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Federal Reserve Board Issues Long-Awaited Capital Rules

On June 7, 2012, the Board of Governors of the Federal Reserve System (the "Federal Reserve") took action to bring the U.S. capital adequacy framework in line with various international initiatives designed to bolster the quality and quantity of capital of banking organizations. Through three related proposals and one final rule, the Federal Reserve (together with the other federal banking agencies, which are expected to act this week) would completely revise the overall structure of its capital adequacy rules to implement both international agreements on capital and requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The first proposal would implement the Basel III regulatory capital framework issued by the Basel Committee on Banking Supervision (the "Basel Committee") in 2010 and the so-called Collins Amendment provision of the Dodd-Frank Act. If the federal banking agencies (the "Agencies") were to adopt this proposal (including its phase-in provisions for minimum capital ratios and applicable capital buffers) in final form by the end of 2012, it would put the United States back on track with the Basel III framework's timeframe for implementation. The proposals hew closely to the Basel III framework, and their few deviations are generally in the direction of earlier implementation and higher capital requirements, with some notable exceptions.

The second proposal would implement the standardized approach in the Basel II capital framework in a manner consistent with the requirement in Section 939A of the Dodd-Frank Act ("Section 939A") that the Agencies remove from their capital adequacy regulations references to and reliance on credit ratings. The standardized approach is a non-models-based approach for determining risk-weighted assets for banking organizations that are not mandatorily subject to the advanced approaches. Importantly, as proposed, the standardized approach would apply to all banking organizations currently subject to minimum capital requirements (other than bank holding companies ("BHCs") subject to the Federal Reserve's Small Bank Holding Company Policy Statement) and would become the "generally applicable" capital requirements for purposes of determining compliance with the Collins Amendment's risk-based capital "floor".

The final proposal would revise the advanced approaches risk-based capital rule in a manner consistent with Section 939A and incorporate certain aspects of Basel III that apply only to large, internationally active banking organizations ("core banks"). These revisions include, among others, elimination of the ratings-based and internal assessment approaches

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for securitization exposures and a higher counterparty credit risk capital requirement to account for credit valuation adjustments.

In addition, the Agencies also finalized the market risk capital rule, implementing a series of revisions to the market risk capital requirements for exposures in a banking organization's trading book. The Basel Committee initially adopted these revisions, commonly known as "Basel II.5", over various issuances in 2005, 2009 and 2010. Basel II.5 was implemented in Europe in 2011, in accordance with the Basel Committee's timeframe, but the United States' implementation has lagged due to complications posed by Section 939A's prohibition on the use of credit ratings.

This memorandum provides a high-level analysis of the releases and highlights certain key issues, including certain significant divergences from the Basel frameworks. The proposals will be open for comment until September 7, 2012.[1] The market risk capital rule will become effective January 1, 2013.[2]

It is important to note that the proposals do not implement certain other reforms to bank capital and liquidity regulation proposed by the Basel Committee. Specifically, the proposals do not implement the so-called "G-SIB Surcharge" which would impose a capital surcharge on banking organizations designated as global systemically important banks ("G-SIBs") ranging from 1% to 2.5% (with a possible incremental surcharge of 1% on the largest G-SIBs if they continue to grow). The Agencies indicated that they intend to finalize implementing rules for the G-SIB Surcharge by 2014 for phase-in from 2016 to 2019, consistent with the Basel Committee's timeline. However, the proposals do not indicate whether, or to what extent, large U.S. banking organizations that are not designated as G-SIBs by the Financial Stability Board may be subject to a surcharge. The proposal indicates that the OCC is considering imposing the G-SIB surcharge on globally significant national banks.

Similarly, the proposals do not include draft implementing regulations for the Basel Committee's framework for liquidity risk. In a prior release, the Federal Reserve proposed to require bank holding companies with assets equal to or in excess of $50 billion and nonbank financial companies designated as systemically important by the Financial Stability Oversight Council (collectively, "Covered Companies") to maintain a liquidity buffer similar to the liquidity coverage ratio in the Basel III liquidity framework, although the Federal Reserve stated at the time that it expects these provisions would be amended after

[1] The proposals are available at: http://federalreserve.gov/newsevents/press/bcreg/20120607a.htm

[2] The market risk rule is available at: http://federalreserve.gov/newsevents/press/bcreg/20120607b.htm

the Basel Committee and the U.S. regulatory agencies study, finalize and adopt appropriate liquidity measures.[3]

IMPLEMENTATION OF THE BASEL III FRAMEWORK

Scope

The proposals would require *all* banking organizations, regardless of size, to begin complying with the Basel III minimum risk-based capital requirements as of January 1, 2013, in accordance with the Basel Committee's proposed timeframe. Similarly, all banking organizations would be subject to the capital conservation buffer when its phase-in begins in 2016. However, certain aspects of the proposal—specifically the supplementary leverage ratio and the countercyclical buffer—would apply only to core banks.

