Limited reprieve from EMIR 1 March, 2017 variation margin deadline

As the 1st March 2017 deadline for implementing the EMIR variation margin exchange requirements loomed, the European Supervisory Authorities (ESAs) have today issued a release indicating its expectation that national EU regulators would show temporary forbearance in enforcing EMIR's variation margin provisions, on a case by case basis. Our previous EMIR bulletin reported that the U.S. CFTC had similarly announced on 13th February last that it would allow swap dealers a six-month grace period to comply with the 1 March 2017 variation margin rules deadline that was applicable in the U.S.

While this ESAs statement does not have the effect of amending the EMIR legislation, this statement would be expected to result in a temporary reprieve from enforcement action at a national level due to non-compliance with the variation margin rules. That is, assuming the relevant EU regulator considers this to be appropriate in light of the size of the exposure to the counterparty and the counterparty's default risk. The ESAs' statement also sets out that "participants must document the steps taken toward full compliance and put in place alternative arrangements to ensure that the risk of non-compliance is contained, such as using existing Credit Support Annexes to exchange variation margins." It would appear from this that counterparties who already have CSAs in place must take demonstrable steps to exchange variation margin under such CSAs from March 1 (even if not compliant with the EMIR requirements) whereas counterparties without such CSAs would not be expected to do so. It is not clear what "alternative arrangements" the ESAs expect counterparties without existing credit support documentation to put in place.

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The statement goes on to say that "this approach does not entail a general forbearance, but a case-by-case assessment from the [national regulators] on the degree of compliance and progress" with the expectation that "the difficulties will be solved in the coming few months and that transactions concluded on or after 1 March 2017 remain subject to the obligation to exchange variation margin."

While this temporary reprieve will be welcomed by many, counterparties should take note of its limited and qualified nature.

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