New York
Menlo Park
Washington DC
São Paulo
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
212 450 4000 tel
212 701 5800 fax

March 9, 2017

By electronic submission to regs.comments@federalreserve.gov, regs.comments@occ.treas.gov and comments@FDIC.gov.

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, S.W., Suite 3E-218,
Mail Stop 9W-11
Washington, D.C. 20219

Re: Notices of Proposed Rulemaking on Restrictions on Qualified Financial Contracts (FRB RIN 7100 AE-52; Docket No. R-1538); (OCC RIN 1557-AE05, Docket ID: OCC-2016-0009); (FDIC RIN 3064-AE46)

Ladies and Gentlemen:

We are pleased to submit this supplemental letter on behalf of Bank of America Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co. and Morgan Stanley (collectively, the "**Banks**") to the Board of Governors of the Federal Reserve System (the "**Board**"), the Office of the Comptroller of the Currency (the "**OCC**") and the Federal Deposit Insurance Corporation (the "**FDIC**") (together, the "**Agencies**") with respect to the Agencies' notices of proposed rulemaking regarding resolution stay regulations with respect to qualified financial contracts (the "**proposed QFC rules**").[1] On August 5, 2016, the Banks submitted a

[1] *See* Notice of Proposed Rulemaking, *Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking*

comment letter to the Board regarding the Board Proposed Rule;[2] on October 18, 2016, the Banks submitted a comment letter to the OCC regarding the OCC Proposed Rule;[3] and on December 12, 2016, the Banks submitted a comment letter to the FDIC regarding the FDIC Proposed Rule[4] (collectively, the "**Initial Comment Letters**"). The Banks are submitting this supplemental letter in order to provide the Agencies with further information regarding certain categories of QFCs that the Initial Comment Letters proposed be excluded from the requirements of certain portions of the proposed QFC rules.[5] This information is summarized in the attached chart and described in further detail below.

The information provided in this letter and the attached chart are intended to provide further details with respect to certain illustrative types of contracts that fall within the general categories of QFCs that the Banks believe need not be amended to comply with the requirements of the final QFC rules, because they are either already compliant as they do not contain any prohibited default or transfer restriction provisions or because they pose little risk to the stability of the U.S. financial system. The Banks have also added certain additional examples of the types of QFCs that the Banks believe should be excluded from the final QFC rules because remediation of those agreements would be challenging, if not impossible. These examples are not exhaustive with respect to the categories of QFCs that the Banks believe should be excluded from the final QFC rules. Other categories of QFCs may also warrant exclusion from the express acknowledgement and/or remediation requirements for the reasons discussed in the Initial Comment Letters. Additionally, this chart provides only typical contractual terms for each category of QFC. Individual contracts within each category may contain nonstandard terms (for example, with respect to default rights and transfer restrictions)

Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 81 Fed. Reg. 29169 (May 11, 2016) (the "**Board Proposed Rule**"); Notice of Proposed Rulemaking, *Mandatory Contractual Stay Requirements for Qualified Financial Contracts*, 81 Fed. Reg. 55381 (Aug. 19, 2016) (the "**OCC Proposed Rule**"); Notice of Proposed Rulemaking, *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 81 Fed. Reg. 74326 (Oct. 26, 2016) (the "**FDIC Proposed Rule**").

[2] *See* Letter from the Banks to the Board regarding the Board Proposed Rule (Aug. 5, 2016) (the "**Board Letter**").

[3] *See* Letter from the Banks to the OCC regarding the OCC Proposed Rule (Oct. 18, 2016).

[4] *See* Letter from the Banks to the FDIC regarding the FDIC Proposed Rule (Dec. 12, 2016).