The proposals would also extend the Basel III minimum regulatory capital requirements to savings and loan holding companies ("SLHCs") domiciled in the United States. SLHCs, which are not currently subject to formal capital requirements, would be required to comply with the same capital regulations applicable to BHCs. However, small SLHCs would not be able to take advantage of the exemption from these requirements available to small BHCs (under $500 million in total consolidated assets) because the Collins Amendment does not expressly exempt small SLHCs (unlike small BHCs subject to the Federal Reserve's Small Bank Holding Company Policy Statement) from its requirement that the Federal Reserve establish minimum risk-based capital requirements for depository institution holding companies. The imposition of these formal capital and associated reporting requirements on small SHLCs would result in a significantly higher regulatory and reporting burden for small thrifts in a shell holding company structure and would appear to incentivize these organizations to reorganize into a bank holding company structure.

Leverage Requirements

A key divergence from the Basel III framework is the Agencies' proposal to impose two distinct leverage requirements on core banks.

The proposal would preserve for all banking organizations the existing capital guidelines' leverage requirement and calculation methodology (Tier 1 capital, as determined under the revised guidelines, divided by average total on-balance sheet assets net of

[3] The liquidity buffer applicable to Covered Companies is discussed in greater detail in CGSH's Client Alert Memo, *The Federal Reserve Board's Heightened Prudential Requirements for Systemically Important Financial Institutions,* dated January 24, 2012.

deductions from Tier 1 capital). Moreover, it would raise the leverage requirement for highly-rated banking organizations from 3% to 4%.

In addition, the proposal would introduce a supplementary leverage requirement based broadly on the Basel III framework's 3% leverage requirement, but would make this requirement applicable only to core banks. The supplementary leverage requirement would be calculated in line with the Basel III framework's broader exposure base by including certain off-balance sheet exposures in the denominator. However, the Agencies note that international discussions with regard to the calculation of exposures for "repo-style transactions" are ongoing, and therefore, the proposal includes "repo-style transactions" in the exposure calculation at carrying value from the GAAP balance sheet, and diverges from the Basel III framework by disregarding the Basel II netting rules.

The proposal's belt-and-suspenders approach to leverage capital requirements marks a departure from other jurisdictions' implementation of Basel III. For example, while the current draft of the European Capital Requirements Directive IV proposes to introduce the Basel III leverage ratio as an element of the supervisory review, the directive would stop short of imposing it as a formal, Pillar 1 requirement. The supplementary leverage requirement in the proposal, by contrast, would become a binding requirement in 2018 and would require core banks to begin reporting their supplementary leverage ratios in 2015. Moreover, most EU banks have not historically been subject to a leverage requirement similar to the existing U.S. capital guidelines' requirement to maintain a 4% ratio of Tier 1 capital to on-balance sheet assets.

Risk-based Capital and Prompt Corrective Action

In contrast to the supplementary leverage ratio, the proposal's risk-based capital minimums and buffers and their phase-in schedules are generally consistent with the Basel III framework. However, in addition to implementation of the international accords, the Agencies have also proposed modifications to the "prompt corrective action" ("PCA") framework, which is designed to place restrictions on U.S. insured depository institutions if their capital levels begin to show signs of weakness.

Under the proposal, the capital thresholds for the different PCA categories would be raised to reflect the proposal's changes to the definition of capital and the regulatory capital minimum ratios. Notably, however, the capital conservation buffer in the proposal, which would restrict a banking organization's ability to make capital distributions and discretionary bonus payments if its capital levels dip into the 2.5% buffer range, is not incorporated into the PCA framework as had been widely anticipated.

