DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 3 and 50
Docket ID OCC-2014-0028
RIN 1557-AD91

FEDERAL RESERVE SYSTEM
12 CFR Parts 217 and 249
Regulations Q and WW
Docket No. R-1507
RIN 7100 AE-28

Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCIES: Office of the Comptroller of the Currency (OCC) and Board of Governors of the Federal Reserve System (Board)

ACTION: Interim final rule with request for comment.

SUMMARY: The OCC and Board (collectively, the agencies) invite comment on an interim final rule that amends the definition of "qualifying master netting agreement" under the regulatory capital rules, and the liquidity coverage ratio rule, as well as under the lending limits rule applicable to national banks and Federal savings associations. The agencies also are proposing to amend the definitions of "collateral agreement," "eligible margin loan," and "repo-style transaction" under the regulatory capital rules. The amendments are designed to ensure that the regulatory capital, liquidity, and lending limits treatment of certain financial contracts is not affected by implementation of special resolution regimes in foreign jurisdictions or by the International Swaps and Derivative Association Resolution Stay Protocol.

DATES: This rule is effective on January 1, 2015. Comments must be received on or before March 3, 2015.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to each of the agencies. Commenters are encouraged to use the title "**Regulatory Capital Rules,**

Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions" to facilitate the organization and distribution of comments among the Agencies.

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "**Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions**" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—"Regulations.gov":** Go to *http://www.regulations.gov*. Enter ''Docket ID OCC-2014-0028'' in the Search Box and click "Search." Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the Regulations.gov home page to get information on using *Regulations.gov,* including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Email:** *regs.comments@occ.treas.gov*.
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- **Fax:** (571) 465–4326.
- **Hand Delivery/Courier:** 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2014-0028" in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- **Viewing Comments Electronically:** Go to *http://www.regulations.gov.* Enter "Docket ID OCC-2014-0028" in the Search box and click "Search." Comments can be filtered by agency using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by e-mail or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R-1507 and RIN 7100 AE 28, by any of the following methods:

- **Agency Web site:** *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- **Federal eRulemaking Portal:** *http://www.regulations.gov*. Follow the instructions for submitting comments.
- **Email:** *regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- **Fax:** (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 will be made available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* 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., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, (202) 649-6982; or Nicole Billick, Risk Expert, (202) 649-7932, Capital Policy; or Valerie Song, Senior Attorney, (202) 649-5500, Bank Activities and Structure, or Carl Kaminski, Counsel, or Ron Shimabukuro, Senior Counsel,

Legislative and Regulatory Activities Division, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Assistant Director, (202) 452-5239, Thomas Boemio, Manager (202) 452-2982, or Kevin R. Tran, Supervisory Financial Analyst, (202) 452-2309, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452-2277, Christine Graham, Counsel, (202) 452-3005, Will Giles, Counsel, (202) 452-3351, or Trevor Feigleson, Attorney, (202) 475-3274, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Summary

The agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a "qualifying master netting agreement" or agreement that provides for certain rights upon a counterparty default.[1] The agencies, by rule, have defined a qualifying master netting agreement as a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty (default

[1] See 12 CFR Part 3 (OCC) and 12 CFR Part 217 (Board). All references to sections in the regulatory capital rules should be read to mean references to the corresponding sections to the applicable CFR part of each agency's rules. The term "banking organization" includes national banks, state member banks, savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, except for certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

rights), thereby reducing its counterparty exposure and market risks.[2] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than a gross basis, results in a lower measure of exposure, and thus, a lower capital requirement under the regulatory capital rules.

The current definition of "qualifying master netting agreement" recognizes that default rights may be stayed if the financial company is in receivership, conservatorship, or resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[3] or the Federal Deposit Insurance Act (FDI Act).[4] Accordingly, transactions conducted under netting agreements where default rights may be stayed under Title II of the Dodd-Frank Act or the FDI Act may qualify for the favorable capital treatment described above. However, the current definition of "qualifying master netting agreement" does not recognize that default rights may be stayed where a master netting agreement is subject to limited stays under foreign special resolution regimes or where counterparties agree through contract that a special resolution regime would apply. When the agencies adopted the current definition of "qualifying master netting agreement," no other country had adopted a special resolution regime relevant to the definition, and no banking organizations had communicated to the agencies an intent to enter into contractual amendments to clarify that bilateral over-the-counter (OTC) derivatives transactions are subject to certain provisions of certain U.S. and foreign special resolution regimes.

