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MARGIN FOR UNCLEARED SWAPS: PRACTICAL CONSIDERATIONS FOR THE BUY-SIDE

The new U.S. margin regulations for uncleared swaps address the form of margin, timing for delivery, haircuts, required initial and variation amounts, and two-way margin. The authors discuss these subjects and find, in particular, that the regulations will require changes in documentation, and may require adjustments to a buy-side entity's asset mix and operations. They advise buy-side entities to educate themselves on the key parameters of the regulations and make strategic decisions that take regulatory changes into account.

By Willa Cohen Bruckner and Matthew Barringer *

In the aftermath of the 2008 financial crisis, fundamental regulatory changes were brought to the swaps market, perhaps none touching so many market participants so significantly as the margin requirements for uncleared swaps. Every major jurisdiction has adopted or will adopt margin regulations that impact large banks and other swap dealers, as well as parties on the other side of swap transactions. Compliance dates are staggered, with March 1, 2017 being the first to affect parties other than the largest market participants, and each September 1 through 2020 being additional compliance dates.

The industry has been engaged in an intense effort to modify documentation and put arrangements in place so that transactions would comply with margin requirements before the March 1, 2017 deadline. Swap dealers have invested enormous resources to assure compliance with the regulations by March 1, 2017. However, many other market participants, particularly

those with lean internal staffing, have spent little time digesting the new requirements and understanding their economic and operational effects.¹

¹ Just prior to March 1, 2017, US and European authorities acknowledged that much of the industry would not be compliant with the regulations by the deadline. Each has left an opening for a softer hand in reviewing a swap dealer's compliance with respect to customers that do not pose significant credit and market risk, as long as appropriate risk management processes are in place and the swap dealer is making efforts to comply. Supervision and Regulation Letter 17-3, Board of Governors of the Federal Reserve System (Feb. 22, 2017), <https://www.federalreserve.gov/bankinforeg/srletters/sr1703.pdf>; OCC Bulletin 2017-12, to CEOs and Compliance Officers of National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties (Feb. 23,

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