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Hot CoCos—The Next Bank Hybrid?

by Gregory J. Lyons, Paul M. Rodel and Edite Ligere

The Basel Committee on Banking Supervision's ("Basel Committee") Basel III capital and liquidity rules ("Basel III"), finalized last December, are expected to ultimately apply (subject to varying levels of regulatory modification at the country level) to banking institutions of all sizes across the globe. Among other things, Basel III will: (1) impose higher capital ratios, including a new ratio focusing on common equity; (2) increase the capital charges for many activities, particularly those involving counterparty credit risk; and (3) narrow the scope of what constitutes Tier 1 and Tier 2 capital, including by disqualifying many types of "hybrid" securities from Tier 1 capital treatment. A full discussion of Basel III is provided in the January 2011 issue of the *Financial Institutions Report*, available at www.debevoise.com.

Given these new capital requirements, as described in greater detail in Section I below, not to mention the still higher requirements expected in many jurisdictions, many banks will need to issue common equity to meet the new regulatory minimums. However, more recently regulators, banks and investors have focused increasingly on contingent convertible (so-called "CoCo") instruments and their possible role in a bank's capital structure. Non-common shares are generally less expensive, and thus more desirable for banks. However, the Basel Committee has expressed concern in Basel III and elsewhere that earlier "hybrid" securities did not provide enough capital support to banks in times of stress. As a result, as described in greater detail in Section II below, in a January 13, 2011 release (the "January Release") the Basel Committee requires "internationally active" banks to include in all non-common instruments intended to qualify as Additional Tier 1 or Tier 2 capital a provision that converts the instruments to common equity (or reduce their principal amount) in the event the bank is deemed non-viable or requires a capital infusion (a Non-Viability Contingent Capital provision, or "NVCC provision"). The instrument will thus convert to common equity, or be written off, at the point the bank is at the verge of becoming a "gone concern." The Basel Committee is requiring these "low trigger" conversions to ensure that, in the event of another banking crisis, holders of investments in the banks, rather than taxpayers, bear the financial burden.

Regulators, banks and market participants also are evaluating a separate category of CoCo instruments (as is also discussed in Section II). Rather than being based on an NVCC determination, these instruments are sometimes referred to as "high trigger CoCos" as they are anticipated to convert to common equity upon a bank failing to maintain a minimum capital standard well above non-viability, or otherwise to fail to meet some other metric of financial health. Credit Suisse recently completed a U.S. $2.0 billion offering of CoCo bonds for this purpose that may serve as a model of the type of institution that can offer high trigger CoCo bonds, and the terms under which they can be offered. A summary of the key terms of the Credit Suisse "Tier 2 Buffer Capital Notes" is included on page 11.

The stakes are high for all parties concerned as to how banks satisfy these capital demands. Bank debt, as broadly defined, currently constitutes approximately $3 trillion, or 44%, of the total market.[1] In addition to significant common equity issuances, Standard & Poor's ("S&P") anticipates that up to $1 trillion of CoCo-based instruments will be issued over the next five to ten

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Letter from the Editor

As the financial crisis (hopefully) recedes from view, regulatory agencies and others across the globe are starting to implement the roles called for by their leaders to seek to prevent another crises from occurring. Their charge is difficult as they must balance the mandates for tougher oversight with the recognition that the very institutions and programs they are trying to protect may be punished by the marketplace (and thus be inhibited from providing their critical credit and intermediary services) if the regulatory burdens are too severe.

This issue of the *Financial Institutions Report* focuses on several areas of this tension. At the international level, banking institutions are evaluating whether so-called "CoCo Bonds" are viable as new hybrid capital instruments in light of regulatory mandates and marketplace acceptance. At the U.S. level, the agencies are proposing rules on executive compensation designed to reduce risky behavior (but hopefully not dissuade talent), and government agencies are evaluating how to establish a viable mortgage market where the government plays less of a role. Undoubtedly these and other dialogues will occur globally for some period of time, and we will keep our clients and friends abreast of developments.

Gregory J. Lyons
Co-Editor-in-Chief

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Proposed Dodd-Frank Act Incentive Compensation Requirements

by Elizabeth Pagel Serebransky and Charity Brunson Wyatt

The Federal Deposit Insurance Company ("FDIC"), jointly with several other federal financial regulators, has released proposed rules intended to implement section 956 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The proposed rules prohibit incentive-based compensation arrangements at covered financial institutions ("CFIs") that encourage inappropriate risk by providing (i) excessive compensation or (ii) compensation that could lead to a material financial loss. The proposed rules will also require each CFI to submit an annual report to its supervising agency disclosing the structure of its incentive-based compensation arrangements and establish policies and procedures governing incentive-based compensation.

If adopted in their current form, the rules will apply to CFIs with total consolidated assets of $1 billion or more that offer incentive-based compensation arrangements to "covered persons." (A description of the rules for determining which entities are CFIs and how asset size is determined is set forth below.) Additional requirements, including the requirement to defer 50% of annual incentive compensation for executive officers, will apply to larger CFIs (generally, those with $50 billion or more in total consolidated assets).

Although the proposed rules were approved by the FDIC Board at its meeting on February 7, 2011, the proposal is a joint rulemaking by the Office of the Comptroller of the Currency, Treasury ("OCC"); the Board of Governors of the Federal Reserve System ("Fed"); the FDIC; the Office of Thrift Supervision, Treasury ("OTS"); the National Credit Union Administration ("NCUA"); the U.S. Securities and Exchange Commission ("SEC"); and the Federal Housing Finance Agency ("FHFA") (together, the "Agencies"). Each Agency must independently approve the proposed rule before it is published in the Federal Register; the NCUA and SEC have each already approved a proposed rule substantively similar to the rule released by the FDIC.

Prohibitions

Prohibitions Applicable to all "Covered Persons."

CFIs are prohibited from establishing or maintaining incentive-based compensation arrangements for any "covered person" that may encourage inappropriate risk by providing (i) excessive compensation or (ii) compensation that could lead to material financial loss. Under the proposal, a "covered person" means any executive officer, employee, director, or principal shareholder (*i.e.*, 10% owner) of a covered financial institution, and an "executive officer" means a person who holds the title or performs the function of: president, CEO, executive chairman, COO, CFO, chief investment officer, chief lending officer, chief legal officer, chief risk officer, or is head of a major business line.

