

ACCOMPLISHMENTS OF THE COMMODITY FUTURES TRADING COMMISSION

June 2014—January 2017

Timothy Massad was sworn in as Chairman of the Commodity Futures Trading Commission on June 5, 2014. The following highlights key accomplishments of the Commission during the Chairman's tenure. Chairman Massad also worked to build consensus within the Commission. Over 95 percent of the more than 600 votes taken during Chairman Massad's tenure were unanimous.

ACTIONS TO BENEFIT COMMERCIAL END-USERS

Throughout his time in office, Chairman Massad has focused on addressing the concerns of commercial end-users, who use the derivatives markets to hedge routine commercial risk and engage in price discovery. In particular, Chairman Massad sought to make sure the rules required by the Dodd Frank Act did not create undue burdens on these businesses, which did not cause the financial crisis.

Margin for Uncleared Swaps. The Commission exempted commercial end-users from its rule on margin for uncleared swaps. Specifically, swap dealers are not required to collect margin from commercial end-user counterparties. This distinction was appropriate because the requirements are focused on those who create the most risk, which are large financial institutions.

Volumetric Optionality. The Commission clarified when certain agreements that include volumetric optionality provisions are forward contracts, rather than swaps. These types of contracts are widely used by a variety of end-users, including natural gas utilities. By clarifying that these agreements are not subject to swap rules, the interpretation will help make sure commercial companies can continue to conduct their daily operations efficiently.

Trade Options. The Commission made changes to its rules on trade options, which are a type of commodity option. These changes recognize that trade options are different from the swaps that were the focus of Dodd-Frank reforms. It eliminates reporting and recordkeeping obligations for commercial users in connection with trade options, including Form TO, and thereby reduces the burdens on such businesses in using these instruments. The Commission also stated its intention to not apply position limits to trade options.

Simplifying Recordkeeping Requirements. The Commission adopted changes to its rules to reduce recordkeeping obligations for commercial end-users, particularly with respect to pre-trade communications, text messages, and records of final transactions. More detailed recordkeeping is appropriate for intermediaries handling customer trades but not for end users.

Modernizing Recordkeeping and Storage Obligations. The Commission proposed amendments to modernize recordkeeping and storage obligations set forth in CFTC rules, and make them technology neutral. Among other things, the proposal will provide greater flexibility when it comes to how records must be retained and produced. Doing so would reduce costs for businesses and improve the quality of record preservation and production.

Customer Protection/Margin Collection. The Commission adopted a change to its customer-protection rules to address a concern of many smaller customers regarding the posting of collateral for their trades. The Commission removed a provision that would have automatically accelerated the deadline for when futures commission merchants (FCMs) must post "residual interest" to clearinghouses. This deadline can affect when customers must post collateral to the FCM.

Reporting Requirements for Contracts in Illiquid Markets. CFTC staff took action to make sure new swap reporting requirements do not make it more difficult for a commercial end-user to hedge risk. The staff permitted delayed reporting for certain less liquid, long-dated swap contracts.

Treasury Affiliates and Captive Finance Companies. The Commission staff has also taken action to make sure that end-users can use the exemptions available to them regarding clearing and swap trading even if they enter into swaps through a treasury affiliate. Such entities, which are single-purpose financing subsidiaries of commercial companies, could be considered financial institutions and thus are not eligible for such exemptions, absent such action. Similarly, the staff made clear that wholly-owned securitization vehicles of auto manufacturers, which are used to support the sale and leasing of cars and trucks, were eligible to use such exemptions.

Clearing Relief for Community Banks. CFTC staff also addressed the concerns of community development financial institutions, small banks, and small bank holding companies with under \$10 billion in assets with respect to clearing. The staff action allowed these entities to choose not to clear a swap subject to the CFTC's clearing requirement, provided that they elect the Commission's end-user exception and comply with certain other conditions. As with commercial end-users, these institutions were not the cause of the crisis, and swap rules should not impose undue burdens on their operations.

Public Utility Companies. The Commission amended its swap dealer registration threshold rules so that local, publicly-owned utility companies can continue to effectively hedge their risks in the energy swaps market. These companies, which keep the lights on in many homes across the country, must be able to access these markets efficiently in order to provide reliable, cost-effective service to their customers.

Regional Transmission Organizations. The Commission exempted certain transactions in the regional transmission organization (RTO) and independent system operator (ISO) markets from most provisions of its rules, while retaining the Commission's authority to pursue fraud and manipulation in those markets. The CFTC did so because these electric markets are subject to regulation by the Federal Energy Regulatory Commission (FERC) and state regulators, who work to ensure that energy rates remain reasonable, transmission systems function reliably, and the interests of market participants are balanced with the protection of electricity consumers. Without taking this action, CFTC rules could lead to inconsistent regulation, and adversely affect consumers without enhancing customer protection.

Position Limits. The Commission re-proposed the 2013 proposed rule on position limits, which was originally issued prior to Chairman Massad's tenure, in order to address a variety of concerns. The Commission revised the proposed position limit levels after substantial CFTC staff review of the latest and best estimates of deliverable supply. The Commission proposed further adjustments to the bona fide hedging position definition, to more closely mirror the statutory definition, which eliminates certain requirements determined to be unnecessary, and to address other concerns raised by market participants. The Commission also developed a process for exchange recognition of non-enumerated bona fide hedging positions and certain enumerated anticipatory hedge positions, and grants of spread exemptions, each subject to the Commission's oversight. Finally, the re-proposal would relieve exchanges temporarily from the obligation to establish position limits on swaps subject to federal limits, when an exchange lacks access to position information on swaps.

The Commission chose to re-propose the rule in December 2016 for two reasons. First, the many changes made to the 2013 proposal had only been proposed in pieces, and it is beneficial for the public to understand how these components work together as part of a comprehensive proposal. Second, with the Commission in a time of transition, the Commission did not wish to adopt a rule that the CFTC would choose not to implement or defend in the future, as this would create significant uncertainty and inconsistency for many end-users.

