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Derivatives 2026

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Introduction

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Katten Muchin Rosenman LLP has a futures and derivatives team that leverages extensive knowledge of futures and derivatives products to help clients achieve their commercial goals. Serving a diverse clientele that includes dealers, end-users, proprietary traders, brokers, advisers, exchanges and clearing organisations, the team of more than 25 attorneys handles various commercial transactions across multiple asset classes. With a solid grasp of regulations, market practices and documentation, its attorneys focus on efficient deal closure and compliance

while adeptly navigating regulatory and litigation challenges. The practice is bolstered by the firm's ability to successfully obtain regulatory relief that resolves issues before they escalate. Katten's strong US and UK teams are fully co-ordinated to efficiently and consistently serve the needs of clients who do business on both sides of the Atlantic. Clients often rely on Katten as a trusted adviser to design three-cornered analyses for their activities in the United Kingdom, the European Union and the United States.

Contributing Editor



Carl Kennedy is a partner and co-chair of the financial markets and regulation group at Katten. Clients value his diverse and well-informed perspective formed through his diverse background as a former

regulator with the Commodity Futures Trading Commission and a former senior in-house counsel at a large investment bank, particularly in relation to the commodities and derivatives markets. Carl's extensive experience makes him a trusted adviser to large and small financial institutions, asset managers, clearing houses, intermediaries, hedge funds and proprietary trading firms. Clients depend on his guidance regarding derivatives-related litigation and enforcement actions, investigations and complex regulatory issues relating to transactions.

Co-Authors



Daniel Davis is a partner and co-chair of the financial markets and regulation group at Katten. From derivatives products to cryptocurrencies, he helps clients navigate evolving regulatory requirements. Drawing on

his experience as General Counsel at the Commodity Futures Trading Commission, Dan deeply understands financial services agencies and is trusted by clients to mitigate risks during investigations and enforcement actions. He also provides guidance on rules issued by financial agencies for entities such as futures commission merchants, swap dealers and derivatives clearing organisations. Regarding fraud-related allegations under the Commodity Exchange Act, Dan assists clients in developing compliance practices to meet regulatory standards.

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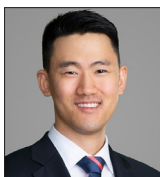
Stephen Morris is a financial markets and funds partner at Katten, and has extensive experience as in-house counsel at a leading multinational financial institution and as a trial attorney with the Commodity Futures

Trading Commission. As a former senior in-house coverage attorney for the institutional listed derivatives and clearing business of a top-tier broker-dealer/futures commission merchant, Stephen knows regulations surrounding the clearing of futures, equity options and cleared swaps. He counsels on routine documentation to regulatory investigations and enforcement issues, and handles regulatory issues relating to digital assets, digital asset securities and cryptocurrencies. Stephen frequently serves as a FIA Legal & Compliance Conference panel chair.



Matthew Kluchenek is a financial markets and funds partner at Katten, whose deep understanding of trading and financial markets enables him to counsel and advocate effectively for clients facing complex allegations of

fraud or non-compliance. He regularly advises clients in connection with enforcement inquiries by the Commodity Futures Trading Commission, the Securities and Exchange Commission, the Department of Justice and self-regulatory organisations, such as CME Group and the National Futures Association. Matthew represents clients throughout the financial market ecosystem, including global financial institutions, exchanges, clearinghouses, brokers, dealers, advisers, trading firms and commercial end-users, on a broad array of derivatives issues.



Alexander Kim is an associate in the financial markets and funds department at Katten, and offers regulatory and general legal guidance to securities broker-dealers, commodities market participants and

other players in the financial services industry. He also advises some of the largest and most prominent digital asset trading platforms and blockchain technology companies. Alex's clients benefit from his extensive technical knowledge of cutting-edge blockchain-based products, gained from his previous experience with a digital asset start-up.



