Commodity Futures Trading Commission

Office of Public Affairs

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Q&A – Time-Limited Staff No-Action Letter for Failure to Collect and/or Post Variation Margin under Commission Regulation 23.153

Will the No-Action Letter postpone the March 1, 2017 compliance date for exchange of variation margin under Commission Regulation 23.153?

No. The No-Action Letter does not postpone the Commission-mandated March 1, 2017 compliance date. It simply affords market participants with a grace period to come into compliance.

What is the purpose of the No-Action Letter?

Having heard from industry participants on the operational challenges associated with preparing documentation for thousands of financial end-users that use the swaps market to hedge financial risk, staff believes this relief is necessary in order to avoid a global swap market disruption. Without this relief, swap dealers may be required to stop trading with many non-dealer counterparties, which could reduce access to liquidity and the ability to hedge positions for pension funds, asset managers, and insurance companies that manage Americans' retirement savings and financial security.

What will staff expect of swap dealers that rely on the No-Action Letter?

A swap dealer may only rely on the No-Action Letter's grace period if: non-compliance with the March 1, 2017 date is solely due to inability to complete, despite good-faith efforts, necessary documentation (including custodial segregation documentation, if any) or, acting in good faith, requires additional time to implement operational processes; the swap dealer uses its best efforts to comply with the March 1, 2017 deadline as soon as possible after March 1, 2017; in situations where the swap dealer already exchanges variation margin with a counterparty, it must continue to do so with such counterparty until the swap dealer can comply with the March 1 VM Requirements with respect to that counterparty; and the swap dealer complies with the March 1, 2017 requirements with respect to all swaps to which the March 1, 2017 compliance date applies that were entered on or after March 1, 2017 (i.e., back-loading is required).

What is back-loading?

Back-loading means that, by September 1, 2017 at the latest, the swap dealer will have complied with the collection and/or posting requirements of § 23.153 for every uncleared swap that was subject to the March 1, 2017 deadline.

Does the No-Action Letter affect the variation margin requirements of § 23.153 that were subject to a September 1, 2016 compliance date?

No, the No-Action Letter has no effect on the variation margin requirements for uncleared swaps that were subject to the September 1, 2016 compliance date. As of September 1, 2016, a swap dealer was required to comply with the variation margin requirements of § 23.153 with swap counterparties where the swap dealer (combined with all of its affiliates) and its counterparty (combined with all of its affiliates) had an average daily notional amount of covered swaps for March, April, and May of 2016 that exceeds $3 trillion.

Who should be contacted in case of any questions about the No-Action Letter?

Please contact Eileen T. Flaherty, Director, Division of Swap Dealer & Intermediary Oversight, Commodity Futures Trading Commission at eflaherty@cftc.gov or (202) 418-5326.