MEMO# 30566

February 7, 2017

ICI Global and Other Trades Request that European Regulators Delay the March 1 Variation Margin Compliance Date for Uncleared Derivatives

[30566] February 7, 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
Trading and Markets RE: ICI Global and Other Trades Request that European Regulators Delay the March 1 Variation Margin Compliance Date for Uncleared Derivatives

Today, ICI Global along with the European Fund and Asset Management Association, Pensions Europe, and the American Benefits Council filed a comment letter requesting that the European Securities Markets Authority ("ESMA"), the European Banking Authority, and the European Insurance and Occupational Pensions Authority along with the European Commission work to implement at least a six-month delay of the March 1 compliance date for certain variation margin requirements for uncleared derivatives, through a dedicated regulatory technical standard ("RTS"). We requested the delay because, although funds have worked in good faith towards timely compliance with the variation margin requirements, we understand that a large volume of documentation still must be completed. A delay would allow funds and their counterparties to complete the necessary documentation. Alternatively, if an RTS cannot be executed in time, the letter asks the European Commission to request that ESMA work with national competent authorities to provide forbearance on the enforcement of variation margin requirements for at least six months.[1]

Our letter is very similar to the one we submitted last week to US regulators[2] and states that, in the absence of a delay, many funds face the real prospect of having their derivatives trades halted on March 1. The letter then: 1) explains the significant documentation challenges the variation margin rules present for funds; 2) identifies various obstacles that the industry has encountered in attempting to meet the compliance dates; and 3) recommends that US and European regulators coordinate an extension to remove the potential for regulatory arbitrage.

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Attachment

endnotes

[1] As previously reported, in December, the European Union finalized an RTS establishing margin requirements for non-centrally cleared over-the-counter ("OTC") derivatives. *See* Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives central counterparties and trade repositories with regard to regulatory technical standards for risk mitigation, techniques for OTC derivative contracts not cleared by a central counterparty (December 15, 2016), *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&from=EN. For a summary of the EU's OTC margin rules, please *see* ICI Memorandum No. 30491 (Dec. 20, 2016), *available at* https://www.iciglobal.org/iciglobal/pubs/memos/memo30491. The RTS, among other things, prescribes the minimum amount of variation margin to be posted and collected for OTC derivatives transactions and the methodologies by which the amount should be calculated. Firms with notional amounts of uncleared derivatives contracts totaling less than €3 trillion and their counterparties (including regulated funds) must begin exchanging the required variation margin on prospective transactions beginning March 1, 2017.

[2] *See* Letter from David W. Blass, General Counsel, Investment Company Institute, to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, et al., dated January 30, 2017. *See also* ICI Memorandum No. 30551 (Jan. 30, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30551.
