

MEMO# 28687

January 26, 2015

Proposed Qualified Financial Contract Recordkeeping Requirements for SIFIs and Certain Other Large Entities

[28687]

January 26, 2015

TO: SEC RULES MEMBERS No. 5-15

ACCOUNTING/TREASURERS COMMITTEE No. 1-15

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 5-15

MONEY MARKET FUNDS ADVISORY COMMITTEE No. 4-15 RE: PROPOSED QUALIFIED FINANCIAL CONTRACT RECORDKEEPING REQUIREMENTS FOR SIFIS AND CERTAIN OTHER LARGE ENTITIES

Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) established a mechanism for the orderly resolution of a financial company whose failure and resolution under applicable federal or state law would have serious adverse effects on financial stability in the United States. Under Title II, the Federal Deposit Insurance Corporation (“FDIC”) has receivership authority over financial companies in default or in danger of default for which a determination has been made by the Secretary of the Treasury (in consultation with the President) to seek the appointment of the FDIC as receiver.

To assist the FDIC as receiver with exercising its rights and fulfilling its obligations under Title II, the Treasury Secretary, as Chairperson of the Financial Stability Oversight Council, recently proposed rules to implement the qualified financial contract (“QFC”) recordkeeping requirements of the Dodd-Frank Act. [\[1\]](#) The proposed rules would require recordkeeping with respect to positions, counterparties, legal documentation, and collateral by certain defined entities (“Proposed Rules”). [\[2\]](#) Given the purpose of the requirements, the Proposed Rules seek to identify—and to apply these requirements to—the universe of entities most likely to undergo orderly liquidation under Title II. Comments on the Proposed Rules are due by April 7, 2015.

Scope of Proposed Rules

The Proposed Rules would require “records entities” to maintain detailed information about their QFC [\[3\]](#) positions and be capable of providing this information to their federal primary financial regulatory agencies (“PFRAs”) within 24 hours of a request. The Proposed Rules

define “records entity” as a financial company that is a party to an open QFC, or guarantees, supports, or is linked to an open QFC and meets one of the following criteria: (1) is determined pursuant to Title I of the Dodd-Frank Act to be an entity that could pose a threat to the financial stability of the United States (“SIFI”); (2) is designated under Title VIII of the Dodd-Frank Act as a financial market utility that is, or is likely to become, systemically important; or (3) has total assets equal to or greater than \$50 billion. [4] In addition, a records entity would include a party to an open QFC or that guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group within which at least one affiliate [5] meets one of the three criteria. With respect to the \$50 billion threshold, the Secretary believes that it is a useful means for identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II. The Proposing Release further states that the definition of records entity is “designed to reduce recordkeeping burdens by only capturing those financial companies with QFC positions for which the FDIC is most likely to be appointed as receiver.” [6]

The Proposed Rules would not apply to an entity, such as an investment adviser, that acts as agent on behalf of a client and is not a party to that client’s QFC or does not support, guarantee, or is not otherwise linked to that client’s QFC. Moreover, financial companies that are not incorporated or organized under US federal or state law would not be required to maintain records under the Proposed Rules. Finally, the Proposed Rules would allow the Treasury Secretary to issue conditional or unconditional general and specific exemptions from one or more requirements in the rule as the Secretary determines to be necessary or appropriate. [7]

Records to be Maintained

The Proposed Rules set forth the general recordkeeping requirements with the detailed list of records included in the Appendix to the Proposed Rules. The Proposed Rules would require that a records entity maintain all records in electronic form in a specified format set forth in the Appendix and that all records be capable of being transmitted electronically to a records entity’s PFRA and the FDIC. The Proposed Rules also would require a records entity to use a unique counterparty identifier for each of its counterparties. A records entity would be required to maintain electronic copies of all agreements that govern the QFC transactions as well as credit support documents related to such QFC transactions.

The Appendix (which includes four tables) provides the detailed QFC recordkeeping requirements. Table A-1 sets forth required position-level data, including unique position identifiers, CUSIP identifier numbers, unique trade confirmation numbers and other internal identifying information relevant to the position. Table A-1 also would require records of any loan or other obligation that relates to a QFC. Table A-2 would require counterparty aggregate exposures and collateral data for all QFCs entered into by a records entity with a counterparty, including market value of collateral, location of collateral, and any custodial and segregation arrangements. Table A-3 would require maintenance of legal agreement data for each QFC agreement or master agreement between each records entity and counterparty, including master agreements, annexes, supplements or other modifications with respect to the agreements. Table A-4 would expand on the information set forth in Table A-2 and would require maintenance of data both with respect to collateral received and collateral posted on a counterparty-by-counterparty basis.

Compliance Dates

The Proposed Rules would require entities that are records entities on the effective date of the final rule to comply with the rule no later than 270 days thereafter and provide each of

its PFRAs and the FDIC a point of contact responsible for recordkeeping under the rule on the effective date of the rule. An entity that becomes a records entity after the effective date would be required to provide a point of contact within 60 days of becoming a records entity and would have to comply with the rule 270 days after the entity becomes subject to the rule.

Frances M. Stadler
Associate General Counsel

Jennifer S. Choi
Associate General Counsel

Rachel H. Graham
Associate General Counsel

endnotes

[1] Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority, 80 FR 966 (Jan. 7, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-01-07/pdf/2014-30734.pdf> (“Proposing Release”).

[2] Under Title II and the Federal Deposit Insurance Act, from the time the FDIC is appointed as receiver until 5 p.m. ET on the business day following the date of the appointment, a QFC counterparty is prohibited from exercising any contractual rights (including termination) triggered by the appointment of the receiver.

[3] QFCs include five types of financial contracts: securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements. In addition, a master agreement that governs any contracts in the five categories is treated as a QFC. Security agreements, guarantees, credit enhancements or reimbursement obligations that relate to QFCs also are defined as QFCs. All swaps and security-based swaps defined in Title VII of the Dodd-Frank Act qualify as QFCs.

[4] Total assets would be determined based on the most recent year-end consolidated statements of financial condition filed with a PFRA.

[5] An “affiliate” is defined by reference to the Bank Holding Company Act as any company that controls, is controlled by, or is under common control with another company.

[6] Proposing Release at 972.

[7] The Proposed Rules do not provide much detail regarding the exemptions that may be provided by the Secretary. According to the Proposing Release, the Secretary would consider whether to grant an exemption after receiving a recommendation from the FDIC, prepared in consultation with the applicable PFRAs, that takes into consideration the financial company’s or financial companies’ size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system and any other factors deemed necessary or appropriate.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.