

Derivatives, Legislative and Regulatory Weekly Update (January 12, 2024)

Client Alert | January 12, 2024

From the Derivatives Practice Group: U.S. derivatives news has been slow during the last two weeks, but a few international developments may pique your interest.

New Developments

- **SEC Publishes Risk Alert: Observations Related to Security-Based Swap Dealers.** On January 10, the SEC's Division of Examination published a [Risk Alert](#) presenting examination and outreach observations concerning compliance with rules applicable to security-based swap dealers. The SEC stated that in sharing these observations, the Division seeks to remind security-based swap dealers of their obligations under relevant security-based swap rules and encourage security-based swap dealers to consider improvements in their compliance programs, as may be appropriate, to further compliance with Exchange Act requirements. The Risk Alert presents observations in the following areas: (1) reporting of security-based swap transactions and correction of reporting errors; (2) business conduct standards; (3) security-based swap trading relationship documentation and portfolio reconciliation; and (4) recordkeeping. [NEW]
- **CFTC Publishes Decentralized Finance Report.** On January 8, the CFTC's Digital Assets and Blockchain Technology Subcommittee of the Technology Advisory Committee (TAC) released a [report](#) entitled "Decentralized Finance." The report discusses TAC's view that the benefits and risks of DeFi depend significantly on the design and features of specific systems, and that one of its central concerns related to DeFi systems is the lack of, and some industry designs to avoid, clear lines of responsibility and accountability. TAC opined that this feature of DeFi systems may present the clearest ways in which DeFi poses risks to consumers and investors, as well as to financial stability, market integrity and illicit finance—according to TAC, it implicates no clear route to ensuring victim recourse, defense against illicit exploitation, or the ability to insert necessary changes and controls during periods of crisis and network stress. The report finds that government and industry should take timely action to work together, across regulatory and other strategic initiatives, to better understand DeFi.
- **CFTC Chairman Announces Division of Data Appointments to Continue the CFTC's Focus on Mission Critical Data.** On December 21, CFTC Chairman Rostin Behnam announced two appointments in the Division of Data (DOD) intended to enhance the CFTC's analytic capabilities as the agency aims to increase innovation in its data-driven culture. Ted Kaouk has been named Chief Data Officer and Director of DOD. Dr. Kaouk will spearhead data integration initiatives and collaborate with the CFTC's offices and divisions in an attempt to help the agency make informed policy decisions. John Coughlan will serve as the agency's first Chief Data Scientist. He will work to advance DOD's data science expertise and expand the agency's use of artificial intelligence to more effectively oversee the derivatives markets and meet its own regulatory requirements.

New Developments Outside the U.S.

- **RBI Issues Circular on Risk Management and Interbank Dealings.** On January

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5, the Reserve Bank of India (RBI) issued a [circular](#) on risk management and interbank dealings. The RBI stated that it has reviewed the foreign exchange risk management facilities based on the feedback received from market participants and experience gained since the revised framework came into force. It has also consolidated the directions in respect of all types of foreign exchange transactions (including cash, tom and spot). The RBI explained that the directions contained in the Currency Futures (Reserve Bank) Directions, 2008 ([Notification No. FED.1/DG\(SG\)-2008 dated August 06, 2008](#)), and Exchange Traded Currency Options (Reserve Bank) Directions, 2010 ([Notification No. FED.01/ED\(HRK\)-2010 dated July 30, 2010](#)), as amended from time to time, are now being incorporated into the [Master Direction – Risk Management and Inter-Bank Dealings](#). These revised directions will come into effect on April 5, 2024, replacing the existing directions in Part A (Section I) of the [Master Direction – Risk Management and Inter-Bank Dealings dated July 5, 2016](#), as amended from time to time, superseding the notifications listed in [Annex-II](#). [NEW]

