

## This Week in Derivatives

July 11, 2025

**From the Derivatives Practice Group:** This week, the CFTC issued an advisory to provide guidance and describe its plan to address criminally liable regulatory offenses in accordance with Executive Order 14294, Fighting Overcriminalization in Federal Regulations.

## New Developments

**CFTC Issues Advisory on Referrals for Potential Criminal Enforcement.** On July 9, the CFTC's Division of Enforcement ("DOE") issued an [advisory](#) to provide guidance describing its plan to address criminally liable regulatory offenses in accordance with [Executive Order 14294, Fighting Overcriminalization in Federal Regulations](#). The advisory announces the framework to be followed when DOE, as the CFTC division responsible for making referrals to the Department of Justice ("DOJ"), considers whether to refer potential violations of criminal regulatory offenses to DOJ. The advisory also includes a set of factors DOE staff should consider when determining whether to refer alleged violations of criminal regulatory offenses to DOJ. [NEW]

**CFTC Staff Issues No-Action Letter Extension Regarding Counterparties Clearing Swaps through Relief DCOs.** On July 9, the CFTC issued a [no-action letter](#) extending the no-action position in [CFTC Staff Letter No. 22-18](#) concerning certain swap reporting requirements of Part 45 of the CFTC's regulations. The letter applies to counterparties clearing swaps through derivatives clearing organizations ("DCOs") operating consistent with a CFTC exemptive order or a CFTC Division of Clearing and Risk no-action letter (Relief DCOs). [NEW]

**SEC Commissioner Peirce Releases Statement on Tokenization of Securities.** On July 9, SEC Commissioner Hester M. Peirce released a [statement](#) that "[t]okenized securities are still securities" and "market participants must consider – and adhere to – the federal securities laws

when transacting” in tokenized securities. Commissioner Peirce said “[m]arket participants who distribute, purchase, and trade tokenized securities . . . should consider the nature of these securities and the resulting securities laws implications” and that “a token that does not provide the holder with legal and beneficial ownership of the underlying security could be a ‘security-based swap.’” [NEW]

**CFTC Staff Issues FCM FAQs.** On June 30, the CFTC’s Market Participants Division published [responses to frequently asked questions](#) (“FAQs”) regarding registering an entity as a futures commission merchant (“FCM”) and the ongoing regulatory obligations of operating an FCM. The FAQs address, among other issues, the FCM registration process, customer protections, and governance obligations and other requirements. [NEW]

**CFTC Staff Issues No-Action Letter to MIAX Futures Exchange, LLC.** On June 25, the Division of Market Oversight (“DMO”) of the CFTC issued a [no-action letter](#) stating that it will not recommend enforcement action against MIAX Futures Exchange, LLC (“MIAX”) for temporarily providing for the trading of MIAX’s Minneapolis Hard Red Spring Wheat options on futures exclusively through block trades due to the lack of availability of an electronic trading system, subject to certain conditions set forth in the letter. The DMO stated that it believes the temporary no-action positions are warranted to provide participants in the market with a means to trade out of or offset their open positions in certain expirations when electronic trading is no longer available.

## New Developments Outside the U.S.

**ESMA Publishes Guidelines for Assessing Knowledge and Competence of Staff at Crypto-Asset Service Providers.** On July 11, ESMA published [guidelines](#) specifying the criteria for assessing the knowledge and competence of staff at crypto-asset service providers (“CASPs”) who provide information or advice on crypto-assets and services under the Markets in Crypto-Assets Regulation (“MiCA”). The guidelines will apply six months after translation into all EU languages and publication on ESMA’s website. Within two months of the date of publication of the guidelines on ESMA’s website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they comply, do not comply, but intend to comply, or do not comply and do not intend to comply with the guidelines. [NEW]

**ESMA Warns Investors of Unregulated Crypto Products.** On July 11, ESMA issued a [public statement](#) warning investors of the ‘halo effect’ that can lead to overlooking risk when authorized CASPs offer both regulated and unregulated products and/or services. The statement also reminds CASPs of the issues that they should consider when providing unregulated products and services, and recommends that they should be particularly vigilant about avoiding any client confusion regarding the protections attached to unregulated products and/or services. According to ESMA, to avoid any misunderstanding CASPs should clearly communicate the regulatory status of each product or service in all client interactions and at every stage of the sales process. In addition, ESMA reminded crypto-assets entities of their obligation to act fairly, professionally

and in the best interests of their clients, ensuring that all information, including marketing communications, is fair, clear and not misleading. [NEW]

**ESMA Identifies Opportunities to Strengthen MiCA Authorizations.** On July 10, ESMA published the results of a [peer review](#) looking at the authorization of Crypto Asset Service Providers in Malta under MiCA. The peer review analyzes the approaches adopted by the Malta Financial Services Authority and provides recommendations to strengthen those processes. According to ESMA, it identifies overall a good level of resources and supervisory engagement within the authority, with some areas for improvement related to the assessment of authorizations. [NEW]

