

MEMO# 30992

December 22, 2017

OCC Issues Final Rules on Stays in Qualified Financial Contracts of Certain OCC-Supervised Banks

[30992]

December 22, 2017 TO: ICI Members

Investment Company Directors

ICI Global Members

Derivatives Markets Advisory Committee

Money Market Funds Advisory Committee SUBJECTS: Derivatives

International/Global

Investment Advisers

Money Market Funds

Trading and Markets RE: OCC Issues Final Rules on Stays in Qualified Financial Contracts of Certain OCC-Supervised Banks

Last month, the Office of the Comptroller of the Currency (OCC) issued final rules that require certain banks for which the OCC is the primary federal regulator to include restrictions in their qualified financial contracts (QFCs), such as OTC swaps, repo and reverse repo transactions, and securities lending transactions.[\[1\]](#) The final rules are substantively identical to, and complement, the final rules on QFCs recently adopted by the Board of Governors of the Federal Reserve System (Board)[\[2\]](#) and the FDIC.[\[3\]](#) This is the final set of rules expected to be issued by the US prudential regulators on stays in QFCs. We highlight below the entities covered by the OCC's final rules, which differ from those covered by the Board's and FDIC's final rules,[\[4\]](#) and note the final rules' transition periods for convenience.[\[5\]](#)

Covered Entities

The OCC's final rules apply to "covered banks," which are excluded, along with covered FSI's, from the scope of the Board's final rules. A "covered bank" is defined to include: (i) A national bank or Federal savings association that has more than \$700 billion in total assets as reported on the national bank's or Federal savings association's most recent Call Report; (ii) A national bank or Federal savings association that is a subsidiary of a global systemically important bank holding company that has been designated pursuant to Board Regulation YY; (iii) A national bank or Federal savings association that is a subsidiary of a global systemically important foreign banking organization (FBO) that has been designated pursuant to Board Regulation YY; or (iv) A Federal branch or agency of a global systemically

important FBO that has been designated pursuant to Board Regulation YY. The final rules also require a covered bank to ensure that a covered QFC to which its subsidiary is a party (as a direct counterparty or a support provider) complies with the final rules, with several limited exclusions.^[6]

Transition Periods

The transition periods under the OCC's final rules are the same as under the Board's and the FDIC's final rules. A bank that is a covered bank on January 1, 2018^[7] must conform its covered QFCs with its counterparties as follows:

- With other covered entities, covered banks, or covered FSIs, by January 1, 2019;
- With a "financial counterparty" (such as a registered fund, private fund, and commodity pool) that is not a covered entity, covered bank or covered FSI, by July 1, 2019; and
- With other entities, including "small financial institutions," by January 1, 2020.

As under the Board's and FDIC's final rules, the OCC's final rules provide similar compliance periods (i.e., one year, 18 months, two years) for entities that subsequently become covered banks to conform their pre-existing covered QFCs.

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endnotes

^[1] *Mandatory Contractual Stay Requirements for Qualified Financial Contracts*, 82 Fed.Reg. 52260 (Nov. 29, 2017), *available at*

https://docs.wixstatic.com/ugd/ac5ea8_613e7afba1ca42fa99b47cb1678435f9.pdf ("Adopting Release").

^[2] See ICI Memorandum No. 30877 (Sept. 18, 2017), *available at*

https://www.ici.org/my_ici/memorandum/memo30877. The rules adopted by the Board apply to: (1) any US GSIB bank holding company; (2) any subsidiary of such a bank holding company that is not an "excluded bank;" and (3) the US operations of any foreign GSIB with the exception of any "excluded bank." Under the Board's rules, an "excluded bank" is defined generally as a national bank, a federal savings association, federal branch, or other entities supervised by the Office of the OCC or Federal Deposit Insurance Corporation ("FDIC").

^[3] See ICI Memorandum No. 30907 (Oct. 11, 2017), *available at*

https://www.ici.org/my_ici/memorandum/memo30907. The rules adopted by the FDIC apply to "covered FSIs." A "covered FSI" is defined to include any state savings association or state non-member bank that is a direct or indirect subsidiary of (i) a global systemically important bank holding company; or (ii) a global systemically important foreign banking organization and any subsidiary of a covered FSI, with certain limited exceptions.

^[4] See *supra* nn. 2-3.

^[5] For a more fulsome explanation of the final rules, please see the memo we issued

summarizing the Board's final rules, which are substantively identical to the OCC's final rules. See ICI Memorandum No. 30877 (Sept. 18, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30877.

[6] See § 47.3(b)(3).

[7] The relevant date under the Board's final rules is November 13, 2017. The three compliance dates below, however, are the same as under the Board's and FDIC's final rules.

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