itself declined to provide an official response. While the Stress Test Report may have caused unwanted political issues for then-Chairman Giancarlo, he determined to allow the Stress Test Report to be published without any official response, thereby rejecting the objections of the Chicago group of staffers.

I also disagree with the Report's conclusions concerning the retention of NERA Economic Consulting to review the Stress Test Report's conclusions. The Report fails entirely to appreciate how experts and consultants are retained in the real world. In the retention process and thereafter, it is incumbent to communicate with the experts and

consultants the theories to validate or the issues for which an opinion or advice is needed. This happens routinely with consulting and testifying experts. To suggest without any basis in fact that NERA Economic Consulting was somehow biased in the conclusions that were reached is a gross abuse of the investigative process by FCC OIG and a complete misunderstanding of how experts and consultants are employed and utilized. The process outlined in the Report is no different than what is employed by every US Attorney's Office in retaining experts for trial and to suggest that bias occurred here without any evidence of such is improper and insulting to NERA Economic Consulting. I note too that NERA Economic Consulting does not appear to have been asked to provide any input into the Report.

The report repeats many of the misleading and inaccurate claims that the Chicago group repeated to my office. A line-by-line response to the FCC's numerous errors, omissions, and misleading statements would require several hundred pages and many more months. Nevertheless, I have included a further, limited response to Allegation 4, appended at the end of this letter response, labeled "Appendix A." Notably too, the Report fails to mention the territoriality and other issues that historically has existed between CFTC regional office and headquarters, including issues specific to the Chicago office. The Report fails to accord any discretion or respect to my judgment in how the Stress Test Report was conducted and written to communicate to CFTC senior management the seriousness of issues raised for a financial regulator of a multi-trillion, dollar derivatives marketplace.

Turning now to Allegation 6, I disagree with the Report's conclusion that no meaningful work was completed and produced by a former employee, [REDACTED] who was retained as a consultant to help transition projects he had been working on but also to continue to provide me substantive oral updates on the derivatives industry events, CFTC

proposals, and industry happenings. What the Report fails to recognize is the interference with my office's operation by the Agency's failure to permit me to have a remote worker as part of my office's staff. Instead the Agency required the employee to resign his position and to have him be employed as a consultant.

By the time of his departure, many in my office, including [REDACTED] and DIG Ringle, were jealous of the close relationship and value I placed on [REDACTED] counsel and advice. Indeed, the Report notes DIG Ringle's anxiety and anger about not knowing what [REDACTED] was doing for me. Coupled with the fact that [REDACTED] was causing problems in the office, DIG Ringle was unable to comprehend the work that [REDACTED] was performing directly for me and felt that [REDACTED] was not working. That simply was a misplaced fear. As he had done as an employee, [REDACTED] analyzed financial writings and orally synthesized them for me in phone calls that we would have. I have no doubt that [REDACTED] worked all of the hours that he was paid for during his time consulting for the office. Indeed, the Report fails in its ability to conclude otherwise. Although the Report discusses hypothetically whether someone may be paid as a consultant for being available, that was not the case of [REDACTED] work. [REDACTED] routinely reviewed documents and economic literature and kept me abreast of new developments. As the Report quotes from an email [REDACTED] sent to FCC OIG, "As expected by Roy and as I did when I was an employee, in between other 'official' projects or ad hoc requests, I continued independent reading (for future projects) in anticipation of the hiring of junior and senior law-and-economics staff members, which ended up taking a long time..." Despite this explicit statement about the work he was performing while waiting for discrete assignments, the Report inexplicably concluded: "Thus, according to [REDACTED] he made efforts to perform work for the CFTC OIG while he was a consultant, but states quite clearly that his efforts were rebuffed by IG Lavik and CFTC OIG."

Allegations 8 and 9 relate to password usage. Since receiving the Acting Chairman's March 2021, letter, DIG Ringle and I have not shared passwords. As the report notes with regards to Allegation 9, the violation simply "appears to be a technical violation."

Unfortunately, the interference that my office is experiencing with the Chairman's office and his staff is growing. As I explained in my June 14, 2022, letter to the CIGIE (b) (6), (b) (7)(C) [REDACTED], I am experiencing troubling patterns of interference in the operation of my office and with the official duties of the Inspector General. I expect my next Semiannual Report to outline many of my concerns and further expect additional bogus complaints to be filed by Agency personnel to CIGIE.

I am happy to answer any questions you may have about this response.

