

## This Week in Derivatives

July 5, 2024

**From the Derivatives Practice Group:** This week, the CFTC released a report detailing the results of its fourth Supervisory Stress Test of derivatives clearing organization resources. The report concluded the derivatives clearing organization hold sufficient resources to withstand extreme price shocks.

### New Developments

- **Supreme Court Overrules Chevron, Sharply Limiting Judicial Deference To Agencies' Statutory Interpretation.** Last week, the Supreme Court overruled *Chevron v. Natural Resources Defense Council*, a landmark decision that had required courts to defer to agencies', including the CFTC's, reasonable interpretations of ambiguous statutory terms. For a more detailed analysis of the ruling please refer to Gibson Dunn's client alert, available [here](#). [NEW]
- **CFTC Announces Supervisory Stress Test Results.** On July 1, the CFTC issued [Supervisory Stress Test of Derivatives Clearing Organizations: Reverse Stress Test Analysis and Results](#), a report detailing the results of its fourth Supervisory Stress Test ("SST") of derivatives clearing organization ("DCO") resources. Among other findings, the 2024 report concluded the DCOs studied hold sufficient financial resources to withstand many extreme and often implausible price shocks. The purpose of the analysis was twofold: (1) to identify hypothetical combinations of extreme market shocks, concurrent with varying numbers of clearing member ("CM") defaults, that would exhaust prefunded resources (DCO committed capital, and default fund), and unfunded resources available to the DCOs (this represents the reverse stress test component), and (2) to analyze the impacts of DCO use of mutualized resources on non-defaulted CMs. [NEW]

- **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.
- **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.
- **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 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.
- **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 Developments Outside the U.S.

- **ESMA Puts Forward Measures to Support Corporate Sustainability Reporting.** On July 5, ESMA published a [Final Report on the Guidelines on Enforcement of Sustainability Information](#) (“GLESI”) and a [Public Statement on the first application of the European Sustainability Reporting Standards](#) (“ESRS”). ESMA reports that these documents will support the consistent application and supervision of sustainability reporting requirements. [NEW]
- **New MiCA Rules Increase Transparency for Retail Investors.** On July 4, ESMA published the second [Final Report under the Markets in Crypto-Assets Regulation \(MiCA\)](#) covering eight draft technical standards that aim to provide more transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements, and data standards to facilitate supervision by National Competent Authorities (“NCAs”). The report covers public disclosures, as well as descriptions on how issuers should disclose price-sensitive information to the public to prevent market abuses, such as insider dealing. [NEW]
- **ESMA Reappoints Three Members to its Management Board.** On July 4, ESMA announced that it has reappointed three current members to its [Management Board](#). The appointments took place at the Board of Supervisors meeting on July 3. The Management Board, chaired by Verena Ross, Chair of ESMA, is responsible for ensuring that the Authority carries out its mission and performs the tasks assigned to it under its founding Regulation. [NEW]
- **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 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.
- **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.

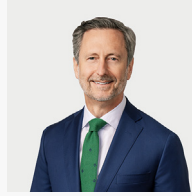
## New Industry-Led Developments

- **ISDA Proceeds with Development of an Industry Notices Hub.** On July 1, ISDA announced it will proceed with the development of an industry-wide notices hub, following strong support from buy- and sell-side institutions globally. The new online platform will allow instantaneous delivery and receipt of critical termination-related notices and help to ensure address details for physical delivery are up to date, reducing the risk of uncertainty and potential losses for senders and recipients of these notices. [NEW]
- **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 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.
- **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.
- **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.

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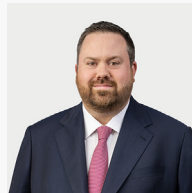
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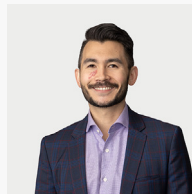
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