# This Week in Derivatives

December 13, 2024

**From the Derivatives Practice Group:** The CFTC will hold an open meeting on December 18 to discuss two Final Rules: the Final Rule on Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, and the Final Rule on Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants.

## New Developments

- **CFTC Staff Issues Advisory Regarding Form 304 Submission Format Beginning January 15, 2025.** On December 12, the CFTC Division of Market Oversight issued an advisory notifying all merchants and dealers of cotton holding or controlling positions for future delivery in cotton (traders) that beginning next year they must submit the regulatory filing identified as “Form 304” through the CFTC’s online filings portal. The advisory notes that all traders who are subject to CFTC Regulation 17 CFR 19.00(a) beginning January 15, 2025, Form 304 must be submitted through the CFTC’s online filings portal, which has been updated for traders’ use. Form 304 should continue to be submitted via email through January 14, 2025. [NEW]

- **CFTC to Hold a Commission Open Meeting December 18.** On December 11, the CFTC announced the Commission will hold an open meeting Wednesday, December 18 at 9:30 a.m. – 12:00 p.m. (ET) at the CFTC’s Washington, D.C. headquarters. The Commission will consider the following: the Final Rule on Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements and the Final Rule on Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants. [NEW]

- **CFTC Staff Issues Advisory Related to the Use of Artificial Intelligence by CFTC-Registered Entities and Registrants.** On December 5, the CFTC's Divisions of Clearing and Risk, Data, Market Oversight, and Market Participants issued a staff advisory on the use of artificial intelligence in CFTC-regulated markets by registered entities and registrants. The advisory is intended to remind CFTC-regulated entities of their obligations under the Commodity Exchange Act and the CFTC's regulations as these entities begin to implement AI. CFTC staff noted that it is closely tracking the development of AI technology and AI's potential benefits and risks and that it values its ongoing dialogue with CFTC-regulated entities and intends to monitor these entities' use of AI as part of the agency's routine oversight activities. According to the CFTC, the advisory is informed, in part, by public comments received in response to the staff's January 25, 2024 Request for Comment on AI.

- **CFTC Releases FY 2024 Enforcement Results.** On December 4, the CFTC announced record monetary relief of over $17.1 billion for fiscal year 2024. With the resolution of digital asset cases that resulted in the agency's largest recovery ever, this record amount included $2.6 billion in civil monetary penalties and $14.5 billion in disgorgement and restitution. In FY 2024, the agency brought 58 new actions including, in the CFTC's words, precedent-setting digital asset commodities cases, its first actions addressing fraud in voluntary carbon credit markets, complex manipulation cases in various markets, and significant compliance cases – including its largest compliance case ever. The CFTC also said that it continued to vigorously litigate pending actions, resulting in significant litigation victories and recoveries.

- **Commissioner Johnson Announces CFTC Market Risk Advisory Committee Meeting on December 10.** On November 26, CFTC Commissioner Kristin N. Johnson, sponsor of the Market Risk Advisory Committee ("MRAC") announced that the MRAC will hold a public meeting on Tuesday, Dec. 10, from 9:30 a.m. to 12:30 p.m. (EDT) at the CFTC's Washington, D.C., headquarters. At the meeting, the MRAC will discuss current topics and developments in the areas of central counterparty risk and governance, market structure, climate-related risk, and innovative and emerging technologies affecting the derivatives and related financial markets.

# New Developments Outside the U.S.

- **ESMA Consults on Proposals to Digitalize Sustainability and Financial Disclosures.** On December 13, ESMA published a Consultation Paper seeking stakeholders' views on how the European Single Electronic Format can be applied to sustainability reporting. The proposals also aim to ease the burden associated with financial reporting. Interested stakeholders are invited to submit their feedback by March 31, 2025. [NEW]

- **ESMA Consults on Open-Ended Loan Originating Alternative Investment Funds.** On December 12, ESMA published a consultation paper on draft regulatory technical standards on open-ended loan originating Alternative Investment Funds ("AIFs") under the revised Alternative Investment Fund Managers Directive ("AIFMD"). AIFMD review has introduced some harmonized rules on loan originating funds. The goal of these rules is to provide a common implementing framework by determining the elements and factors that Alternative Investment Fund Managers need to consider when making the demonstration to their Competent Authorities that the loan originated AIFs they manage can be open-ended. [NEW]

