

United States Senate

WASHINGTON, DC 20510

August 22, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission

Dear Chairman Behnam:

A commissioner with the Commodity Futures Trading Commission (CFTC) has publicly raised concerns that CFTC staff have provided false, misleading, and incomplete information in court and administrative proceedings, and the CFTC has failed to conduct internal reviews or hold those employees accountable for this misconduct.¹ CFTC Commissioner Caroline D. Pham has called upon the Commission to “finally take full accountability and appropriate corrective action to address the conduct;” however, there has been a “lack of appropriate action by CFTC management.”² Thus, I write to you today about the actions the CFTC has taken to ensure its staff provide truthful and accurate information to the courts and in administrative proceedings, and appropriate corrective actions are taken when CFTC staff fail to do so. As you are aware, the federal government has a penchant for misleading courts, Congress, and the American people – see Crossfire Hurricane. The CFTC must not fall into the same downward spiral.

According to court records and statements made by Commissioner Pham, as part of a CFTC *ex parte* submission to freeze the assets of a defendant, a CFTC investigator provided a sworn declaration that almost the entirety of the millions of dollars held in one of the defendant’s corporate accounts was transferred to an unidentified account controlled by the defendant.³ As a result of this hearing, on August 29, 2023, the court froze all of the defendant’s assets based, in part, on the sworn declaration.⁴ However, court records state that in a subsequent hearing on November 6, 2023, the investigator admitted that the CFTC learned shortly after the case was filed that the transfer was actually part of a

¹ Commodity Futures Trading Commission Commissioner Caroline D. Pham, *The CFTC Needs to Get Serious: A Strategic Plan for Reform*, Public Statements & Remarks (May 10, 2024)

<https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement051024>; Commodity Futures Trading Commission Commissioner Caroline D. Pham, *Statement of Commissioner Caroline D. Pham Regarding Rule 11 Sanctions Motion in CFTC v. Traders Global Group*, Public Statements & Remarks (Jul. 3, 2024) <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement070324b>; Commodity Futures Trading Commission Commissioner Caroline D. Pham, *Statement of Commissioner Caroline D. Pham on Administrative Proceedings*, Public Statements & Remarks (Mar. 15, 2024) <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement031524>; Jessica Corso, *Forex Firm Wants CFTC Sanctioned for ‘Bad Faith’ Behavior*, Law360 (Mar. 11, 2024), <https://www.law360.com/articles/1812228/forex-firm-wants-cftc-sanctioned-for-bad-faith-behavior>.

² *Id.*

³ Jul. 3 Statement of Commissioner Pham *supra* note 1; CFTC v. TRADERS GLOBAL GROUP INC et. al, U.S. District Court, District of New Jersey at 24 (Nov. 14, 2023)

<https://storage.courtlistener.com/recap/gov.uscourts.njd.523880/gov.uscourts.njd.523880.134.0.pdf>.

⁴ *Id.*

lawful tax payment rather than the defendant attempting to dissipate their assets.⁵ After learning this, the court admonished the CFTC and told their attorney that if the CFTC did in fact withhold this information from the court and defense counsel, the “CFTC is going to be in a lot of trouble today.”⁶ The CFTC admitted in the November 6 hearing that it did.⁷ The court further criticized the actions of the CFTC and said that the CFTC’s sustained reliance on the inaccurate statements of their investigator to continue the freeze on the defendant’s assets, even after the CFTC knew it was erroneous, was “troubling at best.”⁸ According to statements made by Commissioner Pham, the court ordered a sanctions hearing in the case due to the CFTC’s “alleged ‘pattern of misconduct’ that includes knowingly submitting false statements to the court and attempting to intrude on attorney-client privilege.”⁹

On July 3, 2024, Commissioner Pham stated that “it took six months for the Commission to be notified for the first time of any alleged CFTC misconduct and the admonishment of the CFTC by the Court” in the aforementioned case.¹⁰ In addition, Commissioner Pham announced that she discovered inaccuracies with other CFTC administrative records and “questioned CFTC senior management on the review processes for accuracy and completeness in Commission memoranda and legal filings...”¹¹ Further, Commissioner Pham stated she raised questions about other CFTC matters concerning the Division of Enforcement omitting material evidence from the administrative record.¹² Commissioner Pham asserts despite raising these deficiencies publicly and internally within the CFTC, the CFTC has failed to take appropriate action to address them.¹³

It’s alarming that CFTC staff have engaged in this misconduct and that the CFTC has apparently failed to hold those employees accountable, particularly when the misconduct has resulted in depriving individuals of their property without due process.¹⁴ It’s essential that the CFTC has the necessary processes and procedures in place to ensure its staff provide truthful, accurate, and complete information in proceedings and ensure appropriate corrective action is taken if they don’t. The CFTC must quickly act to resolve these issues to close its credibility gap and restore public trust.¹⁵ Accordingly, so that Congress may conduct oversight concerning the CFTC ensuring staff provide accurate, truthful, and complete information in court and administrative proceedings and that the CFTC holds employees accountable if they don’t, please provide answers to the following no later than September 5, 2024.

1. Describe, in detail, the process and procedure the CFTC has in place to ensure CFTC staff provide accurate, truthful, and complete information to courts and in administrative proceedings.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ May 10 Statement of Commissioner Pham *supra* note 1.

¹⁰ Jul. 3 Statement of Commissioner Pham *supra* note 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ May 10 Statement of Commissioner Pham *supra* note 1.

¹⁵ See Gabrielle Saulsberry, *Two SEC attorneys resign after ‘gross abuse of power’ sanctions*, yahoo!finance (Apr. 23, 2024) <https://finance.yahoo.com/news/two-sec-attorneys-resign-gross-115522188.html>.

2. Why did it take six months for CFTC leadership to be notified about the aforementioned misconduct and admonishment by the court? What other examples of misconduct has the Division of Enforcement failed to apprise CFTC leadership of?
3. Has the CFTC initiated an internal review of the misconduct? Has the CFTC imposed disciplinary and other corrective action? If yes, when, what was found, and what kind of disciplinary and other corrective action was imposed? If not, why not?
4. From 2021 to the present, has the CFTC received allegations related to CFTC staff providing false, misleading, or incomplete information in court, administrative, or other proceedings? If yes, list and describe, in detail, each complaint and the misconduct involved. In these instances, was disciplinary or other corrective action taken? If yes, provide, in detail, the disciplinary or other corrective action taken. If not, why not?

Thank you for your prompt review and response. If you have any questions, please contact Brian Randolph on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

cc: Mr. Christopher Skinner
Inspector General
Commodity Futures Trading Commission