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[2] See section 2 of the regulatory capital rules.

[3] See 12 U.S.C. 5390(c)(8)-(16).

[4] See 12 U.S.C. 1821(e)(8)-(13). The definition would also recognize that default rights may be stayed under any similar insolvency law applicable to government sponsored enterprises (GSEs). Generally under the agencies' regulatory capital rules, GSE means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. See regulatory capital rules section 2.

In recent months, the European Union (EU) finalized the Bank Recovery and Resolution Directive (BRRD), which prescribes aspects of a special resolution regime that EU member nations should implement. In addition, several U.S. banking organizations have opted to adhere to the International Swaps and Derivatives Association's (ISDA) Resolution Stay Protocol (ISDA Protocol),[5] which provides for amendments to the terms of ISDA Master Agreements[6] between counterparties that adhere to the ISDA Protocol to stay certain default rights and other remedies provided under the agreements. The expected implementation of the BRRD by EU member nations and the effective date of certain provisions of the ISDA Protocol may be as early as January 1, 2015. This expected implementation would mirror steps taken in the United States to implement a special resolution regime under Title II of the Dodd-Frank Act.

A master netting agreement under which default rights may be stayed under the BRRD or that incorporates the amendments of the ISDA Protocol would no longer qualify as a qualifying master netting agreement under the regulatory capital, liquidity, and lending limits rules. This would result in considerably higher capital and liquidity requirements that could discourage both the implementation of the BRRD and the ISDA Protocol and the realization of the benefits of these efforts in improving financial stability. In addition, affected national banks and Federal savings associations would be required to measure their lending limits on a gross basis, which would increase the measure of exposure in a manner not contemplated or intended under the current lending limits rules. This result flows from the use of "qualifying master netting agreement" as a cross-reference in the lending limits rules.

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[5] See ISDA Protocol at http://assets.isda.org/media/f253b540-25/958e4aed.pdf/.

[6] The ISDA Master Agreement is a form of agreement that governs OTC derivatives transactions and is used by a significant portion of the parties to bilateral OTC derivatives transactions, including large, internationally active banking organizations. Furthermore, the ISDA Master Agreement generally creates a single legal obligation that provides for the netting of all individual transactions covered by the agreement.

Accordingly, effective January 1, 2015, the interim final rule would permit an otherwise qualifying master netting agreement to qualify if (i) default rights under the agreement may be stayed under a qualifying foreign special resolution regime or (ii) the agreement incorporates a qualifying special resolution regime by contract. Through these revisions, the interim final rule maintains the existing treatment for these contracts for purposes of the regulatory capital, liquidity, and for national banks and Federal savings associations, lending limits rules, while recognizing the recent changes contemplated by the BRRD and the ISDA Protocol.

The interim final rule also revises certain other definitions of the regulatory capital rules to make various conforming changes designed to ensure that a banking organization may continue to recognize the risk mitigating effects of financial collateral[7] received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the regulatory capital, liquidity, and lending limits rules, while recognizing the recent changes contemplated by the BRRD and banking organizations that have adhered to the ISDA Protocol. Specifically, the interim final rule would revise the definition of "collateral agreement," "eligible margin loan,"[8]

[7] Generally, under the agencies' regulatory capital rules, financial collateral means collateral in the form of: (i) cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (ii) gold bullion; (iii) long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded; or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily. In addition, the regulatory capital rules also require that the banking organization have a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). See regulatory capital rule, section 2.

[8] Generally under the agencies' regulatory capital rules, eligible margin loan means an extension of credit where: (i) the extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold; (ii) the collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and (iii) the extension of credit is conducted under an agreement that provides the banking organization with default rights, provided that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the FDI Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs. See regulatory capital rule, section 2. In addition, in order to recognize an exposure as an eligible margin loan a banking organization must comply with the requirements of section 3(b) of the regulatory capital rules with respect to that exposure.

and "repo-style transaction"[9] to provide that a counterparty's default rights may be stayed under a foreign special resolution regime or, if applicable, under a special resolution regime incorporated by contract.[10] The agencies request comment on all aspects of these definitions.

