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VIA ELECTRONIC MAIL TO: WorkforceRelations@CFTC.gov; AAmeen@CFTC.gov

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INDIVIDUAL AND INSTITUTIONAL GRIEVANCE

INTRODUCTION

The National Treasury Employees Union (NTEU or Union) on behalf of Chapter 337 files this Grievance (Grievance) pursuant to Article 38, section 10 of the Master Collective Bargaining Agreement between the Union and the Commodity Futures Trading Commission (CFTC or Agency) dated June 10, 2019 (CBA). The electronic submission of this document constitutes the filing of this Grievance.

By virtue of its complete failure to enforce the provisions of its Anti-Harassment Policy, the CFTC has improperly allowed Commissioner Caroline Pham (Pham) to repeatedly intimidate, harass and abuse other CFTC employees in public¹, which has created and fostered a hostile work environment for all Bargaining Unit Employees (BUEs) who must necessarily interact with or encounter Pham in their professional capacities.

GRIEVANTS

This Grievance is being filed under two theories of liability. The grievants under the Union's first theory of liability are all of the BUEs who were present at both the August and October Closed Meetings², who witnessed Pham's intimidation, harassment and abuse, and who were thereby damaged by Pham's violations of the CFTC's Anti-Harassment Policy, among

¹ And, on information and belief, in private workplace settings.

² The Union is aware that more than one BUE was present at both of the Closed Meetings and they were first-hand witnesses to Pham's misconduct. At this time, the Union is unwilling to name any of these BUEs in this Grievance because they are extremely concerned about retaliation, especially given that their positions require them to interact with Pham and/or her staff.

other things. The grievants under the Union's second theory of liability are all CFTC BUEs who have been damaged by the CFTC's complete failure to enforce its Anti-Harassment Policy, which they relied upon for protection from intimidating, hostile or abusive conduct in their CFTC workplace. BUEs are now afraid to do their work that requires them to interact with Pham, to speak up in defense of their right to be free from her intimidating, hostile or abusive conduct in their CFTC workplace, and/or to approach the Union with their concerns for fear of retaliation by Pham.

FACTS³

The Division of Enforcement's (Enforcement) mission is to protect the public and preserve market integrity by detecting, investigating and prosecuting violations of the Commodity Exchange Act and CFTC regulations. Enforcement attorneys and staff investigate and prosecute violations such as fraud, manipulation, and other abuses concerning commodity derivatives and swaps that harm market integrity, market participants, and the general public. In FY22, Enforcement brought 82 enforcement actions and obtained orders imposing over \$2.5 billion in restitution, disgorgement and civil monetary penalties either through settlement or litigation.

The five-person Commission authorizes certain actions of Enforcement, including authorizing it to file and settle enforcement actions. Enforcement ordinarily prepares a written recommendation setting out the factual and legal basis for the proposed action. The Commission considers Enforcement recommendations either through a seriatim process or at a Closed Meeting, which is a meeting that, pursuant to exemptions in the Government in the Sunshine Act, 5 U.S.C. § 552b, the Commission has voted to close to the public. On information and belief, Closed Meetings are typically held once a month.⁴ At a Closed Meeting, Enforcement staff may orally present the recommendation to the Commission and answer any questions of the Commissioners before the Commission votes on the matter. In any given matter, it may be that staff from other Divisions are asked to attend and possibly give views as it relates to that Division's expertise. At the very least, the Office of General Counsel always has staff, typically including at least one BUE, at the Closed Meetings

This factual narrative will establish a pattern and practice by Pham in her repeatedly hostile interactions with Enforcement employees in at least two recent Closed Meetings, which was observed first-hand by both the Chairman of the CFTC, Rostin Behnam, as well as several

³ The Closed Meeting was held via Microsoft Teams and attendees could see Pham's face during the meeting. Upon information and belief, the CFTC made a recording of the Closed Meeting. Because the CFTC has thus far not provided the Union with a copy of the recording of the Closed Meeting pursuant to the October 23, 2023 information request, this factual narrative was compiled based upon first-hand accounts provided by BUEs who were at the Closed Meeting. The Union expressly reserves the right to amend this Grievance upon receipt and review of the recordings of the October 20 and August 11 Closed Meetings, both of which it has formally requested.