Respectfully submitted,

A. Roy Lavik, Inspector General

APPENDIX A

When D.C. RSB staff originally approached my staff regarding Chicago's stress testing program, the main regulatory issue presented related to Chicago's reliance on regulated entities' "delta ladders." Simply put, a delta ladder is the change of an *e.g.*, interest rate swap portfolio value in response to a basis point change to the underlying reference rate. Chicago staff would take these regulated entities-generated delta ladders and run various scenarios they came up with to predict changes in regulated entities' portfolios. The issue with this approach—as presented to us by D.C. staff—was that the Chicago staff was *dependent* on the regulated entities to calculate and generate an integral variable to the Chicago stress-testing program.

This dependent relationship would be similar to major accounting firms tasked with scrutinizing public companies relying on top-line calculations done by the public company rather than reviewing the underlying data itself. Such an arrangement would undermine the central purpose of independent scrutiny of public companies.

The FCC appears to completely misunderstand this central issue and unfortunately because of this misunderstanding nearly every one of their conclusions are misleading or false. The separate NERA Economic Consulting sreport elaborates on this important issue by highlighting how such a reliance could lead to a single point of failure—that is, because Chicago could not and did not independently calculate the delta ladders an error, omission, or false entry could lead to enormous consequences.

Other examples of FCC's misunderstanding include several statements where FCC claims marginal model calculations are completely irrelevant to stress-testing. Or that more linear products, *e.g.*, interest-rate swaps,

are done just as well using delta ladders as full revaluation. Such statements ignore the dependent relationship described above.

FCC also maligns the work of NERA Economics Consulting—a top-rated PhD economics consulting firm. NERA was chosen by the CFTC not the OIG—a fact, like many other facts, that FCC appears to not appreciate—through the CFTC’s normal consultant award process. Any suggestion by FCC that I or my staff influenced their hiring or decision making is simply unfounded.

FCC erroneously asserts that my staff did not allow Chicago staff the same opportunity to state their case as we did the D.C. group. That assertion is patently false. My staff made numerous overtures to Chicago, in the form of emails, phone calls, and interviews. Because our office was more focused on the substance of the final report, we did not include the various problems my staff encountered when attempting to seek the cooperation of Chicago staff. Chicago staff, including and especially (b) (6), (b) (7)(C) were rude, non-responsive, argumentative, and otherwise uncooperative throughout the entire process. In sum, the Chicago staff were simply unwilling to meaningfully cooperate with my staff. I suspect this was in part because while the DC group could individually produce the statistical models undergirding their stress-testing models, the Chicago leadership could not and had to rely on one staffer in DC.

On page 44-45 of the Appendix, FCC egregiously spins events to shelter Chicago staff from scrutiny. Our report originally recapitulated two separate internal CFTC meetings that occurred in February and March of 2017. At the February meeting, Chicago staff presented what other CFTC staff—including (b) (6), (b) (7)(C) —described to us as misleading and incomplete. Because of

the criticism Chicago received, it was forced to change its March 2017 presentation and withdraw certain material it had originally presented.

FCC writes that, "...[f]urther, the February 2017 presentation was not withdrawn by Chicago...[h]ad CFTC OIG inspectors asked Chicago RSB staff about the presentations CFTC OIG Inspectors would have learned that changes to the February presentation were made for clarity and brevity." This statement would not be surprising if it appeared in a press release and was authored by a public relations firm. For it to come from FCC OIG is shocking. In its own report, FCC admits that Chicago made changes to the February presentation, *i.e.*, previous Chicago claims were retracted. But FCC argues that the changes were made for aesthetic purposes. The claim is absurd. The platform and format of the two different meetings did not change. The time limit did not change. All that changed was that Chicago staff were forced to withdraw inaccurate material. That FCC would obfuscate such a simple sequence of events is telling.

On pages 40-44 of the Appendix, FCC claims OIG knew of the poor SDR quality and that therefore OIG should have known that DC stress testing could not work because DC stress testing relied, in part, on SDR data. FCC's conclusion obfuscates the issue. Our inquiry of the various models in the report was whether the underlying model and technology worked—not whether the data it relied on was poor. But FCC also does not appreciate that data input and databases are not static creatures but rather evolve based on learned experience. While Chicago refused to work with the SDR data—likely because Chicago leadership did not have the technical acumen to use the necessary programs—DC staff were actively trying to work with and improve the SDR data. Meanwhile, FCC's parroting of Chicago talking points omits CFTC's role in mandating and requiring SDR data submittal from market actors—requirements that are mandated by the Dodd-Frank Act.

Chicago's argument was that CFTC should just ignore the data, undermining public statements made by the CFTC.

Related to this misrepresentation is FCC's inability to understand the CFTC's jurisdiction. DCR is responsible for monitoring risk in the CFTC's jurisdiction. Chicago staff used the CFTC's lack of non-CFTC jurisdiction and data as a pretext to argue that more powerful and robust DC tools could not add value because the CFTC was limited to data in its jurisdiction. But this argument is specious for obvious reasons, not least of which the CFTC has been working to cooperate with sister agencies to get non-CFTC data—data that could then be inputted into the new DC models.

