

FEDERAL RESERVE SYSTEM

12 CFR Part 237

Docket No. R-1458; RIN 7100-AD96

Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)

AGENCIES: Board of Governors of the Federal Reserve System (“Board”)

ACTION: Interim final rule with request for comment.

SUMMARY: The Board invites comment on an interim final rule that treats an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act and establishes a process by which a state member bank or uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716.

DATES: This rule is effective on June 5, 2013. Comments must be received on or before August 4, 2013.

ADDRESSES: You may submit comments, identified by Docket No. R-1458 and RIN No. 7100-AD 96, by any of the following methods:

Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Facsimile: (202) 452-3819 or (202) 452-3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452-2272, Christopher Paridon, Counsel, (202) 452-3264, Victoria Szybillo, Counsel (202) 475-6325, or Christine Graham, Senior Attorney, (202) 452-3005, Legal Division; or Jordan Bleicher, Supervisory Financial Analyst, (202)973-6123, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Section 716 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") generally prohibits the provision of "Federal assistance" to any "swaps entity" with regard to any swap, security-based swap, or other activity of the swaps entity.¹ "Federal assistance" is defined by section 716 to include "advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act" and Federal Deposit

¹ See Section 716(a) of the Dodd-Frank Act; 15 U.S.C. 8305(a).

Insurance Corporation (“FDIC”) insurance or guarantees.² For purposes of section 716, the term “swaps entity” generally includes any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Securities Exchange Act of 1934, as applicable.³

Section 716 provides a specific exclusion from the definition of “swaps entity” for any insured depository institution that is a major swap participant or major security-based swap participant.⁴ Section 716 also provides that its prohibition does not apply to an insured depository institution that limits its swaps activities to certain specified activities.⁵

Section 716 provides insured depository institutions with a transition period to facilitate compliance with the requirements of the section. By its terms, the prohibitions of section 716 apply to insured depository institutions only with respect to swaps and security-based swaps entered into after the expiration of the transition period. The provisions of section 716 become effective on July 16, 2013.⁶

The interim final rule addresses the application of section 716 to swaps entities that are uninsured U.S. branches or agencies of a foreign bank and establishes a process by which a state member bank and an uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716. In particular, the

² *Id.*

³ *See* section 716(b)(2) of the Dodd-Frank Act; 15 U.S.C. 8305(b)(2).

⁴ *Id.* This exclusion is available to major swap participants and major security-based swap participants that are not otherwise swap dealers or security-based swap dealers.

⁵ *See* section 716(d) of the Dodd-Frank Act; 15 U.S.C. 8305(d).

⁶ *See* Guidance on the Effective Date of Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 FR 27465 (May 10, 2012).

interim final rule treats uninsured U.S. branches and agencies of foreign banks as insured depository institutions for purposes of section 716.

I. Description of Interim Final Rule

A. Treatment of uninsured U.S. branches and agencies of foreign banks

Section 716(d) of the Dodd-Frank Act provides that the prohibition on Federal assistance does not apply to the provision of Federal assistance to insured depository institutions that limit their swap and security-based swap activities to activities identified in that section.⁷ Those identified activities are: (i) hedging and other similar risk-mitigating activities directly related to the activities of the insured depository institution, and (ii) acting as a swaps entity for swaps or security-based swaps involving rates or reference assets permissible for investment by a national bank pursuant to 12 U.S.C. 24(Seventh), other than acting as a swaps entity for non-cleared credit default swaps.⁸ In addition, section 716(b)(2) of the Dodd-Frank Act exempts insured depository institutions that are major swap participants from the prohibition in section 716(a).

Moreover, section 716 provides insured depository institutions with a transition period to conform their activities to those permissible under section 716.⁹ The appropriate Federal banking agency for an insured depository institution, in consultation with the Securities and Exchange Commission (“SEC”) and Commodities Futures Trading Commission (“CFTC”), as appropriate, has the authority to establish the length of the transition period, which can be up to 24 months, and to extend the transition period for a period of up to one additional year. For purposes of establishing a transition period, the Board is the appropriate Federal banking agency

⁷ See section 716(d) of the Dodd-Frank Act; 15 U.S.C. 8305(d).

⁸ See *id.* at 8305(d)(1)-(3).

