

**MEMO# 30907**

October 11, 2017

# **FDIC Issues Final Rules on Stays in Qualified Financial Contracts of Certain FDIC-Supervised Banks**

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October 11, 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: FDIC Issues Final Rules on Stays in Qualified Financial Contracts of Certain FDIC-Supervised Banks

The Federal Deposit Insurance Corporation (FDIC) recently issued final rules that require certain banks for which the FDIC 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, for the most part, substantively identical to, and complement, the final rules on QFCs the Board of Governors of the Federal Reserve System recently adopted.[\[2\]](#) We highlight below a few key differences between the FDIC's final rules and the Board's final rules.[\[3\]](#)

## **Covered Entities**

The FDIC's final rules apply to "covered FSIs," which are excluded from the scope of the Board's final rules (along with national banks and other entities supervised by the OCC). 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.

## **Provisions Relating to Insolvency Proceedings**

The operative provisions of the FDIC's final rules are substantively the same as the Board's final rules, with a couple differences. First, the FDIC's rules provide that the provision that prohibits the exercise of cross-default rights and limits on transfer in the event of an affiliate of a covered FSI entering resolution does not apply to proceedings under Title II of

the Dodd-Frank Act.<sup>[4]</sup> Second, the FDIC explicitly limited the availability of the rules' creditor protections in Federal Deposit Insurance Act ("FDI Act") proceedings.<sup>[5]</sup>

## Transition Periods

While the transition periods under the FDIC's final rules are the same as under the Board's final rules, the FDIC adopted a different trigger date for the rules' application to existing FSIs. Specifically, under the FDIC's rules, an FSI that is a covered FSI on January 1, 2018<sup>[6]</sup> must conform its covered QFCs with its counterparties as follows:

- With other covered entities, covered banks, or covered FSIs, by January 1, 2019;
- With "financial counterparties" (such as registered funds, private funds, and commodity pools) that are 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 final rules, the FDIC's final rules provide similar compliance periods (i.e., one year, 18 months, two years) for entities that subsequently become covered FSIs to conform their pre-existing covered QFCs.

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## endnotes

<sup>[1]</sup> *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, available at <https://www.fdic.gov/news/board/2017/2017-09-27-notice-sum-b-fr.pdf> ("Adopting Release").

<sup>[2]</sup> See ICI Memorandum No. 30877 (Sept. 18, 2017), available at [https://www.ici.org/my\\_ici/memorandum/memo30877](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 Comptroller of the Currency (OCC) or FDIC.

<sup>[3]</sup> The OCC is expected shortly to issue final rules that are substantially similar to the FDIC's and Board's final rules.

<sup>[4]</sup> See § 382.4.

<sup>[5]</sup> See § 382.4(h), which provides that the creditor protections under § 382.4(d) and (f) are inapplicable to FDI Act proceedings, therefore leaving a creditor with the protections provided by § 382.4(h), which applies explicitly to FDI Act proceedings. The Board's rules do not contain this explicit limitation. The FDIC explained that it did not adopt the additional creditor protection "because it would defeat in large part the purpose of section 382.4 and potentially create confusion regarding the requirements and purposes of sections 382.3 and 382.4 of the final rule." Adopting Release, *supra* note 1, at 76.

[\[6\]](#) The relevant date under the Board's final rules is November 13, 2017. The three compliance dates above, however, are the same as under the Board's final rules.

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