As noted above, the Chicago staff's use of delta ladders made their stress-testing program per se dependent on regulated entities' calculations. Compounding this error, FCC staff appear to completely misunderstand the technical relationship between delta ladders and stress testing. Let me illustrate with a few examples from the FCC report.

In June of 2017, CFTC held a public meeting where a senior Chicago staffer, referring to "level four" regulation found in an article Chicago staff had authored, stated that "[w]e strive to conduct independent assessments of the risks posed by market participants, primarily through stress testing." Our report scrutinized this and other statements, generally concluding that Chicago staff left the impression that they conducted independent analysis. FCC asserts in its report that Chicago staff's reference to independent oversight is not misleading, stressing that OIG's focus on "independent verification" is wrong. Appendix at 59-60.

Indeed, FCC spends a remarkable amount of space playing linguistic gymnastics, claiming that Chicago "conduct[s] independent

assessments of the risks posed by market participants...” Report at 60. FCC offers what amounts to the most spectacular difference without a distinction argument I have ever read, arguing that because Chicago staff come up with its own scenarios that obviates the fact that Chicago staff receive an integral variable input to its model. Our report, in contrast, noted that if a regulator cannot independently confirm the results of the regulated entity’s calculations then the regulator is by definition dependent on the regulated entity to conduct its oversight.

The Chicago staff [article](#) in question further highlights the absurdity of FCC’s statements. The article states that “[t]he potential shortcomings of the techniques used at level 3 is the lack of independent verification of data and testing of assumptions by the regulator itself. Level 4 entails the use of proactive techniques by which the regulator conducts independent assessments of the risks posed by a regulated entity’s business.” The implication of Level four regulation is clear—while levels 1-3 are limited in their dependency on the regulated entity, level four allows the regulator to independently examine the underlying data and assumptions.

In effect, FCC is asserting that Chicago’s risk-surveillance, while not able to independently verify any of the data it was given by regulated entities, could still somehow do “independent assessments.” That is impossible. To put it simply, this conclusion is absurd and demonstrates the utter bankruptcy of FCC’s “Technical Appendix.”

But FCC’s mendacious advocacy does not end there. After casually admitting that “even if there was such a requirement [independent verification] as stated in the article, the article is a theoretical piece, not a regulation governing the CFTC and not binding on the CFTC staff. Accordingly, Chicago RSB staff presenters were not required by CFTC rules or regulations to explain how Chicago stress testing fit into fourth

level of regulation...Reference to level 4 was purely illustrative and a[]n...aspirational statement..." Appendix at 61.

FCC appears to suggest that it is okay for Chicago staff to mislead the public if the underlying source of the deception is not an official document. Of course, the CFTC holds its regulated entities to a higher standard. Our report suggested we should hold CFTC staff to a similar standard of candor, integrity, and honesty.

FCC further discredits itself by parroting vapid statements from Chicago staff that claim that Chicago staff's use of its own scenarios makes its evaluations independent. Of course, this is false. Page 63-65. If a model relies on a critical variable and that variable is created by a third-party, the model is by definition dependent on the third-party. Conversely, the DC group had created its own models from scratch that could take the positions of the third-parties and revalue the positions based on potential market movements. FCC appears to not remotely appreciate nor understand the distinction.

Additionally, the FCC report repeatedly asserts that my office failed to present explanations "about the independence of the stress tests run by Chicago RSB using delta ladders..." Appendix at 65. Any suggestion that delta-ladder based stressed testing is independent is false.

Senior leadership at every agency takes the opportunity to respond to an OIG report, if given the opportunity. I offered then Chairman Giancarlo several opportunities to respond to OIG's report. He and his staff did not respond. Indeed, Chairman Giancarlo could have simply endorsed Chicago's response to our report. The Chairman did not. FCC attempts to explain this away by claiming that Giancarlo was trying to avoid press coverage. It is unclear how a CFTC management response would affect press coverage and of course FCC does not even attempt to offer an explanation. In reality, Chicago's response to our report was

self-serving, misleading, and generally untrue. Perhaps that is why Giancarlo did not endorse it.

FCC also fails to mention that Giancarlo later hired a CFTC staffer as his senior advisor who was highly critical of Chicago and was a witness who told OIG of the many failures Chicago had. That same adviser later hired one of the DC staffers to run several technical reports—a staffer who was perhaps the most visceral in his criticism of Chicago. Moreover, this same adviser was later hired *to run* the Chicago/DC team. Why would Giancarlo hire someone who was critical of Chicago if Giancarlo believed Chicago did a good job?

