



**THE NEW CHAIRMAN:  
An Interview with  
the CFTC's Tim Massad**

**AS THE NEW CHAIRMAN** of the Commodity Futures Trading Commission, Tim Massad faces a difficult challenge. The U.S. and the European Union are on a collision course regarding a key area of derivatives regulation, and if they cannot reach an accord in the next few months, markets on both side of the Atlantic could be severely disrupted.

The heart of the issue is how clearinghouses should be regulated outside their home jurisdictions. Most of the world's major financial centers are implementing the G-20 mandate to require clearing for over-the-counter derivatives, but there are differences in the details, and that has raised some questions about whether some sort of "mutual recognition" would avoid duplicative regulation for clearinghouses that operate in more than one jurisdiction.

The issue is particularly acute for clearinghouses in Europe and the U.S., which account for the majority of global trading in OTC derivatives. EU officials have signaled that they view several Asian countries as meeting their standards for "equivalent" regulation, which would allow clearinghouses in those countries to clear trades in the EU. But the officials are not yet ready to propose the same for the U.S. until certain differences are resolved. If the EU does not reach an equivalence determination for the U.S. in the next several months, European banks that are members of U.S. clearinghouses will face a punitive increase in their capital requirements and some may reduce or even terminate their clearing operations.

Going in the opposite direction, EU officials have asked the CFTC to recognize their clearing regime as comparable and exempt European clearinghouses from U.S. regulation. CFTC officials insist, however, that all foreign clearinghouses are subject to U.S. law if they clear swaps for U.S. customers. In effect, that would require nearly every major international clearinghouse to register with the CFTC as a "designated clearing organization" and in many cases could set up a conflict between CFTC rules and local requirements.

Despite more than a year of difficult negotiations on this issue, Massad is hopeful that it will be resolved soon. Since taking over the CFTC in June, he has made two trips to Europe for talks with EU regulators on cross-border issues. In an interview with *Futures Industry*, Massad said he recognizes how important it is to resolve this issue and stressed that each side will have to agree to give "appropriate deference" to the rules of the other.

While Massad is new to the regulation of derivatives, he's no stranger to international negotiations. Before com-

ing to Washington in 2009, he spent 25 years at the law firm of Cravath, Swaine and Moore, where he specialized in advising corporations on securities offerings, bank financings and other types of transactions. From 1998 to 2002 he was one of the firm's top partners in Hong Kong, where he worked on transactions for clients throughout Asia, including the Singapore Exchange's initial public offering. At the start of his career, he helped draft the original International Swaps and Derivatives Association master agreement for over-the-counter swaps, an experience that he says helped him understand the importance of standardization then and now.

Massad also is no stranger to public service. When the credit crisis hit in 2008 and 2009, he offered to work pro bono for the Congressional Oversight Panel, the ad hoc group then chaired by Elizabeth Warren to oversee the Treasury Department's response to the crisis. He became an expert on the Troubled Asset Relief Program, the government program that injected capital into more than 900 banks, auto manufacturers and other companies. That led to a stint at the Treasury Department, where in a succession of positions he oversaw the implementation and then the winding down of TARP. While TARP was hugely unpopular with voters, Massad succeeded in selling off the government's stakes at a substantial profit. As then-Treasury Secretary Tim Geithner commented, Massad turned TARP from a "four letter word into a real success story."

Massad was born in New Orleans, the grandson of Lebanese immigrants who settled in Oklahoma. His father served in the U.S. Navy during World War II, then went to work in the oil industry and rose to become president of Mobil's exploration and production division. Massad was raised in Texas and Connecticut and went to college at Harvard University. After working for consumer activist Ralph Nader, he returned to Harvard for a law degree, then joined Cravath in 1984.