II. Background

A. U.S. Resolution Regime

It is common market practice for bilateral derivatives and certain other types of financial contracts entered into by large banking organizations to permit a non-defaulting counterparty to exercise early termination rights and other contractual remedies upon a counterparty (or a related entity) experiencing an event of default. These contractual provisions are generally recognized as a credit risk mitigant because the provisions allow a non-defaulting party the uninterrupted right to close-out, net, and liquidate any collateral securing its claim under the contract upon a counterparty's default.

However, as the failure of Lehman Brothers demonstrated, the uninterrupted exercise of such rights by counterparties of a globally-active financial company with a significant derivatives portfolio could impede the orderly resolution of the financial company and pose risks to financial stability. The United States has enacted laws that impose a limited stay on the exercise of early termination rights and other remedies with regard to qualified financial contracts (such as OTC derivatives, securities financing transactions, and margin loans) with

[9] Generally, under the agencies' regulatory capital rules, repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the banking organization acts as agent for a customer and indemnifies the customer against loss, provided that: (1) the transaction is based solely on liquid and readily marketable securities, cash, or gold; (2) the transaction is marked-to-fair value daily and subject to daily margin maintenance requirements; (3) the transaction provides certain default rights. See regulatory capital rule, section 2. In addition, in order to recognize an exposure as a repo-style transaction for purposes of this subpart, a banking organization must comply with the requirements of section 3(e) of the regulatory capital rules.

[10] See 12 CFR Part 32.

insured depository institutions in resolution under the FDI Act and, in 2010, with financial companies in resolution under Title II of the Dodd-Frank Act.

B. Foreign Special Resolution Procedures and the ISDA Protocol

In recognition of the issues faced in the financial crisis concerning resolution of globally-active financial companies, the EU issued the BRRD on April 15, 2014, which requires EU member states to implement a resolution mechanism by December 31, 2014, in order to increase the likelihood for successful national or cross-border resolutions of a financial company organized in the EU.[11] The BRRD contains special resolution powers, including a limited stay on certain financial contracts that is similar to the stays provided under Title II of the Dodd-Frank Act and the FDI Act. Therefore, the operations of U.S. banking organizations located in jurisdictions that have implemented the BRRD could become subject to an orderly resolution under the BRRD, including the application of a limited statutory stay of a counterparty's right to exercise early termination rights and other remedies with respect to certain financial contracts. The BRRD is generally designed to be consistent with the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes),[12] which were initially adopted by the Financial Stability Board (FSB)[13] of the G-20[14] member nations in October 2011, and are

[11] On January 1, 2015, most of the provisions of the BRRD are expected to take effect in a number of the EU member states.

[12] The Key Attributes are available at www.financialstabilityboard.org/publications/r_111104cc.pdf. See specifically Key Attributes 4.1-4.4 regarding set-off, netting, collateralization and segregation of client assets and Appendix I Annex 5 regarding temporary stays on early termination rights. In October 2014, the FSB adopted a 2014 version of the Key Attributes that incorporates new annexes to provide additional guidance with respect to specific Key Attributes. No changes were made to the text of the twelve Key Attributes of October 2011.

[13] The FSB is an international body that monitors and makes recommendations about the global financial system. The FSB coordinates the regulatory, supervisory, and other financial sector policies of national financial authorities and international standard-setting bodies.

[14] The G-20 membership comprises a mix of the world's largest advanced and emerging economies. The G-20 members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the

designed to provide a standard for the responsibilities and powers that national resolution regimes should have to resolve a failing systemically important financial institution.

In addition to the issuance of the BRRD, on November 4, 2014, ISDA published the ISDA Protocol, which enables counterparties to amend the terms of their ISDA Master Agreements to stay certain early termination rights and other remedies provided under the agreement. As of November 12, 2014, 18 global financial institutions, including several of the largest U.S. banking organizations,[15] have opted to adhere to the ISDA Protocol and thereby would modify ISDA Master Agreements among those adhering parties. Like other qualified financial contracts, OTC derivatives transactions executed under standard ISDA Master Agreements allow a party to terminate the agreement immediately upon an event of default of its counterparty, including if its counterparty (or a related entity)[16] enters insolvency or similar proceedings.

