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EXTERNAL

US Qualified Financial Contract (QFC) Stay Rules

FREQUENTLY ASKED QUESTIONS

Why am I receiving these FAQs?

As a BNY Mellon counterparty, you may be impacted by the new US QFC Stay Rules. We would like to familiarize you with these new regulations and how they may impact your relationship with BNY Mellon.

What are the US QFC Stay Rules?

US QFC Stay Rules are a set of new requirements that have been adopted by US regulators to mitigate the risk of destabilizing close-outs of qualified financial contracts (QFCs) entered into by US Global Systemically Important Banks (GSIBs) such as BNY Mellon.

The US QFC Stay Rules are related to the application of US special resolution regimes and form part of a broader set of global regulations aimed at ending “too big to fail.”

The US QFC Stay Rules support this goal by requiring GSIBs and their in-scope QFC counterparties to exchange consents related to the suspension of certain contractual rights deemed to interfere with the orderly resolution of GSIBs (collectively referred to in these FAQs as “resolution stay consents”).

What are the US QFC Stay Rules? (Cont'd)

These resolution stay consents are intended to support US regulators' actions to resolve a failing GSIB, including suspending — or staying — the exercise of certain default and transfer restriction rights against a failing GSIB.

The US QFC Stay Rules require US GSIBs and their subsidiaries worldwide, as well as US branches, agencies and subsidiaries of non-US GSIBs (collectively known as "covered entities"), to obtain resolution stay consents from all counterparties to in-scope QFCs.

For BNY Mellon, the US QFC Stay Rules apply to all of our subsidiaries and affiliates, worldwide.

What is a Special Resolution Regime?

Following the financial crisis, governments handed financial regulators new powers to assume control of GSIBs that might be failing or that are likely to fail. Rather than letting a GSIB go through a regular bankruptcy — which could adversely impact financial markets and the wider economy — regulators can now assist GSIBs by implementing a more orderly resolution strategy, known as a "special resolution regime." This involves determining the best way to provide liquidity and capital to the GSIB in accordance with an agreed resolution strategy that mitigates systemic risks to the wider financial markets.

What is a Qualified Financial Contract (QFC)?

The definition of QFC[1] is very broad and includes OTC and listed derivatives, swaps, FX transactions, commodity transactions, repo, stock loans and prime brokerage contracts as well as a wide variety of securities contracts, including those that provide for guarantees or extensions of credit in the clearance or settlement of securities transactions.

QFCs generally will be considered to be in-scope for the US QFC Stay Rules if they include express transfer restrictions or if they contain provisions that enable counterparties to exercise certain default rights that are deemed to interfere with the orderly resolution of a GSIB (or any of its subsidiaries or affiliates).

How do the US QFC Stay Rules help with a special resolution?

The US QFC Stay Rules require GSIBs to obtain counterparties' acknowledgement of stays of certain default rights and the right of US authorities to transfer QFCs of a failing GSIB, consistent with US insolvency regimes.

These contractual acknowledgements reduce the risk that counterparties may seek to enforce contractual rights that interfere with the orderly resolution of a GSIB in a jurisdiction that may not directly apply US law.

[1]Defined in section 210(c)(8)(D) of Title II of the Dodd-Frank Act

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What other jurisdictions are imposing resolution stay rules?

Currently, France, Germany, Japan, Switzerland and the UK have each adopted comparable rules. The stay rules in these countries are set out in:

France: French Monetary and Financial Code

Germany: Recovery and Resolution Act

Japan: Deposit Insurance Act — Orderly Resolution Regime

Switzerland: Banking Insolvency Ordinance — Insolvency of Banks and Securities

UK: Banking Act 2009

Other countries are anticipated to follow suit with similar stay regulations.

Are the US QFC Stay Rules the same as the stay rules being implemented across EMEA and APAC?

The US stay rules are not the same as the resolution stay rules being implemented in jurisdictions in EMEA and APAC. Resolution stay rules are generally specific to jurisdictions where they are applied, and may have different effective dates and different approaches to entity/contract scope of application.

European Union member states will apply stay rules that are largely consistent with the resolution regime requirements set out in the EU Bank Recovery and Resolution Directive or BRRD. In each jurisdiction or region, the relevant financial regulator, acting as the resolution authority, will want stays in place for impacted entities in its jurisdiction/region so that it can implement an effective resolution strategy for such an entity in the event it is failing or likely to fail.

How will firms become compliant with the US QFC Stay Rules?

GSIBs and their in-scope QFC counterparties are expected to exchange resolution stay consents as required under the US QFC Stay Rules, either by adhering to the **ISDA 2018 US Resolution Stay Protocol** (2018 US Protocol) or by making contractual amendments that are substantially the same as those contained in the 2018 US Protocol through a bilateral QFC amendment, in line with industry conventions.

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How will firms become compliant with the US QFC Stay Rules? (Cont'd)

Adherence to the 2018 US Protocol through ISDA (the International Swaps and Derivatives Association) is not indicative of the scope of the US QFC Stay Rules applying only to financial contracts such as swaps and other derivatives. The scope is wider than this, as noted above, and ISDA is only the trade organization providing market standard documentation to facilitate compliance with these rules by all impacted GSIBs and their respective in-scope QFC counterparties.

Is there a deadline by which these QFCs must comply with the US QFC Stay Rules?

Yes. The US QFC Stay Rules require GSIBs to obtain resolution stay consents from counterparties (and conform all new QFCs to the same requirements) within a specified timeline.

The first compliance deadline under the US QFC Stay Rules is **January 1, 2019,** for all in-scope QFCs between GSIB covered entities.

The second wave, on **July 1, 2019,** picks up in-scope QFCs of GSIB covered entities facing "financial counterparties" (other than small financial institutions).