[5] Specifically, the Initial Comment Letters requested that the Agencies modify the proposed QFC rules to clarify that (1) QFCs that do not include any transfer restrictions or default rights that would be subject to the stay-and-transfer provisions of U.S. special resolution regimes, along with QFCs that are governed by U.S. law, need not expressly acknowledge that transfers of, and default rights under, those contracts are effective to the same extent as under U.S. special resolution regimes; (2) QFCs not containing prohibited default rights or transfer restrictions need not be remediated to remove those provisions; and (3) certain QFCs that do not pose a risk to U.S. financial stability in the event a G-SIB were to fail, and for which remediation would be difficult or impossible, need not be subject to the express acknowledgement or remediation requirements discussed above. *See* Board Letter at 8-13.

and thus may fall outside of the Banks' requested exclusions from, and exemptions to, the requirements of the final QFC rules.

a. Contracts that do not contain any transfer restrictions or default rights. As discussed in the Initial Comment Letters, the Banks believe that, as a matter of principle, all contracts without any default rights or transfer restrictions should be excluded from the express-acknowledgement requirements of Section 252.83 of the Board Proposed Rule (and comparable provisions of the OCC Proposed Rule and FDIC Proposed Rule). To the extent such contracts do not contain any cross-default rights, these contracts also should not require any remediation steps in order to comply with the prohibition on cross-default rights under Section 252.84 of the Board Proposed Rule (and comparable provisions under the OCC Proposed Rule and the FDIC Proposed Rule). Examples of contracts in this category include the following:

- *Cash Market Securities Transactions* – These transactions are very short-term in nature, settling within one securities settlement cycle, and are generally documented under a simple short-form confirmation, or an electronic trade ticket, that sets out only the basic economic terms of the transaction. They are not documented under industry-standard documentation. They can be entered into by institutional or retail customers. The confirmations contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support.

- *Spot FX Transactions (Not Documented Under an ISDA Master Agreement*) – These transactions are also short-term in nature (settling in less than two days) and, outside of the ISDA Master Agreement context, are not documented under industry-standard documentation. Spot FX transactions may be entered into by institutional or retail customers. Transactions with institutional customers are typically documented under a simple short-form confirmation that sets out only the basic economic terms of the transaction. The confirmations contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support. Spot FX transactions with retail customers are described in further detail below.

- *Retail Customer Agreements*, including:

    - *Retail Brokerage Agreements* – These generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties. They are not documented on an industry-standard form. The underlying brokerage trades are generally short-term. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *Retirement/IRA Account Agreements* – These also generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties. They are not documented on an industry-standard form. The underlying brokerage trades are generally short-term. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *Margin Agreements* – These also generally take the form of a pre-printed agreement that sets forth the terms that govern the purchase of securities by the retail customer on margin. They are not documented on an industry-standard form. The underlying brokerage trades are generally short-term, and the margin loans are generally repayable on demand. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *Options Agreements* – These also generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties, including the purchase of exchange-traded options by the retail customer. They are not documented on an industry-standard form. The underlying options trades are generally short-term. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *Retail FX Spot Agreements* – These also generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties with respect to the underlying FX spot transactions. They are not documented on an industry-standard form. The underlying spot transactions are very short-term in nature (settling in less than two days). The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *FX Forwards Master Agreements* – These also generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties with respect to the underlying FX forward transactions. Unless the parties choose otherwise, they are not documented on an industry-standard form. The underlying forward transactions vary in tenor, but typically do not exceed one year. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

- *Delivery Versus Payment Client Agreements* – These also generally take the form of a pre-printed account agreement that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties with respect to the purchase or sale of securities by the client (typically a high-net-worth individual) on a delivery-versus-payment or receipt-versus-payment basis. The underlying transactions are very short-term in nature, and cash and securities are exchanged at the same time on the settlement date. The pre-printed account agreements contain no direct defaults, direct transfer restrictions, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer.

The foregoing types of QFCs number in the millions at some firms, and remediating these contracts, which in the case of retail contracts are often with individuals rather than corporate entities, to include the required express acknowledgment would require an enormous outreach effort that would be extremely burdensome. Furthermore, it is unclear how such large numbers of individuals would be able to adhere to the ISDA Protocol, if at all, which means that these contracts would have to be remediated on a bilateral basis with each individual. Many of these QFCs are also short-term transactions, and can be as short as overnight transactions or transactions settling in a limited number of days. In addition, since these contracts lack objectionable default rights or transfer restrictions, these types of QFCs do not give rise to the risk that counterparties will exercise their contractual rights in a manner that is inconsistent with the provisions of the U.S. special resolution regimes. Furthermore, to the extent they are entered into with retail customers, who may prefer to see their transactions continue with a bridge institution, there is an even smaller risk to the resolution of the firm or to the financial stability of the broader market. Requiring the remediation of the foregoing types of QFCs would thus be an inefficient and costly application of the final QFC rules while providing no meaningful resolution benefits.

