

• Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

• Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?

• Would more, but shorter, sections be better? If so, which sections should be changed?

• What else could we do to make the regulation easier to understand?

#### List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

#### Board of Governors of the Federal Reserve System

#### 12 CFR Chapter II

#### Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

#### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 2. Appendix A to part 225 is amended as set forth below:

■ a. In section II.A.1.a.iv., remove “and” from the end of paragraph (3), remove the period from the end of paragraph (4), add a semicolon and “and” to the end of subparagraph (4), and add a new paragraph (5) to read as follows; and

■ b. In section II.A.1.b.i., amend paragraph (1) by adding the following sentence to the end of paragraph (1) to read as follows:

#### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

II. \* \* \*  
A. \* \* \*  
1. \* \* \*  
a. \* \* \*  
iv. \* \* \*

(5) Subordinated debentures issued to the Treasury under the TARP (TARP Subordinated Securities) established by the EESA by a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S–Corp BHC) or by a bank holding company organized in mutual form (Mutual BHC).

b. \* \* \*

i. \* \* \*

(1) \* \* \* Notwithstanding the foregoing, the full amount of TARP Subordinated Securities issued by an S–Corp BHC or Mutual BHC may be included in its tier 1 capital, provided that the banking organization must include the TARP Subordinated Securities in restricted core capital elements for the purposes of determining the aggregate amount of other restricted core capital elements that may be included in tier 1 capital in accordance with this section.

\* \* \* \* \*

■ 3. In appendix C to part 225, revise footnote 3 in section 2 to read as follows:

#### Appendix C to Part 225—Small Bank Holding Company Policy Statement

\* \* \* \* \*

2. \* \* \*

<sup>3</sup> The term *debt*, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

Subordinated debt associated with trust preferred securities generally would be treated as debt for purposes of paragraphs 2.C., 3.A., 4.A.i., and 4.B.i. of this policy statement. A bank holding company, however, may exclude from debt an amount of subordinated debt associated with trust preferred securities up to 25 percent of the holding company's equity (as defined below) less goodwill on the parent company's balance sheet in determining compliance with the requirements of such paragraphs of the policy statement. In addition, a bank holding company subject to this policy statement that has not issued subordinated debt associated with a new issuance of trust preferred securities after December 31, 2005, may exclude from debt any subordinated debt associated with trust preferred securities until December 31, 2010. Bank holding companies subject to this policy statement also may exclude from debt until December 31, 2010, any subordinated debt associated with refinanced issuances of trust preferred securities originally issued on or prior to December 31, 2005, provided that the refinancing does not increase the bank holding company's outstanding amount of subordinated debt. Subordinated debt associated with trust preferred securities will not be included as debt in determining compliance with any other requirements of this policy statement.

In addition, notwithstanding any other provision of this policy statement and for

purposes of compliance with paragraphs 2.C., 3.A., 4.A.i., and 4.B.i. of this policy statement, both a bank holding company that is organized in mutual form and a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code may exclude from debt subordinated debentures issued to the United States Department of the Treasury under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343, 122 Stat. 3765 (2008).

The term *equity*, as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company as defined in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a small bank holding company. Nevertheless, to a limited degree and under certain circumstances, the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) The preferred stock is redeemable only at the option of the issuer; and (2) the debt to equity ratio of the holding company would be at or remain below .30:1 following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, May 21, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–12626 Filed 5–29–09; 8:45 am]

**BILLING CODE 6210–02–P**

#### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 225

[Regulation Y; Docket No. R–1336]

#### Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting a final rule to allow bank holding companies that have issued senior perpetual preferred stock to the U.S. Department of the Treasury under the capital purchase and other programs established by the Secretary of the Treasury under the Emergency

Economic Stabilization Act of 2008, to include such capital instruments in tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies.

**DATES:** The final rule will become effective on July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Norah M. Barger, Deputy Director, (202) 452-2402, or John F. Connolly, Manager, (202) 452-3621, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452-5270, or Benjamin W. McDonough, Senior Attorney, (202) 452-2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** On October 17, 2008, the Board issued an interim final rule (interim rule) to allow bank holding companies that issue senior perpetual preferred stock to the U.S. Department of Treasury (Treasury) under the Troubled Asset Relief Program (TARP) established by section 101 of the Emergency Economic Stabilization Act of 2008 (Senior Perpetual Preferred Stock), to include such capital instruments in tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies.<sup>1</sup> The Board is now adopting the interim rule as a final rule without substantive changes.<sup>2</sup>

The Emergency Economic Stabilization Act of 2008 (EESA), Division A of Public Law 110-343, 122 Stat. 3765 (2008), was intended, among other things, "to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States."<sup>3</sup> Pursuant to the authorities granted by the EESA, and in order to restore liquidity and stability to the financial system, on October 14, 2008, Treasury announced the establishment of the Capital Purchase Program (CPP) under the TARP.<sup>4</sup> Through the CPP, Treasury

has provided capital to eligible banks, bank holding companies, savings and loan holding companies, and savings associations (collectively, banking organizations) by purchasing Senior Perpetual Preferred Stock of the banking organizations.<sup>5</sup> As of April 20, 2009, the Treasury had invested approximately \$198 billion in U.S. banking organizations through the CPP.