- **ESMA Consults on Technical Advice on Listing Act Implications.** On December 12, ESMA launched a consultation to gather feedback following changes to the Market Abuse Regulation ("MAR") and Market in Financial Instruments Directive II ("MiFID II") introduced by the Listing Act. Regarding MAR, ESMA is inviting feedback on: a non-exhaustive list of the protracted process and the relevant moment of disclosure of the relevant inside information (together with some principles to identify the moment of disclosure for protracted not listed processes); a non-exhaustive list of examples where there is a contrast between the inside information to be delayed and the latest public announcement by the issuer; and a methodology and preliminary results for identifying trading venues with a significant cross-border dimension, for the purposes of establishing a Cross Market Order Book Mechanism. Regarding MiFID II, ESMA's proposals cover: a systematic review of the relevant provisions in Commission Delegated Regulation 2017/565 to ensure that a Multilateral Trading Facility ("MTF") (or a segment of it) to be registered as small and medium-sized enterprises growth market complies with the relevant requirements in the revised MiFID II; and some conditions to meet the registration requirements for a segment of an MTF, as specified in the revised MiFID II. [NEW]

- **ESAs Provide Guidelines to Facilitate Consistency in the Regulatory Classification of Crypto-Assets by Industry and Supervisors.** On December 10, the European Supervisory Authorities (the "ESAs") published joint Guidelines intended to facilitate consistency in the regulatory classification of crypto-assets under Markets in Crypto Asset Regulation. The Guidelines include a standardized test to promote a common approach to classification as well as templates market participants should use when communicating to supervisors the regulatory classification of a crypto-asset. [NEW]

- **IOSCO Publishes Final Report on Regulatory Implications and Good Practices on the Evolution of Market Structures.** On November 29, IOSCO published its Final Report on the Evolution in the Operation, Governance, and Business Models of Exchanges. According to IOSCO, the Final Report addresses significant changes in exchange business models and market structures, highlighting the impact of increased competition, technological advancements, and cross-border activity on exchanges. Additionally, it outlines a set of six good practices for regulators to consider in the supervision of exchanges that cover three key areas: (1) Organization of Exchanges and Exchange Groups (2) Supervision of Exchanges and Trading Venues within Exchange Groups and (3) Supervision of Multinational Exchange Groups.

- **BoE Publishes Report on Its System-Wide Exploratory Scenario Exercise and Stress Test Results for UK CCPs.** On November 29, the Bank of England ("BoE") published a final report on its system-wide exploratory scenario ("SWES") and the results of its 2024 supervisory stress test of UK central counterparties ("CCPs"). As part of the SWES exercise, 50 participating firms, including banks, insurers, pension schemes, hedge funds, asset managers and CCPs, had to assess how they would be impacted by a hypothetical stress scenario, including severe but plausible shocks to a wide range of market prices and indicators over 10 business days, including moves similar to those seen during the UK gilt market crisis in 2022 and the 2020 dash for cash. BoE noted key observations, including (1) the simulated market shocks generated significant liquidity needs for non-bank financial intermediaries, (2) financial participants' collective actions amplify the initial shock, (3) the gilt repo market was central in helping to absorb the shock, but its capacity in times of stress remains limited, (4) the exercise confirms the resilience of UK CCPs to a stress scenario similar to the worst ever historical stress and (5) there were material differences between firms' and CCPs' expectations on projections of initial margin increases, with banks and non-bank financial intermediaries generally overestimating changes in CCP initial margin. The BoE indicated that its supervisory stress test of UK CCPs also confirmed the resilience of UK CCPs to a stress scenario similar to the worst ever historical stress and indicated (1) CCPs were found to experience greater mutualized losses in this exercise compared to previous ones, (2) the ability of clients of defaulting members to port positions has a material impact on the credit stress test results and (3) the exercise also considered the cost of liquidating concentrated positions held by defaulters, with results showing that including concentration costs (assuming no porting) can have a material impact on the depletion of resources.

