

Derivatives, Legislative and Regulatory Weekly Update (March 22, 2024)

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***From the Derivatives Practice Group:** This issue addresses ESMA's ongoing process to potentially shorten the settlement cycle in EU Markets, developments in Hong Kong and Australia, and a couple responses from ISDA to regulators.*

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New Developments

- **CFTC's Global Markets Advisory Committee Advances Three Recommendations.** On March 7, the CFTC's Global Markets Advisory Committee (GMAC), sponsored by Commissioner Caroline D. Pham, advanced three new recommendations intended to (1) [promote U.S. Treasury markets resiliency and efficiency](#), (2) [provide resources on the upcoming transition to T+1 securities settlement](#), and (3) [publish a first-ever digital asset taxonomy to support U.S. regulatory clarity and international alignment](#).
- **CFTC's Market Risk Advisory Committee to Meet.** The CFTC's Market Risk Advisory Committee (MRAC) will meet on April 9 at 9:30 am ET. The MRAC will consider current topics and developments in the areas of central counterparty risk and governance, market structure, climate-related risk, and emerging technologies affecting derivatives and related financial markets.

New Developments Outside the U.S.

- **ESMA Publishes Feedback on Shortening Settlement Cycle.** On March 21, the European Securities and Markets Authority (ESMA) [published feedback](#) received to its Call for Evidence on shortening the settlement cycle in the EU. According to ESMA's report on the feedback, respondents focused on four areas: (1) many operational impacts, beyond adaptations of post-trade processes, were identified as the result of a reduction of the securities settlement cycle in the EU; (2) respondents identified a wide range of both potential costs and benefits of a shortened cycle, with some responses supporting a thorough impact assessment; (3) respondents provided suggestions around how and when a shorter settlement cycle could be achieved, with a strong demand for a clear signal from the regulatory front at the start of the work and clear coordination between regulators and the industry; and (4) stakeholders made clear the need for a proactive approach to adapt their own processes to the transition to T+1 in other jurisdictions. Additionally, according to ESMA, some responses warned about potential infringements due to the misalignment of the EU and North America settlement cycles. [NEW]
- **HKMA Issues New SPM Modules on Market Risk and CVA Risk Capital Charges.** On March 15, the Hong Kong Monetary Authority (HKMA) released a [circular](#) informing the industry that it has issued new Supervisory Policy Manual (SPM) modules [MR-1: Market Risk Capital Charge](#) and [MR-2: CVA Risk Capital Charge](#) as statutory guidance, which will come into effect on a day to be appointed by the HKMA (intended to be January 1, 2025). The HKMA said that the revised market risk and credit valuation adjustment (CVA) risk capital frameworks will be set out in Part 8 and Part 8A of the Banking (Capital) Rules, respectively. The SPM MR-1: Market Risk Capital Charge covers the standardized approach for market

risk, the internal models approach, the simplified standardized approach and requirements related to the boundary between the trading book and banking book, while the SPM MR-2: CVA Risk Capital Charge covers the reduced basic CVA approach, the full basic CVA approach and the standardized CVA approach. According to the HKMA, both new SPM modules are designed not just to provide additional technical details in addition to the rules but to integrally cover all of the related requirements. They set out the minimum standards that all locally incorporated authorized institutions are expected to adopt for the calculation of their market risk and CVA risk capital charges. [NEW]

- **ASIC Finalizes Minor and Technical Changes to OTC Derivatives Reporting Rules.** On March 13, the Australian Securities and Investments Commission (ASIC) finalized the minor and technical changes to the [ASIC Derivative Transaction Rules \(Reporting\) 2024](#) under [ASIC Derivative Transaction Rules \(Reporting\) 2024 Amendment Instrument 2024/1](#) to implement the proposed changes to the 2024 rules set out in Consultation Paper 361a ASIC Derivative Transaction Rules (Reporting) 2024: Follow-on consultation on changes to data elements and other minor amendments ([CP 361a](#)). The changes include (1) seven additional data elements; (2) provide clarifications and administrative updates to the data elements; (3) make consequential changes to Chapter 2: Reporting Requirements; and (4) make other administrative updates including re-referencing the location of definitions in the Corporations Act 2001 that have been moved by the [Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Act 2023](#). According to ISDA, feedback to CP 361a was broadly supportive. In response to industry requests, the final changes also (1) provide for an additional circumstance where the name of Counterparty 2 is not reported and (2) change how the amount of one kind of collateral is reported. [NEW]