The Commission also finalized rules that address aggregation of accounts and positions for which a person controls the trading decisions and those in which the person has an ownership interest, for purposes of determining compliance with the position limits rule. This rule simplifies the standard for aggregation. The rule also provides for additional exemptions from aggregation, while providing the Commission with notice of exemptions relied on.

REFORMING THE OVER-THE-COUNTER SWAP MARKET AS REQUIRED BY THE WALL STREET REFORM AND CONSUMER PROTECTION ACT

During Chairman Massad's tenure, the Commission has completed implementation of nearly all rules to regulate over-the-counter (OTC) swaps required by the Dodd-Frank Wall Street Reform Act. Clearing is now required for most interest rate and credit default swaps. The Commission also took a variety of actions to fine-tune rules previously adopted, in order to address unintended consequences and focus the rules on the areas of greatest risk.

Today, over 80 percent of swap transactions in our markets are being cleared, as compared to only about 15 percent in 2007. Margin requirements are in place for uncleared swaps. Trading on regulated platforms has been widely adopted, and is bringing increased transparency and integrity to the process. Transaction data is being reported and is publicly available, which has already given regulators better insight, and has enhanced price discovery and competition for market participants. Specifically during the Chairman's tenure, the Commission took the following actions:

Margin Requirements. The Commission finalized and is implementing margin requirements for uncleared swaps. Requiring margin is perhaps the single most important element of swaps market regulation set forth in the Dodd-Frank Act. Margin is the first line of defense in the event of a default, and collection of daily variation margin prevents the accumulation of losses, thus minimizing the potential for excessive risk buildup in the system.

The Commission rules focus on where the greatest risk exists— in the transactions between large financial institutions. Further, they exempt commercial end-users. Under Chairman Massad, CFTC staff worked to harmonize these rules with those of the U.S. prudential regulators, as well as with international standards. Initially, there were many differences across jurisdictions and between U.S. regulators, pertaining to threshold amounts, scope of coverage, acceptable forms of collateral and other areas. But after significant work, there is now substantial harmonization, which is critical to effective regulation and to the efficiency of the global market.

The Commission also adopted a cross-border approach for the implementation of its rules. This recognizes that there can be risk to a U.S. entity from a subsidiary's offshore transactions, even if those transactions are not guaranteed by the parent entity. At the same time, the Commission provided a broad scope of substituted compliance with the rules of other jurisdictions.

Capital Requirements for Swap Dealers and Major Swap Participants. Following completion of the margin rules, the Commission re-proposed requirements setting capital requirements for swap dealers. Capital is also among the most important reforms of the over-the-counter swap market agreed to by the leaders of the G20 nations in 2009. While margin for uncleared swaps is the front line defense against a default, adequate capital is critical to the ability of swap dealers to absorb losses.

The re-proposal supports safety and soundness as well as competition, by providing three different approaches. For swap dealers that are affiliates of prudentially regulated firms, the proposal permits

them to use a method based on the capital rules of U.S. prudential regulators. Swap dealers that are also broker-dealers can use an approach that is based on the Securities and Exchange Commission's net liquid assets approach. And for those dealers that are engaged primarily in non-financial activities, the Commission proposed a third approach based on net worth.

Expanding Mandatory Clearing of Swaps. The Commission required mandatory clearing for interest rate swaps in several additional currencies, where local jurisdictions have mandated or are expected soon to mandate clearing. These jurisdictions include Australia, Canada, European Union, Mexico, Hong Kong, Singapore and Switzerland. This supplements the initial clearing mandates that pertained to U.S. dollar, euro, British pound sterling and Japanese yen swaps. It further implements the G20 commitment to mandate clearing of standardized swaps and harmonize with counterparts abroad.

Improving Trading of Swaps. The Commission has also taken significant action to implement the regulatory framework for swaps trading, as envisaged by the Dodd-Frank Act and the G20, by granting permanent registration status to 23 swap execution facilities (SEFs). SEFs now account for a substantial amount of overall swaps trading and have promoted greater price transparency and improved liquidity in the interest rate swap market.

CFTC staff also issued several "no-action" letters and guidance on various aspects of this regulatory framework to improve the swaps trading process and address unintended consequences. These included:

- **Package Transactions.** CFTC staff provided no-action relief that has allowed SEFs and market participants to develop technical capabilities to execute package transactions on SEFs.
- **Block Trades.** CFTC staff has provided no-action relief so that block transactions could continue to be negotiated between parties and executed on a SEF, which facilitates credit checks.
- **Correcting Erroneous Trades.** CFTC staff has granted relief allowing trades that have been rejected from clearing due to clerical or operational errors to be corrected within one hour of rejection. The relief also permits new, prearranged trades to offset and replace an erroneous trade that has already been accepted for clearing – if executed and submitted for clearing within three days.
- **SEF Confirmations and Confirmation Data Reporting.** CFTC staff has provided relief to SEFs from the obligation to maintain copies of Master Agreements or other underlying documentation. Staff also provided relief for SEFs regarding their obligation to report confirmation data on uncleared swaps to swap data repositories, clarifying that SEFs need only report such confirmation data for uncleared swaps to which they already have access.
- **Inter-Affiliate Swaps.** CFTC staff has provided relief to certain affiliated counterparties from exchange-based trading requirements. The relief permits such types of counterparties to execute swaps transactions off-SEF that are intended to manage risk.
- **SEF Financial Resources.** Staff issued guidance that clarifies the calculation of projected operating expenses for the purpose of determining the capital that the law requires SEFs to hold. Specifically, the guidance clarifies the variable commissions that SEFs pay do not have to be included in a SEF's calculation of projected operating costs.
- **Methods of Execution.** The CFTC also provided greater flexibility with respect to methods of execution on SEFs. During the permanent registration review process, the CFTC found that an auction match trading protocol was acceptable as a method of execution for swaps subject to

exchange-trading requirements as long as the SEF rulebook provides adequate transparency regarding the process for setting the offer price. Further, the CFTC also found that certain types of streaming-based trading systems were acceptable methods of execution for swaps subject to exchange-trading requirements.

