

## This Week in Derivatives

August 16, 2024

**From the Derivatives Practice Group:** This week, ESMA signed a Memorandum of Understanding with the British Columbia Securities Commission and updated its list of recognized third-country central counterparties to include those which are established in Canada and authorized or recognized by the British Columbia Securities Commission.

## New Developments

- **CFTC Approves a Joint Rule Proposal to Establish Technical Data Reporting Standards.** On August 8, the CFTC voted to jointly propose and request public comment on the establishment of technical data reporting standards with other financial regulatory agencies. The proposal would establish uniform data standards for the collections of information reported to the CFTC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Housing Finance Agency, Securities and Exchange Commission, and the Department of the Treasury. The proposal would also establish uniform data standards for data collected from these financial regulatory agencies on behalf of the Financial Stability Oversight Council. According to the CFTC, the proposed standards would promote interoperability of financial regulatory data across the financial regulatory agencies through the adoption of common identifiers for legal entities, financial instruments, and other data. In addition to proposing the use of common identifiers, the proposal would also further standardize the format and transmission of data to financial regulatory agencies. The CFTC explained that the proposed rule is part of the implementation of the Financial Data Transparency Act of 2022 (“FDTA”); although the CFTC is not specifically referenced in the FDTA, the Secretary of the Treasury designated the CFTC as a covered agency on May 3, 2024. Comments on the proposal are due 60 days following publication in the Federal Register.

- CFTC Exempts Additional Singapore Recognized Market Operators from SEF Registration Requirements.** On August 2, the CFTC announced it unanimously approved an amended order that exempts two recognized market operators (“RMO”s) authorized within Singapore from CFTC swap execution facility (“SEF”) registration requirements. The exempted RMOs are FMX Securities (Singapore) Pte. Limited and LMAX Pte. Ltd. Section 5h(g) of the Commodity Exchange Act provides that the CFTC may grant such an exemption if it finds that a foreign SEF is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the facility’s home country. Likewise, the CFTC may revoke exempt status when a facility is no longer authorized or in good standing in its home country.
- CFTC Approves Final Rule Allowing U.S. Introducing Brokers Direct Access to Registered Foreign Boards of Trade for the Submission of Customer Orders.** On July 29, the CFTC announced it approved final rules amending Part 48 of its regulations. The final rules permit a foreign board of trade (“FBOT”), registered with the CFTC, to provide direct access to its electronic trading and order matching system to an introducing broker, located in the United States and registered with the CFTC, for the submission of customer orders to the FBOT’s trading system for execution. The final rules also establish a procedure for an FBOT to request revocation of its registration and remove certain outdated references to “existing no-action relief” in Part 48.

## New Developments Outside the U.S.

- ESAs’ Joint Board of Appeal Allows the Appeal Lodged by NOVIS and Remits the Case to EIOPA.** On August 13, the Joint Board of Appeal of the European Supervisory Authorities (“ESAs”) unanimously [decided](#) that the appeal brought by NOVIS against the European Insurance and Occupational Pensions Authority (“EIOPA”) is admissible. The appeal was brought in relation to the EIOPA decision not to grant access to documents, which were requested by NOVIS. In its decision, the board of appeal acknowledged that requests for access to documents laid out in Regulation No 1049/2001 can be dismissed by way of exceptions to protect certain public and private interests. [NEW]
- ESMA Recognizes CDS Clearing and Depository Services as Tier 1 CCP Following MoU with the British Columbia Securities Commission.** On August 13, ESMA signed a Memorandum of Understanding (“MoU”) with the British Columbia Securities Commission and updated its list of recognized third-country central counterparties (“CCPs”) under the European Markets Infrastructure Regulation (“EMIR”). The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs that are established in Canada and authorized or recognized by the British Columbia Securities Commission, and which have applied for EU recognition under EMIR. [NEW]
- ESAs’ Joint Board of Appeal Dismisses Appeal by Euroins Insurance Group AD Against the European Insurance and Occupational Pensions Authority.** On August 7, the Joint Board of Appeal of the ESAs unanimously [decided](#) that the appeal brought by

Euroins Insurance Group AD (“Euroins”) against the EIOPA is inadmissible. In its decision, the board of appeal found that EIOPA’s power to initiate an investigation is of an entirely discretionary nature. Furthermore, the board of appeal also asserted that the EIOPA Chairperson’s decision to initiate an investigation is not subject to the board of appeal’s review. Finally, the decision clarified that the board of appeal does not have the power to order EIOPA to re-assess an appellant’s request to open an investigation.