b. Certain types of contracts that do not contain any default rights but may contain transfer restrictions. These contracts should be excluded from the express-acknowledgement requirements of Section 252.83 of the Board Proposed Rule (and comparable provisions under the OCC Proposed Rule and FDIC Proposed Rule).[6] Contracts in this category include the following:

[6] Since there are no cross-default rights under these agreements, they should also not require any remediation steps in order to comply with the prohibition on cross-default rights under Section 252.84 of the Board Proposed Rule (and comparable provisions under the OCC Proposed Rule and FDIC Proposed Rule).

- *Investment Advisory Account Agreements* – These contracts are entered into with retail clients and generally take the form of a pre-printed account agreement, which may be used alone or together with a brokerage account agreement, that acts as an umbrella agreement setting forth the terms that govern the relationship between the parties, including with respect to the purchase and sale of securities for the account of the retail advisory customer. They are not documented on an industry-standard form. The underlying securities trades are generally short-term. They contain no direct defaults, cross-defaults or restrictions on the transfer of credit support vis-à-vis the dealer, but as required by Section 205(a)(2) of the Investment Advisers Act of 1940, they contain a provision requiring the client's consent to a transfer or assignment of the agreement by the adviser.

  Investment advisory account agreements may also number in the millions at some firms, and remediation to include express acknowledgement would require an enormous outreach effort, often to clients that are individuals, which would be extremely burdensome. In addition, since these contracts lack objectionable default rights or transfer restrictions, investment advisory account agreements do not give rise to the risk that counterparties will exercise their contractual rights in a manner that is inconsistent with the provisions of the U.S. special resolution regimes. Requiring the remediation of these agreements would thus provide no meaningful resolution benefits.

- *Underwriting Agreements* – Underwriters enter into these agreements with institutional customers (issuers of the underwritten securities). These agreements are individually negotiated, although each underwriter generally has its own preferred form. In some cases, a single agreement acts as an umbrella agreement governing the terms of multiple issuances. Each commitment with respect to an underlying issuance is very short-term, lasting during the period from pricing (when the underwriting agreement is signed) until closing, which is generally three to five days later.[7] The underwriting agreements contain no direct default provisions, since in practice it is highly unlikely that an issuer would hire a financial institution on the brink of insolvency to underwrite its securities offering, although they customarily prohibit the transfer of the agreement to another underwriter. Underwriting agreements also never require a guarantee by the underwriter's parent or affiliate, and do not contain any cross-defaults or restrictions on the transfer of credit support vis-à-vis the underwriter.

---

[7] *See* SEC Exchange Act Rule 15c6-1, 17 C.F.R. § 240.15c6-1. Under this rule, trades in the secondary market are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Market practice for primary issuances typically also follows a three-day settlement cycle, or a five-day settlement cycle if alternative arrangements are agreed and relevant disclosures are specifically made.

Underwriting agreements, because of the function they serve, and because the underwriter is undertaking obligations to sell securities on behalf of the issuer, would not pose a risk to the resolution of the underwriter or the underwriter's affiliates, or to the financial stability of the broader market. Because these underwriting agreements also frequently include only transfer restrictions and not default rights, they also do not give rise to the risk that the issuers will exercise their contractual rights in a manner inconsistent with the provisions of the U.S. special resolution regimes, and remediation of these contracts would provide no meaningful resolution benefits.

c. Contracts issued in the capital markets or related to a capital markets issuance. Examples of contracts in this category include the following:

