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# BUY-SIDE BEWARE: NEW LIMITS ON INSOLVENCY-RELATED REMEDIES IN CERTAIN QFCs

*Federal banking regulators recently adopted final rules that will restrict insolvency-related contractual remedies of certain buy-side entities transacting in covered QFCs with U.S. and foreign GSIBs, and their affiliates. The authors discuss the ins and outs of these complex rules and report the regulators' responses to the numerous comments received on the proposed rules.*

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In mid- to late 2017, each of the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (together these entities are referred to as the Regulators) adopted parallel, complementary and substantively identical final rules (Rules) that will impact the insolvency-related transfer and "default rights" of certain buy-side parties transacting in covered "qualified financial contracts" (Covered QFCs). These Covered QFCs include swaps, other derivatives contracts, repurchase agreements (repos) and reverse repos, and securities lending and borrowing transactions with certain systemically important banking entities.[1]

The Rules directly apply to banking entities that are: (i) deemed to be a global systemically important U.S. banking organization (U.S. GSIBs) or that meet an asset size threshold; (ii) certain subsidiaries of a U.S. GSIB; or (iii) certain U.S. operations of systemically important foreign banking organizations (Foreign GSIBs). (These entities are generally referred to as Covered Entities in this article and each category of Covered Entity, which includes a Covered Bank and a Covered FSI (each as defined below), is described in more detail.)

The Rules will require Covered Entities to eliminate certain contractual rights with respect to Covered QFCs when:

- the Covered Entity counterparty becomes subject to a receivership either (i) as a non-bank financial company pursuant to the Orderly Liquidation Authority (OLA) provisions of Title II of the Dodd-Frank Act (generally under the FDIC) or (ii) as an insured depository institution pursuant to the Federal Deposit Insurance Act (FDIA) under the FDIC (together U.S. Special Resolution Regimes) or

[1] 82 Fed. Reg. 42882 (Sept. 12, 2017) (Board Rules); 82 Fed. Reg. 56630 (Nov. 29, 2017) (OCC Rules); and 82 Fed. Reg. 50228 (Oct. 30, 2017) (FDIC Rules).

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