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FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1596]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AE70

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD28

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA92

Margin and Capital Requirements for Covered Swap Entities; Final Rule

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Final rule.

SUMMARY: The Board, OCC, FDIC, FCA, and FHFA (each an Agency and, collectively, the Agencies) are adopting amendments to their rules establishing minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (Swap Margin Rule). These amendments conform the Swap Margin Rule to rules recently adopted by the Board, the OCC, and the FDIC that impose restrictions on certain qualified financial contracts, including certain non-cleared swaps subject to the Swap Margin Rule (the QFC Rules). Specifically, the final amendments to the Swap Margin Rule conform the definition of ''Eligible Master Netting Agreement'' to the definition of ''Qualifying Master Netting Agreement'' in the QFC Rules. The amendment to the Swap Margin Rule ensures that netting agreements of firms subject to the Swap Margin Rule are not excluded from the definition of ''Eligible Master Netting Agreement'' based solely on their compliance with the QFC Rules. The amendment also ensures that margin amounts required for non-cleared swaps covered by agreements that otherwise constitute Eligible Master Netting Agreements can continue to be calculated on a net portfolio basis, notwithstanding changes to those agreements that will be made in some instances by firms revising their netting agreements to achieve compliance with the QFC Rules. In addition, for any non-cleared swaps that were ''entered into'' before the compliance dates of the Swap Margin Rules—and which are accordingly grandfathered from application of the rule's margin requirements—the amendments state that any changes to netting agreements that are required to conform to the QFC Rules will not render grandfathered swaps covered by that netting agreement as ''new'' swaps subject to the Swap Margin Rule.

DATES: The final rule is effective November 9, 2018.

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I. Background

A. The Swap Margin Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was enacted on July 21, 2010.[1] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Dodd-Frank Act generally characterizes as ''swaps'' (swap is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap) and ''security-based swaps'' (security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

security index).[2] For the remainder of this preamble, the term ''swaps'' refers to swaps and security-based swaps unless the context requires otherwise.

Sections 731 and 764 of the Dodd-Frank Act required the Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) to adopt rules jointly that establish capital and margin requirements for swap entities [3] that are prudentially regulated by one of the Agencies (covered swap entities),[4] to offset the greater risk to the covered swap entity and the financial system arising from swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[5] On November 30, 2015, the Agencies published a joint final rule (Swap Margin Rule) to establish minimum margin and capital requirements for covered swap entities.[6]

In the Swap Margin Rule, the Agencies adopted a risk-based approach for initial and variation margin requirements for covered swap entities.[7] To implement the risk-based approach, the Agencies established requirements for a covered swap entity to collect and post initial margin for non-cleared swaps with a counterparty that is either: (1) A financial end user with material swaps exposure,[8] or (2) a swap entity.[9] A covered swap entity must collect and post variation margin for non-cleared swaps with all swap entities and financial end user counterparties, even if such financial end users do not have material swaps exposure.[10] Other counterparties, including nonfinancial end users, are not subject to specific, numerical minimum requirements for initial and variation margin.[11]

The effective date for the Swap Margin Rule was April 1, 2016, but the Agencies established a phase-in compliance schedule for the initial margin and variation margin requirements.[12] On or after March 1, 2017, all covered swap entities were required to comply with the variation margin requirements for non-cleared swaps with other swap entities and financial end user counterparties. By September 1, 2020, all covered swap entities will be required to comply with the initial margin requirements for non-cleared swaps with all financial end users with a material swaps exposure and all swap entities.

