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## This Week in Derivatives

September 12, 2025

**From the Derivatives Practice Group:** This week, the CFTC withdrew guidance regarding DCO recovery and wind-down plans, voluntary carbon credit derivative contracts, and operational resilience framework proposed rules.

### New Developments

**CFTC Staff Withdraws Guidance on DCO Recovery Plans and Wind-down Plans.** On September 1, the CFTC's Division of Clearing and Risk announced it is withdrawing [CFTC Letter No 16-61](#), *Recovery Plans and Wind-down Plans Maintained by Derivatives Clearing Organizations and Tools for the Recovery and Orderly Wind-down of Derivatives Clearing Organizations*, effective immediately. As stated in the withdrawal letter, because systemically important derivatives clearing organizations and derivatives clearing organizations that elect to be subject to Subpart C of Part 39 of the CFTC's regulations are already required to maintain viable recovery and wind-down plans that are consistent with the risk management requirements of the Commodity Exchange Act, CFTC regulations, and relevant international standards, the guidance is duplicative and not necessary. [NEW]

**CFTC Withdraws Guidance Regarding Listing Voluntary Carbon Credit Derivative Contracts.** On September 10, the CFTC announced the [withdrawal](#) of its "Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts." The CFTC has determined the guidance resulted in placing a disproportionate focus on Voluntary Carbon Credit derivative contracts, which could lead to confusion and

inconsistencies in implementing the CFTC's existing, well-established product listing regulatory framework. This [Gibson Dunn Client Alert](#) has more details. [NEW]

### **CFTC Issues Withdrawal of Operational Resilience Framework Proposed Rules.**

On September 9, the CFTC announced it is [withdrawing](#) the proposed rulemaking, "Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants." As stated in the notice of withdrawal, the CFTC is withdrawing the proposal to reconsider how the proposed rules work in practice with the operational resilience rules of other regulators, including both domestic and foreign. [NEW]

### **CFTC Issues Policy Statement on Referrals for Potential Criminal Enforcement.**

On September 5, the CFTC approved a [policy statement](#) describing its [plan](#) to address criminally liable regulatory offenses in accordance with [Executive Order 14294, Fighting Overcriminalization in Federal Regulations](#). The policy statement sets the framework to be followed when CFTC, including the Division of Enforcement, considers whether to refer potential violations of criminal regulatory offenses to the Department of Justice. [NEW]

**CFTC and SEC Issue Joint Statement on Regulatory Harmonization Efforts.** On September 5, the CFTC and the SEC issued a [joint statement](#) on regulatory harmonization opportunities and announced a joint roundtable on September 29, from 1:00 p.m. to 5:00 p.m. The roundtable will be an opportunity to discuss regulatory harmonization priorities. "This roundtable represents a pivotal step toward building more coherent and competitive U.S. markets," Chairman Atkins and Acting Chairman Pham said.

**Acting Chairman Pham Statement on Spring 2025 Unified Agenda.** On September 4, CFTC Acting Chairman Caroline Pham made a [statement](#) about the 2025 Unified Agenda, which "implements the President's executive orders and demonstrates that the CFTC is getting back to basics." Additionally, she stated that the CFTC "must be laser-focused on our mission to promote market integrity and liquidity in the commodity derivatives markets that are critical to the real economy and global trade." The CFTC's [Spring 2025 Unified Agenda](#) includes two pre-rule activities, 19 proposed rules and five final rules, including: a concept release on the appropriate regulatory treatment of event contracts; a proposed rule on revisions to swap dealer business conduct standards; a proposed rule on swap data recordkeeping and reporting requirements; a proposed rule on cross-border application of swap dealer and security-based swap dealer requirements; a proposed rule on block trade reporting; and a final rule regarding margin requirements for uncleared swaps for swap dealers and major swap participants.

**Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC.** On September 5, SEC Chairman Paul Atkins and CFTC Acting Chairman Caroline Pham [announced](#) that “the SEC and CFTC must coordinate to ensure there is not a regulatory ‘no man’s land’ due to inaction by one or both agencies. Failure to coordinate, and the resulting regulatory uncertainty, have chilled productive economic activity even when the products would otherwise be allowable under federal law. That chapter belongs to history. It is a new day at the SEC and the CFTC, and today we reaffirm the need to ensure regulation does not stand in the way of progress. By working in lockstep, our two agencies can harness our nation’s unique regulatory structure into a source of strength for market participants, investors, and all Americans.”

