

## This Week in Derivatives

June 17, 2024

**From the Derivatives Practice Group:** This week, ISDA submitted an additional proposal to the US Basel III 'endgame' notice of proposed rulemaking and submitted a response on the Basel Committee on Banking Supervision's G-SIB Window Dressing Consultation.

## New Developments

- **CFTC's Global Markets Advisory Committee Advances Recommendations on Basel III Endgame and Variation Margin Processes.** On June 4, the CFTC's Global Markets Advisory Committee (GMAC) advanced two recommendations to examine the impacts of proposed U.S. bank capital requirements and to improve collateral and liquidity management for non-centrally cleared derivatives. The GMAC approved the two recommendations without objection.
- **Biden-Harris Administration Announces New Principles for High-Integrity Voluntary Carbon Markets.** On May 28, the Biden-Harris Administration released a [Joint Statement of Policy and new Principles for Responsible Participation in Voluntary Carbon Markets \(VCMs\)](#) that codifies the U.S. government's approach to advance high-integrity VCMs. The Principles for Responsible Participation include: (1) carbon credits and the activities that generate them should meet credible atmospheric integrity standards and represent real decarbonization; (2) credit-generating activities should avoid environmental and social harm and should, where applicable, support co-benefits and transparent and inclusive benefits-sharing; and (3) corporate buyers that use credits should prioritize measurable emissions reductions within their own value chains, among others. The announcement of the Principles also highlighted valuable work performed by the CFTC, including new guidance at COP28 to outline factors that derivatives exchanges may consider when listing [voluntary carbon credit derivative contracts](#) to promote the integrity,

transparency, and liquidity of these developing markets and a new [Environmental Fraud Task Force](#) to address fraudulent activity and bad actors in carbon markets.

- **IOSCO Board Re-Elects CFTC Chairman Behnam as Vice Chair.** On May 28, the Board of the International Organization of Securities Commissions (IOSCO) re-elected CFTC Chairman Rostin Behnam as a Vice Chair for the term 2024-2026, a role to which he was originally elected in October 2022. The election took place at IOSCO's 2024 Annual Meeting in Athens, Greece. In announcing the results of the election, the CFTC stated that as a member of the IOSCO Board's Management Team, Chairman Behnam helps guide IOSCO's policy development and overall management. The CFTC stated that in addition to steering the CFTC's engagement in an array of policy work within IOSCO, Chairman Behnam has co-led IOSCO's Financial Stability Engagement Group and currently co-chairs the Carbon Markets Workstream within IOSCO's Sustainable Finance Task Force.

## New Developments Outside the U.S.

- **ESAs publish Joint Annual Report for 2023.** On June 7, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) published its [2023 Annual Report](#), providing an account of the joint work completed over the past year. The Joint Committee continued to play a coordinating role to facilitate discussions and the exchange of information across the three ESAs, the European Commission, and the European Systemic Risk Board (ESRB). The main areas of cross-sectoral focus were joint risk assessment, sustainable finance, digitalization, consumer protection, securitization, financial conglomerates, and central clearing. Among the Joint Committee's main deliverables were policy products for the implementation of the Digital Operational Resilience Act (DORA) as well as ongoing work related to the Sustainable Finance Disclosure Regulation (SFDR). [NEW]
- **ESAs and ENISA Sign a Memorandum of Understanding to Strengthen Cooperation and Information Exchange.** On June 5, the ESAs announced that they have concluded a multilateral [Memorandum of Understanding \(MoU\)](#) to strengthen cooperation and information exchange with the European Union Agency for Cybersecurity (ENISA). This multilateral MoU formalizes the ongoing discussions between the ESAs and ENISA to strengthen their already close cooperation as a result of the Directive On Measures For A High Common Level Of Cybersecurity (NIS2 Directive) and the Digital Operational Resilience Act (DORA).
- **ESAs Call for Enhanced Supervision and Improved Market Practice on Sustainability-related Claims.** On June 4, the ESAs published their Final Reports on Greenwashing in the financial sector. In their respective reports the ESAs reiterate the common high-level understanding of greenwashing as a practice whereby sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. According to the ESAs, this practice may be misleading to consumers, investors, or other market participants. The ESAs stressed that financial market players

have a responsibility to provide sustainability information that is fair, clear, and not misleading. While the ESAs' reports focus on the EU's financial sector, they acknowledge that addressing greenwashing requires a global response, involving close cooperation among financial supervisors and the development of interoperable standards for sustainability disclosures.