**European Supervisory Authorities Sign Memorandum of Understanding with AMLA for Effective Cooperation and Information Exchange.** On July 3, ESMA concluded a multilateral Memorandum of Understanding (“MoU”) with the EU’s new Authority for Anti-Money Laundering and Countering the Financing of Terrorism (“AMLA”). The multilateral MoU outlines how the European Supervisory Authorities and AMLA will exchange information with one another and cooperate in practice to perform their respective tasks in an efficient, effective and timely manner. According to ESMA, the MoU aims to promote supervisory convergence throughout the EU’s financial sector, enable the exchange of necessary information, and foster cross-sectoral learning and capacity building among supervisors in areas of mutual interest. [NEW]

**ESMA Finds Convergence Opportunities for Pre-trade Controls.** On July 2, ESMA concluded a common supervisory action (“CSA”) on pre-trade controls under the Markets in Financial Instruments Directive II. According to ESMA, the CSA was launched with the goal of gathering further detailed insights on how investment firms are using pre-trade controls across the EU. ESMA said that the results highlighted that most investment firms have integrated pre-trade controls in their trading activity and in their risk management framework but, nevertheless, it appears that practices related to the implementation and governance are often divergent and not always robust. [NEW]

**ESMA Promotes Clarity in Sustainability-related Communications.** On July 1, ESMA published a [thematic note](#) on sustainability-related claims used in non-regulatory communications. This publication outlined four guiding principles on making sustainability claims, and offered practical do’s and don’ts, illustrated through concrete examples of good and poor practices, based on observed market practices. [NEW]

**ESMA Narrows Down Scope of CSDR Cash Penalties Trading.** On June 26, ESMA published a [final report](#) that specifies the scope of Central Securities Depositories Regulation (“CSDR”) cash penalties which the agency describes in an effort to support its simplification and burden reduction initiative in post-trading. ESMA provided technical advice to the European Commission on the scope of settlement discipline that it said is in line with the revised settlement discipline framework set out in CSDR Refit, identifying (1) the causes of settlement fails that are considered as not attributable to the participants in the transaction, and (2) the circumstances in which operations are not considered as trading. ESMA also identified a broad range of scenarios that would not trigger CSDR cash penalties.

**ESMA Provides Advice on Eligible Assets for UCITS.** On June 26, ESMA published its [advice to the European Commission](#) on the review of the Undertakings for Collective Investment in Transferable Securities (“UCITS”) Eligible Assets Directive (“EAD”). The EAD is an implementing directive providing clarification on the assets a UCITS can invest in. ESMA said that it provided in the Technical Advice a comprehensive assessment of the EAD’s implementation across Member States and made proposals to ensure regulatory clarity and uniformity across jurisdictions.

**ESMA Suggests Amendments to the DLT Pilot Regime to Make It Permanent.** On June 25, ESMA published a [report](#) on the Distributed Ledger Technology (“DLT”) Pilot Regime. ESMA also provided an overview of the EU market for authorized DLT market infrastructures and recommendations on how to expand participation in the DLT Pilot Regime. ESMA indicated that the report contained information about business models, types of DLT financial instruments offered, and technical or legal issues encountered by supervisors to date. ESMA also said that it analyzed exemptions requested by DLT market infrastructures and the conditions under which National Competent Authorities have granted those exemptions.

**ESMA Provides Guidance on Key Tool for CCP Resolution.** On June 25, ESMA published its first central counterparties (“CCPs”) [resolution briefing](#), which it said aims to support National Resolution Authorities (“NRAs”) on the operationalization of the cash call mechanism. The briefing, developed by ESMA’s CCP Resolution Committee, provides a methodology to be considered by NRAs when including the resolution cash call in CCP resolution plans.

## New Industry-Led Developments

**ISDA Responds to ESMA MiFIR Review Consultation.** On July 8 ISDA announced that it submitted a [response](#) to ESMA’s fourth package of Level 2 consultation under the Markets in Financial Instruments Regulation Review (“MiFIR”), on transparency for derivatives, package orders and input/output data for the derivatives consolidated tape. In the response, ISDA said that it argues against ESMA’s proposal to use a modified International Securities Identification Number as the identifier for those over-the-counter (“OTC”) derivatives in scope for transparency, and reiterated its longstanding view that the unique product identifier is the correct identifier for OTC derivatives. ISDA also noted that the response also strongly opposes the assessment of single name credit default swaps referencing global systemically important banks as liquid, and proposes a modified deferral framework for these contracts. ISDA stated that the response generally supports the deferral framework for interest rate derivatives, but notes that any benefit gained from the inclusion of basis swaps, forward rate agreements and forward starting swaps is disproportionate to the effort of including them, due to the very small numbers of these instruments that will be in scope of transparency under MiFIR. [NEW]

**ISDA Updates Canadian Transaction Reporting Party Requirements Guidance.** On July 8, the ISDA updated its Canadian Transaction Reporting Party Requirements [document](#) to account for the Canadian OTC derivatives rule amendments going live on July 25, 2025. According to ISDA, the purpose of the document is to provide a method for a single reporting party

determination that can be incorporated by reference in a written agreement in compliance with the Canadian Reporting Rules where the Canadian Reporting Rules otherwise provide for two reporting parties. [NEW]

