

Annex E of the Business Conditions for Investment Services

Information on the U.S. Resolution Stay Rules

This Annex is for information purposes only and are not intended to constitute legal advice and must not be relied upon. If you require legal advice in connection with the contents of this Annex, you should consult your own legal advisors.

BACKGROUND

1 What are the U.S. Resolution Stay Rules?

The U.S. banking regulators adopted the U.S. Resolution Stay Rules to reduce the risk posed to the financial system in the case of the resolution of a U.S. Global Systemically Important Banking organization (G-SIB) or the U.S. operations of a non-U.S. G-SIB by promoting market-wide adoption of contractual restrictions on the exercise of early termination rights under qualified financial contracts (QFCs).

The U.S. Resolution Stay Rules require that counterparties to all “in-scope” QFCs with G-SIBs:

- explicitly opt in to the stay-and-transfer provisions of the U.S. Special Resolution Regimes; and
- agree to prohibit the exercise of default rights based, directly or indirectly, on the insolvency of a GSIB parent or other affiliate (cross-defaults) and restrict the transfer of affiliate guarantees in the event a parent or other affiliate enters insolvency proceedings.

2 What transactions are “In Scope” QFCs?

QFC is defined very broadly to cover a wide variety of transactions, including without limitation:

- swaps and other derivatives;
- repo and reverse repo transactions, securities lending and borrowing transactions;
- contracts for the purchase or sale of securities, CDs or mortgage loans;
- commodity contracts;
- forward contracts;
- certain spot transactions;
- guarantees or credit enhancements related to the foregoing; and
- master agreements related to the foregoing.

An “in scope” QFC is any QFC that explicitly restricts the transfer of a QFC from a G-SIB or provides one or more default rights that may be exercised against a G-SIB. QFCs that do not have any explicit default rights or transfer restrictions are not in scope for purposes of the U.S. Resolution Stay Rules.

RULE TIMING AND COMPLIANCE

3 How do I comply with the U.S. Resolution Stay Rules?

The U.S. Resolution Stay Rules require you and your consolidated affiliates (affiliates that are consolidated under U.S. GAAP or IFRS) to amend in scope QFCs with all U.S. G-SIBs and their subsidiaries, and the U.S. operations of all non-U.S. G-SIBs, in accordance with the timeline set by the regulators (which is set out below in Q4).

To amend all in scope QFCs, you may use a bilateral template which Citi will provide. Alternatively, you can use the 2018 U.S. Resolution Stay Protocol, which includes certain creditor protections that are not available under the rules through a bilateral agreement and amend all of your Qualified Financial Contracts (ISDAs and other agreements) with all Covered Entities through a single adherence letter.

For more information on both bilateral and Protocol adherence, please contact Citi at citiqfcstay@citi.com.

4 What is the compliance timeline for the U.S. Resolution Stay Rules?

The U.S. Resolution Stay Rules offer a phased-in compliance timeline based on counterparty type:

Jan 1, 2019: Covered entities under the U.S. Resolution Stay Rules (U.S. G-SIBs and U.S. operations of non-U.S. G-SIBs) will have to amend QFCs with other G-SIBs;

July 1, 2019: Financial counterparties, including:

- banks
- broker-dealers
- swap dealers
- hedge funds
- insurance companies
- pension funds

Jan 1, 2020: All other counterparties, including:

- small financial institutions¹
- corporates
- sovereigns
- central banks

5 What is the trigger date for when an in scope QFC would be subject to the requirements of the U.S. Resolution Stay Rules?

The trigger date for the U.S. Resolution Stay Rules is January 1st 2019, regardless of the compliance date. If a counterparty in any of the compliance categories identified in Question 4 enters into any new QFC (whether or not that specific QFC requires remediation) with a covered G-SIB entity on or after January 1st 2019, the counterparty's entire in-scope QFC portfolio with all of Citi's subsidiaries and affiliates, as well as in-scope QFCs between all of the counterparty's consolidated affiliates and Citi's subsidiaries and affiliates, will need to be remediated by the applicable compliance date.

