

## [Banking and Finance Law Daily Wrap Up, TOP STORY—Treasury adopts qualified financial contract recordkeeping requirements, \(Oct. 28, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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The Treasury Department, in consultation with the Federal Deposit Insurance Corporation, has adopted a rule implementing the qualified financial contract (QFC) recordkeeping requirements of the Dodd–Frank Act that require financial companies to maintain records to assist the FDIC as receiver for a covered financial company. The [rule](#) will be finalized on Dec. 30, 2016.

The Dodd-Frank Act established a mechanism for the orderly resolution of a financial company whose failure and resolution under otherwise applicable federal or state law would have serious adverse effects on financial stability in the United States. In order to assess the options that would be available following its appointment as receiver for a financial company in liquidation, the FDIC needs detailed information about the covered financial company's QFCs.

**Changes in final rule.** After considering the comments received to the [proposed rule](#), the Secretary to the Treasury has made changes from the proposed rule in order to reduce the scope of financial companies subject to the rules and the extent of recordkeeping required while still requiring the records the FDIC would need as receiver in order to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) (see *Banking and Finance Law Daily*, [Jan. 6, 2015](#)).

The final rule retains the inclusion of certain nonbank financial companies and financial market utilities in the definition of records entity. However, a conditional exemption has been provided applicable to certain financial market utilities. The definition of "records entity" has been modified in order to further differentiate financial companies, which narrows the scope of entities subject to the recordkeeping requirements of the final rules. The definition specifically includes in the definition those entities that are identified as global systemically important banks, or G-SIBs.

Additionally, the phrase "guarantees, supports, or is linked to an open QFC" was eliminated from the definition of "records entity." The rule maintains the \$50 billion asset requirement for financial companies, with an additional factor tied to a financial company's level of derivatives activity.

Insurance companies have been excluded from the definition of "records entity," after commentators pointed out that the liquidation of an insurance company, under the Dodd-Frank Act, would be conducted under state law instead of the orderly liquidation authority. Additionally, a conditional exemption has been provided for clearing organizations.

The final rule also provides a *de minimis* exemption from the recordkeeping requirements, other than the requirement to maintain copies of the documents that govern QFC transactions, for entities that are party to 50 or fewer open QFC positions.

Additional revisions were included in the final rule intending to reduce the burden of the required recordkeeping:

- replacing the requirement to maintain organizational charts of counterparties with a requirement to identify only certain information as to each counterparty, such as the ultimate and immediate parent entities of the counterparty;
- eliminating the requirement to maintain risk metrics information;
- eliminating the requirement to maintain copies of additional information with respect to QFCs provided by the records entity to other regulators, swap data repositories, and security-based swap data repositories;
- eliminating the requirement that copies of QFC agreements be searchable;

- eliminating several fields from the required data tables; and
- providing for tiered initial compliance dates based on the size of the corporate group, with all records entities having additional time to comply with the rules.

The rules also provide for additional fields in the required data tables, and replaced the proposed requirement that records of affiliated records entities be maintained in a form that allows for aggregation with the requirement that the top-tier parent financial company be capable of aggregating such records.

MainStory: TopStory BankingOperations DoddFrankAct FinancialStability