The contractual amendments effectuated pursuant to the ISDA Protocol would apply the provisions of Title II of the Dodd-Frank Act and the FDI Act concerning limited stays of termination rights and other remedies in qualified financial contracts to ISDA Master Agreements between adhering counterparties, including adhering counterparties that are not otherwise subject to U.S. law. The amendments also would apply substantially similar

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European Union. Following the most recent financial crisis, leaders of the G-20 member nations recognized that the orderly cross-border resolution of a globally-active financial company requires all countries to have effective national resolution regimes to resolve failing financial companies in an orderly manner and that national resolution regimes should be consistent with one another. Subjecting the same financial company to conflicting legal rules, procedures, and mechanisms across jurisdictions can create uncertainty, instability, possible systemic contagion, and higher costs of resolution.

[15] As of November 12, 2014, the U.S. banking organizations that have agreed to adhere to the ISDA Protocol are Bank of America Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., and Morgan Stanley, and certain subsidiaries thereof. See current list of adhering parties to the ISDA Protocol at http://www2.isda.org/functional-areas/protocol-management/protocol-adherence/20.

[16] Under the ISDA Resolution Stay Protocol, a related entity is defined to include (i) each parent or (ii) an affiliate that is (a) a creditor support provider or (b) a specified entity.

provisions of certain non-U.S. laws, such as the BRRD, to ISDA Master Agreements between adhering counterparties that are not otherwise subject to such laws.[17] The contractual amendments effectuated pursuant to the ISDA Protocol would permit a party that has agreed to adhere to the ISDA Protocol to exercise early termination rights and other remedies only to the extent that it would be entitled to do so under the special resolution regime applicable to its adhering counterparties (or related entities, as applicable).[18]

C. Description of Relevant Provisions of the Regulatory Capital and the Liquidity Coverage Ratio Rules

As noted above, the agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis, provided that the contracts are subject to a qualifying master netting agreement or other agreement that contains specific provisions. Specifically, under the regulatory capital rules, a banking organization with multiple OTC derivatives that are subject to a qualifying master netting agreement would be able to calculate a net exposure amount by netting the sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement and calculating a risk-weighted asset amount based on the net exposure amount. For purposes of the supplementary leverage ratio (as applied only to advanced approaches banking organizations), a banking organization that has one or more OTC derivatives with the same counterparty that are subject to a qualifying master netting agreement would be permitted to not include in total leverage exposure cash variation margin received from such counterparty that has offset the

[17] The provisions of the ISDA Protocol relating to the special resolution regimes in these jurisdictions will become effective on January 1, 2015, for ISDA Master Agreements between the 18 adhering financial companies (as of November 21, 2014). The ISDA Protocol also covers special resolution regimes in other FSB member jurisdictions so long as the regimes meet conditions specified in the ISDA Protocol relating to creditor safeguards, which are consistent with the Key Attributes.

[18] Parties adhering to the ISDA Protocol would initially be contractually subject to the statutory special resolution regimes of France, Germany, Japan, Switzerland, the United Kingdom and the United States.

mark-to-fair value of the derivative asset or cash collateral that is posted to such counterparty that has reduced the banking organization's on-balance sheet assets.[19]

In addition, the agencies' rules permit a banking organization to recognize the risk-mitigating effect of financial collateral for other types of collateralized exposures. Specifically, for risk-based capital purposes, a banking organization with a securities financing transaction that meets the definition of a repo-style transaction with financial collateral, a margin loan that meets the definition of an eligible margin loan with financial collateral, or an OTC derivative contract collateralized with financial collateral may determine a net exposure amount to its counterparty according to section 37 or section 132 of the regulatory capital rules. A banking organization with multiple repo-style transactions or eligible margin loans with a counterparty that are subject to a qualifying master netting agreement may net the exposure amounts of the individual transactions under that agreement. In addition, for purposes of the supplementary leverage ratio, an advanced approaches banking organization with multiple repo-style transactions with the same counterparty that are subject to a qualifying master netting agreement would be permitted to net for purposes of calculating the counterparty credit risk component of its total leverage exposure. In general, recognition of netting results in a lower measure of risk-

