

This Week in Derivatives

April 11, 2025

From the Derivatives Practice Group: This week, the SEC has a new Chairman, and the CFTC issued an important interpretative letter on certain FX products.

New Developments

- **Senate confirms Atkins as SEC chair.** On April 9, the Senate voted 52-44 to confirm Paul Atkins as the next chair of the SEC. Atkins, a former SEC commissioner and a longtime financial industry consultant, was tapped in December by Donald Trump for the position. In his March 27 confirmation hearing before the Senate Banking Committee, Atkins indicated he would streamline the agency's regulatory activity. Atkins is expected to be friendlier toward the financial industry than the previous SEC chair, Gary Gensler.
- **CFTC Releases Staff Letter Relating to Certain Foreign Exchange Transactions.** On April 9, the CFTC's Market Participants Division and Division of Market Oversight ("DMO") issued an [interpretative letter](#) providing the Divisions' views on the characterization of certain foreign exchange ("FX") transactions as being "swaps," "foreign exchange forwards," or "foreign exchange swaps," in each case, as defined in the Commodity Exchange Act. Specifically, the interpretative letter states: Window FX Forwards, as described in the letter, should be considered to be "foreign exchange forwards;" and Package FX Spot Transactions, as described in the letter, should not be considered to be "foreign exchange swaps" or "swaps." [NEW]
- **Acting Chairman Pham Lauds DOJ Policy Ending Regulation by Prosecution of Digital Assets Industry and Directs CFTC Staff to Comply with Executive Orders.** On April 8, CFTC Acting Chairman Caroline D. Pham praised a recently-announced Justice Department policy ending the practice of regulation by prosecution that has

targeted the digital asset industry in recent years, and directed CFTC staff to comply with the President's executive orders and Administration policy, consistent with DOJ's digital assets enforcement priorities and charging considerations. The DOJ policy comes as Acting Chairman Pham has similarly refocused the CFTC's enforcement resources on cases involving fraud and manipulation. [NEW]

- **CFTC Staff Issues No-Action Letter Regarding Pre-Trade Mid-Market Mark.** On April 4, the CFTC's Market Participants Division issued a [no-action letter](#) in relation to the Pre-Trade Mid-Market Mark ("PTMMM") requirement in Regulation 23.431 for swap dealers and major swap participants. The CFTC first issued a no-action letter regarding the PTMMM requirement in 2012, shortly after the PTMMM compliance date, because it did not provide significant informational value and created costly operational challenges. Unlike prior no-action letters which provided relief for certain specified types of swaps, this relief under this no-action letter applies to all swaps and does not require advanced counterparty consent. [NEW]
- **Rahul Varma Named Acting Director of CFTC Division of Market Oversight.** On April 2, CFTC Acting Chairman Caroline D. Pham announced Rahul Varma will serve as the Acting Director of the DMO. Varma joined the CFTC in 2013 as an Associate Director for Market Surveillance in DMO, with responsibility for energy, metals, agricultural, and softs markets. In 2017, he helped start the Market Intelligence Branch in DMO and served as its Acting Deputy Director. In 2024, he took on the role of Deputy Director for the combined Market Intelligence and Product Review branches.
- **CFTC Staff Withdraws Advisory on Review of Risks Related to Clearing Digital Assets.** On March 28, the CFTC's Division of Clearing and Risk ("DCR") announced it is withdrawing CFTC [Staff Advisory No. 23-07](#), *Review of Risks Associated with Expansion of DCO Clearing of Digital Assets*, effective immediately. As stated in the [withdrawal letter](#), DCR determined to withdraw the advisory to ensure that it does not suggest that its regulatory treatment of digital asset derivatives will vary from its treatment of other products.
- **CFTC Staff Withdraws Advisory on Virtual Currency Derivative Product Listings.** On March 28, DMO and DCR announced they are withdrawing CFTC [Staff Advisory No. 18-14](#), *Advisory with Respect to Virtual Currency Derivative Product Listings*, effective immediately. As stated in the [withdrawal letter](#), DMO and DCR determined that the advisory is no longer needed given additional staff experience with virtual currency derivative product listings and increasing market growth and maturity.
- **ICE and Circle Sign MOU to Explore Product Innovation Based on Circle's USDC and USYC Digital Assets.** On March 27, Intercontinental Exchange Inc. ("ICE"), a leading global provider of technology and data, and Circle Internet Group, Inc. ("Circle"), a global financial technology company and stablecoin market leader, today announced an agreement whereby ICE plans to explore using Circle's stablecoin USDC, as well as tokenized money market offering US Yield Coin ("USYC"), to develop new products and solutions for its customers. Under the MoU, Circle and ICE plan to collaborate to explore applications for using Circle's stablecoins and other product offerings within ICE's