- ***Straight-Through Processing.*** Staff supplemented prior Staff Guidance concerning application of the "as soon as technologically practicable" standard requiring straight-through processing of trades executed on or pursuant to the rules of a SEF, including trades using middleware, and provided time for the industry to achieve compliance.

Commission staff has also explored how to harmonize trading rules with European standards, has developed an "exempt SEF" framework for foreign trading platforms, developed proposed revisions to the "made available for trade" process, and developed a proposal to codify many of the above staff actions into CFTC rules, all of which will await action by the next Commission.

De Minimis Threshold. The Commission has delayed the decrease in the *de minimis* threshold for swap dealing in order to consider further what the level should be. This threshold determines when an entity's swap dealing activity requires registration with the CFTC, which triggers margin and capital requirements, as well as other oversight and business conduct rules. The rule originally provided for an automatic drop in the threshold from \$8 billion in notional amount of swap dealing activity over the course of a year to \$3 billion.

This action was taken after completion of a staff report on the threshold. It estimated that lowering the threshold would not increase significantly the percentage of interest rate swaps (IRS) and credit default swaps (CDS) covered by swap dealer regulation, but it would require many additional firms to register. This might include some smaller banks whose swap activity is related to their commercial lending business.

The Commission also finalized a rule permitting parties engaging in swaps with public utilities to exclude such swaps from the \$25 million *de minimis* threshold for swaps with special entities.

Increased Focus on Uncleared Swaps. The staff report on the *de minimis* threshold referenced above is just one example of how the Commission has increased its analysis, monitoring, and overall focus on uncleared swap data and uncleared swap exposures during Chairman Massad's tenure. These efforts include the development of greater risk surveillance work and the development of an internal weekly swaps report.

Revisions to Reporting Rules. Under Chairman Massad, the Commission has made numerous revisions to its reporting requirements and worked to streamline and harmonize reporting requirements. First, the Commission adopted a rule to create a simple, consistent process for reporting cleared swaps. The rule streamlines the reporting process so there are not duplicate records of a swap, which can lead to double counting that can distort the data. It makes sure that accurate valuations of swaps are provided on an ongoing basis. It also eliminates some needless reporting requirements for swap dealers and major swap participants.

Commission staff has also put out for comment draft technical specifications for swap data reported to swap data repositories (SDRs). The published draft technical specifications addressed the reporting of 120 priority data elements and described the form, manner and the allowable values that each data element can have. CFTC staff also co-chairs the working group tackling this issue internationally, which has similarly proposed standardized reporting fields. The staff is also working to evaluate consistency between U.S. and international standards.

The Commission also proposed changes to its swap data rules that will make it easier for other regulators, both domestic and foreign, to gain access to SDR swap data. The proposal would conform CFTC rules to various changes Congress made in law, and provide a process for the sharing of information. Among other things, Congress removed a requirement that another regulator must indemnify both the CFTC and the swap data repository for expenses related to litigation before data could be shared. This proposal removes the requirement in the CFTC's own rules, makes other changes consistent with Congressional action, and creates a process for when and how other regulators gain access to SDR information that will protect confidentiality.

In addition, Commission staff issued time-limited, no-action relief to make sure new swap reporting requirements do not make it more difficult for a commercial end-user to hedge risk. The staff permitted delayed reporting for certain less liquid, long-dated swap contracts.

The CFTC also codified no-action relief related to the timing for filing chief compliance officer (CCO) annual reports for swap dealers, futures commission merchants, and major swap participants. Specifically, the rule gives participants 90 days following their fiscal year-end to file CCO annual reports and clarifies the filing requirements applicable to swap dealers and major swap participants located in jurisdictions for which the CFTC has granted a comparability determination with respect to the contents of the reports.

Simplifying and Improving Portfolio Reconciliation Requirements. The Commission amended its requirement that swap dealers (SD) and major swap participants (MSP) exchange the terms of swaps with their counterparties for portfolio reconciliation by limiting the exchange to only "material terms" of swaps and revising the definition of "material terms" so that SDs, MSPs, and their counterparties can focus on reconciling data fields that impact swap valuation and counterparty obligations, without impairing the CFTC's ability to oversee and regulate the swaps markets.

Proposed Rule Regarding the Application of Certain Swap Provisions in Cross-Border Transactions. The Commission proposed a rule addressing the cross-border application of certain swap provisions of the Commodity Exchange Act. Prior to the Chairman's tenure, the Commission published guidance in this area. The proposed rule would enhance clarity and consistency by establishing clear standards on certain matters discussed in the guidance. Among other things, the proposal provides a standard for determining whether a swap dealing transaction should be included in an entity's calculation of whether it must register as a swap dealer. It provides a consistent definition of "U.S. person" and defines other key terms consistent with how they are defined in the Commission's cross-border margin rule. It would apply external business conduct (EBC) standards for cross-border transactions, including those transactions that are arranged, negotiated, or executed by personnel in the U.S.

Working with NFA to Implement Dodd-Frank Rules Efficiently. Under Chairman Massad, the CFTC has delegated additional responsibilities to, and enhanced coordination efforts with, the National Futures Association (NFA), a self-regulatory organization. By virtue of this, the Commission is now leveraging the significant resources of the NFA to better oversee its registrants, and focusing finite CFTC resources on NFA oversight, strategic horizontal and direct reviews, industry monitoring/surveillance, and, when necessary, critical incident response.

