

COMMENT LETTER

February 21, 2017

Joint Trades Submit Supplemental Comment Letter to European Regulators Requesting Relief from the March 1 Variation Margin Compliance Date (pdf)

For the attn. of: Mr Steven Maijor, Chair European Securities and Markets Authority Mr Andrea Enria, Chair European Banking Authority Mr Gabriel Bernardino, Chair European Insurance and Occupational Pensions Authority Via electronic transmission Ref. [17-1019] Brussels, 21 February 2017 Supplemental Letter Regarding the Variation Margin ("VM") Compliance Date for Pension and Regulated Funds (UCITS, AIFs and US Regulated Funds)

Dear Sirs, Following up on our letter of 7 February 2017, we are writing to reiterate our concern with regard the above matter and call on the European Supervisory Authorities (European Securities Markets Authority, the European Banking Authority, and the European Insurance and Occupational Pensions Authority) (collectively, "ESAs") to act urgently to ensure coordination among National Competent Authorities in their enforcement approaches and allow for reasonable flexibility to market participants in their aim to comply with the new variation margin ("VM") requirements under EMIR. Whereas the sectors we represent support and are doing their utmost to comply with these new rules, the current 1 March 2017 compliance date for VM requirements in the RTS of risk mitigation tools for non-centrally cleared OTC derivatives under EMIR is Concerns about the Variation Margin Compliance Date for Pension and Regulated Funds (UCITS, AIFs and US Regulated Funds) Page 2 of 3 practically impossible to meet. For example, currently EU pension funds have completed only 10%-20% of the required agreements. While we understand that the ESAs do not have formal power to provide "no-action relief", we believe that alternative actions should be undertaken to by the ESAs in order to ensure consistency. In this regard, we refer to the article 1 of the ESAs regulations, which note that the Authorities "shall contribute to improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision". For this reason, with this letter, we urge the ESAs to provide guidance on a harmonised enforcement approach by the National Competent Authorities that allows for reasonable flexibility, at least six months, to market participants in their aim to comply with the new rules. We would also strongly encourage the ESAs or National Competent Authorities to issue statements confirming this position to ensure legal certainty. With the compliance date less than 10 days away, we urge EU authorities to act quickly to avoid major disruptions in the global derivatives market. Otherwise buy-side market participants are at risk of being be cut-off from trading with firms subject to the VM regulations, may be unable to access the liquidity they need and would remain unhedged. Since we submitted our initial comment letter,¹ the US

Commodity Futures and Trading Commission (“CFTC”) staff has joined several non-European jurisdictions in providing relief from the 1 March VM implementation date to affected parties.² We reiterate our belief that ensuring global regulatory consistency remains crucial. Specifically, the CFTC staff issued a no-action letter allowing affected parties until 1 September 2017 to come 1 See Letter from Peter De Proft, Director General, European Fund and Asset Management Association, et al., to Olivier Guersent, Director General for Financial Services Policy, DG FISMA European Commission, et al., dated February 7, 2017. 2 Australia, Hong Kong, and Singapore have included a 6-month transitional period for variation margin implementation, beginning on 1 March 2017, and ending on 31 August 2017. We understand that the United Kingdom also is considering relief in this area. See Futures & Options World, “FCA to use judgment over variation margin rule” (Feb. 15, 2017) (“We will use judgement in our supervision of firms taking into account their position and the credibility of the plans they have made” said a spokesperson from the FCA”), available at <http://www.fow.com/3661846/FCA-to-use-judgement-over-variation-margin-rule.html>. Concerns about the Variation Margin Compliance Date for Pension and Regulated Funds (UCITs, AIFs and US Regulated Funds) Page 3 of 3 into compliance with the new VM regulations.³ In providing relief, the CFTC staff highlighted the tremendous burdens that parties face in executing new or amended credit support documentation to comply with the VM requirements. Without relief, the CFTC staff recognized that dealers may be required to stop trading with a significant number of counterparties for lack of proper documentation. The CFTC staff noted the “significant impact” that proceeding without a proper transition could have on a pension and regulated fund’s ability to hedge positions and otherwise manage its accounts.⁴ Moreover, an abrupt cut-off in substantial swap trading activity could have harmful effects on the global swaps market with both foreseeable and unforeseeable consequences to market health and safety. In fact, some Member States have yet to finalize, or have done so only few days ago, a mechanism for counterparties to more easily incorporate amendments to their agreements.⁵ We trust the National Competent Authorities and the ESAs, in their coordinating role, will be open to assisting firms to reasonably and appropriately comply with the new rules without disrupting the global markets. Yours faithfully, Peter De Proft Matti Leppälä Dan Waters Lynn Dudley
 Director General, EFAMA Secretary General/CEO, Pensions Europe Managing Director, ICI
 Global Senior Vice President, Global Retirement and Compensation Policy, American
 Benefits Council 3 See CFTC Letter No. 17-11 (Feb. 13, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-11.pdf>. 4 See CFTC, Press Release pr7531-17: “CFTC’s Division of Swap Dealer and Intermediary Oversight Issues Time-Limited No-Action Transition for March 1, 2017 Compliance Date for Variation Margin and No- Action Relief from Minimum Transfer Amount Provisions,” available at <http://www.cftc.gov/PressRoom/PressReleases/pr7531-17>. 5 Unlike the US, where parties can utilize ISDA’s new Credit Support Annex for Variation Margin to effectuate amendments to their current agreements, parties in some European countries (e.g., Germany and Spain) do not have approved CSA templates to proceed.