derivatives exchanges, clearinghouses, data services, and other markets, to deliver innovation and build new markets and product offerings based on Circle's products.

- **Updated FIA Disclosures For New CFTC Rules.** On March 24, the FIA announced that it has published updated versions of the *FIA Uniform Futures and Options on Futures Risk Disclosures Booklet* and *FIA Template Disclosures Regarding Separate Accounts* for new CFTC rules. Both documents are available in the "Regulatory Disclosures" section of [FIA's US Documentation Library](#). The CFTC approved new rules in December [revising the list of permitted investments for Futures Commissions Merchants \("FCMs"\) and DCOs in CFTC Regulation 1.25](#) ("1.25 Rule") and [codifying no-action relief governing treatment of separate accounts](#) ("Separate Accounts Rule"). The 1.25 Rule requires FCMs and Introducing Brokers to use a revised form of the 1.55 risk disclosure statement for customers onboarded on or after March 31, 2025. The revised disclosure statement reflects the scope of permissible investments, as modified by the 1.25 Rule. The *FIA Uniform Futures and Options on Futures Risk Disclosures Booklet* is intended to assist FCMs in delivering mandatory customer disclosures under CFTC, exchange and Self-Regulatory Organization rules. Among the disclosures contained in the booklet is the *FIA Combined Risk Disclosure Statement*. That document has been updated in accordance with the 1.25 Rule to reflect the modified list of permissible investments.

New Developments Outside the U.S.

- **ESMA Publishes Consultation on Clearing Thresholds.** On April 8, ESMA published a [consultation](#) on a revised approach to clearing thresholds under the European Market Infrastructure Regulation ("EMIR") 3. The consultation covers the following topics: proposals for a revised set of clearing thresholds; considerations for hedging exemptions for non-financial counterparties; and a trigger mechanism for reviewing the clearing thresholds. [NEW]
- **FCA Publishes Policy Statement on the Derivatives Trading Obligation and Post-trade Risk Reduction Services.** On April 3, the UK Financial Conduct Authority ("FCA") published policy statement [PS25/2](#) on changes to the scope of the UK derivatives trading obligation ("DTO") and an extension of exemptions from certain obligations under the UK Markets in Financial Instruments Directive ("MIFID") and MIFIR. [NEW]
- **ESMA Consults on Transparency Requirements for Derivatives Under MiFIR Review.** On April 3, ESMA [asked for input](#) on proposals for [Regulatory Technical Standards \("RTS"\)](#) on transparency requirements for derivatives, amendments to RTS on package orders, and RTS on input/output data for the over-the-counter ("OTC") derivatives consolidated tape. ESMA said that it is developing various technical standards further specifying certain provisions set out in the Market in Financial Instruments Regulation Review. The consultation paper covers the following three areas: transparency requirements for derivatives, RTS on package orders, and RTS on input/output data for the OTC derivatives consolidated tape. The consultation will remain open until 3 July 2025.