Excessive Compensation Prohibition: Compensation is considered excessive when amounts paid are unreasonable or disproportionate to, among other things, the amount, nature, quality and scope of services performed by the covered person. In assessing compensation, Agencies will consider: (i) the combined value of all cash and non-cash benefits provided to the covered person; (ii) the compensation history of the covered person or employees with comparable expertise, (iii) the financial condition of the CFI, (iv) compensation practices at comparable institutions (based on factors like asset size, location, and complexity of operations/assets), (v) for postemployment benefits, the projected total cost and benefit to the CFI, (vi) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the CFI, and (vii) any other factors the Agency determines to be relevant.

Material Financial Loss Prohibition: CFIs also are prohibited from establishing or maintaining any types of incentive compensation arrangements for covered persons (either individually or as part of a group of persons subject to the same or similar

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incentive-based compensation arrangements) that could lead to a material financial loss to the CFI. Acceptable arrangements must: (i) balance risk and financial rewards (*e.g.*, by using deferral of payments with adjustment for actual losses or performance over time, risk adjustment of awards, longer performance periods, or reduced sensitivity to short-term performance), (ii) be compatible with effective controls and risk management, and (iii) be supported by strong corporate governance.

Further Prohibitions Applicable to Larger Covered Financial Institutions.

Required deferral arrangements for executive officers. At larger CFIs (generally, those with $50 billion or more in total consolidated assets) at least 50% of the annual incentive-based compensation of an "executive officer" must be deferred over a period of at least three years, and the deferred amounts paid must be adjusted for actual losses or other measures or aspects of performance that are realized or become better known during the deferral period. This requirement is intended to achieve consistency with international standards. A CFI may release or vest the deferred compensation in a lump sum at the end of the three years, or in installments over the three years, but the amount cannot vest faster than pro rata over the three-year deferral period. Comments are specifically sought on whether the mandatory deferral provisions should apply to a differently defined group of individuals, such as the institution's top 25 earners of incentive-based compensation, and whether the fifty percent/three-year deferral minimum is appropriate.

> CFIs must develop and maintain policies and procedures to govern incentive-based compensation and adopt incentive-based compensation arrangements pursuant to those policies. These policies and procedures should be appropriately tailored to balance risk and reward for an institution of the CFI's size, complexity, and business activity, as well as the scope and nature of its incentive-based compensation arrangements.

Special review and approval requirement for other designated individuals. The board of directors (or a committee thereof) of these larger CFIs must (i) identify which covered persons, other than the executive officers, individually have the ability to expose the institution to possible losses that are substantial in relation to the institution's size, capital, or overall risk tolerance (*e.g.*, traders with large position limits relative to the institution's overall risk tolerance) ("Designated Individuals"), (ii) approve the incentive-based compensation for the Designated individuals, and (iii) maintain documentation of such approval. Incentive-compensation arrangements for such individuals cannot be approved unless the board determines that the arrangement effectively balances the financial rewards to the employee and the range and time horizon of risks associated with the employee's activities.

Annual Report

Each CFI must submit an annual report to its applicable Federal regulator containing:

- a clear narrative description of the components of the CFI's incentive-based compensation, specifying the types of covered persons it applies to (disclosure of actual compensation to individuals is not required),
- a succinct description of the CFI's policies and procedures governing incentive-based compensation,
- for larger CFIs, a succinct description of any specific incentive compensation policies and procedures applicable to the institution's executive officers and other Designated Individuals,
- a description of material changes to incentive-based compensation arrangements and policies and procedures since the last annual report, and
- specific reasons why the CFI believes the structure of its incentive-based comp plan does not encourage inappropriate risks by providing covered persons (i) compensation that could lead to a material financial loss or (ii) that is excessive.

The volume and detail provided should correspond with the size and complexity of the institution as well as the scope and nature of incentive-based compensation arrangements.

Policies and Procedures

CFIs must develop and maintain policies and procedures to govern incentive-based compensation and adopt incentive-based compensation arrangements pursuant to those policies. These policies and procedures should be appropriately tailored to balance risk and reward for an institution of the CFI's size, complexity, and business activity, as well as the scope and nature of its incentive-based compensation arrangements. At a minimum, the policies and procedures must:

- be consistent with the reporting requirements and prohibitions set forth in the rules,
- be designed to prohibit incentive-based compensation arrangements that encourage inappropriate risks by providing covered persons with (i) excessive compensation or (ii) compensation that could lead to material financial loss to the CFI,
- require that risk-management, risk oversight and internal control personnel be involved in all phases of the process of designing incentive-based compensation arrangements, and have responsibility for ongoing assessment of policies and arrangements,
- provide for monitoring by a group or person independent of the covered person (*i.e.*, having a separate reporting line to senior management), where practicable in light of the institution's size and complexity, of incentive-based compensation awards and payments, risks taken, and actual risk outcomes to determine whether incentive-based compensation payments are reduced to reflect adverse risk outcomes or high levels of risk taken, and whether incentive-based payments should be modified,
- provide that the board of directors receive data and analysis sufficient to allow it to assess whether the overall design and performance of the firm's incentive-based compensation arrangements are consistent with section 956 of the Dodd-Frank Act,
- provide that the institution maintain sufficient documentation of the institution's processes for establishing, implementing, modifying and monitoring incentive-based compensation arrangements sufficient to allow the institution's appropriate federal regulator to determine the CFI's compliance with section 956 and the proposed rule. Such documentation must include: the plan, the names and titles of individuals covered by the plan, a record of awards made under the plan, and records of people involved in approval and ongoing monitoring of the plan,
- provide that, where deferral is used, such deferral be in amounts and for a period of time appropriate to the duties and responsibilities of the CFI's covered persons, the risks associated with those duties and responsibilities, and the size and complexity of the CFI, and that deferred amounts be adjusted for actual losses or other measures or aspects of performance realized, and
- subject any incentive-based compensation arrangement to a corporate governance framework that provides for ongoing oversight by the board of directors or a committee of the board of directors.

The proposed rules also prohibit CFIs from evading the restrictions by doing anything indirectly that they would be prohibited under the rules from doing directly.

Covered Financial Institutions and Asset Size

The proposed rules would expand the definition of "covered financial institution" to include: (a) in the case of OCC, a national bank, a Federal branch and agency of a foreign bank, and their subsidiaries that are not functionally regulated; (b) in the case of the Fed, a state member bank, a bank holding company, a state-licensed uninsured branch or agency of a foreign bank, and the U.S. operations of a foreign bank with more than $1 billion of U.S. assets that is treated as a bank holding company (a covered financial institution would include the subsidiaries of the institution); (c) in the case of the FDIC, a state nonmember bank and an uninsured U.S. branch of a foreign bank; (d) in the case of the OTS, a savings association, an operating subsidiary of a federal savings association, and a savings and loan holding company; (e) in the case of NCUA, a credit union; (f) in the case of the SEC, a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 and an investment adviser (regardless of

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whether the firm is registered as an investment advisor under the Act); and (g) in the case of the FHFA, Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance. This definition encompasses more organizations than those specifically identified in the Dodd-Frank Act.

