



asset management group



April 6, 2018

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Request for Alignment of Applicability Dates with Phased-In Compliance Schedule under Final QFC Stay Rules¹

Dear Sirs and Madams:

The undersigned associations (the “**Associations**”)² write to raise concerns on behalf of pension funds, regulated investment funds, private funds, and other clients of asset managers that enter into qualified financial contracts (QFCs) with entities that are subject to the final rules on stays in QFCs recently issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (together, the “U.S. Banking Agencies”). For the reasons set forth below, we believe that the U.S. Banking Agencies should align the applicability dates under the QFC Stay Rules with the phased-in compliance dates applicable to QFCs executed between Covered Entities³ and financial counterparties that are not Covered Entities. Although the QFC Stay Rules provide for a phased-in compliance schedule to

¹ *Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 82 Fed. Reg. 42882 (Sept. 12, 2017); *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 82 Fed. Reg. 50228 (Oct. 30, 2017); *Mandatory Contractual Stay Requirements for Qualified Financial Contracts*, 82 Fed. Reg. 56630 (Nov. 29, 2017) (collectively, the “QFC Stay Rules”); and related rulemakings, e.g., *Margin and Capital Requirements for Covered Swap Entities; Proposed Rule*, 83 Fed. Reg. 7413 (Feb. 21, 2018).

² See end of letter for descriptions of the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”) and the Investment Company Institute.

³ We use “Covered Entities” herein to refer to covered entities, covered banks and covered FSIs, as applicable, under each of the QFC Stay Rules.

allow an orderly transition,⁴ the rules require that a Covered Entity conform its QFCs to the final rules beginning on the earliest compliance date.⁵ As a result, Covered Entities will expect their non-bank counterparties to conform their QFCs, including pre-existing QFCs, to the QFC Stay Rules as of the earliest compliance date, thus effectively depriving non-bank counterparties of the benefit of the phased-in compliance schedule. To allow for an orderly process for compliance with the QFC Stay Rules, the Associations request that the U.S. Banking Agencies instead align the applicability of the rules with each phased-in compliance date.

The QFC Stay Rules establish three compliance dates based on entity type. For example, the Board of Governors of the Federal Reserve System's (the "**Board**") QFC Stay Rules provide for the following dates:

- (i) January 1, 2019, if each party to the covered QFC is a covered entity or an excluded bank [(the "**First Compliance Date**")];
- (ii) July 1, 2019, if each party to the covered QFC (other than the covered entity) is a financial counterparty that is not a covered entity or excluded bank [(the "**Second Compliance Date**")]; and
- (iii) January 1, 2020, if a party to the covered QFC (other than the covered entity) is not described in paragraph (f)(1)(i) or (f)(1)(ii) of this section or if, notwithstanding paragraph (f)(1)(ii), a party to the covered QFC (other than the covered entity) is a small financial institution. [(the "**Third Compliance Date**")].⁶

However, the QFC Stay Rules apply, as of January 1, 2019 (the "**Application Date**"), to new QFCs a Covered Entity executes with its counterparties, as well as pre-existing QFCs, if the Covered Entity enters into a new QFC with that counterparty after January 1, 2019.⁷ Because all QFCs entered on or after the Application Date between a Covered Entity and counterparty must be compliant with the QFC Rules notwithstanding a later compliance date, Covered Entities that enter into QFCs with counterparties subject to the Second Compliance Date or Third Compliance Date will be unlikely to take the risk of entering into contracts to which the QFC Rules apply without the certainty that those QFCs will be amended to conform to the rules. At the same time, Covered Entities and their counterparties need the additional time provided by the phased-in compliance schedule, as intended by the QFC Rules, to amend their contracts.