Nicholas Gervasi is an associate in the financial markets and funds department at Katten, and supports financial services clients such as investment advisers, broker-dealers and hedge funds in their regulatory

and transactional matters. He brings a business-oriented approach to complex regulatory challenges. With a background in architecture, Nick is adept at balancing competing interests between the law and client goals. Prior to joining Katten, he gained valuable experience at a non-profit, where he learnt the importance of creative problem-solving within tight budget constraints.

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Introduction to Derivatives

Derivatives have become an integral part of the global financial landscape, with transaction volumes growing dramatically over the years. These powerful, capital-efficient financial instruments, whose value is derived from the value of underlying assets such as stocks, bonds, commodities, currencies, interest rates and market indexes, play a crucial role in risk management and speculative opportunities worldwide.

The derivatives industry has undergone significant changes, shaped by global events like the 2008 financial crisis, which prompted a wave of regulatory reforms aimed at enhancing market stability and transparency. Today, derivatives are traded on regulated exchanges and via the over-the-counter (OTC) markets in major financial centres around the world, including New York, London, Tokyo, Singapore and Hong Kong.

There are several main types of derivatives, each with its own unique characteristics and purposes.

- **Futures** – contracts obligating the buyer to purchase, or the seller to sell, an asset at a predetermined future date and price. These are traded on regulated futures exchanges.
- **Commodity options** – contracts giving the buyer the right, but not the obligation, to buy or sell an asset at a set price within a specific period. Options on futures are traded on regulated futures exchanges, while OTC options are bilaterally executed between two parties off-exchange.
- **Forwards** – customised contracts between two parties to buy, sell and deliver an asset at a specified future date for a price agreed upon today (which is often modified during the course of the contract).
- **Swaps** – agreements to exchange cash flows or other financial instruments between parties over a set period.
- **Contracts for Difference (CFDs)** – these are derivatives that allow traders to speculate on price movements of assets, settling the difference in value between opening and closing prices in cash, without physical delivery of the underlying commodity. CFDs are deemed to be swaps in the United States

but are considered a distinct type of derivatives product in some other jurisdictions.

While derivatives are powerful tools for risk management, allowing businesses to protect against price volatility, currency fluctuations and interest rate changes, they also carry significant risks, including market, credit and liquidity risks. Most jurisdictions place considerable restrictions on who can trade derivatives, how these instruments are traded, and whether certain post-execution activities (eg, mandatory clearing, imposition of margin, and risk mitigation measures) must occur.

The regulatory environment for derivatives varies by country but has seen increased oversight and reform over the last decade. The primary regulatory bodies in some of the most active trading jurisdictions (by trading volumes) include:

- the US Commodity Futures Trading Commission (CFTC);
- the European Securities and Markets Authority (ESMA);
- the Financial Conduct Authority (FCA) of the United Kingdom;
- the Financial Services Agency of Japan (FSA); and
- the Monetary Authority of Singapore (MAS).

This guide aims to provide a clear understanding of derivatives, their types, global market impact and regulatory landscape, helping business professionals navigate the complexities of this rapidly evolving financial environment. This guide will also cover recent developments in the derivatives market, including but not limited to US harmonisation and deregulation efforts, digital asset reforms, perpetual futures, security futures, and the impact of agentic AI.

Markets and size

Derivatives markets play a vital role in the global economy, such as enabling commercial businesses to raise financing at competitive rates and effectively manage their exposures to various risks. This, in turn, allows these businesses to invest and grow, spurring economic growth. The size of the derivatives market is staggering, with the notional value of outstanding derivatives growing by 16% in 2025 to reach USD846

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trillion. This growth was driven primarily by euro-denominated interest rate derivatives, whose notional value increased by approximately USD1.3 trillion, or roughly 24%, since June 2024.

As noted above, derivatives are traded on both regulated exchanges and OTC markets. Exchange-traded derivatives are standardised contracts traded on regulated exchanges, offering price transparency and liquidity. Major derivatives exchanges include the Chicago Mercantile Exchange, Eurex and the Tokyo Financial Exchange. These exchanges operate under strict regulatory frameworks to ensure market integrity and protect investors, with rules covering contract specifications, trading procedures, margin requirements and reporting obligations. In some jurisdictions, certain derivatives – such as futures contracts, options on futures contracts and certain types of standardised swaps – are required to trade on a regulated exchange.

