

This Week in Derivatives

September 6, 2024

From the Derivatives Practice Group: This week, the CFTC staff issued a no-action letter regarding swap data reporting and recordkeeping regulations. The no-action letter is comparable to previous letters issued for similarly situated designated contract markets and derivatives clearing organizations.

New Developments

- **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.
- **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.

- **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.
- **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.

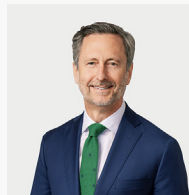
New Industry-Led Developments

- **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.” [NEW]
- **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.

Practice Group Members



Jeffrey L. Steiner
Washington, D.C.
202.887.3632
jsteiner@gibsondunn.com



Michael D. Bopp
Washington, D.C.
202.955.8256
mbopp@gibsondunn.com



Michelle M. Kirschner
London
+44 (0)20 7071.4212
mkirschner@gibsondunn.com



Darius Mehraban
New York
212.351.2428
dmehraban@gibsondunn.com



Jason Cabral
New York
212.351.6267
jcabral@gibsondunn.com



Adam Lapidus
New York
212.351.3869
alapidus@gibsondunn.com



Stephanie L. Brooker
Washington, D.C.
202.887.3502
sbrooker@gibsondunn.com



William R. Hallatt
Hong Kong
+852.2214.3836
whallatt@gibsondunn.com



David P. Burns
Washington, D.C.
202.887.3786
dburns@gibsondunn.com



Marc Aaron Takagaki
New York
212.351.4028
mtakagaki@gibsondunn.com



Hayden K. McGovern
Dallas
214.698.3142
hmcgovern@gibsondunn.com



Karin Thrasher
Washington, D.C.
202.887.3712
kthrasher@gibsondunn.com

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