

From: Steve Eisen  
Subject: Regulation Y - Capital Adequacy Guidelines

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Comments:

RE: 12 CFR Part 225 [Regulation Y; Docket No. R-1356] - Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

The Board's interim final rule permits bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any new subordinated debt securities issued to the Treasury (emphasis added) under the Treasury's capital purchase program (CPP) (Subordinated Securities) in tier 1 capital for purposes of the Board's riskbased and leverage capital guidelines for bank holding companies, provided that the Subordinated Securities will count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital; and allows bank holding companies that are subject to the Board's Small Bank Holding Company Policy Statement and that are S-Corps or Mutual BHCs to exclude the Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Small Bank Holding Company Policy Statement.

My comment is that this rule, as well as the one allowing preferred securities issued under the CPP to non S-Corp BHCs, be modified to allow the same capital treatment to be afforded to private equity and debt issued under the same or similar terms (some of the terms might have to be modified for these so-called "private TARP" transactions as may be appropriate). My reasons are as follows:

1. The main purpose of Congress seems to be to encourage private funds to invest again in the banking system, and what a better way than to allow these securities to receive favorable capital treatment whether they are from public or private sources.
2. If the public wants a return of their taxpayer monies more quickly, or maybe not even invested in the first place, the public should be supportive of a simple solution such as allowing "private TARP" to count as capital.
3. The terms established for the Subordinated Securities and preferred stock used in the CPP were based on the long time use by bank holding companies of trust preferred securities, which also count as tier 1 capital and not debt. Applying this precedent to "private TARP" would make it easier and less costly for these bank holding companies to issue these securities.

Steven J. Eisen, Esq., who represents 100+ community banking organizations  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
211 Commerce Street, Suite 1000  
Nashville, TN 37201  
Phone: (615) 726-5718  
Fax: (615) 744-5718  
E-Mail: [sjeisen@bakerdonelson.com](mailto:sjeisen@bakerdonelson.com)  
Web: [www.bakerdonelson.com](http://www.bakerdonelson.com)

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