- *Warrants Issued in Capital Markets* – These instruments are commonly either issued by a bank holding company or by a dealer firm or other subsidiary, which is guaranteed by its parent bank holding company. These instruments are issued pursuant to an offering document and in compliance with relevant securities laws. The terms of these instruments are governed by warrant agreements, which are similar to indentures, except that they are not governed by the Trust Indenture Act. They tend to be issued on a frequent basis, with each issuance linked to the issuer's own common equity or to different underlying reference assets and purchased by different sets of investors, whose identities are generally not known to the issuer. Each issuance would be represented by a separate warrant certificate. These instruments may also be traded in the market, often cleared through a clearing organization such as DTC, and in some cases, listed on securities exchanges. Warrant agreements and warrant certificates are not documented on an industry-standard form, and warrants can be purchased by institutional and retail customers. The terms of warrants can vary. They contain direct defaults and may contain cross-defaults if they are guaranteed, and may contain transfer restrictions on the transfer of credit support, if guaranteed.

  Remediation of these warrant agreements and warrant certificates, however, would be extremely difficult, if not impossible, since this would require the affirmative vote of a substantial number of separate voting groups of holders to amend the terms of the instruments. Even if possible, obtaining such consent would be expensive because of "hold-out" premiums and may be impossible to achieve because there is no mechanism that would force an amendment.

  Since these instruments are traded in the markets, it would also not be possible for an issuer to ascertain whether a particular investor in such instruments has also entered into other QFCs with the dealer or any of its affiliates (or vice versa) for purposes of complying with the proposed mechanism for remediation of existing QFCs.

Issuers would be able to comply, however, if remediation of these instruments were required on a prospective basis with respect to new issuances only since the new investors could be informed of the terms of the warrant at the time of purchase and, accordingly, no later consent would be required as is the case with currently outstanding warrants. This more efficient approach would eliminate the difficulties of retrospectively requiring all outstanding purchasers to agree to amend the terms of the instruments, and would allow time for firms to develop new warrant agreements and warrant certificates, as well as to engage in client outreach efforts and to make any appropriate public disclosures.

- *Contracts with Special Purpose Vehicles ("**SPVs**") That Are Multi-Issuance Note Platforms* – QFCs may be entered into with SPVs that issue notes or other debt securities to investors pursuant to an underlying indenture or a similar agreement in multiple series, with each series tied to a particular QFC. These contracts may vary with respect to whether they contain transfer restrictions. They do generally contain direct defaults and, if guaranteed, may contain cross-defaults and transfer restrictions on the transfer of credit support.

  Similar to warrants, remediation of these agreements with the SPVs would be extremely difficult, if not impossible, since this would require the trustee of the underlying notes to obtain the affirmative vote of a substantial number of separate voting groups of note holders to amend the terms of the instruments. Even if possible, obtaining such consent would be expensive because of "hold-out" premiums and may be impossible to achieve because there is no mechanism that would force an amendment.

  Issuers would be able to comply, however, if remediation of these instruments were required on a prospective basis with respect to new issuances only since the new investors could be informed of the terms of the note at the time of purchase and, accordingly, no later consent would be required as is the case with currently outstanding notes. This more efficient approach would eliminate the difficulties of retrospectively requiring all outstanding purchasers to agree to amend the terms of the instruments, and would allow time for firms to develop new agreements with the SPVs, as well as to allow the SPVs to engage in client outreach efforts.

d. Other types of contracts that pose remediation challenges. In addition, there are certain types of contracts that, similar to contracts with financial market utilities, are entered into with public or private entities that serve a utility-like function, the terms of which are often subject to the requirements of their own regulatory authorities. Remediation of these contracts, to the extent they were considered to be QFCs, would be extremely difficult, if not impossible. One example of such a contact is highlighted below, but this is a non-exhaustive example and there may be other similar contracts that face similar remediation challenges.

- *Agreements with Power Operators Governed by Regulatory Tariffs* – These agreements are standardized agreements similar in architecture to a protocol, where a significant majority of counterparties are municipalities, municipal-owned utilities, electric cooperatives or other types of utility companies.[8] Members of the group will trade with each other under the terms and conditions of the agreements, particularly for short-term trades. These agreements, similar to the types of agreements entered into with financial market utilities, are typically non-negotiable and are governed by standard or regulatory tariffs subject to approval by their own regulatory authorities.[9] The terms of these standardized agreements generally contain direct defaults and may contain cross-defaults if they are guaranteed, and may contain transfer restrictions on the transfer of credit support, if guaranteed.

