



GIBSON DUNN

This Week in Derivatives

September 5, 2025

From the Derivatives Practice Group: This week, the CFTC and the SEC put out several releases this week, including a joint statement on regulatory harmonization.

New Developments

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. [NEW]

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. [NEW]

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.” [NEW]

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. [NEW]

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]

Acting Chairman Pham Announces FBOT Advisory to Provide Regulatory Clarity for Non-U.S. Exchanges. On August 28, the CFTC’s Division of Market Oversight today issued an [advisory](#) to reaffirm the foreign board of trade (“FBOT”) registration framework for non-U.S. entities legally organized and operating outside the United States that seek to provide persons physically located in the United

States with direct market access to their trading platforms. The advisory provides a reminder that a FBOT must be registered with the CFTC in accordance with the procedures, requirements, and conditions set forth in the Part 48 rules. The CFTC's FBOT registration framework applies to all markets, regardless of asset class, and includes both traditional and digital asset markets.

Commissioner Kristin Johnson Announces Departure from CFTC. On August 26, Commissioner Kristin Johnson, who joined the CFTC more than three years ago, [announced](#) that she will depart the agency later this year. Her term of service ended earlier this year in April 2025, and her last day at the Commission will be on September 3, 2025. Following Commissioner Johnson's departure, Acting Chairman Pham will be the sole remaining Commissioner.

CFTC Enhances Market Oversight with Advanced Surveillance Technology Platform. On August 27, the CFTC announced that it is enhancing its market surveillance and fraud detection capabilities by deploying Nasdaq's industry-leading suite of surveillance technology. As the CFTC embraces an expanding regulatory remit, Nasdaq's Market Surveillance platform will support the agency's mission to promote market integrity. The upgraded technological capabilities follow CFTC Acting Chairman Caroline D. Pham's [pledge](#) in March to secure an enhanced market surveillance system as part of a broader effort to modernize the agency and replaces the CFTC's '90s-era legacy system.

Acting Chairman Pham Announces Next Crypto Sprint Initiative. On August 21, CFTC Acting Chairman Caroline D. Pham announced that the CFTC will begin its next crypto sprint initiative to implement the recommendations in the President's Working Group on Digital Asset Markets [report](#). Starting August 21, Acting Chairman Pham will begin stakeholder engagement on all other report recommendations for the CFTC. She [announced](#) CFTC's crypto sprint earlier in August.

New Developments Outside the U.S.

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.

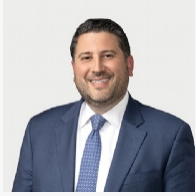
New Industry-Led Developments

ISDA 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.

ISDA Responds to CDSC Consultation on Common Carbon Credit Data Model. On August 12, ISDA [responded to a consultation](#) from the Climate Data Steering Committee (“CDSC”) on a Common Carbon Credit Data Model. ISDA members believe the Group-of-20 carbon data model initiative is a positive step in addressing data gaps and interoperability from a top-down perspective. The response supports the setting up of a standard global carbon data taxonomy with appropriate ongoing maintenance and oversight through global industry bodies and a consensus process, which can be a more lasting and durable solution overall.

ISDA and FIA Respond on Australian Clearing and Settlement Facility Resolution Regime. On August 11, ISDA and the Futures Industry Association (“FIA”) submitted a [joint response](#) to the Reserve Bank of Australia (“RBA”) on its consultation on guidance for Australia’s clearing and settlement facility resolution regime. The associations welcome publication of the draft guidance, which provides greater clarity and transparency on the RBA’s approach to the resolution of clearing and settlement facilities in Australia. However, the associations encourage the RBA to provide greater detail on certain aspects of its approach to resolution, including explicit assurance that the power to direct a central counterparty to amend its rules would not be used to amend any rights that any clearing participant has to terminate contracts with or take other action against a clearing house and, more broadly, under what circumstances the RBA would use this direction power.

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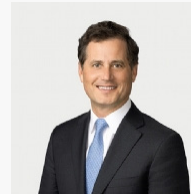
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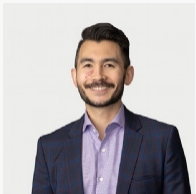
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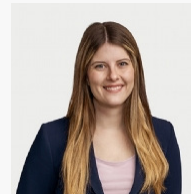
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