

## Cabinet News and Views

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### Priorities for Derivatives Markets from ISDA's Annual General Meeting



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The first in-person ISDA annual general meeting (“AGM”) after the COVID-19 pandemic is wrapping up today in Madrid, Spain. This conference follows the Futures Industry Association Law and Compliance (“FIA L&C”) annual conference held in Washington, D.C. at the end of April, and the topics addressed were essentially similar, albeit approached from a different angle.

First and foremost, emerging regulation, documentation and the infrastructure of digital assets markets were discussed extensively. Participants acknowledged that markets in cryptos have matured beyond being a mere curiosity and, from a regulatory perspective, now pose significant systemic risks that need to be addressed by regulators. Commodity Futures Trading Commission (“CFTC”) Chairman Russ Behnam noted the CFTC’s efforts at policing digital assets markets, and Securities and Exchange Commission (“SEC”) Chairman Gary Gensler specifically addressed jurisdictional issues of regulation, asserting that most digital assets contracts would likely constitute “securities.” Emerging documentation issues for crypto derivatives were addressed in the context of ISDA’s working groups. From this discussion, it is clear that many issues are left for further regulatory resolution, such as a proposed memorandum of understanding between the CFTC and the SEC, as well as the CFTC’s and SEC’s coordination with other U.S. federal and international regulators.

Second, sustainability-linked derivatives (“SLDs”) and broader matters relating to ESG investing and markets in ESG products were also addressed. Socially responsible business practices, as well as climate change and the incident risks to world financial markets were discussed, although at this stage, few solutions were proposed to reach net zero goals. The CFTC has identified as one of its priorities the development of reliable markets in carbon credits and other environmental products (both over-the-counter and exchange-traded) and, at the same time, gaining greater expertise in policing fraud and “greenwashing.” Many market

participants stressed that the development of verifiable key performance indicators (“KPIs”) of environmentally sustainable products and SLDs will be one of the solutions to a sustainable market infrastructure.

Third, regulators and market participants alike addressed other issues that either came to light in the wake of the COVID-19 pandemic or remain on the regulatory agenda for implementation. These priorities include implementation of Phase 6 for initial margin, reporting rules and the use of reliable data, LIBOR transition, intermediation and clearing of crypto products, and protection of retail participants.

Finally, representatives from ISDA had identified several documentation initiatives and published several consultative papers relating to these market regulatory priorities.

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