

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

July 28, 2011 | Client Update

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.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

John Banes

+1 212 450 4116
john.banes@davispolk.com

William F. Barron

+1 212 450 4182
william.barron@davispolk.com

Luigi L. De Ghenghi

+1 212 450 4296
luigi.deghenghi@davispolk.com

Andres V. Gil

+34 91 768 9625
andres.gil@davispolk.com

Nicholas A. Kronfeld

+1 212 450 4950
nicholas.kronfeld@davispolk.com

Paul Etienne Kumleben

+44 20 7418 1360
paul.kumleben@davispolk.com

Jeffrey M. Lewis-Oakes

+1 212 450 4659
jeffrey.oakes@davispolk.com

James C. Lin

+852 2533 3368
james.lin@davispolk.com

Connie I. Milonakis

+44 20 7418 1327
connie.milonakis@davispolk.com

Theodore A. Paradise

Margaret E. Tahyar

+1 212 450 4379
margaret.tahyar@davispolk.com

Shane Tintle

+1 212 450 4526
shane.tintle@davispolk.com

Michael J. Willisich

+34 91 768 9610
michael.willisich@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[072811_basel%20coccos%20memo%20external.pdf](#)