**CFTC Staff Issues No-Action Letter Regarding Event Contracts.** On September 3, the CFTC’s Division of Market Oversight and the Division of Clearing and Risk announced they have taken a [no-action position](#) regarding swap data reporting and recordkeeping regulations for event contracts in response to a request from QCX LLC, a designated contract market, and QC Clearing LLC, a derivatives clearing organization. The Divisions will not recommend that the CFTC initiate an enforcement action against either entity or their participants for failure to comply with certain swap-related recordkeeping requirements and for failure to report to swap data repositories data associated with binary option transactions and variable payout contract transactions executed on or subject to the rules of QCX LLC and cleared through QC Clearing LLC, subject to the terms of the no-action letter.

**CFTC and SEC Staff Issue Joint Statement on Trading of Certain Spot Crypto Asset Products.** On September 2, the CFTC and the SEC issued a [joint statement](#) regarding the trading of certain spot crypto asset products. This joint statement clarifies staff’s views that SEC- and CFTC- registered exchanges are not prohibited from facilitating the trading of certain spot commodity products. The joint effort exemplifies how the two agencies can coordinate to promote trading venue choice and optionality for market participants.

## **New Developments Outside the U.S.**

**ESMA Publishes 2025 IFRS Taxonomy.** On September 11, ESMA published an [amendment](#) to the European Single Electronic Format Regulatory Technical Standard to include the 2025 update of the International Financial Reporting Standards (“IFRS”) taxonomy. The updated taxonomy reflects the latest developments in international financial reporting, including the introduction of IFRS 18 “Presentation and Disclosure in Financial Statements” and IFRS 19 “Subsidiaries Without Public Accountability.” These standards are currently undergoing the EU endorsement process, expected to be finalized in early 2026. [NEW]

**ESAs Note Greater Effort From Financial Market Participants in Disclosure of Principal Adverse Impacts.** On September 9, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – the “ESAs”) published their [fourth annual Report](#) on the extent of voluntary disclosure of principal adverse impacts (“PAIs”) under the Sustainable Finance Disclosure Regulation. The ESAs have observed a steady improvement in the quality of the PAI voluntary disclosures at both entity and product level. [NEW]

**ESMA Publishes Second Risk Monitoring Report.** On September 9, ESMA published its [second risk monitoring report of 2025](#), setting out the key risk drivers currently facing EU financial markets. Beyond the general risk drivers, ESMA’s report provided an update on structural developments and the status of key sectors of financial markets during the first half of 2025. [NEW]

**ESMA and the European Environment Agency Sign Memorandum of Understanding to Strengthen Cooperation in Sustainable Finance Area.** On August 20, ESMA and the European Environment Agency (“EEA”) signed a [Memorandum of Understanding \(“MoU”\)](#) whose purpose is to strengthen cooperation in sustainable finance. The MoU focuses on environmental factors and their integration in the EU sustainable finance framework, including the supervision of the framework. The MoU also outlines how ESMA and the EEA will exchange expertise, information and data with one another and support mutual capacity building activities.

## New Industry-Led Developments

**ISDA, IIF Respond to PRA on Adjustments to Basel 3.1 Market Risk Framework.** On September 12, ISDA and the Institute of International Finance (“IIF”) submitted a [joint response](#) to the Prudential Regulation Authority’s (“PRA”) consultation on adjustments to the market risk capital framework (CP 17/25). The response also includes further recommendations beyond the PRA’s proposed changes, which have been long-standing advocacy items and reduce the operational complexity of the framework and encourage wider adoption of internal models. [NEW]

**ISDA Responds to ESMA on Margin Transparency.** On September 8, ISDA [responded](#) to a consultation by the European Securities and Markets Authority on a draft regulatory technical standard under the European Market Infrastructure Regulation (“EMIR 3.0”) on margin transparency requirements. ISDA’s members are supportive of margin transparency but believe transparency can be achieved in a more efficient manner. [NEW]

