

Client Update

Banking Agencies' Guidance on Compliance Date for Uncleared Swap Margin Rules

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On February 23, 2017, the Federal Reserve Board (the “FRB”) and the Office of Comptroller of the Currency (the “OCC”) issued guidance¹ (the “VM Guidance”) on how banking supervisors should examine swap dealers for compliance with variation margin requirements for uncleared swaps issued by the banking prudential regulators² (the “VM Requirements”).

The VM Guidance explains that while the compliance deadline for the VM Requirements is March 1, 2017, the FRB and the OCC expect the swap dealers to make good faith efforts to comply with the VM Requirements in a timely manner, but no later than September 1, 2017.

THE VM GUIDANCE

On February 13, 2017, the Division of Swap Dealer and Intermediary Oversight of the Commodity Futures Trading Commission (the “CFTC”) issued a no-action letter³ to swap dealers under the jurisdiction of the CFTC to delay, until September 1, 2017, full compliance with the VM Requirements for uncleared swaps that are otherwise scheduled to go into compliance on March 1, 2017 under the CFTC’s margin requirements for uncleared swaps.

¹ Joint Press Release of the FRB and the OCC, *available at*: <https://www.federalreserve.gov/newsevents/press/bcreg/20170223a.htm>.

² Margin and Capital Requirements for Covered Swap Entities, *available at*: <https://www.fdic.gov/news/news/press/2015/pr15081.html>. For more information, see our client update *available at*: <http://www.debevoise.com/insights/publications/2015/10/bank-agencies-adopt-margin-and-capital-rules>.

³ CFTC Letter No. 17-11, *available at*: <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/17-11>. For more information, see our client update *available at*: <http://www.debevoise.com/insights/publications/2017/02/cftc-no-action-letters>.

Following requests by many industry groups representing both the swap dealer and the swap end-user communities, the FRB and the OCC are issuing this VM Guidance to provide some comfort to parties that would not be able to finish implementing the documentation and other processes for compliance with the VM Requirements by March 1, 2017.

In the Supervision and Regulation Letter relating to the VM Guidance,⁴ the FRB states that the examiners should use the following principles in exercising their supervisory discretion over the relevant swap dealers:

- Priority should be given to compliance by swap dealers based on the size and risk inherent in the credit and market risk exposures presented by each of their counterparties. The VM Requirements compliance is expected as of March 1, 2017, with respect to the swap dealers and financial end users that present significant exposures. With respect to other counterparties, the examiners should focus on the swap dealers' good faith efforts to comply with the VM Requirements as soon as possible, and in no case later than September 1, 2017.
- Recognizing the scope and scale of necessary changes for each swap dealer to achieve compliance with the VM Requirements, during the initial examinations for compliance, the examiners should evaluate the swap dealers' management systems and program for compliance. Each swap dealer is expected to have governance processes that assess and manage its current and potential future credit exposure to its counterparties, as well as any other market risk arising from such swap transactions.
- The examiners should also consider the swap dealers' implementation plan, including actions taken to update documentation, policies, procedures and processes, as well as training programs for staff on how to handle technical problems and other implementation challenges.

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Please do not hesitate to contact us with any questions.

⁴ SR Letter 17-03: Initial Examinations for Compliance with Minimum Variation Margin Requirements for Non-Cleared Swaps and Non-Cleared Security Based Swaps, available at: <https://www.federalreserve.gov/bankinfo/srletters/sr1703.htm>.