

## This Week in Derivatives

June 21, 2024

**From the Derivatives Practice Group:** The CFTC had an active week with various approvals and no-action relief.

### New Developments

- **CFTC Staff Issues a No-Action Letter Regarding Certain Reporting Requirements for Swaps Transitioning from CDOR to CORRA.** On June 27, the CFTC Division of Market Oversight (“DMO”) and Division of Data (“DOD”) issued a [staff no-action letter](#) regarding certain Part 43 and Part 45 swap reporting obligations for swaps transitioning under the ISDA LIBOR fallback provisions from referencing the Canadian Dollar Offered Rate (“CDOR”), to referencing the risk-free Canadian Overnight Repo Rate Average (“CORRA”) following the cessation of CDOR after June 28, 2024. The letter states DMO and DOD will not recommend the CFTC take enforcement action against an entity for failure to timely report under Part 45 the change in a swap’s floating rate. This letter covers those floating rate changes that are made under the ISDA LIBOR fallback provisions from CDOR to CORRA, but only in the event the entity uses its best efforts to report the change by the applicable deadline in Part 45 and in no case reports the required information later than five business days from, but excluding, July 2, 2024. The letter also states DMO and DOD will not recommend the CFTC take enforcement action against an entity for failure to report under Part 43 the change in the floating rate for a swap modified after execution to incorporate the ISDA LIBOR fallback provisions to transition from referencing CDOR to referencing CORRA. [NEW]
- **CFTC Extends Public Comment Period for Proposed Amendments to Event Contracts Rules.** On June 27, the CFTC announced it is extending the deadline for public comment on a proposal to amend its event contract rules. The extended comment

period will close on August 8, 2024. The CFTC is providing an extension to allow interested persons additional time to analyze the proposal and prepare their comments. The proposal would amend CFTC Regulation 40.11 to further specify types of event contracts that fall within the scope of Commodity Exchange Act (“CEA”) Section 5c(c)(5)(C) and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. [NEW]

- **CFTC Grants ForecastEx, LLC DCO Registration and DCM Designation.** On June 25, the CFTC announced that it has issued ForecastEx, LLC an Order of Registration as a derivatives clearing organization (“DCO”) and an Order of Designation as a designated contract market (“DCM”) under the CEA. DCO registration was granted under Section 5b of the CEA. DCM designation was granted under Section 5a of the CEA. ForecastEx is a limited liability company registered in Delaware and headquartered in Chicago, Illinois. [NEW]
- **CFTC Approves Final Capital Comparability Determinations for Certain Non-U.S. Nonbank Swap Dealers.** On June 25, the CFTC announced it has approved four comparability determinations and related comparability orders granting conditional substituted compliance in connection with the CFTC’s capital and financial reporting requirements to certain CFTC-registered nonbank swap dealers organized and domiciled in Japan, Mexico, the European Union (France and Germany), or the United Kingdom. Pursuant to the orders, non-U.S. nonbank swap dealers subject to prudential regulation by the Financial Services Agency of Japan, the National Banking and Securities Commission of Mexico and the Mexican Central Bank, the European Central Bank, or the United Kingdom Prudential Regulation Authority may satisfy certain CEA capital and financial reporting requirements by being subject to, and complying with, comparable capital and financial reporting requirements under the respective foreign jurisdiction’s laws and regulations, subject to specified conditions. [NEW]
- **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 Developments Outside the U.S.

- **EBA and ESMA Publish Guidelines on Suitability of Management Body Members and Shareholders for Entities Under MiCA.** On June 27, EBA and ESMA published [joint guidelines](#) on the suitability of members of the management body, and on the assessment of shareholders and members with qualifying holdings for issuers of asset

reference tokens (“ARTs”) and crypto-asset service providers (“CASPs”), under the Markets in Crypto Assets regulation (“MiCA”). The first set of guidelines covers the presence of suitable management bodies within issuers of ARTs and CASPs. The second set of guidelines concerns the assessment of the suitability of shareholders or members with direct or indirect qualifying holdings in a supervised entity. [NEW]

- **ESAs Propose Improvements to the Sustainable Finance Disclosure Regulation.** On June 18, the EBA, the European Insurance and Occupational Pensions Authority (“EIOPA”), and ESMA (the three European Supervisory Authorities, i.e., “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.
- **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 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]

## New Industry-Led Developments

- **ISDA Publishes Framework to Prepare for Close Out of Derivatives Contracts.** On June 27, ISDA published the [ISDA Close-out Framework](#) that market participants can use to help prepare for potential terminations of collateralized derivatives contracts. ISDA stated that the launch of the ISDA Close-out Framework is in response to the March 2023 failure of Signature Bank and SVB in the US, which, according to ISDA, highlighted the complexities of potentially terminating over-the-counter derivatives trading relationships following various post-crisis regulatory reforms. Specifically, the reforms require that in-scope entities are now required to post margin for non-cleared derivatives transactions, while various jurisdictions have introduced mandatory stays on termination rights and remedies as part of bank resolution regimes. ISDA stated that the ISDA Close-out Framework is intended to be used as a preparatory resource to help firms coordinate internal business functions and stakeholders and internal and external legal, operational, risk management, infrastructure and other relevant service providers to ensure they are adequately prepared for any potential future stress events. [NEW]
- **ISDA Responds to CCIL on Proposal for USD/INR FX Options.** On June 21, ISDA submitted a response to a [consultation paper](#) from the Clearing Corporation of India

Limited (“CCIL”) on a proposal to introduce an electronic trading platform and clearing and settlement services for USD/INR FX options of up to one year maturity initially. The response sets out the features of the trading platform, the risk management framework and a questionnaire on the parameters of the product. ISDA’s response focuses mainly on the risk management framework aspect, including the margin models and default management framework. It asks for more clarity and transparency on the choice of margin models and encourages the implementation of scheduled variation margin calls and stress-based anti-procyclicality measures. [NEW]

- **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.
- **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.
- **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.
- **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.

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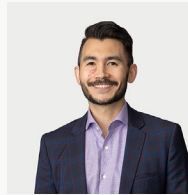
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