⁹ See section 716(f) of the Dodd-Frank Act; 15 U.S.C. 8305(f).

for state member banks and uninsured state branches and agencies of foreign banks.¹⁰ Finally, section 716 applies to swaps and security-based swaps entered into by an insured depository institution only after expiration of the transition period.¹¹

The structure, language, and purpose of section 716 create an ambiguity regarding the definition of “insured depository institution” for purposes of the various provisions of section 716, including, in particular, regarding the scope of the exceptions and transition period granted to insured depository institutions. The term “insured depository institution” is not defined for purposes of these provisions. Section 2 of the Dodd-Frank Act provides that “except as the context otherwise requires...,”¹² the definition of “insured depository institution” has the same meaning as in the Federal Deposit Insurance Act. “Insured depository institution” is defined by section 3(c)(2) of the Federal Deposit Insurance Act to mean a bank or savings association the deposits of which are insured by the FDIC, and, for some purposes under section 3(c)(3), an uninsured U.S. branch or agency.¹³

In the context of section 716, uninsured U.S. branches and agencies of foreign banks would appear to be properly considered to be insured depository institutions. By statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks.¹⁴

Thus, uninsured U.S. branches and agencies of foreign banks are treated as insured member

¹⁰ See 12 U.S.C. 1813(q)(3). The Office of the Comptroller of Currency (OCC) is the appropriate Federal banking agency for any Federal branch or agency of a foreign bank. See 12 U.S.C. 1813(q)(1).

¹¹ See section 716(e) of the Dodd-Frank Act; 15 U.S.C. 8305(e).

¹² See section 2(chapeau) and (18)(A) of the Dodd-Frank Act; 12 U.S.C. 5301 (chapeau) and (18)(A).

¹³ See 12 U.S.C. 1813(c)(2), (c)(3).

¹⁴ Section 13(14) of the Federal Reserve Act; 12 U.S.C. 347d.

banks for purposes of the only Federal assistance that causes uninsured U.S. branches and agencies of foreign banks to be affected by section 716. Moreover, the authority vested in the Federal banking agencies to enforce compliance with laws such as Title VII of the Dodd-Frank Act against uninsured U.S. branches and agencies of foreign banks is based on the treatment of those branches and agencies as insured depository institutions.¹⁵ Section 716 appears therefore, to be predicated on treatment of uninsured U.S. branches and agencies as insured depository institutions.

Treating uninsured U.S. branches and agencies of foreign banks as insured depository institutions is also consistent with the purpose and legislative history of section 716. Section 716 and Title VII of the Dodd-Frank Act generally are intended to reduce systemic risks from derivatives activities. Treating uninsured U.S. branches and agencies as insured depository institutions furthers these objectives by providing sufficient opportunity for uninsured U.S. branches and agencies to conform or cease their swaps activities in an orderly manner and to continue the same risk-mitigating hedging and other activities permitted for insured depository institutions under section 716. This approach is also consistent with the legislative history, which suggests Congress intended to treat uninsured branches and agencies as insured depository institutions.¹⁶

¹⁵ 12 U.S.C. 1813(c)(3). While commercial lending companies owned or controlled by foreign banks are also treated as insured depository institutions for purposes of section 1813(c)(3) of the Federal Deposit Insurance Act, these companies do not have access to Federal Reserve advances under the Federal Reserve Act, and thus, are not treated as insured depository institutions for purposes of this interim final rule.

¹⁶ Senator Lincoln, the sponsor of section 716, and Senator Dodd, the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, engaged in a colloquy on the Senate floor during Senate consideration of the Dodd-Frank Act Conference Report in which they confirmed that uninsured U.S. branches and agencies should be treated in the same manner as insured

The interim final rule provides that, for purposes of section 716 of the Dodd-Frank Act and the interim final rule, the term “insured depository institution” includes any insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any uninsured U.S. branch or agency of a foreign bank.¹⁷ The terms branch, agency, and foreign bank are defined in section 1 of the International Banking Act of 1978.¹⁸

B. Transition period for insured depository institutions and uninsured U.S. branches and agencies of foreign banks

Section 716 provides insured depository institutions with a transition period to conform their activities.¹⁹ Under section 716(f), the appropriate Federal banking agency for an insured depository institution, in consultation with the SEC and CFTC, as appropriate, is required to establish the length of the transition period for conformance with the requirements of section 716. That transition period may be up to 24 months and may be extended for a period of up to one additional year.

In establishing the length of the transition period for an insured depository institution, the Board is required by statute to take into account and make written findings regarding the potential impact of divestiture or cessation of swap or security-based swaps activities on the

depository institutions. *See* 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

¹⁷ The interim final rule would define uninsured U.S. branches and agencies of foreign banks as insured depository institutions solely for the purposes of section 716 and the interim final rule. Nothing in this interim final rule affects the availability of deposit insurance under the Federal Deposit Insurance Act with respect to deposits received by an uninsured U.S. branch or agency of a foreign bank.

