

## This Week in Derivatives

September 20, 2024

**From the Derivatives Practice Group:** This week, the CFTC approved a final rule to amend Part 40 of the CFTC's regulations. The CFTC intends the amendments to clarify, simplify, and enhance the utility of the Part 40 regulations.

### New Developments

- **CFTC Approves Final Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts.** On September 20, the CFTC approved final guidance regarding the listing for trading of voluntary carbon credit derivative contracts. The guidance applies to designated contract markets ("DCMs"), which are CFTC-regulated derivatives exchanges, and outlines factors for DCMs to consider when addressing certain Core Principle requirements in the Commodity Exchange Act ("CEA") and CFTC regulations that are relevant to the listing for trading of voluntary carbon credit derivative contracts. The guidance also outlines factors for consideration when addressing certain requirements under the CFTC's Part 40 Regulations that relate to the submission of new derivative contracts, and contract amendments to the CFTC. [NEW]
- **CFTC Approves Part 40 Final Rule to Simplify and Enhance Rule and Product Submission Processes.** On September 12, the CFTC approved a final rule to amend Part 40 of the CFTC's regulations. The regulations in Part 40 implement Section 5c(c) of the CEA and govern how registered entities submit self-certifications, and requests for approval, of their rules, rule amendments, and new products for trading and clearing, as well as the CFTC's review and processing of such submissions. The amendments are intended to clarify, simplify and enhance the utility of the Part 40 regulations for registered entities, market participants and the CFTC. The final rule is effective 30 days after publication in the Federal Register. [NEW]

- 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.
- 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.
- 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 MIAX Derivatives Exchange LLC (“MIAXdx”), a designated contract market and derivatives clearing organization. The Divisions will not recommend the CFTC initiate an enforcement action against MIAXdx 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 MIAXdx 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.

## **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.
- **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.
- **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 Industry-Led Developments

- **ISDA Publishes Results of DC Review Consultation.** On September 19, ISDA published the results of a [market-wide consultation](#) on proposed changes to the structure and governance of the Credit Derivatives Determinations Committees (“DCs”). ISDA reported that the consultation indicated broad market support to implement many of the recommendations, including establishing a separate governance body, implementing certain transparency proposals relating to the publication of DC decisions and appointing up to three independent members of the DCs. Some of the proposals received a significant minority of objections. [NEW]
- **ISDA Submits Letter to US Treasury Department on Listed Transactions.** On September 11, ISDA [submitted a letter](#) in response to the US Department of the Treasury’s proposal to identify certain basket contract transactions as listed transactions. In the letter, ISDA argued that ISDA believes the proposed regulations would apply to many non-abusive transactions, would inappropriately take the place of substantive guidance and would generate compliance burdens and uncertainty for taxpayers. [NEW]
- **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

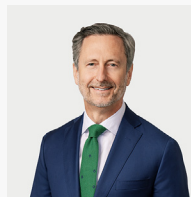
Regulators (“CFR”) on the central clearing of bonds and repos in Australia. In response to changes in the size and structure of the Australian bond and repo markets, the CFR sought feedback on the costs and benefits of introducing a central counterparty (“CCP”) in the Australian bond and repo markets. 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.

- **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.”

### Practice Group Members



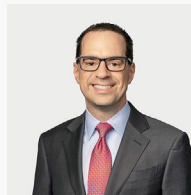
**Jeffrey L. Steiner**  
Washington, D.C.  
202.887.3632  
[jsteiner@gibsondunn.com](mailto:jsteiner@gibsondunn.com)



**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)

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm, please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists, please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at [gibsondunn.com](http://gibsondunn.com)