[19] Under the agencies' regulatory capital rules, the general framework consists of two approaches: (1) the standardized approach, which, beginning on January 1, 2015, will apply to all banking organizations regardless of total asset size, and (2) the advanced approaches, which currently apply to large internationally active banking organizations (defined as those banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposure, depository institution subsidiaries of those banking organizations that use the advanced approaches rule, and banking organizations that elect to use the advanced approaches). As a general matter, the standardized approach sets forth standardized risk weights for different asset types for regulatory capital calculations, whereas, for certain assets, the advanced approaches make use of risk assessments provided by banking organizations' internal systems as inputs for regulatory capital calculations. Consistent with section 171 of the Dodd-Frank Act (codified at 12 U.S.C. 5371), a banking organization that is required to calculate its risk-based capital requirements under the advanced approaches (*i.e.*, an advanced approaches banking organization) also must determine its risk-based capital requirements under the generally applicable risk-based capital rules, which will be the standardized approach beginning on January 1, 2015). The lower – or more binding – ratio for each risk-based capital requirement is the ratio that the advanced approaches banking organization must use to determine its compliance with minimum regulatory capital requirements. See generally 12 CFR Part 3 (OCC) and 12 CFR Part 217 (Board).

weighted assets and total leverage exposure than if a banking organization were to calculate its OTC derivatives, repo-style transactions, and eligible margin loans on a gross basis. This result is consistent with the view that entering into transactions under a netting agreement that satisfies certain criteria reduces a banking organization's risk exposure.

The agencies also use the concept of a qualifying master netting agreement in the liquidity coverage ratio (LCR) rule.[20] The LCR rule requires a banking organization to maintain an amount of high-quality liquid assets (the numerator) to match at least 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator). For derivative transactions subject to a qualifying master netting agreement, a banking organization would be able to calculate the net derivative outflow or inflow amount by netting the contractual payments and collateral that it would give to, or receive from, the counterparty over a prospective 30-day period.[21] If the derivative transactions are not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the LCR rule's cap on total inflows. Recognition of netting may result in lower net cash outflows, and thus a lower LCR denominator and liquidity requirement, than if a banking organization were to calculate its inflows and outflows on its derivatives transactions on a gross basis.

III. The Interim Final Rule

[20] The agencies' LCR rules will be codified at 12 CFR part 50 (OCC) and 12 CFR part 249 (Board).

[21] See 12 CFR __.32(c) and __.33(b) of the agencies' LCR rule. The LCR final rule provides that foreign currency transactions that meet certain criteria can be netted regardless of whether those transactions are covered by a qualified master netting agreement. 79 FR 61440, 61532-33 (October 10, 2014).

The interim final rule amends the definitions of "collateral agreement, "eligible margin loan," "qualifying master netting agreement," and "repo-style transaction" in the agencies' regulatory capital rules and "qualifying master netting agreement" in the agencies' LCR rules to ensure that the regulatory capital, liquidity, and lending limits treatment of OTC derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of various foreign special resolution regimes and the ISDA Protocol. In particular, the interim final rule amends these definitions to provide that a relevant netting agreement or collateral agreement may provide for a limited stay or avoidance of rights where the agreement is subject by its terms to, or incorporates, certain resolution regimes applicable to financial companies, including Title II of the Dodd-Frank Act, the FDI Act, or any similar foreign resolution regime that provides for limited stays substantially similar to the stay for qualified financial contracts provided in Title II of the Dodd-Frank Act or the FDI Act.

In determining whether the laws of foreign jurisdictions are "similar" to the FDI Act and Title II of the Dodd-Frank Act and provide for limited stays substantially similar to those provided for in the FDI Act and Title II of the Dodd-Frank Act, the agencies intend to consider all aspects of the stays under the U.S. laws.[22] Relevant factors include, for instance, the length of stay and the related creditor safeguards or protections provided under a foreign special resolution regime.[23] The agencies expect that the implementation of special resolution regimes of France,

[22] See 12 U.S.C. 1821(e)(8)-(13) and 5390(c)(8)-(16). As noted above, the ISDA Protocol covers only resolution regimes that are considered to be consistent with the principles of the Key Attributes. Therefore, it is also expected that any limited statutory stay under foreign law determined for purposes of this interim final rule to be similar to the FDI Act and Title II of the Dodd-Frank Act would also be consistent with the relevant principles of the Key Attributes.

