

IOSCO Reports on Pre-Hedging and Financial Asset Tokenization

Presented to the ABA Business Law Section
Derivatives and Futures Law Committee Meeting 2026
January 29, 2026 – January 31, 2026

Matthew Kulkin and Caroline Estey, Wilmer Cutler Pickering Hale and Dorr LLP¹

I. Introduction

The International Organization of Securities Commissions (IOSCO) plays a central role in shaping the global regulatory landscape for financial market regulation. IOSCO reports have significant implications for the Commodity Futures Trading Commission (CFTC), its registrants and the markets it oversees, as they provide frameworks and guidance that inform US regulatory policy and practices. Oftentimes, IOSCO reports are the precursor to CFTC regulatory action, or signal future regulatory trends in the United States.

This paper examines IOSCO's recent reports on pre-hedging and financial asset tokenization. By exploring IOSCO's evolving standards and their practical impact, the following analysis provides insights into the organization's ongoing influence on both national and cross-border capital markets regulations.

II. The History of IOSCO

IOSCO is a global body that sets internationally recognized principles and standards for securities regulation.² Though the standards are widely recognized and often adopted, they are not legally binding; each jurisdiction decides whether and how they will apply IOSCO's guidance. Established in 1983 by 11 securities regulatory agencies from North and South America, IOSCO now includes more than 200 members from 130 jurisdictions, representing 95% of the world's securities regulators.³ Most members are national securities commissions or similar governmental authorities with significant oversight of securities and derivatives markets, like the CFTC and Securities and Exchange Commission (SEC) in the United States.⁴ While many jurisdictions look to IOSCO for guidance in developing their own regulations, implementation is not always uniform.⁵

¹ Matthew Kulkin is a partner in WilmerHale's Securities and Financial Services Department. He previously served as the Director of the CFTC's Division of Swap Dealer and Intermediary Oversight. He can be reached at Matthew.Kulkin@wilmerhale.com. Caroline Estey is an associate in WilmerHale's Transactional Department. She can be reached at Caroline.Estey@wilmerhale.com.

² *About IOSCO*, IOSCO, https://www.iosco.org/v2/about/?subsection=about_iosco.

³ *Id.*

⁴ *Id.* In addition to "Ordinary Members" like the CFTC and SEC, IOSCO Affiliate Members include Cboe Global Markets, CME Group, Depository Trust & Clearing Corporation, Financial Industry Regulatory Authority, National Futures Association, Options Clearing Corporation, Securities Investor Protector Corporation.

⁵ *Market Fragmentation and Cross-Border Regulation*, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf>.

To foster international collaboration, IOSCO published the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, which promotes cross-border enforcement and information sharing.⁶ IOSCO's work is recognized and supported by agencies within member jurisdictions and by international organizations such as the Financial Stability Board, the G20 and the International Monetary Fund.⁷ IOSCO also partners with the Committee on Payments and Market Infrastructures (CPMI), forming CPMI-IOSCO, to set global standards for clearing, settlement and reporting arrangements.⁸

IOSCO first published the Objectives and Principles of Securities Regulation in 1998, providing a foundational framework for globally consistent regulation, oversight and enforcement.⁹ The principles are built on three main objectives: protecting investors; ensuring fair, efficient and transparent markets; and reducing systemic risk.¹⁰ IOSCO revised the principles in 2003 and published a related comprehensive methodology for assessing global implementation.¹¹ The principles were updated again in 2010 and 2017.¹²

In addition to these core principles, IOSCO issues topic-specific guidance through eight specialized committees and a task force for sustainable finance.¹³ Each committee develops standards for its area of regulation. IOSCO also regularly publishes in-depth reports on evolving securities issues to promote internationally coordinated regulatory responses.¹⁴

Many global financial services regulators rely on IOSCO's recommendations and reports to guide their regulatory development.¹⁵ The CFTC is no exception; while IOSCO plays a central role in informing CFTC policy and standards, it is not used as a legal authority in the Commission's enforcement cases.

For example, in July 2019, CFTC staff conducted a self-assessment using IOSCO's methodology to analyze US compliance with IOSCO principles related to financial sector stability.¹⁶ At a

⁶ IOSCO, *supra* note 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*, Presidents Committee of the International Organization of Securities Commissions, at 13.