Specifically, at Chairman Massad's direction, the NFA has taken on additional responsibilities with respect to the review of swap dealer registration applications, the ongoing examination of swap dealers, swap valuation disputes, the review of swap dealer margin models for uncleared swaps, and (upon finalization of a capital rule) the review of swap dealer capital models. Separately, the Commission issued an order authorizing the NFA as a designee to secure access to data maintained by swap data repositories in order to facilitate NFA's performance of its functions as a registered futures association.

CENTRAL CLEARING AND CLEARINGHOUSE RESILIENCE

In 2009, the G20 leaders made a decision to require clearing of standardized swaps through central counterparties or CCPs, which enables market participants to reduce exposures, mitigate counterparty credit risk, and mutualize tail risk. But while clearing reduces risk, it does not eliminate it. Therefore, as use of central clearing has increased, it has become even more important to focus on making sure clearinghouses are strong and stable. Chairman Massad has made clearinghouse strength and resilience a priority during his tenure.

Equivalence accord with European Commission. In February 2016, European Commissioner Jonathan Hill and Chairman Massad announced an agreement that resolved longstanding issues regarding the recognition and oversight of clearinghouses. As a result, European market participants can continue to clear derivatives on U.S. clearinghouses, which has leveled the playing field for U.S. and EU clearinghouses and allowed the derivatives market to continue to be global. The agreement helped bring the two regulatory regimes closer together, and helped ensure that central clearinghouses on both sides of the Atlantic are held to high standards. That contributes to financial stability and the potential for growth.

Soon after this announcement, the CFTC took action to implement this agreement, approving a comparability determination that identified the rules regarding regulation of clearinghouses for which the CFTC will recognize substituted compliance. The Commission also streamlined the process for European clearinghouses to register with the CFTC, which will further harmonize the two regimes. Following this accord, four U.S. clearinghouses have received formal recognition in the EU: CME Clearing, ICE Clear Credit, ICE Clear U.S., and Minneapolis Grain Exchange.

Recovery Rules and Plans. The CFTC has worked to ensure that CME and ICE Clear Credit, the two clearinghouses under the Commission's jurisdiction that are designated as systemically important by the Financial Stability Oversight Council, complete their recovery and wind down plans and rules. CFTC staff released detailed guidance on what must be part of these plans and rules.

Enhancing Risk Surveillance and Stress Tests. Chairman Massad has also made surveillance and testing of clearinghouse resilience top priorities. The CFTC's examination and risk surveillance programs focus on clearinghouse resilience on an ongoing basis. There are extensive daily margin and position reporting requirements that enable the Commission to engage in daily risk surveillance. This involves looking at risk at the clearinghouse, clearing member, and trader levels, and examining market risk, liquidity risk, credit risk, and concentration risk, in order to identify who is at risk, the magnitude of that risk, and how that risk compares to available financial resources. The clearinghouses are also required to oversee the risk management policies and practices of their members.

CFTC staff also [released a report](#) in November 2016 on the results of a series of supervisory stress tests they performed on the five largest clearinghouses under the CFTC's jurisdiction, located in the U.S. and the United Kingdom. These tests assessed the impact of stressful market scenarios across these clearinghouses and across the largest clearing members. The results showed that the clearinghouses had ample resources to withstand extremely stressful market scenarios on the test date. They further showed that risk was diversified across clearing members and across scenarios— for example, a clearing member that had a loss at one clearinghouse might actually have gains at others. The CFTC's ability to conduct these tests is directly related to our framework for oversight of foreign and domestic clearinghouses registered with the Commission. No other regulator of clearinghouses is currently able to look across national boundaries like this.

Working with FDIC on Resolution Planning. The CFTC is working closely with staff of the Federal Deposit Insurance Corporation (FDIC), the statutory resolution authority for systemically important clearinghouses. The agencies are working to develop resolution strategies in light of Dodd-Frank and international standards. In addition, the first Crisis Management Groups for those clearinghouses have been planned for early 2017.

Actions to Protect Customer Funds. The Commission also took action to further ensure the safety of customer funds, by issuing an order that made it possible for systemically important clearinghouses to deposit customer funds at Federal Reserve Banks, and by working with clearinghouses and the Federal Reserve to open such accounts. The order makes clear that a Federal Reserve Bank that opens such an account would be subject to the same standards of liability that generally apply to it as a depository, rather than any potentially conflicting standard under the commodity laws. These accounts have been formally authorized and are now in the process of being opened.

International Work on CCP Resilience, Recovery and Resolution. CFTC staff is also helping to lead a major effort involving regulators from around the world to look at clearinghouse resilience, recovery and resolution planning. The effort has four main components, and the Commission is participating in all of them.

First, the CFTC is co-chairing a working group looking at clearinghouse resilience and recovery issues. This includes examining whether international regulatory standards are sufficiently granular in several areas, such as margin methodologies, liquidity, governance and stress testing. In addition, there are other working groups assessing the implementation of these standards at ten representative clearinghouses, examining resolution planning for clearinghouses, and examining the interdependencies among global clearinghouses and major clearing members.

ADDRESSING NEW CHALLENGES AND OPPORTUNITIES IN THE DERIVATIVES MARKETS

Regulators must not just look backwards to address the causes of past failures or crises. They also must look ahead—ahead to the new opportunities and challenges facing our markets. Financial markets constantly evolve, and Chairman Massad has taken a number of steps to ensure our regulatory framework is adapting to these changes.

Cybersecurity/System Safeguard Rules. Today, the risk of cyberattack probably represents the single greatest threat facing the stability and integrity of the markets the Commission regulates. Early in his tenure, Chairman Massad directed the staff to examine ways to improve cybersecurity protection. This led to the proposal and finalization of rules to bolster protections against cyberattacks and other types of operational risk. These rules require the firms that run the core market infrastructure – the exchanges, clearinghouses, trading platforms, and trade repositories – to regularly evaluate cyber risks and test their cybersecurity and operational risk defenses. The rules require specific types of testing, ensure the independence with which testing is applied and assessed, and impose principles-based standards that rely on best practices.

