

This Week in Derivatives

May 10, 2024

From the Derivatives Practice Group: This week, ESMA has issued a Call for Evidence to gather information from stakeholders to assess the risks and benefits of the Undertakings for Collective Investment in Transferable Securities gaining exposure to various asset classes.

New Developments

- **Statement of Chairman Rostin Behnam Regarding Proposed Event Contracts Rulemaking.** On May 10, CFTC Chairman Rostin Behnam remarked on his support for the proposed amendments to the Commission's rules concerning event contracts. The Chairman remarked that the Commission proposes to further specify the types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest. He believes that the amendments will support efforts by registered entities to comply with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing. [NEW]
- **CFTC Technology Advisory Committee Advances Report and Recommendations to the CFTC on Responsible Artificial Intelligence in Financial Markets.** On May 2, the CFTC's Technology Advisory Committee (TAC) released a [Report on Responsible AI in Financial Markets](#). The CFTC stated that the TAC issued a Report that facilitates an understanding of the impact and implications of the evolution of AI on financial markets. The Committee made five recommendations to the Commission as to how the CFTC should approach this AI evolution to safeguard financial markets. The Committee urged the CFTC to leverage its role as a market regulator to support the current efforts on AI coming from the White House and Congress. [NEW]

- **CFTC Chairman Behnam Designates Ted Kaouk as the CFTC's First Chief Artificial Intelligence Officer.** On May 1, CFTC Chairman Rostin Behnam announced the designation of Dr. Ted Kaouk as the agency's first Chief Artificial Intelligence Officer. Dr. Kaouk currently serves as the CFTC's Chief Data Officer and Director of the Division of Data. The CFTC stated that in this newly expanded role as the CFTC's Chief Data & Artificial Intelligence Officer, Dr. Kaouk will be responsible for leading the development of the CFTC's enterprise data and artificial intelligence strategy to further integrate CFTC's ongoing efforts to advance its data-driven capabilities.
- **CFTC Approves Final Rule Amending the Capital and Financial Reporting Requirements of Swap Dealers and Major Swap Participants.** On April 30, the CFTC announced it has approved a final rule that amends the capital and financial reporting requirements of Swap Dealers (SDs) and Major Swap Participants (MSPs). According to the CFTC, the amendments make changes consistent with CFTC Staff Letter No. [21-15](#) regarding the tangible net worth capital approach for calculating capital under CFTC Regulation 23.101, as well as CFTC Staff Letter No. [21-18](#), as further extended by CFTC Staff Letter No. [23-11](#), regarding the alternate financial reporting requirements for SDs subject to the capital requirements of a prudential regulator. The amendments also revise certain Part 23 regulations regarding the financial reporting requirements of SDs, including the required timing of certain notifications, the process for approval of subordinated debt for capital, and the information requested on financial reporting forms to conform to the rules. The CFTC stated that the amendments are intended to make it easier for SDs and MSPs to comply with the CFTC's financial reporting obligations and demonstrate compliance with minimum capital requirements. To allow for sufficient time to effectuate the reporting and notification amendments, the final rule has a compliance date of September 30, 2024, and will apply to all financial reports with an "as of" reporting date of September 30, 2024, or later.
- **CFTC Approves Final Rules on Large Trader Reporting for Futures and Options.** On April 30, the CFTC announced approval of final rules to amend its large trading reporting regulations for futures and options. These regulations require futures commission merchants, clearing members, foreign brokers, and certain reporting markets (reporting firms) to report to the Commission position information for the largest futures and options traders. The final rules replace the data elements currently enumerated in the CFTC's regulations with an appendix specifying applicable data elements. The final rules also provide for the publication of a separate Part 17 Guidebook specifying the form and manner for reporting. In addition, the final rules remove the outdated 80-character data submission standard in the CFTC's regulations. According to the CFTC, that standard will be replaced by a FIXML standard, as set out in the Part 17 Guidebook.
- **CFTC Approves Final Rules on Swap Confirmation Requirements for SEFs.** On April 23, the CFTC approved final rules to amend its swap execution facility (SEF) regulations related to uncleared swap confirmations to address issues which have been addressed in CFTC staff no-action letters, including the most recent CFTC No Action Letter No. [17-17](#), as well as associated conforming and technical changes. In particular, the final rules amend CFTC Regulation 37.6(b) to enable SEFs to incorporate terms of underlying, previously negotiated agreements between the counterparties by reference in an

uncleared swap confirmation without being required to obtain such underlying, previously negotiated agreements. Further, the final rules amend CFTC Regulation 37.6(b) to require such confirmation to take place “as soon as technologically practicable” after the execution of the swap transaction on the SEF for both cleared and uncleared swap transactions. The final rules also amend CFTC Regulation 37.6(b) to make clear the SEF-provided confirmation under CFTC Regulation 37.6(b) shall legally supersede any conflicting terms in a previous agreement, rather than the entire agreement. The final rules make conforming amendments to CFTC Regulation 23.501(a)(4)(i) to correspond with the amendments to CFTC Regulation 37.6(b). Finally, the final rules make certain non-substantive amendments to CFTC Regulation 37.6(a)-(b) to enhance clarity.