- **ESMA Announces Further Guidance on Exclusion Criteria for the Selection of Consolidated Tape Providers.** On November 25, ESMA clarified details for some of the documents that future applicants will be expected to provide when participating in the selection process for Consolidated Tapes Providers ("CTPs"). During the first stage of the selection procedure, the exclusion criteria will be used to assess if applicants can be invited to submit their applications in the second stage of the procedure. ESMA will require specific documentation from applicants, including a declaration of honor and valid evidence on exclusion criteria. ESMA's publication includes an indicative overview of the relevant certificates issued in each EU Member State for such evidence.

- **ESMA Responds to the European Commission Consultation on Non-Bank Financial Intermediation.** On November 22, ESMA sent its response to the European Commission consultation on assessing the adequacy of macroprudential policies for Non-Bank Financial Intermediation ("NBFI"). In its response, ESMA makes key proposals in several areas, including liquidity management, money market fund regulation, supervision and data, and coordination between competent authorities.

# New Industry-Led Developments

- **FRTB Implementation Challenges: Capitalization of Funds.** On December 13, ISDA published a second whitepaper on the capitalization of equity investment in funds ("EIIFs") under the Fundamental Review of the Trading Book ("FRTB") framework. This paper builds upon an earlier ISDA publication in 2022 that highlighted the overly conservative capital requirements and operational complexities resulting from the proposed Basel III framework associated with EIIFs. Since then, several jurisdictions have implemented the FRTB (Canada and Japan), while others have finalized their FRTB rules (the EU and the UK) or are consulting on the final rules (the US). This topic continues to be a globally important issue for the industry, with many unresolved concerns related to the treatment of EIIFs. [NEW]

- **Joint Associations Send Letter on UK CCP Equivalence and Recognition.** On December 12, ISDA and eleven other trade associations representing a broad group of market participants sent a letter to Commissioner Albuquerque requiring that the European Commission extends the equivalence decision for UK Central Counterparties ("CCPs") in a non-time-limited manner and well in advance of March 31, 2025. The current time-limited equivalence decision is set to expire on June 30, 2025. [NEW]

- **ISDA Publishes Paper on Compliance Requirements under MIFIR.** On December 9, ISDA published a paper that maps out an approach to post-trade transparency under the revised Markets in Financial Instruments Regulation ("MIFIR") for reporting single-name credit default swaps referenced to global systemically important banks, supporting meaningful transparency and implementation practicability. [NEW]

- **ISDA Responds to European Commission's Consultation on Macroprudential Policies for NBFIs.** On November 21, ISDA responded to the European Commission's consultation on assessing the adequacy of macroprudential policies for NFBI. In the response, ISDA covers a range of key topics, including the need to consider the diversity of the NBFI sector, possible solutions to challenges in meeting collateral requirements, the importance of bank intermediation capacity, the need for deep and liquid core funding markets, enhanced data sharing among regulators and the vital role played by non-cleared derivatives markets, especially in times of stress.

- **ISDA Sends Letter to FASB on Hedge Accounting Improvements.** On November 25, ISDA submitted a comment letter to the Financial Accounting Standards Board ("FASB") in response to its exposure draft (ED) on File Reference No. 2024-ED200, Derivatives and Hedging (Topic 815) – Hedge Accounting Improvements. In the comment letter, ISDA explains it supports the FASB's proposals in the ED and believes the ED achieves the FASB's objective of improving the application and relevance of the derivatives and hedging guidance**.**

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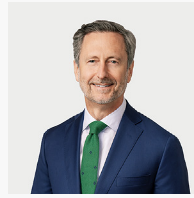

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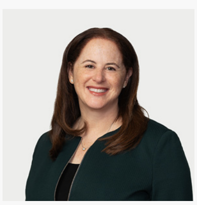

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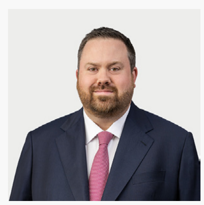

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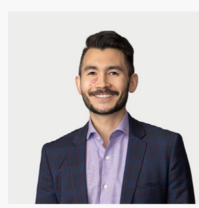

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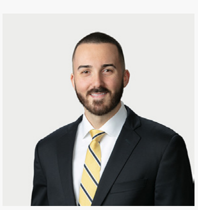

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