On the other hand, many bespoke derivatives are traded OTC, which means that these contracts are traded directly between parties or through brokers or electronic trading platforms. While the OTC markets offer flexibility, they come with higher counterparty risk compared to exchange-traded derivatives. Post-2008 financial crisis reforms, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in the United States and the European Market Infrastructure Regulation (EMIR) in Europe, have increased oversight of OTC markets, introducing requirements for trade reporting, central clearing, registration of certain large market participants and risk mitigation.

Clearing of derivatives ensures that trades are settled efficiently and securely through a central clearinghouse. A clearinghouse manages the risk between buyers and sellers by guaranteeing the terms of the contract, ensuring each party fulfils its respective obligations. Clearinghouses centralise and standardise transactions, reducing counterparty risk and enhancing market stability, thereby playing a crucial role in safeguarding the global financial system against systemic shocks. This process fosters market stability and trust, enabling businesses to manage their financial exposures effectively. With more and more

derivatives becoming subject to mandatory clearing, systemic risk concerns have shifted from too-big-to-fail market participants to regulated clearinghouses.

Key participants in derivatives markets include:

- institutional investors;
- commodity trading advisors;
- fund managers and hedge funds (commodity pools);
- commercial hedgers;
- retail traders;
- banks;
- corporations;
- insurance companies;
- pension plans; and
- asset managers.

Each group has different motivations, ranging from hedging risk to seeking profit through speculation. While derivatives offer many benefits, they also involve various risks, including market risk, liquidity risk, operational risk and counterparty risk. Effective risk management strategies and regulatory compliance are essential for mitigating these risks.

Regulators monitor and assess the activities of key players in the derivatives market by requiring the registration of clearinghouses, trade repositories and large market participants. By mandating registration, regulators gain valuable insights into the operations, risk management practices and financial health of these entities. This transparency allows for more effective supervision, and helps to identify potential systemic risks before they escalate. Furthermore, registration often comes with specific compliance obligations, ensuring that these institutions adhere to established standards of conduct, reporting and risk management. As the derivatives market continues to evolve, the registration process also provides a framework for regulators to adapt their oversight to new and emerging market developments.

History of derivatives

Derivatives have a rich history dating back to ancient civilisations, where farmers and merchants used forward contracts to lock in prices for agricultural products. Aristotle recounts the renowned case of Thales’

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market corner in the 6th century BCE. Thales, so the story goes, was weary of the jeers of his contemporaries that his interest in philosophy and astronomy was useless, and the reason for his impoverished state. Having observed the correlations between climate and olive harvests in his native Miletus (on the west coast of present-day Türkiye), he predicted over the course of an unusually mild Winter that there was going to be a large crop of olives, so he raised a small sum of money and bought or rented all the olive presses in the region. When the bumper harvest came and the demand for presses exploded, Thales' corner of the market for olive presses paid off – proving, as Aristotle concludes, “that it is easy for philosophers to be rich if they choose, but this is not what they care about”.

The 19th century saw the creation of futures exchanges for agricultural commodities, with the Chicago Board of Trade (CBOT) in the United States, established in 1848, playing a pivotal role in the development of standardised futures contracts. With the introduction of financial futures in the 1970s, the derivatives market expanded beyond derivatives on agricultural commodities to encompass derivatives on financial products such as interest rates, currencies and stock indices.

Swaps emerged as a key derivative product in the 1980s, starting with currency swaps and followed by interest rate swaps. Companies and financial institutions entered into swaps to manage exposure to fluctuations in interest rates and exchange rates. The 1990s witnessed a rapid expansion in the use and variety of derivatives, including the introduction of credit default swaps (CDS) and the significant growth of OTC markets.

However, global financial crises have highlighted the risks associated with derivatives. The 1997 Asian Financial Crisis and the 2008 Global Financial Crisis underscored the systemic risks posed by derivatives, particularly in the mortgage-backed securities market and CDS, leading to catastrophic losses for major financial institutions and prompting calls for regulatory reform.

