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Changes to the Regulatory Capital and Liquidity Rules: Interim Final Rule

Summary

The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the agencies) are amending certain provisions of the agencies' capital and liquidity rules to ensure that the treatment of over-the-counter derivatives, eligible margin loans, and repo-style transactions is unaffected by implementation of special resolution regimes in foreign jurisdictions or by the International Swaps and Derivatives Association Resolution Stay Protocol (ISDA Protocol).

Note for Community Banks

The interim final rule does not affect community banks.

To

Chief Executive Officers of National Banks and Federal Savings Associations, All Department and Division Heads, All Examining Personnel, and Other Interested Parties

Highlights

The rulemaking amends definitions of "qualifying master netting agreement," "collateral agreement," "eligible margin loan," and "repo-style transactions." The interim final rule permits applicable netting agreements to provide for a limited stay when the agreement is subject either to a U.S. special resolution regime, including title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) or the Federal Deposit Insurance Act. The interim final rule also applies to a foreign resolution regime that is substantially similar to title II of Dodd-Frank or the Federal Deposit Insurance Act.

Background

For parties that adhere to the ISDA Protocol, the protocol limits the default and early termination rights in their ISDA master agreements to make the agreements subject to the stay provisions of title II of Dodd-Frank, the Federal Deposit Insurance Act, and other similar special resolution regimes, such as the recently finalized European Union Bank Recovery and Resolution Directive. The amendments to the ISDA master agreements limit the early termination rights of a party to the agreement to the same extent that those rights would be limited under the special resolution regime applicable to its counterparty.

The regulatory capital (including the supplemental leverage ratio), liquidity, and lending limit rules currently recognize netting of collateral agreements for over-the-counter derivatives and certain securities financing transactions, as long as a banking organization may terminate its positions upon an event of default of its counterparty. The current rules provide that the transactions may receive this treatment even though certain U.S. laws, including title II of Dodd-Frank and the Federal Deposit Insurance Act, may temporarily stay the termination rights.

Absent the changes to the current capital, liquidity, and lending limit rules set forth in this interim final rule, many exposures that are currently netted would be disqualified from netting under the agencies' rules when the ISDA Protocol becomes effective. The interim final rule ensures that over-the-counter derivatives and securities financing transactions continue to qualify for netting under the agencies' rules even if the transactions become subject to potential stays under foreign special resolution regimes that are similar to those of the United States, such as the European Union Bank Recovery and Resolution Directive, or under contractual provisions that incorporate stays of special resolution regimes.

Further Information

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Related Link

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