¹⁸ 12 U.S.C. 3101. Insured branches of foreign banks are also included in the definition of “insured depository institution” under section 3(c)(2) of the Federal Deposit Insurance Act.

¹⁹ *See* 15 U.S.C. 8305(f).

insured depository institution's: (i) mortgage lending; (ii) small business lending; (iii) job creation; (iv) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the FDIC; and (v) any other factor that the Board believes appropriate to consider.

The interim final rule provides that a state member bank and an uninsured state branch and agency of foreign bank may seek a transition period of up to 24 months from July 16, 2013 (for an entity that is a swaps entity as of July 16, 2013), or from the date on which the entity becomes a swaps entity (if that date occurs after July 16, 2013), by submitting a written request to the Board. The request must include: (i) the length of the transition period requested; (ii) a description of the quantitative and qualitative impacts of immediate divestiture or cessation of swap or security-based swaps activities on the institution, including regarding the potential impact of divestiture or cessation of swap or security-based swaps activities on the institution's mortgage lending, small business lending, job creation, capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the FDIC; and (iii) a description of the insured institution's plan for conforming its activities to the requirements of section 716.

Under the interim final rule, the Board may also request additional information that it believes is necessary in order to act on a request for a transition period. The Board will seek to act on a request for a transition period expeditiously after the receipt of a complete request. The interim final rule would allow the Board to impose conditions on any transition period granted if the Board determines such conditions are necessary and appropriate. Consistent with section 716(f), the interim final rule also permits the Board, in consultation with the SEC and CFTC, as appropriate, to extend the transition period for up to one additional year. To request an extension

of the transition period, an insured depository institution must submit a written request no later than 60 days before the end of the transition period.

II. Request for Comments

The Board is interested in receiving comments on all aspects of the interim final rule. In particular:

Question 1. Is it appropriate and consistent with section 716 to define insured depository institution to include an uninsured U.S. branch or agency?

Question 2. How could the transition period process be modified to better achieve the purposes of section 716? Are there any additional factors that the Board should consider in reviewing a request for a transition period?

Question 3. Are there specific additional conditions or limitations that the Board should, by rule, impose in connection with granting a transition period? If so, what conditions or limitations would be appropriate? Alternatively, should the Board consider what conditions or limitations might be appropriate to apply during a transition period (including any extension thereof) on a tailored or case-by-case basis?

III. Effective Date; Solicitation of Comments

This interim final rule is effective immediately. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁰ Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.²¹

²⁰ 5 U.S.C. 553(b)(B).

²¹ 5 U.S.C. 553(d)(3).

Consistent with section 553(b)(B) of the APA, the Board finds that issuing this rule as an interim final rule is necessary to avoid significant disruptions in the swaps activities of the uninsured U.S. branches and agencies of foreign banks, and that obtaining notice and comment prior to issuing the interim final rule would be impracticable and contrary to the public interest. Furthermore, the Board finds that there is good cause to publish the interim final rule with an immediate effective date.

The Board views the scope of section 716's prohibition as closely related to the application of the Title VII framework to the cross-border activities of foreign banks. The CFTC and SEC both have issued proposals regarding the cross-border application of Title VII.²² The CFTC issued an exemptive order granting temporary relief from certain cross-border applications of the swaps provisions of Title VII.²³

Although the Title VII regulatory structure is still being developed, section 716 goes into effect on July 16, 2013. Accordingly, the Board is seeking to provide clarity to uninsured U.S. branches and agencies of foreign banks regarding the availability of the transition period and the exceptions available for insured depository institutions. Absent clarity regarding the availability of the transition period, uninsured U.S. branches and agencies of foreign banks arguably would have to terminate their swaps activities by July 16, 2013 in order to continue to be eligible for access to the discount window. Terminating swaps activities by this date may result in foreign banks and their counterparties winding down their swaps activities in an inefficient and disorderly fashion that could present significant operational and other risks.

²² 76 FR 858, 860 (January 7, 2013), 78 FR 30,967 (May 23, 2013).

²³ 76 FR 858. The SEC did not issue a similar exemptive order because it has not established the compliance date for the security-based swap dealer registration provisions of Title VII.