The proposal would also augment the PCA capital categories by incorporating the Common Equity Tier 1 capital requirement and, beginning in 2018, the proposed supplementary leverage requirement for core banks. The new PCA framework would not

take effect until January 1, 2015, consistent with the full transition of the minimum capital requirements and the standardized approach for the calculation of risk-weighted assets. Once effective, PCA would require depository institutions to maintain a Tier 1 leverage ratio of 5%, a Common Equity Tier 1 risk-based capital measure of 6.5%, a Tier 1 risk-based capital ratio of 8% and a total risk-based capital ratio of 10% to be considered well capitalized. By contrast, when fully phased-in in 2019, the capital conservation buffer would require a banking organization to maintain a Common Equity Tier 1 ratio of 7%, a Tier 1 risk-based capital ratio of 8.5%, and a total risk-based capital ratio of 10.5% in order to avoid restrictions on its capital distributions and discretionary bonus payments. Accordingly, the capital conservation buffer may effectively establish a higher market expectation for a banking organization to be considered well capitalized.

The proposal does not establish new criteria for a BHC or SLHC to be considered well capitalized. Although BHCs and SLHCs are not subject to PCA, Section 606 of the Dodd-Frank Act ("Section 606") requires financial holding companies ("FHCs") – and not only their insured depository institution subsidiaries – to be "well capitalized". Section 606 also requires any SLHC (other than a grandfathered unitary) that is engaged in activities otherwise permissible only for financial holding companies to be well capitalized "as if the savings and loan holding company was a bank holding company." Currently, the definitions of "well capitalized" for insured depository institutions under PCA and for BHCs diverge because the Federal Reserve's Regulation Y does not require a BHC to maintain a 5% leverage ratio in order to be considered well capitalized. The Federal Reserve has sole discretion to revise the definition of well capitalized for BHCs and SHLCs (in contrast to the PCA definition of well capitalized, which is determined on an interagency basis), and it remains unclear whether the Federal Reserve will propose to incorporate either or both leverage ratios into its revised definition of well capitalized for such entities.

Common Equity Tier 1 and the Treatment of Unrealized Gains and Losses

A banking organization's Common Equity Tier 1 levels are likely to be significantly more volatile under the proposal than previously because unrealized gains and losses recognized on the balance sheet for accounting purposes would also be incorporated for regulatory capital purposes. Under existing capital regulations, unrealized gains and losses on available for sale ("AFS") debt securities do not impact regulatory capital; however, unrealized losses on AFS equity securities are deducted from Tier 1 capital (net of tax) and unrealized gains on AFS equity securities may be included in Tier 2 capital up to 45% of the pre-tax net amount.

The proposal diverges somewhat from the Basel III framework, potentially creating additional capital volatility for U.S. banking organizations on an earlier timeframe. Under the Basel III framework, the recognition of losses—but not gains—on AFS securities would be phased in on a 20% per year basis over a five-year period with full implementation by

January 2018. The recognition of gains is still being considered by the Basel Committee. By contrast, the proposal requires the immediate flow through to Common Equity Tier 1 of all unrealized losses on AFS *equity* securities (consistent with the current treatment), but permits the five-year phase-in for unrealized gains on AFS *equity* securities and both unrealized gains and losses on AFS *debt* securities.

Further volatility may come from the Agencies' proposal to exclude from capital the impact of unrealized gains and losses on cash flow hedges that relate to the hedging of items that are not recognized at fair value on the balance sheet. Although consistent with the Basel III framework, the Agencies recognized that this exclusion may create an asymmetry with the recognition of unrealized gains and losses on AFS securities.

U.S. banking organizations have expressed grave concerns about these aspects of the proposal because of the volatility they would introduce. The proposal would effectively require U.S. banking organizations to estimate and maintain capital cushions above the minimum requirements (plus buffers) in order to avoid being subject to sanctions, such as limitations on dividends and other distributions, that come into effect when a banking organization falls into the capital conservation buffer zone or loses its well capitalized status. The proposal indicates the Agencies are already considering potential limitations on the proposed flow through treatment, including by potentially excluding unrealized gains and losses on debt securities whose changes are predominantly attributable to fluctuations in benchmark interest rates, such as the debt obligations of the U.S. government and its agencies and government-sponsored enterprises ("GSEs").

