

MEMO# 30534

January 24, 2017

Draft Comment Letter Requesting a Delay to the March 1 Variation Margin Compliance Date; Member Comments Requested by January 27, 2017

[30534] January 24, 2017 TO: Derivatives Markets Advisory Registered Fund CPO
Advisory Securities Operations Advisory Committee RE: Draft Comment Letter Requesting a Delay to the March 1 Variation Margin Compliance Date; Member Comments Requested by January 27, 2017

As previously reported, the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve, Office of the Comptroller of the Currency, Farm Credit Administration and Federal Housing Finance Agency (altogether, “Prudential Regulators”) and Commodity Futures Trading Commission (“CFTC”) adopted final margin rules generally requiring swap dealers and certain other swap entities to post and collect initial and variation margin for over-the-counter swaps transactions.^[1] As part of the rules, swap dealers must exchange variation margin with other entities, including financial end users (e.g., registered funds), beginning on March 1, 2017. 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. Accordingly, we are requesting a six-month delay of the compliance date to allow funds and their counterparties to complete the necessary documentation.

ICI's draft comment letter requesting the delay is attached for your review. **If you have any comments on the draft letter, please send them to Jennifer Choi at jennifer.choi@ici.org or Kenneth Fang at kenneth.fang@ici.org by close of business on Friday, January 27. We are planning to send a final letter to the Prudential Regulators and CFTC by noon on Monday, January 30.**

Our draft letter states that, in the absence of a delay, many funds face the real prospect of having few dealer counterparties with which to execute transactions, or even losing the ability to trade swaps on March 1. The letter then: 1) explains the significant documentation challenges the variation margin rules present for funds; and 2) identifies various obstacles that the industry has encountered in attempting to meet the compliance dates.

First, the letter notes that funds must negotiate and execute documentation complying with

the new requirements, either by entering into new ISDA Credit Support Annexes or amending existing ones. In addition, the letter mentions that, until very recently, our members have encountered difficulty obtaining information about how those documents could be amended from dealers, who have been focused on meeting other compliance deadlines. It further explains that, as registered investment companies under the Investment Company Act of 1940, funds have the additional burden of preparing and executing tri-party control agreements to ensure that variation margin is held through a third-party custodian.

Second, the letter identifies the obstacles funds have encountered in dealing with swap dealers and using ISDA's 2016 Variation Margin Protocol. Specifically, the letter points out the range of responsiveness our members have experienced from dealers that have been prioritizing negotiations with their clients, resulting in smaller funds with smaller derivatives exposure receiving the least amount of attention. The letter also explains that, until recently, the ISDA VM Protocol, which was created to facilitate compliance with the variation margin rules, did not allow segregation of variation margin at a third-party custodian, making it unusable for funds. Moreover, it adds that the supplement to the ISDA VM Protocol that would allow for segregation of variation margin at a third-party custodian likely will not be available on ISDA's electronic platform until after March 1, 2017.

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Kenneth Fang
Assistant General Counsel

[Attachment](#)

endnotes

[1] See Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840 (Nov. 30, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf>; Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-01-06/pdf/2015-32320.pdf>. For a summary of the Prudential Regulators' OTC margin rules, please see ICI Memorandum No. 29484 (Nov. 12, 2015), available at https://www.ici.org/my_ici/memorandum/memo29484. For a summary of the CFTC's OTC margin rules, please see ICI Memorandum No. 29587 (Dec. 22, 2015), available at: https://www.ici.org/my_ici/memorandum/memo29587.