In late July, *Futures Industry* interviewed Massad and asked him about his agenda as chairman and how his experience as a corporate lawyer informs his views on the derivatives markets and the CFTC's mission. Massad stressed the importance of listening to the concerns raised by commercial end-users and others who use derivatives and promised to apply some "fine-tuning" to the implementation of Dodd-Frank. He also said he expects to work closely with other U.S. policymakers, many of whom he knows personally from his time at Treasury. But he also stressed the importance of restoring confidence in the derivatives markets, not only in the sense of preventing another crisis but also in restoring the public's perception of the market's fairness and integrity.



## INTERVIEW

**FI:** Can you give us a sense of the trail of events that led you to this job?

**MASSAD:** I spent 25 years in private practice. When the financial crisis happened, I volunteered to help the Congressional Oversight Committee. It was an opportunity to use my skills and experience to serve my country. That led to me joining Treasury. I spent five years there overseeing the TARP. As I was finishing my work on TARP, I was asked whether I would be interested in chairing this agency. I was honored to be asked to do this. It was an opportunity to address one of the causes of the crisis and also to chair an agency which is really at the forefront of regulating some of the most interesting developments in the financial markets. As a lawyer in private practice, I had had a lot of experience in derivatives. I'd worked all over the world doing all sorts of different financial transactions. So I felt that my background also gave me a good basis for this job.

**FI:** Can you give us some examples of the derivatives transactions you worked on when you were in private practice?

**MASSAD:** I was one of a small handful of lawyers who drafted the ISDA agreements [in 1986-87]. I was an associate at Cravath and I was the scribe, basically, for the U.S. side. I literally spent about a year and a half of my life on that. We did a U.S. form and a U.K. form. We also did a users' guide, which contained all of the definitions and all the other optional provisions you could include. After that I continued to be involved in derivatives. I oversaw all the transactions that the firm did for clients for a while, and then I went on to advise clients occasionally on their derivatives exposures and their hedging strategies as part of my general corporate practice.

**FI:** How does that experience inform your perspective on both the role that derivatives played in the financial crisis and your responsibilities now as head of the CFTC?

**MASSAD:** I think it informs my perspective in several ways. First is how the [derivatives] industry has been propelled by standardization. Before we did the standard forms, we were literally doing swaps as 50-

page bespoke agreements. Standardizing the forms gave this business the engine to grow to be a global industry. Now standardization is really a principal driver of what we're doing in terms of bringing transparency and oversight to this industry. We are requiring clearing of standardized swaps. We are requiring transparent trading of standardized swaps. So I have the historical perspective of seeing that evolution and seeing the importance of standardization.

I think the second thing it gives me is an appreciation of the wide variety of businesses that rely on the derivatives markets, not just interest rate or currency swaps but really the whole range of products that are used in these markets. I know these markets seem esoteric to a lot of Americans. But they really are fundamental to the strength of our economy and to the many businesses that rely on them to hedge price risk and currency risk and interest rate risk and so forth.

Finally it gives me an appreciation of the cross-border issues and the importance of those. The drafting of those standard forms was the first exercise in trying to harmonize the laws of different jurisdictions. It's interesting that we are in a place today where people say we should harmonize everything. That's in part, of course, because this industry grew up to be a global industry without any regulations. Now we're trying to bring that regulation to bear. Of course there are going to be some differences, but I think we'll ultimately get to a place where it's reasonably consistent.

**FI:** You seem pretty sanguine about that. But there's a lot of concern in the industry that the U.S. and the EU are at an impasse on the issue of recognition of clearing. There are certain deadlines coming up in December, but people need to make business decisions now and there's a lot of concern about potential disruption. What's your response to that?

**MASSAD:** The clearing issue is extremely important. I've been spending a lot of time on that. I made two trips to Europe in my first month in office to meet with my international counterparts, and we spent a lot of time discussing those very issues. I recog-

nize the importance of finding a resolution and I'm hopeful that we can find a resolution soon.

When you look at the substance of it, while I generally agree that each country should have appropriate deference with respect to the laws of other jurisdictions, one thing to keep in mind in clearing is that we've had a regime of dual registration [for clearinghouses] and cooperative oversight for some time. That's worked very well, particularly to ensure protection of U.S. customer funds.

