

## This Week in Derivatives

August 23, 2024

**From the Derivatives Practice Group:** This week, ESMA published the Guidelines on funds' names using sustainability-related terms in all official EU languages. National competent authorities must inform ESMA by October 21 of their compliance with the Guidelines.

## New Developments

- **CFTC Staff Issues No-Action Letter for EU-Based and UK-Based DCOs Regarding Certain Requirements Applicable to DCOs.** On August 23, the CFTC's Division of Clearing and Risk (DCR) issued a no-action letter to address the applicability of certain CFTC regulations to registered derivatives clearing organizations ("DCOs") based in either the EU or the UK. This letter replaces CFTC Letter [16-26](#), which applied only to EU-based DCOs and was issued in 2016 as part of the CFTC's response to the EU equivalence determination with regard to the CFTC's regulatory framework for DCOs. DCR has updated CFTC Letter 16-26 to explicitly apply it to UK-based DCOs post-Brexit. [NEW]
- **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.

## New Developments Outside the U.S.

- **ESMA Publishes Translations of its Guidelines on Funds’ Names.** On August 21, ESMA published the [translations](#) in all official EU languages of its [Guidelines on funds’ names using ESG or sustainability-related terms](#). National competent authorities must notify ESMA by October 21 2024 whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines. [NEW]
- **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.
- **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.

- **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.

## 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.

[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)



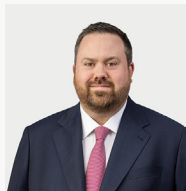
**Jason Cabral**  
New York  
212.351.6267  
[jcabral@gibsondunn.com](mailto:jcabral@gibsondunn.com)



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



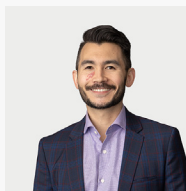
**Stephanie L. Brooker**  
Washington, D.C.  
202.887.3502  
[sbrooker@gibsondunn.com](mailto:sbrooker@gibsondunn.com)



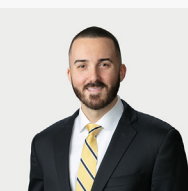
**William R. Hallatt**  
Hong Kong  
+852.2214.3836  
[whallatt@gibsondunn.com](mailto:whallatt@gibsondunn.com)



**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)

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