



GIBSON DUNN

## This Week in Derivatives

February 20, 2026

**From the Derivatives Practice Group:** This week, the CFTC filed an amicus brief in the Ninth Circuit that reaffirms its exclusive jurisdiction over prediction markets.

### New Developments

**CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing.** On February 17, the CFTC filed an [amicus brief](#) in the U.S. Circuit Court of Appeals for the Ninth Circuit confirming its exclusive jurisdiction over the U.S. commodity derivatives markets, including event contract markets commonly referred to as prediction markets. The brief was filed in *North American Derivatives Exchange, Inc. et al v. The State of Nevada on relation of the Nevada Gaming Control Board et al.* [NEW]

**CFTC Announces Innovation Advisory Committee Members.** On February 12, the CFTC announced the members of the Innovation Advisory Committee (IAC). The committee will help the Commission keep pace with how breakthrough innovations, such as artificial intelligence and blockchain technologies, are transforming markets, enabling the agency to develop adaptive regulations and maintain robust financial oversight in a world where change is constant. Chairman Selig is the sponsor of this committee and nominated Michael Passalacqua as the committee's designated federal officer. The full list of IAC members can be found [here](#).

**CFTC Targets Relationship Investment Scams with National and International Initiatives this Valentine’s Week.** On February 9, the CFTC’s Office of Customer Education and Outreach announced that it is leading national and international awareness efforts to warn the public about relationship investment scams, a form of fraud that costs Americans an estimated \$10 billion each year. The national interagency *DatingOrDefrauding?* social media awareness campaign warns Americans to be skeptical of any requests from new online friends or romantic interests. The campaign highlights a common warning sign: requests to send crypto assets, or other forms of payment, to invest in scams through fake crypto websites.

**CFTC Staff Reissues Letter 25-40 Updating Payment Stablecoin Definition.** On February 6, the CFTC’s Market Participants Division [announced](#) it has reissued [CFTC Staff Letter 25-40](#) with a limited revision to the definition of “payment stablecoin.” This No-Action Position is with respect respect to futures commission merchants that accept certain non-securities digital assets as margin collateral and (a) take into account the value of such digital assets for purposes of certain regulatory requirements, subject to conditions or (b) deposit payment stablecoins as residual interest, subject to conditions. The CFTC’s revision specifies that a national trust bank may be a permitted issuer of a payment stablecoin for purposes of the no-action position.

**SEC Publishes Data on Exchange Traded Funds and Fund Mergers; Updated Statistics on Municipal Advisors, Transfer Agents, and Security-Based Swap Dealers.** On February 5, the SEC’s Division of Economic and Risk Analysis (DERA) published two [new reports](#) on exchange traded funds and fund mergers, and updated statistics and data visualizations on municipal advisors, transfer agents, and security-based swap dealers. The reports provide the public with information about the growth in active ETFs and the changes in fees paid by investors when mutual funds and ETFs acquire other funds.

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

**ESMA Publishes Supervisory Briefing on the AAR Representativeness Obligation.** On February 20, ESMA published a [supervisory briefing](#) on the representativeness obligation linked to the active account requirement (AAR). The briefing sets out ESMA’s supervisory expectations for how counterparties should comply with and report on the AAR representativeness obligation. According to ESMA, it also provides guidance and promotes supervisory convergence for the supervision of counterparties subject to the AAR. [NEW]

**ESMA Publishes List of Supplementary Deferrals for Sovereign Bonds.** On February 19, ESMA and the National Competent Authorities (NCAs) have agreed that [supplementary deferrals](#) may be applied on top of the standard Markets in Financial Instruments Regulation deferral regime for sovereign bonds. ESMA and all NCAs, except the National Bank of Slovakia, have decided to allow the following supplementary deferrals: for trades of a medium size on liquid bonds in Group 1, the publication of the volume may be omitted until the end of the trading day. The supplementary deferrals should start applying on May 4, 2026. [NEW]

**ESMA Seeks Input to Streamline and Simplify its Market Abuse Guidelines.** On February 19, ESMA launched a [consultation](#) proposing amendments to its Market Abuse Regulation guidelines on the delay in the disclosure of inside information. According to ESMA, the proposals will align the guidelines with the disclosure regime as amended by the Listing Act, ensuring issuers face fewer administrative burdens while benefiting from clearer requirements. [NEW]

