

Key Considerations Relating to Issuances of Contingent Convertible Instruments in or into the United States

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As a result of the various capital reforms arising out of the recent financial crisis, there has been increasing interest by non-US banks to issue contingent convertible instruments ("CoCos"). Some commentators have estimated that the market for CoCos could range between Euro 500 billion and Euro 1 trillion, although the decision of the Basel Committee on Banking Supervision to require ordinary share capital to meet the proposed capital surcharge of 1 to 2.5 percentage points for the 30 largest banks may reduce their use. As capital reform measures applicable to non-US banks stabilize, we expect that interest in accessing US capital markets with CoCos will increase considering the potential size of the market. Alternatively, it is expected that hybrid capital will continue to be issued which will include certain features similar to CoCos (e.g., exchange/conversion triggers), although such hybrid securities may not fully comply with the Loss Absorbency Requirements. This memorandum discusses certain key considerations under the US Securities Act of 1933, as amended for issuances of CoCos eligible to satisfy regulatory capital requirements under the Basel III package of capital and liquidity reforms by non-US banks in the United States. These considerations would also generally apply to hybrids incorporating the exchange/conversion features of CoCos.

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