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January 30, 2017

Mr. Robert deV. Frierson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
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Mr. Robert E. Feldman
Executive Secretary
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Mr. Alfred M. Pollard
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Legislative and Regulatory Activities Division
Office of Comptroller of the Currency
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Mail Stop 9W-11
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Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Uncleared Swap Margin Requirements – Request for a Delay of the March 1, 2017
Variation Margin Compliance Date

Ladies and Gentlemen:

The Investment Company Institute¹ writes, on behalf of our members, to request respectfully at least a six-month delay of the compliance date for variation margin requirements, which are

¹The Investment Company Institute (“ICI”) is a leading global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$18.4 trillion in the United States, serving more than 95 million US shareholders, and US\$1.6

scheduled to take effect on March 1, 2017.² The margin rules generally will require swap dealers and certain other swap entities to post and collect initial and variation margin for over-the-counter swaps transactions. The compliance date for initial and variation margin requirements for counterparties that have an average daily aggregate notional amount of swaps that exceeds \$3 trillion was September 2016. The next significant compliance date for the margin rules is March 1, 2017, when swap dealers must exchange variation margin with other entities, including financial end users (*e.g.*, funds).

Despite significant efforts of regulated funds (*e.g.*, US mutual funds) to comply with the variation margin requirements by March 1, many of our members continue to struggle, due to factors outside their control, to complete the required documentation before that date. As further described below, these challenges include funds having to enter into or amend huge volumes of derivatives agreements. Although the industry has worked towards a more standardized solution to facilitate compliance with the new rules, these efforts have had mixed success and one of the standardized approaches was determined only late in the process. For example, certain elements of the ISDA protocol for regulated funds were finished only last week and likely will not be available on ISDA's electronic platform prior to March 1.

In the absence of a delay of the rule's compliance date beyond March 1, many funds face the real prospect of having few dealer counterparties with which to execute transactions. Much worse, they may even lose the ability to trade swaps. A reduction in counterparty options could increase fund costs and make it difficult for funds to obtain exposure to certain asset classes. Losing access to the derivatives markets entirely could cause funds, many of which use derivatives to hedge risk, to have more difficulty or incur higher costs in implementing their investment strategies. Under either scenario, regulated funds and their shareholders will be harmed.

For all these reasons, ICI requests at least a six-month delay of the March 1, 2017 compliance date.³ This period would allow market participants to make reasonable and continuous progress towards fully complying with the variation margin requirements.⁴

trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² See Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840 (Nov. 30, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf>; Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-01-06/pdf/2015-32320.pdf>.

³ Australia, Hong Kong, and Singapore all have announced their implementation timetables. Each jurisdiction has included a 6-month transitional period for variation margin implementation, beginning on March 1, 2017, and ending on August 31, 2017.

⁴ We were encouraged that CFTC Acting Chairman Giancarlo recently noted that “[a]s Acting Chairman, I also intend to look at solutions to ease the March 1st transition in a responsible manner. Look for the CFTC to have more to say about this in the weeks to come.” Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before SEFCON VII (January 18, 2017), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-19>.

I. The New Collateral Obligations Present Significant Documentation Challenges Beyond the Control of Regulated Funds

To comply with the new rules, regulated funds must negotiate and execute documentation that complies with the new requirements. Funds that have existing documentation generally must amend those documents to comply with the new requirements. Until very recently, our members, have had difficulty even obtaining information regarding how these documents could be amended, mainly because the dealers were focused on various other impending deadlines – margin requirements among dealers in September 2016 and the clearing obligation in the European Union in December 2016.⁵ Moreover, many members with existing documentation have had to negotiate bilaterally with their dealers to retain the important terms that regulated funds had negotiated previously with their dealer counterparties. As a result, amending existing documentation began later than regulated funds expected and has taken a significant period of time.

Regulated funds that currently do not have documentation providing for the exchange of variation margin will need to enter into new ISDA Credit Support Annexes (“CSAs”) to the ISDA Master Agreement or a similar agreement to comply with the new rules. We understand that many funds that trade only certain foreign exchange (“FX”) products (*e.g.*, non-deliverable currency forwards) historically have not had to exchange variation margin and therefore did not have any documentation in place. These funds have to enter into new CSAs that cover these products.

In addition, unlike many other entities, regulated funds have the additional burden of preparing and executing tri-party control agreements to ensure that variation margin is held through a third-party custodian. The tri-party control agreement is necessary to ensure that fund assets (*i.e.*, variation margin posted by a regulated fund) are held in a manner that complies with the Investment Company Act of 1940.⁶ Funds that currently do not have these agreements in place (regulated funds, for example, whose derivatives exposures consist only of non-deliverable currency forwards) will have to engage in negotiations with their counterparties and custodians to ensure that the tri-party control agreement accommodates the segregation requirements for regulated funds.