¹ Small financial institution is defined in the U.S. Resolution Stay Rules as an insured bank, an insured savings association, a farm credit institution, or credit union with assets of \$10bn or less.

ADDITIONAL RULE BACKGROUND AND QUESTIONS

The rule texts can be found at the following links:

FDIC: <https://www.fdic.gov/news/board/2017/2017-09-27-notice-sum-b-fr.pdf>

FED: <https://www.gpo.gov/fdsys/pkg/FR-2017-09-12/pdf/2017-19053.pdf>

OCC: <https://www.gpo.gov/fdsys/pkg/FR-2017-11-29/pdf/2017-25529.pdf>

6 What other regimes have similar resolution stay requirements?

The UK, Germany, Switzerland, Italy, France and Japan have implemented similar resolution stay rules. These jurisdictions are enacting laws, regulations or other binding measures that generally require regulated entities to obtain contractual consent of counterparties to be subject to stays on or overrides of certain termination rights under home-country Special Resolution Regimes (SRR).

Scope and applicability for each jurisdictional rule is different and depend on the jurisdictional law. ISDA developed the ISDA Resolution Stay Jurisdictional Modular Protocol with different “Jurisdictional Modules” specific to the SRR Stay Regulations issued in the above jurisdictions. Please note that adhering to any of the ISDA Resolution Stay Jurisdictional Modular Protocol Jurisdictional Modules does not satisfy the requirements of the U.S. Resolution Stay Rule. Please consult your legal counsel for details.

You can also review the various country-specific Jurisdictional Modules in this link:

<https://www.isda.org/protocol/isda-resolution-stay-jurisdictional-modular-protocol/>

7 My firm is not incorporated in the U.S., do I have to comply with the U.S. Resolution Stay Rules?

Yes, even if you are not incorporated in the U.S., if you want to continue to enter into QFCs with any U.S. G-SIB or its subsidiaries, or the U.S. operations of a non-U.S. G-SIB, you will have to comply with the U.S. Resolution Stay Rules.

8 My firm is not incorporated in the U.S. and I only trade with non-U.S. Citi entities, do I have to comply with the U.S. Resolution Stay Rules?

Yes, even if you are not incorporated in the U.S. and are only trading with non-U.S. Citi entities, you have to comply with the U.S. Resolution Stay Rules. All U.S. GSIBs and their subsidiaries (both U.S. and non-U.S.) and the U.S. operations of non-U.S. GSIBs are required to amend in scope QFCs with all counterparties.

9 My firm is not a G-SIB, do I have to comply with the U.S. Resolution Stay Rules?

Yes, even if you are not a G-SIB, if you want to trade with a U.S. G-SIB or its subsidiaries, or the U.S. operations of a non-U.S. G-SIB, you will have to comply with the U.S. Resolution Stay Rules. U.S. G-SIBs and U.S. operations of non-U.S. G-SIBs are required to amend in scope QFCs with all counterparties.

10 I am negotiating a new, in-scope agreement with Citi. Will this agreement be compliant with the Rule?

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Yes, rule compliant language is available for all agreement types and will be incorporated into all in-scope agreements. Please confer with your negotiator and local counsel to ensure this language is incorporated in your latest agreement template.

11 What is a default right?

A default right is broadly defined to include the right of a party to liquidate, terminate, cancel, rescind, or accelerate the QFC or transactions thereunder, to exercise set-off or netting rights, exercise remedies in respect of collateral or other credit support or any related property, to modify or alter the amount of collateral or margin that must be provided, or to suspend, delay, or defer payment or performance, or to otherwise modify the obligations of a party. With respect to the opt-in provisions, a default right also includes the right of a party to terminate the QFC on demand at a specified time, or from time to time, without the need to show cause.

- A **direct default right** refers to the right of a party to exercise default rights based on its direct counterparty becoming subject to an insolvency proceeding.
- A **cross-default right** refers to the right of a party to exercise default rights based directly or indirectly on a parent or other affiliate of the direct counterparty becoming subject to an insolvency proceeding.