Finally, at numerous points in the report FCC speculates that my goal was to get Chicago leadership fired. This speculation is perhaps the most irresponsible claim in the report. Nowhere in the original report do we even remotely suggest that anyone should be fired. At no time did my office ever discuss the possibility of recommending anyone be fired. FCC offers no evidence to support its bald speculation—because there is no basis for the statement.

Enclosure 3

August 29, 2022

Via email through (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Kevin H. Winters
Chairperson, Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington DC 20006-3900

Re: Draft Report of Investigation for Integrity Committee – IC Case 986
Comments of Judith Ringle to Draft Report of Investigation

Dear Mr. Winters:

This letter is in response to the Memorandum, dated July 14, 2022, to Ms. Judith A. Ringle, Deputy Inspector General, U.S. Commodity Futures Trading Commission, which provided her with the opportunity to submit comments regarding the draft Report of Investigation for IC Case 986.¹

A. Background

The Integrity Committee (IC) notified Ms. Ringle of its investigation in Case 986 in May 2019. The Integrity Committee requested that the Federal Communications Commission Office of Inspector General investigate allegations regarding the conduct of CFTC Inspector General Roy A. Lavik and Ms. Ringle. Originally, FCC OIG was asked to investigate seven allegations. In June 2021, the IC requested that the FCC OIG expand the investigation to include three more allegations – for a total of ten allegations. Not all ten allegations concerned Ms. Ringle.

Ms. Ringle was interviewed by the FCC OIG on two separate occasions related to the original allegations – August 28, 2020, and August 31, 2020. Further, Ms. Ringle responded to several follow up requests for information and documents from FCC OIG throughout the summer,

¹ The IC granted undersigned counsel's requested extension of time to provide comments to the draft report, so that they are due by August 29, 2022.

fall and winter of 2020 and 2021, each time answering all their questions.² Ms. Ringle also provided written information and documents on several other occasions. Then in June 2021, the FCC OIG informed Ms. Ringle that its investigation had been expanded to include what are identified as Allegations 7, 8 and 9. Ms. Ringle was interviewed by FCC OIG again on July 28, 2021, related to Allegations 7, 8 and 9. Ms. Ringle has fully cooperated in this investigation.

On July 7, 2022, the FCC OIG submitted its draft report of investigation to the IC. In the draft ROI, the FCC OIG concluded that it found evidence supporting Allegations 1, 3, 6 and 9 related to Ms. Ringle. The following constitutes Ms. Ringle’s comments regarding the draft ROI.³

B. Ms. Ringle’s employment with CFTC

Ms. Ringle has been employed by the federal government since August 1988, spending most of her time with the CFTC. In 1988, Ms. Ringle joined the CFTC’s Division of Enforcement. She worked there until December 1989 when she joined the Office of General Counsel. She remained in CFTC OGC until 1996 when she went to work for the Social Security Administration Office of Inspector General.

In 2007, Ms. Ringle returned to CFTC as a non-supervisory attorney, CT-14, in the Office of Inspector General.⁴ One year later she was promoted to a CT-15 non-supervisory attorney position. In 2014, Ms. Ringle was reassigned to a supervisory attorney position. Then in 2015, Ms. Ringle was promoted to the Deputy IG and Chief Counsel position.

C. FCC OIG Conclusions Regarding Allegations

Allegation 1

Whether the IG and DIG mismanaged OIG and abused their authority by prioritizing "management reviews" over investigations, including those with allegations of criminal misconduct.

FCC OIG found evidence that IG Lavik and DIG Ringle intentionally prioritized a “management review” over an investigation. Upon receipt of allegations of misconduct by [redacted], IG Lavik and DIG Ringle assigned the managerial misconduct allegations to Attorney-Economists, instead of CFTC OIG’s trained investigator, and instructed them to conduct a management review. Even after IG Lavik authorized CFTC OIG’s trained investigator to investigate the alleged criminal

² It is worth noting that none of FCC OIG’s interviews of Ms. Ringle were recorded or transcribed. Further, Ms. Ringle has never been provided a copy of the interview notes taken by the FCC OIG investigators.

³ Please note that a lack of response to an allegation, event, or conclusion described in the draft ROI does not indicate Ms. Ringle’s agreement with allegation, event, or conclusion.

⁴ The draft ROI erroneously states that Ms. Ringle was the Deputy IG and Chief Counsel in 2007. ROI 1.

misconducted, IG Lavik persisted on prioritizing the management review that CFTC OIG Attorney-Economists conducted, over the investigation.