[23] Under Title II of the Dodd-Frank Act, counterparties are stayed until 5:00 p.m. on the business day following the date of appointment of a receiver from exercising termination, liquidation, or netting rights under the qualified financial contract. 12 U.S.C. 5390(c)(10)(B)(i)(I). If the qualified financial contracts are transferred to a solvent third party before the stay expires, the counterparty is permanently enjoined from exercising such rights based upon

Germany, Japan, Switzerland, and the United Kingdom would be substantially similar to those of the United States and provide for limited stays substantially similar to those provided for in the FDI Act and Title II of the Dodd-Frank Act.[24]

Without the interim final rule, several banking organizations would no longer be permitted to recognize financial contracts as subject to a qualifying master netting agreement or satisfying the criteria necessary for the current regulatory capital, liquidity, and lending limits treatment, and would be required to measure exposure from these contracts on a gross, rather than net, basis. This result would undermine the salutary effects of the BRRD and similar resolution regimes and the ISDA Protocol on financial stability. The interim final rule is necessary to maintain the existing treatment for these contracts for purposes of the regulatory capital, liquidity, and lending limits rules. The agencies do not believe that the disqualification of master netting agreements that would otherwise result in the absence of the interim final rule accurately reflects the risk posed by these OTC derivative transactions. Implementation of consistent, national resolution regimes on a global basis furthers the orderly resolution of internationally active financial companies, and enhances financial stability. Moreover, the development of the ISDA Protocol furthers the principles of Title II of the Dodd-Frank Act and the FDI Act (in instances where a counterparty is a U.S. entity or its subsidiary) by applying limited stays of termination rights to counterparties who are not otherwise subject to U.S. law.

In addition, the agencies intend to incorporate the definition of "qualifying master netting agreement" set forth in this interim final rule into rules that establish minimum margin

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the appointment of the receiver, but is not stayed from exercising such rights based upon other events of default. See 12 U.S.C. 5390(c)(10)(B)(i)(II).

[24] Annexes to the ISDA Protocol specify conditions that the special resolution regimes of the five countries must meet in order for section 1(a) of the ISDA Protocol to apply to the ISDA Master Agreements of adhering parties.

requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (covered swap entities) subject to agency supervision. On September 24, 2014, the OCC, Board, Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency published a notice of proposed rulemaking that would establish minimum margin requirements for covered swap entities subject to agency supervision (2014 swap margin NPR).[25] The proposed rule would permit a covered swap entity to calculate variation margin requirements on an aggregate, net basis under an eligible master netting agreement (EMNA) with a counterparty. The comment period for the 2014 swap margin NPR closed on November 24, 2014. The OCC, Board, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency are reviewing the comments received and drafting a final rule. Ultimately, the Federal banking agencies intend to align the definitions of EMNA and qualifying master netting agreement in their respective regulations pertaining to swap margin requirements, regulatory capital requirements, liquidity requirements, and lending limits.

IV. Request for Comments

The agencies are interested in receiving comments on all aspects of the interim final rule. In particular, do the amendments to the definitions of "qualifying master netting agreement," "collateral agreement," "repo-style transaction," and "eligible margin loan" ensure that the regulatory capital, liquidity, and lending limits treatment of OTC derivatives, repo-style transactions, eligible margin loans and other collateralized transactions is unaffected by the ISDA Protocol and the BRRD? Is there any reason why the agencies should not revise the above mentioned definitions?

[25] 79 FR 57348 (September 24, 2014).

The ISDA Protocol also provides for limited stays of termination rights for cross-defaults resulting from affiliate insolvency proceedings under a limited number of U.S. general insolvency regimes, including the U.S. Bankruptcy Code.[26] The interim final rule does not address this portion of the ISDA Protocol because this portion of the ISDA Protocol does not take effect on January 1, 2015. Instead, it takes effect upon the effective date of implementing regulations in the United States. The agencies request comment on whether the definitions of "qualifying master netting agreement," "collateral agreement," "repo-style transaction," and "eligible margin loan" should also be amended to recognize the stay of default rights in this context.

V. Effective Date; Solicitation of Comments

This interim final rule is effective January 1, 2015. 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."[27] 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.[28]

The ISDA Protocol was published by ISDA on November 4, 2014, and as of November 12, 2014, 18 large banking organizations, including five large U.S. banking organizations, have voluntarily adhered to the ISDA Protocol, which will become effective on January 1, 2015.

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[26] Under the ISDA Protocol, upon commencement of such proceedings, adhering counterparties would be subject to a limited stay of their termination rights and other remedies. The limited stay does not apply if a direct counterparty is subject to general insolvency proceedings. The stay also does not apply to payment or delivery defaults or to defaults that are not directly or indirectly related to the affiliate insolvency proceedings.