The Senior Perpetual Preferred Stock issued under the CPP is perpetual preferred stock in the issuing banking organization, is senior to the issuer's common stock, and is *pari passu* with the issuer's existing preferred shares as to liquidation preference and dividends (other than preferred shares which by their terms rank junior to the issuer's most senior class of existing preferred shares). All Senior Perpetual Preferred Stock issued by bank holding companies provide for cumulative dividends. The aggregate amount of Senior Perpetual Preferred Stock that may be issued by a banking organization to Treasury under the CPP must be (i) not less than one percent of the organization's risk-weighted assets, and (ii) not more than the lesser of (A) \$25 billion and (B) three percent of the organization's risk-weighted assets.<sup>6</sup>

As noted in the preamble to the interim rule, the Senior Perpetual Preferred Stock issued under the CPP includes several features that are designed to make it attractive to a wide array of generally sound banking organizations and encourage such banking organizations to replace the Senior Perpetual Preferred with private capital in an expeditious, but prudent, manner.

In particular, the Senior Perpetual Preferred Stock issued under the CPP has an initial dividend rate of five percent per annum, which will increase

financial institutions. On April 7, 2009, the Treasury announced term sheets for public and non-public holding companies with a top-tier parent that is organized in mutual form. These term sheets have substantially the same terms as the term sheet that was announced on October 14, 2008, for publicly-held financial institutions. For purposes of the interim rule and the final rule, the preferred stock issued to Treasury pursuant to these term sheets is considered to be senior perpetual preferred stock issued to Treasury under the TARP.

<sup>5</sup> In a separate rule document published elsewhere in today's issue of the *Federal Register*, the Board is publishing an interim final rule to allow bank holding companies that are "S-corporations" to include in tier 1 capital subordinated notes issued to the Treasury under the CPP for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies. (June 1, 2009).

<sup>6</sup> Treasury has announced that it is considering re-opening the Capital Purchase Program for institutions with total assets under \$500 million and raising—from 3 percent to 5 percent of risk-weighted assets—the amount of capital instruments for which qualifying institutions can apply.

to nine percent per annum five years after issuance. In addition, following the redemption of all the Senior Perpetual Preferred Stock issued under the CPP, a banking organization will have the right to repurchase any other equity security of the organization (such as warrants or equity securities acquired through the exercise of such warrants) held by Treasury.

In the preamble to the interim rule, the Board recognized that some of the features of the Senior Perpetual Preferred Stock issued under the CPP included in preferred stock issued to private investors would render the preferred stock ineligible for tier 1 capital treatment or limit its inclusion in tier 1 capital under the Board's capital guidelines for bank holding companies. Bank holding companies generally may not include in tier 1 capital perpetual preferred stock (whether cumulative or noncumulative) that has a dividend rate step-up. Furthermore, the amount of eligible cumulative perpetual preferred stock that a bank holding company may include in its tier 1 capital generally is subject to a 25 percent limit.<sup>7</sup>

The interim rule permits bank holding companies to include all Senior Perpetual Preferred Stock issued to Treasury under the TARP in tier 1 capital without limit. The Board sought comment on all aspects of the interim rule, including this treatment. The Board has carefully reviewed and analyzed the issues raised by commenters and has decided to adopt the interim rule as a final rule without substantive changes. The Board received seven comments on the interim rule from individuals and trade groups. Commenters largely supported the interim rule.<sup>8</sup> Commenters acknowledged the Board's concerns with certain features of the Senior Perpetual Preferred Stock, including its dividend rate step-up. However, commenters noted that other factors mitigate these concerns. Commenters noted, for example, that issuers will not be allowed to repurchase other stock or increase common dividends for three years after the issuance of the Senior

<sup>1</sup> 73 FR 62851 (October 22, 2008). A correction to a citation in the interim rule was published on October 27, 2008. 73 FR 63624 (October 27, 2008).

<sup>2</sup> This final rule addresses only the regulatory capital treatment of the Senior Perpetual Preferred Stock. Details about the Capital Purchase Program and other programs established by the Treasury under the EESA, including eligibility requirements and the general terms and conditions of the senior perpetual preferred stock issued to Treasury and warrants associated with such stock, are available at <http://www.financialstability.gov/>.

<sup>3</sup> See 12 U.S.C. 5201(1).

