



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-75-2008
August 6, 2008

RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Notice of Proposed Rulemaking

Summary: The FDIC has issued the attached Notice of Proposed Rulemaking (NPR) that would establish recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in a troubled condition, as defined in the proposed rule. Comments on the NPR are due by September 26, 2008. This NPR would implement certain statutory authority for purposes of the FDIC's meeting its statutory obligations regarding the treatment of QFCs in the event of its appointment as receiver of a failed insured depository institution. The proposed rule and appendix would require an institution in a troubled condition, upon written notification by the institution's appropriate federal banking agency or the FDIC, to produce immediately at the close of processing of the institution's business day for a period provided in that notification electronic files for (1) certain position level and counterparty level data and (2) certain QFC counterparty and portfolio identifiers, in addition to other required QFC-related information in either electronic or written files.

Distribution:

All insured depository institutions

Suggested Routing:

Chief Executive Officer
Chief Financial Officer
Board of Directors

Related Topics:

Administrative practice and procedure
Bank deposit insurance
Reporting and recordkeeping requirements
Securities

Attachment:

Recordkeeping Requirements for Qualified Financial Contracts; Proposed Rule and Notice

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Note:

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Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

- The proposed rule would establish recordkeeping requirements for QFCs held by insured depository institutions in a troubled condition.
- "QFCs" are defined as those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.
- Appendix A sets forth the specific QFC recordkeeping requirements. These QFC recordkeeping requirements are organized under three categories as provided in Appendix A: (1) position level data, (2) counterparty level data, and (3) certain contracts and lists of counterparty affiliates and identifiers, affiliates of the institution that are counterparties to QFC transactions, organizational charts involving the institution and its affiliates, and supporting vendors.
- Position level data and counterparty data must be maintained in electronic files in a format acceptable to the FDIC, and such institutions would be required to demonstrate the ability to produce this information immediately at the close of processing of the institution's business day, for a period provided in a written notification by the FDIC.
- The NPR seeks comment on various issues regarding the scope of institutions that would be covered under the rule and the specific position and counterparty data that would be included in the QFC recordkeeping requirements.

RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Notice of Proposed Rulemaking

The Federal Deposit Insurance Corporation (FDIC) has issued the attached Notice of Proposed Rulemaking (NPR) that would establish recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions (IDIs) in a troubled condition, as defined in the proposed rule. “QFCs” are defined as those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

This NPR would implement rulemaking authority provided to the FDIC by Congress in 2005 to establish QFC recordkeeping requirements, in consultation with the other federal banking agencies, for QFCs held by institutions determined by the FDIC to be in a “troubled condition.” These statutory amendments were enacted by Congress to support the FDIC’s meeting its statutory obligations regarding the treatment of QFCs in the event of its appointment as receiver of a failed insured depository institution.

The proposed rule and appendix would require an institution in a troubled condition, upon written notification by the institution’s appropriate federal banking agency or the FDIC, to produce immediately at the close of processing of the institution’s business day for a period provided in that notification:

- 1) electronic files for certain position level and counterparty level data;
- 2) electronic or written lists of (i) QFC counterparty and portfolio identifiers, (ii) certain affiliates of the institution and the institution’s counterparties to QFC transactions, (iii) contact information and organizational charts for key personnel involved in QFC activities, and (iv) contact information for vendors for such activities; and
- 3) copies of key agreements and related documents for each QFC.

For purposes of the proposed rule, “troubled condition” means any IDI that:

- 1) has a composite supervisory rating, as determined by its appropriate federal banking agency in its most recent examination, of 3 (if the IDI has total consolidated assets of \$10 billion or greater), 4 or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;
- 2) is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

- 3) is subject to a cease-and-desist order or written agreement issued by the appropriate federal banking agency that requires action to improve the financial condition of the IDI, or is subject to a proceeding initiated by the appropriate federal banking agency that contemplates the issuance of an order requiring action to improve the financial condition of the IDI, unless otherwise informed in writing by the appropriate federal banking agency;
- 4) is informed in writing by the IDI's appropriate federal banking agency that it is in troubled condition for purposes of the rule on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate federal banking agency; or
- 5) is determined by the appropriate federal banking agency or the FDIC, in consultation with the appropriate federal banking agency, to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate federal banking agency in its most recent report of examination.

Appendix A sets forth the specific QFC recordkeeping requirements, which are organized under three categories: (1) position level data; (2) counterparty level data; and (3) certain contracts and lists of counterparty affiliates and identifiers, affiliates of the institution that are counterparties to QFC transactions, organizational charts involving the institution and its affiliates, and supporting vendors.

The NPR seeks comment on various issues regarding the scope of institutions that would be covered under the rule and the specific position and counterparty data that would be included in the QFC recordkeeping requirements. Comments are due by September 26, 2008.

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