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Update: CFTC Delays Compliance Deadline for New Swap Margin Rules

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ALTHOUGH THE LETTER TECHNICALLY DOES NOT DELAY THE EFFECTIVE DATE OF MARCH 1, 2017, FROM THE PERSPECTIVE OF THE BUY SIDE, THE LETTER FUNCTIONS AS A "GRACE PERIOD," AND THE COMPLIANCE DATE HAS BEEN MOVED TO SEPTEMBER 1, 2017.

On February 13, 2017, the Commodity Futures Trading Commission (CFTC) issued Letter No. 17-11, which effectively delays the compliance deadline for the new swap variation margin regulations (New Swap Margin Rules). (We discussed the rules in our Client Alert published early on February 13, available at http://www.pepperlaw.com/publications/documentation-for-the-new-swap-margin-rules-and-thoughts-for-the-buy-side-and-end-users-2017-02-13/.) As described below, the CFTC's letter applies only to certain swap dealers. The letter states that the CFTC's Division of Swap Dealer and Intermediary Oversight will not recommend an enforcement action against a swap dealer for failing to comply with the New Swap Margin Rules if the swap dealer complies by

September 1, 2017 and, prior to such date, the swap dealer continues to use its best efforts to comply with the New Swap Margin Rules. In addition, swap dealers relying on the letter must continue to collect and post variation margin under any existing collateral agreements they have with their counterparties and satisfy certain additional requirements.

Although the letter technically does not delay the effective date of March 1, 2017 from the perspective of the buy side, the letter functions as a "grace period," and the compliance date has been moved to September 1, 2017. Buy-side parties can now continue to trade under existing swap documentation with their sell-side counterparties until September 1, 2017, even if their existing documentation does not comply with the New Swap Margin Rules. That being said, we expect swap dealers will continue to press the buy side to complete compliant versions of the New Swap Margin Rules documentation in a timely manner.

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- The CFTC letter only applies to swap dealers that are *not* regulated by a Prudential Regulator (*i.e.*, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency). Thus those parties covered by the CFTC relief are registered broker-dealers and futures commission merchants that are not also banks. As of today, swap dealers that are regulated by a Prudential Regulator remain subject to the March 1, 2017 deadline and do not have a "grace period" to rely on.

We suggest that buy-side counterparties contact their swap dealers and ascertain whether their swap dealers are still subject to the March 1, 2017 deadline without a "grace period." We believe that swap dealers with a bank charter, as of today, are likely to remain subject to the March 1, 2017 deadline, unless the Prudential Regulators issue a similar delay. It is possible, and perhaps likely, that the Prudential Regulators will issue a letter similar to the CFTC's February 13, 2017 letter and also create a "grace period" for the swap dealers they regulate. We will keep you apprised of developments as we become aware of them.

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- We encourage those thinking about the New Swap Margin Rules to speak with experienced regulatory counsel to discuss possible strategies for complying with the rule in greater detail. Pepper Hamilton can help.

If you have any questions, please reach out to Todd R. Kornfeld and Gregory J. Nowak, or any other members of the Pepper Hamilton Financial Services team.

Research assistance for this article was provided by Theodore D. Edwards, an associate in Pepper's Philadelphia office.