

ALERTS

New EMIR Variation Margin Requirements

28 February 2017

From 1 March 2017, the new variation margin ('VM') rules for over-the-counter ('OTC') derivatives contained in the regulatory technical standards adopted by the European Commission (the 'Delegated Regulation')[1] will apply to certain European counterparties.

In anticipation of the 1 March deadline, European counterparties (and any non-EU entities, including funds, that trade with European financial institutions) are in the process of putting in place appropriate risk management procedures and compliant netting and collateral documentation to implement the new VM requirements.

To address industry concerns as to parties failing to meet the deadline, a joint-association letter (consisting of, amongst others, ISDA, SIFMA and ABA) was sent[2] to regulators and central banks requesting forbearance. In response, the European Supervisory Authorities (the 'ESAs') did not grant a forbearance but encouraged national competent authorities (such as the FCA in the United Kingdom) to adopt a risk-based approach in the application and enforcement of the rules. The FCA has stated[3] that it will be taking into account '*the credibility of the plans [parties] have made*'.

Legal Review of Netting and Collateral Arrangements

As well as the implementation of new VM documentation and risk management procedures, the Delegated Regulation requires each party

to an OTC derivative (including investment managers on behalf of the funds they manage) to undertake an independent legal review of its exchange of collateral and netting arrangements to confirm that they are in compliance with the Delegated Regulation. In the EU, parties to OTC derivatives may be required by national competent authorities to demonstrate that a legal review has been undertaken.

Counterparties are also required to review their risk management procedures on an annual basis, which may also necessitate the legal review of any new arrangements or updates to existing margin and collateral arrangements.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Commission Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty published on the Official Journal on 15 Nov. 2016.

[2] The joint-association letter can be viewed here.

[3] The FCA's statement can be viewed here.

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