**ISDA and Ant International Lead New Industry Report on use of Tokenized Bank Liabilities for FX Settlement and Cross-Border Payments under Project Guardian.** On July 3, ISDA announced that ISDA and Ant International led the Project Guardian FX industry group to develop a new report for implementing tokenized bank liabilities and shared ledger in cross-border payments and foreign exchange (“FX”) settlement. According to ISDA, the report, available on the Monetary Authority of Singapore’s [website](#), draws on the partners’ technology expertise, FX payment experience and extensive industry partnerships to propose principles for leveraging tokenized bank liabilities and shared ledgers in transaction banking services. [NEW]

**ISDA Published Report on Key Trends in the Size and Composition of OTC Derivatives Markets in the Second Half of 2024.** On July 3, ISDA published a [research note](#) using the latest data from the Bank for International Settlements OTC derivatives statistics that shows a modest increase in notional outstanding during the second half of 2024 compared to the same period in 2023. According to ISDA, notional outstanding for interest rate, foreign exchange, equity and commodity derivatives all rose year-on-year. [NEW]

**ISDA Presents Credit Derivatives Proposal to Address Lock-Up Agreements for CDS Auctions.** On July 3, ISDA presented a proposed [Lock-Up Agreements and CDS – Proposed Auction Solution](#). According to ISDA, the CDS industry represented by ISDA’s Credit Steering Committee, aims to have a consistent and uniform approach in relation to Locked Up Debt and CDS auctions that addresses the relevant issues. ISDA noted that the proposal is a framework and ISDA is seeking market feedback on the proposal, indicating that additional detail will be developed if there is support for the proposal to ensure the proposal works operationally with respect to the auctions. [NEW]

**ISDA and the UK Publishes Joint Paper on UK EMIR Reform.** On July 1, ISDA and UK Finance published a [paper](#), which recommended a set of reforms for the UK European Market Infrastructure Regulation (“UK EMIR”), carefully considering each EU EMIR 3.0 reform and asking whether ISDA would wish to adopt each measure, adopt with modifications, or not at all, in the UK. The recommendations also lead with proposals on burden reduction and simplification, both topics high on the government’s agenda. [NEW]

**ISDA Publishes Paper on Credit Derivatives Trading Activity Reported in EU, UK and US Markets: First Quarter of 2025.** On July 1, ISDA published a [report](#) that analyzes credit derivatives trading activity reported in Europe. The analysis shows European credit derivatives transactions based on the location of reporting venues (EU versus UK) and product type. The report also compares European-reported credit derivatives trading activity to what is reported in the US. [NEW]

**ISDA Submits Letter to FASB on Agenda Consultation.** On June 30, ISDA submitted a [comment letter](#) to the Financial Accounting Standards Board (“FASB”) in response to the proposal File Reference No. 2025-ITC100, Agenda Consultation. ISDA noted it believes that the

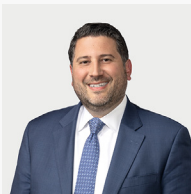
highest priority should be given to expanding the hedge accounting model to address its limitations in aligning accounting outcomes with actual economic exposures and actual entities' risk management practices. ISDA also highlighted that expanding the hedge accounting model through a dedicated broad scope project or projects should be among the FASB's highest priorities. [NEW]

**ISDA Responds to FCA Quarterly Consultation on UK EMIR Reporting.** On June 30, ISDA submitted a response to chapter 5 of the UK Financial Conduct Authority's ("FCA") [quarterly consultation CP25/16](#) on trade repository reporting requirements under the UK European Market Infrastructure Regulation ("UK EMIR"). Chapter 5 proposes "Amendments to the UK EMIR Trade Repository reporting requirements," which include the addition of the field "Execution Agent" to table 3 of the EMIR message template, and to correct a typo in Article 8(5) of the EMIR technical standards. [NEW]

**ISDA Publish Saudi Arabia Netting Opinions.** On June 30, ISDA published new legal opinions that recognize the enforceability of close-out netting under regulations published by the Saudi Central Bank ("SAMA") earlier this year. In addition to SAMA's regulations, the Saudi Capital Market Authority ("CMA") has published draft netting regulations that are closely aligned with SAMA's rules, which will cover other financial market participants, including asset managers and infrastructure providers. ISDA said that the ISDA netting opinions will be extended to cover the CMA rules when they are finalized. [NEW]

**ISDA Publishes Paper on Developments in Interest Rate Derivatives Markets in Mainland China and Hong Kong.** On June 24, ISDA published a [research paper](#) that analyzes interest rate derivatives ("IRD") trading activity reported in mainland China and Hong Kong. Key highlights from the report include that (1) China's renminbi ("RMB")-denominated IRD market has expanded significantly since 2022 and that (2) the share of RMB-denominated IRD traded notional in Hong Kong overall grew to 10.2% in 2024.

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