

### § 371.3

### 12 CFR Ch. III (1–1–22 Edition)

FDIC determines by regulation, resolution, or order to be a QFC, including without limitation, any securities contract, commodity contract, forward contract, repurchase agreement, and swap agreement.

(r) *Records entity* means any insured depository institution that has received written notice from the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition and written notice from the FDIC that it is subject to the recordkeeping requirements of this part.

(s) *Reportable subsidiary* means any subsidiary of a records entity that is incorporated or organized under U.S. federal law or the laws of any State that is not:

(1) A functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5);

(2) A security-based swap dealer as defined in 15 U.S.C. 78c(a)(71); or

(3) A major security-based swap participant as defined in 15 U.S.C. 78c(a)(67).

(t) *State* means any state, commonwealth, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam or the United States Virgin Islands.

(u) *Subsidiary*, with respect to another entity, means an entity that is, or is required to be, consolidated by such other entity on such other entity's financial statements prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards.

(v) *Total consolidated assets* means the total consolidated assets of a records entity and its consolidated subsidiaries as reported in the records entity's most recent year-end audited consolidated statement of financial condition filed with the appropriate Federal banking agency.

(w) *Troubled condition* means an insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of \$10 billion or greater), 4 or 5 under the Uniform Financial

Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

#### § 371.3 Maintenance of records.

(a) *Form and availability.* (1) Unless it is not required to maintain records in electronic form as provided in § 371.4(d), a records entity shall maintain the records described in § 371.4 in electronic form and shall be capable of producing such records electronically in the format set forth in the appendices of this part.

(2) All such records shall be updated on a daily basis and shall be based upon values and information no less current than previous end-of-day values and information.

(3) Except as provided in § 371.4(d), a records entity shall compile the records described in § 371.4(a) or § 371.4(b) (as applicable) in a manner that permits aggregation and disaggregation of such records by counterparty. If the records are maintained pursuant to § 371.4(b), they must be compiled by the records entity on a consolidated basis for itself and its reportable subsidiaries in a manner that also permits aggregation and disaggregation of such records by the records entity and its reportable subsidiary.

(4) Records maintained pursuant to § 371.4(b) by a records entity that is a Part 148 affiliate shall be compiled consistently, in all respects, with records compiled by its affiliate(s) pursuant to Part 148.

(5) A records entity shall maintain each set of daily records for a period of not less than five business days.

(b) *Change in point of contact.* A records entity shall provide to the FDIC, in writing, any change to the name and contact information for the person at the records entity who is responsible for recordkeeping under this part within 3 business days of any change to such information.

(c) *Access to records.* A records entity shall be capable of providing the records specified in § 371.4 (based on the immediately preceding day's end-of-day values and information) to the FDIC no later than 7 a.m. (Eastern Time) each day. A records entity is required to make such records available to the FDIC following a written request by the FDIC for such records. Any such written request shall specify the date such records are to be made available (and the period of time covered by the request) and shall provide the records entity at least 8 hours to respond to the request. If the request is made less than 8 hours before such 7 a.m. deadline, the deadline shall be automatically extended to the time that is 8 hours following the time of the request.

(d) *Maintenance of records after a records entity is no longer in a troubled condition.* A records entity shall continue to maintain the capacity to produce the records required under this part on a daily basis for a period of one

year after the date that the appropriate Federal banking agency or the FDIC notifies the institution, in writing, that it is no longer in a troubled condition as defined in § 371.2(w).

(e) *Maintenance of records after an acquisition of a records entity.* If a records entity ceases to exist as an insured depository institution as a result of a merger or a similar transaction with an insured depository institution that is not in a troubled condition immediately following the transaction, the obligation to maintain records under this part on a daily basis will terminate when the records entity ceases to exist as a separately insured depository institution.

#### § 371.4 Content of records.

(a) *Limited scope entities.* Except as provided in § 371.6, a limited scope entity must maintain (at the election of such records entity) either the records described in paragraph (b) of this section or the following records:

(1) The position-level data listed in Table A-1 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(2) The counterparty-level data listed in Table A-2 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(3) The corporate organization master table in Appendix A of this part for the records entity and its affiliates.

(4) The counterparty master table in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(5) All documents that govern QFC transactions between the records entity and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each QFC position that has been confirmed and all trade acknowledgments for each QFC position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or