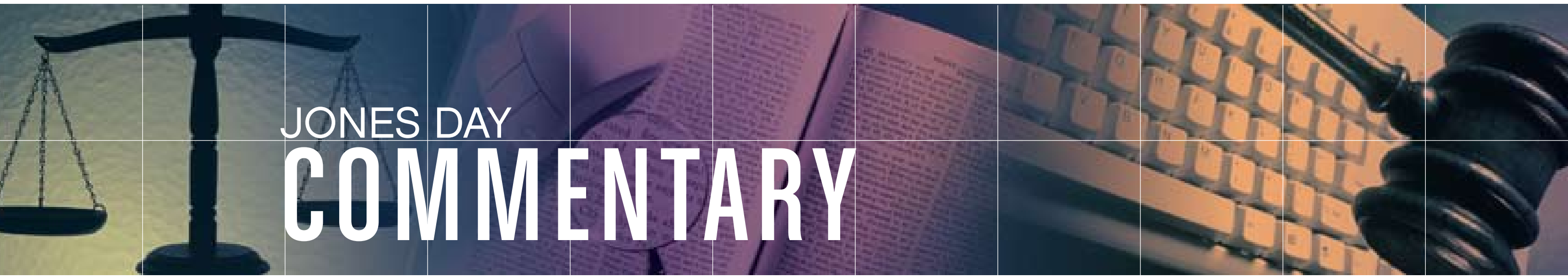
OCTOBER 2008



FEDERAL RESERVE BOARD RELEASES INTERIM FINAL RULE: CAPITAL TREATMENT OF TARP PREFERRED STOCK

Late in the afternoon of October 16, 2008, the Board of Governors of the Federal Reserve System (the "Federal Reserve") released an interim final rule (the "Rule") effective October 17, which clarifies the capital treatment for bank holding companies ("BHCs") of the senior, cumulative preferred stock ("Preferred Stock") to be issued to the U.S. Treasury (the "Treasury") pursuant to the Treasury's TARP Capital Purchase Program (the "Program"). The Rule amends the capital rules included as Appendix A to Federal Reserve Regulation Y ("Reg. Y"). The Federal Reserve's adopting release (the "Release") also provides further insight into the TARP.

CAPITAL TREATMENT

The Rule provides that:

- Preferred Stock is Tier 1 capital for BHCs for leverage capital and risk-based capital purposes.
- The amount of Preferred Stock counted as Tier 1 capital will be unlimited for capital adequacy purposes.
- Since the Preferred Stock can be included as Tier 1 capital without limit under the same provision of Reg. Y as noncumulative perpetual preferred stock, it is not a "restricted core capital element" subject to a 25 percent limit of Tier 1 capital. Accordingly, it also will not crowd out other restricted core capital elements, such as other cumulative preferred stock, trust preferred securities, and qualifying minority interests.
- The dividend step-up features, where the Preferred Stock's dividend rate will increase from 5 percent to 9 percent if the Preferred Stock has not been redeemed prior to the fifth anniversary of issuance, will be permitted. The Federal Reserve decided, even though step-ups have been and remain inconsistent with its capital guidelines and principles, that the step-up here promoted a fundamental public policy objective of promptly replacing the Preferred

Stock with private capital consistent with BHC safety and soundness.

- The Preferred Stock will not affect the total amount of capital that BHCs are required to maintain commensurate with the nature and level of their risks.

- The Program's provisions limiting redemption in the first three years after issue to an amount equal to the cash proceeds from the sale of Tier 1 perpetual preferred stock and common stock is similar to a "replacement capital covenant," which fosters a "higher quality capital."

- Any redemptions of Preferred Stock by BHCs will be subject to prior Federal Reserve approval consistent with existing capital rules applicable to BHC preferred stock, generally.

- BHCs that issue Preferred Stock to the Treasury are expected "to appropriately incorporate the dividend features of the Senior Perpetual Preferred Stock into the organization's liquidity and capital funding plans."

- The Rule will not affect BHCs with less than $500 million that are subject to the Federal Reserve's Small BHC Policy.

The Rule does not address the capital treatment of the Preferred Stock for banks, although the Federal Reserve is consulting with the other bank regulators about this. We expect an interagency release on bank capital and the treatment of Preferred Stock to be issued soon.

INSIGHTS INTO THE TARP

The Federal Reserve's Release offers the following insights into the Program:

- The maximum amount of Preferred Stock issuable by any banking organization is the lesser of (i) $25 billion and (ii) 3 percent of its risk-weighted assets. This is consistent with the publicly announced plans by the Treasury to purchase Preferred Stock from several of the largest BHCs.

- The Treasury expects that its purchases of Preferred Stock under the Program will be completed by December 31, 2008.

- Eligible Entities will have to be "generally sound banking organizations" to participate in the Program. Federal Reserve Regulation A "Extension of Credit by Federal Reserve Banks" uses the term "generally sound" institutions, although it is not clear that this standard will be used for determining eligibility under the Program.

We expect that the Program will continue to evolve, and the Federal Reserve and other banking regulators are developing additional guidance for those desiring to participate in the Program, including application materials and eligibility standards or preferences.

We welcome questions.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General e-mail messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Chip MacDonald
1.404.581.8622
cmacdonald@jonesday.com

Kevyn D. Orr
1.202.879.5560
korr@jonesday.com

Christopher M. Kelly
1.216.586.1238
1.212.326.3438
cmkelly@jonesday.com

Brett P. Barragate
1.216.586.7205
1.212.326.3446
bpbarragate@jonesday.com