Client Update
Federal Reserve Proposes Rules Restricting Default Rights in Qualified Financial Contracts with GSIBs

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On May 3, 2016, the Board of Governors of the Federal Reserve System (the "Federal Reserve") issued proposed rules (the "Proposed Rules")[1] that would impose certain restrictions on the rights of a counterparty to a qualified financial contract ("QFC")[2] with a global systemically important banking organization ("GSIB") or an affiliate of the GSIB when the GSIB or its affiliate enters bankruptcy or resolution. Comments on the Proposed Rules must be received by August 5, 2016.

The Proposed Rules are intended to enhance the orderly resolution of failed GSIBs by restricting such rights to the same extent as would be required under the U.S. "special resolution regimes"—the Federal Deposit Insurance Act ("FDIA") and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The Proposed Rules complement the Federal Reserve's recently proposed rules on total loss-absorbing capacity, long-term debt and clean holding company requirements for GSIBs and the ongoing work of the Federal Reserve and the Federal Deposit Insurance Corporation (the "FDIC") on resolution planning requirements for GSIBs.

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1 The text of the Proposed Rules is available at: https://www.federalregister.gov/articles/2016/05/11/2016-11209/restrictions-on-qualified-financial-contracts-of-systemically-important-us-banking-organizations-and.

2 The Proposed Rules define "qualified financial contract" to include, among other things, swaps and other derivatives, repurchase agreements, reverse repurchase agreements and securities lending and borrowing agreements. We discuss the QFC definition in more detail below.

DEFAULT RIGHTS

A party to a QFC generally has the right, contractual or otherwise, to take certain actions upon the occurrence of a default with respect to the counterparty (including its insolvency). Common default rights include the right to suspend performance of the non-defaulting party's obligations, to terminate or accelerate the contract, to net or set off amounts owed between parties and to seize and liquidate the collateral posted by the defaulting party.

The Proposed Rules focus on two distinct types of default rights that may be exercised by the non-defaulting party to a QFC with a GSIB:

- "Direct default rights," whereby the non-defaulting party may terminate a QFC (and exercise these other default rights) based on the insolvency, bankruptcy or resolution of the GSIB entity that is a direct party to the QFC; and
- "Cross-default rights," whereby the non-defaulting party may terminate a QFC (and exercise these other default rights) based on the insolvency, bankruptcy or resolution of an affiliate of the GSIB entity that is the direct party to the QFC.

U.S. BANKRUPTCY AND RESOLUTION REGIMES AND PROPOSED RULES' POLICY OBJECTIVES

The U.S. Bankruptcy Code generally blocks creditors of a bankrupt debtor from enforcing their debts outside of the bankruptcy proceeding by imposing an automatic stay. However, the Bankruptcy Code largely exempts QFC counterparties from the automatic stay through "safe harbor" provisions which permit the counterparties to exercise direct default rights immediately upon the bankruptcy of the debtor. The Bankruptcy Code's automatic stay does not prevent the exercise of cross-default rights against an affiliate of the party entering resolution.

Title II of the Dodd-Frank Act establishes the Orderly Liquidation Authority ("OLA"), which empowers the FDIC, in certain circumstances, to transfer the QFCs of a failed financial company to a bridge financial company or some other financial company that is not in a resolution proceeding and that should be capable of performing under the QFCs.[3] To give the FDIC time to effect this transfer, Title II temporarily stays QFC counterparties of the failed entity (until 5 p.m. eastern time on the business day following the appointment of the FDIC

[3] *See* 12 U.S.C. § 5390(c)(9).

as receiver) from exercising termination, netting and collateral liquidation rights "solely by reason of or incidental to" the failed entity's entry into OLA resolution, its insolvency or its financial condition. Once QFCs are transferred, OLA permanently stays the exercise of default rights for such reasons.

Similarly, with respect to cross-default rights, OLA authorizes the FDIC to enforce contracts of affiliates of a failed financial company that are "guaranteed or otherwise supported by or linked to" the financial company, regardless of any contractual right to terminate, liquidate or accelerate the contracts based solely on the insolvency, financial condition or receivership of the failed company, provided the FDIC takes certain steps to protect the QFC counterparties' interests by the end of the business day following the company's entry into resolution.

