

UPDATE: U.S. Prudential Regulators and EU (EMIR) Relief Guidance Issued on March 1st Variation Margin Deadline

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U.S. Prudential Regulators and European Supervisory Authorities Follow CFTC in Issuing Regulatory Guidance Regarding March 1, 2017 Variation Margin Deadline, But Relief is “Risk” Based

Last week we issued an [alert](#) advising of No-Action Letter 17-11 issued on February 13, 2017 by the U.S. Commodity Futures Trading Commission (“CFTC”), providing limited relief from the March 1, 2017 deadline for covered swap entities to implement variation margin requirements (“VM Requirements”) for uncleared swaps with in-scope counterparties. In that alert we advised that the relief granted by the CFTC might have only limited impact given that no similar relief had yet been issued by the various Prudential Regulators who regulate many banks in the U.S. or by the European Supervisory Authorities (“ESAs”) who regulate many banks in the European Union. On Thursday, February 23, 2017, both the U.S. Prudential Regulators and the ESAs elected to issue regulatory guidance addressing covered swap entities’ (*i.e.*, swap dealers’) compliance with the March 1, 2017 variation margin deadline. Unlike the CFTC relief, the Prudential Regulators’ and the ESAs’ relief is “risk” based, requiring covered swap entities to comply with VM Requirements with respect to counterparties that present significant exposures by March 1, 2017, focusing on a covered swap entity’s good faith efforts to comply with VM Requirements with all other counterparties as soon as possible (for the Prudential Regulators “in no case later than September 1, 2017”). Accordingly, the scope of relief granted in the new guidance is limited and market participants should review the details carefully.

While the CFTC elected to issue relief in the form of a no-action letter, indicating that, subject to certain conditions, during a transitional period until September 1, 2017, the CFTC would not recommend enforcement actions against covered swap entities failing to satisfy applicable VM Requirements, the nature of the Prudential Regulators’ and ESAs’ guidance, and the scope of relief that may be relied upon thereunder, are more limited.

On February 23, 2017, both the [Federal Reserve Board](#) and the [Office of the Comptroller of the Currency](#) issued guidance discussing their expectations regarding compliance with the March 1, 2017 variation margin deadline. Both observed that the March 1, 2017 deadline remained in place, and did not provide for general suspension of enforcement or postponement of the deadline.

Instead, they focused on principles that examiners should focus on in examining supervised institutions’ compliance with the VM Requirements during initial exams following the implementation of the new variation margin rules, and in so doing, discussed some parameters around which regulators could exercise discretion in such examinations.

To read the full alert, click on the PDF linked below.

[US-Prudential-Regulators-EU-Relief-Guidance-Issued.PDF](#)