The Swap Margin Rule's requirements apply only to a non-cleared swap entered into on or after the applicable compliance date (covered swap); a non-cleared swap entered into prior to a covered swap entity's applicable compliance date (legacy swap) is generally not subject to the margin requirements in the Swap Margin Rule.[13] However, the compliance date provisions of the Swap Margin Rule contain no safe harbor from the rule's application to a legacy swap that is later amended or novated on or after the applicable compliance date.[14]

Whether a non-cleared swap is deemed to be a legacy swap or a covered swap also affects the treatment of a covered swap entity's netting portfolios. The Swap Margin Rule permits a covered swap entity to (1) calculate initial margin requirements for covered swaps under an eligible master netting agreement (EMNA) with a counterparty on a portfolio basis in certain circumstances, if it does so using an initial margin model; and (2) calculate variation margin on an aggregate net basis under an EMNA.[15] In addition, the Swap Margin Rule permits swap counterparties to identify one or more separate netting portfolios under an EMNA, including netting sets of covered swaps and netting sets of non-cleared swaps that are not subject to margin requirements.[16] Specifically, a netting portfolio that contains only legacy swaps is not subject to the margin requirements set out in the Swap Margin Rule.[17] However, if a netting

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[2] *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). The CFTC is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. The SEC is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the Supplementary Information accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

[4] Section 1a(39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The Board is the prudential regulator for any swap entity that is (i) a state-chartered bank that is a member of the Federal Reserve System, (ii) a state-chartered branch or agency of a foreign bank, (iii) a foreign bank which does not operate an insured branch, (iv) an organization operating under section 25A of the Federal Reserve Act of 1913, as amended, or having an agreement with the Board under section 25 of the Federal Reserve Act, or (v) a bank holding company, a foreign bank that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, as amended, or a savings and loan holding company (on or after the transfer date established under section 311 of the Dodd-Frank Act), or a subsidiary of such a company or foreign bank (other than a subsidiary for which the OCC or the FDIC is the prudential regulator or that is required to be registered with the CFTC or SEC as a swap dealer or major swap participant or a security-based swap dealer or major security-based swap participant, respectively). The OCC is the prudential regulator for any swap entity that is (i) a national bank, (ii) a federally chartered branch or agency of a foreign bank, or (iii) a Federal savings association. The FDIC is the prudential regulator for any swap entity that is (i) a State-chartered bank that is not a member of the Federal Reserve System, or (ii) a State savings association. The FCA is the prudential regulator for any swap entity that is an institution chartered under the Farm Credit Act of 1971, as amended. The FHFA is the prudential regulator for any swap entity that is a ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (*i.e.,* the Federal National Mortgage Association and its affiliates, the Federal Home Loan Mortgage Corporation and its affiliates, and the Federal Home Loan Banks). *See* 7 U.S.C. 1a(39).

[5] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[6] 80 FR 74840 (November 30, 2015).

[7] 80 FR 74843.

[8] ''Material swaps exposure'' for an entity means that the entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. *See* § ____.2 of the Swap Margin Rule.

[9] *See* §§ ____.3 and ____.4 of the Swap Margin Rule.

[10] *Id.*

[11] *Id.*

[12] The applicable compliance date for a covered swap entity is based on the average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April and May of that year. The applicable compliance dates for initial margin requirements, and the corresponding average daily notional thresholds, are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all swap entities and counterparties. *See* § ____.1(e) of the Swap Margin Rule.

[13] *See* § ____.1(e) of the Swap Margin Rule.

[14] *See* 80 FR 74850–51 (discussing commenters' requests for addition of three safe-harbors to the Swap Margin Rule and the Agencies' rationale for rejecting those requests).

[15] *See* §§ __.2 and __.5 of the Swap Margin Rule.

[16] Typically, this is accomplished by using a separate Credit Support Annex for each netting set, subject to the terms of a single master netting agreement.

[17] *See* §§ ____.2 and ____.5 of the Swap Margin Rule.

portfolio contains any covered swaps, the entire netting portfolio is subject to the margin requirements of the Swap Margin Rule.[18]

B. The QFC Rules

As part of the broader regulatory reform effort following the financial crisis to increase the resolvability and resiliency of U.S. global systemically important banking institutions [19] (U.S. GSIBs) and the U.S. operations of foreign GSIBs (together, GSIBs),[20] the Board, the OCC, and the FDIC adopted final rules that establish restrictions on and requirements for certain non-cleared swaps and other financial contracts (collectively, Covered QFCs) of GSIBs and their subsidiaries (the QFC Rules).[21]

