

January 29, 2018

U.S. Department of the Treasury
Attn: Qualified Financial Contracts Recordkeeping Comments
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Proposed Rule Regarding Qualified Financial Contract Recordkeeping Related to Orderly Liquidation Authority

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“**The Clearing House**”) and the Securities Industry and Financial Markets Association (“**SIFMA**”) welcome this opportunity to comment on the Department of the Treasury’s (“**Treasury**”) proposed rule (the “**Proposed Rule**”)¹ to extend the compliance dates originally specified in the final rule regarding Qualified Financial Contracts (“**QFC**”) Recordkeeping Related to Orderly Liquidation Authority (“**OLA**”), codified in 31 C.F.R. Part 148 (“**Part 148**”).

The Proposed Rule would amend Part 148 to extend the compliance period for all entities subject to Part 148 (“**Treasury Records Entity**”) by six months to allow the Treasury, the Federal Deposit Insurance Corporation (“**FDIC**”) and the other primary financial regulatory agencies additional time to respond to exemption requests. As noted in the Proposed Rule, these exemption requests relate to the treatment under Part 148 of “certain types of records entities within a corporate group and certain types of QFCs.”²

We appreciate and strongly support the Treasury’s proposal to extend the compliance date so that firms can develop recordkeeping systems with the benefit of responses to the exemption requests. However, it is important to note that how Treasury rules on the pending requests will have a significant impact on the systems that firms build to comply with Part 148, including the costs of the systems and the time it takes to build them. Already the delays in responding to exemption requests have complicated firms’ efforts to build the systems essential for compliance with Part 148 by making it more difficult to efficiently pursue the required projects. Thus, in our view, Treasury’s prompt resolution of the pending exemption requests is

¹ Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority; Proposed Rule, 82 Fed. Reg. 61505 (Dec. 28, 2017).

² Proposed Rule, 82 Fed. Reg. 61506.

critical because further compliance date extensions will be necessary if Treasury requires additional time to resolve these requests.

Our comments below focus on the appropriate length of the proposed extension in the context of other regulatory requirements and the relationship between the Proposed Rule and the FDIC's parallel requirements for QFC recordkeeping for records entities in a "troubled condition" under 12 C.F.R. Part 371 ("**Part 371**").

I. Treasury Should Amend the Proposed Rule so that Compliance Dates For All Treasury Records Entities are Extended by Nine Months

The exemptions process under Part 148 allows the regulators to adjust the requirements of the rule to meet the stated purposes of that rule without imposing unnecessary or inappropriate requirements on corporate groups with Treasury Records Entities. In the Treasury's guidance implementing Part 148, the Secretary of the Treasury recognized that the requirements of Part 148 could be adapted to better fit different types of entities and QFCs and identified the exemptions process as a means for the Treasury to use its discretion to tailor the rule's requirements.³ The exemptions process can result in significant changes to the scope of a corporate group's compliance effort, and therefore, timely resolution of exemptions is critical for Treasury Records Entities to prepare to comply with the final rule. Treasury should extend the compliance date so that corporate groups are able to incorporate outcomes of the exemptions process into their compliance efforts.

For our members, compliance with Part 148 is a significant undertaking. If a corporate group is subject to the rule, all U.S. members of the group that are not "excluded entities" are Treasury Records Entities to the extent they are party to at least one QFC.⁴ Absent exemptions, a corporate group must develop a recordkeeping system that spans the activities of all such entities and for all of their open QFCs. In addition, and as discussed in greater detail below, corporate groups may also be developing recordkeeping systems for members that are insured depository institutions ("**IDIs**") to comply with the FDIC's Part 371 requirements. The relationship between Part 148 and Part 371 complicates the compliance effort and, even in advance of any possible applicability of Part 371 to an IDI, requires careful consideration of capabilities, comparative compliance requirements and available resources. Given the breadth of Part 148, corporate groups have dedicated significant resources, including internal personnel, outside experts and third-party vendors, to develop the systems and reporting capabilities

³ Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority; Final Rule, 81 Fed. Reg. 75624, 75644 (Oct. 31, 2016) ("The Secretary recognizes that there may be particular types of QFCs or counterparties for which more limited information may be sufficient to enable the FDIC to exercise its rights under [OLA] and fulfill its obligations under sections 210(c)(8), (9), or (10) of [OLA]. The Final Rules provide the Secretary with the discretion to grant conditional or unconditional exemptions from one or more of the requirements of the Final Rules, which could include exemptions from the recordkeeping requirements regarding particular types of QFCs or counterparties. In addition, section 148.1(d)(3) of the Final Rules provides the Secretary with the authority to grant extensions of time for compliance purposes.").

⁴ See 31 C.F.R. 148.2(n)(1)(iii)(E) (providing that if a financial company in a corporate group is a Treasury Records Entity, each member of the corporate group that consolidates, is consolidated by, or is consolidated with such financial company is also a Treasury Records Entity).

necessary to comply with Parts 148 and 371. While corporate groups already use substantial portions of the data required in their day-to-day operations, Parts 148 and 371 require additional information, from additional entities, and in specific formats that are not currently used by the Treasury Records Entities. Treasury's decisions with respect to an exemption request may change the scope of a corporate group's compliance effort. To incorporate a significant change requires coordination, planning and internal approvals in response.

Given the complexity and the scale of a corporate group's compliance effort, our members estimate that corporate groups may require up to one year to complete the systems work needed to comply with the final formulation of Parts 148 and 371 following resolution of significant exemption requests. Accordingly, if the regulators promptly resolve the exemption requests that have been submitted to date, then we believe Treasury should extend the compliance dates in Part 148 by nine months, rather than six months, for all Treasury Records Entities.⁵ For Treasury Records Entities in the first tier, a nine month extension will also facilitate improved planning and allocation of resources in response to significant related regulatory changes with similar timelines. For example, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the FDIC adopted rules regarding so-called "resolution stay" restrictions in QFCs. These rules apply to all contracts entered into on or after January 1, 2019.⁶ Corporate groups required to comply with this rule expect to commit substantial resources to meeting this target during the final months of 2018. For firms in the first tier for Part 148, this regulatory obligation will increase the challenge of also complying with Parts 148 and 371 by the end of 2018.

This additional time will allow corporate groups to modify their compliance plans in an efficient manner to incorporate the results of exemption requests. We note, however, that additional extensions of time for compliance likely will be necessary if the regulators require additional time to resolve exemption requests. While we are confident that Treasury and the other regulators recognize the cost of complying with Part 148, we wish to emphasize the importance of allowing sufficient time to implement a planned, efficient compliance effort and the necessity of providing, if necessary, additional extensions to allow corporate groups the time necessary to incorporate the results of significant exemption requests.

In the Proposed Rule, Treasury also asked whether the extension should apply to all Treasury Records Entities or only those in the first tier, *i.e.*, with a June 23, 2018, compliance date. We believe the extension should apply to all Treasury Records Entities. As noted above, corporate groups have extensive internal processes to plan and budget for a compliance effort in response to large-scale regulatory developments. Corporate groups that are not in the first tier of

⁵ For Treasury Records Entities in the first tier, a nine month extension would require compliance in March 2019, providing Treasury with time to promptly resolve pending exemption requests and approximately one year for corporate groups in the first tier to comply.

⁶ 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; Final Rule, 82 Fed. Reg. 42882 (Sept. 12, 2017); Mandatory Contractual Stay Requirements for Qualified Financial Contracts; Final Rule, 82 Fed. Reg. 56630 (Nov. 29, 2017); Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions; Final Rule, 82 Fed. Reg. 50228 (Oct. 30, 2017).

compliance with Part 148 have already undertaken this effort and would need to adjust their plans in response to the outcomes of exemption requests just as Treasury Records Entities in the first tier. These corporate groups should also have the benefit of sufficient compliance time once the full scope of requirements is understood.