¹³ IOSCO, <https://www.iosco.org/>.

¹⁴ *Public Reports*, IOSCO, https://www.iosco.org/v2/publications/?subsection=public_reports.

¹⁵ IOSCO, *supra* note 2.

¹⁶ *Detailed Assessment of Implementation; IOSCO Objectives and Principles of Securities Regulation*, International Monetary Fund, <https://home.treasury.gov/system/files/206/Securities-CFTC-FSAP-Self-Assessment-of-IOSCO-Principles-07.31.2019.pdf>.

Technology Advisory Committee meeting in October 2018, the Committee discussed recommendations from a recent IOSCO consultation report and confirmed compliance with those recommendations.¹⁷ Previous CFTC Commissioner Brian Quintenz later cited the Committee's reliance on IOSCO's report as evidence of the seriousness with which the risks were addressed.¹⁸ In a February 2023 order, the CFTC emphasized IOSCO's technical guidance, identifying required elements and confirming compliance with IOSCO's standards.¹⁹ These examples illustrate how IOSCO's standards and guidance serve as a critical foundation for the CFTC's regulatory framework, ensuring that US derivatives markets remain aligned with global best practices.

Recently, IOSCO released two noteworthy reports, FR/14/2025 Pre-Hedging and FR/17/2025 Tokenization of Financial Assets.²⁰ This paper briefly explores each of the releases and their potential implications for CFTC regulation and enforcement.

III. FR 14/2025 Pre-Hedging Final Report

The Pre-Hedging report explains the concept of pre-hedging, provides a framework for managing pre-hedging practices, and offers recommendations for regulators and market participants.²¹ Its goal is to create consistent interpretation and clear guidance, helping regulators and market participants align standards across markets and asset classes.²² The report addresses potential risks and offers practical recommendations to protect clients and strengthen trust in wholesale financial markets.²³

Pre-hedging is defined as trading undertaken by a dealer where the (a) dealer is dealing on its own account in a principal capacity, (b) trades are executed in the same or related instruments after the receipt of information about one or more anticipated client transactions and before the client has agreed on the terms of the transaction and/or irrevocably accepted the executable quote, (c) trades are executed to manage the risk related to the anticipated client transaction, and

¹⁷ *Electronic Trading Risk Principles, Section E. Market Participants' Discussions of Best Practice*, CFTC, <https://www.cftc.gov/LawRegulation/FederalRegister/proposedrules/2020-14381.html>.

¹⁸ *Electronic Trading Risk Principles, Appendix 3 – Supporting Statement of Commissioner Brian Quintenz*, CFTC, <https://www.cftc.gov/LawRegulation/FederalRegister/proposedrules/2020-14381.html>.

¹⁹ *Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting, Section B. CPMI and IOSCO Technical Guidance on the Harmonization of the Unique Product Identifier*, CFTC, <https://www.cftc.gov/LawRegulation/FederalRegister/final-rules/2023-03661.html>.

²⁰ *FR/14/2025 Pre-Hedging Final Report*, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD805.pdf> and *FR/17/2025 Tokenization of Financial Assets*, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD809.pdf>.

²¹ *FR/14/2025 Pre-Hedging*, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD805.pdf>.

²² *Id.*

²³ *Id.*

(d) trades are executed with the intention of benefiting the client.²⁴ Such trades may occur across asset classes, including securities, derivatives and over-the-counter markets.²⁵

Pre-hedging serves as a risk management tool for dealers ahead of anticipated market offerings and other transactions.²⁶ It enables dealers to explore market prices and conditions, offset risk, and secure liquidity before quoting a price to the client.²⁷ Pre-hedging can also reduce market impact by spreading execution and allow smaller dealers to compete without substantial cash reserves.²⁸ However, it also introduces risks for market participants and the broader market.²⁹ IOSCO identifies three main concerns: 1) the misuse of client information by dealers, 2) clients' lack of understanding of pre-hedging and 3) potentially negative impacts on the prices offered to clients.³⁰ To address these concerns, IOSCO provides recommendations for the use and management of pre-hedging risks.³¹