OLA is modeled largely after the resolution framework for banks under FDIA, which addresses direct default rights in the failed bank's QFCs with stay-and-transfer provisions that are substantially similar to the corresponding provisions of OLA. However, FDIA does not address cross-default rights, leaving QFC counterparties of a failed depository institution's affiliates free to exercise any contractual rights they may have to terminate, net and liquidate collateral based on the depository institution's entry into resolution.

The Proposed Rules are intended to address the threat to financial stability posed by both direct default rights and cross-default rights in two ways. First, the Proposed Rules seek to reduce the risk that courts in foreign jurisdictions would disregard statutory stay-and-transfer provisions under OLA and FDIA when a GSIB enters a resolution proceeding by requiring QFC counterparties to opt into those provisions contractually. The goal is to ensure that all QFCs, including those that are governed by foreign law or entered into with a foreign party or for which collateral is held outside the United States, would be treated the same way in the context of an FDIC receivership under OLA or FDIA.

Second, the Proposed Rules seek to facilitate the resolution of a failed GSIB entity under the U.S. Bankruptcy Code and FDIA by importing OLA's restrictions on cross-default rights into those other regimes, such that when a GSIB entity enters resolution under the Bankruptcy Code or FDIA, its solvent affiliates' QFCs will be protected from disruption to a similar extent as if the failed entity had entered resolution under OLA.

APPLICABILITY AND SCOPE

Scope of Proposal

Covered Entities

The Proposed Rules apply to QFCs entered into by:

- U.S. top-tier holding companies that are GSIBs (under the Federal Reserve's rule establishing risk-based capital surcharges for GSIBs)[4] and their subsidiaries (other than national banks, Federal savings associations, federal branches and federal agencies ("Covered Banks"));[5] and
- U.S. subsidiaries, U.S. branches and U.S. agencies of foreign GSIBs[6] (other than Covered Banks and certain other special-purpose entities) (collectively, "Covered Entities").

Covered QFCs

The Proposed Rules apply to "covered QFCs," which are:

- QFCs entered into on or after the effective date of the final rules (if adopted); and
- QFCs entered into with prior to the effective date ("legacy QFCs") if the Covered Entity or any affiliated Covered Entity or Covered Bank also enters into a QFC with the same counterparty to the legacy QFC or its affiliate on or after the effective date.

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[4] Federal Reserve, "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies," 80 Fed. Reg. 49106 (Aug. 14, 2015). Under the GSIB surcharge rule's methodology, there are currently eight U.S. GSIBs: Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company.

[5] The Proposed Rules do not apply to national banks and federal savings associations, but the OCC is expected to issue proposed rules in the near future to cover national bank subsidiaries of GSIBs and others, and the rules are expected to be substantively identical to the Proposed Rules.

[6] A top-tier foreign banking organization is a foreign GSIB (and its U.S. operations are Covered Entities) if the banking organization or the Federal Reserve determines it is (or would be) a GSIB under the global methodology issued by the Basel Committee on Banking Supervision or the Federal Reserve determines that the foreign banking organization or its U.S. intermediate holding company is or would be a GSIB under the GSIB capital surcharge rule (if it were subject to such rule).

QFCs include swap agreements, securities contracts (including contracts for the sale, purchase or loan of a security and options on such contracts), repurchase agreements (including reverse repurchase agreements), commodity contracts (including commodity futures and commodity options) and forward contracts, master agreements covering the foregoing, and security agreements or other credit enhancements (such as guarantees or reimbursement obligations) related to any of the foregoing, as well as any similar agreement that the FDIC determines is a QFC.

The Proposed Rules do not apply to cleared QFCs to which a central counterparty ("CCP") is a party.[7]

In addition, a foreign Covered Entity's multi-branch master agreement will be considered a covered QFC only with respect to the transactions booked at such foreign Covered Entity's U.S. branches and agencies or for which payment or delivery may be made at such U.S. branches or agencies.

Default Rights

"Default rights" include the right, whether contractual or otherwise, to suspend performance of the non-defaulting party's obligations, to terminate or accelerate the QFC, to net or set off amounts owed between parties and to seize and liquidate the defaulting party's collateral. In addition, they include a right or contractual provision that alters the amount of margin that must be provided in respect of a QFC exposure, that entitles a party to demand the return of any posted margin or that modifies a transferee's right to reuse margin, or any similar rights, except where the right arises solely from a change in the value of margin or a change in the amount of exposure.