- **ESMA Publishes Data for Quarterly Bond Liquidity Assessment and the Systematic Internalizer Calculations.** On August 1, ESMA published the new [quarterly liquidity assessment of bonds](#) and the [data](#) for the quarterly systematic internalizer calculations for equity, equity-like instruments, bonds and for other non-equity instruments under MiFID II and MiFIR.
- **ESMA Delivers Opinion on Global Crypto Firms Using their non-EU Execution Venues.** On July 31, ESMA issued an [Opinion](#) to address the risks presented by global crypto firms seeking authorization under the Markets in Crypto Assets (“MiCA”) Regulation for part of their activities (crypto brokerage) while keeping a substantial part of their group activities (intra-group execution venues) outside the EU regulatory scope. The opinion calls for a case-by-case assessment, outlining the specific requirements that ESMA believes should be met regarding best execution, conflicts of interest, the obligation to act honestly, fairly, and professionally in the best interests of clients and the obligation relating to the custody and administration of crypto-assets on behalf of clients.
- **The FCA Publishes Consultation Paper on the Derivatives Trading Obligation and Post-Trade Risk Reduction Services.** On July 26, the Financial Conduct Authority (“FCA”) published a [consultation paper](#) on aspects of the derivatives trading obligation (“DTO”) as part of HM Treasury’s Wholesale Markets Review. The FCA is consulting on proposals to (1) include certain overnight index swaps based on the US Secured Overnight Financing Rate within the classes of derivatives subject to the DTO; (2) expand the list of post-trade risk reduction services exempted from the DTO and from other obligations; and (3) the FCA’s intention to use its power to suspend or modify the DTO once its transitional powers expire. The consultation closes on September 30, 2024. The FCA will publish a policy statement with final rules in Q4 2024.
- **ESAs Publish Joint Final Report on the Draft Technical Standards on Subcontracting under DORA.** On July 26, the European Supervisory Authorities published their joint [Final Report](#) on the draft Regulatory Technical Standards (“RTS”) specifying how to determine and assess the conditions for subcontracting information and communication technology (“ICT”) services that support critical or important functions under the Digital Operational Resilience Act (“DORA”). These RTS aim to enhance the digital operational resilience of the EU financial sector by strengthening the financial entities’ ICT risk management over the use of subcontracting.

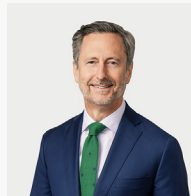
## New Industry-Led Developments

- **ISDA Letter on FICC’s Proposed Rulebook Changes.** On August 1, ISDA submitted a [letter](#) to the SEC in response to the Fixed Income Clearing Corporation’s (“FICC”) proposed changes to its Government Securities Division Rulebook in accordance with the Securities Exchange Act of 1934. The comment letter addresses FICC’s proposal to modify its trade submission rules in relation to mandatory clearing of certain US Treasury transactions. The proposed rule changes: (i) adopt a requirement that each netting member must submit all eligible secondary market transactions to which it is a counterparty to FICC for clearance and settlement; (ii) adopt new initial and ongoing membership requirements and other measures to facilitate FICC’s ability to monitor a netting member’s compliance with the trade submission requirement; (iii) adopt disciplinary measures to address a netting member’s failure to comply with the trade submission requirement; and (iv) modify the FICC rules to facilitate the trade submission requirement.
- **Joint Association Letter on CFTC Block Thresholds and Cap Sizes.** On July 29, ISDA, the Securities Industry and Financial Markets Association, the Securities Industry and Financial Markets Association Asset Management Group, the American Council of Life Insurers and the Investment Company Institute sent a [letter](#) to the CFTC requesting a public forum be provided to continue to evaluate the methodology for calculating the block thresholds and cap sizes under Part 43 of the CFTC’s regulations.

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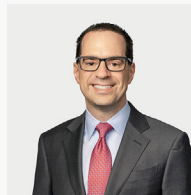
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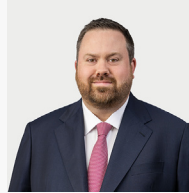
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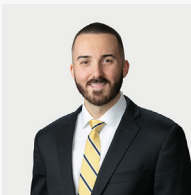
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