  Remediation of these agreements would be extremely difficult, if not impossible, because it is not expected that these entities or their governing bodies would agree to adhere to the ISDA Protocol or to bilaterally negotiate changes, and in some cases regulatory approval may be needed to do so. Especially since these agreements are governed by regulatory tariffs and are subject to other regulatory regimes, the Banks believe that these agreements are more appropriately addressed through other vehicles rather than through the final QFC rules.

e. Contracts governed by U.S. law. As noted in the Initial Comment Letters, the Banks believe that QFCs that contain no cross-default rights, but may contain direct insolvency-based default rights or transfer restrictions, should not be required to be remediated to include the express provisions required by Section 252.83 (and comparable provisions under the OCC Proposed Rule and the FDIC Proposed Rule) if they are already governed by U.S. law.

In any event, however, the Banks believe that QFCs governed by U.S. law that are entered into with counterparties that are organized under U.S. law or are otherwise domiciled or have a principal place of business in the United States[10] should be excluded from the scope of proposed Section 252.83 (and comparable provisions under the OCC Proposed Rule and the

[8] One example of this type of contract is the Western Systems Power Pool Agreement.

[9] *See, e.g.*, Federal Power Act §§ 201, 205, 206; 16 U.S.C. §§ 824, 824d, 824e (giving FERC the jurisdiction to regulate the sale of electric energy at wholesale in interstate commerce by public utilities).

[10] Since this exclusion would apply only to QFCs that contain no cross-defaults, it would be limited to contracts where the covered entity that is the direct party itself could potentially be subject to proceedings under the FDIA or Title II of the Dodd-Frank Act—in other words, a U.S. entity.

FDIC Proposed Rule). These counterparties are already bound to observe the stay and transfer provisions of the FDIA and Title II of the Dodd-Frank Act, as mandatory provisions of U.S. federal law, and there is no reason to anticipate they would willingly violate U.S. law. This should be the case regardless of the governing law of the agreement, although in practice many agreements with such counterparties will be governed by U.S. law.

The Banks note that the comment letter submitted by the Risk Management Association[11] on the Board Proposed Rule advocates a three-pronged test of "nexus" with the United States for purposes of recognizing an exclusion from the express acknowledgment requirements of proposed Section 252.83. Under this proposal, a sufficient U.S. nexus to justify exclusion would exist if (1) the contract is governed by U.S. law; (2) a contact is entered into between entities organized in the United States and (3) if the G-SIB's obligations under the QFC are collateralized, the collateral is held with a U.S. custodian or depositary pursuant to an account agreement governed by U.S. law.

The Banks believe that collateral location is not relevant to developing an exclusion to the scope of proposed Section 252.83 (and comparable provisions under the OCC Proposed Rule and the FDIC Proposed Rule). The key issue is whether the counterparty would be bound to observe the mandates of the FDIA and Title II of the Dodd-Frank Act regarding limitations on the counterparty's ability to terminate, liquidate or accelerate the contract and the powers of the FDIC to effect a transfer such contract, either because the agreement between the parties is governed by U.S. law or because the counterparty is located in the U.S. and subject to the jurisdiction of the U.S. courts. The location of the collateral and the governing law of any custodial agreement should not be relevant to this analysis.

The Banks further believe that the second prong that requires entities to be organized in the United States should be extended to cover entities organized under U.S. law or otherwise domiciled or have a principal place of business in the United States.

[11] Letter from the Risk Management Association to the Board regarding the Board Proposed Rule (Aug. 5, 2016), *available at* http://www.rmahq.org/WorkArea/DownloadAsset.aspx?id=19604.

* * * * *

The Banks strongly support the Agencies' goals underlying the proposed QFC rules, appreciate the opportunity to comment on the proposals and wish to thank the Agencies for their consideration of this supplemental letter. Please feel free to contact Randall D. Guynn by phone at (212) 450-4239 or by email at randall.guynn@davispolk.com if you would like to discuss anything in this comment letter with representatives of the Banks.

