

§ 371.3

to an individual transaction under a QFC.

(e) *Qualified financial contracts* (QFCs) mean those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

(f) *Troubled condition* means for purposes of this part, any 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 ten billion dollars 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

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composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Form, availability and maintenance of records.

(a) *Form and availability.* The records required to be maintained by an insured depository institution for QFCs under this part—

(1) Except for records that must be maintained through electronic files under appendix A of this part, may be maintained in any form, including in an electronic file, provided that the records are updated at least daily;

(2) If the records are not maintained in written form, will be capable of being reproduced or printed in written form; and

(3) Will be made available upon written request by the FDIC immediately at the close of processing of the institution's business day, for a period provided in that written request.

(b) *Maintenance of records after the institution is no longer in a troubled condition.* Insured depository institutions that are in a troubled condition as defined in § 371.2(f) shall continue to maintain the capacity to produce records required under this part on a daily basis for a period of one year after the date that the appropriate Federal banking agency notifies the institution that it is no longer in a troubled condition as defined in § 371.2(f).

(c) *Maintenance of records after an acquisition of an institution that is in a troubled condition.* If an insured depository institution that has been determined by the appropriate Federal banking agency to be in a troubled condition ceases to exist as an insured depository institution as a result of a merger or a similar transaction into an insured depository institution that is not in a troubled condition immediately following the acquisition, the obligation to maintain records under this part on a daily basis will terminate when the institution in a troubled condition ceases to exist as a separately insured depository institution.

§ 371.4 Content of records.

For each QFC for which an insured depository institution is a party or is