Implementation Time Frame

The Proposed Rules, if adopted, would become effective on the first day of the first calendar quarter that begins at least one year after the issuance of the final

[7] While it is not clear exactly which types of clearing arrangements this exclusion would apply to, a literal reading of the Proposed Rules would not exclude the customer facing transactions of a clearing member in a principal-to-principal clearing model. Moreover, under the U.S. agency clearing framework, it is not clear if the exclusion would apply to the pre-novation swap entered into bilaterally, prior to clearing. Finally, it is not clear whether the guarantee provided by a futures commission merchant to a CCP of its clearing customer's obligations under a cleared swap would be a covered QFC; the guarantee is a credit enhancement of a QFC, and would therefore appear to be a covered QFC despite the fact that the underlying cleared swap is not a covered QFC.

rules. For example, if the final rules are published in the final quarter of 2016, they would become effective on January 1, 2018.

A Covered Entity would be required to comply with the rules beginning on the later of (1) the effective date of the final rules or (2) the first day of the first calendar quarter that begins at least one year after becoming a Covered Entity (the "compliance date").

A Covered Entity would comply with the rules with respect to:

- covered QFCs entered into on or after the compliance date with any counterparty; and
- preexisting covered QFCs entered into prior to the compliance date, no later than the first date on or after the compliance date on which the Covered Entity or an affiliate (that is also a Covered Entity or an Covered Bank) enters into a new covered QFC with the counterparty to the preexisting covered QFC or an affiliate of the counterparty.

REQUIRED CONTRACTUAL PROVISIONS RELATING TO DIRECT DEFAULTS

Section 83 of the Proposed Rules requires covered QFCs to explicitly provide that when the Covered Entity enters resolution under OLA or FDIA:

- default rights are permitted to be exercised by its counterparties against the Covered Entity (the "Default Provision"), and
- the transfer of the QFC (and any interest or obligation in or under it and any property securing it) from the Covered Entity will be effective (the "Transfer Provision," and together with the Default Provision, the "Required Provisions"),

in each case, only to the same extent as such default rights could be exercised or such transfers would be effective under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States (or a state thereof) and the Covered Entity were under the U.S. special resolution regime.

As drafted, the Proposed Rules would require covered QFCs to include the Required Provisions regardless of whether the QFCs provide for default rights or transfer restrictions or whether any such default rights would be stayed, or any transfer would be enforced, under OLA or FDIA. For instance, in case of a swap with a foreign subsidiary of a U.S. GSIB, the foreign subsidiary would be a Covered Entity and the parties would be required to include the Required Provisions in their swap documentation, notwithstanding that the foreign

subsidiary would not be subject to any future OLA proceedings involving its U.S. parent. Even if no default rights against a Covered Entity are set forth in, or arise under governing laws with respect to, Covered QFCs (as in the case of margin loans), such QFCs would have to include the Required Provisions.

PROHIBITIONS RELATING TO CROSS-DEFAULTS

General Prohibitions

Section 84 of the Proposed Rules would import OLA's restrictions on cross-default rights into the FDIA and Bankruptcy Code regimes by imposing a general prohibition on the exercise under a covered QFC of cross-default rights against a "direct party" (*i.e.*, a party to a covered QFC that is not a credit enhancement (a "direct QFC"), which party is a Covered Entity, a Covered Bank subsidiary of a U.S. GSIB or a Covered Bank subsidiary, branch or agency of a foreign GSIB). Specifically, Covered Entities and their affiliates would be prohibited from entering into any covered QFC that permits the exercise of any default right that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a resolution proceeding (under any insolvency regime worldwide). For purposes of Section 84, the term "default right" excludes rights to terminate on demand and without cause.

In addition, Section 84 of the Proposed Rules would prohibit Covered Entities from entering into covered QFCs that prohibit the transfer of any credit enhancement (a "covered affiliate credit enhancement") provided to the direct party by any affiliate that is a Covered Entity, a Covered Bank subsidiary of a U.S. GSIB or a Covered Bank subsidiary, branch or agency of a foreign GSIB (a "covered affiliate support provider") (or any interest or obligation in or under, or any property securing, such credit enhancement) upon an affiliate of the direct party becoming subject to a resolution proceeding (under any insolvency regime). This prohibition would not apply where the transfer would result in the direct party being the beneficiary of the credit enhancement in violation of any applicable law.

