GIBSON DUNN

Derivatives, Legislative and Regulatory Weekly Update (May 24, 2024)

Client Alert | May 24, 2024

Click for PDF

From the Derivatives Practice Group: *ESMA is consulting a variety of topics under the MiFIR and MiFID reviews, including on consolidated tape providers and three new technical standards.*

New Developments

- **CFTC Announces Updated Part 43 Block and Cap Sizes and Further Extends No-Action Letter Regarding the Block and Cap Implementation Timeline.** On May 23, the CFTC's Division of Data published updated post-initial appropriate minimum block sizes and post-initial cap sizes as determined under CFTC regulations. The Division of Market Oversight (DMO) also issued a letter further extending the no-action position originally taken in CFTC Letter No. 22-03 regarding the compliance dates for certain amendments, adopted in November 2020, to the CFTC's swap data reporting rules concerning block trades and post-initial cap sizes. The updated post-initial appropriate minimum block and cap sizes will be effective October 7. The updated post-initial appropriate minimum block and post-initial cap sizes, as well as other swap reporting rules, forms, and requirements, are at Real-Time Reporting | CFTC. [NEW]
- **CFTC Announces Global Markets Advisory Committee Meeting on June 4.** On May 23, CFTC Commissioner Caroline D. Pham, sponsor of the Global Markets Advisory Committee (GMAC), announced the GMAC will hold a public meeting on Tuesday, June 4, from 10:00 a.m. to 3:00 p.m. EDT at the CFTC's New York Regional Office. At this meeting, the GMAC will hear a presentation from the GMAC's Global Market Structure Subcommittee, Technical Issues Subcommittee, and Digital Asset Markets Subcommittee on various workstreams, and consider recommendations from the Subcommittees on such workstreams. [NEW]
- **CFTC Issues Proposal on Event Contracts.** On May 10, the CFTC issued a Notice of Proposed Rulemaking to further specify types of event contracts that fall within the scope of Commodity Exchange Act (CEA) section 5c(c)(5)(c) and are contrary to the public interest. The proposal includes a determination that event contracts involving each of the activities enumerated in CEA section 5c(c)(5)(c) (gaming, war, terrorism, assassination, and activity that is unlawful under any Federal or State law) are, as a category, contrary to the public interest and therefore may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. Further, the proposal defines "gaming" in detail, and the proposal lists illustrative examples of gaming that include staking or risking something of value on the outcome of a political contest, an awards contest, or a game in which one or more athletes compete, or an occurrence or non-occurrence in connection with such a contest or game. Thus, event contracts involving these illustrative examples of gaming could not be listed for trading or accepted for clearing under the proposal. Comments must be received on or before July 9, 2024.

Related People

Jeffrey L. Steiner

Adam Lapidus

Marc Aaron Takagaki

Hayden McGovern

Karin Thrasher Barry

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

- **Statement of Chairman Rostin Behnam Regarding Proposed Event Contracts Rulemaking.** On May 10, CFTC Chairman Rostin Behnam remarked on his support for the proposed amendments to the Commission's rules concerning event contracts. The Chairman remarked that the Commission proposes to further specify the types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest. He believes that the amendments will support efforts by registered entities to comply with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing.

New Developments Outside the U.S.

- **ESMA Consults on Commodity Derivatives Under MiFID Review.** On May 23, ESMA launched a public consultation on proposed changes to the rules for position management controls and position reporting. The changes come in the context of the review of the Market in Financial Instruments Directive (MiFID II). ESMA is consulting on changes to the technical standards (RTS) on position management controls, the Implementing Technical Standards (ITS) on position reporting, and on position reporting in Commission Delegated Regulation (EU). [NEW]
- **ESMA Consults on Consolidated Tape Providers and Their Selection.** On May 23, ESMA invited comments on draft technical standards related to Consolidated Tape Providers (CTPs), other data reporting service providers (DRSPs) and the assessment criteria for the CTP selection procedure under the Markets in Financial Instruments Regulation (MiFIR). The proposed draft technical standards are developed in the context of the review of MiFIR and will contribute to enhancing market transparency and removing the obstacles that have prevented the emergence of consolidated tapes in the European Union. [NEW]
- **ESMA Makes Recommendations for More Effective and Attractive Capital Markets in the EU.** On May 22, ESMA published its Position Paper on "Building more effective and attractive capital markets in the EU". The Paper includes 20 recommendations to strengthen EU capital markets and address the needs of European citizens and businesses. [NEW]
- **ESMA Consults on Three New Technical Standards.** On May 21, ESMA launched a public consultation on non-equity trade transparency, reasonable commercial basis (RCB) and reference data under the MiFIR review. ESMA is seeking input on three topics: (1) pre- and post-trade transparency requirements for non-equity instruments (bonds, structured finance products and emissions and allowances); (2) obligation to make pre-and post-trade data available on an RCB intended to guarantee that market data is available to data users in an accessible, fair, and non-discriminatory manner; and (3) obligation to provide instrument reference data that is fit for both transaction reporting and transparency purposes. [NEW]
- **ESMA Publishes Data on Markets and Securities in the EEA.** On May 16, ESMA published the Statistics on Securities and Markets (ESSM) Report, with the objective of increasing access to data of public interest. The report provides details about how securities markets in the European Economic Area (EEA30) were organized in 2022, including structural indicators on securities, markets, market participants and infrastructures. It covers the distribution of legal entities by member states, either based on their supervisory role or their location. It also contains information on third country entities when their activities are recognized (e.g., CCPs or benchmark administrators) or when their securities are traded in EEA30 (e.g., information on issuers and securities available for trading).
- **ESMA to Host Web Event on Effective and Attractive Capital Markets.** On May 22, ESMA will host an online event focused on the launch of its Position Paper on the effectiveness of capital markets in the European Union. Natasha Cazenave,

