

This Week in Derivatives

January 3, 2025

From the Derivatives Practice Group: Happy New Year! In late 2024, ISDA released the first version of the Equity Derivatives Clause Library. Not surprisingly, the regulatory agencies were quiet over the holidays.

New Developments

- **Customer Advisory: Avoiding Fraud May be Your Best Resolution.** A new CFTC [customer advisory](#) suggests adding “spotting scams” to your list of New Year’s resolutions. The Office of Customer Education and Outreach’s Avoiding Fraud May be Your Best Resolution says that with scammers robbing billions of dollars from Americans through relationship investment scams, resolving to be careful about who you trust online, staying informed, and learning all you can about trading risks are admirable 2025 resolutions.
- **CFTC Approves Final Rule on Margin Adequacy, Treatment of Separate Accounts of a Customer by Futures Commission Merchants.** On December 20, 2024, the CFTC announced a [final rule](#) to implement requirements for futures commission merchants related to margin adequacy and the treatment of separate accounts of a customer. The rule finalizes the Commission’s proposal, published in the Federal Register in March, to codify the no-action position in CFTC staff letter 19-17 regarding separate account treatment.
- **CFTC Approves Final Rule Regarding Safeguarding and Investment of Customer Funds.** On December 17, the CFTC announced that it approved a [final rule](#) amending the CFTC’s regulations that govern how futures commission merchants and derivatives clearing organizations safeguard and invest customer funds held for the benefit of

customers engaging in futures, foreign futures, and cleared swaps transactions. The amendments revise the list of permitted investments in CFTC Regulation 1.25 and make other related changes and specifications. The amendments also eliminate the CFTC requirement that an FCM deposit customer funds with depositories that provide the CFTC with read-only electronic access to such accounts. The compliance date for the revisions is 30 days after the final rule is published in the Federal Register, except for the revisions to the Segregation Investment Detail Reports (“SIDR”) specified in CFTC Regulations 1.32, 22.2(g)(5), and 30.7(l)(5), and the revisions to the customer risk disclosure statement required under CFTC Regulation 1.55. The compliance date for the revisions to the SIDR and the risk disclosure statement is March 31, 2025.

- **CFTC Grants QC Clearing LLC DCO Registration.** On December 17, 2024, the CFTC [announced](#) that it issued QC Clearing LLC an Order of Registration as a derivatives clearing organization under the Commodity Exchange Act. QC Clearing LLC permitted to clear, in its capacity as a DCO, fully collateralized positions in futures contracts, options on futures contracts, and swaps.

New Developments Outside the U.S.

- **ESMA Launches Selection of the Consolidated Tape Provider for Bonds.** On January 3, ESMA announced the launch of the first selection procedure for the Consolidated Tape Provider (“CTP”) for bonds. Entities interested to apply are encouraged to register and submit their requests to participate in the selection procedure by February 7, 2025. The CTP aims to enhance market transparency and efficiency by consolidating trade data from various trading venues into a single and continuous electronic stream. This consolidated view of market activity is intended to help market participants to access accurate and timely information and make better-informed decisions, leading to more efficient price discovery and trading. [NEW]
- **ESMA Publishes Feedback Received to Proposed Review of Securitization Disclosure Templates.** On December 20, ESMA published a [Feedback Statement](#) summarizing the responses it received to its [Consultation Paper](#) on the securitization disclosure templates under the Securitization Regulation (“SECR”). Overall, respondents acknowledge the need for further improvements to the securitization transparency regime but recommend postponing the template review due to concerns about its timeline in relation to a broader SECR review. [NEW]
- **ESMA Consults on the Internal Control Framework for Some of its Supervised Entities.** On December 19, ESMA launched a [consultation](#) on draft Guidelines related to the Internal Control Framework for some of its supervised entities. ESMA said that the proposed draft Guidelines build on the Internal Control Guidelines currently in place for Credit Rating Agencies and extend them to include also Benchmark Administrators, and Market Transparency Infrastructures (Trade Repositories, Data Reporting Services Providers and Securitization Repositories). The draft Guidelines outline ESMA’s expectations for the components and characteristics of an effective internal control system, intended to ensure: a strong framework, detailing the internal control environment and informational aspects, and effective internal control functions, including compliance,

risk management, and internal audit. The draft Guidelines also explain how ESMA applies proportionality in its expectations regarding the internal controls for a supervised entity. According to ESMA, the consultation is primarily aimed at ESMA supervised entities and prospective applicants for ESMA supervision.

- **ESMA Releases Last Policy Documents to Get Ready for MiCA.** On December 17, ESMA published its [last package of final reports](#) containing Regulatory Technical Standards and guidelines ahead of the full entry into application of the Markets in Crypto Assets Regulation. Specifically, the package includes Regulatory Technical Standards on market abuse and guidelines on reverse solicitation, suitability, crypto-asset transfer services, qualification of crypto-assets as financial instruments and maintenance of systems and security access protocols.

New Industry-Led Developments

- **ISDA Publishes Equity Definitions Clause Library.** On December 20, ISDA announced it has published version 1 of the ISDA Equity Derivatives Clause Library. The ISDA Equity Derivatives Clause Library provides drafting options with respect of certain clauses that parties can choose to include in an equity derivatives transaction that incorporates the 2002 ISDA Equity Derivatives Definitions. [NEW]

Practice Group Members



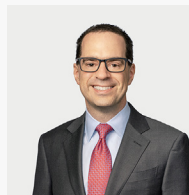
Jeffrey L. Steiner
Washington, D.C.
202.887.3632
jsteiner@gibsondunn.com



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

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.

© 2025 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).