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DEPARTMENT OF THE TREASURY

31 CFR Part 148

RIN 1505-AC57

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Secretary of the Treasury (the “Secretary”), as Chairperson of the Financial Stability Oversight Council, is proposing, in consultation with the Federal Deposit Insurance Corporation (the “FDIC”), an amendment to the regulation implementing the qualified financial contract (“QFC”) recordkeeping requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act” or the “Act”) that would extend the compliance dates of the regulation.

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>, or by mail (if hard copy, preferably an original and two copies) to: The Treasury Department, Attn: Qualified Financial Contracts Recordkeeping Comments, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on www.regulations.gov. In general, comments received, including attachments and other supporting materials, are part of the public

record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Director, Office of Capital Markets, (202) 622-0157; Peter Nickoloff, Financial Economist, Office of Capital Markets, (202) 622-1692; Steven D. Laughton, Assistant General Counsel (Banking & Finance), (202) 622-8413; or Stephen T. Milligan, Attorney-Advisor, (202) 622-4051.

SUPPLEMENTARY INFORMATION: On October 31, 2016, the Secretary published a final regulation pursuant to section 210(c)(8)(H) of the Dodd-Frank Act requiring certain financial companies to maintain records with respect to their QFC positions, counterparties, legal documentation, and collateral that would assist the FDIC as receiver in exercising its rights and fulfilling its obligations under Title II of the Act.¹

The regulation provides for staggered compliance dates for the bulk of the recordkeeping requirements as follows. The regulation generally provides that records entities with \$1 trillion or more in total consolidated assets have 540 days (approximately 18 months) after the effective date to comply with the regulation; that records entities with total assets equal to or greater than \$500 billion (but less than \$1 trillion) have two years from the effective date to comply with the regulation; that records entities with total assets equal to or greater than \$250 billion (but less than \$500 billion) have three years from the effective date to comply with the regulation; and that all other records entities have four years from the effective date to comply with the regulation.² Given that the effective date is December 30, 2016, the first of these compliance dates is currently June 23, 2018.

¹ 81 FR 75624 (Oct. 31, 2016).

² 31 CFR 148.1(d)(1)(i).

Separately, the regulation provides that the Secretary may grant conditional or unconditional exemptions from the regulation’s requirements after receiving a recommendation from the FDIC, prepared in consultation with the relevant primary financial regulatory agencies (as defined in the regulation).³ Since the regulation became effective, the Secretary, the FDIC, and the primary financial regulatory agencies have received requests for exemptions from the requirements of the regulation for certain types of records entities within a corporate group and certain types of QFCs. These exemption requests are currently subject to review by the Secretary, the FDIC, and the primary financial regulatory agencies.

In light of the pending exemption requests and the Administration’s general policy of alleviating unnecessary regulatory burdens,⁴ the Secretary, in consultation with the FDIC, is proposing a six month extension of the compliance dates in the regulation. Although the Secretary recognizes the importance of the QFC recordkeeping requirements, the Secretary has concluded that it would impose an unnecessary burden on records entities to require their compliance with the regulation before the scope of their recordkeeping responsibilities is determined. A short extension of the compliance dates is appropriate pending the Secretary’s decisions whether to grant, in whole or in part, conditional or unconditional exemptions based on the exemption requests received to date, and to allow adequate time for records entities to prepare for compliance once the exemption requests are resolved.

Specifically, the Secretary is proposing that all records entities be given approximately an additional six months to comply with the regulation. The Secretary estimates that this will allow sufficient time for the FDIC, in consultation with the primary financial regulatory agencies, to

³ 31 CFR 148.3(c)(4).

⁴ See Executive Order No. 13771, Reducing Regulation and Controlling Regulatory Costs § 1, 82 FR 9339 (Feb. 3, 2017); Executive Order No. 13777, Enforcing the Regulatory Reform Agenda, § 1, 82 FR 12285 (Mar. 1, 2017).

formulate recommendations to the Secretary and for the Secretary to make a determination as to the exemption requests. The Secretary requests comment on whether the compliance date should be extended and, if so, whether six months is the proper length for the extension and whether the compliance date should only be extended with respect to records entities in the first tier, *i.e.*, those records entities with a June 23, 2018 compliance date.

Administrative Law Matters

1. Regulatory Flexibility Act

This proposed rule would not impose any additional burden on any records entities; rather, it would reduce the existing regulatory burden by extending the periods in which records entities have to comply with the regulation's requirements. For these reasons and as discussed further in the release of the 2016 final regulation, the Secretary certifies, pursuant to 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Small Business Administration's most recently revised standards for small entities, which went into effect on October 1, 2017.

2. Executive Order 12866

This proposed rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

List of Subjects in 31 CFR Part 148

Reporting and recordkeeping requirements

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury proposes to revise part 148 to 31 CFR to read as follows:

Part 148—Qualified Financial Contracts Recordkeeping Related to the FDIC Orderly Liquidation Authority

1. The authority citation for Part 148 continues to read as follows:

Authority: 31 U.S.C. 321(b) and 12 U.S.C 5390(c)(8)(H).

2. Amend 31 CFR 148.1(d) by revising the introductory text to paragraphs (d)(1)(i), (d)(1)(i)(A), (d)(1)(i)(B), (d)(1)(i)(C), and (d)(1)(i)(D) as follows:

§ 148.1 Scope, purpose, effective date, and compliance dates.

* * * * *

(d) Compliance. (1) Initial compliance dates. (i) A records entity subject to this part on the effective date must comply with § 148.3(a)(2) on the date that is 90 days after the effective date and with all other applicable requirements of this part on:

(A) December 31, 2018 for a records entity that:

* * * * *

(B) June 30, 2019 for any records entity that is not subject to the compliance date set forth in paragraph (d)(1)(i)(A) of this section and:

* * * * *

(C) June 30, 2020 for any records entity that is not subject to the compliance date set forth in paragraphs (d)(1)(i)(A) or (B) of this section and:

* * * * *

(D) June 30, 2021 for any records entity that is not subject to the compliance dates set forth in paragraphs (d)(1)(i)(A), (B), or (C) of this section.

* * * * *

Dated: December 21, 2017.

Clay Berry,

Deputy Assistant Secretary for Capital Markets.

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