QFC Stay Rules and Credit Agreements

May 6, 2019 - Today the LSTA has published a Market Advisory addressing the application of the QFC Stay Rules to credit agreements. The QFC Stay Rules are designed to improve the resolvability and resilience of U.S. global systemically important banking organizations (G-SIBs) and the U.S. operations of foreign G-SIBs by mitigating the risk of destabilizing closeouts of qualified financial contracts (QFCs). The Rules require GSIBs to include new language in certain credit agreements if the related loan documents also support the borrower’s obligations under swaps or other qualified financial contracts. The LSTA has now published credit agreement language which satisfies the Rules’ requirements. To that end, please click here for the LSTA’s Market Advisory which includes an explanatory note about the Rules and the LSTA language that can be inserted into credit agreements (in due course the language will be included in the LSTA’s Form of Revolving Credit Facility and the LSTA’s Model Credit Agreement Provisions). Members should note that the language does not need to be included in LSTA Confirms when used to evidence ordinary loan trades in the loan market because those agreements would not be “qualified financial contracts” under the Rules. Members should note that the QFC Stay Rules establish two compliance dates. If all parties to the credit agreement (other than Covered Entities) are financial counterparties as defined in the Rules, then July 1, 2019, is the compliance date for that credit agreement. If at least one party is neither a Covered Entity nor a financial counterparty, then January 1, 2020, is the compliance date for that credit agreement (many loans made to corporate borrowers in the leveraged loan market will fall within this group). Because the requirement to conform new in-scope QFCs, as well as certain pre-existing QFCs, by the applicable compliance date is triggered when a Covered Entity enters into a new QFC with a counterparty on or after January 1, 2019, regardless of counterparty type, Covered Entities may wish to consider adding the standardized language to all in-scope credit agreements even in advance of the applicable compliance date. The language is loosely analogous to the Contractual Recognition Provision required by the EU Bail-in Rule, and thus we expect that inclusion of the new language in credit agreements will go smoothly in deals.

Click here for the Market Advisory which includes the LSTA Language and the definitions used in this email.

Click here for the QFC Stay Rules presentation given by LSTA’s external counsel on this project, Erika White and Gabe Rosenberg of Davis Polk, on May 2, 2019.