<sup>4</sup> On November 17, 2008, the Treasury announced a term sheet under the CPP for privately-held

<sup>7</sup> See 12 CFR part 225, Appendix A, sections II.A.1.a.ii., II.A. a.iv.(1), II.A.1.b.i., and II.A.1.b.ii.(2). Until March 31, 2011, internationally-active banking organizations generally are expected, but not required, to limit the amount of qualifying cumulative perpetual preferred stock (including related surplus) and qualifying trust preferred securities included in tier 1 capital to 15 percent of the sum of core capital elements. 12 CFR part 225, Appendix A, section II.A.1.b.ii.(3).

<sup>8</sup> One commenter recommended that the Board take steps to make its capital adequacy guidelines easier to understand. This comment is addressed below.

Perpetual Preferred Stock. In addition, commenters argued that the dividend rate step-up of the Senior Perpetual Preferred Stock would help achieve the fundamental public policy objective of replacing the U.S. Government's equity investment with private capital in a prompt, safe, and sound manner.

The Board concurs that the specific features of the Senior Perpetual Preferred Stock and the unique circumstances and purposes of the Capital Purchase Program and TARP largely mitigate the Board's concerns about the dividend rate step-up. The Senior Perpetual Preferred Stock is issued to Treasury as part of a nationwide, temporary, and emergency program, established by Treasury under the EESA, to provide capital to eligible banking organizations and thereby promote stability in the financial markets and the banking industry as a whole and help restore economic growth.

Since publication of the interim rule, the Treasury has established two additional programs under the EESA pursuant to which Treasury may purchase Senior Perpetual Preferred Stock from bank holding companies—the Targeted Investment Program (TIP) and Capital Assistance Program (CAP). In addition, the Treasury has established the Asset Guarantee Program (AGP), under which Treasury may receive Senior Perpetual Preferred Stock from a bank holding company as a premium for guaranteeing assets of the company.<sup>9</sup>

The interim final rule adopted by the Board, by its terms, applies to all Senior Perpetual Preferred Stock issued to Treasury under the TARP, including any Senior Perpetual Preferred Stock issued under the TIP, CAP, or AGP. The Board recognizes that the Senior Perpetual Preferred Stock issued by bank holding companies to Treasury under the TIP and AGP (TIP/AGP Preferred) and under the CAP (CAP Preferred) has certain features that differ from the Senior Perpetual Preferred Stock issued under the CPP. For example, both the TIP/AGP Preferred and CAP Preferred have a higher initial interest rate, but no interest rate step-up feature. In addition, the CAP Preferred is convertible to common stock of the issuing banking organization at the organization's option (subject to the approval of the appropriate Federal banking agency), and must convert to common stock of the issuer after seven

years.<sup>10</sup> Although the higher initial interest rate makes the TIP/AGP Preferred and CAP Preferred somewhat less desirable from a capital perspective because of its added cost to the issuing bank holding company, the Board believes that this feature is mitigated by the lack of an interest rate step-up (in the case of both instruments) and the convertibility of the CAP Preferred.

In addition, the CPP, TIP, CAP, and AGP each seek to advance the same key government objectives underlying the EESA—fostering financial market stability, and supporting the availability of credit to consumers during the current stressed market conditions. As noted above, the EESA was adopted to “immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States.”<sup>11</sup> Treasury's authority to make investments, and to provide commitments to make investments, under the TARP, including through the CPP and other programs, ends on December 31, 2009, subject to a potential extension to October 3, 2010.<sup>12</sup> The emergency nature and statutorily-limited duration of the TARP helps to ensure that the Senior Perpetual Preferred Stock issued by banking organizations will serve its intended purpose as a provisional vehicle for buttressing the capital bases of banking organizations and stabilizing the financial system during a period of severe economic stress, while preserving the preeminent importance of private capital to the stability of banking organizations in the longer-term.

The Board also notes that, since the adoption of the interim rule, the EESA has been amended to permit a banking organization to redeem the Senior Perpetual Preferred Stock without regard to the source of the funds used to redeem the stock and without regard to any waiting period.<sup>13</sup> The Board

<sup>10</sup> After conversion, the Convertible Preferred, as qualifying common stockholders' equity, would be includable without limit in the tier 1 capital of a bank holding company as a core capital element for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies. See 12 CFR part 225, Appendix A, section II.A.1.a.i.

<sup>11</sup> See *supra*, n. 3.

