

This Week in Derivatives

April 4, 2025

From the Derivatives Practice Group: Rahul Varma was named acting director of the CFTC's Division of Market Oversight this week and CFTC staff withdrew two advisories.

New Developments

- **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 Division of Market Oversight (“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. [NEW]
- **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. [NEW]
- **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. [NEW]

- **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.
- **CFTC Staff Issues Interpretation Regarding Financial Reporting Requirements for Japanese Nonbank Swap Dealers.** On March 20, the CFTC’s Market Participants Division issued an [interpretation](#) concerning financial reporting obligations for nonbank swap dealers subject to regulation by the Financial Services Agency of Japan (“Japanese nonbank SDs”). On July 18, 2024, the CFTC issued a comparability determination and related comparability order granting substituted compliance in connection with the CFTC’s capital and financial reporting requirements to Japanese nonbank SDs, subject to certain conditions in the order (“[Japanese Comparability Order](#)”). One of the conditions in the Japanese Comparability Order, condition 9, requires each Japanese nonbank SD to file a copy of its home regulator Annual Business Report with the CFTC and the National Futures Association (NFA). The staff interpretation clarifies that Japanese nonbank SDs may satisfy condition 9 of the Japanese Comparability Order by filing with the CFTC and the NFA certain enumerated schedules of the Annual Business Report (In Scope Schedules), subject to the translation, U.S. dollar conversion, and deadline requirements of condition 9. The interpretation was issued in response to a request from the Securities

Industry and Financial Markets Association on behalf of its Japanese nonbank SD members that rely on the Japanese Comparability Order.

- **SEC's Division of Corporation Finance Releases Statement on Certain Proof-of-Work Mining Activities.** On March 20, the SEC's Division of Corporation Finance ("Corp Fin") released a [statement](#) providing its views on certain activities on proof-of-work networks known as "mining." Specifically, the statement addressed the mining of crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and are used to participate in and/or earned for participating in such network's consensus mechanism or otherwise used to maintain and/or earned for maintaining the technological operation and security of such network. Corp Fin said that participants in "Mining Activities" (as defined in the statement) do not need to register transactions with the SEC under the Securities Act or fall within one of the Securities Act's exemptions from registration in connection with these Mining Activities. Commissioner Crenshaw released a related statement, noting that Corp Fin's statement delivers "neither progress nor clarity" and suffers from issues of flawed logic and limited and imprecise application. Commissioner Crenshaw said that Corp Fin's statement "leaves us exactly where we started," because it does not obviate the need for a facts and circumstances application under the investment contract test set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
- **CFTC's Office of Customer Education and Outreach Releases New Advisory on Fraud Using Generative AI.** On March 19, the CFTC's Office of Customer Education and Outreach (the "OCEO") released a [customer advisory](#) that says generative artificial intelligence is making it increasingly easier for fraudsters to create convincing scams. The OCEO advisory describes how fraudsters use AI to create fraudulent identifications with phony photos and videos that can appear very real if one is not familiar with the advances of AI technology. The fraudsters also are using AI to forge government or financial documents. An FBI public service announcement also warns the public about how criminals are using AI to commit fraud and how the technology is being used in relationship investment scams.

New Developments Outside the U.S.

- **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. [NEW]

- **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. [NEW]
- **The European Supervisory Authorities Publish Evaluation Report on the Securitisation Regulation.** On March 31, the Joint Committee of the European Supervisory Authorities published its [evaluation report on the functioning of the EU Securitisation Regulation \(SECR\)](#). 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. [NEW]
- **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. [NEW]
- **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. [NEW]
- **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.

- ESMA Extends the Tiering and Recognition of the Three UK-Based CCPs.** On March 17, ESMA announced its decision to temporarily extend the application of the recognition decisions under Article 25 of the EMIR for three CCPs established in the United Kingdom (“UK”). On January 30, 2025, the European Commission adopted a new equivalence decision in respect of the regulatory framework applicable to CCPs in the UK. Subsequently, ESMA has prolonged the tiering determination decisions and recognition decisions for the three recognized UK CCPs - ICE Clear Europe Ltd, LCH Ltd (as Tier 2) and LME Clear Ltd (as Tier 1) – that were adopted by ESMA on September 25, 2020, to align with the expiry date of the new equivalence decision. The application of the tiering determination decisions and recognition decisions is temporarily extended until 30 June 2028.
- ESMA and Bank of England Conclude a Revised MoU in Respect of UK-Based CCPs Under EMIR.** On March 17, ESMA and the Bank of England (“BoE”) signed a [revised Memorandum of Understanding](#) (“MoU”) on cooperation and information exchange concerning the three CCPs established in the UK (ICE Clear Europe Ltd, LCH Ltd and LME Clear Ltd) which have been recognized by ESMA under EMIR. ESMA said that, according to EMIR, one of the conditions for recognition of a third-country CCP (TC-CCP) by ESMA is the establishment of cooperation arrangements between ESMA and the relevant third-country authority. ESMA noted that the revised MoU follows the amendments introduced by EMIR 3 on the requirements concerning the content of such cooperation arrangements, in particular, cooperation in respect of systemically important TC-CCPs (Tier 2 TC-CCPs), and replaces the earlier version that ESMA and the BoE concluded in 2020.

New Industry-Led Developments

- 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. [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 our specific priority measures for consideration. [NEW]

- **IOSCO Launches New Alerts Portal to Help Combat Retail Investment Fraud.** On March 20, IOSCO announced the launch of the [International Securities & Commodities Alerts Network](#) (“I-SCAN”). IOSCO said that I-SCAN is a unique global warning system where any investor, online platform provider, bank or institution can check if a suspicious activity has been flagged for a particular company by financial regulators, which will submit alerts directly to I-SCAN, worldwide. According to IOSCO, I-SCAN forms part of IOSCO’s Roadmap for Retail Investor Online Safety, an initiative which was launched in November last year.

Practice Group Members



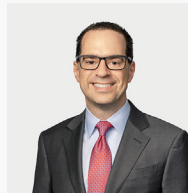
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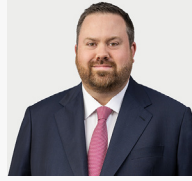
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