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## **Dodd-Frank Act Summary on Bank Capital Requirements**

The Dodd-Frank Act requires some significant changes to capital requirements for banking organizations. Your company should evaluate these changes to determine the impact on your capital structure and capital needs.

### **Holding Companies Must Meet Bank Capital Standards on Consolidated Basis**

The Act requires the federal regulators to establish consolidated capital requirements for any type of depository institution holding company (e.g., bank holding companies, thrift holding companies, financial holding companies, industrial loan holding companies) that are not less than the federal regulatory capital requirements for depository institutions. These requirements will include minimum leverage and risk-based capital standards. (See below regarding the impact of these standards on trust preferred securities ("TRUPS") used as capital.)

The Act will also apply the "source of strength" doctrine to thrift holding companies and holding companies of industrial loan banks. This doctrine, which has been applied to bank holding companies for many years, requires each holding company to serve as a source of financial strength for its depository institution subsidiary. Through this requirement, the Dodd-Frank Act intends to establish some parity in the capital standards applicable to holding companies of depository institutions, regardless of charter type.

### **Limits on TRUPS as Tier One Capital for Medium and Large-Sized Holding Companies**

Under the Act's capital provisions, certain depository institution holding companies will not be able to count "hybrid capital instruments," such as TRUPS, as Tier One Capital. These provisions apply as follows:

- Bank Holding Companies with Less Than \$500 Million Consolidated Assets. Bank holding companies with less than \$500 million in total consolidated assets are not limited in their ability to use TRUPS and other hybrid capital

instruments as Tier One Capital, as long as those organizations operate under the Federal Reserve's Small Bank Holding Company Policy as in effect on May 19, 2010. (This exception specifies only "bank holding companies" as being exempt, but may be interpreted by the regulators to apply to small thrift holding companies, as well.)

- Holding Companies with between \$500 Million and \$15 Billion in Consolidated Assets. Depository institution holding companies with at least \$500 million, but less than \$15 billion in total consolidated assets cannot count as Tier One Capital any hybrid capital instruments, including TRUPS, issued on or after May 19, 2010. However, these holding companies can continue to count as Tier One Capital any hybrid capital instruments issued before May 19, 2010.
- Holding Companies with \$15 Billion or more in Consolidated Assets. Depository institution holding companies with \$15 billion or more in total consolidated assets cannot count as Tier One Capital any hybrid capital instruments issued on or after May 19, 2010. Furthermore, the ability of these organizations to continue to count as Tier One Capital any hybrid capital instruments, including TRUPS, issued before May 19, 2010, will be phased out incrementally over a period of three years, beginning January 1, 2013.

These provisions do not apply to any hybrid capital instrument issued prior to October 4, 2010, to the U.S. government or a U.S. government agency under the Emergency Economic Stabilization Act of 2008, such as Troubled Asset Relief Program (TARP), Capital Purchase Program securities.

### **New Regulations Regarding Capital Requirements for Certain Asset Types**

In addition to the changes in capital treatment for TRUPS and other hybrid capital instruments, the bank regulatory authorities are required to establish new rules governing capital treatment applicable to certain types of assets, based on the associated risk. Examples of these asset types include the following:

- Derivatives
- Securitized products
- Securities borrowing and lending
- Repurchase and reverse repurchase agreements

The regulators have not yet announced when these regulations will be issued.

If you have further questions regarding the Dodd-Frank Act, you may contact one of the Thompson Coburn Attorneys listed below:

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