Now, in a lot of ways, we totally defer to Europe in clearing. We don't insist, first of all, that clearing even take place in the U.S. There are a lot of products that can be cleared without any involvement of U.S. law. But there are certain areas, swaps being one because of what the law says, and also futures that are traded on a U.S. exchange, where the law basically requires that they be done in a way that's consistent with certain customer protection standards.

**FI:** Where does substituted compliance fit into this?

**MASSAD:** I think where we'll get to is a regime of appropriate deference. We've already done some things in that regard. We're talking about that with our European counterparts. There may be ways we can clarify and formalize some of those things. At the same time, it's very important that they recognize our clearinghouses as equivalent. They've acknowledged they don't have any issues with respect to the governance of our clearinghouses. Our clearinghouses meet the international standards already and they have for some time. So I think the only issue on the table is this issue of how we treat these dually registered clearinghouses. We're making clearing more important in the global financial system. That's why I think it's important that we build on what we've done in the past, in terms of this cooperative oversight arrangement, and not dismantle it.

**FI:** What do you think it's going to take to persuade your counterparts in Europe to reach some sort of compromise?

**MASSAD:** I think it's a process of just

building relations and talking through the issues. Making it clear what we can do and what we can't do. I'm optimistic that we can work these issues out. It will take time. There will be differences. I'm not saying that it's going to be exactly the same. But let's keep in mind that no one would expect that the laws that govern how companies sell securities should be the same in the U.S., Europe, Japan, Singapore and Hong Kong. No one would expect that the laws as to how companies secure a bank loan should be the same in all those jurisdictions. But because this industry grew up without any regulation, because people have been able to do their deals across borders without worrying about that, people start from the premise that the regulation should be the same.

We'd like to get to where the regulation is relatively consistent. We'll work very hard to do that. But people have to recognize that we're bringing regulation, much needed regulation, to this industry. And the vehicle for doing that is the nation state, and each one has different traditions, different legal traditions, different customs, and different politics.

**FI:** On the subject of clearing, one of the basic premises of Dodd-Frank is that greater use of clearing will reduce the overall level of systemic risk. But the more that people bring their contracts to clearinghouses, the more risk will end up in those clearinghouses. What sort of mechanisms have you developed to manage the risk in those clearinghouses, and what role does the Federal Reserve have in that process?

**MASSAD:** You're right that we have made clearinghouses more important in the global financial system. That makes oversight of these entities, particularly the largest ones, very, very important. We are engaged very actively in that, and we are working very closely with the Fed on examinations and oversight of these entities. Again, coming back to the European discussion, I think that's why it's so important to have cooperative oversight with our international counterparts, particularly when there are European clearinghouses that have a large amount of their business with American customers.

## Long Arm of the Law

The following clearinghouses have registered with the Commodity Futures Trading Commission as a "designated clearing organization" for the purpose of clearing swaps for U.S. customers or have received temporary relief pending registration or an exemption from CFTC rules.

Clearinghouse	Country of Origin	Products	Status
<b>ASX Clear (Futures) Pty Limited</b>	Australia	Interest rate swaps denominated in Australian dollars and New Zealand dollars	Temporary No-Action Relief Pending Exemption Request
<b>Clearing Corporation of India Ltd.</b>	India	Interest rate swaps and non-deliverable forwards denominated in Indian rupees	Temporary No-Action Relief Pending Exemption Request
<b>Eurex Clearing AG</b>	Germany	Interest rate swaps, credit default swaps	DCO Registration Pending
<b>ICE Clear Europe</b>	U.K.	Credit default swaps, energy swaps, futures	Registered as a DCO
<b>Japan Securities Clearing Corporation</b>	Japan	Interest rate swaps denominated in yen	DCO Registration Pending
<b>Korea Exchange</b>	Korea	Interest rate swaps denominated in won	DCO Registration Pending
<b>LCH.Clearnet Limited</b>	U.K.	Interest rate swaps, non-deliverable forwards, energy swaps, futures	Registered as a DCO
<b>LCH.Clearnet SA</b>	France	Credit default swaps	Registered as a DCO
<b>OTC Clearing Hong Kong Limited</b>	Hong Kong	Interest rate swaps, non-deliverable forwards	Temporary No-Action Relief, Pending Exemption Request
<b>Singapore Exchange Derivatives Clearing Limited</b>	Singapore	Singapore dollar denominated interest rate swaps, non-deliverable forwards, commodity swaps	Registered as a DCO

