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Derivatives, Legislative and Regulatory Weekly Update (January 24, 2025)

Client Alert | January 24, 2025

From the Derivatives Practice Group: This week, the CFTC announced that Commissioner Caroline D. Pham was unanimously elected as CFTC Acting Chairman and SEC Acting Chairman Uyeda announced the formation of a crypto task force. **New Developments**

- **Acting Chairman Pham Announces CFTC Leadership Changes**. On January 22, Acting Chairman Pham announced the following CFTC leadership changes: Acting Chief of Staff: Harry Jung; Acting General Counsel: Meghan Tente; Acting Director of the Office of Public Affairs: Taylor Foy; Acting Director of the Office of Legislative and Intergovernmental Affairs: Nicholas Elliot; Acting Director of the Division of Market Oversight: Amanda Olear; Acting Director of the Division of Clearing and Risk: Richard Haynes; Acting Director of the Market Participants Division: Tom Smith; Acting Director of the Division of Enforcement: Brian Young; Acting Director of the Office of International Affairs: Mauricio Melara. [NEW]
- **SEC Acting Chairman Uyeda Announces Formation of New Crypto Task Force**. On January 21, SEC Acting Chairman Uyeda launched a crypto task force that, according to the SEC, is dedicated to developing a comprehensive and clear regulatory framework for crypto assets. Commissioner Hester Peirce will lead the task force. Richard Gabbert, Senior Advisor to the Acting Chairman, and Taylor Asher, Senior Policy Advisor to the Acting Chairman, will serve as the task force's Chief of Staff and Chief Policy Advisor, respectively. The SEC said that the task force will collaborate with SEC staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law and that the task force's focus will be to help the SEC draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously. The Sec indicated that the task force will operate within the statutory framework provided by Congress, coordinate the provision of technical assistance to Congress as it makes changes to that framework, and coordinate with federal departments and agencies, including the CFTC, and state and international counterparts. [NEW]
- **CFTC Names Caroline D. Pham Acting Chairman**. On January 20, the CFTC announced the members of the Commission have unanimously elected Commissioner Caroline D. Pham as Acting Chairman, effective January 20, 2025. Acting Chairman Pham was nominated to be a CFTC Commissioner on January 12, 2022 and unanimously confirmed by the U.S. Senate on March 28, 2022, for a term beginning on April 14, 2022 and expiring on April 13, 2027. She succeeds Rostin Behnam, who served as Chairman since January 4, 2022 and will remain a Commissioner until his departure on February 7, 2025. On January 21, Acting Chairman Pham made the following statement: "I'm humbled and grateful to be entrusted by President Trump to lead the CFTC as we approach a significant milestone in our history with tremendous opportunities ahead. For the past half century, the CFTC has proudly served our mission to promote market integrity and liquidity in the commodity derivatives markets that are critical to the real economy and global trade—ensuring American growers, producers, merchants and other commercial end-users can mitigate risks to their business and support strong U.S. economic growth. As the CFTC celebrates our 50th anniversary, we must also

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refocus and change direction with new leadership to fulfill our statutory mandate to promote responsible innovation and fair competition in our markets that have continually evolved over the decades. It's time for the CFTC to get back to the basics. I'm honored to work alongside our dedicated CFTC staff, and I thank former Chairman Behnam and my fellow Commissioners for their service." [NEW]

- **CFTC and the Bank of England Comment on Report on Initial Margin Transparency and Responsiveness in Centrally Cleared Markets**. On January 15, the Basel Committee on Banking Supervision ("BCBS"), the Bank for International Settlements' Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO") published the final report Transparency and responsiveness of initial margin in centrally cleared markets – review and policy proposals and the accompanying cover note Consultation feedback and updated proposals. This report is the culmination of work undertaken by BCBS, CPMI, and IOSCO, co-chaired by the Bank of England and the Commodity Futures Trading Commission.
- **CFTC Announces Review of Nadex Sports Contract Submissions**. On January 14, the CFTC notified the North American Derivatives Exchange, Inc. ("Nadex") d/b/a Crypto.com it will initiate a review of the two sports contracts that were self-certified and submitted to the CFTC on Dec. 19, 2024. As described in the submissions, the contracts are cash-settled, binary contracts. The CFTC determined the contracts may involve an activity enumerated in CFTC Regulation 40.11(a) and section 5c(c)(5)(C) of the Commodity Exchange Act. As required under CFTC Regulation 40.11(c)(1), the CFTC has requested that Nadex suspend any listing and trading of the two sports contracts during the review period.
- **CFTC Announces Departure of Clearing and Risk Director Clark Hutchison**. On January 15, the CFTC announced Division of Clearing and Risk Director Clark Hutchison will depart the agency Jan. 15. Mr. Hutchison has served as director since July 2019.
- **CFTC Staff Issues Advisory Regarding the Compliance Date for Certain DCO Reporting Requirements**. On January 10, the CFTC's Division of Clearing and Risk ("DCR") announced it issued a staff advisory regarding the compliance date for certain daily reporting requirements for registered derivatives clearing organizations ("DCOs"). The requirements were amended in August 2023. The compliance date for the amended requirements is February 10, 2025. According to the advisory, DCR will not expect any DCO to comply with the amended requirements until December 1, 2025, so long as the DCO continues to comply with the previous version of the requirements.
- **CFTC Announces Departure of Enforcement Director Ian McGinley**. On January 10, the CFTC announced that Division of Enforcement Director Ian McGinley will depart the agency on January 17, 2025. Mr. McGinley has served as Director of Enforcement since February 2023.
- **Chairman Rostin Behnam Announces Departure from CFTC**. On January 7, Chairman Rostin Behnam announced that he will be stepping down from his position as Chairman on January 20 and that his final day at the CFTC will be Friday, February 7.