Additional Tier 1 and the Collins Amendment Phase-Out of Hybrid Securities

The proposal would accelerate the Basel III framework's phase-out of trust preferred securities and cumulative perpetual preferred securities from Tier 1 capital of U.S. BHCs with assets of at least $15 billion as is necessary to comply with the Collins Amendment. The proposal clarifies that this phase-out would occur by January 1, 2016 in increments of 25% per year, whereas the Basel III framework contemplates such a phase-out in 10% increments over a 10-year period.

The proposal further deviates from the Basel III framework by specifying that only instruments classified as equity under GAAP would qualify as Additional Tier 1. This supplementary requirement seems to close the door to any possibility of recognition of debt-hosted contingent capital instruments as Additional Tier 1 for U.S. banking organizations, representing another departure from the European capital framework, where supervisory authorities have not foreclosed the possibility that convertible debt instruments such as CoCos could be eligible for inclusion in Basel III Tier 1 capital calculations.

The proposal also diverges from the Basel III framework in its treatment of instruments issued under the Small Business Jobs Act of 2010 and the Emergency Economic

Stabilization Act of 2008, both of which would remain eligible indefinitely for inclusion in Additional Tier 1 despite the Basel III framework's phase-out of public sector capital injections. The proposal also notes the Agencies are considering an additional divergence from the Basel III framework's criteria for Additional Tier 1 instruments by potentially requiring banking organizations to have the ability to cancel or reduce dividends to the holders of Additional Tier 1 instruments (particularly preferred stock) during a period of time when they are paying a penny dividend on common stock, but potentially permitting the payment of an amount equivalent to what is being paid out to common shareholders.

Minority Interests

Consistent with the Basel III framework, the proposal provides that minority interests in consolidated subsidiaries (such as the minority interest associated with REIT preferred securities) would continue to be eligible for inclusion in the Additional Tier 1 capital of the parent bank and its parent BHC, subject to significant limitations (severely restricting REIT preferred inclusion in particular). In addition, in order to be included in regulatory capital, the instrument issued to minority investors must meet the criteria for Additional Tier 1 capital, including the ability to cancel dividends. However, the Agencies indicated in the preamble to the proposal that, since banking organizations might be reluctant to affect the tax status of a REIT by cancelling its dividend, the Agencies would not deem REIT preferred instruments to be eligible for inclusion in Additional Tier 1 capital unless the issuer has the ability to declare a consent dividend.

Goodwill and Other Intangibles

Under the existing U.S. capital guidelines, goodwill has traditionally been fully or partially deducted, and the proposal preserves this treatment. The proposal would immediately phase in deduction of goodwill from Common Equity Tier 1 capital in 2013, notwithstanding the Basel III framework's incremental phase-in from 2014 to 2018. In addition, goodwill embedded in the valuation of significant investments in the capital of an unconsolidated financial institution would also be deducted from a banking organization's Common Equity Tier 1 under the proposal without regard to the phase-in provisions applicable to other adjustments to capital.

Pension Fund Assets

The proposal includes a potentially favorable deviation from the Basel III framework regarding defined benefit pension fund assets and unfunded liabilities. Under the existing capital guidelines, both pension fund surpluses (assets) and unfunded liabilities are "filtered out" (*i.e.,* reversed) in the calculation of Tier 1 capital. While the Basel III framework provides that pension fund surpluses must be deducted from Common Equity Tier 1 and unfunded pension fund liabilities must be fully recognized when calculating equity of the organization, the proposal would not require insured depository institutions to deduct their pension fund surpluses from Common Equity Tier 1 because the FDIC has unfettered access

to these excess funds in receivership. By contrast, a depository institution's parent BHC or SLHC would be required to deduct any surplus associated with a holding company pension plan unless it had unfettered access to the surplus.

Mortgage Servicing Assets

Consistent with the Basel III framework, the proposal provides that mortgage servicing assets ("MSAs"), net of associated deferred tax liabilities, can be recognized in Common Equity Tier 1, with recognition capped at 10% of the banking organization's Common Equity Tier 1 and further capped, when aggregated with deferred tax assets and significant investments in the common shares of unconsolidated financial institutions, at 15%. By contrast, under existing regulations, MSAs, non-mortgage servicing assets and purchased credit card relationships may be included in Tier 1 capital in an aggregate amount that cannot exceed 100% of Tier 1 capital (within sub-limits for non-mortgage servicing assets and purchased credit card relationships).