In response to the 2008 Global Financial Crisis, leaders of the G-20 met in Pittsburgh in 2009 and agreed on

comprehensive reforms to increase transparency and reduce risks in the OTC derivatives markets. These agreements reached among world leaders resulted in the establishment of key principles for the regulation of OTC derivatives, including required clearing of standardised OTC derivatives through central counterparties (CCPs) and reporting of OTC derivatives trades to trade repositories. Policymakers in various jurisdictions enacted significant regulatory reforms, including Dodd-Frank and EMIR, and regulatory bodies promulgated stringent rules to oversee derivatives activities, aiming to mitigate systemic risks, enhance market transparency and protect market participants.

Organisation of topics

The world of derivatives is complex, dynamic and critically important to global financial markets. This comprehensive guide aims to provide a thorough understanding of derivatives, from their fundamental concepts to the intricate regulatory landscape and current enforcement trends. By exploring the various types of derivatives, their regulation, documentation practices and recent enforcement activities, readers will gain valuable insights into this sophisticated financial domain.

This guide is organised into the following chapters.

- General – this section provides a foundational understanding of the derivatives markets, setting the stage for a more detailed explanation of specific derivative types, their regulation, documentation and enforcement trends.
- Types of derivatives – building on the general overview and historical context, this section delves into the specific types of derivatives, examining their unique characteristics, regulatory aspects and emerging trends.
- Regulation of derivatives – this section focuses on the roles of various regulatory bodies and specific regulatory requirements. It identifies national regulators and their jurisdictions, and outlines rules on clearing, mandatory trading, position limits and reporting. It also covers the regulation of derivatives at subnational and supranational levels. Lastly, it considers oversight by self-regulatory organisations and exchanges.

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- Documentation issues – after establishing the regulatory framework, this section addresses the documentation practices critical for trading and clearing derivatives, highlighting industry standards and specific requirements. It covers industry standards for derivatives documentation and addresses specific requirements for trading agreements, margin documentation and legal opinions.
- Enforcement trends – this section examines recent enforcement activities and trends, providing insights into regulatory priorities and compliance expectations.

Recent developments

In recent years, the global derivatives market has undergone significant changes, driven by harmonisation efforts and deregulation, demand for 24/7 trading, tokenisation and stablecoins, perpetual futures and event contracts. These advancements have aimed to create a more transparent, inclusive and accessible financial landscape, expanding the reach of derivatives markets.

Geopolitical trends/deregulation

The US derivatives market is regulated by both the Securities and Exchange Commission (SEC) and CFTC. In response to the overlapping regulatory requirements imposed by the agencies, the US has pursued greater alignment through its Harmonization Initiative. The effort aims to reduce duplicative compliance requirements, clarify jurisdictional boundaries, and foster seamless co-ordination between the agencies. SEC Chairman Paul Atkins has championed the concept of “super-apps,” under which a securities intermediary would be able to offer various products and services, including non-security crypto-assets, crypto-asset securities, and traditional securities, on a singular interface and without having to acquire multiple state and federal licences. The overarching goal of the harmonisation efforts is to assess whether substituted compliance, in which one agency’s framework can satisfy the comparable requirements of the other, can achieve more efficient regulatory outcomes all the while providing an avenue for market participants to offer multiple products on a single platform without having to navigate inconsistent and overlapping regulatory frameworks. This deregulatory push mirrors a broader global trend, as other major jurisdictions are

similarly streamlining their own derivatives and digital asset regulatory frameworks to remain competitive and attract market participants seeking more efficient cross-border access.