The proposed rules also include guidance, specific to each supervisory agency, on how to calculate total consolidated assets and what constitutes a "larger" CFI. For the FHFA, all Federal Home Loan Banks with total consolidated assets of $1 billion or more are larger CFIs. In the version of the proposed rule approved by the NCUA, all credit unions with total consolidated assets of $10 billion or more are larger CFIs. The SEC-proposed rule, which determines asset size based on "total assets" as reflected on the CFI's balance sheet, specifically requested comments on the proposed manner of calculating "total asset size" for investment advisors.

* * * * *

Comments on the proposed rule will be accepted for 45 days after the proposed rule's publication in the Federal Register. Final versions of the rules will be codified by each Agency in its specified portion of the Code of Federal Regulations, and are intended to supplement existing rules and guidance adopted by the Agencies. Once adopted by the Agencies, Final Rules will become effective six months after publication in the Federal Register, with annual reports due within 90 days of the end of each CFI's fiscal year. Given that section 956 of the Dodd-Frank Act requires the Agencies to adopt regulations or guidance within nine months of the Act's adoption (*i.e.*, by April 21, 2011), we should expect that Final Rules will become effective prior to the end of 2011. ■

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Whither Fannie and Freddie? Reform of the U.S. Secondary Mortgage Market

by David A. Luigs

Two and a half years ago, on September 6, 2008, the Federal Housing Finance Agency ("FHFA"), using new authority provided by the Housing and Economic Recovery Act of 2008 ("HERA"), which had been enacted barely a month earlier, placed Fannie Mae and Freddie Mac into conservatorship.[1] As part of the arrangement, the U.S. Treasury also agreed to provide ongoing financial support to Fannie and Freddie to ensure they would remain active participants in the marketplace. The day after both were placed into conservatorship, the FHFA, acting on behalf of Fannie and Freddie in its role as their conservator, entered into separate Preferred Stock Purchase Agreements ("PSPA") with the Treasury. Under the PSPAs, Treasury provided an initial commitment to acquire up to $100 billion of senior preferred stock as necessary to ensure that Fannie and Freddie would not have a negative net worth.

Under the HERA, the FHFA otherwise was subject to requirements to place either enterprise into receivership – *i.e.*, a liquidation process, as opposed to a conservatorship that can continue to operate an enterprise to preserve its value – if its liabilities exceed its assets.[2] The PSPAs were amended in September 2008 and in May 2009, among other things to double Treasury's funding commitment from $100 billion to $200 billion.

On Christmas Eve, 2009, the PSPAs were again amended to provide that Treasury's funding commitment would be equal to the greater of $200 billion or $200 billion plus the

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cumulative total of deficiency amounts for an enterprise for calendar years 2010, 2011 and 2012. This latter amendment would appear to make clear that the Treasury has provided an unlimited commitment to keep the enterprises solvent through at least 2012.[3] Since the establishment of the conservatorships, Fannie and Freddie have drawn over $150 billion of senior preferred stock pursuant to the PSPAs. Last Fall, the FHFA estimated that the enterprises' total, cumulative draws under the PSPAs through 2013 would be in the range of $221 to $363 billion.

As the FHFA has said, "[b]y providing a capital backstop … the Treasury's commitment under the PSPAs effectively eliminated any mandatory triggering of receivership and ensures that the Enterprises have the ability to fulfill their financial obligations and perform their statutory mission."[4] And fulfill that mission, the two enterprises have. In the aftermath of the financial crisis, the non-agency mortgage and securitizations markets evaporated, resulting in a situation where the federal government arguably is the secondary mortgage market. Fannie, Freddie and the Federal Housing Administration ("FHA"), currently insure, guarantee or finance over 90% of new residential mortgage loans.

At the same time, in the Dodd-Frank Act, the Congress went about rewriting the rules for origination, servicing and securitization in the residential mortgage market, as well as the rules for other financial institutions and markets, but largely left Fannie and Freddie out of the legislation. This course may have been understandable given the crucial role being played by the enterprises in the shrinking housing market, but it also exposed the Congress and the Administration to criticism that they had not resolved the enterprises, while they continued to draw down federal support. Members of Congress introduced bills to end the FHFA conservatorship and to phase out Treasury financial support.

One provision that was part of the Dodd-Frank Act, however, specifically required the Treasury Secretary to conduct a study of and develop recommendations regarding options for ending the conservatorships of Fannie and Freddie, including how to improve the housing finance system, and submit the report to Congress by January 31, 2011. On February 11 of this year, the Treasury and the Housing and Urban Development Department ("HUD") released their report, "Reforming America's Housing Finance Market" ("Report"). The Report concluded that the current role of the federal government in the housing finance system, and that of Fannie and Freddie in particular, should be reduced, the system should rely more on private capital, and the enterprises should be wound down over a responsible timeline.

The Report offered a few specific actions to reduce the role of Fannie and Freddie. First, the Report recommended a number of loss-mitigating measures the enterprises could take that would raise their capital positions and make it easier for other institutions to compete. Specifically, the Report recommended that FHFA require that the two enterprises increase the guarantee fees they charge so that they are priced "as if they were held to the same capital standards as private banks or financial institutions," that they pursue additional credit-loss protection from private insurers and other capital providers, and that they increase the level of required borrower downpayments with an ultimate goal that "any" mortgage they guarantee will have a downpayment of at least ten percent. The timing of these actions is unclear, as the Report notes that the guarantee-fee increases would "depend significantly on market conditions" and should be phased in over "the next several years" and that the move to a 10 percent downpayment requirement across the board should be done "gradually" and arrive "eventually." The Report further recommends no deviations from other pre-existing circumstances that will also reduce Fannie and Freddie's role: the scheduled expiration in October 2011 of the temporary increase in the conforming loan limits and the continued required, annual reductions, required under the PSPAs and FHFA regulations, to shrink the enterprises retained investment portfolios.