[27] 5 U.S.C. 553(b)(B).

[28] 5 U.S.C. 553(d)(3).

Upon the effective date of the ISDA Protocol, the ISDA Master Agreements entered into between the adhering banking organizations would be disqualified from recognition as transactions subject to a qualifying master netting agreement.

The BRRD was adopted on April 15, 2014.[29] Implementation of the BRRD by a number of EU member states is expected to occur by January 1, 2015. Becoming subject to the limited stays contemplated by the BRRD also disqualifies agreements that would otherwise qualify as a qualifying master netting agreement or a collateral agreement, and disqualifies securities financing transactions or margin loans from the regulatory capital treatment of a repo-style transaction or eligible margin loan, respectively. Adoption of this interim final rule, in conjunction with the implementation of the BRRD and the ISDA Protocol by relevant foreign jurisdictions is consistent with steps to facilitate the orderly resolution of systemically important financial institutions.

Changes to the definitions of qualifying master netting agreement, repo-style transaction, eligible margin loan and collateral agreement are needed to ensure that contractually subjecting netting and collateral agreements, agreements executing a repo-style transaction and agreements executing an eligible margin loan to domestic and foreign special resolution regimes does not disrupt current treatment under the agencies' regulatory capital, liquidity, and lending limits rules. Notice and comment through the issuance of a notice of proposed rulemaking for purposes of these amendments would extend beyond January 1, 2015, resulting in adverse financial consequences to some U.S. banking organizations.

The agencies find that, under these circumstances, prior notice and comment through the issuance of a notice of proposed rulemaking are impracticable and that the public interest is best

[29] The United Kingdom published a consultative paper in July 2014 regarding the implementation of the BRRD.

served by making the rule effective on January 1, 2015. Otherwise, banking organizations could be subject to considerably higher capital and liquidity requirements because the regulatory capital and liquidity rules would not recognize netting under the relevant agreements or the current treatment of such contracts. Moreover, under the OCC's legal lending limits for national banks and Federal savings association, which rely on the definition of qualifying master netting agreement, the legal lending limits of those institutions may be significantly reduced. These outcomes could weaken liquidity in OTC derivatives markets, increase the cost of credit, and reduce the availability of credit.

National implementation of the BRRD and adherence to the ISDA Protocol should facilitate the orderly resolution of internationally active banking organizations. Absent capital and liquidity treatment and legal lending limits (where applicable) afforded to counterparties entering into a qualifying master netting agreement, banking organizations would be dis-incentivized to enter into such agreements.

For these reasons, with respect to the amendments to the definitions of qualifying master netting agreement, collateral agreement, repo-style transaction, and eligible margin loan, the agencies find good cause to dispense with the delayed effective date otherwise required by 5 U.S.C. 553(b)(B) and 553(d)(3) and under section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802.[30]

VI. Regulatory Analysis

A. Regulatory Flexibility Act Analysis

[30] The RCDRIA requires that, subject to certain exceptions, regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule. This effective date requirement does not apply if the agency finds for good cause that the regulation should become effective before such time.

OCC: The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Board: The requirements of the RFA are not applicable to this interim final rule.[31] Nonetheless, the Board observes that the interim final rule would not have a significant economic impact on a substantial number of small entities. The Board requests comment on its conclusion that the new interim final rule should not have a significant economic impact on a substantial number of small entities.

To support the above finding that the interim final rule would not have a significant economic impact on a substantial number of small entities, the Board is publishing a final 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.[32] 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.

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[31] The requirements of the RFA are not applicable to rules adopted under the Administrative Procedure Act's ''good cause'' exception, see 5 U.S.C. 601(2) (defining ''rule'' and notice requirements under the Administrative Procedure Act).

[32] 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.

Under regulations issued by the U.S. Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[33] As of June 30, 2014, there were approximately 657 small state member banks, 3,719 small bank holding companies, and 254 small savings and loan holding companies.

The interim final rule is expected only to apply to banking organizations that adhere to the ISDA Protocol or engage in a substantial amount of cross-border derivatives transactions. Small entities generally will not fall into this category. To date, the Board is aware of less than two dozen banking organizations, all with total consolidated assets greater than $250 billion, that are likely to adhere to the ISDA Protocol or engage in a substantial amount of cross-border derivatives transactions. The Board is aware of no other Federal rules that duplicate, overlap, or conflict with this interim final rule. The Board believes that this interim final rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the interim final rule that would reduce the economic impact on small banking organizations supervised by the Board.