Event contracts

Event contracts are financial instruments that allow market participants to take positions on the outcomes of specific events, often allowing traders to buy “yes” or “no” positions, functioning as a marketplace between traders. The sports industry has experienced a rise in event contracts, particularly after the announcement of the first US exchange-traded, CFTC-regulated sports event contract in December 2024. Since then, the US legal landscape has been enveloped with state gaming enforcement actions as well as debates on whether sports event contracts are distinct from traditional sports wagering and whether the Commodity Exchange Act displaces state gambling law. In other jurisdictions, such as the UK, event contracts referencing financial events are prohibited for retail investors, and event contracts referencing sporting or political outcomes are regulated as gambling. As event contracts gain popularity and prediction markets evolve, answering these legal questions becomes increasingly imperative.

Digital assets and related developments

Tokenisation is the process of creating digital representations of assets such as cash and securities on a blockchain, and offers a way to mitigate operational difficulties and settlement delays in post-trade processes. There has been enormous interest in, and a global push toward, tokenisation, with multiple pilot programmes having launched across jurisdictions. In cleared derivatives markets, where participants must post both initial and variation margin to CCPs, the ability to move tokenised assets in near real time has the potential to reduce settlement times from days to minutes. Tokenised assets, such as stablecoins, can be transferred and recorded on-chain, which would increase liquidity and ease the burden of intraday margin calls for participants.

Furthermore, there have been significant legislative reforms coming into force or being proposed all around the globe. In Europe, for example, the Markets in Crypto-Assets (MiCA) framework officially

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became fully enforceable on 1 July 2026, bringing major market changes, stricter compliance standards, and new anti-money laundering sanctions for crypto instruments, including derivatives based on crypto. In the US, proposed legislation regarding digital assets has been introduced as the CLARITY Act, which, if passed, will establish a federal regulatory framework for digital assets in the United States. Such a framework would provide much-needed clarity on the jurisdictional divide between the SEC and CFTC over digital assets, reducing regulatory arbitrage and compliance uncertainty for market participants. As this legislation advances, market participants should monitor its progress closely, as the resulting framework will likely shape how digital assets are classified, traded, and established in terms of custody in the US for years to come.

Perpetual derivatives

Regulatory uncertainty regarding the classification of perpetual contracts in the US derivatives markets led crypto-based perpetual futures to flourish elsewhere across the globe. In an effort to bring these markets to the US, the CFTC recently approved Bitcoin perpetual futures to trade on exchanges as futures, rather than as swaps. Attention is now increasingly turning to a related debate: whether perpetual futures should be offered on products outside the digital asset space.

Security futures

Security futures products (SFPs) are futures with an underlying instrument of either a single security or narrow-based security index. Single-stock futures have long traded on exchanges outside the US, and this trend is now reaching US markets as well, as several US exchanges have either launched, or are planning to launch, futures on individual shares of common stock. As this market develops, broker-dealers and FCMs should evaluate how the emergence of single stock security futures may affect their product offerings, customer margining, and compliance obligations.

Agentic AI

Agentic AI describes artificial intelligence systems capable of autonomously performing complex, multi-step tasks with limited human oversight, adapting to changing circumstances, and co-ordinating actions across systems. These capabilities are beginning to transform the derivatives industry, most notably in the areas of trade surveillance, algorithmic trading, and recordkeeping.

In trade surveillance, for example, banks are deploying agentic AI tools as investigative agents that analyse real-time activity and identify trading patterns suggesting misconduct. Before, compliance teams reviewed cases manually after their surveillance systems used predefined rules to flag activity. With this new technology, AI agents can examine trading behaviour, compare it with historical patterns, and flag unusual actions, meaning compliance teams may spend less time sorting through massive volumes of simple alerts and allocate more time to reviewing the complex issues raised by AI agents. In algorithmic trading, agentic systems can execute multi-step trading strategies and adjust to real-time market conditions with less direct human oversight. In recordkeeping, these systems can automate the capture, tagging, and retention of trading communications and transaction data, helping firms keep pace with recordkeeping obligations as trading volumes and data complexity increase.

Conclusion

Derivatives have evolved significantly from their early origins and become integral to modern financial markets. Despite their benefits in risk management, the complexity and potential risks of derivatives require ongoing regulatory oversight and prudent use by market participants. The future of derivatives will likely continue to be shaped by technological innovations, regulatory developments and the changing needs of the global economy.

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