Subject to certain exemptions, the QFC Rules require U.S. GSIBs, together with their subsidiaries, and the U.S. operations of foreign GSIBs (each a Covered QFC Entity and, collectively, Covered QFC Entities) to conform Covered QFCs to the requirements of the rules.[22] The QFC Rules generally require the Covered QFCs of Covered QFC Entities to contain contractual provisions that opt into the ''temporary stay-and-transfer treatment'' of the Federal Deposit Insurance Act (FDI Act) [23] and title II of the Dodd-Frank Act, thereby reducing the risk that the stay-and-transfer treatment would be challenged by a Covered QFC Entity's counterparty or a court in a foreign jurisdiction.[24] The temporary stay-and-transfer treatment is part of the special resolution framework for failed financial firms created by the FDI Act and title II of the Dodd-Frank Act. The stay-and-transfer treatment provides that the rights of a failed insured depository institution's or financial company's counterparties to terminate, liquidate, or net certain qualified financial contracts on account of the appointment of the FDIC as receiver for the entity (or the insolvency or financial condition of the entity for which the FDIC has been appointed receiver) are temporarily stayed when the entity enters a resolution proceeding to allow for the transfer of the failed firm's Covered QFCs to a solvent party.[25] The QFC Rules also generally prohibit Covered QFCs from allowing the exercise of default rights related, directly or indirectly, to the entry into resolution of an affiliate of the Covered QFC Entity (cross-default rights).[26]

C. The Definitions of Qualifying Master Netting Agreement

As part of the QFC Rules, the Federal banking agencies amended the definition of qualifying master netting agreement (QMNA) in their capital and liquidity rules to prevent the QFC Rules from having disruptive effects on the treatment of netting sets of Board-regulated firms, OCC-regulated firms, and FDIC-regulated firms.[27] The FCA plans to propose several technical and clarifying amendments to its capital regulations, including a revision to the definition of QMNA so it continues to be identical to both the definition in the regulations of the Federal banking agencies' regulatory capital and liquidity rules, and the amended definition of EMNA in this rulemaking.[28]

The amendments to the Federal banking agencies' capital and liquidity rules were necessary because the previous QMNA definition did not recognize some of the new close-out restrictions on Covered QFCs imposed by the QFC Rules.[29] Pursuant to the previous definition of QMNA, a banking organization's rights under a QMNA generally could not be stayed or avoided in the event of its counterparty's default. However, the definition of QMNA permitted certain exceptions to this general prohibition to accommodate certain restrictions on the exercise of default rights that are important to the prudent resolution of a banking organization, including a limited stay under a special resolution regime, such as title II of the Dodd-Frank Act, the FDI Act, and comparable foreign resolution regimes. The previous QMNA definition did not explicitly recognize all the restrictions on the exercise of cross-default rights.[30] Therefore, a master netting agreement that complies with the QFC Rules by limiting the rights of a Covered QFC Entity's counterparty to close out against the Covered QFC Entity would not meet the previous QMNA definition. A failure to meet the definition of QMNA would result in a banking organization subject to one of the Federal banking agencies' capital and liquidity rules losing the ability to net offsetting exposures under its applicable capital and liquidity requirements when its counterparty is a Covered QFC Entity. If netting were not permitted, the banking organization would be required to calculate its capital and liquidity requirements relating to certain Covered QFCs on a gross basis rather than on a net basis, which would typically result in higher capital and liquidity requirements. The Federal banking agencies do not believe that such an outcome would accurately reflect the risks posed by the affected Covered QFCs.

The amendments to the QMNA definition maintain the netting treatment for these contracts under the Federal banking agencies' capital and liquidity rules. The amendments permit a master netting agreement to meet the definition of QMNA even if it limits the banking organization's right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of a counterparty that is a Covered QFC Entity to the extent necessary for the Covered QFC Entity to comply fully with the QFC Rules. The amended definition of QMNA continues

[18] *Id.*

[19] *See* 12 CFR 217.402 (defining global systemically important banking institution). The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company.