ROI ii, 6 (internal footnotes omitted).⁵ The FCC OIG’s conclusion that it “[found] evidence” that Ms. Ringle did something wrong related to Allegation 1 is both misleading and unsupported by the record.

Some context is important here. As noted in the draft ROI, on November 30, 2017, CFTC OIG met with CFTC management to discuss allegations of misconduct in the Office of Financial Management (OFM). Over the course of the following two months (which included December 2017 and January 2018, times of the year when many federal employees take use-or-lose leave and are not available or in the office), IG Lavik, Ms. Ringle and other OIG staff discussed how to address the allegations involving OFM. Originally, IG Lavik initiated a management review to look into the evidentiary support for the allegations. However, on January 31, 2018, IG Lavik decided to investigate the allegations regarding OFM. As addressed below, there are several problems with FCC OIG’s conclusions regarding Allegation 1.

First, Allegation 1 claims that Ms. Ringle and IG Lavik prioritized management *reviews* over *investigations* – plural. However, the FCC OIG only examines a single instance where a management review was used – the so-called “Management Advisory: Office of Financial Management” (“OFM review”). ROI 6.

Second, and more significant, though the FCC OIG concluded that CFTC OIG favored a management review with respect to OFM, its conclusion ignores the fact that ***an investigation was commenced*** regarding the issues involving the Office of Financial Management. ROI 10. Although the draft ROI notes the fact that IG Lavik decided to commence an investigation, the FCC OIG gives that short shrift. Moreover, IG Lavik decided to commence an investigation ***only*** two months after CFTC OIG first met with CFTC management about the allegations of misconduct within OFM. Again, the original allegations were raised with CFTC OIG on November 30th, and IG Lavik decided to open an investigation on January 31st.

Third, the FCC OIG never explains why conducting a management review is necessarily wrong or even a bad idea in the context of the lone example it relies on. As Ms. Ringle explained in her interviews, management reviews are used for allegations that managers are mismanaging staff, and the bulk of the incoming allegations dealt with assertions of improper management decisions. Moreover, (b) (6), (b) (7)(C) had a history of dealings with (b) (6), (b) (7)(C) at issue and was already working on several investigations. The IG’s initial determination to assign other staff to a management review, at least at the outset, made imminent sense to Ms. Ringle. As the management review revealed possible criminal activity in the opinion of the OIG staff assigned, the IG within two months determined to open an investigation.

⁵ References to the draft Report of Investigation will be cited as “ROI __.”

Further, the FCC OIG seems to expand the scope of Allegation 1 by insinuating that the CFTC OIG engaged in wrongdoing when it assigned Attorney-Economists to conduct a management review rather than an investigator. Not only is this claim not part of Allegation 1 – or the other allegations – but the FCC OIG fails to identify a specific rule that was potentially violated in doing so. We believe FCC OIG did not address this additional issue in its interviews with Ms. Ringle.

Allegation 3

Whether the IG and DIG violated section 7(b) of the IG Act by unnecessarily compromising whistleblower anonymity and witness identities in OIG reports. Specifically, it is alleged that they deliberately named witnesses and complainants without their consent and, in some cases, after they specifically requested to remain anonymous due to fear of retaliation.

The investigation determined that this allegation is substantiated for IG Lavik and DIG Ringle. IG Lavik and DIG Ringle have not developed and implemented procedures to protect the confidentiality of whistleblowers and witnesses as required by Section 7 of The Inspector General Act of 1978 and the Data Collection and Analysis Standard of the CIGIE *Quality Standards for Inspection and Evaluation*. Particularly troubling is CFTC OIG's practice of submitting CFTC OIG reports that will be made public to the agency's Office of General Counsel ("OGC") and allowing OGC to have the final word on report redactions, particularly because OGC is not bound to comply with IG Act and CIGIE professional standards when redacting OIG reports. Also questionable is the practice of publishing the names of CFTC senior management in OIG reports based on their position alone. This allegation triggered the examination of two CFTC OIG reports.

ROI ii-iii, 23. The FCC OIG conclusion that Allegation 3 is substantiated is without support and flawed in its analysis. The IG Act cannot be read as literally as FCC OIG proposes in concluding the IG Act was violated. Further, it is significant to note that much of FCC OIG's conclusions regarding Allegation 3 rely on the incorrect claim that CFTC OIG was *required* to develop and implement procedures regarding the confidentiality of witnesses.

Development of procedures regarding confidentiality is not required and is not included in Allegation 3.

As noted above, the FCC OIG’s conclusion that Ms. Ringle (and IG Lavik) violated § 7(b) of the IG Act is rooted in the false notion that CFTC OIG was required to develop and implement procedures regarding witness confidentiality. This conclusion is insupportable.