The Commission is also continuing to make cybersecurity a priority in its examinations. The examinations look at an entity's policies and procedures, vigilance and responsiveness to identified weaknesses, the resources being devoted to cybersecurity, and the priority placed on it by the board or senior management.

The Commission has also made it a priority to facilitate greater sharing of information between government and businesses on potential cyber threats and preparations to prevent attacks. There has been a significant increase in such cooperation across the government during the last two years. As an example, the CFTC hosted an exercise involving participants from several government agencies—including law enforcement agencies and Homeland Security—as well as CME, ICE, clearing firms, and trading firms—to discuss what would happen if derivatives trading platforms were hit by a cyberattack. These exercises assist regulators in planning for and understanding how such an attack could unfold.

In addition to guarding against technological threats among the entities the CFTC regulates, Chairman Massad has also pushed increased vigilance regarding the Commission's internal cybersecurity. The Office of Management and Budget's annual evaluation of all federal agencies for cybersecurity performance, which is conducted pursuant to the Federal Information Security Management Act, ranks the CFTC among the highest for smaller agencies, receiving compliance scores of over 90 percent for two consecutive years.

Automated Trading. The markets the CFTC regulates have changed fundamentally in the last several years. The days of pit-based, open outcry trading have transformed into a machine dominated market where a millisecond is considered slow. At the CFTC, Chairman Massad has worked to ensure that our oversight and regulatory framework keep up. The Commission proposed rules designed to address the risk of disruption or other operational problems that can be caused by automated trading. The proposal requires pre-trade risk controls such as message throttles and maximum order size limits, and other measures such as “kill switches,” which facilitate emergency intervention in the case of malfunctioning algorithms. The types of controls required were based on market participant input as to what were best practices. But the proposal does not prescribe the parameters or limits of such controls, leaving those specifics to market participants. The proposal sets general requirements pertaining to the design, testing and supervision of automated trading systems, but again leaves the details of those to market participants. The proposal also requires that source code and similar records be preserved and made available to the Commission when necessary, but requiring such access to be authorized by the Commission itself.

The CFTC has also enhanced its surveillance and enforcement efforts in light of the increased use of automated trading. The Commission has increased its capabilities to receive and analyze message data and developed its own sophisticated analytical tools to examine trading by the millisecond. Notably, the Commission also obtained new statutory authority under Dodd-Frank to prevent illegal behavior such as “spoofing.” Under Chairman Massad, the Commission has brought several spoofing cases, where market participants used complex algorithmic strategies to generate and then cancel massive numbers of bids or offers without the intention of actually consummating those transactions in order to affect price. See additional discussion under “Enforcement.”

Financial Technology. Chairman Massad has also focused on the innovations that may be created through financial technology, such as blockchain technology. Although meaningful applications of this technology in our markets is probably some time away, Chairman Massad has emphasized that Commission rules should not stand in the way of its potential. To that end, the Commission proposed amendments to modernize recordkeeping and storage obligations set forth in CFTC rules, and make them technology neutral. As mentioned above, the proposal would provide greater flexibility when it comes to how records must be retained and produced, which reduces costs and improves the quality of preservation and production.

INTERNATIONAL MATTERS

Chairman Massad has focused on working closely with other regulators from around the world. Extensive international coordination and cooperation is extremely necessary to have modern, global regulation of markets. This includes harmonizing rules as much as possible, and working together on oversight. This also includes the development and implementation of registration or exemption processes for non-U.S. exchanges, trading platforms and clearinghouses that recognize where foreign laws provide comparable oversight. During the Chairman's tenure, the Commission has actively engaged with the European Union and the UK, as well as Australia, Canada, China, Hong Kong, India, Japan, Malaysia, Mexico, Singapore, South Korea, Switzerland and others on important initiatives, such as clearinghouse regulation, automated trading, cybersecurity and surveillance and enforcement matters. Specific accomplishments include the following:

Margin Requirements. Chairman Massad and the CFTC staff worked to harmonize the CFTC's margin rules with international standards. See discussion under "Reforming the Over-The-Counter Swap Market." The Commission staff also issued a comparability determination for Japan with respect to margin rules.

Equivalence accord with Europe. Chairman Massad reached an accord with the European Union on clearinghouse recognition and oversight. See discussion under "Central Clearing."

European Commission (EC) Equivalence Decision for Designated Contract Markets. Chairman Massad and the CFTC staff also worked to secure an equivalence decision from the European Commission with respect to U.S. derivatives exchanges. Under the EC decision, fifteen DCMs were determined to be equivalent, including CME, ICE Futures and Nasdaq Futures.

Registration of Eurex Clearing. The Commission approved the registration of Eurex Clearing as a derivatives clearing organization, making it the sixth non-U.S. clearinghouse to be registered as a DCO.

Foreign Boards of Trade. The Commission is also improving cross-border regulation when it comes to futures trading as well. Chairman Massad made it a priority to enhance the review process so that foreign exchanges seeking to provide direct electronic access to persons in the U.S. register with the CFTC as a foreign board of trade, or FBOT, without undue delay. The registration is conditioned upon, among other things, the exchange being subject to standards that are comparable with CFTC regulations. During his tenure, the Commission approved the registration of 12 exchanges as FBOTs.