[20] The U.S. operations of 21 foreign GSIBs are currently subject to the Board's QFC Rule.

[21] The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule). The QFC Rules include a phased-in conformance period for a Covered QFC Entity that varies depending upon the counterparty type of the Covered QFC Entity. The first conformance date is January 1, 2019, and applies to Covered QFCs with GSIBs. The QFC Rules provide Covered QFC Entities an additional six months or one year to conform its Covered QFCs with other types of counterparties.

The Board's QFC Rule applies to U.S. GSIBs and their subsidiaries, as well as other U.S. operations of foreign GSIBs, with the exception of banks regulated by the FDIC or OCC, Federal branches, or Federal agencies. The FDIC's QFC Rule applies to GSIB subsidiaries that are state savings associations and state-chartered banks that are not members of the Federal Reserve System. The OCC's QFC Rule applies to national bank subsidiaries and Federal savings association subsidiaries of GSIBs, and Federal branches and agencies of foreign GSIBs.

[22] To the extent a U.S. GSIB, any of its subsidiaries, or the U.S. operations of a foreign GSIB include a swap entity for which one of the Agencies is a prudential regulator, a Covered QFC Entity may be a covered swap entity.

[23] 12 U.S.C. 1811 *et seq.*

[24] 12 CFR part 47; 12 CFR part 252, subpart I; 12 CFR part 382.

[25] 12 U.S.C. 1821(e)(10)(B), 5390(c)(10)(B). Title II of the Dodd-Frank Act also provides the FDIC with the power to enforce Covered QFCs (and other contracts) of subsidiaries and affiliates of the financial company for which the FDIC has been appointed receiver. 12 U.S.C. 5390(c)(16); 12 CFR 380.12.

[26] *See supra* note 24.

[27] 82 FR 42882, 42915; 82 FR 50228, 50258; 82 FR 56630, 56659.

[28] *See* FCA's Fall 2018 Unified Agenda (*www.RegInfo.gov*). The FCA's Tier 1/Tier 2 Capital Framework's existing definition of QMNA is identical to the previous definition of QMNA used in the Federal banking agencies' capital and liquidity rules.

[29] 12 CFR 3.2 (2017); 12 CFR 50.3 (2017); 12 CFR 217.2 (2017); 12 CFR 249.3 (2017); 12 CFR 324.2; 12 CFR 329.3.

[30] *See, e.g.,* 12 CFR 252.84(b)(1).

to recognize that default rights may be stayed if the defaulting counterparty is in resolution under the Dodd-Frank Act, the FDI Act, a substantially similar law applicable to government-sponsored enterprises, or a substantially similar foreign law, or where the agreement is subject by its terms to, or incorporates, any of those laws. By recognizing these required restrictions on the ability of a banking organization to exercise close-out rights when its counterparty is a Covered QFC Entity, the amended definition allows a master netting agreement that includes such restrictions to continue to meet the definition of QMNA under the Federal banking agencies' capital and liquidity rules.

II. Discussion of the Final Rule

On February 21, 2018, the Agencies published a request for comment on a proposed rule to amend the definition of EMNA in the Swap Margin Rule and to clarify the impact of the amendment on legacy swaps.[31] The Agencies are adopting the proposed rule as final without change. The final amendment clarifies that a master netting agreement meets the definition of EMNA under the Swap Margin Rule when the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of the QFC Rules. This final rule text is identical to the corresponding text used in the amended definition of QMNA in the Federal banking agencies' capital and liquidity rules.

In addition, the Agencies are adopting as proposed the amendment to the Swap Margin Rule that provides that amendments made to an EMNA that a firm enters into solely to comply with the QFC Rules will not be taken into account for purposes of determining the date on which swaps subject to that agreement were entered into. This amendment establishes that a legacy swap will not be deemed a covered swap under the Swap Margin Rule if it is amended solely to comply with one of the QFC Rules. For example, to comply with the restrictions on Covered QFCs, a Covered QFC Entity may directly amend the contractual provisions of its Covered QFCs or, alternatively, cause its Covered QFCs to be subject to the International Swaps and Derivatives Association 2015 Resolution Stay Protocol (Universal Protocol) or the U.S. Protocol, as defined in the QFC Rules. The Swap Margin Rule amendment will provide certainty to a covered swap entity and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules.