There is also good cause to provide clarity on the availability of the exceptions set forth in section 716 through this interim final rule because notice and public procedure would be impracticable and contrary to the public interest. Without such clarity, uninsured branches and agencies would be required to begin terminating all their swap activities during the transition period, even those that qualified for the exceptions. The novation of existing swaps may require the branch or agency to enter quickly into new master swap agreements with each customer, which could present operational risks to the branch or agency and its customers. In the Board's view, the potential harm to these entities and their counterparties that may result from not providing clarity on the availability of the exceptions warrants a departure from the notice and comment rulemaking procedure.

Last, the Board finds that there is good cause to establish the process for applying for transition period relief through this interim final rule because notice and comment would be unnecessary and contrary to the public interest. The interim final rule establishes a procedure of obtaining a statutory transition period and reduces burden on applying institutions by narrowing and clarifying the information that must be provided to obtain this statutory benefit. State member banks are eligible for the transition period under section 716(f) absent implementing regulations, and the Board has already received applications from state member banks requesting transition period relief. In addition, this portion of the interim final rule is appropriately characterized as a rule of procedure, and therefore would not normally be subject to notice and comment requirements. The Board has determined to publish the transition period procedures in this interim final rule in order to provide notice to all state member banks regarding these procedures.

Although notice and comment are not required prior to the effective date of this interim final rule, the Board invites comment on all aspects of this rulemaking and will revise this interim final rule if necessary or appropriate in light of the comments received.

IV. Regulatory Analysis

A. Regulatory Flexibility Act Analysis

In accordance with section 4 of the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, the Board is publishing an initial regulatory flexibility analysis for the interim final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.²⁴ The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the interim final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this interim final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment on the effect of the interim final rule on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

The Board is adopting this interim final rule to treat an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act and establish a process by which a state member bank and uninsured branch or agency

²⁴ Under standards the U.S. Small Business Administration has established, an entity is considered “small” if it has \$175 million or less in assets for banks and other depository institutions. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716.

Under regulations issued by the Small Business Administration (“SBA”), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7 million or less to \$175 million or less.²⁵ The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of \$175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the interim final rule would apply to an uninsured U.S. branch or agency of a foreign bank and a state member bank that is registered with the CFTC or SEC as a swap dealer or security-based swap dealer, respectively. Regulations issued by the CFTC and SEC provide that a person shall not be deemed a swap dealer if its swap dealing activity over the preceding 12 months results in swap positions with an aggregate gross notional amount of no more than \$3 billion, and an aggregate gross notional amount of no more than \$25 million with regard to swaps with a “special entity” (which includes municipalities, other political subdivisions and employee benefit plans).²⁶ Given the relative size of the *de minimis* exemption, it is unlikely that a financial firm that is at or below the \$175 million asset threshold would be engaged in swaps transactions that would meet or exceed the threshold to qualify as a swap dealer or security-based swap dealer.²⁷

²⁵ 13 CFR 121.201.

²⁶ 77 FR 30596 (May 23, 2012).

²⁷ *See id.* at 30701 and 30743.

As noted above, because the interim final rule is not likely to apply to any company with assets of \$175 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the interim final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the interim final rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the interim final rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 716 of the Dodd-Frank Act.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comment on how to make this interim final rule easier to understand.

For example:

- Has the Board organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?

- What else could the Board do to make the regulation easier to understand?

C. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501-3521) (“PRA”), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (“OMB”) control number. The OMB control number for this information collection will be assigned. The Board reviewed the interim final rule under the authority delegated to the Board by OMB.

The interim final rule contains requirements subject to the PRA. The reporting requirements are found in sections 237.22(a)1 and 237.22(e). This information collection requirement would implement section 716 of the Dodd-Frank Act.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Regulation KK.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: Uninsured state branches or agencies of foreign banks, state member banks.

Abstract: The interim final rule would treat an uninsured U.S. branch or agency of a foreign bank as an insured depository institution and establish a process by which a state member bank and uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities.

Section 237.22(a)(1) would enable an insured depository institution for which the Board is the appropriate Federal banking agency to request a transition period of up to 24 months from

the later of July 16, 2013, or the date on which it becomes a swaps entity, during which to conform its swaps activities to the requirements of this section by submitting a request in writing to the Board. Any request submitted must, at a minimum, include the following information: (i) the length of the transition period requested; (ii) a description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in paragraph (d) of that section; and (iii) a detailed explanation of the insured depository institution's plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. § 8305) and this part.

Section 237.22(e) would allow the Board to extend a transition period for a period of up to one additional year. To request an extension of the transition period, an insured depository institution must submit a request containing the information set forth in paragraph (a) of this section. The insured depository institution must submit the request no later than 60 days before the end of the transition period.