- ESMA Publishes Annual Peer Review of EU CCP Supervision CCP Supervisory Convergence.** On April 2, ESMA published its [annual peer review report](#) on the supervision of European Union (“EU”) Central Counterparties (“CCPs”) by National Competent Authorities (“NCAs”). The peer review measures the effectiveness of NCA supervisory practices in assessing CCP compliance with the European Market Infrastructure Regulation (“EMIR”) requirements on outsourcing and intragroup governance arrangements. ESMA indicated, for this exercise, the review of the functioning of CCP colleges remains overall positive. ESMA also said that the peer review identified the need to promote further supervisory convergence in respect of the definition of major activities linked to risk management.
- The European Supervisory Authorities Publish Evaluation Report on the Securitization Regulation.** On March 31, the Joint Committee of the European Supervisory Authorities published its [evaluation report on the functioning of the EU Securitization Regulation](#). The report purports to put forward recommendations to strengthen the overall effectiveness of Europe’s securitization framework through simplification, while ensuring a high level of protection for investors and safeguarding financial stability. This report identifies areas where the regulatory and supervisory framework can be enhanced, supporting the growth of robust and sound securitization markets in Europe.
- PRA, FCA Consult on Margin Requirements for Non-centrally Cleared Derivatives.** On March 27, the UK Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority published [CP5/25 – Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251](#). The consultation paper proposes to indefinitely exempt single-stock equity and index options from the bilateral margining requirements in the UK. In addition, it proposes to remove the requirement to exchange initial margin (“IM”) for legacy contracts once a counterparty falls out of scope of the margin requirements. It also proposes to permit UK firms, when transacting with a counterparty subject to the margin requirements in another jurisdiction, to use that jurisdiction’s threshold assessment calculation periods and dates of entry into the scope of IM requirements to determine whether those transactions are subject to IM requirements.
- MAS Responds to Feedback on Proposed Changes to Capital Framework.** On March 27, the Monetary Authority of Singapore (“MAS”) published its [response](#) to feedback received to the [consultation paper](#) on proposed amendments to the capital framework for approved exchanges and approved clearing houses. The consultation was later extended to licensed trade repositories. MAS’s response addresses liquidity requirements, eligible capital, and total risk requirements.
- ESMA Makes Recommendations for the Supervision of STS Securitizations.** On March 27, ESMA published its [Peer Review Report](#) on NCAs supervision of Simple, Transparent and Standardized (“STS”) securitizations. The Report looks into and provides recommendations on the supervisory approaches adopted by selected NCAs when supervising STS securitization transactions and the activities of their originators, sponsors and securitization special purpose entities. The Peer Review focused on the NCAs of France, Germany, Portugal, and the Netherlands.

New Industry-Led Developments

- **ISDA CEO Testifies Before House Financial Services Committee Task Force.** On April 8, ISDA CEO Scott O'Malia [testified](#) on the implementation of mandatory US Treasury clearing before the House Committee on Financial Services Task Force on Monetary Policy, Treasury Market Resilience, and Economic Prosperity. The testimony highlighted several key issues that need to be resolved before the clearing mandate comes into effect, including recalibration of the supplementary leverage ratio to ensure banks have the balance sheet capacity to provide intermediation and client clearing services in the US Treasury market, making changes to the proposed Basel III endgame and surcharge for global systemically important banks to avoid a disproportionate capital charge for client clearing businesses, and ensuring the margining and capital treatment of client exposures reflects the actual risk of a client's overall portfolio. [NEW]
- **ISDA Responds to ESMA Consultation on CCP Model Validation.** On April 7, ISDA responded to [ESMA's consultation](#) on the draft RTS under article 49(5) of the EMIR, on the conditions for an application for validation of model changes and parameters under Articles 49 and 49a of EMIR, which have been revised as part of EMIR 3. In the consultation paper, ESMA sets out proposed quantitative thresholds and qualitative elements to be considered when determining whether a model change is significant. In the response, ISDA noted that more information would be necessary to understand the rationale behind the thresholds that are proposed. ISDA provided comments on ESMA's interpretation of 'concentration risk' and on the proposed lookback period for assessing whether a change is significant. [NEW]
- **Cross-product Netting Under the US Regulatory Capital Framework.** On April 4, ISDA, the Futures Industry Association ("FIA") and the Securities Industry and Financial Markets Association ("SIFMA") developed a [discussion paper](#) to: (i) provide an overview of cross-margining programs developed by clearing organizations and their importance in the context of implementing recent market reforms with respect to US Treasury securities clearing; (ii) describe cross-product netting arrangements with customers as a means to effectively reduce risk and their relation to cross-margining programs; (iii) describe the treatment of cross-product netting arrangements under the current US regulatory capital framework; and (iv) propose potential targeted changes to US regulatory capital rules to more appropriately reflect the economics of, and facilitate firms' use of, cross-product netting arrangements with customers, particularly with respect to transactions based on US Treasury securities. [NEW]
- **ISDA/IIB/SIFMA Request to Extend 22-14.** On April 3, a [joint ISDA/IIB/SIFMA letter](#) requested reporting relief for certain non-US swap dealers in Australia, Canada, the European Union, Japan, Switzerland or the United Kingdom with respect to their swaps with non-US persons. The joint trade association letter, submitted to CFTC on 26 March 2025, requests an extension of the no-action relief in Letter 22-14 until the adoption and effectiveness of final rules addressing the cross-border application of Part 45/46. [NEW]

