

Carolyn Jackson and Guy Dempsey Discuss COVID-19 Challenges for OTC Derivatives

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Financial Markets and Funds attorneys Carolyn Jackson, partner, and Guy Dempsey, of counsel, spoke with *LexisNexis Banking and Finance*, offering insight into the impact that COVID-19 is having on the OTC derivatives market. Topics covered included which OTC derivatives are most affected, potential Force Majeure events, defensive measures for market participants and how derivatives regulators are responding. The article also was featured in the *PRIME Finance* newsletter.

When asked about the impact of market volatility on OTC derivatives, Carolyn and Guy indicated there are three main adverse effects —". . . A party subject to daily margin requirements may face significant margin calls due to losses in the party's economic position . . . parties who are subject to financial covenants, additional termination events tied to financial deterioration can find themselves facing potential termination of their swaps due to deterioration of their overall economic position . . ."

In regards to defensive measures, they offered the following, "All market participants should examine their trading document to identify their current exposure under financial covenants and custom termination events and events of default. Special attention should be given to provisions requiring notice to the counterparty of adverse events. Participants concerned about counterparty defaults should review their policies and procedures for terminating ISDA agreements. All contracts governed by NY law include an implied duty to act reasonably and in good faith in enforcing the agreement." ("The impact of coronavirus (COVID-19) on OTC derivatives," March 31, 2020)

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