In addition to actions regarding Fannie and Freddie, the Report recommends actions to reduce the role of the FHA, from its current roughly 30 percent market share (nearly double or triple its historic role), by decreasing the maximum loan size that can qualify for FHA insurance and by increasing the price of FHA mortgage insurance premiums. Although it calls for "further reform" of the regulatory oversight of the Federal Home Loan Banks ("FHLBs") – including ending an institution's ability to be a member of more than one FHLB, limiting the level of advances by large members, and reducing and altering the composition

of the FHLBs' large investment portfolios – the Report does not otherwise call for specific actions to reduce the future role of the FHLBs.

Regarding the timing of such a responsible wind-down of the enterprises, the Report offers mostly caution. The Report warns against the dangers from a premature constraint on Fannie and Freddie's operations and offers assurance that their losses are virtually all attributable to loans from the bubble years and that new loans over the past two years are subject to stricter underwriting standards and of much higher quality. The Report vows to work to retain talent at the enterprises and to ensure that Americans will continue to be able to take out a mortgage to buy a home or to refinance an existing loan.

Finally, the Report discusses options for the government's future role in the housing finance system. At the outset, the Report dismisses the two extremes of near complete privatization or near complete nationalization of the mortgage, asserting that neither is a viable long-term strategy for the housing market. Instead, the Report concentrates on three options that fall between these two extremes.

Option One would be a very narrow government role, limited to insuring loans involving narrowly targeted groups of borrowers using FHA insurance and similar programs offered by the Agriculture and Veterans Affairs Departments. This option would appear to mean that the vast majority of borrowers would borrow in a market without federal government assistance and the Report all but acknowledges that such borrowers would be faced with significantly higher mortgage costs and likely would not be able to afford the traditional pre-payable, 30-year, fixed-rate mortgage. Moreover, the Report notes that in such a regime it may be difficult for the government to step in effectively to ensure access to capital for housing in the event of crisis. The Report observes that the absence of such a mechanism to provide targeted support to soften a contraction in credit could lead to other government actors stepping in more broadly to save institutions that are necessary to maintain the flow of mortgage credit, and thus exacerbate moral hazard.

Proposals to some extent recognize that Fannie and Freddie, or some form of successor thereof, could play a role in such a new system. The mortgage guarantee companies are envisioned as potentially using the current Fannie and Freddie securitization processes but subject to tighter, presumably government-prescribed, underwriting standards.

Option Two solves principally for this concern about the ability of the government to intervene in a crisis, by adding a "minimal" government guarantee mechanism that could be scaled up in a crisis. The Report suggests that such government guarantee could be kept small in normal times by pricing the insurance so high that it would only be attractive in the absence of private capital or by simply directly limiting the amount of such insurance provided. The Report acknowledges that there could be significant "operational challenges" in designing and managing an organization that can remain small most of the time but with the capacity to take on much more business quickly when needed. Moreover, the Report again notes that here, as with Option One, there would be the same concern about the rest of the market, presumably the vast majority of borrowers' ability to obtain affordable mortgage credit and the traditional pre-payable, 30-year, fixed-rate mortgage.

Finally, Option Three offers up a broader government role to provide greater liquidity to the mortgage market even in normal times, and thereby provide the most support for access to mortgage credit more broadly. Here, the Report envisions two apparently new types of institutions – one private, one public. First, a group of "private mortgage guarantee companies," subject to stringent capital and oversight requirements, would provide a guarantee for securities backed by mortgages that meet strict underwriting standards. Presumably, these institutions would look something like banks or (likely much smaller) versions of Fannie and Freddie – government regulated but privately owned and limited to a certain finance functions. Second, as to the public institution, the government would provide "catastrophic reinsurance" to the holders of these securities,

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in return for a premium, with such reinsurance provided only after the private guarantee companies' shareholders had been entirely wiped out. Such a government reinsurer would presumably look something like the Federal Deposit Insurance Corporation ("FDIC"), but would be insuring the guarantees provided to mortgage-backed security holders by the guarantee companies, rather than deposit liabilities of banks.

The Report discusses the advantages and disadvantages of each of these options without advocating for any one, and instead calls for a dialogue with Congress over which course to follow. A somewhat broad coalition within the mortgage industry and policy circles, however, appears to have coalesced around Option Three. A variety of observers — including Moody's, the Housing Policy Council of the Financial Services Roundtable, the Mortgage Bankers Association, and the Center for American Progress — have all advocated for a system along the lines of the Report's Option Three. Similarly, two Federal Reserve economists, Diana Hancock and Wayne Passmore, have authored a paper that discusses how catastrophic reinsurance like that discussed in Option Three could prevent "runs" by providers of capital to the mortgage market analogous to how the FDIC prevents a run by depositors on the banking system.

These proposals to some extent recognize that Fannie and Freddie, or some form of successor thereof, could play a role in such a new system. The mortgage guarantee companies are envisioned as potentially using the current Fannie and Freddie securitization processes but subject to tighter, presumably government-prescribed, underwriting standards. Hancock and Passmore note that an FDIC-like insurer would benefit from the accumulated information on mortgage default, the credit risk modeling expertise, the securitization know-how, and the infrastructure that is embodied in the Fannie and Freddie organizations.

The advantages of such a system are said to be that it would provide a version of the liquidity and access to affordable mortgage credit that has been provided by the current and prior system, but at a reduced level and with lower risk to taxpayers and financial stability. First loss would be taken by the private owners of the mortgage guarantee companies, and the government reinsurance would kick in only thereafter. The provision of explicit, defined government reinsurance is argued to mitigate the risk of moral hazard from potentially broader, implicit guarantees.

Nevertheless, the Report itself does not advocate for Option Three and instead it invites a dialogue with the Congress over all three options, and the future of Fannie, Freddie and the U.S. housing finance system. Even if reforms such as Option Three enjoy the backing of an industry and policy coalition, it remains to be seen if they will gain traction in the legislative process. Many members of Congress are said to be opposed to anything less than a full privatization of Fannie and Freddie and any substantial government role in the housing finance system. If so, it is possible that no substantial changes may occur before 2012. To the extent that other sources of private capital were to begin to return to the residential mortgage market, the Report suggests that we would begin to see measured reductions in the market share of Fannie, Freddie, and the FHA, perhaps precipitated by higher guarantee fees or the other actions cited in the Report and discussed above. At the same time, however, under the Dodd-Frank Act, there will need to be a significant re-writing of the rules governing residential mortgage origination, servicing, and securitization practices. Other sources of capital may be reluctant to return to this sector in a significant way until those new standards are in place and their implications well understood.