- **IOSCO Issues Final Report on Standards Implementation Monitoring for Regulator Principle.** On April 2, IOSCO published a [Final Report](#) following its review of IOSCO Standards Implementation Monitoring (ISIM) for Regulator Principles 6 and 7, which address systemic risk and perimeter of regulation. IOSCO's Objectives and Principles of Securities Regulation 6 and 7 stipulate that regulators should have or contribute to processes to identify, monitor, mitigate and manage systemic risk, as well as have or contribute to a process to review the perimeter of regulation regularly. This ISIM Review by IOSCO's Assessment Committee found a high level of implementation across the 55 jurisdictions from both emerging and advanced markets. According to IOSCO, the report highlights some good practices and also identifies a few areas where there is room for improvement, observed primarily in some emerging markets. For example, the Report notes that some jurisdictions do not have clear responsibilities, definitions and regulatory processes with respect to systemic risk.
- **ISDA Sends Letter on Changes to the French General Tax Code.** On March 31, ISDA, the Association for Financial Markets in Europe and the International Securities Lending Association sent a [letter to the French tax authority](#) about changes being made to Articles 119 bis A and 119 bis 2 of the general French tax code in the Loi des Finances pour 2025. In February, the French parliament passed budget legislation that broadened the application of withholding tax for both cleared and non-cleared derivatives involving payments related to manufactured dividends. In the letter, the associations request that detailed administrative guidelines are issued as soon as possible. The lack of guidelines makes it more difficult for the associations' member firms to accurately determine the scope of the new legislation and calculation of the withholding tax when due. [NEW]
- **ISDA Responds to EC on Amendments to Taxonomy Regulation Delegated Act.** On March 26, ISDA and the Association for Financial Markets in Europe submitted a [joint response](#) to the EC's proposed changes to EU Taxonomy Regulation reporting. The associations indicated that they welcome the EC's commitment in the context of the Omnibus sustainability package to reduce Taxonomy reporting burdens and provide swift relief to reporters. However, they also noted concerns over whether the proposals go far enough to achieve these objectives, opining that they would not provide sufficient reduction in reporting burdens for banks and their clients and they would not achieve meaningful disclosures. The responses sets out specific priority measures for consideration.

Practice Group Members



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



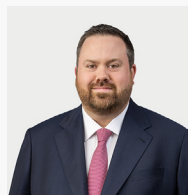
Jason Cabral
New York
212.351.6267
jcabral@gibsondunn.com



Adam Lapidus
New York
212.351.3869
alapidus@gibsondunn.com



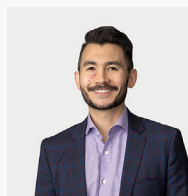
Stephanie L. Brooker
Washington, D.C.
202.887.3502
sbrooker@gibsondunn.com



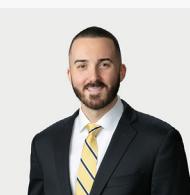
William R. Hallatt
Hong Kong
+852.2214.3836
whallatt@gibsondunn.com



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

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