



ALERT

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BANK

Federal Reserve Proposes Amendments to "Financial Institution" Definition Under Regulation EE

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The Board of Governors of the Federal Reserve System (the "FRB"), in a rare post-financial crisis expansion of netting recognition, proposed amendments (the "[Proposed Amendments](#)") to its definition of "financial institution" under Regulation EE, 12 C.F.R. Part 231 ("Reg EE") in early May 2019. Reg EE was promulgated pursuant to the "Payment System Risk Reduction" provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), codified as amended at 12 U.S.C. §§ 4401 *et seq.*

FDICIA, among other things, codifies protections for the operation of netting under certain bilateral and multilateral contracts between and among "financial institutions," even after the commencement of insolvency proceedings (with enumerated exceptions, including the "stay and transfer" provisions under Federal Deposit Insurance Corporation ("FDIC") receiverships for banks and other financial institutions). FDICIA defines "financial institution" to include broker-dealers, depository institutions, and futures commission merchants and authorizes the FRB to define further "financial institutions" by regulation.

Reg EE currently defines "financial institutions" by way of qualitative and quantitative measures, but has not been updated since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") in the wake of the financial crisis in 2010. Dodd-Frank, of course, subjected many entities to enhanced regulations and created a number of new regulatory classifications for such entities, including "swap dealers," "derivatives clearing organizations," nonbank financial companies, and financial market utilities deemed "systemically important" by the Federal Stability Oversight Council (the "FSOC") and "bridge institutions" created by the FDIC under the Dodd-Frank "orderly liquidation authority."

The Proposed Amendments would add these and similar entities to the definition of "financial entity" and would also clarify the means of measuring whether certain levels of premerger activity would satisfy the quantitative measures under Reg EE. Although the Proposed Amendments would not be expected as a practical matter to include many, if any, institutions that are not already comprised within the existing criteria, the FRB appears to have taken this action largely of its own initiative. Comments to the Proposed Amendments are due on July 1, 2019.



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