Thus, the Report, and the other studies and voices in the discussion over reform of Fannie and Freddie, indicate that there may be an emerging consensus around what a new system could look like and a role that a potentially transformed Fannie and Freddie might serve in that system. Other circumstances, though, may suggest that it could be some time before any such reforms take place. ■

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1. According to the FHFA, the boards of directors of Fannie and Freddie consented to the conservatorships. Section 1145(a) of HERA, codified at 12 U.S.C. 1367(a)(3)(I), provides that the boards of directors of Fannie and Freddie may consent to being placed into conservatorship or receivership.
2. Id., codified at 12 U.S.C. 1367(a)(4).
3. Treasury has described the December 2009 amendment as allowing the cap on Treasury's funding commitment to increase as necessary to accommodate any cumulative reduction in net worth over the three years from 2009 to 2012 and as becoming fixed at the end of the three years.
4. 75 Fed. Reg. 81407 (Dec. 28, 2010).

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years,[2] evidencing that many more CoCo issuances likely will occur over a short to medium-term horizon as banks seek to replace non-qualifying instruments, if the market can absorb them.

This article seeks to assist banks to evaluate these capital raising options.[3] First, as background, the article summarizes the Basel III capital requirements. The article then discusses both the low trigger and high trigger CoCo instruments (as evidenced by Credit Suisse) in greater detail, with the goal of providing clarity as to which options are mandated, and available, to varying institutions, and the overall likely market for such instruments.

I. Background--The Basel III Capital Requirements and Their Anticipated Impact

Basel III seeks to simplify and harmonize the capital standards (and eliminate subtiers of capital) across jurisdictions by establishing separate capital requirements for (a) common equity Tier 1 ("Common Equity Tier 1") capital (a new regulatory metric of capital), (b) total Tier 1 capital, consisting of the sum of Common Equity Tier 1 and additional Tier 1 ("Additional Tier 1") capital, and (c) total capital ("Total Capital"), consisting of the sum of Common Equity Tier 1, Additional Tier 1 and Tier 2 capital. Basel III will require banking institutions to maintain: (i) a minimum Common Equity Tier 1 capital ratio of 4.5%, (ii) a minimum Tier 1 capital ratio of 6%, and (iii) a minimum Total Capital ratio of 8%. The capital conservation buffer ultimately will effectively increase each of those standards by 2.5%, and Basel III provides regulators discretion to raise the capital requirements still further through a countercyclical buffer. All these capital requirements will phase in at various points during the decade after Basel III first becomes effective in January 2013, and their burden will be further exacerbated by a material limitation on the inclusion of minority interests, mortgage servicing rights, tax deferred instruments, and other items in Common Equity Tier 1 and the increased risk capital charges (not to mention the leverage and liquidity ratios).

For the largest international banks, so-called global systemically important financial institutions or "G-SIFIs," the Basel Committee is anticipated to impose even higher capital demands. The Financial Stability Board (another supranational government body) is anticipated to recommend the initial G-SIFIs by mid-2011, with the FSB and the Basel Committee then anticipated to publish their "enhanced" capital requirements prior to the G-20 Leaders meeting in early November. Some early reports have suggested that the minimum Tier 1 capital ratio (before the capital conservation and countercyclical buffers) of the G-SIFIs could be at least 10%.[4] And, of course, individual countries are able to demand higher capital from banks subject to their jurisdiction. Switzerland, for example, proposed a 19% total capital "Swiss Finish" in December that is expected to be finalized in Fall 2011.

As to the nature of the capital instruments themselves, to constitute Additional Tier 1 capital, Basel III provides that an instrument must, among other things, (i) be subordinated to depositors, general creditors and subordinated debt of the bank, (ii) not be secured or guaranteed by the issuer or any related entity, (iii) be perpetual, without any maturity date or any incentive to redeem (such as step-ups), (iv) be callable only after 5 years, and only then with prior regulatory approval, and (v) provide the issuer with the ability to cancel distributions at any time, with no restrictions imposed on the bank. Thus, Basel III more expressly provides that current Tier 1-eligible capital instruments with step-ups, dividend pushers or similar "innovative" or "exotic" traits will be phased out pursuant to the timing discussed below. This phase-out is expected to disqualify, for example, U.S. trust preferred securities from Tier 1 capital, as well as many types of European hybrid capital. Stated differently, non-cumulative perpetual preferred is the only type of existing widely distributed security clearly able to qualify as Additional Tier 1 Capital.

Tier 2 capital is also tightened under Basel III by establishing a single set of criteria to qualify, including that the instrument (i) be subordinated to depositors and general creditors of the bank, (ii) not be secured or covered by a guaranty of the issuer or a related party, (iii) have an original maturity of at least five years, with no incentive to redeem (including step-ups), (iv) provide the investor no right to accelerate the payment, except in bankruptcy or liquidation, and (v) not have a credit-sensitive dividend feature. Loan-loss reserves held

Credit Suisse High-Trigger Contingent Convertible Notes – February 2011

Security	• USD 2 billion of 7.875% Tier 2 Buffer Capital Notes due 2041 (BCNs)
Issuer	• A newly formed Guernsey limited company, wholly owned by Credit Suisse Group AG (CSG)
Guarantee	• Irrevocable subordinated guarantee of CSG
Issue Price	• 100.0%
Interest Rate	• Fixed to variable. 7.875% until August 2016, then reset every 5 years at fixed spread above a benchmark index
Conversion	• Viability Event: Upon delivery of notice of a Contingency Event, BCNs mandatorily convert to CSG ordinary shares at the prevailing market price over a 30-day period preceding the notice of conversion, subject to a minimum price of USD 20 per share • Contingency Event: As for Viability Event, but in this case the ordinary shares may, at CSG's election, be offered for sale to existing shareholders and cash in the amount of the conversion price delivered to holders of BCNs
Viability Event	• FINMA, the Swiss financial regulator, determines that conversion of the BCNs is necessary to prevent CSG from becoming insolvent, bankrupt, unable to pay a material amount of its debts or unable to carry on its business • CSG receives a commitment of extraordinary support from the Public Sector to prevent CSG from becoming insolvent, bankrupt, unable to pay a material amount of its debts or unable to carry on its business
Contingency Event	• CSG has given notice that its Core Tier 1 Ratio/ Common Equity Tier 1 Ratio is below 7 per cent. at the date of the financial statements contained in a Quarterly Financial Report and that a Contingency Event Conversion will take place.
Redemption	• Issuer Call: After 5 years, at CSG's option in whole or in part at par plus accrued interest • Tax Event Call: If the making of any payment under the BCNs would require the payment of additional amounts for tax purposes, CSG can redeem the BCNs in whole but not in part at par. • Non-Qualifying Capital Call: If the BCNs are not eligible in their entirety to be treated as "buffer capital" under Swiss law and as Tier 2 Capital under Basel rules, CSG can redeem the BCNs in whole but not in part at 102%. • Takeover Call: If any person or persons acquire more than 95% of CSG ordinary shares, CSG can redeem the BCNs in whole but not in part at 104%.
Substitution or Modification	• If circumstances triggering a Tax Event Call or a Non-Qualifying Capital Call occur, CSG can substitute all (but not some) of the BCNs or vary the terms of all (but not some) of the BCNs
Listing	• EuroMTF Market of the Luxembourg Stock Exchange
Rating	• BBB+ by Fitch
Offering; Settlement; Governing Law	• Regulation S only; Euroclear/Clearstream; English law