They include:

- BM&F Bovespa S.A. (BVMF) (Brazil)
- Bursa Malaysia
- Cleartrade Exchange Pte. Limited (Singapore)
- CME Europe Limited (CMEEL)
- Eurex Deutschland (Eurex)
- ICE Futures Canada
- ICE Futures Europe (IFEU)
- London Metal Exchange (LME)
- London Stock Exchange Derivatives (LSED)
- Montreal Exchange
- Singapore Exchange Ltd. (SGX-DT)
- Tokyo Commodity Exchange (TOCOM)

Exempt Clearinghouses. Under Chairman Massad’s direction, the staff developed a process to permit non-U.S. clearinghouses that seek to clear swaps for their U.S. clearing members only, and not for U.S. customers, to obtain an exemption from CFTC registration requirements. The Commission has issued such exemptive orders for clearinghouses located in Australia, Japan, South Korea and Hong Kong. In these cases, the clearinghouse need not comply with many CFTC regulations as long as it has comparable and comprehensive supervision and regulations—and complies with the international standards set forth in the Principles for Financial Market Infrastructures.

Exemptions to Solicit Orders or Funds from U.S. Customers. The Commission has also issued several exemptions so that firms can solicit and accept orders or funds directly from U.S. customers for trading on specified non-U.S. exchange(s) without having to register with the CFTC. These include the Hong Kong Securities and Futures Commission and the Korea Exchange.

Foreign Swaps Trading Platforms. The Commission staff have been working with European Commission staff on methods for recognizing swap trading platforms. The staff also extended no-action relief for Australian-based trading platform Yieldbroker Pty Limited.

Memoranda of Understanding and Similar Arrangements. The Commission entered into memoranda of understanding and similar arrangements with authorities in many non-U.S. jurisdictions to promote greater international cooperation and information sharing with respect to the supervision of cross-border regulated entities. Such arrangements were entered into with authorities in the following jurisdictions: Australia, Canada, the European Union, Germany, Hong Kong, Korea, Mexico, and the United Kingdom.

Alternative Processes for Registration of Foreign Persons. The Commission amended its rules to permit alternative means for foreign persons to comply with certain registration requirements. Such persons’ firms can complete criminal background checks in lieu of submitting fingerprints.

ENFORCEMENT ACTIONS

The CFTC’s enforcement responsibilities are more important than ever, due to its expanded mission, increasing market complexity, increasing cross-border nature of unlawful schemes due to the globalization of the markets, and the continued threats to the integrity of the markets through manipulative or deceptive schemes, disruptive trading practices, such as spoofing, and other unlawful practices. During Chairman Massad’s tenure, the Commission has pursued cases involving manipulation, false reporting of market information, spoofing, as well as a wide range of fraudulent schemes, including Ponzi schemes, precious metals frauds and deceptive practices related to commodity pools, which preyed upon the retail public.

The agency’s actions have led to billions of dollars in restitution being ordered, which helps compensate a victimized party, and in disgorgement and civil monetary penalties, which goes directly to the U.S. Treasury. See the table below for the number of new enforcement actions filed and a summary of monetary sanctions ordered in all pending cases each fiscal year.

Year	Enforcement Actions	Civil Monetary Penalties	Restitution and Disgorgement	Total Monetary Sanctions
2014	67	\$1.8 Billion	\$1.4 Billion	\$3.27 Billion
2015	69	\$3.144 Billion	\$59 Million	\$3.2 Billion
2016	68	\$484 Million	\$543 Million	\$1.29 Billion

Some of the types of cases pursued under the Chairman's term include the following:

Integrity of Benchmarks. During Chairman Massad's tenure, the Commission has brought twelve actions against banks and brokers to address abuses and ensure the integrity of critical, global financial benchmarks, such as foreign exchange, LIBOR, and ISDAFIX benchmarks. These cases required remediation measures including strengthening internal controls and improvements to benchmark setting processes, as well as the payment of penalties totaling over \$3.4 billion.

- The CFTC issued [six orders](#) filing and settling charges against Barclays Bank PLC (Barclays), Citibank N.A. (Citibank), HSBC Bank plc (HSBC), JPMorgan Chase Bank N.A. (JPMorgan), The Royal Bank of Scotland plc (RBS), and UBS AG (UBS) for attempted manipulation of, and for aiding and abetting other banks' attempts to manipulate, global foreign exchange benchmark rates to benefit the positions of certain traders. A total of more than \$1.8 billion in penalties has been imposed on these banks for misconduct.
- The CFTC issued an order against [Deutsche Bank AG](#) finding that Deutsche Bank routinely engaged in acts of false reporting and attempted manipulation and, at times, succeeded in manipulating the LIBOR for U.S. Dollar, Yen, Sterling, and Swiss Franc, and the Euro Interbank Offered Rate (Euribor), and did so to benefit cash and derivatives trading positions that were priced off LIBOR or Euribor. The CFTC ordered Deutsche Bank to pay an \$800 million civil monetary penalty, the largest fine in the CFTC's history.
- The Commission ordered [CitiBank, N.A. and its Japanese affiliates](#) to pay a \$175 million penalty for attempted manipulation of Yen LIBOR and Euroyen Tokyo Interbank Offered Rate (TIBOR), as well as false reporting of Euroyen TIBOR and U.S. Dollar LIBOR.
- The Commission issued three orders against financial institutions for attempted manipulation and false reporting of U.S. dollar ISDAFIX benchmark swap rates: Citibank (\$250 million civil monetary penalty); Barclays, Barclays Bank PLC, and Barclays Capital (\$115 civil monetary penalty); Goldman Sachs Group, Inc., and Goldman, Sachs, & Co., N.A. (\$120 million).

Spoofing and Manipulation. The Commission has brought numerous cases involving manipulation of and disruptive trading, through spoofing, involving multiple markets, including crude oil, wheat, e-mini 500, copper and precious metals. Notably, the Commission charged [Navinder Singh Sarao](#) and his company Nav Sarao with manipulation, attempted manipulation, and spoofing with regard to the E-mini S&P 500 futures contracts over a five-year period, including when the Defendant's alleged misconduct contributed to the market conditions that led to the "Flash Crash." The CFTC brought this action to resolution through settlement and obtained over \$38 million in disgorgement and penalties. Mr. Sarao also pled guilty to criminal charges brought by the Department of Justice (DOJ). In addition, the Commission worked with the U.S. Attorney's Office for the Northern District of Illinois on a criminal conviction against [Panther Energy Trading LLC](#) and Michael J. Coscia for engaging in "spoofing," following a civil case brought by the Commission.

