

## § 252.87

## 12 CFR Ch. II (1–1–23 Edition)

with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies.

(b) *Definition of foreign bank multi-branch master agreements.* A foreign bank multi-branch master agreement means a master agreement that permits a U.S. branch or U.S. agency and another place of business of a foreign bank that is outside the United States to enter transactions under the agreement.

### § 252.87 Identification of global systemically important foreign banking organizations.

(a) For purposes of this subpart, a top-tier foreign banking organization that is or controls a covered company (as defined at 12 CFR 243.2(f)) is a global systemically important foreign banking organization if any of the following conditions is met:

(1) The top-tier foreign banking organization determines, pursuant to paragraph (c) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(2) The Board, using information available to the Board, determines:

(i) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(ii) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q (part 217 of this chapter), would be identified as a global systemically important BHC under § 217.402 of the Board's Regulation Q; or

(iii) That any U.S. intermediate holding company controlled by the top-tier foreign banking organization, if the U.S. intermediate holding company is or were subject to § 217.402 of the Board's Regulation Q, is or would be identified as a global systemically important BHC.

(b) Each top-tier foreign banking organization that determines pursuant to paragraph (c) of this section that it has the characteristics of a global systemically important banking organization under the global methodology must notify the Board of the determination by January 1 of each calendar year.

(c) A top-tier foreign banking organization that is or controls a covered company (as defined at 12 CFR 243.2(f)) and prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

(d) Each top-tier foreign banking organization that controls a U.S. intermediate holding company and that meets the requirements of § 252.153(b)(5) and (6) also meets the requirements of paragraphs (b) and (c) of this section.

### § 252.88 Exclusion of certain QFCs.

(a) *Exclusion of QFCs with FMUs.* Notwithstanding § 252.82, a covered entity is not required to conform to the requirements of this subpart a covered QFC to which:

(1) A CCP is party; or

(2) Each party (other than the covered entity) is an FMU.

(b) *Exclusion of certain excluded bank QFCs.* If a covered QFC is also a covered QFC under parts 47 or 382 of this title that an affiliate of the covered entity is also required to conform pursuant to parts 47 or 382 of this title and the covered entity is:

(1) The affiliate credit enhancement provider with respect to the covered QFC, then the covered entity is required to conform the credit enhancement to the requirements of this subpart but is not required to conform the direct QFC to the requirements of this subpart; or

(2) The direct party to which the excluded bank is the affiliate credit enhancement provider, then the covered entity is required to conform the direct QFC to the requirements of this subpart but is not required to conform the credit enhancement to the requirements of this subpart.

(c) *Exclusion of certain contracts.* Notwithstanding § 252.82, a covered entity

## Federal Reserve System

§ 252.132

is not required to conform the following types of contracts or agreements to the requirements of this subpart:

(1) An investment advisory contract that:

(i) Is with a retail customer or counterparty;

(ii) Does not explicitly restrict the transfer of the contract (or any QFC entered pursuant thereto or governed thereby, or any interest or obligation in or under, or any property securing, any such QFC or the contract) from the covered entity except as necessary to comply with section 205(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(a)(2)); and

(iii) Does not explicitly provide a default right with respect to the contract or any QFC entered pursuant thereto or governed thereby.

(2) A warrant that:

(i) Evidences a right to subscribe to or otherwise acquire a security of the covered entity or an affiliate of the covered entity; and

(ii) Was issued prior to November 13, 2017.

(d) *Exemption by order.* The Board may exempt by order one or more covered entities from conforming one or more contracts or types of contracts to one or more of the requirements of this subpart after considering:

(1) The potential impact of the exemption on the ability of the covered entity(ies), or affiliates of the covered entity(ies), to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan;

(2) The burden the exemption would relieve; and

(3) Any other factor the Board deems relevant.

## Subparts J–L [Reserved]

## Subpart M—Risk Committee Requirement for Foreign Banking Organizations With Total Consolidated Assets of at Least \$50 Billion but Less Than \$100 Billion

SOURCE: Reg. YY, 79 FR 17323, Mar. 27, 2014, unless otherwise noted.

### § 252.130 [Reserved]

### § 252.131 Applicability.

(a) *General applicability.* A foreign banking organization with average total consolidated assets of at least \$50 billion but less than \$100 billion must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its average total consolidated assets equal or exceed \$50 billion.

(b) *Cessation of requirements.* A foreign banking organization will remain subject to the risk-committee requirements of this section until the earlier of the date on which:

(1) Its total consolidated assets are below \$50 billion for each of four consecutive calendar quarters; and

(2) It becomes subject to the requirements of subpart N or subpart O of this part.

[84 FR 59109, Nov. 1, 2019]

### § 252.132 Risk-committee requirements for foreign banking organizations with total consolidated assets of \$50 billion or more but less than \$100 billion.

(a) *U.S. risk committee certification.* A foreign banking organization subject to this subpart, must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(1) Oversees the risk management policies of the combined U.S. operations of the foreign banking organization; and

(2) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.