MEMO# 30622

March 6, 2017

National Regulators' Statements and Guidance Regarding the March 1 Variation Margin Implementation Deadline

[30622] March 6, 2017 TO: ICI Members
ICI Global Members
Derivatives Markets Advisory Committee
ICI Global Trading & Markets Committee
Registered Fund CPO Advisory Committee
Securities Operations Advisory Committee SUBJECTS: Derivatives
International/Global RE: National Regulators' Statements and Guidance Regarding the March 1 Variation Margin Implementation Deadline

As previously noted, the European Supervisory Authorities ("ESAs") and the International Organization of Securities Commissions ("IOSCO") issued statements in late February regarding the March 1 deadline for exchanging variation margin for uncleared, over-the-counter derivatives.[1] Following those statements, national regulators from the United Kingdom, Ireland, Spain and Canada issued similar statements and guidance addressing the variation margin deadlines in their jurisdictions. Below is a summary of those statements and guidance.[2]

I. The Financial Conduct Authority ("FCA") – United Kingdom[3]

The FCA acknowledged that some firms may not be in a position to exchange variation margin fully in compliance with the March 1 deadline despite their efforts to date. In supervising firms' progress, the FCA will take a risk-based approach and use judgement as to the adequacy of progress, taking into account the position of particular firms and the credibility of the plans they have made.

The FCA will expect firms not yet in compliance to demonstrate that they have made best efforts to achieve full compliance, and to be ready to explain how they will achieve compliance in as short a time as practicable for all in-scope transactions entered into from March 1, 2017. The FCA will expect detailed and realistic plans to be in place, which they may request to see at any time, and for firms to have come into compliance within the coming few months.

II. The Central Bank of Ireland - Ireland[4]

The Central Bank of Ireland recognized the operational challenges in meeting the March 1 deadline. The Central Bank will apply a risk-based approach in supervising firms' progress and adequacy of processes, and expects counterparties to make every effort to move into full compliance at the earliest possible date.

While the Central Bank does not expect market participants to unwind or avoid transactions that they otherwise would have entered into, it does expect to see evidence of robust planning to achieve compliance at the earliest possible time for all in-scope transactions entered into from March 1, 2017.

III. The Office of the Superintendent of Financial Institutions ("OSFI") – Canada[5]

OSFI expressed awareness of the transitional measures taken in other major jurisdictions in order to avoid causing substantial disruptions to the derivatives market. OSFI recognizes that a harmonized implementation of the variation margin requirements would be helpful in ensuring a level playing field and a stable derivatives market for Canadian federally regulated financial institutions ("FRFIs") that the requirements cover.

Accordingly, OSFI will provide some relief to FRFIs with respect to the mandatory exchange of variation margin that begins on March 1. For all counterparties to which a covered FRFI has a significant exposure, OSFI expects those FRFIs to meet the variation margin requirements by March 1, 2017. For FRFIs transacting with counterparties that do not present a significant exposure to them, OSFI expects those FRFIs to meet the variation margin requirements by no later than September 1, 2017.

IV. The National Securities Market Commission ("CNMV") – Spain[6]

The CNMV generally applies a risk-based approach to its supervisory tasks, but will take into account the compliance difficulties that the ESAs and IOSCO noted and the specific circumstances of the entities affected when assessing the degree and timing of compliance.

In any case, the CNMV expects that entities having difficulties with the March 1 implementation date, will take necessary measures to comply without exception as soon as possible by implementing an effective and realistic plan. The CNMV expects that compliance will be widespread within weeks or a few months and will carry out specific supervisory actions to verify it.

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endnotes

[1] *See* ICI Memoranda Nos. 30592 (Feb. 23, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30592, and 30594 (Feb. 23, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30594 (summarizing statements from the

ESAs and IOSCO, respectively, regarding the variation margin compliance date for uncleared derivatives). *See also* ICI Memoranda Nos. 30593 (Feb. 23, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30593, and 30583 (Feb. 14, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30583 (summarizing US prudential regulators' guidance and a CFTC no-action letter, respectively, regarding the variation margin compliance date for uncleared swaps).

[2] This information summarizes e-mails previously circulated to the Derivatives Markets Advisory Committee and the ICI Global Trading & Markets Committee.

[3] *See* FCA Statement on EMIR 1 March 2017 Variation Margin Deadline (Feb. 23, 2017), *available at* https://www.fca.org.uk/news/news-stories/fca-statement-emir-1-march-2017-variation-margin-deadline.

[4] *See* FAQs, *available at* http://www.centralbank.ie/REGULATION/EMIR/Pages/FAQs.aspx. The Central Bank of Ireland's statement can be found at FAQ No. 15.

[5] *See* Guideline E-22 Margin Requirements for Non-Centrally Cleared Derivatives (Feb. 24, 2017), *available at* http://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/e22_let17.aspx.

[6] *See* CNMV Notice on the Obligation to Exchange Collateral for OTC Derivative Contracts from 1st March 2017 (Feb. 27, 2017), *available at* http://www.cnmv.es/portal/verDoc.axd?t=%7bb9a462a0-dc2e-4d75-a9ec-5ed39c09761c%7d.