

ORDER

Order granting an exemption from the U.S. special resolution regime express recognition requirements of 12 C.F.R. § 47.4 for certain “non-U.S. non-linked” qualified financial contracts entered into by foreign subsidiaries of covered banks

WHEREAS, the Office of the Comptroller of the Currency’s (“OCC”) Mandatory Contractual Stay Requirements for Qualified Financial Contracts (“QFC Stay Rule”) set forth in 12 C.F.R. Part 47¹ are intended to promote the safety and soundness of federally chartered or licensed institutions by mitigating the potential destabilizing effects of the resolution of a global systemically important banking entity on an affiliate that is a covered bank by requiring covered banks to include in certain financial contracts mandatory contractual provisions relating to stays on acceleration and close out rights and transfer rights;

WHEREAS, the express recognition requirements of 12 C.F.R. § 47.4 (the “Express Recognition Requirements”) require a covered bank’s covered qualified financial contracts (“QFC”) to expressly recognize that the stay-and-transfer provisions of the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1835a, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5381-5394, including their corresponding implementing regulations (collectively, the “U.S Special Resolution Regimes”) apply to the contracts, unless such laws already clearly apply to the contracts;

WHEREAS, pursuant to 12 C.F.R. § 47.8(d), the OCC may exempt by order one or more covered banks from conforming one or more contracts or types of contracts to one or more of the requirements of the QFC Stay Rule after considering the potential impact of the exemption on the ability of the covered bank, or its affiliates, to be resolved in a rapid and orderly manner in

¹ For purposes of this order, all terms used have the meaning set forth in 12 C.F.R. Part 47, unless otherwise noted.

the event of the financial distress or failure of the entity that is required to submit a resolution plan; the burden the exemption would relieve; and any other factors the OCC deems relevant;

WHEREAS, the OCC has considered the factors set forth in 12 C.F.R. § 47.8(d) and determined that exempting the application of the Express Recognition Requirements to “non-U.S. non-linked contracts,” as defined below, is consistent with the purpose of the Express Recognition Requirements in achieving uniform cross-border application of the U.S. Special Resolution Regimes to contracts subject to such authorities;

WHEREAS, for purposes of this Order, a “non-U.S. non-linked contract” means a QFC that:

- (1) is entered into between a foreign subsidiary² and one or more parties, none of which is a covered bank, covered entity, or covered FSI other than a foreign subsidiary;
- (2) is not guaranteed or otherwise supported³ by an affiliate of the foreign subsidiary that could itself be placed into a U.S. Special Resolution Regime;
- (3) is not linked⁴ to an affiliate of the foreign subsidiary; and
- (4) contains no default rights that could be exercised against any other covered bank, covered entity, or covered FSI that itself could be placed into a U.S. Special Resolution Regime;

² For purposes of this definition, a “foreign subsidiary” means a company subject to the QFC Stay Rule that: (1) is not incorporated in or organized under the laws of the United States or any State; (2) does not have its principal place of business located in the United States, including any State; and (3) is not a U.S. branch or U.S. agency.

³ For purposes of this definition, the term “support” has the same meaning as in 12 C.F.R. § 380.12(b)(3).

⁴ For purposes of this definition, the term “linked” has the same meaning as in 12 C.F.R. § 380.12(b)(1). The term “specified financial condition clause” referenced in this definition has the same meaning as in 12 C.F.R. § 380.12(b)(2).

NOW, THEREFORE, pursuant to the authority set forth in 12 C.F.R. § 47.8(d), the OCC hereby orders that:

- (1) Non-U.S. non-linked contracts entered into by foreign subsidiaries of covered banks are exempted from the express recognition requirements of 12 C.F.R. § 47.4.
- (2) Foreign subsidiaries of covered banks must continue to comply with all other requirements of the QFC Stay Rule applicable to non-U.S. non-linked contracts.
- (3) Nothing in this Order shall bar, estop, or otherwise prevent the OCC from taking any action affecting covered banks, including the revocation of this Order, on the basis of information not known to the OCC as of the effective date of the Order.

IT IS SO ORDERED.

OFFICE OF THE COMPTROLLER OF THE CURRENCY

/s/

Maryann H. Kennedy
Senior Deputy Comptroller for Large Bank Supervision