**ISDA Responds to ESMA on Clearing Costs.** On September 8, ISDA [responded](#) to consultation by the European Securities and Markets Authority on a draft regulatory technical standard on clearing fees and associated costs. ISDA proposed that clearing service providers should be able to meet the new requirements under article 7c by referring to existing disclosures. [NEW]

**ISDA Publishes Paper on Stress Scenarios for Forward Looking CCP IM Simulators.** On September 5, ISDA published a [paper](#) that explains why stress scenarios that central counterparties use for default fund sizing cannot be used for forward-looking initial margin simulators. [NEW]

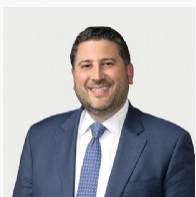
**ISDA Publishes Paper on Proposed Liquidity Assessment for Single-name CDS.** On September 5, ISDA submitted a [paper](#) to the European Securities and Markets Authority and the European Commission in support of its earlier response to ESMA's Markets in Financial Instruments Regulation review consultation package 4 ("CP4") on transparency for derivatives. The paper argues that the proposed assessment of five-year single-name credit default swaps that reference global systemically important banks as liquid, proposed in CP4 for the purposes of public transparency, is fundamentally flawed. [NEW]

**ISDA, EFAMA, FIA Submit Paper on EMIR 3 Active Account Representativeness.** On September 4, the European Fund and Asset Management Association and the Futures Industry Association shared a [paper](#) with EU policymakers requesting clarification on the implementation of the active account requirement under the third European Market Infrastructure Regulation in relation to representativeness. In particular, the paper addresses the frequency required to determine the most relevant subcategories, the treatment of counterparties falling below the €6 billion threshold and reporting considerations for representativeness. [NEW]

**ISDA Responds to EC on Amendments to Delegated Regulation.** On September 4, ISDA [responded](#) to the European Commission's consultation on amendments to delegated regulation (EU) 2017.567. ISDA's response to the consultation supports the thrust of the proposed amendments – in particular, the expansion of post-trade risk reduction service to include portfolio rebalancing and basis risk optimization exercises in addition to portfolio compressions. The response also suggests several amendments to the drafting of article 16a for greater clarity and the avoidance of unnecessary complexity. [NEW]

**ISDA and Joint Trades Submit Letter to BCBS Calling for Recalibration of Cryptoasset Prudential Standards.** On August 25, ISDA, in partnership with a coalition of leading global financial trade associations (“Joint Trades”), and with advisory support from Boston Consulting Group, Ashurst, and Sullivan & Cromwell, submitted a [letter](#) to the Basel Committee on Banking Supervision (“BCBS”). The letter called for a pause and recalibration of the Cryptoasset Exposures Standard (i.e., SCO60). The Joint Trades urged BCBS to delay the implementation of SCO60, currently scheduled for January 2026, to allow time for a targeted consultation and redesign of the framework. The letter also argued that the current standard imposes overly conservative and punitive capital requirements that do not accurately reflect the actual risks of cryptoassets and are inconsistent with established market risk practices. The letter emphasized the need for a more balanced approach that aligns with actual risk profiles and encourages responsible innovation within the regulatory framework.

#### Practice Members



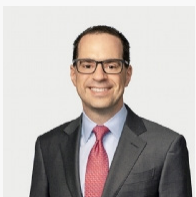
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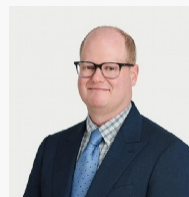
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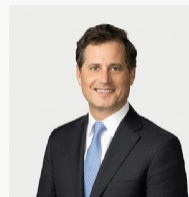
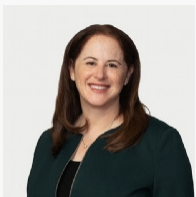
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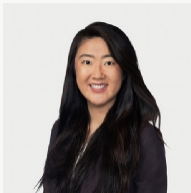
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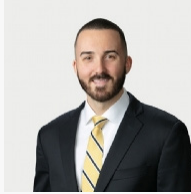
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