We also note that uncertainty about the rule's requirements, while exemption requests are pending, has added further costs and complexity to corporate groups' compliance efforts. For example, not knowing the full scope of the compliance effort has made it challenging for corporate groups to agree to a scope of work, or continue with an already established scope of work, with third-party vendors and to set internal timelines, especially given limited resources and unrelated compliance obligations. Corporate groups' ongoing compliance efforts are costly and have become increasingly challenging to coordinate as timing becomes uncertain. We therefore urge the regulators to respond to exemption requests as quickly as possible and in a manner that facilitates compliance rather than adds further complexity. If dialogue with us or our members would help resolve exemption requests, we would, of course, welcome the opportunity to discuss any issues with the regulators.

II. The Treasury and the FDIC Should Align the Compliance Dates for Part 148 and Part 371

The FDIC's Part 371 rules are parallel QFC recordkeeping rules to Part 148, but Part 371 only applies to IDIs in a "troubled condition" ("**FDIC Records Entities**").⁷ Part 371 imposes compliance dates that are different from those under Part 148. We believe that the Treasury and FDIC intend for Part 148 and Part 371 to be complementary and for corporate groups subject to both sets of rules to develop a single, harmonized recordkeeping system. The Treasury explained in adopting Part 148 that the requirements of that rule are based on the FDIC's "experience with Part 371."⁸ Likewise, the FDIC noted in the preamble to its 2017 Part 371 amendments that the FDIC harmonized the requirements between Part 148 and Part 371 so that "in complying with Part 371, an IDI can utilize the same systems built by its affiliates in order to comply with Part 148."⁹ However, if Treasury extends the compliance date for Treasury Records Entities, FDIC Records Entities may have an earlier compliance date unless the FDIC takes parallel action.

Under the Part 371 transition compliance dates, if an entity is an FDIC Records Entity on October 1, 2017, it would need to comply with the revised Part 371, *i.e.*, the same requirements as under Part 148, within 270 days after October 1, 2017. Although that timing would generally align with the compliance date for Treasury Records Entities in the first tier, it would not if the Treasury adopts an extension for Treasury Records Entities.

The FDIC should also extend the compliance date for FDIC Records Entities to align with the compliance dates under Part 371, and we urge the FDIC to issue a market-wide solution,

⁷ See 12 C.F.R. § 371.1(c)(2) (compliance dates for entities that become FDIC Records Entities); § 371.6 (transition compliance dates for entities that are FDIC Records Entities prior to October 1, 2017).

⁸ 81 Fed. Reg. 75638.

⁹ Recordkeeping Requirements for Qualified Financial Contracts; Final Rule, 82 Fed. Reg. 35584, 35586 (Jul. 31, 2017).

such as an interim final rule that aligns the compliance dates under Part 371. FDIC Records Entities can also benefit from Treasury's guidance in response to exemption requests, especially if an exemption request is granted to a Treasury Records Entity affiliate of an FDIC Records Entity. Creating different compliance periods for entities within a single corporate group would undermine the regulators' goals of harmonizing the rules for corporate groups to develop a single recordkeeping system. We therefore urge the Treasury and the FDIC to coordinate the implementation of these rules.

* * *

The Clearing House and SIFMA appreciate this opportunity to comment on the Proposed Rule and your consideration of the views expressed in this letter. We support the goals of the Proposed Rule, and, as described in our comments, we believe that the Treasury should extend the compliance date by nine months for all Treasury Records Entities, and coordinate with the FDIC to harmonize its rules with the FDIC's requirements under Part 371.

If you have any questions or need further information, please do not hesitate to contact John Court (202-649-4628; john.court@theclearinghouse.org) or Carter McDowell (202-962-7327; cmcdowell@sifma.org).

Respectfully submitted,



John Court
Managing Director & Deputy General Counsel
The Clearing House Association L.L.C.



Carter McDowell
Managing Director and Associate General
Counsel
Securities Industry and Financial Markets
Association

Appendix A

Description of the Associations

The Clearing House. The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by launching a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

The Securities Industry and Financial Markets Association. SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.