

U.S. QFC Stay Rules

Standard Language to Comply with Resolution Regime Requirements

This language relates to the final rules imposing new requirements on the terms of certain swaps, repos and other qualified financial contracts (**QFCs**) of global systemically important banking organizations (**GSIBs**) (the **Final QFC Stay Rules**).¹ The Final QFC Stay Rules require contractual provisions limiting the ability of counterparties to exercise default rights arising in the context of a GSIB resolution and ensuring that actions taken under U.S. special resolution regimes are enforceable on a cross-border basis.

Unless subject to an exemption, QFCs of entities subject to the Final QFC Stay Rules (**Covered Entities**) must satisfy the requirements of the “Resolution Regime” and “Bankruptcy Code” requirements of the Final QFC Stay Rules. Under the “Resolution Regime” requirements, such QFCs must provide that, if the Covered Entity or any of its affiliates become subject to resolution under the Orderly Liquidation Authority or the Federal Deposit Insurance Act, the counterparty can only exercise default rights and enforce transfer restrictions to the extent permitted under such regimes.² Under the “Bankruptcy Code” requirements, such QFCs must limit the ability of counterparties to exercise default rights related, directly or indirectly, to an affiliate of the Covered Entity entering into Bankruptcy Code or other insolvency proceedings.³

The language provided below was developed by ISDA to help Covered Entities and their counterparties satisfy the “Resolution Regime” requirements of the Final QFC Stay Rules and does not satisfy the “Bankruptcy Code” requirements of the Final QFC Stay Rules. A QFC does not need to satisfy the “Bankruptcy Code” requirements of the Final QFC Stay Rules if:

- The QFC entered into by the Covered Entity does not explicitly provide any default right related, directly or indirectly, to an affiliate becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding; and
- If the QFC benefits from a guarantee or other credit support provided by an affiliate of the Covered Entity, there are no restrictions on the transfer of such guarantee or credit support (or related interest, obligation or property) in the event the affiliate becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding. The QFC may prohibit such a transfer only if the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

Parties should consider what amendments, if any, are required to tailor this sample language to the specific agreement in which it is used. When including this language in an agreement, Covered Entities should consider whether this language should also be included in any related agreements (e.g., guarantees provided by affiliates).

¹ 82 Fed. Reg. 56630 (Nov. 29, 2017) (**OCC Rule**); 82 Fed. Reg. 50228 (Oct. 30, 2017) (**FDIC Rule**); 82 Fed. Reg. 42882 (Sept. 12, 2017) (**Federal Reserve Rule**).

² OCC Rule § 47.4; FDIC Rule § 382.3; Federal Reserve Rule § 252.83.

³ OCC Rule § 47.5; FDIC Rule § 382.4; Federal Reserve Rule § 252.84.

Standard “Resolution Regime” Language

1. Opt-In to U.S. Special Resolution Regimes

(a) In the event [*insert name of party or parties that are Covered Entities*] becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) from [*insert name of party or parties that are Covered Entities*] will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) were governed by the laws of the United States or a state of the United States;⁴ and

(b) In the event [*insert name of party or parties that are Covered Entities*] or an Affiliate of [*insert name of party or parties that are Covered Entities*] becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights with respect to this Agreement that may be exercised against [*insert name of party or parties that are Covered Entities*] are permitted to be exercised to no greater extent than the Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

2. Definitions

Affiliate has the meaning given in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and section 225.2(a) of the Board's Regulation Y (12 CFR 225.2(a)).

Default Right means any:

(i) Right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that

⁴ **Explanatory Footnote:** The Final QFC Stay Rules require that in-scope QFCs “explicitly provide” this language except under limited circumstances. While the QFC Stay Rules provide an exemption from this requirement for in-scope QFCs governed by U.S. law when the counterparty is a U.S. person as defined under the QFC Stay Rules, there is no such exemption for in-scope QFCs governed by U.S. law with counterparties that are not U.S. persons.

entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure.

U.S. Special Resolution Regime means the Federal Deposit Insurance Act (12 U.S.C. 1811–1835a) and regulations promulgated thereunder and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381–5394) and regulations promulgated thereunder.