Sincerely,

Davis Polk & Wardwell /rg

Davis Polk & Wardwell LLP

cc: **Bank of America Corporation**

Citigroup Inc.

The Goldman Sachs Group, Inc.

JPMorgan Chase & Co.

Morgan Stanley

Chart Summarizing the Typical Terms of Categories of QFCs

	Type of Documentation	Industry Standard Form?	Tenor	Institutional / Retail	Direct Defaults?	Direct Transfer Restrictions?	Cross-Defaults?	Credit Support Transfer Restrictions?	Remediation Challenges
Cash Market Securities Trade	Simple short-form confirm or electronic trade ticket	No	Short-term (one settlement cycle)	Both	No	No	No	No	Frequently number in the millions with large numbers of customers; no master agreement; express acknowledgement requirement would require creation of additional documentation.
Spot FX Trade (not under ISDA Master)	Simple short-form confirm, no master agreement	No	Short-term (less than 2 days)	Both	No	No	No	No	Frequently number in the millions with large numbers of customers; no master agreement; express acknowledgement requirement would require creation of additional documentation.
Retail Spot FX Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions short-term (less than 2 days)	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
Brokerage Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-term	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
Retirement / IRA Account Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.

	Type of Documentation	Industry Standard Form?	Tenor	Institutional / Retail	Direct Defaults?	Direct Transfer Restrictions?	Cross-Defaults?	Credit Support Transfer Restrictions?	Remediation Challenges
			term						
Margin Agreement (stand-alone)	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-term	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
Options Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-term	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
FX Forwards Master Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions vary, typically 1 year	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
DVP Client Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-term	Retail	No	No	No	No	Frequently number in the millions with large numbers of retail customers.
Investment Advisory Account Agreement	Preprinted Account Agreement	No	Umbrella agreement; underlying transactions generally short-term	Retail	No	Yes—there is a direct transfer restriction as required by Section 205(a)(2) of the Advisers Act of 1940	No	No	Frequently number in the millions with large numbers of retail customers.
Underwriting Agreements	Underwriting / Placement Agreement between issuer	No	May be umbrella agreement, but underlying	Institutional	No	Yes	No	No	Underwriting / Placement Agreements should not pose a risk to the

	Type of Documentation	Industry Standard Form?	Tenor	Institutional / Retail	Direct Defaults?	Direct Transfer Restrictions?	Cross-Defaults?	Credit Support Transfer Restrictions?	Remediation Challenges
	and underwriters		purchase transactions are short-term (generally close within 3 to 5 days)						resolution of the dealer or the underwriter's affiliates, or to the financial stability of the broader market, remediation would thus not provide any meaningful resolution benefits
Warrants Issued in Capital Markets	Warrant Agreement (broadly similar to an Indenture) governing multiple issuances of Warrant Certificates representing the terms of each issuance	No	Varies, but often less than 1 year	Both	Yes	Varies	Yes, if guaranteed	Varies, if guaranteed	Issued in the capital markets to widely dispersed groups of investors; remediation of existing transactions would require the affirmative vote of a substantial number of separate voting groups of holders. Not possible for issuer to ascertain whether a particular investor has also entered into other QFCs with issuer's affiliates.
Contracts with SPVs that are Multi-Issuance Note Platforms	Agreements vary depending on the type of QFC	No	Varies	Institutional	Yes	Varies	Yes, if guaranteed	Yes, if guaranteed	Issued in the capital markets by SPVs to widely dispersed groups of investors; remediation of existing transactions would require the affirmative vote of a substantial number of separate voting

	Type of Documentation	Industry Standard Form?	Tenor	Institutional / Retail	Direct Defaults?	Direct Transfer Restrictions?	Cross-Defaults?	Credit Support Transfer Restrictions?	Remediation Challenges
									groups of holders.
Agreements with Power Operators Governed by Regulatory Tariffs	Multilateral Agreement	Yes	Varies	Institutional	Yes	Yes	Yes, if guaranteed	Yes, if guaranteed	In some cases, may require regulatory approval before changes can be made; not expected for these entities or their governing bodies to adhere to the ISDA Protocol or even to bilaterally negotiate changes to the standard form.