Source: CFTC

INTERVIEW

**FI:** How do you manage your priorities within the limited resources you have? Are you looking for any ways to change how the agency functions that would free up resources in some way?

**MASSAD:** Unfortunately, we don't have the budget I would like to have to really make sure we can be doing all that we should be doing. We've got to rely on the industry to regulate itself, in many respects. I think the main thing I'm looking for is just encouraging people to take a fresh look at how we can be most efficient with the resources that we have.

This agency has gone through a very intensive rule-writing phase. It was an incredible amount of work and a credit to all the people in this agency. Now that we've gotten most of the rules done, we're more focused on compliance with those rules, with enforcement, and with our examination and review activities. I'm encouraging people to think about the proper allocation of resources, given what we have in terms of responsibilities and budget, and how we can leverage other resources, the self-regulatory

organizations, or otherwise. The fact that we now are working with the Fed, for example, on oversight of two of the clearinghouses is very helpful and important.

**FI:** Going back to something you said at the beginning of this interview, what is it about this agency and the markets it regulates that you find so interesting and exciting?

**MASSAD:** First of all, you look at the growth of these markets over the last 20 years. It's really quite incredible in terms of the expansion of products that are traded. It's also the fact that you have both futures and swaps components. It's the fact that it is cross-border. It's the relationship of these markets to the cash markets, which I think is very interesting. And it's the fact that more and more businesses use these markets. I don't think 20 or 30 years ago you saw the same depth and diversity of usage that you see today. All of that is what makes it interesting.

**FI:** You've spoken about the need to protect end-users from getting caught up in regula-

tions designed for the financial institutions that were at the heart of the financial crisis. Can you talk a bit more about that and how that guides your philosophy?

**MASSAD:** All the things that we're doing under our expanded responsibilities are, in my mind, a great benefit to those end-users. We want to make sure that we don't have unintended consequences and inappropriate burdens on these nonfinancial companies because of the way we're trying to bring oversight to the industry. Given the agency's mandate to develop rules to cover oversight, reporting, trade execution, and clearing over a very compressed timetable, inevitably there are issues where you say, oh, gee, I didn't realize it would cause that effect. Those are the kinds of things where we may need to go back and try to fine-tune it as best we can.

**FI:** What's the process for doing that fine-tuning?

**MASSAD:** It's a mix of things. We use the tools at our disposal. The agency has already done some of those, whether it's no-action letters or the proposed rule we have out there on the treatment of special entities. It's not a wholesale review or revision of the rules. It's really more just a matter of being mindful of those issues, like *bona fide* hedging, making sure we get that right. Congress mandated that we develop position limits for a wide range of commodities. But in doing so, we want to make sure that businesses that rely on these markets can continue to engage in *bona fide* hedging. Another example is that Congress is very clear that end-users should be treated differently when it comes to margining and things like that. So it's those sorts of issues.

**FI:** One of the pillars of Dodd-Frank is the creation of swap execution facilities. There was a lot of excitement when these were launched, but there hasn't been much volume so far. One factor may be that there is a whole cadre of people who are familiar with quoting prices in futures or FX or other markets who are not yet part of the SEFs. What are you doing to get these non-traditional liquidity providers into the SEF world so that the SEFs start to look like a place where you can get better prices than elsewhere in the market?



