

US

Morrison & Foerster

A capital question

Just around the end-of-year holiday, the Federal Reserve Board proposed several rules related to capital requirements for US banks.

The much anticipated proposed rulemakings, which were required by Sections 165 and 166 of the Dodd-Frank Act, only addressed a portion of the regulatory capital questions. The proposed regulations affect bank holding companies with consolidated assets of \$50 billion or more and those nonbank financial institutions deemed to be systemically important.

Many market participants expected that the notice of proposed rulemaking would address aspects of the Collins amendment (Section 171, DFA) regarding the types of financial instruments that would be eligible for inclusion within Tier 1 capital. However, the proposed regulation did not address Section 171 and also did not address the implementation of the Basel III framework in the US.

The proposed regulation specifically addresses: risk-based capital requirements and leverage limits for certain covered companies, liquidity requirements, single-counterparty credit limits, risk management, stress tests, the debt-to-equity ceiling, and early remediation. The requirements build on existing supervisory guidance for large and complex banking organisations, although a few of the requirements are new or require revisions to existing compliance programs.

The new requirements cover capital planning by nonbank covered companies, expanded duties for directors and management in overseeing liquidity policy; a quantitative liquidity buffer based on the Basel III liquidity coverage ratio, the treatment of credit enhancements in connection with limits on single-counterparty credit exposures; double stress-testing of capital adequacy; and an “early remediation framework.” The proposed regulation does not address foreign banks.

All in all, the most important questions regarding regulatory capital await answers.

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