IOSCO's recommendations emphasize that pre-hedging should be strictly limited to legitimate risk management associated with anticipated client transactions.³² Dealers should ensure they are acting in the client's best interests, rather than their own, ensuring fairness and honesty in all interactions.³³ The guidance also stresses minimizing market impact and upholding market integrity.³⁴ For conduct risk management, IOSCO suggests dealers establish and document policies, procedures and controls for pre-hedging, and provide clients with clear disclosures.³⁵ Dealers are encouraged to obtain prior consent from clients prior to transacting with a client and offer a straightforward process for clients to modify or revoke consent with reasonable notice.³⁶ Safeguarding confidential client information, managing conflicts of interest and implementing appropriate information barriers are viewed as essential.³⁷ Maintaining detailed records of pre-hedging activities, along with robust compliance and supervisory frameworks, including trade and communication monitoring, surveillance, and regular reviews, is also seen as critical for oversight and accountability.³⁸

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

In 2024, the CFTC settled *In re TOTSA TotalEnergies Trading SA*, a case involving manipulative pre-hedging practices.³⁹ The CFTC found that the company was attempting to manipulate the market by selling physical EBOB gasoline at below-market prices to depress the reported price of EBOB, thereby boosting the value of the company's EBOB short position.⁴⁰ Then-Commissioner Caroline Pham dissented, warning that the decision risked "asserting that legitimate commercial hedging activity is illegal."⁴¹ She criticized the enforcement action for imposing a significant penalty on a market participant without strong evidence, arguing that such actions could chill lawful risk-management practices by commercial end-users.⁴² Commissioner Pham cautioned that if pre-hedging is treated as inherently suspicious activity, companies may avoid these strategies altogether, undermining their ability to manage price risk and harming market liquidity and the broader economy.⁴³

The differences of perspectives presented in the *TOTSA* matter highlight the need for regulatory clarity. IOSCO's Pre-Hedging report offers the CFTC an opportunity to harmonize standards and issue clear guidance. Doing so would provide registrants with a framework for compliant pre-hedging, reducing uncertainty and ensuring registrants can confidently use derivatives for legitimate risk management without fear of enforcement.

By setting clear standards, IOSCO's report seeks to harmonize global practices around pre-hedging, reducing conduct risk while preserving its legitimate role as a risk management tool.⁴⁴ If widely adopted, these recommendations have the potential to enhance transparency, protect clients and strengthen confidence in global markets.⁴⁵

IV. FR/17/2025 Tokenization of Financial Assets Final Report

The Tokenization of Financial Assets report examines the current state of financial asset tokenization and distributed ledger technology in capital markets, drawing on observations from the Financial Asset Tokenization Working Group under the IOSCO Fintech Task Force.⁴⁶ The report discusses how global regulators are preparing for and responding to developments in financial asset tokenization, clarifying compliance expectations and future policy direction.⁴⁷ It

³⁹ *In re TOTSA TotalEnergies Trading SA*, CFTC Docket No. 24-19 (Aug. 27, 2024).

⁴⁰ *Id.*

⁴¹ *Dissenting Statement of Commissioner Caroline D. Pham on Commercial End-User Enforcement Action*, CFTC, (August 27, 2024), [Dissenting Statement of Commissioner Caroline D. Pham on Commercial End-User Enforcement Action | CFTC](#).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *FR/17/2025 Tokenization of Financial Assets*, IOSCO, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD809.pdf>.

⁴⁷ *Id.*

highlights emerging trends, adoption, current use cases and potential implications of asset tokenization, providing valuable insights for those weighing the risks and benefits of involvement.⁴⁸ The report notes that IOSCO’s principles and guidance may apply well to tokenization due to their technology-neutral approach.⁴⁹

IOSCO defines tokenization as the creation, issuance or representation of assets on a digital token ledger or programmable platform.⁵⁰ In financial markets, tokenization typically involves using distributed ledger technology to deliver financial services.⁵¹ Tokenization arrangements often allow assets to be divided into smaller, more accessible shares; store coded instructions for automatic execution; use preexisting programmed instructions in new ways; or execute multiple transaction steps in a single action.⁵² While these capabilities offer potential benefits, tokenization also introduces risks.⁵³ Commercial applications may amplify existing risks and create new ones, such as unclear legal implications regarding rights and ownership, and vulnerabilities specific to digital infrastructure, including cyberattacks.⁵⁴ Tokenization is also costly and complex, with many operational challenges yet to be resolved.⁵⁵