- [Igor B. Oystacher](#) and his proprietary trading company, 3Red Trading LLC, were charged with engaging in a manipulative and deceptive spoofing scheme while trading at least five different futures contracts on four exchanges for more than two years. The CFTC charged the defendants pursuant to its new Dodd-Frank authorities, which prohibit certain disruptive trading practices, including spoofing, and provide the Commission additional anti-fraud and anti-manipulation authority, prohibiting the intentional or reckless use of a manipulative or deceptive device or contrivance. In settlement, a federal court ordered the defendants pay a \$2.5 million penalty and required that an independent monitor assess and monitor for three years all 3Red's and

Oystacher's futures trading for the purpose of identifying any future violations.

- [Heet Khara and Nasim Salim](#) were charged with engaging in unlawful disruptive trading practices in the gold and silver futures markets, specifically by “spoofing” over several months in early 2015. In the subsequent settlement of this litigation, the Commission obtained over \$2.9 million in penalties and permanent trading and registration bans.

Frauds Against Retail Investors. The Commission has brought actions for failing to properly protect of customer funds, for retail fraud schemes, for illegal, off-exchange contracts, and failure to register with the Commission. In addition, Dodd-Frank gave the Commission additional authority to go after financed transactions in precious metals. Under Chairman Massad, the Commission was vigorous in its enforcement efforts in this area, as this was an area of considerable abuse that often targeted retirees.

- The CFTC was granted a default judgment and permanent injunction against Defendants [Alvin Guy Wilkinson](#) and his entities, Chicago Index Partners, L.P. and Wilkinson Financial Opportunity Fund, L.P., for commodity pool fraud that victimized 30 investors. The Order found that Wilkinson misappropriated pool funds, fraudulently solicited pool participants, issued false statements to customers and provided false financial information to the National Futures Association (NFA). The judgment totaled \$21 million in sanctions.
- The Commission obtained a consent order against [Banc de Binary, Ltd](#), its affiliates and CEO for violations of CFTC's ban on trading binary options off-exchange and obtained more than \$9 million in restitution and penalty.

Other Notable Cases. The Commission has also has brought actions for other violations of trade practices, such as wash trades, fictitious trades, position limits, trading ahead, and in many other areas. Notable cases include the following:

- The Commission brought a \$100 million action against [JP Morgan Chase Bank, N.A.](#) for failure to disclose certain conflicts of interest to clients of its wealth management business.
- The Commission obtained consent order against U.S. Bank National Association requiring US Bank to pay \$18 million to customers of Peregrine Financial Group Inc. Peregrine and its CEO Russell Wassendorf held segregated funds at the bank that CEO used to defraud customers and misappropriate over \$200 million.
- The Commission ordered [Jon Ruggles](#) to disgorge more than \$3.5 million in trading profits and pay a \$1.75 million penalty or engaging in fraudulent, fictitious, and noncompetitive trades in crude and heating oil futures and options, among others.
- CFTC brought an action against [Arya Motazed](#) for engaging in fraudulent transactions related to gas and oil futures. Motazed was ordered to pay a civil monetary penalty of \$100,000 and restitution in the amount of \$217,000—and was permanently banned from trading and registering as a futures professional in any capacity with the CFTC.

Reporting Violations. The Commission has also brought several actions charging reporting violations, including its first enforcement actions enforcing the new Dodd-Frank Act large trader reporting requirements for physical commodity swap positions, for real time public reporting of swap transactions, and for the reporting of swap data. The CFTC also took action against an exchange for recurring data reporting problems, sending a clear message that all persons must be held accountable to meet their regulatory responsibilities.

- [Société Générale SA](#) failed to properly report certain non-deliverable forward transactions to a swap data repository (SDR), and failed to timely report to an SDR a large number of foreign-exchange swap, foreign-exchange forward, and non-deliverable forward transactions. Société Générale was ordered to pay a \$450,000 civil monetary penalty.
- [Deutsche Bank AG](#), a provisionally registered swap dealer, has been subject to two actions by the Commission relating to significant reporting violations. In the Commission's first action, the Commission found that Deutsche failed to properly report its swaps transactions, did not diligently address and correct the reporting errors until the bank was notified of the CFTC's investigation, and failed to have an adequate swaps supervisory system governing its swaps reporting requirements. The bank was ordered to pay a \$2.5 million civil monetary penalty. In August of 2016, the Commission filed a federal court action against Deutsche for further swap reporting and supervisory violations as well as for violating the Commission's prior order. Based on the Commission's allegations of ongoing violations, the court appointed a monitor to ensure Deutsche Bank's compliance with its reporting responsibilities.
- [ICE Futures U.S., Inc.](#) (ICE), a designated contract market, failed to submit accurate and complete reports, which errors included incorrect clearing member reports, permanent record data, and transaction-level trade data. ICE was ordered to pay a \$3 million civil monetary penalty.

Whistleblower Program. The Dodd Frank Act authorized for the first time a Whistleblower Program for the CFTC. The agency has been implementing this new authority and building out the program, and the number of tips, complaints and referrals that the Enforcement Division receives has increased year over year. The CFTC made its first Whistleblower award in 2014 and has made a total of four awards to individuals who provided specific and credible information about violations that lead to a successful enforcement action. In 2016, CFTC issued a whistleblower award of more than \$10 million, marking the largest such award since Congress created the CFTC Whistleblower program in 2010, and reflecting the continued growth and impact of the Agency's Whistleblower Office.

The Commission has proposed amendments to the Whistleblower rules to, among other things, improve the review process, strengthen the anti-retaliation protection and improve confidentiality protections.

