



GIBSON DUNN

This Week in Derivatives

March 6, 2026

From the Derivatives Practice Group: This week, the CFTC responded to a no-action letter request from Coinbase Derivatives regarding systems safeguards.

New Developments

CFTC Issues No-Action Position Regarding Systems Safeguards Issue. On March 3, the CFTC issued [CFTC Letter No. 26-07](#) in response to a no-action letter request from Coinbase Derivatives, LLC (COIN), a designated contract market submitted pursuant to Commission regulation 140.99. COIN seeks a no-action position with respect to certain requirements under Commodity Exchange Act Section 5(d)(20), and Commission regulation 38.1051(c) addressing backup facilities. [NEW]

CFTC Chairman Selig Announces Mel Gunewardena as Director of the Office of International Affairs and Senior Markets Advisor to the Chairman. On March 2, CFTC Chairman Michael S. Selig announced Mel Gunewardena as director of the Office of International Affairs and Senior Markets Advisor to the Chairman. Gunewardena was previously a managing director in the Global Markets Trading Divisions at Goldman Sachs, Deutsche Bank, and State Street. [NEW]

CFTC Chairman Selig Announces David I. Miller as Director of Enforcement. On March 2, CFTC Chairman Michael S. Selig announced that former federal prosecutor David I. Miller will serve as the CFTC's director of enforcement. Miller joins the CFTC from private practice, having served as a litigation partner at two global law firms. [NEW]

CFTC Chairman Selig Announces Alan Brubaker as Director of the Office of Legislative and Intergovernmental Affairs. On March 2, CFTC Chairman Michael S. Selig announced that Alan Brubaker will serve as the CFTC's Director of the Office of Legislative and Intergovernmental Affairs. Brubaker joins the CFTC after serving as a senior advisor to the House Committee on Oversight and Government Reform under Kentucky Congressman James Comer. [NEW]

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.

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.

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) Mastrogiacono as Senior Advisor.

New Developments Outside the U.S.

ESMA Publishes Report Showing New Investment Funds Drive Reduction in Costs to Investors. On March 3, ESMA published its [2025 market report](#) on the costs and performance of EU retail investment products. This eighth Costs and Performance report shows that ongoing costs in the EU continued to decline in 2024. According to ESMA, this is mostly due to new investment funds entering the market, as they usually charge lower fees. Cost reductions for long-standing funds remained more limited. [NEW]

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 February 27, 2026 (see [here](#)) and through the Register web interface (see [here](#)).

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.

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.

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.

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 harmonize suitability assessments and ensure supervisory convergence across the EU. The consultation runs until May 25, 2026.

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.

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.

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 Industry-Led Developments

IOSCO Appointed Emily Fitts as Chair of the Monitoring Group. On March 5, IOSCO's Monitoring Group [announced](#) that Emily Fitts has been appointed the new Chair of the Monitoring Group, effective immediately. Previously, she was the Deputy Chief Accountant (International) of the U.S. Securities and Exchange Commission. Fitts succeeds Ryan Wolfe, who served as Chair between April 2025 and March 2026. [NEW]

ISDA Publishes Position Paper on SFDR Review. On February 27, ISDA and the Association for Financial Markets in Europe (AFME) published a [position paper](#) on the European Commission's proposed revisions to the Sustainable Finance Disclosure Regulation (SFDR 2.0). The paper welcomed the European Commission's proposal as a strong starting point for negotiations, particularly the introduction of a product categorization framework and more streamlined disclosure requirements. ISDA and AFME stated that these represent meaningful progress

towards a more coherent regime that can effectively support capital flows to the sustainable transition. [NEW]

ISDA Responds to HKMA SFC Consultation on Clearing Rules. On February 27, ISDA [responded](#) to a joint consultation by the Hong Kong Monetary Authority and the Securities Futures Commission on proposed amendments to schedule 2 of the clearing rules for over-the-counter derivatives. The proposed amendments introduced permanent calculation periods going forward. ISDA welcomed the amendment, stating that it provided greater regulatory certainty and removed the need for periodic legislative amendments to update the calculation periods. [NEW]

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.

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.

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.



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