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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: Final rule.

SUMMARY: The Secretary of the Treasury (the “Secretary”), as Chairperson of the Financial Stability Oversight Council, in consultation with the Federal Deposit Insurance Corporation (the “FDIC”), is adopting a final rule that extends the compliance dates of 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”).

DATES: The final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 On December 28, 2017, the Secretary published a notice of proposed rulemaking that would extend the compliance dates of the regulation.²

The regulation currently 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.³ Given that the effective date is December 30, 2016, the first of these compliance dates is currently June 23, 2018.

Separately, the regulation provides that a records entity may request an exemption from one or more of the regulation's requirements and 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).⁴ 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

¹ 81 FR 75624 (Oct. 31, 2016).

² 82 FR 61505 (Dec. 28, 2017).

³ 31 CFR 148.1(d)(1)(i).

⁴ 31 CFR 148.3(c)(4).

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,⁵ the Secretary, in consultation with the FDIC, proposed a six-month extension of the compliance dates in the regulation. The Secretary specifically requested comment on whether the compliance dates should be extended and, if so, whether six months is the proper length for the extension and whether an extension should be given only with respect to records entities in the first compliance tier, *i.e.*, those records entities that currently have a June 23, 2018 compliance date.

The Secretary received one substantive comment regarding the proposed rule.⁶ The Clearing House Association L.L.C. and the Securities Industry and Financial Markets Association, which represent certain institutions that are records entities under the rule, wrote together to express their strong support for a proposed extension.⁷ These commenters recommended a nine month extension for all records entities noting that such an extension would afford records entities enough time to reflect the Secretary's determinations as to the pending exemption requests in their efforts to comply with the regulation.

In support of their request for extension of the compliance dates, the commenters cited the resources being expended to develop systems to collect information in the specific formats required by the rule and the changes that will have to be made to the plans for those compliance

⁵ See Executive Order No. 13771, Reducing Regulation and Controlling Regulatory Costs, section 1, 82 FR 9339 (Feb. 3, 2017); Executive Order No. 13777, Enforcing the Regulatory Reform Agenda, section 1, 82 FR 12285 (Mar. 1, 2017).

⁶ The Secretary received a total of four comments; however, three of the comments were not germane to the proposed rule.

⁷ Letter of January 29, 2018.

efforts once determinations as to the exemption requests are made. The commenters also cited concurrent efforts by records entities to come into compliance with other regulatory requirements regarding QFCs recently adopted by other federal financial regulators.

Although the Secretary recognizes the importance of the QFC recordkeeping requirements, the Secretary continues to believe 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. An 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 has determined to amend the regulations to extend the compliance date by approximately nine months for records entities in the first compliance tier. Based on the substantive comment received in response to the proposed rule, the Secretary believes that this extension will allow sufficient time for such records entities to comply with the rule after determinations have been made with respect to the exemption requests. The Secretary has determined to extend the compliance dates for all other records entities by six months, as was proposed. Based on the substantive comment received in response to the proposed rule, the Secretary believes this additional time will permit records entities in each compliance tier to adjust their plans and budgets for compliance once the determinations as to the exemption requests are made while maintaining the staggered approach that was adopted by the Secretary with respect to the original compliance dates. That staggered approach was adopted not only on the understanding that larger entities will generally have greater capacity to apply to the task of coming into initial compliance with the rules but also because of the anticipated need to provide

guidance to records entities as they work to come into compliance with the rules.⁸ Maintaining the staggered compliance schedule will permit staff of the Department of the Treasury and the FDIC to allocate their resources to more efficiently provide any needed guidance to records entities in each compliance tier.

Administrative Law Matters

1. Regulatory Flexibility Act

This final rule will 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 this reason 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 final 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 final rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

3. Executive Order 13771

While the cost savings of the rule cannot be estimated at this time, this final rule is considered a deregulatory action under Executive Order 13771.⁹

List of Subjects in 31 CFR Part 148

Reporting and recordkeeping requirements.

⁸ See 81 FR at 75634.

⁹ 82 FR 9339 (Feb. 3, 2017).

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury amends part 148 to 31 CFR 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 § 148.1 by revising paragraphs (d)(1)(i) introductory text, (d)(1)(i)(A) introductory text, (d)(1)(i)(B) introductory text, (d)(1)(i)(C) introductory text, and (d)(1)(i)(D) to read as follows:

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

* * * * *

(d) * * *

(1) * * *

(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) March 31, 2019 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 dates set forth in paragraph (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 paragraph (d)(1)(i)(A), (B), or (C) of this section.

* * * * *

Dated: April 13, 2018.

Clay Berry,

Deputy Assistant Secretary for Financial Markets.

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