⁴ On information and belief, a closed meeting was not held in September because of Pham's behavior at the August meeting.

other mandatory reporters under the CFTC's Anti-Harassment Policy. The narrative is in reverse chronological order because it starts with Pham's misconduct in October, which forms the nucleus of the factual basis for this Grievance.

1. The October 20, 2023 Closed Meeting

On or about Friday, October 20, 2023, the Union became aware of an instance of extreme intimidation, harassment and abuse of an Enforcement attorney by Pham. More specifically, at a Closed Commission Meeting (Closed Meeting) earlier on that same day, several BUEs observed first-hand Pham's almost 30-minute harangue of an Enforcement attorney. During the Closed Meeting, Pham treated the Enforcement attorney as if they were a hostile witness being cross-examined and not as if they were both CFTC employees working toward a common goal. For example, Pham demanded that the Enforcement attorney answer her questions with only a "yes" or "no" response. Further, Pham repeatedly raised her voice and made angry facial expressions at the Enforcement attorney. When the Enforcement attorney attempted a substantive response to one of Pham's questions, Pham raised her voice and yelled at the employee to "answer yes or no!" At this point, the Director of Enforcement interjected and asked Pham to allow the attorney to give a complete answer.

Eventually, on the basis that Pham had used up her allotted time for questions and that the other Commissioners were entitled to ask their questions, Chairman Benham attempted to interject. However, Pham pushed back and continued her intimidation of the staff member for a few more minutes. At the conclusion of the meeting, the Director of Enforcement attempted to convey his wish for all future interactions to be conducted with respect, but he was also met with resistance, as Pham intimated that she was not being treated with respect at the meeting. Upon information and belief, Pham was treated with respect at the meeting. It is unknown if either the Chairman or the Director made a report to Human Resources (HR) about Pham's misconduct, but, on information and belief, at least two other managers present at the Closed Meeting reported it to HR. On information and belief, there were over 60 attendees at the Closed Meeting, including staff from Enforcement, the Office of the General Counsel, the Division of Market Oversight, and the Market Participants Division.

After the meeting, the Union understands from several BUEs that there were multiple debriefing conversations where BUEs and managers expressed support for each other. There was not, however, any official management statement of support for the Enforcement staff who had endured Pham's harassment. At the very least, the Union expects that management must know that after any harassing incident, it is critical to convey to employees that they are safe and supported.

2. The August 11, 2023 Closed Meeting

When several BUEs contacted the Union to express their shock and horror about Pham's misconduct in October, they also relayed information relevant to this Grievance because it concerned their observance of similar misconduct by Pham in August, or their having learned of such misconduct in the course of their work duties. The Union understands that the August 11,

2023 Closed Meeting was the most recent Closed Meeting before the October 20, 2023 Closed Meeting. Upon information and belief, there were more than 45 attendees at this meeting.

On information and belief, at the August Closed Meeting, Pham subjected an Enforcement manager to a lengthy (sixty-plus minutes) harangue in which she questioned the manager about the intelligence and skill of the manager's staff, which had prepared papers that Pham and her staff reviewed in advance of the meeting. Upon information and belief, Pham also subjected an Office of General Counsel manager to similar questioning, suggesting their staff was equally incompetent.

Unlike the October Closed Meeting, neither the Chairman nor the Director of Enforcement attempted to address or curb Pham's intimidation, harassment and abuse. Management's complete failure to address the misconduct allowed Pham to continue with her pattern and practice of public intimidation, harassment and abuse of Enforcement staff, in particular at, but not limited to, the October 20 Closed Meeting.

Upon information and belief, several Enforcement managers who attended this August meeting informed their staff of Pham's inappropriate conduct, and managers focused on finding ways to avoid invoking a similar outburst from Pham in the future. These communications had the effect of creating a fearful environment throughout Enforcement. There was not, however, any official management statements of support for the staff after either witnessing or learning of such a hostile interaction.