- **CFTC Extends Public Comment Period for Proposed Rule for Designated Contract Markets and Swap Execution Facilities Regarding Governance and Conflicts of Interest.** On April 22, the CFTC announced it is extending the deadline for public comment period on a proposed rule that makes certain modifications to rules for Swap Execution Facilities and Designated Contract Markets in Part 37 and 38 that would establish governance requirements regarding market regulation functions, as well as related conflicts of interest standards. The deadline is being extended to May 13, 2024.

New Developments Outside the U.S.

- **ESMA Asks for Input on Assets Eligible for UCITS.** On May 7, ESMA published a [Call for Evidence](#) on the review of the [Undertakings for Collective Investment in Transferable Securities \(UCITS\) Eligible Assets Directive \(EAD\)](#). The objective of this call is to gather information from stakeholders to assess possible risk and benefits of UCITS gaining exposure to various asset classes. Investors and consumer groups interested in retail investment products, management companies of UCITS, self-managed UCITS investment companies, depositaries of UCITS and trade associations are invited to provide their feedback on market practices and interpretation or practical application issues with respect to the eligibility criteria and other provisions set out in the UCITS EAD. [NEW]
- **ESMA Publishes the Annual Transparency Calculations for Non-Equity Instruments, Bond Liquidity Data and Quarterly SI Calculations.** On April 30, ESMA published the results of the [annual transparency calculations for non-equity instruments](#), [new quarterly liquidity assessment of bonds](#) and [the quarterly systematic internaliser calculations](#) under MiFID II and MiFIR. As indicated in [ESMA's public statement](#) on March 27, the quarterly liquidity assessment of bonds as well as the data for the quarterly systematic internalizers will continue to be published by ESMA.
- **ESAs Issue Spring 2024 Joint Committee Update.** On April 30, the three European Supervisory Authorities (EBA, EIOPA and ESMA - the ESAs) issued their [Spring 2024 Joint Committee update](#) on risks and vulnerabilities in the EU financial system. The risk update shows that risks remain elevated in a context of slowing growth, an uncertain interest rate environment and ongoing geopolitical tensions. According to the update, in recent months, financial markets have performed strongly in anticipation of potential

interest rate cuts in 2024 in both the EU and the US, despite the significant uncertainty surrounding these. The ESAs stated that this strong performance entails elevated risks of market corrections linked to unexpected events.

New Industry-Led Developments

- **ISDA and AFME Respond to FCA Publicizing Enforcement Consultation.** On April 30, ISDA and the Association for Financial Markets in Europe (AFME) responded to a Financial Conduct Authority (FCA) proposal that would give it the ability to publicly name firms at the start of an investigation and before a decision has been reached on whether to take further action. According to ISDA, there has been a considerable reaction to the proposals across the financial services industry, and [the response](#) highlights various risks and concerns with the proposals, including the risk to the competitiveness of the UK, damage to shareholder value and reputation of the sector, and worse outcomes for consumers. [NEW]
- **ISDA Launches Outreach Initiative on Proposed Notices Hub.** On April 25, ISDA announced major industry outreach initiative to establish support among dealers and buy-side firms for a new online platform that would allow the instantaneous delivery and receipt of critical termination-related notices, reducing the risk exposure and potential losses from a delay. Under the ISDA Master Agreement, termination-related notices must be delivered by certain prescribed methods, using company address details listed in the agreement. However, delays can occur if a company has moved and the documentation hasn't been updated with the new details or if delivery to a physical location is not possible due to geopolitical shocks. The proposed ISDA Notices Hub would act as a secure central platform for firms to deliver notices, with automatic alerts sent to the receiving entity. Multiple designated people at each firm would be able to access the hub from anywhere in the world, regardless of the situation at its physical location. The platform would also allow market participants to update their physical address details via a single entry, providing a golden source of those details.
- **ISDA, SIFMA, and CCMA Publish T+1 Settlement Cycle Booklet.** On April 30, ISDA, the Securities Industry and Financial Markets Association (SIFMA) and the Canadian Capital Markets Association (CCMA) published a [T+1 settlement cycle booklet](#) to address queries from market participants on the settlement cycle changes taking place in North America on May 27-28, 2024, and the possible impact to relevant securities and over-the-counter (OTC) derivatives transactions. This booklet may be updated from time to time.
- **ISDA Publishes Sub-Annex A Maintenance Guidelines for the 2005 ISDA Commodity Definitions.** On April 30, ISDA published maintenance guidelines for [Sub-Annex A](#) of the 2005 ISDA Commodity Definitions. Sub-Annex A contains definitions for various Commodity Reference Prices.
- **ISDA and SIFMA Submit Addendum to Proposed FFIEC Reporting Revisions.** On April 23, ISDA and the Securities Industry and Financial Markets Association (SIFMA) submitted an addendum to the joint response to the Board of Governors of the Federal

Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency on the proposed reporting revisions of the call report, FFIEC 101 and FFIEC 102, which are designed to reflect the implementation of the Basel III endgame proposal. The addendum contains additional findings in the FFIEC 102 report, including end-of-week Fundamental Review of the Trading Book standardized approach average calculations and reported market risk risk-weighted assets in sub-parts D and E.

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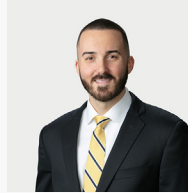
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