FRB RAISES TO $1 BILLION THE SIZE OF BANK HOLDING COMPANIES EXEMPTED FROM CAPITAL REQUIREMENTS AND EXTENDS RELIEF TO THRIFT HOLDING COMPANIES

APRIL 2015

On April 9, 2015, the Board of Governors of the Federal Reserve System (the "FRB") announced that it is amending rules related to regulatory capital requirements for bank holding companies and thrift holding companies. For bank holding companies the rule amendments raise the asset size at which a bank holding company must meet regulatory capital requirements from $500 million to $1 billion. The amendments also exempt thrift holding companies from regulatory capital requirements if they have less than $1 billion in assets. The FRB also adopted changes that enable qualifying small bank holding companies and savings and loan holding companies to take advantage of the streamlined informational notice and other regulatory requirements. The changes will be effective 30 days after publication in the *Federal Register*. Subsidiary depository institutions continue to be subject to minimum capital requirements.

The increased threshold will ease the regulatory and reporting burdens on an increased number of holding companies and should facilitate mergers and acquisitions between companies that fall under the threshold on a *pro forma* basis.

QUALITATIVE REQUIREMENTS CONTINUE TO APPLY

As previously, a small bank holding company is exempted from regulatory capital requirements only if it (i) is not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) does not conduct significant off-balance sheet activities (including but not limited to securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) does not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The FRB issued the Policy Statement in 1980 because the FRB recognized that small bank holding companies have less access to equity financing than larger bank holding companies and that the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the FRB adopted the Policy Statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The first version of the Policy Statement set the asset threshold at $150 million, and the FRB increased it to $500 million in 2006. In December 2014, Congress mandated that the threshold be increased to $1 billion.

POLICY STATEMENT EXTENDED TO THRIFTS

Congress also mandated that the Policy Statement apply to thrift holding companies. Because, for purposes of the Policy Statement, operation as a savings and loan was "nonbanking activity," the Policy Statement was not available to thrift holding companies. The amendments to the Policy Statement and FRB interpretation will now extend the provisions of the Policy Statement to thrift holding companies.

OTHER POLICY STATEMENT PROVISIONS REMAIN IN EFFECT

For both bank holding companies and thrift holding companies, the FRB may still determine that the Policy Statement will not apply "if such action is warranted for supervisory purposes."

The Policy Statement continues to set forth standards for capital structure in the context of an acquisition. For example, the amount of acquisition debt should not exceed 75% of the acquisition price.

ADDITIONAL INFORMATION

Our Financial Services attorneys will be pleased to meet with you to discuss the impact of the amendments. Please contact your attorney at Tucker Ellis or any of the following attorneys.

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