However, based on requirements in the Federal Deposit Insurance Corporation Improvement Act of 1991, the proposal further haircuts the amount of MSAs that a banking organization may include in Common Equity Tier 1 by requiring that MSAs eligible for inclusion in regulatory capital cannot be valued at more than 90% of their fair market value. Accordingly, even if a banking organization would have been able to include all of its MSAs under the Basel III framework, it would still be required to deduct at least 10% of the fair value of these MSAs from its Common Equity Tier 1.

BASEL II STANDARDIZED APPROACH

The Agencies initially proposed the standardized approach in July 2008 as an optional alternative to the Basel I framework in the Agencies' existing capital regulations for banking organizations not otherwise subject to the Basel II advanced approaches. The Agencies were on the cusp of finalizing the first standardized proposal shortly before the enactment of the Dodd-Frank Act. However, Section 939A required further revisions to the standardized approach to eliminate its significant reliance on the use of external ratings.

As proposed in 2008, and consistent with the Basel II framework, the standardized approach would have expanded the use of both external ratings issued by a nationally recognized statistical ratings organization and ratings inferred from the use of such external ratings to determine risk weights for a number of exposure categories.

However, in order to comply with Section 939A, the proposal inevitably deviates from the standardized approach in the Basel II framework. In place of the framework's reliance on credit ratings, the proposal outlines alternative measures for analyzing the credit risk of certain exposures. For example, the proposal would determine risk weights for sovereign debt based on the country risk classifications ("CRC") published regularly by the

Organization for Economic Cooperation and Development—the approach that has been adopted in the market risk rule. However, exposures to the U.S. government would be assigned a risk weight of 0%, regardless of their CRC rating.

In place of the Basel II framework's rating-based approach for determining the risk-based capital requirement for securitization exposures, the proposal would require banking organizations to apply either the gross-up method in the existing capital rules or a simplified supervisory approach ("SSFA"), which has also been adopted in the market risk rule. Under the SSFA, risk weights for securitization exposures would range from 20% to 1250% (dollar for dollar capital). The SSFA would require banking organizations to conduct a spreadsheet calculation for each securitization exposure that relies on inputs (updated at least quarterly) including the risk weight applicable to the underlying exposures; the attachment and detachment points of the securitization tranche, which determine the exposure's relative subordination; and the current percentage of underlying exposures that are 90 days or more past due, in default, or in foreclosure. Although in theory these inputs should be available in the prospectuses for newly issued securitizations or from servicer reports from existing securitizations, this approach would introduce significant additional burden in addition to resulting in considerably higher capital requirements for securitization positions relative to the ratings-based approaches in the Basel II framework and the existing capital rules. Accordingly, the proposal appears likely to have a significant chilling effect on the securitization market by increasing the cost to hold securitization positions, especially for smaller banks.

With respect to exposures to U.S. public sector entities, GSEs, depository institutions, and corporates (excluding securities firms), the proposal would preserve the existing capital guidelines' treatment. However, the proposal would raise the 20% risk weight under the existing capital rules for exposures to highly-rated qualifying securities firms to 100%, based on the Agencies' belief that securities firms do not have the same risk profile as banks (although this conclusion is not further documented or discussed in the proposal). This aspect of the proposal would adversely impact securities firms by placing them at a significant competitive disadvantage to depository institutions, whose exposures are eligible for lower risk weights under the proposal.

Setting aside these statutorily-mandated deviations from the Basel II framework, it is important to note that the proposal diverges from the framework in at least one other significant respect. The proposed risk weights for residential mortgages, for example, range from 35% to 200%, while the Basel III framework would cap the risk weight for residential mortgages at 150%. The proposal also eliminates the possibility of a 20% risk weight for prudently underwritten mortgages with a loan-to-value ratio of less than or equal to 60%, which the Agencies had initially proposed in 2008. The process for determining risk weights for residential mortgages is also significantly more complex than originally proposed in 2008.

MARKET RISK FINAL RULE

Over objections from the industry, the Agencies adopted the market risk rule with only minor modifications to the alternatives to credit ratings set forth in the December 2010 proposal. In remarks at the Federal Reserve's June 7 meeting, Governor Tarullo supported adoption of the long-delayed rule to implement Basel II.5, but indicated that the Federal Reserve was already considering additional revisions. Specifically, he signaled preliminary support for further amendments to the market risk framework to establish standardized capital requirements for market risk as a back-up for model-derived risk weights. Governor Bloom Raskin broadly echoed his concerns about so-called "model risk" throughout the capital framework in a question to staff at the meeting. The FDIC has also long expressed reservations about the reliance on internal models to determine a banking organization's capital requirements, and in a recent speech, the Comptroller of the Currency continued this theme discussing the need for ongoing monitoring and analysis to ensure that a banking organization's internal models perform as expected.