First, FCC OIG concludes that the CFTC OIG has not developed and implemented procedures to protect confidentiality of whistleblowers and witnesses. ROI 23. However, Allegation 3 *does not* allege that CFTC OIG has not developed said procedures. The only claim in Allegation 3 is that IG Lavik and Ms. Ringle violated § 7(b) of the IG Act by compromising witness and complainant identities.

Second, despite its claim, there is *no requirement* that the CFTC OIG develop and implement procedures for maintaining confidentiality of individuals providing information. ROI 23-24. FCC OIG states that “[t]his *requirement* is further refined in the Data Collection and Analysis Standard of the CIGIE Quality Standards for Inspection and Evaluation, which *requires* IGs to develop and implement procedure for maintaining the confidentiality of individuals providing information. CIGIE Quality Standards for Inspection and Evaluation at 11-12.” ROI 24 (emphasis added). The FCC OIG is incorrect on two fronts.

The 2020 version of the CIGIE Quality Standards for Inspection and Evaluation does not contain any language related to developing procedures for maintaining confidentiality of witnesses. Additionally, the 2020 version does not even contain a section entitled “Data Collection and Analysis Standard.”

It seems that the FCC OIG is actually relying on the 2012 version of the CIGIE Quality Standards for Inspection and Evaluation, which was in effect during some of the events under investigation, which does address confidentiality. However, the 2012 version *does not* – as claimed by the FCC OIG - “require” the development and implementation of procedures but rather states that “OIGs *should* develop and implement procedures for maintaining the confidentiality of individuals providing information.” 2012 version pp. 11-12 (emphasis added). Thus, contrary to the FCC OIG’s assertion, OIGs were not *required* to develop said procedures even under the 2012 version.

Indeed, the 2012 version provides OIG’s greater flexibility than the FCC OIG itself would impose on OIGs regarding confidentiality. On page 11 of the 2012 version, “[c]onfidentiality, *as appropriate, should* be afforded to sources of information consistent with the Inspector General Act of 1978, as amended; the internal policies of each OIG; and other applicable laws and statutes.” (Emphasis added).

The Stress Testing Report was not an investigation and Ms. Ringle did not participate in Stress Testing Report in any meaningful way

FCC OIG claims Ms. Ringle violated § 7(b) in connection with disclosures of one report, entitled Inspection & Evaluation: CFTC Stress-Testing Development Efforts (“Stress Testing Report”). FCC OIG correctly states that Ms. Ringle did not participate in the Stress Testing Report project in a meaningful way, including in a supervisory capacity. ROI 33. Ms. Ringle did not know the names of all the individuals named in this report and did not know the names of the sources for the report and was not aware if any source identities were improperly disclosed within the report. If source identities were disclosed, Ms. Ringle has no knowledge whether consent was obtained or whether the IG determined that disclosure of source identities was “unavoidable.”

Further, the Stress Testing report was an inspection and evaluation report. The 2012 version of the CIGIE Quality Standards for Inspection and Evaluation was in effect during the writing of it. Rather than reciting the requirements of § 7(b), the 2012 version, p. 11, states: “Confidentiality, as appropriate, should be afforded to sources of information consistent with the Inspector General Act of 1978, as amended; the internal policies of each OIG; and other applicable laws and statutes.” Indeed, it is not clear that § 7(b) of the IG Act - requiring the protection of sources of information unless the IG determines disclosure is unavoidable in the course of the investigation - applies to Inspections and Evaluations.

Naming actors versus witnesses/sources

The FCC OIG correctly states Ms. Ringle’s position on section 7(b) of the IG Act: “According to DIG Ringle, Section 7(b) does not require the redaction of the names of actors; only the names of the sources of information must be redacted.” ROI 25. Ms. Ringle does take issue, however, with the word “redaction.” Section 7(b) does not prohibit including the names of those accused of wrongdoing. For instance, “Jack broke the computer” is different than “Bob told us that Jack broke the computer.” Ms. Ringle will include - unredacted - “Jack broke the computer” in a report but would not disclose that the source was Bob. However, “Jack” – the wrongdoer - might be redacted from the public version. Ms. Ringle believes the Commission may properly be informed regarding who stole the computer. The text of § 7(b) of the IG Act says nothing about confidentiality of individuals whose actions are described in ROI.

