

GIBSON DUNN

This Week in Derivatives

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From the Derivatives Practice Group: This week, the CFTC published notices of proposed rulemaking for whistleblower rules and event contracts.

New Developments

CFTC Seeks Public Comment on Notice of Proposed Rulemaking Concerning Whistleblower Rules. On June 11, the CFTC published a [Notice of Proposed Rulemaking](#) to amend its whistleblower rules. According to the CFTC, the proposal incorporates a 30 percent presumption for whistleblower awards of \$5 million or less, subject to Commission discretion and its analysis of relevant regulatory factors, and is modeled on the Securities and Exchange Commission's rule 21F-6(c). The comment period will be open for 30 days after publication of the Notice of Proposed Rulemaking in the Federal Register. [NEW]

CFTC Seeks Public Comment on Notice of Proposed Rulemaking Concerning Event Contracts Involving Enumerated Activities. On June 10, the CFTC published a [Notice of Proposed Rulemaking](#) seeking public comment on amendments to CFTC Regulation 40.11 and the addition of Appendix F to part 40. The Commission said that it has continued to observe growth in the number and variety of event contracts listed for trading by CFTC-registered entities, including contracts referencing sporting events. The CFTC indicated, in light of these developments, that its proposal would establish a structured framework for evaluating whether such contracts involve an activity enumerated in Section 5c(c)(5)(C) of the Commodity Exchange Act and, if so, whether that contract is contrary to the public interest. According to the Commission, the proposal sets out a 90-day review process ensuring critical procedural protections and a set of public interest factors the Commission would apply on a contract-by-contract basis; it also proposes definitions key statutory terms, including "involve" and "gaming." [NEW]

CFTC Establishes Joint Data Standards as Required Under the Financial Data Transparency Act of 2022. On June 8, the CFTC announced that it established [joint data standards](#) under the Financial Data Transparency Act of 2022. According to the Commission, the final rule establishes technical standards for data submitted to certain financial regulatory agencies and is designed to promote interoperability of financial regulatory data across various agencies by establishing common identifiers for entities, geographic locations, dates, and certain products and currencies. [NEW]

CFTC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions. On June 3, the CFTC [rescinded](#) a policy, codified in Appendix A to Part 10, stating that it will not accept settlement offers where the defendant continues to deny the allegations in the complaint or administrative order. According to the CFTC, rescinding this policy aligns the Commission with the overwhelming majority of federal agencies and gives the Commission more flexibility in settling enforcement actions, which conserves resources, provides certainty, and potentially expedites the return of money to injured investors.

CFTC Staff Issues No-Action Position Related to Designated Contract Market Procedures. On June 3, the CFTC's Division of Market Oversight announced it has issued a [no-action letter](#) to Cboe Digital Exchange, LLC, a designated contract market, which addresses certain procedures related to dormancy. The no-action position is time-limited and subject to the terms and conditions in the letter.

CFTC Implements Technical Enhancements to Streamline Product Self-Certification Process. On June 1, the CFTC announced the launch of enhancements to its electronic filing system for product self-certifications. According to the CFTC, Exchanges are now able to submit a single set of product certification documents applicable to multiple closely related contract certifications in one consolidated submission. Updated submission instructions regarding this new functionality are available [here](#).

CFTC Chairman Selig Announces Dr. Patrick J. Schorno as Chief Economist. On June 1, CFTC Chairman Michael S. Selig announced that Dr. Patrick J. Schorno has been named the agency's chief economist to serve as economic adviser to the Commission and integrate rigorous economic analysis, regulatory cost-benefit analysis, and research into the CFTC's mission. Dr. Schorno joins the CFTC from the Public Company Accounting Oversight Board where he served as the deputy chief economist.

New Developments Outside the U.S.