General Creditor Protections

In order to reduce the impact of Section 84 prohibitions in limiting the protections available to Covered Entities' QFC counterparties, the Proposed Rules include several exceptions to the prohibitions. These creditor protections are intended to allow creditors to exercise limited default rights outside of an orderly resolution of a Covered Entity.

First, a direct QFC to which a Covered Entity, a Covered Bank subsidiary of a U.S. GSIB or a Covered Bank subsidiary, branch or agency of a foreign GSIB is a party (a "covered direct QFC") and a covered affiliate credit enhancement supporting such covered direct QFC may permit the exercise of default rights that arise from:

- the direct party becoming subject to any resolution proceeding other than under OLA and FDIA or any substantially similar foreign laws; or
- the failure of the direct party, a covered affiliate support provider or a transferee that assumes a credit enhancement to satisfy its payment or delivery obligations under the covered direct QFC or credit enhancement (as applicable).

Moreover, where multiple contracts exist between the same counterparties, the Proposed Rules would allow covered direct QFCs and any covered affiliate credit enhancement supporting it to permit the exercise of a default right in one covered QFC that is triggered by the direct party's failure to satisfy its payment or delivery obligations under another contract between the same parties.

Additional Creditor Protections for Supported QFCs

The Proposed Rules provide additional creditor protections to a direct party that is the beneficiary of a covered affiliate credit enhancement (a "supported party"). The Proposed Rules allow these creditor protections in recognition of the supported party's interest in receiving the benefit of its credit enhancement.

Specifically, where a covered direct QFC is supported by a covered affiliate credit enhancement and the covered affiliate support provider becomes subject to any resolution proceeding other than under Chapter 11 of the Bankruptcy Code and remains obligated under the credit enhancement, the direct QFC and the affiliate credit enhancement may permit the exercise, after the expiration of a specified stay period, of a default right triggered by the covered affiliate support provider's resolution. The stay period would begin when the credit support provider enters resolution and would end at the later of 5 p.m. eastern time on the following business day or 48 hours after the entry into resolution.

Similarly, where the covered affiliate support provider enters resolution and the covered affiliate credit enhancement is transferred to a transferee that itself becomes subject to any resolution proceeding (including under Chapter 11), the direct QFC and the affiliate credit enhancement may permit the exercise, after the expiration of the stay period, of a default right triggered by the covered affiliate support provider's resolution. Even where the transferee does not become subject to any resolution proceeding, the direct QFC and the credit

enhancement may permit the exercise of such default rights, after the expiration of the stay period, unless either (1) all of the support provider's direct or indirect ownership interests in the direct party are also transferred to the transferee or (2) reasonable assurance is provided that substantially all of the support provider's assets (or the net proceeds from the sale of those assets) will be transferred to the transferee in a timely manner. These creditor protections are intended to assure the supported party that the transferee will be at least roughly as financially capable of providing the credit enhancement as the covered affiliate support provider.

If the covered affiliate support provider does not remain, and a transferee does not become, obligated to substantially the same extent as the covered affiliate support provider was obligated immediately prior to its entry into resolution, the Proposed Rules allow the covered direct QFC and the covered affiliate credit enhancement to permit the exercise of such default rights, after the expiration of the same stay period, with respect to: (1) the covered affiliate credit enhancement; and (2) all other covered affiliate credit enhancements provided by the covered affiliate support provider in support of other covered direct QFCs between the direct party, on the one hand, and the supported party and its affiliates, on the other. These creditor protections, which are modeled on similar provisions in OLA and FDIA, are intended to prevent the support provider or the transferee from "cherry picking" by assuming only those QFCs of a given counterparty that are favorable to the support provider or transferee.

Finally, to ensure that a QFC counterparty of a subsidiary of a bank that goes into FDIA receivership receives the same level of protection that FDIA provides to QFC counterparties of the bank itself, the Proposed Rules allow both a covered direct QFC and a covered affiliate credit enhancement to permit the exercise of default rights related to the credit support provider's entry into FDIA proceedings (1) after the stay period applicable under FDIA (*i.e.*, after 5 p.m. eastern time on the business day following the appointment of the FDIC as receiver) if the credit enhancement is not transferred and (2) during the FDIA stay period if the default rights may only be exercised so as to permit the supported party to suspend performance of its obligations under the covered direct QFC to the same extent as it would be entitled to do so if the covered direct QFC were with the support provider itself and were treated in the same manner as the credit enhancement.

