

# THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE

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OFFICE OF THE PRESIDENT

February 6, 2013

The Honorable Gary Gensler, Chairman  
Commodity Futures Trading Commission  
1155 21st Street, NW  
Washington, DC 20581

Re: CTFC use of Judgment Officers who are not appointed as an ALJ to decide cases  
requiring an APA Hearing

Dear Chairman Gensler:

As you may know, the Federal Administrative Law Judges Conference ("FALJC") is a voluntary professional organization composed of federal Administrative Law Judges ("ALJs") appointed under 5 U.S.C. § 3105. ALJs conduct formal, "on-the-record" administrative hearings that are governed by the Administrative Procedure Act of 1946 ("APA"). Congress passed the APA to ensure the integrity of the federal administrative adjudication process. The FALJC judges seek to ensure that APA safeguards are afforded to individuals and organizations subject to administrative actions which may affect an individual's or organization's rights including but not limited to matters such as suspension and revocation of licenses or other enforcement by federal agencies.

I am writing on behalf of FALJC to inquire about the Commodity Future Trading Commission's ("CFTC") use of Judgment Officers who are not ALJs appointed under 5 U.S.C. § 3105 to adjudicate and decide matters under 7 U.S.C. § 12a in connection with defaults involving revocation of registrations under 17 C.F.R. Part 3.<sup>1</sup> The Agency website that publishes CFTC dispositions shows that such decisions have been issued by ALJs in the past.<sup>2</sup> Where an agency's past practice has been to use ALJs to adjudicate such matters, a change to eliminate the use of ALJs without reference to any change in authority raises a concern as to whether the parties subject to agency action are being deprived of an APA safeguard for an independent adjudication.

We would appreciate any information or explanation of authority you can provide concerning CFTC's use of a Judgment Officer, instead of an Administrative Law Judge, to issue initial decisions and orders in such default cases.

Sincerely,

Judge J. Jeremiah Mahoney, President  
Federal Administrative Law Judges Conference

cc: OPM Director; CFTC Commissioners

<sup>1</sup> See, Initial Decisions on Default in CFTC Docket Nos. SD 12-01; SD 12-03; SD 12-5; SD 12-7; and SD 12-8.

<sup>2</sup> E.g., Initial Decisions on Default, CTFC Docket Nos. SD 11-01; SD 09-02; SD 08-02; SD 07-05; SD 06-02; SD 05-02; SD 04-01.