**ESMA Announces Upcoming Changes to the Euribor Panel.** On February 18, ESMA announced that it will issue a statement on the upcoming changes to the Euribor panel, in its capacity as supervisor of the European Money Market Institute (EMMI), administrator of Euribor. ESMA's statement concerns the [announcement](#) by EMMI that Barclays Bank PLC will withdraw from the Euribor panel. The withdrawal will take effect on February 27, which will be the bank's final day contributing input data to the benchmark determination. [NEW]

**ESMA Publishes Statement Supporting the Smooth Implementation of the Listing Act.** On February 18, ESMA issued a [statement](#) with practical guidance to national competent authorities, issuers, and their advisors on the application of the revised prospectus framework introduced by the Listing Act. [NEW]

**ESMA Supports the Simplified European Sustainability Reporting Standards and Suggests Targeted Adjustments.** On February 18, ESMA delivered its [opinion](#) on the draft revised European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG). ESMA stated that it strongly supports the European Commission's goal of enhancing competitiveness and growth through simplification and burden reduction. On this basis, ESMA also stated that it welcomes EFRAG's proposed changes to the ESRS and finds room for specific modifications. [NEW]

**ESMA Publishes Latest Edition of Spotlight on Markets Newsletter.** On February 13, ESMA published its latest edition of the Spotlight on Markets Newsletter. This edition opens with ESMA's [Digital and Data Strategies](#), outlining ESMA's position that enhanced data use and improved digital tools will strengthen effective and risk-based supervision. Other highlights include the [launch of the](#)

[selection process](#) for the Consolidated Tape Provider for OTC derivatives, which ESMA stated is an important step toward greater post-trade transparency.

**ESMA to Hold Conference “A New Era for EU Capital Markets” on May 21, 2026.** On February 5, ESMA announced that it is organizing a [high-level conference](#) “A New Era for EU Capital Markets” on May 21, 2026 in Paris, France. The conference will bring together senior policymakers, regulators, leaders of major market infrastructures and financial institutions, as well as investor representatives. Discussions will focus on how to deepen market integration, strengthen supervision and improve the investor journey in support of the Savings and Investments Union.

## New Industry-Led Developments

**ISDA Publishes SwapsInfo Full Year 2025 and the Fourth Quarter of 2025 Review.** On February 17, ISDA published a [report](#) noting that trading activity in interest rate derivatives (IRD) and credit derivatives increased in 2025, which ISDA said reflects shifting monetary policy expectations and broader market conditions. ISDA also found that IRD traded notional rose by about 46% year-on-year, led by an increase in overnight index swaps. Index credit derivatives also traded notional grew by more than 50%. [NEW]

**IOSCO Announces Pre-Valentine’s Day Campaign Focused on Combatting Relationship Investments Scams.** On February 11, IOSCO announced the start of a [worldwide initiative](#) to raise awareness about relationship investment scams and the devastating effect they can have on an investor’s financial future. These scams are called various names, including romance scams, crypto investment scams, financial grooming scams, and “pig butchering” scams.

**ISDA Responds to Bank of England Consultation on Systemic Stablecoins.** On February 10, ISDA [responded](#) to the Bank of England’s consultation on a proposed regulatory regime for sterling-denominated systemic stablecoins. In its response, ISDA highlighted its position that any regulatory framework should be assessed through the lens of prudent risk management and the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and International Organization of Securities Commissions, with a particular focus on liquidity, credit risk, operational resilience and legal certainty. [NEW]

**ISDA Publishes Paper on IRRBB Management in Emerging Market and Developing Economies.** On February 9, ISDA published a [paper](#) on interest rate risk in the banking book (IRRBB) in which it argues that building more effective IRRBB management frameworks supported by well-functioning interest rate

derivatives markets is both a financial stability priority and a foundation for sustainable economic progress in emerging market and developing economies.

**ISDA and FIA Respond to CPMI-IOSCO Consultation on General Business Losses.** On February 5, ISDA and the Futures Industry Association (FIA) [responded](#) to the Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) consultation on the management of general business risks and general business losses by financial market infrastructures (FMIs). ISDA and FIA stated that they welcome the consultation's emphasis that FMIs should maintain sufficient resources to bear general business losses for which they are solely responsible, given these losses stem from risks under FMI control and are not appropriately allocated to participants.

**ISDA Chief Executive Scott O'Malia Gives Remarks at Trading Book Capital Event.** On February 5, Scott O'Malia gave [welcoming remarks](#) at ISDA's Trading Book Capital event. In his remarks, O'Malia highlighted three priorities: (1) preserving the viability of Fundamental Review of the Trading Book internal models and improving current treatment of non-modellable risk factors, (2) mitigating market-functioning strains, and (3) ensuring that the supplementary leverage ratio operates as a backstop after recent U.S. modifications.

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