The Agencies received five substantive comments on the proposal. All five substantive comments generally supported the proposed amendment clarifying the treatment of legacy swaps, while two of the comments also specifically expressed support for the proposed amendment to the definition of EMNA. Two comments raised issues unrelated to the proposal.[32]

As described below, three of the comments also recommended alternative approaches to clarify the treatment of legacy swaps. One comment stated that it supported the proposed amendment on the treatment of a legacy swap after it is amended to comply with a QFC Rule because such an amendment does not change the economic nature of the original transaction and therefore would not require such legacy swap to become subject to margin requirements.

The three comments that recommended alternatives to the proposed amendment on the treatment of legacy swaps urged the Agencies to issue guidance that clarifies certain ''non-material'' amendments will not result in a legacy swap becoming subject to margin requirements rather than adopting the proposed amendment. Specifically, a comment requested that the Agencies, in consultation with global authorities, issue guidance that provides clarity on the circumstances under which a legacy swap is considered a new swap. This comment also recommended that such guidance should make clear that non-material amendments (*i.e.,* administrative amendments, contract-intrinsic events, risk-reducing amendments, and amendments required by regulation or legislation) would not cause a legacy swap to be treated as a new swap subject to the Swap Margin Rule. This same commenter also recommended that in the near term the Agencies should clarify the effect of amendments to legacy swaps related to: (i) Ring fencing of derivative transactions into non-bank entities; (ii) interest rate benchmark reform, such as the movement away from LIBOR; and (iii) novations or other amendments necessitated by the United Kingdom leaving the European Union. Another comment recommended that, instead of adopting the proposal as a final rule, the Agencies issue principles-based guidance that clarifies that certain amendments to legacy swaps, including risk-reducing amendments and amendments made to satisfy other regulatory requirements, do not require such legacy swap to become a covered swap, and therefore, subject to margin requirements. This comment requested that, if the Agencies decide to adopt the proposed amendments to the Swap Margin Rule, the amendment should be described as a ''safe harbor'' that is intended to provide clarity to the industry and, thus, should not imply that other immaterial amendments would cause a legacy swap to become subject to margin requirements.

The Agencies are adopting the amendment to the Swap Margin Rule as proposed. Under the final rule, revisions to a master netting agreement that comply with the QFC Rules will not cause the agreement to fall out of the Swap Margin Rule's EMNA definition. The Agencies' approach provides clarity and certainty to swap market participants as to the effect of changes required by the QFC Rules. Further changes requested by the commenters are not within the scope of the Agencies' proposal, so the Agencies are not making revisions to address those comments. As explained in the preamble to the Swap Margin Rule, the Agencies declined to include language requested by commenters in the rule that would classify certain new swap transactions as being ''entered into prior to the compliance date.'' The Agencies noted that doing so could create significant incentives to engage in amendments and novations for the purpose of evading the margin requirement. The Agencies further explained that limiting the extension to ''material'' amendments or ''legitimate'' novations would be difficult to effect within the final rule because the specific motivation for an amendment or novation is generally not observable, and such classifications would make the process of identifying those swaps to which the rule applies overly complex and non-transparent.[33]

As the Agencies continue to assess industry developments such as interest rate benchmark reform, the Agencies will take into account any associated implementation ramifications

[31] 83 FR 7413 (February 21, 2018).

[32] A comment urging a change to the inter-affiliate provisions of the Swap Margin Rule and a comment requesting that the Agencies clarify that a legacy swap that is amended or novated not be subject to margin requirements if it is entered into by special purpose vehicles for purposes of a certain securitization transaction are outside the scope of the proposal.

[33] *See* 80 FR 78450–51.

surrounding the treatment of legacy swaps under the Swap Margin Rule.