Disclosure of unredacted reports to the Commission and to Congress

The FCC OIG also states: “More importantly, CFTC OIG does not redact either confidential information or whistleblower or the identity of witnesses who provide information from the published version of its reports. Instead, CFTC OIG relies on the agency’s OGC to redact” ROI 24. Ms. Ringle believes it is currently appropriate for CFTC to redact the public version of OIG products. CFTC must defend FOIA and Privacy Act litigation. OIG has not sought to establish an independent FOIA function, by delegation of authority or otherwise. Often, and this is especially the case with IT information, what is already publicly available will impact the extent to which additional information in an OIG report should be redacted. The Agency will have greater

information regarding what is already publicly available on the agency side. Also, CFTC FOIA personnel consult personally with individuals whose names may be released publicly pursuant to a FOIA request or otherwise. Especially when the witness was hostile, or was a target, for OIG to again confront the witness to explain disclosure issues is outside the OIG mission. OGC consults with OIG during the redaction process. If Ms. Ringle believes a redaction decision is not appropriate, she requests its legal justification, and advises the IG accordingly.

FCC OIG also remarks “[i]nterestingly, the name of _____, who is the target of the Management Advisory: Office of Financial Management . . . is redacted throughout the [report].” ROI 25. That is correct. FCC OIG is reviewing the public version of that report. But the OFM review was provided to the Commission *unredacted*. All reports are provided to the Commission unredacted. Targets are named in reports sent to the Commission. Sources are not named in reports to the Commission (unless we obtain permission, or the IG determines the disclosure is unavoidable during the investigation). Again, in consultation with OIG, the agency may determine to redact names from the public version of OIG reports. The only exception of which Ms. Ringle is aware is when the source of an allegation is conveying the allegation in the course of their official duties, such as when ethics attorneys in OGC make a referral to OIG. The CFTC OIG may mention those employees by name as the communicators of the allegations because they are speaking in their official capacity, as part of their job duties.

FCC OIG states the first disclosure was by IG Lavik to the Chairman on March 12, 2018. ROI 26. FCC OIG states that the report was distributed by the Chairman after that. Nothing in the IG Act authorizes the IG to control the Commission’s distribution of an OIG report. The CFTC OIG trusts that the Commission will exercise appropriate discretion. Ms. Ringle marks reports she works on or supervises “unredacted and confidential” (or similar language) and expects the Commission to redistribute only on a need-to-know basis.

FCC OIG states the second disclosure was the final report, by Ms. Ringle, encrypted, to the full Commission and copied to others on July 30, 2018. ROI 71. Sending out reports was a usual thing for Ms. Ringle to do back then (now the authors send out reports). FCC OIG seems concerned that the report was not redacted. Again, OIG never sends redacted reports to the Commission. It is important for the Commission to understand who the actors are in order to make a proper determination as to what to do with the information being relayed in the report. Over the years, the Commissioners have asked OIG to cc: their assistants. In addition, OIG will cc: relevant management.

Finally, FCC OIG takes issue with a disclosure of the unredacted Stress Testing Report to the Senate Agriculture Committee, pursuant to the request of the Committee Chairman. ROI 29. Ms. Ringle sent the *Stress Testing Report* encrypted and without attachments (except attachment 35, the contracted report by NERA Economic Consulting).⁶

⁶ Section (b)(7) of the Privacy Act, 5 USC 552a, permits (otherwise prohibited) disclosures “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.” There is no requirement such request to be in writing. CFTC OIG requires a written request from Congress, or, to the extent of matter within its jurisdiction, any

The FCC OIG also states that “...the only way DIG Ringle’s response can be interpreted is that CFTC OIG would not be opening a dialog with Chicago RSB management to determine whether the Stress Testing Report contained any inaccuracies.” ROI 31. However, the FCC OIG forgets that CFTC OIG provided the report in draft form to the Commission in *March 2018*. The usual course is for management to respond, raising any concerns, including concerns about factual inaccuracies. Management declined to formally comment on the OIG Report. Ms. Ringle’s response in *August 2018* conveyed that she would not be opening a dialog with Chicago RSB staff to determine whether the Stress Testing Report contained any inaccuracies. As the FCC OIG acknowledges: “DIG Ringle did not participate in this project in a supervisory capacity and, as a result, was not responsible for ensuring that the project was conducted in accordance with CIGIE professional standards.” ROI iii. Ms. Ringle considered the report final; however, official documents have been recalled and amended to correct errors in the past. The point is that, having no authority to tell the authors to change this particular report, Ms. Ringle gave the authors the RSB response, asked them to ensure the accuracy of their report, and let IG Lavik know this was happening.

It simply would not ever have been possible for Ms. Ringle to improperly include source/witness/whistleblower information in a report over which she had no supervisory authority and for which she had no meaningful input. Each disclosure Ms. Ringle made of the unredacted report was done encrypted, and under statutory obligation to report to the full Commission, or in response to a request from Congress (authorized under the Privacy Act). Both disclosures were done at the direction of or with the knowledge and approval of the IG.

