GIBSON DUNN

Derivatives, Legislative and Regulatory Weekly Update (January 31, 2025)

Client Alert | January 31, 2025

From the Derivatives Practice Group: This week, the CFTC and SEC extended the Form PF amendments compliance date from March 12, 2025 to June 12, 2025. **New Developments**

- **CFTC and SEC Extend Form PF Amendments Compliance Date.** The Commodity Futures Trading Commission, together with the Securities and Exchange Commission, extended the compliance date for the amendments to Form PF that were adopted Feb. 8, 2024. The compliance date for these amendments, which was originally March 12, 2025, has been extended to June 12, 2025. Form PF is the confidential reporting form for certain SEC-registered investment advisers to private funds, including those that also are registered with the CFTC as commodity pool operators or commodity trading advisers. This extension will mitigate certain administrative and technological burdens and costs associated with the prior compliance date. This extension will also provide more time for filers to program and test for compliance with these amendments. [NEW]
- **Acting Chairman Pham Launches Public Roundtables on Innovation and Market Structure.** On January 27, Acting Chairman Pham announced the launch of a series of public roundtables on evolving trends and innovation in market structure, including issues such as affiliated entities and conflicts of interest, prediction markets, and digital assets. Pham renewed calls for open public engagement and increased transparency by the CFTC on its policy approach to changes in derivatives markets last year. [NEW]
- **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.
- **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

Related People

Jeffrey L. Steiner

Adam Lapidus

Marc Aaron Takagaki

Karin Thrasher

international counterparts.

- **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 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.”
- **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.

New Developments Outside the U.S.

- **ESMA Provides Guidance on MiCA Best Practices.** On January 31, ESMA published a new supervisory briefing aiming to align practices across the EU member states. The briefing, developed in close cooperation with National Competent Authorities (“NCAs”), promotes convergence and prevents regulatory arbitrage, providing concrete guidance about the expectations on applicant Crypto Asset Service Providers, and on NCAs when they are processing the authorization requests. [NEW]
- **ESMA Publishes Data for Quarterly Bond Liquidity Assessment.** On January

31, ESMA published the new quarterly liquidity assessment of bonds. ESMA's liquidity assessment for bonds is based on a quarterly assessment of quantitative liquidity criteria, which includes the daily average trading activity (trades and notional amount) and the percentage of days traded per quarter. [NEW]

- **Equivalence of UK CCPs Extended to June 30, 2028**. On January 30, the European Commission determined that the regulatory framework applicable to central counterparties ("CCPs") in the United Kingdom of Great Britian and Northern Ireland is equivalent, in accordance with Regulation No 648/2012 of the European Parliament and of the Council. [NEW]
- **Euribor Panel to include Finland's OP Corporate Bank and the National Bank of Greece.** OP Corporate Bank and the National Bank of Greece join the group of credit institutions that contribute to Euribor under its revised methodology, which is a substitute for the panel banks' expert judgement. The methodology was adopted in a phased approach by all members across the Euribor panel between May and October 2024. [NEW]
- **New Governance Structure for Transition to T+1 Settlement Cycle Kicks Off**. On January 22, ESMA, 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 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.
- **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.
- **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 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.
- **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 Joint Trade Association letter to SEC on US Treasury Clearing.** On January 24, ISDA, the Alternative Investment Management Association, the Futures Industry Association ("FIA"), the FIA Principal Traders Group, the Institute of International Bankers, the Managed Funds Association and the Securities Industry and Financial Markets Association and its asset management group sent a letter to Mark Uyeda, acting chair at the US Securities and Exchange Commission (SEC) requesting an extension to the implementation dates for the Treasury clearing mandate by a minimum of 12 months. The associations believe this would give the SEC time to consider and address several critical issues and for the industry to implement clearing. In the letter, the associations highlight their concern that, without an extension, the success of the transition to central clearing will be compromised and may lead to disruptions in the cash Treasury securities and repo markets. [NEW]
- **ISDA and AFME Publish Joint Response to ECB Consultation on Options and Discretions under EU Law.** On January 24, ISDA and the Association for Financial Markets in Europe ("AFME") responded to the European Central Bank's ("ECB") consultation on its approach to options and discretions under EU law. In the response, the associations highlight the efforts of the ECB to establish consistent options and discretions that would harmonize rules and foster a level playing field in the euro area. The response also mentions that further actions are necessary, specifically on trading book boundary classifications and exemptions.

[NEW]

- **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.

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)

Related Capabilities

Derivatives

Oil and Gas

Power and Renewables

Energy and Infrastructure