Euribor Panel to Include KBC Bank. On May 27, the European Money Markets Institute, the administrator of Euribor, announced the inclusion of KBC Bank in the Euribor panel. ESMA and the Belgian Financial Services and Markets Authority welcome the inclusion of KBC Bank in the panel as a positive development that contributes to strengthening the robustness and reliability of this critical benchmark. [NEW]

ESAs Publish the First Report on DORA Major ICT-related Incidents. On June 3, the European Supervisory Authorities (ESAs) published their first [annual overview](#) of major information and community technology (ICT) incidents in the EU financial sector based on a reporting mechanism established by the Digital Operational Resilience Act (DORA). ESMA said that the report shows that ICT risks are increasingly borderless and interconnected. The ESAs also noted that the recent evolution of highly capable AI-driven tools should encourage financial entities to strengthen cybersecurity measures going forward.

GMTF Presents its Findings on EU Gas and Gas Derivative Markets. On June 2, the Gas Market Task Force (GMTF) published a [report](#) on the functioning of EU gas and gas derivatives markets. ESMA said that the report suggests further work in several areas to ensure that European gas and gas derivatives markets continue performing as expected and to the benefit of European competitiveness and consumers.

New Industry-Led Developments

ISDA Publishes Report on ISDA-Actrix US Treasury Repo Market Clearing Indicators. On June 10, ISDA published a [report](#) concerning indicators related to central clearing adoption in the U.S. Treasury repo market. According to ISDA, sponsored cleared repo volumes can be used as a proxy to monitor client participation in central clearing, the key objective of the Securities and Exchange Commission's U.S. Treasury clearing mandate. [NEW]

ISDA Publishes ISDA-Actrix US Treasury Repo Market Clearing Indicators Methodology. On June 9, ISDA published a [white paper](#) intended for market participants interested in the structure and methodology used to construct the ISDA-Actrix US Treasury Repo Market Clearing Indicators. According to ISDA, this report provides precise details that allow participants to access the publicly available data and replicate the calculations in the report themselves. [NEW]

IOSCO Publishes Recommendations for Secondary Market Disclosure. On June 8, IOSCO published its [Final Report on Recommendations for Secondary Market Disclosure](#). The report is intended to assist regulators in reviewing their existing disclosure frameworks and considering whether updates or refinements may be appropriate. [NEW]

ISDA Responds to BoE Consultation on Permissions to Facilitate Mobilization of New CCPs. On June 4, ISDA submitted a [response](#) to the Bank of England's (BoE) consultation on its approach to using its requirements and permissions powers to facilitate mobilization of new central counterparties (CCPs). The consultation includes a draft policy statement, setting out how the BoE will use its powers to impose de minimis limits and give permissions to modify or waive certain rules for new CCPs in a "mobilization" phase. [NEW]

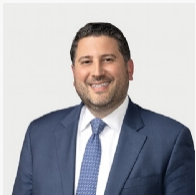
ISDA and the Credit Derivatives Governance Committee Select S&P Global as DC Administrator. On June 4, ISDA and the Credit Derivatives Governance Committee [announced](#) that S&P Global Market Intelligence has been selected as

the administrator for the Credit Derivatives Determinations Committees (DCs). According to ISDA, the DCs were introduced in 2009 as a centralized decision-making body to enable a standardized auction settlement process and ensure central clearing could be implemented for credit derivatives.

ISDA, GDF Respond to the Central Bank of Ireland on DLT and Tokenization. On June 3, ISDA and Global Digital Finance [responded](#) to the Central Bank of Ireland's discussion paper on distributed ledger technology (DLT) and tokenization in financial services. ISDA said the response focused on the potential role of DLT and tokenization within wholesale markets, including their use in collateral and liquidity management, and that the paper also emphasized that any regulatory framework for DLT and tokenization should be assessed through the lens of prudent risk management, with particular attention to liquidity, credit risk, operational resilience and legal certainty.

IOSCO Publishes Final Report on Valuing Collective Investment Schemes. On June 1, IOSCO published its [Final Report on Valuing Collective Investment Schemes \(CIS\)](#). According to IOSCO, the paper sets out a comprehensive and updated set of recommendations to further enhance the reliability, consistency, and transparency of valuation practices across global investment funds and updates and consolidates IOSCO's earlier principles on valuation for [collective investment schemes](#) and [hedge funds](#).

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