Derivatives, Legislative and Regulatory Weekly Update (May 9, 2025)

Client Alert | May 9, 2025

From the Derivatives Practice Group: This week, the CFTC placed certain staff on administrative leave pending ongoing investigations.

New Developments

- **CFTC Staff on Leave Pending Investigation.** On May 5, pursuant to the President's executive orders on lawful governance and accountability, the CFTC placed certain staff on administrative leave for potential violations of laws, government ethics requirements and professional rules of conduct. The CFTC stated it is committed to holding employees to the highest standards, as expected by American taxpayers. Investigations are currently ongoing into these matters and the CFTC has committed to provide updates as appropriate. [NEW]
- **SEC Publishes New Market Data, Analysis, and Visualizations.** On April 28, the SEC's Division of Economic and Risk Analysis ("DERA") has published new data and analysis on the key market areas of public issuers, exempt offerings, Commercial Mortgage-Backed Securities ("CMBS"), Asset-Backed Securities ("ABS"), money market funds, and security-based swap dealers ("SBSD") in an effort to increase transparency and understanding of our capital markets amongst the public.
- **Paul S. Atkins Sworn in as SEC Chairman.** On April 21, Paul S. Atkins was sworn into office as the 34th Chairman of the SEC. Chairman Atkins was nominated by President Donald J. Trump on January 20, 2025, and confirmed by the U.S. Senate on April 9, 2025. Prior to returning to the SEC, Chairman Atkins was most recently chief executive of Patomak Global Partners, a company he founded in 2009. Chairman Atkins helped lead efforts to develop best practices for the digital asset sector. He served as an independent director and non-executive chairman of the board of BATS Global Markets, Inc. from 2012 to 2015.
- **CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets.** On April 21, the CFTC issued a Request for Comment to better inform them on the potential uses, benefits, and risks of perpetual contracts in the derivatives markets the CFTC regulates ("Perpetual Derivatives"). This request seeks comment on the characteristics of perpetual derivatives, including those characteristics which may differ across products. as well as the implications of their use in trading, clearing and risk management. The request also seeks comment on the risks of perpetual derivatives, including risks related to the areas of market integrity, customer protection, or retail trading.
- **CFTC Staff Seek Public Comment on 24/7 Trading.** On April 21, the CFTC issued a Request for Comment to better inform them on the potential uses, benefits, and risks of trading on a 24/7 basis in the derivatives markets the CFTC regulates. This request seeks comment on the implications of extending the trading of CFTC-regulated derivatives markets to an effectively 24/7 basis, including the potential effects on trading, clearing and risk management which differ from trading during current market hours. The request also seeks comment on the risks of 24/7 trading, and the associated clearing systems, including risks related to the areas of market integrity, customer protection, or retail trading.

New Developments Outside the U.S.

-
  - **ESMA Delivers Technical Advice on Market Abuse and SME Growth Markets as Part of the Listing Act.** On May 7, ESMA published its advice to the European Commission to support the Listing Act's goals to simplify listing requirements, enhance access to public capital markets for EU companies, and improve market integrity. In relation to Market Abuse Regulation ("MAR"), the advice covers: protracted processes, identifying key moments for public disclosure; delayed public disclosure, listing situations where delays are not allowed; and Cross-Market Order Book Mechanism, indicating the methodology for the identification of trading venues with significant cross-border activity. [NEW]
  - **ESMA Consults on Rules for ESG Rating Providers.** On May 2, ESMA published a Consultation Paper on draft Regulatory Technical Standards ("RTS") under the ESG Rating Regulation. The draft RTS cover the following aspects that apply to ESG rating providers: the information that should be provided in the applications for authorization and recognition; the measures and safeguards that should be put in place to mitigate risks of conflicts of interest within ESG rating providers who carry out activities other than the provision of ESG ratings; the information that they should disclose to the public, rated items and issuers of rated items, as well as users of ESG ratings. [NEW]
  - **ESMA Publishes the Annual Transparency Calculations for Non-equity Instruments and Bond Liquidity Data.** On April 30, the European Securities and Markets Authority ("ESMA"), the EU's financial markets regulator and supervisor, published the results of the annual transparency calculations for non-equity instruments and new quarterly liquidity assessment of bonds under MiFID II and MiFIR.
  - **ESMA Report Shows Increased Data Use Across EU and First Effects of Reporting Burden Reduction Efforts.** On April 30, ESMA published the fifth edition of its Report on the Quality and Use of Data. The report reveals how the regulatory data collected has been used by authorities in the EU and provides insight into actions taken to ensure data quality. The document presents concrete cases on data use ranging from market monitoring to supervision, enforcement and policy making. The report also highlights ESMA's Data Platform and ongoing improvements to data quality frameworks as key advancements in tools and technology for data quality.
  - **ESMA Issues Supervisory Guidelines to Prevent Market Abuse under MiCA.** On April 29, ESMA published guidelines on supervisory practices to prevent and detect market abuse under the Market in Crypto Assets Regulation ("MiCA"). Based on ESMA's experience under Market Abuse Regulation ("MAR"), the guidelines intended for National Competent Authorities ("NCAs") include general principles for effective supervision and specific practices for detecting and preventing market abuse in crypto assets. They consider the unique features of crypto trading, such as its cross-border nature and the intensive use of social media.
  - **ESMA Assesses the Risks Posed by the Use of Leverage in the Fund Sector.** On April 24, ESMA published its annual risk assessment of leveraged alternative investment funds ("AIFs") and its first analysis on risks in UCITS using the absolute Value-at-Risk ("VaR") approach. Both articles represent ESMA's work to identify highly leveraged funds in the EU investment sector and assess their potential systemic relevance.

