

**MEMO# 30959**

November 27, 2017

# **EU Authorities Issue Statement Regarding Variation Margin Requirements for Physically Settled Foreign Exchange Derivatives Contracts**

[30959]

November 27, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

International/Global RE: EU Authorities Issue Statement Regarding Variation Margin Requirements for Physically Settled Foreign Exchange Derivatives Contracts

Last Friday, the European Supervisory Authorities (ESAs) issued a statement regarding challenges for certain counterparties in exchanging variation margin for physically settled foreign exchange derivatives contracts (FX contracts) by January 3, 2018.[\[1\]](#) The statement noted that the ESAs are in the process of developing a solution to this issue. In the meantime, the ESAs expect national competent authorities to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner.

Specifically, the ESAs noted that the implementation of the variation margin requirement appears mainly to pose a challenge regarding transactions with certain end-users.[\[2\]](#) Moreover, the ESAs stated that the requirement to exchange variation margin for FX contracts (part of the globally agreed upon framework) has been adopted in other jurisdictions via supervisory guidance, which in turn has led to a scope of application being more limited in other jurisdictions than in Europe.

In light of this situation, the ESAs are currently undertaking a review of the Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (RTS) and will develop draft amendments to these RTS. Specifically, the amendment of the RTS would most likely limit the scope of the requirement to cover transactions between institutions (credit institutions and investment firms).[\[3\]](#) If the ESAs are able to develop a solution, then these draft amendments will be submitted to the European Commission by December 24.

Jennifer S. Choi

Associate General Counsel

Kenneth Fang  
Assistant General Counsel

**endnotes**

[1] Variation margin exchange for physically settled FX forwards under EMIR (Nov. 24, 2017), *available at* <https://esas-joint-committee.europa.eu/Pages/News/Variation-margin-exchange-for-physically-settled-FX-forwards-under-EMIR-.aspx>. The statement addresses only physically settled FX forward contracts.

[2] ICI Global, in conjunction with four other trade associations, submitted a letter urging European regulators to defer and reconsider variation margin requirements for FX contracts. See ICI Memorandum No. 30894 (Oct. 3, 2017), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30894>.

[3] We understand that the scope of the requirements is still under discussion but likely would cover transactions between certain “institutions” (*i.e.*, banks and broker-dealers).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.