

This Week in Derivatives

June 21, 2024

From the Derivatives Practice Group: ISDA had an active week, submitting responses to the FSB Consultation on Liquidity Preparedness for Margin and Collateral Calls, the FCA Consultation on Sustainability Disclosure Requirements, and the FCA and BoE on the UK EMIR Refit

New Developments

- **CFTC to Hold a Commission Open Meeting June 24.** On June 17, CFTC Chairman Rostin Behnam announced the Commission will hold an open meeting on Monday, June 24 at 9:30 a.m. (EDT) at the CFTC's Washington, D.C. headquarters. The Commission stated that at the meeting, it will consider final capital and financial reporting comparability determinations and orders for certain nonbank swap dealers domiciled in Japan, Mexico, the European Union (limited to France and Germany), and the United Kingdom. [NEW]
- **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.
- **U.S. Department of Treasury Releases Joint Policy Statement and Principles on 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 (the "Joint Statement") announcing the U.S. government's approach to further developing high-integrity voluntary carbon markets ("VCMs"). The Joint Statement

announces seven principles, which are not exhaustive, that seek to codify and strengthen concepts and practices already developed market participants, governments and international bodies. The primary aim of these principles is to inform and support the continuing development of VCMs. On June 17, Gibson Dunn published an [alert](#) discussing the principles and key takeaways. [NEW]

New Developments Outside the U.S.

- **ESAs Propose Improvements to the Sustainable Finance Disclosure Regulation.** On June 18, the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) published a [Joint Opinion](#) on the assessment of the Sustainable Finance Disclosure Regulation (SFDR). In the joint opinion, the ESAs call for a coherent sustainable finance framework that caters for both the green transition and enhanced consumer protection, considering the lessons learned from the functioning of the SFDR. [NEW]
- **ESAs Board of Appeal Renews its President's Term and Elects a Vice-President.** On June 13, the ESAs renewed the President and elected the Vice-President of the Board of Appeal, for a term of 2.5 years. Michele Siri, Professor of Insurance and Financial Markets Law, University of Genoa, Italy, was renewed as Board of Appeal's President and Margarida Lima Rego, Associate Professor and Vice-Dean at NOVA School of Law, NOVA University, Portugal, was appointed as Board of Appeal's Vice-President. [NEW]
- **ESMA Publishes 2023 Annual Report.** On June 14, ESMA announced that it has published its [Annual Report for 2023](#). ESMA stated that the report sets out the key achievements of the authority in the first year of implementing ESMA's new 5-year strategy, delivering on the mission of enhancing investor protection and promoting stable and orderly financial markets in the European Union (EU). According to the report, ESMA's key accomplishments during 2023 include enhancing supervisory convergence through peer reviews on the supervision of central counterparties (CCPs) and central securities depositories (CSDs), identifying areas for improvement and issuing recommendations to ensure consistent supervision across the EU, and monitoring retail investment markets and reporting on the costs and performance of retail investment products, highlighting cost reductions and variations across products and member states, and recommending that investors carefully evaluate costs and diversify investments. [NEW]
- **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).

- **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.

New Industry-Led Developments

- **ISDA Responds to FSB Consultation on Liquidity Preparedness for Margin and Collateral Calls.** On June 18, ISDA submitted a response to the Financial Stability Board's (FSB) [consultation on liquidity preparedness for margin and collateral calls](#). The response notes that the recommendations are generally sensible and seek to incorporate a proportionate and risk-based approach. It also highlights a number of considerations relevant to the non-bank financial intermediation (NBFII) sector's liquidity preparedness for margin and collateral calls. [NEW]
- **ISDA Responds to FCA Consultation on Sustainability Disclosure Requirements.** On June 14, ISDA [responded](#) to the UK Financial Conduct Authority's (FCA) consultation

on sustainability disclosure requirements for portfolio management. ISDA stated that it supports the FCA taking a proportionate approach to the use of derivatives in sustainable investing. ISDA believes that it is important that recommendations on the treatment of derivatives, expected to be proposed by the European Union's Platform on Sustainable Finance (PSF) by the end of 2024, are implemented consistently by the relevant authorities, including those in the UK. In the response, ISDA highlights several issues related to derivatives and makes recommendations. [NEW]

- **ISDA Responds to FCA and BoE on UK EMIR Refit.** On June 12, ISDA submitted a [response](#) to the joint Bank of England and UK Financial Conduct Authority (FCA) consultation on part two of the UK European Market Infrastructure Regulation (UK EMIR) Refit reporting Q&A and proposed updates to validation rules. In the response, ISDA highlights several topics, including the reporting of equity resets, commodity basis swaps and excess collateral under UK EMIR. [NEW]
- **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.
- **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.
- **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.

Practice Group Members



Jeffrey L. Steiner
Washington, D.C.
202.887.3632
jsteiner@gibsondunn.com



Michael D. Bopp
Washington, D.C.
202.955.8256
mbopp@gibsondunn.com



Michelle M. Kirschner
London
+44 (0)20 7071.4212
mkirschner@gibsondunn.com



Darius Mehraban
New York
212.351.2428
dmehraban@gibsondunn.com



Jason Cabral
New York
212.351.6267
jcabral@gibsondunn.com



Adam Lapidus
New York
212.351.3869
alapidus@gibsondunn.com



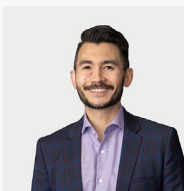
Stephanie L. Brooker
Washington, D.C.
202.887.3502
sbrooker@gibsondunn.com



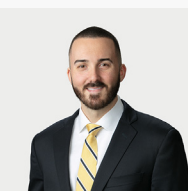
William R. Hallatt
Hong Kong
+852.2214.3836
whallatt@gibsondunn.com



David P. Burns
Washington, D.C.
202.887.3786
dburns@gibsondunn.com



Marc Aaron Takagaki
New York
212.351.4028
mtakagaki@gibsondunn.com



Hayden K. McGovern
Dallas
214.698.3142
hmcgovern@gibsondunn.com



Karin Thrasher
Washington, D.C.
202.887.3712
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