Allegation 6

Whether the IG and DIG wasted government funds by paying a consultant to be “available” without any work assigned and without any work produced.

Ms. Ringle did not waste government funds as alleged by FCC OIG. Ms. Ringle became concerned at the close of the semiannual reporting period ending March 31, 2019, that she was not getting responses to the consultant when she tried to reach him and was not in the loop on anything he was doing. She raised the issue at an OIG staff meeting on March 27, 2019, hoping that others would report that they were aware of his work.

The draft ROI states: “DIG Ringle was signing off on the hours submitted on his consultant timesheet, as well as all OIG staff timesheets, because IG Lavik did not like the WebTA system.” ROI 59.⁷ Following the March 27, 2019, staff meeting, Ms. Ringle would speak with IG Lavik prior to certifying time sheets submitted by the consultant and would notate

committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee for all unredacted reports, including reports not protected by the Privacy Act.

⁷ It would be more accurate to state that Ms. Ringle has authority to certify all staff time and attendance but serves as a backup for the audit staff. Audit staff is usually certified by the Assistant Inspector General for Auditing (AIGA).

time and attendance certifications for the consultant with a message that the certification was directed by IG Lavik. Ms. Ringle tried to remember to do this each pay period. In June 2019 Ms. Ringle asked IG Lavik to take over time and attendance certification for the consultant, which he did. IG Lavik assured her throughout that the consultant was performing work for him.

The draft ROI further states:

Nevertheless, DIG Ringle considered referring the matter to CIGIE, prior to receiving the May 2019 letter from CIGIE about this investigation, which appears to conflict with her previous statement that she did not think there was time and attendance fraud.

Ms. Ringle considered referring the matter to the CIGIE prior to receiving the letter from CIGIE in May 2019 because the fact that she believed the IG (when he said the consultant was working) was not relevant to the determination whether to make a referral, all things considered. At the time, multiple OIG employees were expressing similar concerns and did not believe the consultant was working for the IG. ROI 64. Ms. Ringle believed an investigation needed to take place regardless of whether she believed IG Lavik and understood the role CIGIE IC should play. However, Ms. Ringle believed someone with actual knowledge that the consultant was not working should make the allegation. Ms. Ringle believed the IG but did not have access to the consultant's files and email necessary to verify IG Lavik's assertions.

Finally, as she stated in her 2020 interview with FCC OIG, Ms. Ringle was made aware of the complaint to CIGIE IC not in May 2019, but in December 2018, and was sure an investigation would take place. The draft ROI correctly states that Ms. Ringle did not refer a separate allegation to CIGIE IC regarding the consultant's time and attendance filings because she thought it would be "inefficient." ROI 64. Ms. Ringle was aware that the CIGIE IC usually processes incoming allegations within six months. Following the March 27, 2019, staff meeting, Ms. Ringle chose to wait for the CIGIE investigation to get underway, with the establishment of contacts to be contacted about the investigation, which happened in May 2019. The May 2019 notice revealed that allegations regarding the consultant were among the allegations received and being investigated.

Allegation 9

Whether Deputy Inspector General (DIG) Ringle used IG Lavik's username and password to log into government systems and perform official actions.

FCC OIG found evidence that DIG Ringle used IG Lavik's username and password to log into a government system and perform official actions. This appears to be a technical violation of

rules prohibiting the sharing of passwords and a misuse of DIG Ringle's authority.

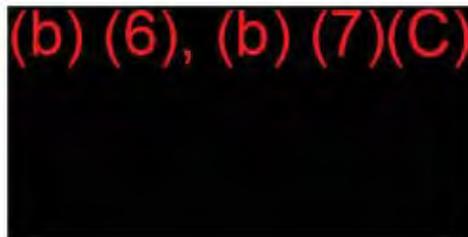
ROI v, 84. As noted in the draft ROI, if anything, Allegation 9 involves a technicality with no actual harm to the CFTC or the integrity of its systems. A few facts weigh in favor of Allegation 9 not being sustained as it relates to Ms. Ringle. First, Ms. Ringle only used IG Lavik's password with his advance and explicit approval. Second, Ms. Ringle only used IG Lavik's password to perform official government purpose at his direction. Third, there is no evidence that Ms. Ringle "misused" her position when she used IG Lavik's password for purposes he intended.

D. Conclusion

As noted above, the FCC OIG's draft ROI as it relates to the Allegations against Ms. Ringle conclusions are tainted by flawed analyses. Considering Ms. Ringle's comments, we request that the Integrity Committee dismiss, or significantly discount, the FCC OIG's findings and conclusions.

Very truly yours,

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the signature area. The text "(b) (6), (b) (7)(C)" is written in red at the top of the redaction.

 cc: Judith Ringle