RESCINDED

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Transmittal – See OCC 2020-11

Mandatory Contractual Stay Requirements for Qualified Financial Contracts: Final Rule

Summary

The Office of the Comptroller of the Currency (OCC) published a final rule in the *Federal Register* today that will enhance the resilience and the safety and soundness of federally chartered and licensed financial institutions. The final rule addresses concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms. Under this final rule, a covered bank is required to ensure that all covered qualified financial contracts (QFC) (1) contain a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under title II of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act) and in the Federal Deposit Insurance Act and (2) limit the exercise of default rights based on the insolvency of an affiliate of the covered bank. In addition, this final rule makes conforming amendments to the OCC's capital adequacy standards in 12 CFR 3 and the liquidity risk measurement standards in 12 CFR 50. The OCC worked closely with the Board of Governors of the Federal Reserve System (board) and the Federal Deposit Insurance Corporation (FDIC) to ensure that the requirements of this final rule are substantively identical to those contained in final rules issued by the board on September 12, 2017, and the FDIC on October 30, 2017.

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Note for Community Banks

The final rule would not apply to community banks.

Highlights

The final rule

- applies to covered banks, which include
  - national banks or federal savings associations not under a bank holding company that have more than $700 billion in total assets as reported on their most recent Consolidated Reports of Condition and Income (call report),
  - national banks and federal savings associations (including any subsidiaries) that are subsidiaries of a global systemically important bank holding company that has been designated pursuant to 12 CFR 252.82(a)(1) of the board's Regulation YY,
  - national banks and federal savings associations (including any subsidiaries) that are subsidiaries of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of Regulation YY, and

- federal branches and agencies (including any U.S. subsidiary of a federal branch or agency) of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of Regulation YY.

- requires covered banks to ensure that a covered QFC
  - contains a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under title II of the Dodd–Frank Act and in the Federal Deposit Insurance Act, and
  - limits the exercise of default rights based on the insolvency of an affiliate of the covered bank.

- makes conforming amendments in certain definitions in the capital adequacy standards in 12 CFR 3 and the liquidity risk measurement standards in 12 CFR 50.
- is effective on January 1, 2018, and provides a phased-in compliance period based on the size and sophistication of counterparties.

Background

In the wake of the financial crisis of 2007–08, U.S. and international financial regulators have placed increased focus on improving the resolvability of large, complex financial institutions that operate in multiple jurisdictions, often called global systemically important banking organizations (GSIB).

GSIBs are interconnected with other financial firms, including other GSIBs, through large volumes of QFCs. The failure of one entity within a GSIB can trigger disruptive terminations of these contracts if the counterparties of both the failed entity and its affiliates exercise their contractual rights to terminate the contracts and liquidate collateral. These terminations, especially if counterparties lose confidence in the GSIB quickly and in large numbers, can destabilize the financial system and potentially lead to a financial crisis.

OCC-supervised institutions are some of the largest entities by asset size in GSIBs and often are parties to large volumes of QFCs. As a result of these contracts, these entities are highly interconnected with other large financial firms and may be exposed to destabilizing effects if their counterparties, or counterparties of their affiliates, exercise default rights upon the covered bank's or a GSIB affiliate's entry into resolution. These potential effects are best addressed by requiring all GSIB entities to amend their QFCs to include contractual provisions aimed at avoiding such destabilization. As the primary supervisor of covered banks, the OCC has a significant interest in preventing or mitigating destabilizing effects. These destabilizing effects would have an adverse impact on the safety and soundness of covered banks individually and collectively, with the potential for spillover beyond GSIB-affiliated banks and federal branches and agencies to the federal banking system.

Accordingly, the OCC is publishing this rule to ensure that the QFCs entered into by such entities do not threaten the stability or safety and soundness of covered banks individually or collectively.

Further Information

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Related Link

- "Mandatory Contractual Stay Requirements for Qualified Financial Contracts" (PDF)