⁴ See, e.g., 12 CFR § 252.82 (compliance schedule under the final rules of the Board of Governors of the Federal Reserve). A substantially similar phased-in compliance schedule was included in the final rules issued by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

⁵ This requirement also applies to pre-existing QFCs, which must be amended to conform to the QFC Stay Rules if a Covered Entity enters into a new QFC with that counterparty or a "consolidated affiliate" after the earliest compliance date.

⁶ See, e.g., 12 CFR § 252.82(f).

⁷ See, e.g., 12 CFR § 252.82(c)(1)(ii).

Consistent with the Associations' prior advocacy for phased-in compliance⁸, the Application Date for counterparties subject to the Second Compliance Date should be aligned with the Second Compliance Date and a similar alignment should be made for the Third Compliance Date. The QFC Stay Rules as currently structured do not, as a practical matter, allow parties to utilize the phased-in compliance dates.

This result is inconsistent with the intent of the U.S. Banking Agencies to create a phased-in compliance schedule. For example, the Board stated in its final rule release that it intended the phase-in compliance scheme to "allow market participants time to adjust to the new requirements and make required changes to QFCs in an orderly manner," and "to reduce the compliance burden of the final rule."⁹ As applied, however, the compliance schedule under the QFC Stay Rules will not accomplish this result because the rules create a strong incentive for Covered Entities to ensure that QFCs with their counterparties are in compliance with the rules as of the First Compliance Date.

Absent alignment of the phased-in compliance date and the Application Date, asset managers will face an unanticipated accelerated compliance burden that does not allow adequate time to complete education and outreach efforts to their clients. The Associations urge the U.S. Banking Agencies to align the dates that QFCs become subject to the QFC Stay Rules with the phased-in compliance dates under the rules. Doing so will allow financial counterparties and other entities to benefit from the intended amount of additional time to amend their contracts with Covered Entities.

* * * * *

We are committed to continuing to engage with the Board, OCC, and FDIC as they consider aligning the application dates and the phase-in compliance dates for QFCs. We are available to answer any questions or follow up requests that the Board, OCC, or FDIC may have.

⁸ See SIFMA AMG's Comment Letter on "Proposed Rules Regarding Restrictions on Qualified Financial Contracts" available at: <https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-submits-comments-to-the-federal-reserve-system-on-proposed-rules-regarding-restrictions-on-qualified-financial-contracts.pdf>. "Compliance for QFCs with mutual funds, private funds and commodity pools (and perhaps other collective investment vehicles and financial trading firms) should be subject to a compliance date six months later, with QFCs with other counterparties subject to compliance another six months after than (i.e., one year after the initial compliance date)." ICI made a similar comment in its comment letter dated August 5, 2016, to the Board of Governors of the Federal Reserve, available at <https://www.ici.org/pdf/30119.pdf> "In connection with implementation of the final rule, we request that the Board provide a longer transition period for funds and asset managers. This extension is warranted in light of the substantial number of agreements that will be affected and the additional time and effort that will be necessary for asset managers to amend contracts and obtain client consent regarding the changes required by the final rules. We therefore recommend that the Board provide asset managers with a compliance period that is at least six months longer than the compliance period provided to other covered entities under the final rules."

⁹ See, e.g., 82 Fed. Reg. 42882, 42912.

April 6, 2018

Page 4 of 4

Respectfully submitted,

/s/ Laura Martin

Laura Martin

SIFMA Asset Management Group –

Managing Director and Associate

General Counsel

lmartin@sifma.org

(212) 313-1176

/s/ Andrew Ruggiero

Andrew Ruggiero

SIFMA Asset Management Group –

Associate and Assistant

General Counsel

aruggiero@sifma.org

(212) 313-1128

/s/ Sarah Bessin

Sarah Bessin

Associate General Counsel

Investment Company Institute

sarah.bessin@ici.org

(202) 326-5835

* * * * *

SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed \$39 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

The [Investment Company Institute](#) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$21.9 trillion in the United States, serving more than 100 million US shareholders, and US\$7.5 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](#), with offices in London, Hong Kong, and Washington, DC.