- **Hong Kong Consults on Regulatory Regime for Stablecoins.** On December 27, the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority (HKMA) jointly issued a public consultation paper on the legislative proposal for implementing the regulatory regime for stablecoin issuers in Hong Kong. Under the proposed regime, an issuer would be required to obtain a license from the HKMA if it issues a stablecoin that references the value of one or more fiat currencies in Hong Kong. The licensed issuer will have to fulfil certain financial resources requirements, and will be required to put in place an effective stabilization mechanism, such as maintaining a pool of high-quality and highly-liquid reserve assets with proper custody arrangement. The proposed regime further imposes governance, risk management and AML/CFT measures on licensees. Interested parties are encouraged to submit written comments on or before February 29, 2024. [NEW]
- **ESAs Propose to Extend Equity Option Margin Exemption by Two Years.** On December 21, the European Supervisory Authorities (ESAs) – the European Securities and Markets Authority (ESMA), the European Banking Authority and the European Insurance and Occupational Pensions Authority – published [draft regulatory technical standards](#) (RTS) proposing a two-year extension (until January 4, 2026) to the exemption for equity options from bilateral margining under the European Market Infrastructure Regulation (EMIR). These RTS have to be endorsed by the European Commission and are subject to non-objection by the Council of the EU and the European Parliament before they enter into force. The draft RTS are accompanied by a [statement](#) from the ESAs that competent authorities “should not prioritise any supervisory or enforcement action” relating to bilateral margining for equity options until the entry into force of these amended RTS or the adoption of a long-term solution under EMIR 3, whichever occurs first.” [NEW]

New Industry-Led Developments

- **ISDA Updates OTC Derivatives Compliance Calendar.** On January 3, 2024, ISDA updated its global calendar of compliance deadlines and regulatory dates for the over-the-counter (OTC) derivatives space. The updated calendar can be found on the [ISDA website](#).
- **ISDA Submits Response to HMT, FCA and PRA on UK EMIR.** On December 20, ISDA and UK Finance submitted a joint [response](#) to His Majesty’s Treasury (HMT), the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) on the reform of the UK EMIR. ISDA stated that ISDA and UK Finance submitted the response in an attempt to inform the next stage of the UK’s smarter regulatory framework reform package. In the response, the associations recommend a small number of clearly defined changes, seek certainty and permanence on current temporary exemptions and request an end to the current

dependency on equivalence decisions for certain provisions (for instance, the intragroup exemption). [NEW]

The following Gibson Dunn attorneys assisted in preparing this update: Jeffrey Steiner, Adam Lapidus, Marc Aaron Takagaki, Hayden McGovern, and Karin Thrasher. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Derivatives practice group, or the following practice leaders and authors: Jeffrey L. Steiner, Washington, D.C. (202.887.3632, jsteiner@gibsondunn.com) Michael D. Bopp, Washington, D.C. (202.955.8256, mbopp@gibsondunn.com) Michelle M. Kirschner, London (+44 (0)20 7071.4212, mkirschner@gibsondunn.com) Darius Mehraban, New York (212.351.2428, dmehraban@gibsondunn.com) Jason J. Cabral, New York (212.351.6267, jcabral@gibsondunn.com) Adam Lapidus, – New York (+1 212.351.3869, alapidus@gibsondunn.com) Stephanie L. Brooker, Washington, D.C. (202.887.3502, sbrooker@gibsondunn.com) Roscoe Jones Jr., Washington, D.C. (202.887.3530, rjones@gibsondunn.com) William R. Hallatt, Hong Kong (+852 2214 3836, whallatt@gibsondunn.com) David P. Burns, Washington, D.C. (202.887.3786, dburns@gibsondunn.com) Marc Aaron Takagaki, New York (212.351.4028, mtakagaki@gibsondunn.com) Hayden K. McGovern, Dallas (214.698.3142, hmcgovern@gibsondunn.com) Karin Thrasher, Washington, D.C. (202.887.3712, kthrasher@gibsondunn.com)

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