

# Client Update

## CFTC No-Action Letters on Uncleared Swap Margin Rules

### NEW YORK

Byungkwon Lim  
blim@debevoise.com

Emilie T. Hsu  
ehsu@debevoise.com

On February 13, 2017, the Division of Swap Dealer and Intermediary Oversight (“DSIO”) of the Commodity Futures Trading Commission (the “CFTC”) issued two no-action letters regarding the application of the CFTC’s margin requirements for uncleared swaps<sup>1</sup> (“CFTC Margin Rules”).

The first letter<sup>2</sup> provides no-action relief to swap dealers to delay, until September 1, 2017, full compliance with the variation margin (“VM”) requirements for uncleared swaps that are otherwise scheduled to go into compliance on March 1, 2017 (the “VM Delay Letter”).

The second letter<sup>3</sup> provides no-action relief to apply a “minimum transfer amount” (“MTA”) no greater than \$50,000 to the initial margin (“IM”) and VM amounts applicable to uncleared swaps entered into with “separately managed accounts” subject to certain conditions (the “MTA Letter”).

As of the date of this update, the U.S. banking prudential regulators have not expressed whether they would grant identical relief for those swap dealers that are subject to the margin requirements for uncleared swaps adopted by the prudential regulators.

### THE VM DELAY LETTER

Under the CFTC Margin Rules, a swap dealer registered with the CFTC and for which there is no banking prudential regulator (a “CFTC SD”) is required to

---

<sup>1</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). For more information, see our client update available at: <http://www.debevoise.com/insights/publications/2015/12/cftc-adopts-margin-rules-for-non-cleared-swaps>.

<sup>2</sup> CFTC Letter No. 17-11, available at: <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/17-11>.

<sup>3</sup> CFTC Letter No. 17-12, available at: <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/17-12>.

exchange VM on uncleared swaps entered into with all counterparties that are swap dealers, major swap participants or financial end users on and after March 1, 2017.

Following a number of requests by virtually all CFTC SDs and many industry groups representing the swap end-user community, DSIO issued the VM Delay Letter to provide no-action relief to CFTC SDs to delay the compliance date of VM exchanges from March 1, 2017, to September 1, 2017, subject to the following conditions:

- The CFTC SD does not comply with the March 1, 2017 deadline solely because it has not, despite good faith efforts, completed necessary credit support documentation (including custodial segregation documents, if any) with such counterparty or, acting in good faith, requires additional time to implement operational processes to settle VM by March 1, 2017;
- The CFTC SD uses its best efforts to continue to implement compliance without delay with each counterparty following March 1, 2017;
- To the extent the CFTC SD has existing variation margin arrangements with a counterparty, it must continue to exchange VM with such counterparty in accordance with such arrangements until such time as the CFTC SD is able to comply with the VM requirements of the CFTC Margin Rules; and
- No later than September 1, 2017, the CFTC SD fully complies with the VM requirements with respect to all swaps entered into on or after March 1, 2017.

DSIO states that it will monitor the progress of the CFTC SDs that are relying on the VM Delay Letter and expects them to make “continual, consistent, and quantifiable progress toward compliance with ... all counterparties on a rolling basis during the no-action period.”

### THE MTA LETTER

Under the CFTC Margin Rules, a CFTC SD is permitted to apply an MTA of up to \$500,000 per entity, below which the transfer of IM and VM does not need to be made “to alleviate the operational burdens associated with making de minimis margin transfers.”

Many large institutional clients hire multiple asset managers to manage different portions of such clients’ assets. Each manager only has investment management discretion over a portion of the clients’ assets as established by an investment management agreement (an “IMA”) between the clients and the manager.

In the MTA Letter, the DSIO defines a “separately managed account” or an “SMA” as an account managed by an asset manager and governed by an IMA that grants an asset manager authority with respect to a specified portion of the client’s assets referred to as assets under management.

When a CFTC SD enters into swaps with an institutional client that owns multiple SMAs, the asset manager of each SMA will typically execute the swaps as an agent for the SMA on behalf of the institutional client. Further, each SMA will typically have its own ISDA master agreement and credit support annex with the CFTC SD; as a result, margin movements for IM or VM cannot be netted across all the SMAs of a particular institutional client.

In the MTA Letter, DSIO provides no-action relief such that each CFTC SD can apply an MTA no greater than \$50,000 to the IM and VM collection and posting obligations under the CFTC Margin Rules to each SMA for the swaps entered into with a CFTC SD by an asset manager on behalf of an SMA owned by a legal entity pursuant to authority granted under an IMA, and when the swaps of such SMA are subject to a master netting agreement that does not permit netting of IM or VM obligations across SMAs of the legal entity that have swaps outstanding with the CFTC SD.

\* \* \*

Please feel free to contact us with any questions.