

This Week in Derivatives

October 25, 2024

From the Derivatives Practice Group: The SEC announced its 2025 examination priorities, which include continued focus on security-based swap dealers and the potential for examinations of security-based swap execution facilities in 2025. The CFTC will hold an open meeting on Tuesday, October 29.

New Developments

- **CFTC to Hold a Commission Open Meeting October 29.** On October 22, the CFTC announced that it will hold an open meeting Tuesday, Oct. 29 at 10:00 a.m. – 4:30 p.m. (EDT) at the CFTC’s Washington, D.C. headquarters. Members of the public can attend the meeting in person, listen by phone, or view a live stream at [CFTC.gov](https://www.cftc.gov). The CFTC will consider the following: (1) Final Rule – Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; (2) Final Rule – Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations, (3) Final Rule – Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning; (4) Commission Fall 2024 Unified Agenda Submission; and (5) CFTC Executive and Supervisor Compensation Structures. [NEW]
- **SEC Division of Examinations Announces 2025 Priorities.** On October 21, the SEC’s Division of Examinations released its [2025 examination priorities](#). The Division of Examinations indicated that it will continue to focus on whether security-based swap dealers (“SBSDs”) have implemented policies and procedures related to compliance with security-based swap rules generally, including whether they are meeting their obligations under Regulation SBSR to accurately report security-based swap transactions to security-based swap data repositories and, where applicable, whether they are complying with

relevant conditions in SEC orders governing substituted compliance. For other SBSs, the Division of Examinations said that it may focus on SBSs' practices with respect to applicable capital, margin, and segregation requirements and risk management. The Division of Examinations also indicated that it expects to assess whether SBSs have taken corrective action to address issues identified in prior examinations. Additionally, the Division of Examinations advised that it may begin conducting examinations of registered security-based swap execution facilities in late fiscal year 2025. [NEW]

- **CFTC Staff Issues Supplemental Letter Regarding No-Action Position Related to Reporting and Recordkeeping Requirements for Fully Collateralized Binary Options.** On October 4, the CFTC's Division of Market Oversight and the Division of Clearing and Risk announced they have taken a [no-action position](#) regarding swap data reporting and recordkeeping regulations in response to a request from KalshiEX LLC, a designated contract market, and Kalshi Klear LLC, a derivatives clearing organization, to modify CFTC Letter No. 21-11 to cover transactions cleared through Kalshi Klear LLC. According to the announcement, the divisions will not recommend the CFTC initiate an enforcement action against KalshiEX LLC, Kalshi Klear LLC, or their participants for failure to comply with certain swap-related recordkeeping requirements and for failure to report to swap data repositories data associated with binary option transactions executed on or subject to the rules of KalshiEX LLC and cleared through Kalshi Klear LLC, subject to the terms and conditions in the no-action letter.

New Developments Outside the U.S.

- **ESMA Responds to the Commission Rejection of Certain MiCA Technical Standards.** On October 16, ESMA [responded](#) to the European Commission proposal to amend the Markets in crypto-assets Regulation ("MiCA") Regulatory Technical Standards ("RTS"). In their response, ESMA emphasized the importance of the policy objectives behind the initial proposal.
- **ESAs Respond to the European Commission's Rejection of the Technical Standards on Registers of Information under the Digital Operational Resilience Act and Call for Swift Adoption.** On October 15, the European Supervisory Authorities ("ESAs") issued an [Opinion](#) on the European Commission's [rejection](#) of the draft Implementing Technical Standards ("ITS") on the registers of information under the Digital Operational Resilience Act. The ESAs raise concerns over the impacts and practicalities of the proposed EC changes to the draft ITS on the registers of information in relation to financial entities' contractual arrangements with ICT third-party service providers.
- **ESMA, ECB and EC Announce Next Steps for the Transition to T+1 Governance.** On October 15, ESMA, the European Commission and the European Central Bank announced the next steps to support the preparations towards a transition to T+1 in a [Joint Statement](#). ESMA stressed in the Joint Statement that they believe a coordinated approach across Europe is desirable, with efforts to reach consensus on the timing of any move to T+1.

- **ESMA Publishes Its First Annual Report on EU Carbon Markets.** On October 7, ESMA published the [2024 EU Carbon Markets report](#), providing details and insights into the functioning of the EU Emissions Trading System market. The report indicates that prices in the EU ETS have declined since the beginning of 2023; emission allowance auctions remain significantly concentrated, with 10 participants buying 90% of auctioned volumes, reflecting a preference by most EU ETS operators to source allowances from financial intermediaries; and the vast majority of emission allowance trading in secondary markets takes place through derivatives, reflecting the annual EU ETS compliance cycle where non-financial sector firms hold long positions (for compliance purposes) while banks and investment firms hold short positions. The report builds on ESMA's [2022 report](#) on the trading of emission allowances, mandated in the context of rising energy prices and a three-fold increase of emission allowances' prices in 2021.

New Industry-Led Developments

- **Central Database of Reporting Entity Contact Details for EU and UK EMIR.** On October 17, ISDA produced a [central database](#) of contact details to assist members resolve reconciliation breaks with counterparties for EU and UK European Market Infrastructure Regulation ("EMIR") reporting. The central database was created by contributing firms' submissions and includes details such as entity names, legal entity identifiers and reporting contact emails.
- **ISDA, GFXD respond to ESMA on Order Execution Policies.** On October 16, ISDA and the Global FX Division of the Global Financial Markets Association responded to a consultation paper from ESMA on "Technical Standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies." In [the response](#), the associations discuss the requirement for pre-selected execution venues, mandatory consumption of consolidated tapes and categorization of financial instruments under the Markets in Financial Instruments Regulation, among other issues.
- **ISDA Submits Paper to ESMA on MIFIR Post-Trade Transparency.** On October 8, ISDA submitted [a paper](#) to ESMA, in which it outlined its views on the scope of OTC derivatives post-trade transparency in the revised MiFIR. The paper outlines ISDA's view on the treatment of certain interest rate derivatives, index credit default swaps and securitized derivatives. ISDA indicated that it is anticipating the publication of ESMA's consultation paper on the revised regulatory technical standards, covering OTC derivatives, later in 2024 or in the first quarter of 2025.

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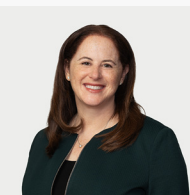
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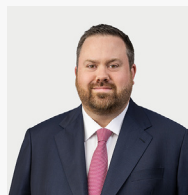
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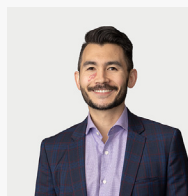
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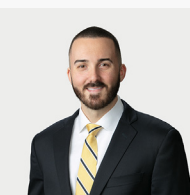
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