

## This Week in Derivatives

July 18, 2025

**From the Derivatives Practice Group:** This week, the European Supervisory Authorities published a guide on oversight activities under the Digital Operational Resilience Act.

### 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.

**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).

**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 Developments Outside the U.S.

**ESAs Publish Guide on DORA Oversight Activities.** On July 15, the European Supervisory Authorities (“ESAs”) published a [guide on oversight activities](#) under the Digital Operational Resilience Act (“DORA”). The aim of this guide is to provide an overview of the processes used by the ESAs through the Joint Examination Teams to oversee critical Information and communication technology third party service providers (“CTPPs”). This guide provides high-level explanations to external stakeholders regarding the CTPP Oversight framework. Furthermore, it provides an overview of the governance structure, the oversight processes, the founding principles and the tools available to the overseers. [NEW]

**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.

**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.

**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.

**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.

**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.

**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 Industry-Led Developments

**ISDA Launches Notices Hub and Protocol to Streamline Delivery and Receipt of Critical Notices.** On July 17, ISDA launched the ISDA Notices Hub and the ISDA 2025 Notices Hub Protocol, giving users a faster and more efficient method for delivering critical notices and reducing the uncertainty and risk of losses that can result from delays. The ISDA Notices Hub is a secure online platform provided by S&P Global Market Intelligence that enables fast delivery and receipt of termination notices and waivers and ensures address details for physical delivery are updated centrally. [NEW]

**ISDA Responds to Voluntary Carbon and Nature Markets Consultation.** On July 10, ISDA [responded to the UK government’s consultation](#) on voluntary carbon and nature markets. ISDA recommends that the UK continues to play a leading role in promoting the consistent legal treatment of carbon credits internationally, with the development of global standards currently

underway. The response identifies several key barriers to participation in the voluntary carbon markets and recommends ways to solve them. [NEW]

**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.

**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.

**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.

**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.

**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.

**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.

**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.

## Practice Group Members



**Jeffrey L. Steiner**  
Washington, D.C.  
202.887.3632  
[jsteiner@gibsondunn.com](mailto:jsteiner@gibsondunn.com)



**Michael D. Bopp**  
Washington, D.C.  
202.955.8256  
[mbopp@gibsondunn.com](mailto:mbopp@gibsondunn.com)



**Michelle M. Kirschner**  
London  
+44 (0)20 7071.4212  
[mkirschner@gibsondunn.com](mailto:mkirschner@gibsondunn.com)



**Darius Mehraban**  
New York  
212.351.2428  
[dmehraban@gibsondunn.com](mailto:dmehraban@gibsondunn.com)



**Jason Cabral**  
New York  
212.351.6267  
[jcabral@gibsondunn.com](mailto:jcabral@gibsondunn.com)



**Adam Lapidus**  
New York  
212.351.3869  
[alapidus@gibsondunn.com](mailto:alapidus@gibsondunn.com)



**Stephanie L. Brooker**  
Washington, D.C.  
202.887.3502  
[sbrooker@gibsondunn.com](mailto:sbrooker@gibsondunn.com)



**William R. Hallatt**  
Hong Kong  
+852.2214.3836  
[whallatt@gibsondunn.com](mailto:whallatt@gibsondunn.com)



**David P. Burns**  
Washington, D.C.  
202.887.3786  
[dburns@gibsondunn.com](mailto:dburns@gibsondunn.com)



**Marc Aaron Takagaki**  
New York  
212.351.4028  
[mtakagaki@gibsondunn.com](mailto:mtakagaki@gibsondunn.com)



**Hayden K. McGovern**  
Dallas  
214.698.3142  
[hmcgovern@gibsondunn.com](mailto:hmcgovern@gibsondunn.com)



**Karin Thrasher**  
Washington, D.C.  
202.887.3712  
[kthrasher@gibsondunn.com](mailto:kthrasher@gibsondunn.com)



**Alice Yiqian Wang**  
Washington, D.C.  
202.777.9587  
[awang@gibsondunn.com](mailto:awang@gibsondunn.com)

*\*Alice Wang, a law clerk in the firm's Washington, D.C. office, is not admitted to practice law.*

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