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against future unidentified losses qualify as Tier 2 capital, but only to a maximum of 1.25% of credit risk-weighted assets.

As to timing, after January 1, 2013, all capital instruments must meet the foregoing standards to qualify as Additional Tier 1 or Tier 2 capital. Instruments issued prior to September 12, 2010 that previously qualified for regulatory capital, but that do not meet the Basel III standards, will be phased out beginning in 2013. The phase-out will result in the recognition of non-qualifying instruments being capped at 90% of their nominal amount outstanding on January 1, 2013, with the cap reducing by 10% on January 1 of each subsequent year. For U.S. banks the Collins Amendment will disqualify at least certain instruments, such as trust preferred securities, on a three-year timeline rather than the 10-year phase-out provided by the Basel Committee.

As to the impact of the foregoing, a Basel Committee Quantitative Impact Study ("QIS") assessed year-end 2009 data gathered from a total of 263 banks from 23 jurisdictions, including 94 "Group 1 banks" (well-diversified, internationally active banks with more than €3 billion Tier 1 Capital), assuming full implementation of Basel III and without accounting for transitional periods. The QIS states that Group 1 banks, on average, will have a 23% increase in risk-weighted assets, with the largest component of the change resulting from increases for CCR exposures. Due largely to new mandatory deductions, Basel III also reduces Group 1 banks' common equity Tier 1 capital by an average of 41.3%. As a result, the 87 banks involved were expected to have, in aggregate, a €165 billion shortfall to satisfy the base 4.5% required Common Equity Tier 1 ratio, and a €577 billion shortfall to satisfy the 7% Common Equity Tier 1 ratio plus capital conservation buffer.

These capital requirements and instrument limitations highlight the new capital raising environment for banks over the coming years. The debt-like hybrid instruments that historically enabled banks to respond to capital demands on a relatively cheap basis largely will no longer be available. In addition to capital retention and asset disposition, common stock issuances are always an option, and likely most favored by regulators. Still, in all but the most extreme cases common equity will be the most expensive form of capital raising for an institution. The desire, particularly by the largest banks, to raise capital with non-common instruments is what is expected to drive the supply of CoCo instruments. The next Section II discusses the two major categories of these instruments expected to develop, and the market for them.

II. Categories of CoCos and Their Markets

The role of CoCos in this capital regime is still developing, both at the Basel Committee and local jurisdiction levels. As described in Section II.1 below, at least for "internationally active" banks, all of their Additional Tier 1 (*i.e.*, non-common) and Tier 2 capital must have NVCC provisions. However, as described in Section II.2 below, the issue gaining more focus in light of the recent Credit Suisse offering is the potential for CoCos that convert from debt-like instruments to equity based on triggering events other than non-viability ("CoCo bonds") to count towards a bank's capital requirements, either to meet the minimum ratios set forth in Section I above or to meet requirements above those levels that the Basel Committee may impose upon G-SIFIs or that an individual country (*e.g.*, Switzerland) may establish for the banks under its jurisdiction.

Notably, at least for internationally active banks, the low and high triggers are not mutually exclusive. A bank non-common instrument must include the NVCC requirements to count as Additional Tier 1 or Tier 2 capital, whether or not the instrument also includes the higher numerical capital trigger likely to be associated with a CoCo bond. Moreover, even if a bank is not internationally active and its regulator does not require it to include the NVCC requirements in its capital instruments, it appears likely that some components of the NVCC framework also will be required for CoCo bonds.

1. NVCC Provision Instruments

As to the NVCC provision instruments, the January Release will require (unless the laws of the bank's governing jurisdiction already impose similar requirements) all non-common instruments issued by "internationally active" banks to have a provision that requires such instruments, at the option of

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the relevant authority, either be written off or convert to common equity upon the trigger event for the instrument to be considered Additional Tier 1 or Tier 2 capital.

To emphasize the point, for affected banks these NVCC provision requirements are in addition to the base requirements for Additional Tier 1 and Tier 2 requirements discussed in Section I above. These NVCC provisions are designed to ensure that equity and debt holders of such a bank, rather than taxpayers, suffer if the bank comes under significant stress. Instruments of affected banks must meet these standards after January 1, 2013 to count as Additional Tier 1 or Tier 2 capital; instruments issued before January 1, 2013 that do not meet these tests will be considered non-qualifying capital instruments for these instruments and thus be subject to the same ten-year phase-out as is described in Section I above.

The most recent Basel Committee directive on NVCC provision has been its January Release. However, the Canadian Office of the Superintendent of Financial Institutions ("OSFI") published more detailed guidance in February 2011[5] to implement the NVCC mandates for banks under its jurisdiction that may provide insight as to how many jurisdictions may implement its directives. OSFI applies these requirements to all deposit-taking institutions organized in Canada ("DTIs"), not merely those that are internationally active (although as a practical matter the largest five DTIs constitute the vast majority of Canada's banking market). The OSFI guidance establishes as NVCC trigger events: (1) a written determination by the regulator that in its opinion the DTI has ceased, or is about to cease to be, viable, and after conversion of the capital instruments it is reasonably likely that the viability of the DTI will be restored; and (2) a government entity publicly announces that a DTI has accepted or agreed to accept government financial support, without which the DTI would have been determined to be nonviable.

