

## This Week in Derivatives

September 13, 2024

**From the Derivatives Practice Group:** This week, there were developments in the election event contracts case in the DC District Court and the DC Circuit Court and the CFTC amended exemptions from certain compliance requirements for commodity pool operators, commodity trading advisors, and commodity pools, which had not been amended since 1992.

### New Developments

- **DC Circuit Court Orders Temporary Stay Suspending Trading on Election Contracts.** On September 12, the United States Court of Appeals for the District of Columbia Circuit (the “DC Circuit Court”) ordered a [temporary stay](#) suspending trading on election contracts offered by KalshiEx LLC (“KalshiEx”) “to give the court sufficient opportunity to consider the emergency motion for stay pending appeal.” Prior to the temporary stay from the DC Circuit Court, the United States District Court for the District of Columbia (the “DC District Court”) [overturned an order](#) blocking KalshiEx from allowing election contract trading on its platform and denied the CFTC’s request for a stay pending appeal. KalshiEx filed a [response](#) to the CFTC’s emergency motion on September 12 and the CFTC’s reply is due to the DC Circuit Court by 6:00 pm on September 14. [NEW]
- **CFTC Approves Final Rule Regarding Exemptions from Certain Compliance Requirements for Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools.** On September 12, the CFTC published a final rule that amends CFTC [Regulation 4.7](#), a provision that provides exemptions from certain compliance requirements for commodity pool operators (“CPOs”) regarding commodity pool offerings to qualified eligible persons (“QEPs”) and for commodity trading advisors (“CTAs”) regarding trading programs advising QEPs. The final rule amends various provisions of the regulation that have not been updated since the rule’s original adoption in 1992.

Specifically, the final rule: (1) increases the monetary thresholds outlined in the “Portfolio Requirement” definition that certain persons may use to qualify as Qualified Eligible Persons; (2) codifies exemptive letters allowing CPOs of Funds of Funds operated under Regulation 4.7 to choose to distribute monthly account statements within 45 days of the month-end; (3) includes technical amendments designed to improve its efficiency and usefulness for intermediaries and their prospective and actual QEP pool participants and advisory clients, as well as the general public; and, (4) updates citations within 17 CFR Part 4, and throughout the CFTC’s rulebook, to reflect the new structure of Regulation 4.7. [NEW]

- **CFTC Staff Issues No-Action Letter Related to Reporting and Recordkeeping Requirements for Fully Collateralized Binary Options.** On September 4, 2024, the CFTC announced the Division of Market Oversight (“DMO”) and the Division of Clearing and Risk have taken a no-action position regarding swap data reporting and recordkeeping regulations in response to a request from LedgerX LLC d/b/a MIA X Derivatives Exchange LLC (“MIA Xdx”), a designated contract market and derivatives clearing organization. The Divisions will not recommend the CFTC initiate an enforcement action against MIA Xdx or its participants for certain swap-related recordkeeping requirements and for failure to report data associated with fully collateralized binary option transactions executed on or subject to the rules of MIA Xdx to swap data repositories. The no-action letter is comparable to no-action letters issued for other similarly situated designated contract markets and derivatives clearing organizations.
- **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.
- **CFTC Staff Extends Brexit-Related No-Action Positions.** On August 29, the CFTC’s 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.
- **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.

## New Developments Outside the U.S.

- **ESAs Warn of Risks From Economic and Geopolitical Events.** On September 10, the three European Supervisory Authorities (“ESAs”) issued their [Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system](#). In the report, the ESAs underlined ongoing high economic and geopolitical uncertainties, warned of the financial stability risks that they believe stem from these uncertainties and called for continued vigilance from all financial market participants. For the first time, the report also includes a cross-sectoral deep dive into credit risks in the financial sector. [NEW]
- **EC Publishes Draghi Report on the Future of European Competitiveness.** On September 9, the European Commission (“EC”) published a report, Future of European Competitiveness, authored by former Italian prime minister and head of the European Central Bank Mario Draghi. The report, which was commissioned by EC president Ursula von der Leyen, outlines the EU’s new industrial strategy. [Part A](#) of the report outlines the overarching strategy, while [Part B](#) discusses sectoral and horizontal policies and related recommendations in more detail. The report covers topics that include energy derivatives, sustainable finance, EU supervision, Basel framework, and collateral. The EC president indicated that she will aim to form a cabinet, with related mission letters that she expects to cover certain aspects of the report as part of future EU policies. [NEW]
- **MAS Updates FAQs on OTC Derivatives Reporting Regulations.** On September 4, the Monetary Authority of Singapore (“MAS”) further updated the [Frequently Asked Questions \(FAQs\) on the Securities and Futures \(Reporting of Derivatives Contracts\) Regulations 2013](#). MAS indicated that the FAQs are to aid implementation of the reporting obligations and elaborate on its intentions for some of the requirements. The new Singapore reporting rules will take effect on October 21, 2024. [NEW]
- **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 stated 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 Industry-Led Developments

- **ISDA Responds to Australia’s CFR on Bonds and Repo Clearing.** On September 4, ISDA [submitted a response](#) to a [consultation](#) from Australia’s Council of Financial Regulators (“CFR”) on the central clearing of bonds and repos in Australia. In response to changes in the size and structure of the Australian bond and repo markets, the CFR sought feedback on the costs and benefits of introducing a central counterparty (“CCP”) in the Australian bond and repo markets. It also sought views on the circumstances under which a bond and repo CCP could be operated safely and efficiently by an overseas operator and what additional protections may be required in Australia. ISDA said that it

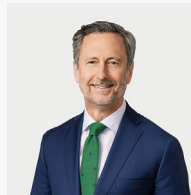
welcomes the fact that the CFR is not considering the introduction of a clearing mandate. In its response, ISDA set out its opinion on the costs and benefits of voluntary central clearing for the Australian bond and repo markets. ISDA also commented on participation and other factors to consider for a bond and repo clearing offering to be viable. On location, the response states it is not uncommon for an overseas operator to provide clearing services related to non-domestic markets and ISDA indicated that it does not see any increased risk for an overseas operator to provide clearing services for the Australian bond and repo markets, as long as the overseas CCP is appropriately supervised and risk-managed. [NEW]

- **ISDA Suggested Operational Practice “P43 Reporting of Post-Trade Events: Trades with no prior P43 Reporting.”** On September 5, ISDA republished a [Suggested Operational Practice](#) (“SOP”) from July 2024 on approaches (e.g., for partial or full unwinds, partial or full novation, or partial or full exercises) under the CFTC amendments for allocated trades. The SOP recommends reporting the first Part 43 reportable post-trade event on an allocated trade with Action type “NEWT” and Event type “TRAD.”
- **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.

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