3. Pham's Repeated Negative Public Statements about Enforcement

When she was first sworn in as a CFTC Commissioner in April 2022, Pham initially commended Enforcement staff efforts in meeting Enforcement's mission. However, Pham appears to have developed a strong animosity for Enforcement and she has repeatedly and publicly made clear her disdain for Enforcement and its work product. A summary of those negative public statements is as follows:

"The staff were in charge incorrectly appears to question the standard practice of rolling (i.e. follow a trading provision. . . I repeat my call for mandatory CFTC staff training program to improve basic knowledge and expertise."

Public post on LinkedIn Profile of Commissioner Pham.

THE UNION'S INFORMATION REQUESTS

The Union provides this recitation of its two information requests as additional context for and in support of this Grievance. Neither information request is overly broad or burdensome on the CFTC. The Union recognizes that the recordings of the Closed Meetings are highly confidential, but it must have them in order to establish a pattern and practice of Pham's intimidation, harassment and abuse of Enforcement staff members at two particular Closed

Date of Statement	Statement/s	Source
8/29/23	<p>"...this enforcement action is fundamentally unfair, unjust, and does not best serve the public interest. Based on my review of the record, I believe that this enforcement action is wrong..."</p> <p>"Enforcement actions for one-off, non-material operational or technical issues is shooting fish in a barrel."</p> <p>"I am saddened and disappointed by the choices made and the approach to the facts in this case for two separate and unrelated vendor issues...."</p>	<u>Dissenting Statement of Commissioner Caroline D. Pham on Examination by Enforcement CFTC</u>
8/29/23	"This is not merely regulation by enforcement—this is regulation by fiat. Such a broad proclamation is the act of kings, not of a free democracy."	<u>Dissenting Statement of Commissioner Caroline D. Pham on CTA Interpretation in an Enforcement Action CFTC</u>
9/27/23	"...staff now no longer take care to be precise in alleging the misappropriation theory, as they once did, and are continuing to take the shortcut of importing non-CFTC terms of art that are inapposite."	<u>Dissenting Statement of Commissioner Caroline D. Pham on Misappropriation Theory in Derivatives Markets CFTC</u>
10/23/23	In response to a pun used in a press release: "The staff press release incorrectly appears to question the standard practice of rolling (i.e. rollover a trading provision. . . . I repeat my call for mandatory CFTC staff training program to improve basic knowledge and expertise."	Public post on LinkedIn Profile of Commissioner Pham.

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Commission Meetings. The Union and the CFTC can collaborate to craft a solution to ensure that the recordings of the Closed Meetings stay confidential, while still allowing the Union to conduct a thorough and fair investigation into the events giving rise to the Grievance. Without access to these recordings, the Union faces significant obstacles in addressing the concerns raised by its members and in seeking appropriate remedies for the alleged misconduct.

Regardless of the outcome of the CFTC's response to the two information requests, they are repeated here so as to ensure the completeness and accuracy of the record. This is crucial not only for the resolution of this Grievance, but also for ensuring the safety and well-being of BUEs.

On Monday, October 23, 2023, the Union sent a formal information request to Workforce Relations for:

1. A copy of the recording made of the Closed Commission Meeting on Friday, October 20, 2023.
2. A list of attendees (by first and last names, where available, and/or by telephone numbers, if applicable) at the Closed Commission Meeting on Friday, October 20, 2023.

The Union asked the CFTC to respond to this request before or by Monday, October 30. As of the date of this filing, the CFTC has not provided the Union with this information.

On Thursday, October 26, the Union sent an additional formal information request to Workforce Relations for:

1. A copy of the recording made of the Closed Commission Meeting on Friday, August 11, 2023.
2. A list of attendees (by first and last names, where available, and/or by telephone numbers, if applicable) at the Closed Commission Meeting on Friday, August 11, 2023.

The Union asked the CFTC to respond to this second request before or by Thursday, November 2. The recordings are critical piece of evidence to substantiate the claims of Pham's misconduct, intimidation and harassment.