New Industry-Led Developments

- **ISDA Responds to CFTC on Clearing Member Funds Protection.** On March 18, ISDA responded to the CFTC's consultation on proposed rules for the protection of clearing member funds held by derivatives clearing organizations (DCOs), including the assets of futures commission merchants (FCMs). According to ISDA, it proposed that the CFTC should finalize the enhanced protection for clearing member assets in connection with an intermediated DCO only, which includes multiple FCMs, unaffiliated with the DCO, as its members. Regarding a DCO providing direct clearing without multiple FCMs unaffiliated with the DCO, ISDA suggested the CFTC should wait to propose enhanced protection for clearing members' assets, once a full assessment of the risks and complications associated with a DCO providing direct clearing has been completed. At which point, in ISDA's opinion, it would be appropriate for the CFTC to propose a comprehensive framework to address these risks holistically. Otherwise, ISDA said, the current notice of proposed rulemaking would create a sense of safety for the disintermediated model, which is superficial due to the rule not creating a comprehensive safety regime for disintermediated central counterparties (CCPs), with many risks arising from such models being left unaddressed. [NEW]
- **ISDA Responds to FASB on Induced Conversion of Convertible Debt.** On March 18, ISDA [submitted a response](#) to the Financial Accounting Standards Board's (FASB) exposure draft on File Reference No. 2023-ED600, Debt—Debt with Conversion and Other Options (Subtopic 470-20): Induced Conversions of Convertible Debt Instruments. ISDA indicated that it supports FASB's proposals in the exposure draft and believes it achieves the objective of improving the application and relevance of the induced conversion guidance to cash convertible debt instruments. [NEW]
- **ISDA Submits Response to IOSCO Voluntary Carbon Markets Consultation.** On March 1, ISDA submitted a response to IOSCO's Voluntary Carbon Markets Consultation Report. The response welcomes IOSCO's work on developing good

practices for regulation of voluntary carbon markets (VCMs), as well as its recognition of the critical role that financial market participants play in VCMs. ISDA explains that clear legal and regulatory categorization of voluntary carbon credits is key to building liquidity in order to support scaling VCMs and to develop safe, efficient markets in Voluntary Carbon Credit derivatives.

- **ISDA Submits Response to the UK Financial Conduct Authority’s Money Market Funds Consultation.** On March 8, ISDA responded to the UK Financial Conduct Authority’s (FCA) consultation on updating the regime for money market funds (MMF). In the response, ISDA highlights its support for using MMFs as collateral for non-cleared derivatives margin requirements and the advancement of tokenized MMFs to be used as collateral to increase collateral mobility, reduce collateral-related transaction costs and related settlement risks.
- **ISDA Publishes Whitepaper Charting the Next Phase of India’s OTC Derivatives Market.** On March 4, ISDA published a new [whitepaper](#) that explores the growth of India’s financial markets and makes a series of market and policy recommendations to encourage the further development of a safe and efficient over-the-counter (OTC) derivatives market. The whitepaper proposes several initiatives that industry participants and regulators could take that ISDA believes will create deeper and more liquid domestic derivatives markets and enhance risk management practices. The recommendations are centered on five key pillars: (1) Broaden product development, innovation and diversification; (2) Foster adoption of similar market and risk principles across regulatory regimes; (3) Enhance market access and diversification of participants in the OTC derivatives market; (4) Ensure growth in a safe and efficient manner; and (5) Encourage greater alignment with international principles and practices.

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) © 2024 Gibson, Dunn & Crutcher LLP. All rights reserved.

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