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

ESMA Executive Director, will be moderating the event and Verena Ross, ESMA Chair, will present the paper and take questions from the audience. Registrations are now open.

- **ESMA Guidelines Establish Harmonized Criteria for use of ESG and Sustainability Terms in Fund Names.** On May 14, following the public statement of December 14, 2023, ESMA published the final report containing Guidelines on funds' names using ESG or sustainability-related terms. The objective of the Guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names. The Guidelines establish that to be able to use these terms, a minimum threshold of 80% of investments should be used to meet environmental, social characteristics or sustainable investment objectives.
- **ESMA Asks for Input on Assets Eligible for UCITS.** On May 7, ESMA published a Call for Evidence on the review of the Undertakings for Collective Investment in Transferable Securities (UCITS) Eligible Assets Directive (EAD). The objective of this call is to gather information from stakeholders to assess possible risk and benefits of UCITS gaining exposure to various asset classes. Investors and consumer groups interested in retail investment products, management companies of UCITS, self-managed UCITS investment companies, depositaries of UCITS and trade associations are invited to provide their feedback on market practices and interpretation or practical application issues with respect to the eligibility criteria and other provisions set out in the UCITS EAD.

New Industry-Led Developments

- **ISDA Tokenized Collateral Guidance Note.** On May 21, ISDA published a guidance note to inform how counsel may approach a legal opinion on the enforceability of collateral arrangements entered into under certain ISDA collateral documentation where the relevant collateral arrangement comprises tokenized securities and/or stablecoins (together, "Tokenized Collateral"). This guidance note sets forth (i) a basic taxonomy of common tokenization structures and (ii) a non-exhaustive list of key issues to consider when analyzing the enforceability of collateral arrangements involving Tokenized Collateral. [NEW]
- **ISDA Response to SFC and HKMA Joint's Consultation Paper on Implementing UTI, UPI, and CDE.** On May 17, ISDA responded to the Securities and Futures Commission (SFC) and Hong Kong Monetary Authority's (HKMA) joint further consultation on enhancements to the OTC derivatives reporting regime for Hong Kong to mandate – (1) the use of Unique Transaction Identifier (UTI), (2) the use of Unique Product Identifier (UPI) and (3) the reporting of Critical Data Elements (CDE). [NEW]
- **US Basel III Endgame: Trading and Capital Markets Impact.** On May 16, in response to the US Basel III proposal, ISDA and the Securities Industry and Financial Markets Association (SIFMA) conducted a quantitative impact study (QIS) that showed that the market risk portion of the proposal, known as the Fundamental Review of the Trading Book, will result in a substantial increase in market risk capital of between 73% and 101%, depending on the extent to which banks use internal models.
- **International Money Market Dates Market Practice Note.** On May 15, ISDA published the International Money Market Dates Practice Note regarding setting the start date/effective date for over-the-counter interest rate derivatives traded by reference to an international money market date.
- **ISDA Publishes DC Review and Launches Market Consultation.** On May 13, ISDA published an independent review on the structure and governance of the Credit Derivatives Determinations Committees (DCs) and launched a market-wide

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

consultation on its recommendations. The review covers the composition, functioning, governance, and membership of the DCs. The report makes several recommendations on possible changes that could be made to improve the structure of the DCs, which are now available on the ISDA website for public consultation.

- **ISDA and FIA Response to CFTC on Swaps LTR Rules (Part 20).** On May 13, ISDA and FIA responded to the CFTC's proposed request for approval from the Office of Management and Budget to continue to collect information related to certain physical commodity swap positions in accordance with the CFTC's swaps large trader reporting (LTR) rules. In the response, the associations request that the CFTC sunset the swaps LTR rules with §20.9 sunset provision.
- **ISDA and IIF Response to CPMI-IOSCO on VM Practices.** On May 10, ISDA and the Institute of International Finance (IIF) responded to a discussion paper on variation margin (VM) practices by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). The associations are supportive of the effective practices on frequency, scheduling, and timing, pass through of VM, excess collateral and transparency from central counterparties (CCPs) to clearing members (CMs), which would foster market participants' readiness for above-average VM calls. On effective practice 8 on transparency from CMs to clients on intraday VM calls, the response highlights that most CMs do not pass on intraday VM calls to their clients and this information would therefore not be relevant.

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)

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. For contact and other information, please visit us at www.gibsondunn.com.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

GIBSON DUNN

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 counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

Related Capabilities

Derivatives

Energy and Infrastructure

Power and Renewables

Oil and Gas

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**