

MEMO# 30592

February 23, 2017

EU Authorities Issue Statement Regarding Variation Margin Compliance Date for Uncleared Derivatives

[30592] February 23, 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: EU Authorities Issue Statement Regarding Variation Margin

Compliance Date for Uncleared Derivatives

Today, the European Securities Markets Authority, the European Banking Authority, and the European Insurance and Occupational Pensions Authority (collectively, “ESAs”) issued a statement regarding the March 1 deadline for the exchange of variation margin for uncleared, over-the-counter derivatives required under the European Market Infrastructure Regulation.[\[1\]](#) The Statement notes that the materials presented to the ESAs, which include those from ICI Global and other market participants, indicate the operational challenges in meeting the implementation deadline, particularly for smaller counterparties.[\[2\]](#)

The Statement also notes that neither the ESAs nor the competent authorities (“CAs”) of the EU Member States possess any formal power to not apply the legal requirements, for example through no-action letters that some non-EU jurisdictions may have the authority to issue.[\[3\]](#) Therefore, the ESAs expect the CAs generally to apply their risk-based supervisory powers in their day-to-day enforcement of the applicable rules. In other words, there would not be a general forbearance on enforcement of the compliance deadline (as requested by ICI Global and others), but the ESAs expect the CAs to conduct a case-by-case assessment on the degree of compliance and progress.

In taking this approach toward enforcement, the ESAs expect the CAs to take into account the size of the exposure to the counterparty plus its default risk. Moreover, market participants are expected to document the steps taken toward full compliance and to put in place alternative arrangements to ensure that the risk of non-compliance is contained (such as by using existing Credit Support Annexes to exchange variation margin). The ESAs and CAs expect that difficulties in complying with the new requirements will be resolved in the coming months and that the transactions concluded on or after March 1 remain subject to

the obligation to exchange variation margin.

Jennifer S. Choi
Associate General Counsel

Kenneth Fang
Assistant General Counsel

endnotes

[1] Variation Margin Exchange under the EMIR RTS on OTC Derivatives (Feb. 23, 2017), *available at* https://www.esma.europa.eu/sites/default/files/library/esas_communication_on_industry_request_on_forbearance_variation_margin_implementation.docx_0.pdf (“Statement”).

[2] See ICI Memoranda Nos. 30589 (Feb. 21, 2017), *available at* https://www.iciglobal.org/my_ici/memorandum/memo30589, and 20566 (Feb. 7, 2017), *available at* https://www.iciglobal.org/my_ici/memorandum/memo30566 (summarizing and attaching joint letters of ICI Global and other trades requesting a delay of the variation margin deadline).

[3] The ESAs also state that any further delay of the application of the EU rules would need to be implemented through EU legislation formally, which is not possible given the lengthy process for adopting EU legislation.