III. Regulatory Analysis

A. Paperwork Reduction Act

OCC: In accordance with 44 U.S.C. 3512, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC reviewed the final rule and concluded that it contains no requirements subject to the PRA.

Board: In accordance with section 3512 of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the final rule under the authority delegated to it by OMB. The rule contained no requirements subject to the PRA, and the Board received no comments on its PRA analysis in the proposed rule. The final rule adopts the proposed rule as proposed, and contains no requirements subject to the PRA.

FDIC: In accordance with the requirements of the PRA, the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC reviewed the final rule and concludes that it contains no requirements subject to the PRA. Therefore, no submission will be made to OMB for review.

FCA: The FCA has determined that the final rule does not involve a collection of information pursuant to the Paperwork Reduction Act for Farm Credit System institutions because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3).

FHFA: The final rule amendments do not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

B. Final Regulatory Flexibility Analysis

OCC: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 886 small entities.[34] Among these 886 small entities, 61 might be affected by the final rule if the small entities are a party to a QFC that falls within the scope of the QFC Rules and must be amended to comply with those rules. Because the OCC assumes that the standards set forth in the final rule will be implemented by OCC-supervised small entities before any of them are required to comply with the QFC Rules, the OCC believes that the final rule will not result in savings—or more than *de minimis* costs—for OCC-supervised entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small OCC-regulated entities.

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (the ''RFA''), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[35] The Board solicited public comment on this rule in a notice of proposed rulemaking [36] and has since considered the potential impact of this final rule on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* As described above, the final rule amends the definition of Eligible Master Netting Agreement in the Swap Margin Rule so that it remains harmonized with the amended definition of ''Qualifying Master Netting Agreement'' in the Federal banking agencies' regulatory capital and liquidity rules. The final rule also makes clear that a legacy swap (*i.e.,* a non-cleared swap entered into before the applicable compliance date) that is not subject to the requirements of the Swap Margin Rule will not be deemed a covered swap under the Swap Margin Rule if it is amended solely to conform to the QFC Rules.

2. *Summary of the significant issues raised by public comment on the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* Commenters did not raise any issues in response to the initial RFA analysis. The Chief Counsel for the Advocacy of the Small Business Administration (''SBA'') did not file any comments in response to the proposed rule.

3. *Description and estimate of number of small entities to which the final rule will apply.* This final rule applies to financial institutions that are covered swap entities (CSEs) that are subject to the requirements of the Swap Margin Rule. Under SBA regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (financial institutions). With respect to financial institutions that are CSEs under the Swap Margin Rule, a financial institution generally is considered small if it has assets of $550 million or less.[37] CSEs would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any CSE is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the SEC.[38] None of the current Board-regulated CSEs are small entities.

[34] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[35] *See* 5 U.S.C. 603(a).

[36] *See* 83 FR 7413 (February 21, 2018).

[37] *See* 13 CFR 121.201 (effective December 2, 2014); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[38] The CFTC has published a list of provisionally registered swap dealers as of October 17, 2017 that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

4. *Description of the projected reporting, recordkeeping and other compliance requirements of the final rule.* The Board does not believe the final rule will result in any new reporting, recordkeeping or other compliance requirements.

5. *Significant alternatives to the final rule.* In light of the foregoing, the Board does not believe that this final rule would have a significant economic impact on a substantial number of small entities and therefore there are no significant alternatives to the final rule that would reduce the impact on small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency to provide a final regulatory flexibility analysis with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less).

According to data from recent Consolidated Reports of Income and Condition (CALL Report),[39] the FDIC supervised 3,603 institutions. Of those, 2,885 are considered ''small,'' according to the terms of the Regulatory Flexibility Act. This final rule directly applies to covered swap entities (which includes persons registered with the CFTC as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the SEC as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934) that are subject to the requirements of the Swap Margin Rule. The FDIC has identified 101 swap dealers and major swap participants that, as of May 17, 2018, have registered as swap entities.[40] None of these institutions are supervised by the FDIC.