New Developments Outside the U.S.

- **New Governance Structure for Transition to T+1 Settlement Cycle Kicks Off**. On January 22, the European Securities and Markets Authority ("ESMA"), the EU's financial markets regulator and supervisor, the European Commission ("EC") and the European Central bank ("ECB") launched a new governance structure to support the transition to the T+1 settlement cycle in the European Union. Following ESMA's report with recommendations on the shortening of the settlement cycle, the new governance structure has been designed to oversee and

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manage the operational, regulatory and technological aspects of this transition. Given the high level of interconnectedness within the EU capital market, a coordinated approach across the EU, involving authorities, market participants, financial market infrastructures and investors, is desirable. ESMA said that the key elements of the new governance model include an Industry Committee, composed of senior leaders and representatives from market players, several technical workstreams, operating under the Industry Committee, focusing on the technological operational adaptations needed in the areas concerned by the transition to T+1 (i.e. trading, matching, clearing, settlement, securities financing, funding and FX, asset management, corporate events, settlement efficiency), and two more general workstreams that will review the scope and the legal and regulatory aspects of these adaptations, and a Coordination Committee, chaired by ESMA and with representation from the EC, the ECB, ESMA and the chair of the Industry Committee, intended to ensure coordination between the authorities and the industry, advising on challenges that may arise during the transition. Additionally, ESMA said that the Commission is currently considering the merits of a legislative change mandating a potential transition to a shorter settlement cycle. [NEW]

- **ESMA and the EC Publish Guidance on Non-MiCA Compliant ARTs and EMTs (Stablecoins)**. On January 17, ESMA published a statement reinforcing the position related to the offer of ARTs and EMTs (also known as stablecoins) in the EU under Market in Crypto Assets regulation (MiCA). The statement provides guidance on how and under which timeline CASPs are expected to comply with the requirements of Titles III and IV of MiCA, as clarified in the EC Q&A. In particular, National Competent Authorities are expected to ensure compliance by crypto assets services providers ("CASPs") regarding non-compliant ARTs or EMTs as soon as possible, and no later than the end of Q1 2025. ESMA indicated that the statement is intended to facilitate coordinated actions at the national level and avoid potential disruptions. The EC has also delivered a Q&A, intended to provide guidance on the obligations contained in titles III and IV of MiCA and how these obligations should apply to CASPs. The Q&A clarifies that certain crypto-asset services may constitute an offer to the public or an admission to trading in the EU and should therefore comply with titles III and IV of MiCA. [NEW]
- **The EBA and ESMA Analyze Recent Developments in Crypto-Assets**. On January 16, ESMA and the European Banking Authority ("EBA") published a Joint Report on recent developments in crypto-assets, analyzing decentralized finance ("DeFi") and crypto lending, borrowing and staking. This publication is the EBA and ESMA's contribution to the European Commission's report to the European Parliament and Council under Article 142 of the Markets in Crypto-Assets Regulation. EBA and ESMA find that DeFi remains a niche phenomenon, with value locked in DeFi protocols representing 4% of all crypto-asset market value at the global level. The report also sets out that EU adoption of DeFi, while above the global average, is lower than other developed economies (e.g. the US, South Korea).
- **BCBS, CPMI and IOSCO Publish Reports on Margin in Cleared and Non-cleared Markets**. On January 15, BCBS, CPMI and IOSCO published three final reports on initial and variation margin in centrally cleared and non-centrally cleared markets. The three reports reflect feedback received further to the publication of consultation reports last year. BCBS, CPMI and IOSCO published the final report on transparency and responsiveness of initial margin in centrally cleared markets, setting out 10 final policy proposals relevant to central counterparties ("CCPs") and clearing members. ISDA and the Institute of International Finance (IIF) submitted a joint response during the consultation. CPMI and IOSCO published the final report on streamlining variation margin in centrally cleared markets, setting out eight examples of effective practices for CCPs' variation margin processes. ISDA and the IIF submitted a joint response during the consultation. BCBS and IOSCO published the final report on streamlining variation margin processes and

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initial margin responsiveness of margin models in non-centrally cleared markets, setting out eight recommendations. ISDA and the IIF submitted a joint response during the consultation. In relation to the BCBS, CPMI and IOSCO report on initial margin transparency and responsiveness in centrally cleared markets, the Bank of England and the CFTC have also published a joint statement expressing support for the findings and policy proposals. [NEW]

- **EU Funds Continue to Reduce Costs**. On January 14, ESMA published its seventh market report on the costs and performance of EU retail investment products, showing a decline in the costs of investing in key financial products. This report aims at facilitating increased participation of retail investors in capital markets by providing consistent EU-wide information on cost and performance of retail investment products.

New Industry-Led Developments

- **ISDA Publishes Equity Definitions VE, Version 2.0**. On January 21, ISDA published version 2.0 of the ISDA Equity Derivatives Definitions (Versionable Edition) on the MyLibrary platform. This publication includes, among other updates, provisions that can be used for documenting transactions with time-weighted average price or volume-weighted average price features, futures price valuation in respect of share transactions and benchmark provisions in respect of an index. [NEW]
- **ISDA and GFXD Respond to FCA on Future of SI Regime**. On January 10, ISDA and the Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association ("GFMA") responded to questions from the UK Financial Conduct Authority ("FCA") on the future of the systematic internalizer ("SI") regime. In the response, ISDA and GFXD support the proposal that firms are no longer required to identify themselves as SIs for derivatives trading and provide input on the consequences of this requirement falling away. ISDA and GFXD do not believe there will be any impact for reporting, best execution or on market structure.

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 (212.351.3869, alapidus@gibsondunn.com) Stephanie L. Brooker, Washington, D.C. (202.887.3502, sbrooker@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) © 2025 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified

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