Approval of Enhanced Creditor Protections

In lieu of the general and additional creditor protections described above, the Proposed Rules would allow Covered Entities to request that the Federal Reserve

approve as compliant with the Proposed Rules one or more forms of covered QFCs (or proposed amendments to one or more forms of covered QFCs) with alternative exemptions (*i.e.*, alternative creditor protections) different from those in the rules. A Covered Entity making such a request would be required to provide a detailed analysis demonstrating how the alternative provisions address range of considerations set forth in the Proposed Rules, as well as a written legal opinion verifying that the alternative provisions would be valid and enforceable under applicable law of the relevant jurisdictions. The Federal Reserve would approve a proposal (subject to any conditions or commitments it may set) only if it determines that the proposal would prevent or mitigate risks to U.S. financial stability and protect the safety and soundness of the banking system to at least the same extent as a QFC that contains only the limited exemptions set forth in the Proposed Rules.

Prohibited Terminations

If a legal dispute arises as to a party's right to exercise a default right under a covered QFC, the Proposed Rules require that the covered QFC provide that, after an affiliate of the direct party has entered a resolution proceeding, the party seeking to exercise a default right bear the burden of demonstrating, by clear and convincing evidence (or a similar or higher burden of proof), that the covered QFC permits the exercise of the default right. The purpose is to deter parties from exercising prohibited default rights under the guise of other default rights that are unrelated to the affiliate's entry into resolution.

APPLICATION OF PROPOSED RULES TO COVERED ENTITIES ACTING AS AGENT

Where a Covered Entity acts as agent with respect to a QFC, Section 83 of the Proposed Rules requires that the QFC include the Required Provisions with respect to any default rights relating to the Covered Entity's or its affiliate's resolution under OLA or FDIA or any transfer of the QFC relating to the Covered Entity's own resolution under such regimes. This is the case even where neither principal to the QFC is a Covered Entity and despite the fact that the U.S. special resolution regimes may not stay the counterparty's exercise of any default right triggered by the agent's resolution under such regimes.

Section 84 of the Proposed Rules generally prohibits a Covered Entity from acting as agent with respect to a QFC that (1) permits the exercise of cross-default rights against the Covered Entity based on the resolution of its affiliate or (2) prohibits the transfer of a covered affiliate credit enhancement to a transferee upon the Covered Entity becoming subject to a resolution proceeding, subject in each case to certain exceptions.

For example, if a Covered Entity acts as agent lender under a Master Securities Loan Agreement ("MSLA"), the MSLA would have to provide that the borrower's default rights may be exercised to no greater extent than they could be under OLA or FDIA if the MSLA were governed by U.S. law and the Covered Entity or its affiliate were being resolved under either such regime. The MSLA would also have to provide that its transfer will be effective to the same extent as it would be under such regimes if the MSLA were governed by U.S. law and the Covered Entity were being resolved under either such regime. Moreover, the MSLA would not be allowed to permit the borrower to terminate at any time based on the resolution of an affiliate of the Covered Entity.

In addition, in the release accompanying the Proposed Rules (the "Proposing Release"), the Federal Reserve indicates that the agency agreement between the agent lender and its own principal (authorizing the agent to act as such) is a covered QFC where the agent is a Covered Entity and provides a guarantee or indemnification for any shortfall in collateral in the event of the counterparty's default. Therefore, the Proposed Rules would require the agency agreement to include the Required Provisions, limiting the principal lender's rights to the same extent as the MSLA would limit the borrower's rights.

As another example, if a Covered Entity asset manager acts as agent with respect to a swap between its client and a counterparty, even if neither of the principals to the swap is a Covered Entity, the swap documentation would have to include the Required Provisions, staying the counterparty's exercise of its default rights upon the resolution of the asset manager or its affiliate to the same extent as they would be stayed under OLA or FDIA (if the swap were governed by U.S. law and the asset manager or its affiliate (as applicable) were being resolved under either such regime). The swap documentation would also not be allowed to permit the counterparty to terminate at any time based on the resolution of an affiliate of the asset manager.

COMPLIANCE WITH ISDA PROTOCOLS

The Proposed Rules provide that a Covered Entity may comply with the prohibitions in Section 84 of the Proposed Rules by adhering to the 2015 Universal Resolution Stay Protocol (the "2015 Protocol") published by the International Swaps and Derivatives Association ("ISDA"),[8] which the Federal Reserve views as consistent with the requirements of the Proposed Rules.