The third wave, on **January 1, 2020,** extends the requirements of the rule to all other in-scope QFC counterparties of GSIBs.

Notwithstanding this rolling compliance timeline, BNY Mellon may be obligated to require certain counterparties, including those eligible for the July 1, 2019 compliance timeline, to provide resolution stay consents prior to July 1, 2019.

This is a consequence of the limited grandfathering relief available under the US QFC Stay Rules. In assessing whether a given QFC is required to be remediated, BNY Mellon is obligated to consider whether any post-January 1, 2019 QFC trading has occurred between any BNY Mellon affiliate and any consolidated affiliate of the relevant QFC counterparty. The effect of this is to substantially broaden the scope of agreements covered by the US QFC Stay Rules.

What are the consequences of failing to provide Resolution stay consents by the aforementioned deadline?

GSIBs such as BNY Mellon are effectively prohibited by rule from entering into any new in-scope QFCs with a counterparty that has not provided resolution stay consents within the relevant compliance timeline. Therefore, we encourage our counterparties to provide resolution stay consents as soon as possible.

How do I provide resolution stay consents under the US QFC Stay Rules?

There are two ways. The simplest is mutual adherence to the 2018 US Protocol. Adherence to the 2018 US Protocol will conform (to the requirements of the US QFC Stay Rules) all in-scope QFCs between a counterparty, the GSIB and any of the GSIB's affiliated entities that have adhered to the 2018 US Protocol.

Parties may sign up for the 2018 US Protocol on **the ISDA website.** Detailed information regarding the procedure for adhering to the 2018 US Protocol (and the contractual effect of such adherence) is included in the link.

All BNY Mellon entities worldwide that are party to in-scope QFCs under the US QFC Stay Rules intend to adhere to the 2018 US Protocol before the relevant compliance timelines noted above. We likewise encourage our counterparties to adhere to eliminate the risk of unintended trading stops being applied.

For counterparties that do not wish to exchange resolution stay consents using the 2018 US Protocol, we expect that parties may be able to enter into standardized bilateral amendments, developed through industry-wide forums, including ISDA, which will result in compliance with the US QFC Stay Rules.

Note, however, that such bilateral amendments are prohibited by rule from offering certain contractual creditor protections that the 2018 US Protocol offers. Accordingly, we encourage our clients and counterparties to leverage the 2018 US Protocol where possible.

How do the US QFC Stay Rules affect me if I am domiciled in a jurisdiction, or transact with a BNY Mellon entity, outside the United States?

Our non-US counterparties are equally affected by the US QFC Stay Rules and will need to provide resolution stay consents where appropriate, as noted above. The US QFC Stay Rules will apply in addition to any other similar resolution stay consents under separate ISDA resolution stay protocols in support of non-US resolution stay requirements that apply to certain BNY Mellon subsidiaries outside the United States.

Non-US counterparties dealing with US GSIBs such as BNY Mellon are encouraged to adhere to the 2018 US Protocol, or risk that the GSIB will halt any new activity with them as of January 1, 2019.

My parent entity is a non-US GSIB. Is my QFC subject to the January 1, 2019 compliance date?

It depends on the domicile of the entity through which you trade with us.

US operations of a non-US GSIB are "covered entities" and, therefore, their in-scope QFCs with any BNY Mellon subsidiary are subject to the January 1, 2019 compliance date mentioned above.

Non-US operations of a non-US GSIB (including the non-US GSIB parent entity) are not "covered entities" under the US QFC Stay Rule. Therefore, in-scope QFCs of such entities with any BNY Mellon subsidiary are generally subject to the second wave compliance date of July 1, 2019.

As noted above, BNY Mellon may nonetheless require certain counterparties, including non-US operations of a non-US GSIB, to provide resolution stay consents prior to July 1, 2019, to avoid any trade stops being applied.

I am organized in the United States and my agreements are governed by US law. Do I need to do anything?

The US QFC Stay Rules exempt "US nexus" QFCs from some but not all of the resolution stay consent requirements. "US nexus" QFCs include QFCs that are governed by US law and that are entered into with a counterparty that is organized, incorporated or domiciled within the United States.

If all your agreements with BNY Mellon have a "US nexus," BNY Mellon may nonetheless require you to provide resolution stay consents (via the 2018 US Protocol or otherwise) if your agreements provide you with certain contractual rights (e.g., cross-defaults) that the US QFC Stay Rules deem to interfere with the orderly resolution of BNY Mellon as a GSIB.

How do the US QFC Stay Rules differ from protections already afforded under the other stay regulations?

The protections afforded under US QFC Stay Rules and other stay rules are similar, but the scope of application of the US QFC Stay Rules is wider. For instance, the US QFC Stay Rules impact all of our subsidiaries and affiliates and have a broader range of in-scope contracts.

Do I need to take any action if I have already adhered to ISDA protocols for other regulations or jurisdictions?

Yes, if you have in-scope QFCs with BNY Mellon or any of its subsidiaries or affiliates. The Jurisdictional Modules to the ISDA Resolution Stay Jurisdictional Modular Protocol support compliance with their respective local requirements and do not result in compliance with the US QFC Stay Rules.

Where can I go for more information on the US QFC Stay Rules and BNY Mellon's approach to the US QFC Stay Rules?

We encourage you to visit the **ISDA 2018 US Resolution Stay Protocol website** for more information regarding the US QFC Stay Rules and for further detail regarding how your QFCs may be impacted by these requirements.

You may also visit BNY Mellon's dedicated US QFC Stay Rules web page at **www.bnymellon.com/qfc**

If you need additional clarification, we invite you to email us at **QFCstayruleenquiries@bnymellon.com.**

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