The OSFI guidance also further discusses and expands upon the Basel Committee guidance by requiring, among other things: (1) that the conversion of the NVCC instrument result in significant dilution of existing common shareholders; (2) that the DTI issuing these instruments ensures that there are no corporate impediments to their automatic and immediate conversion, including by ensuring sufficient common shares are authorized at all times to permit such a conversion; (3) that the conversion not constitute an event of default under the instrument, and that the DTI take all reasonable steps to ensure such a conversion does not constitute an event of default under any other agreement; and (4) that the DTI seek to redeem existing non-qualifying capital instruments in a manner that minimizes the amount of capital instruments that would be redeemed pursuant to clauses permitting such redemption upon a "regulatory event." The guidance also lists criteria that OSFI may consider when evaluating whether to make a determination that a DTI is non-viable.

2. "High Trigger" CoCo Bonds

On February 14, 2011, Credit Suisse agreed to place U.S. $6.2 billion of non-common Tier 1 CoCo bonds with two large existing shareholders, namely Qatar Holding LLC and the Olayan Group, to be paid no earlier than October 2013. This was done as part of an exchange of outstanding Tier 1 "hybrid" capital instruments issued in 2008. The offering is notable because the instruments, which pay a coupon at 9.5% (U.S.), will include "dual conversion triggers": (i) a capital ratio-based trigger point; and (ii) a supervisory-based trigger in line with Basel III's loss absorbency requirement. In particular, the Credit Suisse bonds would convert to common equity if either: (i) Credit Suisse's ratio of Tier 1 common equity to risk-weighted assets were to fall below 7% (the capital ratio-based trigger event); or (ii) the Swiss banking authority ("FINMA") were to determine that Credit Suisse needed public sector support to prevent it from becoming insolvent, bankrupt or unable to pay a material amount of its debts, or other similar circumstances (the supervisory trigger).

A few days later on February 17, 2011, Credit Suisse launched a successful U.S. $2 billion public sale of 7.875% Tier 2 Buffer Capital Notes (*i.e.*, CoCo bonds) outside of the United States. The transaction generated demand of U.S. $22 billion, with orders coming in from 500 separate accounts. The bonds also contain a "dual conversion trigger" like those in the exchange transaction on February 14, 2011. Features that appear to have

enhanced the valuation predictability and marketability of the bonds include: (i) the pre-defined trigger based on a "high" minimum capital ratio (rather than solely a Basel III loss absorbency trigger which is inherently subjective in nature); (ii) the fact that the bonds will mandatorily convert into common stock upon a trigger event (as discussed, under the Basel III loss absorbency requirement either a write-off or conversion into common stock is acceptable); and (iii) the fact that a formula for conversion was established at issuance (rather than, *e.g.*, leaving it to supervisory discretion upon the occurrence of a trigger event).

As the recent Credit Suisse offering demonstrates, CoCo bonds ultimately may be of greatest interest to certain banks and their investors in the future. The ultimate demand for these high trigger CoCos, however, depends upon their acceptance by both the regulators and the marketplace.

As to regulatory acceptance, perhaps even to a greater extent than with the Basel III ratios themselves, the rules regarding CoCo bonds are still very much a work in progress at both the international and local levels. Obviously, the more permissive the regulators are with respect to where CoCo bonds can fall within a bank's capital structure, the more enticing they will prove to banks. At the international level, the Basel Committee is anticipated to publish additional guidance on CoCos in the middle of 2011, which is anticipated to inform and expedite the actions by many countries with respect to these instruments. On February 24, Basel Committee Secretary General Stefan Walter stated that the Basel Committee was evaluating the "pros and cons" of allowing CoCo bonds that convert into equity to constitute core capital.[6] In an interview shortly ahead of the March 8-9 meeting of the Basel Committee, however, Walter stated that the use of CoCos is "not being considered for the minimum Requirement," or for an extra capital buffer agreed by the Basel group that would apply during credit booms. He went on to say that "it's really for the additional loss absorbency of SIFIs." Whether or not the Basel Committee ultimately allows CoCo bonds to constitute Additional Tier 1 capital, the Basel Committee may allow an institution to use CoCo bonds to satisfy some of the enhanced Basel III requirements that will be imposed on SIFIs, and perhaps to satisfy supplemental Basel III capital ratios, such as the capital conservation buffer and the countercyclical buffer.

At the local level, as evidenced by Credit Suisse's offering, Switzerland has been the most aggressive in promoting these instruments. In 2010, Switzerland published proposed rules supporting a 19% total capital ratio on large Swiss banks (much higher than required by Basel III), and allowing its banks to use CoCos to meet a material portion of those requirements. The report provides that 10% of risk-weighted assets must be held in the form of common equity (capital of the highest quality in the form of paid-in capital, disclosed reserves and retained earnings following deduction of regulatory adjustments, *e.g.*, goodwill and deferred tax assets). For the remaining 9% of risk-weighted assets required to meet the overall 19% total capital ratio requirement, the report stated that this could be met by the two large banks (*i.e.*, UBS and Credit Suisse) issuing CoCos. These proposals are expected to be finalized this fall.

Outside of Switzerland, national regulators largely appear to be waiting for the Basel Committee guidance as part of their discussion as to what role, if any, CoCo bonds should play in the capital structure of their banking institutions. In the U.S., Dodd-Frank directs the Financial Stability Oversight Council to publish a report on CoCos by mid-2012, but given the mid-December 2011 Basel Committee timeline, many expect the U.S. regulators to offer at least informal guidance before that (perhaps in conjunction with their anticipated summer proposal to implement Basel III). Moreover, Section 165(c) of Dodd-Frank authorizes the Federal Reserve to require banks above $50 billion of assets to maintain a minimum level of CoCos. However, the level of uncertainty about the role of these instruments is evidenced by a U.S. regulator who is reported to have stated "This [debate regarding the role of CoCos] gets to a fundamental point–what are we trying to accomplish and how does contingent capital get us there? Does it accomplish anything that common equity doesn't."[7]

In Europe, at least the published focus has similarly been on SIFIs using CoCo bonds to satisfy their enhanced requirements. For example, Bank of England Deputy

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Governor Paul Tucker has stated that CoCo bonds with a high trigger, such as an institution falling below a Tier 1 capital ratio of 10%, could be used in connection with the enhanced capital requirements of SIFIs.[8]

Similarly, many of the Asia-Pacific countries, including Australia, Japan, and Singapore, have been generally supportive of Basel III, and are reported to be seeking Basel Committee guidance to begin to evaluate the use of these instruments and, as appropriate, develop their own CoCo bond requirements for larger banks.[9] Particularly to the extent that national capital requirements exceed Basel III capital requirements, CoCo bonds, such as those issued by Credit Suisse, may be permitted in the capital structure. For example, the China Banking Regulatory Commission ("CBRC") recently drafted tough new capital requirement rules for banks which aim to implement the Basel III guidelines on capital and liquidity. Under "normal conditions," systemically important financial institutions would have to maintain a minimum capital-adequacy ratio of 11.5%. The ratio could rise to 14%, with a counter-cyclical additional requirement up to 2.5% if CBRC sees abnormally strong credit growth.