B. Solicitation of Comments on Use of Plain Language

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

- Have the agencies organized the material to suit your needs? If not, how could the rule be more clearly stated?

[33] See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

- Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes would make the rule easier to understand?

- Would more, but shorter, sections be better? If so, which sections should be changed?

- What else could the agencies do to make the rule easier to understand?

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) ("PRA"), the agencies 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 agencies reviewed the interim final rule and determined that it would not produce any new collection of information pursuant to the PRA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure; Capital; National banks, Reporting and recordkeeping requirements; Risk.

12 CFR Part 50

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 217

Administrative practice and procedure; Banks, banking; Capital; Federal Reserve System; Holding companies; Reporting and recordkeeping requirements; Securities.

12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the supplementary information, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

Part 3 [Amended]

■ 1a. Part 3 is amended by redesignating footnotes 5 through 29 as footnotes 9 through 33, respectively.

■ 2. Section 3.2 is amended by:

a. Revising the definitions of "collateral agreement" and "qualifying master netting agreement";

b. Revising paragraph (1)(iii) of the definition of "eligible margin loan";

c. Republishing the introductory text of the definition of "repo-style transaction"; and

d. Revising paragraph (3)(ii)(A) of the definition of "repo-style transaction".

The revisions are set forth below:

§ 3.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a national bank or Federal savings association for a single financial contract or for all financial contracts in a netting set and confers upon the national bank or Federal savings association a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the national bank or Federal savings association with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the national bank's or Federal savings association's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or

laws of foreign jurisdictions that are substantially similar[4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

Eligible margin loan means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the national bank or Federal savings association the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

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[4] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute "securities contracts" under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401-407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the national bank or Federal savings association the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

[7] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a national bank or Federal savings association must comply with the requirements of § 3.3(d) with respect to that agreement.

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the national bank or Federal savings association acts as agent for a customer and indemnifies the customer against loss, provided that:

* * * * *

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the national bank or Federal savings association the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or

[8] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

* * * * *

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 3. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq*.

■ 4. Section 50.3 is amended by:

a. Revising the definition of "qualifying master netting agreement"; and

b. In paragraph (2) of the definition of "regulated financial company", redesignating footnote 1 as footnote 2.

The revision is set forth below.

§ 50.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the national bank or Federal savings association the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty,

provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a national bank or Federal savings association must comply with the requirements of § 50.4(a) with respect to that agreement.

*** * * * ***

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the supplementary information, the Board amends 12 CFR Chapter II parts 217 and 249 to read as follows:

[1] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 5. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-l, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371.

Part 217 [Amended]

■ 5a. Part 217 is amended by redesignating footnotes 5 through 29 as footnotes 9 through 33, respectively.

■ 6. Section 217.2 is amended by:

a. Revising the definitions of "collateral agreement" and "qualifying master netting agreement";

b. Revising paragraph (1)(iii) of the definition of "eligible margin loan";

c. Republishing the introductory text of the definition of "repo-style transaction"; and

d. Revising paragraph (3)(ii)(A) of the definition of "repo-style transaction".

The revisions are set forth below:

§ 217.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a Board-regulated institution for a single financial contract or for all financial contracts in a netting set and confers upon the Board-regulated institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral

posted by the counterparty under the agreement. This security interest must provide the Board-regulated institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the Board-regulated institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

Eligible margin loan means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the Board-regulated institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership,

[4] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute "securities contracts" under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401-407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

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insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

[6] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a Board-regulated institution must comply with the requirements of § 217.3(d) with respect to that agreement.

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Board-regulated institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(3) * * *

(ii) * * *

[7] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

(A) The transaction is executed under an agreement that provides the Board-regulated institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 7. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 8. Section 249.3 is amended by:

a. Revising the definition of "qualifying master netting agreement"; and

[8] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

b. In paragraph (2) of the definition of "regulated financial company", redesignating footnote 1 as footnote 2.

§ 249.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

[1] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a Board-regulated institution must comply with the requirements of § 249.4(a) with respect to that agreement.

* * * * *

Date: December 16, 2014

Thomas J. Curry
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, December 16, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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