Group Briefing

February 2017 (Updated)

EMIR - Variation Margin deadline of 1 March 2017

KEY CONTACTS

For further information please speak to your usual Arthur Cox contact or:

PHIL CODY
PARTNER, DERIVATIVES GROUP
+353 1 618 0604
phil.cody@arthurcox.com

AIDEN SMALL
PARTNER, DERIVATIVES GROUP
+44 207 832 0200
aiden.small@arthurcox.com

EMIR and its related RTS requires certain parties (FCs and NFC+s) to most uncleared OTC derivatives to exchange variation margin for transactions entered into on or after 1 March 2017 (the "**VM Deadline**").

The European Supervisory Authorities (ESAs – European Banking Authority, European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) have published a statement confirming that there will be no delay to the VM Deadline.

The ESAs noted that neither they, nor any competent authority, have any formal power to disapply directly applicable EU legal text – for example, by way of a "no-action letter", as was issued on 13 February 2017 by the U.S. Commodity Futures Trading Commission.

From a buy-side perspective, the statement by the ESAs was helpful in some respects insofar as it confirmed that the ESAs are aware of the operational challenges faced by smaller market participants in meeting the EMIR variation margin requirements by the VM Deadline.

On 24 February the Central Bank of Ireland updated its EMIR Q&A to address the VM Deadline. In the updated Q&A, the Central Bank reiterated the statement from the ESAs that it is a legal obligation for in-scope entities to exchange variation margin from 1 March.

The Central Bank's Q&A goes on to state that it "applies a risk-based approach to the supervision of the adequacy of processes adopted by entities" and that all counterparties "are expected to make every effort to move into full compliance at the earliest possible date." The Central Bank's Q&A also states that "while the Central Bank does not expect market participants to unwind or avoid transactions that they would have otherwise entered into, it does expect to see evidence of robust planning to achieve compliance at the earliest possible time for all in-scope transactions entered into from 1 March 2017".