In his remarks, Governor Tarullo referenced the Basel Committee's consultative paper, published in May 2012—*A Fundamental Review of the Trading Book*—which raises the possibility of eliminating the VaR-based approach in the current market risk framework because of its inability to capture "tail risk". The consultation paper considers alternative risk metrics, in particular expected shortfall models, and also discusses the use of standardized (non-models-based) requirements as an alternative to models-based approaches, or as a floor on these approaches. While the paper is focused on the market risk framework, its preliminary findings could signal an emerging global consensus that the models-based approach to determining capital requirements that is the hallmark of the advanced approaches should be fundamentally reconsidered.

OTHER POINTS OF INTEREST

Collins Amendment Floor Calculation

The proposals would also complicate the calculations that core banks must conduct to determine their compliance with the Collins Amendment floor. The proposals and the final rule make clear that the Collins Amendment floor is to be calculated using the standardized approach in place of the existing Basel I guidelines. In addition to requiring the maintenance of parallel systems to calculate both the floor and advanced capital ratios, the replacement of the current Basel I floor with an entirely new standard would require core banks to make significant additional investments to ensure compliance with the floor. Risk-weighted asset calculations are relatively simple under the Agencies' existing Basel I guidelines (given that most assets fall into one of four buckets, and a ratings-based approach is available for securitizations), and core banks currently have such systems in place. However, the proposal effectively requires core banks to adopt the standardized approach, and therefore to incur substantial additional costs to develop new systems and controls.

Furthermore, even after adopting the standardized approach as the floor, there are additional complexities between the standardized approach, on one hand, and the advanced approaches and market risk capital rules, on the other. As an example, core banks are generally required to use a more sophisticated supervisory formula approach ("SFA") to determine their risk-weighted capital requirements for securitization exposures. However, the Agencies stated in the preamble to the final market risk capital rule that, when calculating their floor requirement, core banks may only use the gross up method or the "simplified" supervisory formula (the SSFA described above). Accordingly, a core bank would be required to maintain dual processes, each of which is quite burdensome in its own right, to determine the capital charges applicable to its securitization exposures. The standardized approach proposal would also introduce methods for determining the risk weights for corporate exposures and residential mortgage loans that differ sharply from the approaches in the existing Basel I guidelines and the advanced approaches, further complicating a core bank's floor calculations.

Comparability and Equivalency Determinations for FBOs

As discussed above, the proposals diverge significantly from the Basel II framework because of the statutory constraints imposed by the Collins Amendment and Section 939A. When the Agencies adopted their final rule implementing the Collins Amendment floor, they acknowledged that the floor would complicate the Federal Reserve's consideration of whether a foreign banking organization ("FBO") (when seeking to establish a branch or agency in the United States or to become an FHC) holds capital equivalent to what would be required of a U.S. banking organization. In addition, the proposed imposition of two leverage ratios on core banks—the proposal's most significant deviation from the Basel III framework—could further complicate such equivalency determinations. Moreover, FBOs seeking to expand their US activities may face significant regulatory burden if they are required to provide the Federal Reserve with capital ratio calculations under the proposed rules, especially in light of the onerous calculations that are required to conform with the proposal's alternatives to credit ratings.

Toward a Convertible Sub-debt Requirement?

At the Federal Reserve's meeting on the proposals, Governor Tarullo also indicated the Federal Reserve is considering requiring core banks to issue subordinated debt or similar liabilities with equity conversion features to ensure their orderly resolution under Title II of the Dodd-Frank Act. Subordinated debt cannot qualify as Tier 1 capital under the proposal or the Basel III capital framework. While it is difficult to evaluate the impact of such a requirement on core banks given the sparse detail provided, it seems likely that, if adopted, this could impose significant additional costs on core banks as a result of the increased coupon that would likely be necessary for instruments with such bail-in features and the additional burden associated with maintaining compliance with another, separate formal capital requirement.

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If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed under “Banking and Financial Institutions” in the Practices section of our website at http://www.cgsh.com.

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