The IOSCO report notes that the “vast majority of tokenized transactions have been part of experimental or pilot programs.”⁵⁶ Nonetheless, IOSCO anticipates growth in tokenization, though the rate and scale remain uncertain, and the regulatory landscape is adapting accordingly. The report views the IOSCO principles, Recommendations for Crypto and Digital Asset Markets, and Recommendations for Decentralized Finance as helpful standards for tokenization regulation, given their “technology-neutral, principles-based and outcomes-focused” nature.⁵⁷

In the United States, regulatory clarity for digital assets is accelerating significantly. Congress is currently considering crypto market structure legislation that would grant the CFTC substantial authority over crypto asset spot markets.⁵⁸ This includes the House-passed CLARITY Act, which would provide the CFTC with primary regulatory oversight over spot digital commodities, as well as other authority over digital commodity markets and digital commodity market participants.⁵⁹

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 14.

⁵⁷ *Id.* at 7.

⁵⁸ See Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (2025).

⁵⁹ *Id.*

At the time of this writing, while the Senate is still developing its version of crypto market structure legislation, discussion drafts of the Senate legislation would grant the CFTC similar regulatory authority.⁶⁰ The CFTC and the SEC have recently begun prioritizing regulatory harmonization and interagency collaboration, including by launching a cross-agency crypto initiative to coordinate efforts regarding the process for facilitating the trading of certain spot crypto asset products.⁶¹

In the interim, the CFTC launched a “Crypto Sprint” in August 2025, with a focus on three main components: (i) listed spot crypto trading on CFTC-registered designated contract markets (DCMs), (ii) facilitating the use of tokenized collateral, including stablecoins, and (iii) rulemakings amending the CFTC’s regulations to enable the use of blockchain technology and market infrastructure in derivatives markets.⁶² As part of this sprint, the CFTC also launched initiatives and sought public comment regarding the use of tokenized collateral and listed spot crypto trading.⁶³ The CFTC expects to commence rulemaking in 2026 to amend its regulations to accommodate blockchain technology, with the goal of finalizing the process by August of 2026.⁶⁴

IOSCO’s guidance could inform these US efforts by providing policies and procedures for managing tokenization risks that allow the United States to strengthen its own regulatory scheme in a way that enhances clarity, reduces delays, and promotes consistency with international norms.

V. IOSCO and the CFTC

Jurisdictions have approached regulation of financial asset tokenization in various ways.⁶⁵ Some clarify how tokenization fits within existing frameworks or identify how current regulations mitigate tokenization risks.⁶⁶ Others have established “sandbox regimes” to allow temporary engagement with tokenization, helping regulators refine their approach.⁶⁷ Still others have enacted new laws and regulations specific to tokenization, supplementing existing frameworks.⁶⁸ As tokenization evolves, IOSCO’s technology-neutral, principles-based approach provides a

⁶⁰ See S. Comm. on Agric., Nutrition, and Forestry, *Boozman, Booker Release Bipartisan Market Structure Discussion Draft* (Nov. 10, 2025).

⁶¹ *Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC*, CFTC, (Sept. 5, 2025), [Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC | CFTC](#).

⁶² *Keynote Address by Acting Chairman Caroline D. Pham, FIA EXPO*, CFTC, (November 18, 2025), [Keynote Address by Acting Chairman Caroline D. Pham, FIA EXPO | CFTC](#).

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ IOSCO, *supra* note 41.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

foundation for consistent global standards.⁶⁹ By aligning regulatory frameworks with these principles, jurisdictions can mitigate emerging risks and foster trust in tokenized markets as they move from pilot programs toward broader adoption.⁷⁰

VI. Conclusion

IOSCO's standards and guidance continue to help shape the global regulatory landscape for securities and derivatives markets. Through its principles-based approach, IOSCO provides a foundation for coordinating market practices, managing emerging risks and fostering international cooperation. As the financial sector continues to grow, evolve and innovate across international jurisdictions, IOSCO's work remains essential for promoting transparency, protecting investors and supporting trustworthy markets worldwide. The ongoing support of regulators across the globe, including the CFTC, works to ensure IOSCO's regulatory frameworks keep pace with market developments and uphold the integrity of the global financial system.

⁶⁹ *Id.*

⁷⁰ *Id.*