As discussed previously, the final rule clarifies that a master netting agreement meets the definition of EMNA under the Swap Margin Rule when the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of the QFC Rules. Without adoption of the final rule, covered entities would be required to calculate capital and liquidity requirements relating to certain Covered QFCs on a gross basis rather than on a net basis, which would typically result in higher capital and liquidity requirements. Therefore, this rule is expected to benefit any potential covered swap entity.

The Swap Margin Rule implements sections 731 and 764 of the Dodd-Frank Act, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (''TRIPRA''). TRIPRA excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirements of the Swap Margin Rule. Given this exclusion, a non-cleared swap between a covered swap entity and a small FDIC-supervised entity that is used to hedge a commercial risk of the small entity will not be subject to the Swap Margin Rule. The FDIC believes that it is unlikely that any small entity it supervises will engage in non-cleared swaps for purposes other than hedging.

Given that no FDIC-supervised small entities are covered swap entities, that the potential effects are expected to be beneficial to covered swap entities, and that it is unlikely that FDIC-supervised small entities enter into non-cleared swaps for purposes other than hedging, this final rule is not expected to have a significant economic impact on a substantial number of small entities supervised by the FDIC. For these reasons, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act, and certifies that the final rule does not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to FHFA's regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the U.S. banking agencies to use plain language in proposed and final rulemakings.[41] The Agencies received no comment on these matters and believe that the final rule is written plainly and clearly.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule does not impose any new mandates and will not result in expenditures by State, local, and Tribal governments, or by the private sector of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or

[39] FDIC CALL Reports, March 31, 2018.

[40] While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of June 18, 2018, there was no date established as the compliance date and no SEC-published list of any such entities that so registered. Accordingly, no security-based swap dealers and major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 101 institutions referred to in the text, the FDIC used the list of swap dealers set forth, on June 18, 2018 (providing data as of May 17, 2018) at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.* Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association *https://www.nfa.futures.org/members/sd/index.html* to determine whether there were registered major swap participants. As of June 18, 2018, there were no Major Swaps Participants listed on this link.

[41] 12 U.S.C. 4809(a).

specifically addressed the regulatory alternatives considered.

E. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[42] Each Federal banking agency has determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin Requirements, National banks, Federal savings associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

12 CFR Part 349

Administrative practice and procedure, Banks, Holding companies, Margin Requirements, Capital, Reporting and recordkeeping requirements, Savings associations, Risk.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

[42] 12 U.S.C. 4802.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends part 45 of chapter I of title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by adding paragraph (e)(7) to read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 3. Section 45.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 45.2 Definitions.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

BOARD OF GOVENORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 237 to read as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT

■ 4. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 5. Section 237.1 paragraph (e)(7) is added to read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared

security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 6. Section 237.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 237.2 Definitions

* * * * *

Eligible master netting agreement * * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 349 as follows:

PART 349—DERIVATIVES

Subpart A—Margin and Capital Requirements for Covered Swap Entities

■ 7. The authority citation for subpart A continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e) and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 8. Section 349.1 is amended by adding paragraph (e)(7) as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 9. Section 349.2 is amended by revising of the definition of *Eligible master netting agreement* to read as follows:

§ 349.2 Definitions.

* * * * *

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part must:

(i) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(A) The agreement meets the requirements of paragraph (2) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(ii) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

* * * * *

FARM CREDIT ADMINISTRATION

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit

Administration amends chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 10. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 11. Section 624.1 is amended by adding paragraph (e)(7) to read as follow:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 12. Section 624.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 624.2 Definitions.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

FEDERAL HOUSING FINANCE AGENCY

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency amends chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 13. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 14. Section 1221.1 is amended by adding paragraph (e)(7) to read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 15. Section 1221.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 1221.2 Definitions.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

Dated: September 18, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 19, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on September 19, 2018.

Federal Deposit Insurance Corporation.

Valerie Jean Best,

Assistant Executive Secretary.

Dated: September 11, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

Dated: September 17, 2018.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

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