Registration Deficient ("RED") List. As part of its ongoing efforts to help protect Americans from fraud, the CFTC created the "Registration Deficient List" (RED List), which contains the names of unregistered foreign entities that the CFTC has reason to believe are soliciting and accepting funds from U.S. residents at a retail level for, among other things, trading in foreign currency or binary options, and who are required to register with the CFTC but, in fact, are not registered.

LITIGATION

During Chairman Massad's tenure, the Commission has achieved a number of litigation victories in various federal courts around the country. These cases include the following:

- *CFTC v. Parnon Energy*, 593 Fed.Appx. 32 (2nd Cir. 2014), which affirmed the district court order rejecting allegations that CFTC violated discovery obligations.
- *CFTC v. Driver*, 585 Fed.Appx. 366 (9th Cir. 2014), which affirmed judgment in favor of the CFTC in a commodity pool fraud case.

- *Bolze v. CFTC*, 13-5484 (6th Cir. 2014), which affirmed judgment in favor of the CFTC in a commodity pool fraud case.
- *CFTC v. Hall*, 632 Fed. Appx. 111 (4th Cir. 2015), which affirmed judgment in favor of the CFTC against a commodity trading advisor for failure to register.
- *CFTC v. Battoo*, 790 F.3d 748 (7th Cir. 2015), which affirmed an asset freeze order against a fraud defendant.
- *CFTC v. Kratville*, 796 F.3d 873 (8th Cir. 2015), which affirmed a judgment in favor of the CFTC in a commodity pool fraud case.
- *Scott v. Frankel*, 77 F.Supp.3d 124 (D.D.C. 2015), which granted the Commission's motion to dismiss various Constitutional and other tort claims. This was affirmed by the U.S. Court of Appeals for the D.C. Circuit on June 8, 2016.
- *Chu v. CFTC*, 823 F.3d 1245 (9th Cir. 2016), which affirmed a CFTC reparations decision.
- *CFTC v. Amerman*, 645 Fed. Appx. 938 (11th Cir. 2016), which affirmed judgment in favor of the CFTC in a commodity pool fraud case.
- *CFTC v. Monex Deposit Co., et al.*, 824 F.3d 690 (7th Cir. 2016), which affirmed order enforcing CFTC's investigative subpoena in a precious-metals fraud investigation under the Commodity Exchange Act.
- *In re Peregrine Fin'l Grp.*, 510 B.R. 190 (Bnkr. Ct. N.D. Ill. 2014), *aff'd*, *Secure Leverage Grp., Inc., et al. v. Bodenstein*, 558 B.R. 226 (N.D. Ill. 2016), which affirmed judgment in favor of the CFTC in the Peregrine bankruptcy; agreeing with the CFTC that futures customers have priority in bankruptcy over forex customers.
- *CFTC v. JBW Capital, LLC*, 812 F.3d 98 (1st Cir. 2016), which affirmed judgment against unregistered CPO fraud defendant.
- *Witter v. CFTC*, 832 F.3d 745 (7th Cir. 2016), which affirmed a CFTC reparations decision.

CUSTOMER EDUCATION AND OUTREACH

Under the Chairman's tenure, the Commission has grown its Office of Customer Education and Outreach (OCEO), which was created under authority in the Dodd-Frank Act to develop customer and public education initiatives. Among its duties, the OCEO creates and distributes financial education messages and materials designed to help customers spot, avoid, and report fraud and other violations of the CEA.

SmartCheck. The OCEO launched the SmartCheck initiative in 2015, which connects investors to tools to check the registration, license, and disciplinary history of certain financial professionals. This collection of tools allows the responsible investor to confirm the credentials of investment professionals, uncover any past bad behavior, and stay ahead of scam artists with news and information.

IMPROVING COMMISSION MORALE, TECHNOLOGY AND EFFICIENCY

The Federal Employee Viewpoints Survey reported declining ratings for the agency for several years. This began to change in 2015, as the CFTC had a six percent increase in global satisfaction compared to 2014, which was followed by a further nine percent increase in 2016 over 2015.

Chairman Massad has sought to enhance efficiency and technological capabilities despite severe budget constraints. The CFTC was among the highest rated small agencies in cybersecurity protections in 2015 and 2016 (see "Addressing New Challenges"). The agency has increased its capabilities to receive and analyze message data on its markets and developed its own sophisticated tools for analyzing that data. The agency has significantly increased the use of electronic reporting for its registrants. The Chairman has also made the Commission more data-driven through the development of cross-divisional working

groups to make maximum use of reported data and the development of more internal metrics and reports. The Chairman has also expanded the Office of the Chief Economist, although Congress has denied the funding the Chairman sought to expand the office further.

Chairman Massad also directed staff to overhaul the Commission's website to improve its visual design and make a number of technical improvements to make it more user-friendly. The new site, which launched in 2016, features an improved search function, updated content, and will soon have new educational resources from the Office of Customer Education and Outreach. It offers a modern design that is simpler, less cluttered, and mobile-friendly. This layout has been informed by research that takes into account visitor feedback as well as web traffic data.

The Commission has received unqualified reports on its financial statements and its internal controls from its independent auditors. In each, there were no material weaknesses or significant deficiencies cited in every year for the last 10 years, except fiscal year 2015. For that year, a GAO report on lease accounting practices led to material weaknesses in the audit reports. The underlying problems dated back to 1994 but had never been identified by the Commission's independent accountants, nor by the staff until 2015, when the staff responded to a GAO inquiry. Under Chairman Massad, the Commission reported the matter fully to the GAO and Congress and took action to improve internal controls. The Commission also took the initiative to enter into an agreement with GSA to turn over certain agency leasing responsibilities to the GSA. In fiscal year 2016, the Commission cleared the material weakness related to leases and regained its clean audit opinion, with no material weaknesses or significant deficiencies reported.