

This Week in Derivatives

August 30, 2024

From the Derivatives Practice Group: The CFTC announced that it has issued Kalshi Klear LLC (“Kalshi”) an Order of Registration as a derivatives clearing organization (“DCO”) under the Commodity Exchange Act.

New Developments

- **CFTC Grants Kalshi Klear LLC DCO Registration.** On August 29, the CFTC announced it has issued Kalshi Klear LLC (“Kalshi”) an Order of Registration as a derivatives clearing organization (“DCO”) under the Commodity Exchange Act. Kalshi’s affiliate, KalshiEx LLC, is registered with the CFTC as a designated contract market. [NEW]
- **CFTC Staff Extends Brexit-Related No-Action Positions.** On August 29, the CFTC’s Division of Market Oversight (“DMO”) and Market Participants Division (“MPD”) announced they are [extending](#) temporary no-action positions in connection with the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”), known as Brexit. In addition, DMO is amending its no-action position to include two additional multilateral trading facilities (“MTFs”) authorized in the UK. The no-action position was also amended to remove an MTF and an organized trading facility because the facilities are no longer authorized in the UK. [NEW]
- **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 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.

- **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.

New Developments Outside the U.S.

- **Markets Increasingly Sensitive After Strong Performance in Early 2024.** On August 29, ESMA published its [second risk monitoring report of 2024](#), setting out the key risk drivers currently facing EU financial markets. The report states that external events continue to have a strong impact on the evolution of financial markets, and ESMA also sees high or very high overall risks in the markets within its remit. [NEW]
- **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.
- **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.

New Industry-Led Developments

- **ISDA and IIF Respond to BCBS Consultation on CCR Management.** On August 28, ISDA and the Institute of International Finance (“IIF”) submitted a joint response to the Basel Committee on Banking Supervision’s (“BCBS”) consultation on guidelines for counterparty credit risk (“CCR”) management. The new guidelines represent an update to the *Sound Practices for Banks’ Interactions with Highly Leveraged Institutions*, published in January 1999, to incorporate recent lessons and best practices. In the response, the associations stress the guidelines should be risk-based and proportional, considering a diverse universe of counterparties and financial markets across the world. The associations stated that they believe a common understanding and coordination between central banks, supervisors and banks can enhance the effectiveness of CCR practices.
[NEW]

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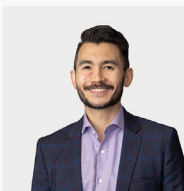
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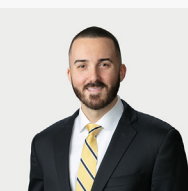
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