Estimated Paperwork Burden

Number of Respondents: 29.

Estimated Average Hours per Response: 7 hours.

Total Estimated Annual Burden: 203 hours.

Comments are invited on:

- (a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;
- (b) The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;

- (d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The Board has a continuing interest in the public's opinions of collections of information.

At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk, Derivatives.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board amends 12 CFR Chapter II by adding new part 237 to read as follows:

Part 237 – Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

1. The authority citation for part 237 shall read as follows:

Authority: 15 U.S.C. 8305, 12 U.S.C. 343 – 350, 12 U.S.C. 1818, 12 U.S.C. 3101 *et seq.*

2. Reserve Subpart A.

Sec.

237.1 – 10 [RESERVED]

3. Add Subpart B to read as follows:

Subpart B-- Prohibition Against Federal Assistance to Swaps Entities

Sec.

237.20 Definitions.

237.21 Definition of Insured Depository Institution for Purposes of Section 716.

237.22 Transition Period for Insured Depository Institutions.

Subpart B-- Prohibition Against Federal Assistance to Swaps Entities

§ 237.20 Definitions.

Unless otherwise specified, for purposes of this subpart:

Board means the Board of Governors of the Federal Reserve System.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign bank has the same meaning as in section 211.21(n) of the Board's Regulation K (12 CFR 211.21(n)).

Major security-based swap participant has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Major swap participant has the same meaning as in section 1a(33) of the Commodity Exchange Act (7 U.S.C. 1a(33)) and as implemented in rules and orders issued by the Commodity Futures Trading Commission.

Security-based swap has the same meaning as in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Security-based swap dealer has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Swap dealer has the same meaning as in section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Swaps entity means a person that is registered as a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant under the Commodity Exchange Act or Securities Exchange Act of 1934, other than an insured depository institution that is registered as a major swap participant or major security-based swap participant.

§ 237.21 Definition of Insured Depository Institution for Purposes of Section 716.

For purposes of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this rule, the term “insured depository institution” includes any insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any uninsured U.S. branch or agency of a foreign bank. The terms branch, agency, and foreign bank are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

§ 237.22 Transition Period for Insured Depository Institutions.

(a) *Approval of transition period.* (1) To the extent an insured depository institution for which the Board is the appropriate Federal banking agency qualifies as a “swaps entity” and would be subject to the Federal assistance prohibition in section 716(a) of the Dodd-Frank Act, the insured depository institution may request a transition period of up to 24 months from the later of July 16, 2013, or the date on which it becomes a swaps entity, during which to conform its swaps activities to the requirements of this section by submitting a request in writing to the Board. Any request submitted pursuant to this paragraph (a) of this section shall, at a minimum, include the following information:

- (i) The length of the transition period requested;
- (ii) A description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in paragraph (d) of this section; and
- (iii) A detailed explanation of the insured depository institution’s plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this part.

(2)(a) The Board may, at any time, request additional information that it believes is necessary for its decision.

(b) *Transition period for insured depository institutions.* Following review of a written request submitted under paragraph (a), the Board shall permit an insured depository institution for which it is the appropriate Federal banking agency up to 24 months after the later of July 16, 2013, or the date on which the insured depository institution becomes a swaps entity, to comply with the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this subpart based on its consideration of the factors in paragraph (c).

(c) *Factors governing Board determinations.* In establishing an appropriate transition period pursuant to any request under this section, the Board will take into account and make written findings regarding:

(1) The potential impact of divestiture or cessation of swap or security-based swaps activities on the insured depository institution's:

(i) Mortgage lending;

(ii) Small business lending;

(iii) Job creation; and

(iv) Capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation; and

(2) Any other factor that the Board believes appropriate.

(d) *Timing of Board review.* The Board will seek to act on a request under paragraph (a) of this section expeditiously after the receipt of a complete request.

(e) *Extension of transition period.* The Board may extend a transition period provided under this section for a period of up to one additional year. To request an extension of the transition period, an insured depository institution must submit a written request containing the information set forth in paragraph (a) of this section no later than 60 days before the end of the transition period.

(f) *Authority to impose restrictions during any transition period.* The Board may impose such conditions on any transition period granted under this section as the Board determines are necessary or appropriate.

(g) *Consultation.* The Board shall consult with the Commodity Futures Trading Commission or the Securities and Exchange Commission, as appropriate, prior to the approval of a request by an insured depository institution for a transition period under this section.

By order of the Board of Governors of the Federal Reserve System, June 5, 2013.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks,
Deputy Secretary of the Board.