New Industry-Led Developments

- **ISDA Presents Proposed Charter for the Credit Derivatives Governance Committee.** On May 8, ISDA presented the proposed Charter for the Credit Derivatives Governance Committee and accompanying DC Rule changes to implement. Pursuant to the announcement made in 2024, an ISDA working group formed from ISDA's Credit Steering Committee has worked on producing the Governance Committee solution. ISDA views the Governance Committee as the first step in implementing the other recommended changes from the Linklaters' report as part of an independent review on the composition, functioning, governance and membership of the DCs. [NEW]
- **ISDA Publishes Governance Committee Proposal for CDS Determinations Committees.** On May 8, ISDA published a proposal for a new governance committee for the CDS Determinations Committees ("DCs"), the first in a series of amendments to improve the structure of the DCs and maintain their integrity in changing economic and market conditions. The governance committee would be responsible for taking market feedback and adopting rule changes affecting the structure and operations of the DCs to ensure their long-term viability and meet market expectations for efficiency and transparency in credit event determinations. [NEW]
- **ISDA Responds to FASB Proposal on KPIs for Business Entities.** On April 30, ISDA submitted a response to the Financial Accounting Standards Board's ("FASB") proposal on financial key performance indicators ("KPIs") for business entities. In the response, ISDA addressed the implications of KPI standardization, its potential impact on financial reporting and risk management, and the broader cost-benefit considerations for preparers and investors. Based on proprietary analysis, ISDA does not view financial KPI standardization or the proposed disclosures as urgent priorities for the FASB at this time.
- **CPMI-IOSCO Assesses that EU has Implemented Principles for Financial Market Infrastructures for Two FMI Types.** On April 28, CPMI-IOSCO released a report that assessed the completeness and consistency of the legal, regulatory and oversight framework in place as of October 30, 2019. The report finds that the implementation of the Principles for Financial Market Infrastructures is complete and consistent for all Principles for payment systems. The legal, regulatory and oversight frameworks in the EU for central securities depositories and securities settlement systems are complete and consistent with the Principles in most aspects. However, the assessment identified some areas for improvement, particularly in aspects where implementation was broadly, partly, or not consistent, including risk and governance principles.
- **ISDA/IIF Responds to EC's Consultation on the Market Risk Prudential Framework.** On April 22, ISDA and the Institute of International Finance ("IIF") submitted a joint response to the EC's consultation on the application of the market risk prudential framework. The associations believe the capital framework should be risk-appropriate and as consistent as possible across jurisdictions to ensure a level playing field without competitive distortions due to divergent rules.
- **ISDA and FIA Respond to Consultation on Commodity Derivatives Markets.** On April 22, ISDA and FIA submitted a joint response to the EC's consultation on the functioning of commodity derivatives markets and certain aspects relating to spot energy markets. In addition to questions on position management, reporting and limits and the ancillary activities exemption, the consultation also addressed data and reporting and certain concepts raised in the Draghi report, such as a market correction mechanism to cap pricing of natural gas and an obligation to trade certain commodity derivatives in the EU only.

The following Gibson Dunn attorneys assisted in preparing this update: Jeffrey Steiner, Adam Lapidus, Marc Aaron Takagaki, Hayden McGovern, Karin Thrasher, and Alice Wang.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Derivatives practice group, or the following practice leaders and authors:

Jeffrey L. Steiner, Washington, D.C. (202.887.3632, )

Michael D. Bopp, Washington, D.C. (202.955.8256, )

Michelle M. Kirschner, London (+44 (0)20 7071.4212, )

Darius Mehraban, New York (212.351.2428, )

Jason J. Cabral, New York (212.351.6267, )

Adam Lapidus, New York (212.351.3869, )

Stephanie L. Brooker, Washington, D.C. (202.887.3502, )

William R. Hallatt, Hong Kong (+852 2214 3836, )

David P. Burns, Washington, D.C. (202.887.3786, )

Marc Aaron Takagaki, New York (212.351.4028, )

Hayden K. McGovern, Dallas (214.698.3142, )

Karin Thrasher, Washington, D.C. (202.887.3712, )

wish you have a great day

Related People

Jeffrey L. Steiner

Adam Lapidus

Marc Aaron Takagaki

Hayden McGovern

Karin Thrasher