Photos by John Rizzo

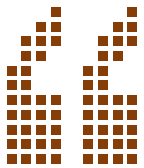
**MASSAD:** We're certainly interested in those issues and those concerns. I think the important thing to keep in mind here is we're just months into this. It's important for people to step back a little and recognize that we're really bringing dramatic change to this industry. Yes, it may take more than a few months to get there. But think back on securities reform and what people said about that. When the Securities Exchange Act was passed in 1934, there were people

There are three types of issues we'll address. There are some things that we can improve, in terms of our rules and bringing greater clarity to what we expect. There are some things that the SDRs need to work on, in terms of how they report data and making it easier for us to aggregate. Finally there are some things that participants in the market will need to improve, taking their obligations seriously, and making sure that they report the data properly. I've seen

this. I'm going to lift up the phone and call somebody if there's an issue that affects both of our interests.

**FI:** Last question—what keeps you up at night?

**MASSAD:** What I'm most concerned about is more of a broader issue than any particular thing that we've touched on, and that's the importance of restoring confidence in our financial markets.



## Our job is to do all we can to help restore confidence in the integrity of the markets.



like the president of the New York Stock Exchange who said this will be the death of American business. So the swap reforms are all still kind of new and it may take time before they seem as commonplace as the requirement that public companies file annual and quarterly reports. There's going to be kinks to work out. There's going to be issues to address, and we'll do our best to address them.

**FI:** One of the other key goals of Dodd-Frank was to make these swap markets more transparent, both to the public and to regulators. On the other hand, the quality of data that is being collected now makes it very difficult to analyze. Where does that fit into your list of priorities?

**MASSAD:** Very high. We can't have true oversight and proper regulation of this market unless we have a good picture of what's going on. Now, it's a big challenge. We're talking about coming up with rules of the road, if you will, or standards for the reporting of data by a lot of different market participants on a wide range of products. But I'm very committed to that. I've talked with our staff a lot about that, and I've been talking with outside groups, whether it's the swap data repositories or firms that have an obligation to report as well as other participants in the market, to get more ideas.

some data from the SDRs on the quality of different firms reporting, and that's very interesting data. We're going to be talking to participants who we feel are not focusing enough on their data reporting obligations.

**FI:** On a specific matter, are you considering extending the clearing mandate to include FX products?

**MASSAD:** We're looking at that, but we don't have a final timetable on that.

**FI:** Is that something where Treasury will be more involved than it would in other areas, just because Treasury historically has had such a strong interest in currency markets?

**MASSAD:** My attitude is I'm going to work closely with all my fellow regulators and agencies. I've got a great relationship with Mary Jo White. We've known each other for decades. [Federal Reserve Governor] Jay Powell is going to be focusing on clearing and he and I know one another and have had a few discussions about this. I know Tom Curry [Comptroller of the Currency] and Marty Gruenberg [FDIC Chairman] and expect to work closely with them. And similarly with [Treasury] Secretary [Jack] Lew and others at Treasury. Look, most Americans expect one part of the government to talk to the other part. I kind of have a common sense attitude toward

Most Americans don't really know anything about these markets and they don't engage in these markets. But the level of confidence that the public has in our financial markets has taken a hit. I believe we have the best financial markets in the world. They're the most dynamic, the most innovative, the most transparent. We need to do all we can to keep them that way, and part of that is making sure we maintain confidence in those markets.

**FI:** From an industry perspective, we tend to focus on systemic risk issues, such as preventing another collapse or protecting the market in case of a default. Is that what you mean when you talk about confidence in the markets?

**MASSAD:** Believe me, that's an equal concern. We're going to do everything we can with the resources that we have to prevent failures and market disruptions. But I think it's more than that. There's a public trust that's involved. Our job is to do all we can to help restore confidence in the integrity of the markets in terms of both the reality and people's perception that they operate fairly and transparently. **fi**

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This interview was conducted by **Will Acworth**, editor of *Futures Industry*.