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[8] The 2015 Protocol is available at https://www2.isda.org/functional-areas/protocol-management/protocol/22. The Proposed Rules provide that any Covered Entity seeking to comply with the Proposed Rules by adhering to the Protocol would need to adhere to the

In addition, in the Proposing Release, the Federal Reserve notes that adherence to the more recently published ISDA Resolution Stay Jurisdictional Modular Protocol (the "Jurisdictional Modular Protocol"), to be accompanied by a yet-to-be published U.S. jurisdictional module, could be used by Covered Entities to comply with the requirements of Section 84 of the Proposed Rules (once finalized) if the U.S. jurisdictional module is "substantively identical" to the 2015 Protocol in all respects (aside from exempting QFCs between adherents that are not Covered Entities or Covered Banks).

ISDA published the Jurisdictional Modular Protocol in order to allow counterparties to financial contracts to comply with the Proposed Rules and similar laws, regulations and guidance (the "Stay Regulations") of various other jurisdictions requiring amendments to certain financial contracts to ensure that stays or overrides of default rights under their own special resolution regimes will be enforced by courts in other jurisdictions.

The Jurisdictional Modular Protocol has two main sections: (1) boilerplate provisions that outline the ways that parties may adhere to individual jurisdictional modules; and (2) jurisdictional modules for those jurisdictions that have finalized Stay Regulations. An adhering party would adhere to only those jurisdictional modules that are applicable to its financial contracts based on its own jurisdiction and that of its counterparties. ISDA has published a jurisdictional module for the UK's rules[9] and is expected to publish jurisdictional modules for the United States and other jurisdictions as additional Stay Regulations are finalized. The provisions of a jurisdictional module will be based directly on the requirements of Stay Regulations in the relevant jurisdiction.

Since the specific provisions of the 2015 Protocol differ from the requirements of various jurisdictions' Stay Regulations in ways that would make it unlikely to be used by non-Covered Entities, ISDA expects that both non-Covered Entities and Covered Entities (including those that already adhere to the 2015 Protocol) will adhere to the Jurisdictional Modular Protocol in order to comply with the various Stay Regulations.[10]

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entire Protocol, including the Securities Financing Transaction Annex and the Other Agreements Annex, and any minor or technical amendments thereto.

[9] The ISDA Resolution Stay Jurisdictional Modular Protocol and the ISDA UK (PRA Rule) Jurisdictional Module are available at: https://www2.isda.org/functional-areas/protocol-management/protocol/24.

[10] See FAQ relating to ISDA Resolution Stay Jurisdictional Modular Protocol, available at: https://www2.isda.org/functional-areas/protocol-management/protocol/24.

OTHER JURISDICTIONS' REGULATORY EFFORTS

Section 83 of the Proposed Rules is consistent with efforts by regulators in other jurisdictions to ensure that the effect of similar provisions in their own special resolution regimes would be enforced by courts in other jurisdictions, including the United States.

For instance, in November2015, the United Kingdom's Prudential Regulation Authority ("PRA") issued a Policy Statement (the "PRA Rule")[11] requiring certain financial firms to ensure that their counterparties to newly created obligations agree to be subject to stays on early termination similar to those that would apply if the financial arrangements were governed by UK law and the UK firm were resolved under the UK's special resolution regime implementing the European Union Bank Recovery and Resolution Directive ("BRRD"). As noted above, ISDA has published a jurisdictional module for the PRA Rule.

That same month, the German parliament passed a law requiring financial contracts governed by non-EU law and entered into by German financial institutions to acknowledge the temporary suspension of termination rights and to accept the exercise of related powers under the German special resolution regime implementing BRRD.

In addition, the Swiss Federal Council requires banks to ensure at both the individual entity and group levels that new agreements and amendments to existing agreements that are subject to foreign law or envisage a foreign jurisdiction are entered into only if the counterparty recognizes a postponement of termination rights in accordance with the Swiss special resolution regime under its Financial Market Infrastructure Act.

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Please do not hesitate to contact us with any questions.

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[11] See Bank of England Prudential Regulation Authority, Policy Statement PS25/15, "Contractual stays in financial contracts governed by third-country law" (Nov. 2015), available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.