⁵ See Commission Delegated Regulation (EU) 2015/2205 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (setting forth clearing compliance dates for interest rate swaps in major currencies), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN>. As late as November 2016, many ICI members could not obtain answers to basic questions about how dealers would approach the documentation process. ICI attempted to facilitate information by providing dealers with a consolidated set of questions regarding implementation of the variation margin requirements.

⁶ Section 17(f) of the Investment Company Act of 1940 typically requires funds to place and maintain their investment securities and similar investments in the custody of an independent, third-party custodian. This requirement covers margin payments posted by a fund to its counterparty.

II. Regulated Funds Have Made Significant Efforts to Comply with the New Requirements Despite Numerous Obstacles

Regulated funds have undertaken considerable, good-faith efforts to comply with the new requirements by reaching out to their dealer counterparties to enter into new agreements or to update their current agreements. Our members have faced a range of responsiveness from their dealers who themselves have been dealing with multiple deadlines. Unfortunately, because of the time constraints, it appears that dealers have been prioritizing their clients, which means that smaller funds with smaller derivatives exposure have received the least amount of attention from their counterparties. Although this approach may make sense from a commercial perspective for dealers, smaller regulated funds have been disadvantaged, and these funds and their shareholders will be harmed disproportionately if they are not able to trade swaps starting from March 1.

Moreover, the New CSA method – one of the methods for complying with the new requirements and the method that regulated funds without existing CSAs would likely use – was amended only last week to ensure that funds can be in compliance with the Investment Company Act.⁷ Until recently, the VM Protocol's New CSA option did not include provisions necessary to accommodate segregation of variation margin at a third-party custodian. Therefore, regulated funds as a practical matter could not use this method. ISDA finally completed supplements to the VM protocol to include these provisions on January 26. In addition, because the supplements were finalized only recently, it is not likely that they will be available on ISDA's electronic platform before March 1, 2017.

As a result of the foregoing, funds and their counterparties will have to negotiate the document in a more labor intensive manner (through e-mailing, faxing or couriering the amendments between the parties). If the compliance date is not delayed, regulated funds also could be forced to accept terms in their agreements that are far less favorable just to be able to continue trading swaps after March 1.

We believe most funds still have much more work to do before the variation margin deadline. As of the date of this letter, our members still have to amend more than 50 contracts, on average, to continue trading and implementing their investment strategies on behalf of their clients. To date, our members have amended successfully very few contracts per member firm. The current situation is alarming but not surprising, given the issues with which funds have had to deal, as described above. A delay of at least six months is necessary to enable regulated funds to continue to be able to engage in swap transactions.

⁷ See ISDA, Amendment to the 2016 Credit Support Annex for Variation Margin (VM) (Jan. 26, 2017), available at <http://www2.isda.org/attachment/OTE0MA==/1Seg%20Amends%20-%20Supplemental%20Rules%20Exhibit.pdf>; ISDA, ISDA 2016 Variation Margin Protocol – Supplemental Rules Exhibit for Segregation Amendments (Jan. 26, 2017), available at <http://www2.isda.org/attachment/OTE0MA==/1Seg%20Amends%20-%20Supplemental%20Rules%20Exhibit.pdf>; and ISDA, ISDA 2016 Variation Margin Protocol – Supplemental Questionnaire for Segregation Amendments (Jan. 26, 2017), available at <http://www2.isda.org/attachment/OTE0MQ==/2Seg%20Amends%20-%20Supplemental%20Questionnaire.pdf>.

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Given the volume of documentation that still must be completed despite good-faith efforts by regulated funds, we request a delay of the compliance date for at least six months to allow funds and their counterparties to complete the documentation that complies with the new requirements. Failure to extend the compliance date likely will result in many regulated funds losing the ability to trade swaps or have far fewer dealer counterparties to execute transactions, decreasing liquidity and increasing costs for fund shareholders.

ICI, therefore, urges you to implement at least a six-month delay of the compliance date, which would allow market participants to make reasonable and continuous progress towards fully implementing the variation margin rules.

We appreciate the opportunity to raise this important matter with you. If you have any questions, please feel free to contact me directly at (202) 326-5815, Jennifer S. Choi, Associate General Counsel, at (202) 326-5876, or Kenneth C. Fang, Assistant General Counsel, at (202) 371-5430.

Sincerely,

/s/ David W. Blass

David W. Blass
General Counsel

cc: The Honorable J. Christopher Giancarlo
The Honorable Sharon Y. Bowen
The Honorable Timothy G. Massad