

July 23, 2010



Treatment of Trust Preferred Securities Under Dodd-Frank

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) was signed into law by President Obama on July 21. The Act includes a number of important provisions of interest that we will address in a series of Alerts to our banking clients. The Act makes significant changes to the ability of bank and thrift holding companies to issue trust preferred securities (“TRUPS”) and continue to count them as Tier 1 capital.

History of the Legislation

The House-passed version of the legislation (H.R. 4173) did not contain any provisions addressing the capital treatment of TRUPS. The subsequent Senate bill included provisions inserted by Senator Collins (R-Maine) that were supported by the FDIC, which would have eliminated Tier 1 capital treatment for TRUPS. These provisions were eased during the deliberations between the Senate and House of Representative conferees that produced the Conference Report, which was approved by the House on June 30 and the Senate on July 15.

Final Provisions of Dodd-Frank

The final rules concerning TRUPS are as follows:

- Bank and thrift holding companies with assets of less than \$15 billion as of December 31, 2009, will be permitted to include TRUPS that were issued before May 19, 2010, as Tier 1 capital.
- TRUPS issued before May 19, 2010, by larger bank and thrift holding companies will continue to be treated as Tier 1 capital until January 2013. At that time, the Tier 1 capital treatment will be phased out over a three-year period ending in January 2016. The specifics of this phaseout of Tier 1 capital treatment are to be determined by the bank regulators.
- Bank holding companies with assets of less than \$500 million will be permitted to continue to issue TRUPS and have them count as Tier 1 capital.

Related practice areas:

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- TRUPS issued by a bank or thrift holding company (other than those with assets of less than \$500 million) after May 19, 2010, will no longer count as Tier 1 capital. TRUPS still will be entitled to be treated as Tier 2 capital.

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