- **The EBA and ESMA Invite Comments on the Review of the Investment Firms Prudential Framework.** On June 3, ESMA and the European Banking Authority (EBA) published a [discussion paper](#) on the potential review of the investment firms' prudential framework. The [discussion paper](#) aims at gathering early stakeholder feedback to inform the response to the European Commission's call for advice. The consultation runs until August 30, 2024. To assess the impact of the possible changes discussed in the paper, the EBA also launched a data collection exercise on a voluntary basis.
- **ESAs Publish Templates and Tools for Voluntary Dry Run Exercise to Support the DORA Implementation.** On May 31, the ESAs published templates, technical documents, and tools for the dry run exercise on the reporting of registers of information in the context of DORA [announced in April 2024](#). Financial entities can use these materials and tools to prepare and report their registers of information of contractual arrangements on the use of ICT third-party service providers in the context of the dry run exercise, and to understand supervisory expectations for the reporting of such registers from 2025 onwards.
- **Final MiCA Rules on Conflict of Interest of Crypto Assets Providers Published.** On May 31, ESMA published the [Final Report](#) on the rules on conflicts of interests of crypto-asset service providers (CASP) under the Markets in Crypto Assets Regulation (MiCA). In the report ESMA sets out draft Regulatory Technical Standards on certain requirements in relation to conflicts of interest for crypto-asset service providers (CASPs) under MiCA, with a view to clarifying elements in relation to vertical integration of CASPs and to further align with the draft European Banking Authority rules applicable to issuers of asset-referenced tokens.
- **ESMA Provides Guidance to Firms Using Artificial Intelligence in Investment Services.** On May 30, ESMA issued a [Statement](#) providing initial guidance to firms using Artificial Intelligence technologies (AI) when they provide investment services to retail clients. When using AI, ESMA expects firms to comply with relevant MiFID II requirements, particularly when it comes to organizational aspects, conduct of business, and their regulatory obligation to act in the best interest of the client.
- **ESMA Reports on the Application of MiFID II Marketing Requirements.** On May 27, ESMA published a combined [report](#) on its 2023 Common Supervisory Action (CSA) and the accompanying Mystery Shopping Exercise (MSE) on marketing disclosure rules under MiFID II. In the report, ESMA identifies several areas of improvements, such as the need for marketing communications to be clearly identifiable as such, and to contain a clear and balanced presentation of risks and benefits. In cases where products and services are marketed as having 'zero cost', ESMA identified they should also include references to any additional fees.

## New Industry-Led Developments

- **VERMEG Integrates Common Domain Model into COLLINE Collateral Management System.** On June 10, ISDA announced that VERMEG, a technology provider for the banking and insurance sector, has integrated the Common Domain Model (CDM) into its COLLINE collateral management system to support the consumption of digitized regulatory initial margin (IM) credit support annexes (CSAs). ISDA stated that VERMEG is the first entity to integrate the CDM to improve the efficiency of collateral processes, with several other firms currently in testing. [NEW]
- **Joint Response to BCBS G-SIB Window Dressing Consultation.** On June 7, ISDA, the Global Financial Markets Association, and the Institute of International Finance submitted a [joint response](#) to the Basel Committee on Banking Supervision's (BCBS) consultation on the revised assessment framework for global systemically important banks (G-SIBs). The associations believe the focus of the consultation – perceived window-dressing behavior – is not founded on robust evidence. [NEW]
- **ISDA and SIFMA Submit Additional Proposal for US Basel III NPR Letter.** On June 4, ISDA and the Securities Industry and Financial Markets Association (SIFMA) submitted an [additional proposal](#) to the US Basel III 'endgame' notice of proposed rulemaking (NPR). The proposal covers the look-through approach for equity investments in funds. [NEW]
- **Preparing for the Dynamic Risk Management Accounting Model.** On May 29, the International Accounting Standards Board (IASB) announced it has a project underway to develop a new model to account for dynamic risk management (DRM) activities under International Financial Reporting Standards (IFRS). It is widely expected that banks will need to apply this model, which could replace existing macro-hedge accounting models within IFRS. The IASB will also explore whether the DRM model could be applied to other risk types at a future date. ISDA [published a whitepaper](#) that sets out ISDA's preliminary observations on the tentative decisions made by the IASB to date. According to ISDA, these observations are based on the current understanding of the model and interpretations of ongoing discussions, but they do not represent a formal industry view, which will not be possible until the IASB has publishes a discussion paper, an exposure draft or a set of deliberations.

[Practice Group Members](#)



**Jeffrey L. Steiner**  
Washington, D.C.  
202.887.3632  
[jsteiner@gibsondunn.com](mailto:jsteiner@gibsondunn.com)



**Michael D. Bopp**  
Washington, D.C.  
202.955.8256  
[mbopp@gibsondunn.com](mailto:mbopp@gibsondunn.com)



**Michelle M. Kirschner**  
London  
+44 (0)20 7071.4212  
[mkirschner@gibsondunn.com](mailto:mkirschner@gibsondunn.com)



**Darius Mehraban**  
New York  
212.351.2428  
[dmehraban@gibsondunn.com](mailto:dmehraban@gibsondunn.com)



**Jason Cabral**  
New York  
212.351.6267  
[jcabral@gibsondunn.com](mailto:jcabral@gibsondunn.com)



**Adam Lapidus**  
New York  
212.351.3869  
[alapidus@gibsondunn.com](mailto:alapidus@gibsondunn.com)



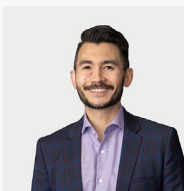
**Stephanie L. Brooker**  
Washington, D.C.  
202.887.3502  
[sbrooker@gibsondunn.com](mailto:sbrooker@gibsondunn.com)



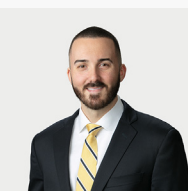
**William R. Hallatt**  
Hong Kong  
+852.2214.3836  
[whallatt@gibsondunn.com](mailto:whallatt@gibsondunn.com)



**David P. Burns**  
Washington, D.C.  
202.887.3786  
[dburns@gibsondunn.com](mailto:dburns@gibsondunn.com)



**Marc Aaron Takagaki**  
New York  
212.351.4028  
[mtakagaki@gibsondunn.com](mailto:mtakagaki@gibsondunn.com)



**Hayden K. McGovern**  
Dallas  
214.698.3142  
[hmcgovern@gibsondunn.com](mailto:hmcgovern@gibsondunn.com)



**Karin Thrasher**  
Washington, D.C.  
202.887.3712  
[kthrasher@gibsondunn.com](mailto:kthrasher@gibsondunn.com)

relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm, please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists, please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at [gibsondunn.com](http://gibsondunn.com)