In contrast, regulators in jurisdictions with more conservative capital requirements and whose banks are already relatively well capitalized may take a wait-and-see approach to CoCo bonds. One example is Brazil. While the Central Bank addressed NVCC requirements for Additional Tier 1 and Tier 2 capital instruments in a February 2011 release setting out its overall approach and timeline for implementation of Basel III, there was no mention of high-trigger CoCo bonds. As existing capital rules in Brazil require banks to maintain capital ratios significantly higher than those applicable to their U.S. and European peers, at least during the first years of implementation of Basel III, the capital needs of Brazilian banks are likely to be modest compared to other international banks.

3. Market Acceptance Beyond the regulatory uncertainty surrounding CoCo instruments, there also has been significant skepticism as to whether a sufficiently robust market exists for these instruments. As stated above, S&P has estimated the supply of these instruments to be approximately U.S. $1 trillion over the next ten years, with banks needing to replace the phasing out of non-conforming capital instruments and wishing to show that they satisfy the higher capital requirements as soon as possible. The possible conversion to equity of these instruments may dissuade real money investors due to the impact this possibility is likely to have on credit ratings, and the potential incompatibility of such a possibility with investors having fixed-income mandates.

Moreover, for heavily regulated institutions, such as insurance companies, the capital impact of holding convertible instruments can be significantly higher than traditional bank trust preferred and other debt-like instruments. For example, the European Insurance and Occupational Pensions Authority ("EIOPA") is currently in the process of formulating ratios and requirements for the use of CoCos to satisfy the EU's Solvency II Directive's capital requirements. EIOPA's Quantitative Impact Study 5 ("QIS5") is expected to be published in April 2011. The previous Quantitative Impact Study ("QIS4") collected data on the use of contingent capital by (re)insurers but did not provide a definitive formula in respect of the level of contingent capital that would be allowed under any given tier of capital of Solvency II. This has been left to QIS5. The Solvency II Directive, which introduces a risk-based approach to capital for EU-based (re)insurers, is due to come into force in 2013.

It is also interesting to note that the investment banking arm of Barclays Bank PLC, namely Barclays Capital, has indicated that it is leaning towards issuing, and paying its global employees, CoCo instruments as part of their 2010 deferred compensation. The biggest hurdle, however, appears to be the lack of regulatory guidelines on the treatment of contingent capital.

Thus, between the two categories of CoCo instruments, while investors may consider Credit Suisse a strong enough institution to warrant the risks associated with a "high trigger" instrument at a reasonable price, it remains to be seen whether the vast majority of banking institutions will achieve similar results. For many, only the NVCC provision instruments may be deemed to have a sufficiently remote possibility of conversion for acceptance, and the pricing of any such instruments nonetheless may be

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exceedingly high. More generally, the possibility of conversion may shift the shareholder base of NVCC provision instrument issuers from the traditional long-term holders to short-term holders, such as hedge funds and private equity firms, which are likely to demand a higher return on their investments. In sum, the possible impact of this convertibility feature on many banking institutions is described as follows in the February 2011 issue of *Global Perspective* by Standard Life Investments:

"The most important issue for bond investors is that when banks fail [or are under stress], future losses will be spread across the capital structure. As regulation develops, we think that it is likely to mean that spreads on bank bonds trade at wider levels relative to historic and that volatility in spreads is persistent. Given the changed nature of bank capital, one question this raises for both the banks and regulators is: who will hold these new bonds."

Conclusion

CoCo instruments have emerged as a significant possible new "hybrid" instrument as national and international banking regulators continue to seek to ensure that investors in banks, rather than taxpayers, suffer upon the distress of a financial institution. Low trigger CoCos will be mandatory for some institutions, while others will likely seek to fill components of their capital structure with high trigger CoCos. The Basel Committee and national regulators may determine to what extent banks want to issue CoCos, but the market will determine their ultimate utility. Credit Suisse has indicated that, at least for the strongest banking institutions, a market exists for CoCo bonds, and indeed Credit Suisse may serve as a reference for similar offerings to come.

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1. www.standardlifeinvestments.com ("Global Perspective", Feb. 2011) ("SLI Article").
2. http://www.standardandpoors.com (December 2010 Commentary Report, "Potential $1 trillion bank contingent capital style issuance faces investor interest").
3. Rabobank issued a CoCo instrument in March 2010. However, Rabobank is an exceptionally highly rated institution, and, as a mutual, its CoCo instrument provided for a write-down of the principal of the instrument rather than its conversion to common stock. Lloyds also completed a form of CoCo offering in 2009, however its issuance was largely in exchange for an already existing instrument on which regulators precluded it from paying dividends. As a result, this article focuses on the Credit Suisse offering, as it is likely to be the most relevant reference for offerings of this type by other banks. Of course, other approaches to improve capital ratio also are available, including disposition of assets, issuances of common equity, and, in some circumstances, issuances of so-called "covered bonds." The "Garrett Amendment" was recently introduced in the U. S. Congress to permit U.S. banks to issue covered bonds. The Treasury and others are reportedly in favor of such bonds, while the FDIC has expressed concern about their preferred treatment in a receivership.
4. SLI Article.
5. http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/guidelines/capital/advisories/nqcibIII_e.pdf (Feb. 2011).
6. http://www.reuters.com/article/2011/02/25/banks-basel-idUSLDE71O1KP20110225, "Basel to Update Midyear on CoCo Usage," (Feb. 25, 2011).
7. http://www.bankinvestmentconsultant.com/news/basel-iii-2671304-1.html, "hink the Basel III Rules Are All Sewn Up? Think Again," Am. Banker (Feb. 3, 2011).
8. http://uk.reuters.com/article/2011/02/18/uk-boe-regulation-idUKTRE71H70F20110218 "BOE's Tucker - Strict Rules Needed for Coco Bonds," STV (Feb. 18, 2011).
9. http://in.reuters.com/article/2011/02/25/asia-cocos-idINL3E7DP0VT20110225, "IFR-Asian Banks eye Coco Bond Issuance," Reuters (Feb. 25, 2011).

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