

DERIVATIVES

EU and Prudential Regulators Issue Statements on March 1 Compliance With Swap Margin Rules

Lacking the ability to issue formal no-action relief from strict compliance with the variation margin rules for uncleared swaps coming into effect on March 1, the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency (OCC) and the European Supervisory Authorities (ESA) have each issued statements suggesting that they will exercise some forbearance in enforcing the margin rules after March 1 if a swap dealer subject to their respective regulations is diligently pursuing compliance on that date. The communications from the Federal Reserve Board and the OCC follow the lead of the no-action relief issued by the Commodity Futures Trading Commission on February 13 by pointing to September 1 as the latest date for full compliance. The ESA communication is stricter in tone and does not identify a specific period in which enforcement will be relaxed. (There are no equivalent statements from the other US prudential regulators because they do not regulate any swap dealers and therefore do not have this issue.)

The Federal Reserve Board statement is available [here](#). The OCC statement is available [here](#).

The ESA statement is available [here](#).

UK DEVELOPMENTS

UK Private Fund Limited Partnerships

HM Treasury has published a revised draft Legislative Reform Order (Order) on amendments to the Limited Partnership Act 1907 (Act), which was laid before parliament on January 16. The Order relates to the new private fund limited partnership (PFLP) structure. The PFLP is designed to reduce the administrative and financial burdens that impact funds under the current limited partnership (LP) structure, thereby making the United Kingdom a more attractive jurisdiction for funds. Further information on the proposal stage of the Order can be found in the *Corporate & Financial Weekly Digest* edition of [August 7, 2015](#).

New and existing LPs that qualify as a collective investment scheme, as defined in the Financial Services and Markets Act 2000, will be able to elect to become PFLPs. PFLPs will be able to benefit from a number of modifications to the LP regime, including the following:

- there will be no need to make or register “capital” contributions and the prohibition on withdrawal of capital contributions will be removed;
- the requirements to register changes in the LP, such as term, capital and general nature, will be removed;
- more relaxed rules on a winding up will apply, with the requirement for a court order removed; and
- there will be a non-exhaustive “white-list” of activities a limited partner can carry out without being deemed to be involved in the management of the LP and therefore liable for the debts and obligations of the LP. The white list includes actions such as taking part in decisions about varying the partnership agreement and appointing a person to wind up the partnership.

The Order will need to be approved by a resolution of both Houses of Parliament before becoming law. The Order will likely go into effect on April 6.

The Order is available [here](#).

EU DEVELOPMENTS

ESAs Publish Statement On Variation Margin Exchange

On February 23, the European Supervisory Authorities (ESAs), which consist of the European Banking Authority, European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority, published a joint statement (Statement) in response to industry requests relating to operational challenges in meeting the deadline of March 1 for exchanging variation margin imposed by the European Market Infrastructure Regulation (EMIR).

The Statement acknowledges that the March 1 deadline poses a challenge for smaller counterparties. However, it goes on to state that the deadline is part of a globally agreed upon framework, known in the European Union since 2015, which had already been delayed by nine months.

The Statement further confirms that the ESAs and national competent authorities of member states possess no formal power to disapply or delay the deadline. The only way to do so would be through further EU legislation, which is not possible due to the lengthy process required.

The Statement ends with an expectation that any difficulties faced by smaller counterparties will be solved in the coming months and those transactions concluded on or after March 1 will remain subject to the obligation to exchange variation margin. In the meantime, competent authorities are expected to “generally apply their risk based supervisory powers,” assessing on a case-by-case basis the level of compliance, and progress towards compliance, of firms unable to meet the deadline.

The Statement is available [here](#).

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For more information, contact:

FINANCIAL SERVICES

Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Kimberly L. Broder	+1.212.940.6342	kimberly.broder@kattenlaw.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@kattenlaw.com
Gary DeWaal	+1.212.940.6558	gary.dewaal@kattenlaw.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	+1.212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@kattenlaw.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@kattenlaw.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Ross Pazzol	+1.312.902.5554	ross.pazzol@kattenlaw.com
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@kattenlaw.com
James Van De Graaff	+1.312.902.5227	james.vandegraaff@kattenlaw.com
Robert Weiss	+1.212.940.8584	robert.weiss@kattenlaw.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

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David A. Brennand	+44.20.7776.7643	david.brennand@kattenlaw.co.uk
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Nathaniel Lalone	+44.20.7776.7629	nathaniel.lalone@kattenlaw.co.uk

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