



GIBSON DUNN

## This Week in Derivatives

February 27, 2026

**From the Derivatives Practice Group:** This week, the CFTC reissued Staff Letter 25-50 to add an additional no-action position regarding CPO delegation arrangements.

### New Developments

**CFTC Staff Reissues Staff Letter 25-50 to Add Additional No-Action Position on CPO Delegation Arrangements.** On February 26, the CFTC's Market Participants Division [reissued](#) CFTC Staff Letter [25-50](#) to add an additional no-action position in relation to the interaction between Letter 25-50 and CFTC Staff Letter [14-126](#), regarding certain delegation arrangements between commodity pool operators. [NEW]

**CFTC Enforcement Division Issues Prediction Markets Advisory.** On February 25, the CFTC's Division of Enforcement issued an advisory following public release of two enforcement cases involving traders' misuse of nonpublic information and fraud with respect to certain prediction markets. Please see Gibson Dunn's upcoming alert on this issue for more information. [NEW]

**CFTC Chairman Selig Announces Senior Staff Appointments.** On February 23, CFTC Chairman Michael S. Selig announced four senior staff appointments in his office. The four appointments are: Brooke Nethercott as Director, Office of Public Affairs; Emma Johnston as Senior Agriculture Advisor; Meghan Tente as Senior Advisor; and Elizabeth (Libby) Mastrogiacomo as Senior Advisor. [NEW]

**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 Developments Outside the U.S.**

**ESMA Publishes the Results of the Annual Transparency Calculations for Equity and Equity-like Instruments.** On February 27, ESMA published the results of the annual transparency calculations for equity and equity-like instruments, which will apply from April 6, 2026. The full list of assessed equity and equity-like instruments is available through ESMA's FITRS in the XML files with publication date from 27 February 2026 (see [here](#)) and through the Register web interface (see [here](#)). [NEW]

**ESMA Issues a Supervisory Briefing on Algorithmic Trading.** On February 26, ESMA published a [supervisory briefing](#) to support consistent supervision of algorithmic trading across the EU. As ESMA states, the briefing provides National Competent Authorities with practical tools and clarified expectations for supervising firms engaged in algorithmic trading under MiFID II. It focuses on key areas where supervisory practices have diverged, including pre-trade controls, governance arrangements, testing frameworks and outsourcing of algorithmic trading systems. [NEW]

**ESMA Consults on Post-trade Risk Reduction Services Under EMIR 3.** On February 26, ESMA launched a [consultation](#) on the requirements for how post-trade risk reduction (PTRR) services can benefit from the conditioned exemption from the clearing obligation introduced under the European Market Infrastructure Regulation (EMIR 3). ESMA is seeking feedback on several elements of the framework for the PTRR service providers to operate under the exemption, including transparency towards participants, algorithm safeguards, execution of PTRR exercises, controls to be performed and record keeping. [NEW]

**ESMA Sets Out Clearing Thresholds Under EMIR 3.** On February 25, ESMA published its draft [Regulatory Technical Standards](#) setting out new and revised clearing thresholds under EMIR 3. The proposed thresholds ensure continuity in the coverage of systemic risk in over-the-counter derivative markets while avoiding unnecessary complexity and additional compliance burdens for market participants. [NEW]

**EBA and ESMA Consult on Revised Suitability Assessment Requirements for Banks and Investment Firms.** On February 25, European Banking Authority (EBA) and ESMA launched a [consultation](#) on the [revised joint guidelines](#) on the assessment of the suitability of members of the management body and key function holders. The revised guidelines form part of a broader package designed to harmonise suitability assessments and ensure supervisory convergence across the EU. The consultation runs until May 25, 2026. [NEW]

**ESMA Reminds Firms of Their Obligations under CFD Product Intervention Measures Amid Rising Offerings of Perpetual Futures.** On February 24, ESMA issued a [statement](#) reminding firms of their obligation to assess whether newly offered products fall within the scope of existing product intervention measures on contracts for differences. ESMA states that this statement responds to the increased offering of derivatives, often marketed as perpetual futures or perpetual contracts, that provide leveraged exposure to underlying values, including crypto-assets such as Bitcoin. [NEW]

**ESMA Consults on Guarantees as CCP Collateral and on Certain Aspects of CCP Investment Policy.** On February 23, ESMA launched a [public consultation](#) following the review of the European Market Infrastructure Regulation (EMIR 3). ESMA is encouraging all interested stakeholders, including non-financial counterparties (NFCs), to share their views about: the relevant conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted by central counterparties (CCPs) as collateral; the conditions under which debt instruments can be considered as eligible financial instruments for the purpose of CCP investment policy; and the highly secured arrangements in which emission allowances posted as margins or default fund contributions can be deposited. [NEW]

**ESMA Simplifies MiFID II/ MiFIR Obligations on Market Data.** On February 23, ESMA [withdrew](#) its [guidelines](#) on the Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR) obligations on market data, effective immediately, which it states reflected its ongoing commitment to simplifying rules and reducing unnecessary compliance burdens for market participants. ESMA stated that this decision aligns the framework with the newly

applicable regulatory technical standards on the obligation to make market data available to the public on a reasonable commercial basis. [NEW]

**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.

**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.

**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 Industry-Led Developments

**ISDA Issues Joint Letter on Italian 2026 Budget Law.** On February 24, ISDA, the Association for Financial Markets in Europe and the International Securities Lending Association jointly sent a [letter](#) to the Italian tax authorities about changes to withholding tax on dividends made in the 2026 budget law, which limits access to the reduced 1.2% withholding tax rate on outbound dividends declared after January 1, 2026. The associations request urgent clarification on how to calculate and apply the new rules, especially in scenarios like securities lending, collateral and derivatives hedging. [NEW]

**ISDA Issues Joint Response to FRB Consultation on Stress Testing Framework.** On February 23, ISDA, the Bank Policy Institute, the American Bankers Association, the Financial Services Forum, the Securities Industry and Financial Markets Association and the US Chamber of Commerce jointly [responded](#) to the US

Federal Reserve's consultation on the stress testing framework. The associations stated that they welcomed the Federal Reserve's proposal to open its stress testing framework to public comment, which is a meaningful step toward greater transparency and objectivity. [NEW]

**ISDA Responds to FCA Consultation on Improving the UK MIFIR Transaction Reporting Regime.** On February 20, ISDA [responded](#) to the Financial Conduct Authority's consultation on improving the UK Markets in Financial Instruments Regulation (MIFIR) transaction reporting regime. ISDA argues against the introduction of conditional single-sided reporting and proposes that the unique product identifier replaces the international securities identification number as the over-the-counter derivatives identifier. [NEW]

**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%.

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