<sup>12</sup> See 12 U.S.C. 5230. Treasury's authority under the TARP may be extended until October 3, 2010, only upon a written certification to the Congress by the Secretary of the Treasury. This certification must “include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension.” *Id.*

<sup>13</sup> See section 7001 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, 123 Stat. 115 (2009). Previously, during the first three years that the Senior Perpetual Preferred

notes, however, that the amendment requires that Treasury consult with the appropriate Federal banking agency before a banking organization may make such a redemption.<sup>14</sup> In addition, the terms of the Senior Perpetual Preferred Stock issued under the CPP, TIP, CAP, and AGP provide that redemption is subject to the approval of the Federal Reserve, which provision remains effective.<sup>15</sup> In light of this provision, the Board recently noted in Federal Reserve SR letter 09–4<sup>16</sup> that any bank holding company that intends to redeem Senior Perpetual Preferred Stock issued to Treasury under the CPP, TIP, CAP, or AGP should first consult with Federal Reserve supervisory staff. After reviewing a request by a bank holding company to redeem Senior Perpetual Preferred Stock, the Board may take such actions as are necessary or appropriate to restrict the bank holding company from redeeming such securities if the redemption would be inconsistent with the safety and soundness of the bank holding company.<sup>17</sup>

For these reasons and in order to continue to support the strong public policy objectives of the CPP, TIP, CAP, and AGP and promote the stability of banking organizations and the financial system, the Board has adopted the interim rule in final form. The final rule—like the interim rule—permits bank holding companies that have issued Senior Perpetual Preferred Stock to the Treasury under the TARP to include such stock without limit as tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies.<sup>18</sup> The Board's decision to include Senior Perpetual Preferred Stock as an unrestricted core capital element in bank holding companies' tier 1 capital is based on each of the factors discussed above—including the emergency and temporary nature of the legislation authorizing the acquisition of such stock by the Treasury—as well as

Stock was outstanding, a banking organization was required to redeem the stock with cash proceeds from the banking organization's issuance of common stock or perpetual preferred stock that (i) qualifies as tier 1 capital of the organization and (ii) the proceeds of which are no less than 25 percent of the aggregate issue price of the Senior Perpetual Preferred Stock. See 73 FR 62852 (October 22, 2008).

<sup>14</sup> See section 7001 of the ARRA.

<sup>15</sup> See 12 CFR part 225, Appendix A, section II.A.1.c.ii.(2).

<sup>16</sup> SR 09–4, “Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies,” March 27, 2009.

<sup>17</sup> See 12 CFR 225.4(b)(1); 12 CFR part 225, Appendix A, sections II.(iii) and II.A.1.c.ii.(2).

<sup>18</sup> See 12 CFR part 225, Appendices A and D.

<sup>9</sup> Details about the TIP, CAP, and AGP are available at <http://www.financialstability.gov>.

those presented in the interim rule, and is further supported by the commenters and the points they raised.

As noted in the preamble to the interim rule, the Board expects bank holding companies that issue Senior Perpetual Preferred Stock under the CPP, TIP, CAP, and AGP like all other bank holding companies, to hold capital commensurate with the level and nature of the risks to which they are exposed. In addition, the Board expects bank holding companies that issue Senior Perpetual Preferred Stock to appropriately incorporate the dividend features of the stock into the organization's liquidity and capital funding plans. Bank holding companies should not construe the Board's decision to allow the inclusion of the Senior Perpetual Preferred Stock as an unrestricted core capital element in bank holding companies' tier 1 capital as in any way (1) detracting from the Board's longstanding stance regarding the unacceptability of a rate step-up in other tier 1 capital instruments or (2) reflecting a decision by the Board to allow cumulative perpetual preferred stock to be includable in bank holding companies' tier 1 capital in excess of the limits established for restricted core capital elements under the Board's capital guidelines for bank holding companies.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities.<sup>19</sup> The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.<sup>20</sup> Under regulations issued by the Small Business Administration,<sup>21</sup> a small entity includes a bank holding company with assets of \$175 million or less (a small bank holding company). As of December 31, 2008, there were approximately 2,586 small bank holding companies.

As a general matter, the Board's risk-based and leverage capital guidelines for bank holding companies apply only to a bank holding company that has consolidated assets of \$500 million or more. Accordingly, this final rule will not affect small bank holding companies and, for this reason, the Board hereby certifies that the rule will not have a

significant impact on a substantial number of small bank holding companies.

### Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

### Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on how to make the interim rule easier to understand. The Board received one comment generally criticizing the Board's capital adequacy guidelines as difficult to understand.

The Board acknowledges that the regulation of a banking organization's capital is a complex area. The Board's capital guidelines necessarily must reflect this complexity. Nevertheless, the Board has endeavored to present this final rule, like all of its capital rules, in a manner that, in light of the nature and complexity of the subject matter, is as brief, comprehensible, and straightforward as possible.

### List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

### Board of Governors of the Federal Reserve System

#### 12 CFR Chapter II

#### Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 2. In appendix A to part 225:

■ a. Revise section II.A.1.a.ii.; and

■ b. Revise footnote 8 in section II.A.1.c.ii.(2) to read as follows:

### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

II. \* \* \*

A. \* \* \*

1. \* \* \*

a. \* \* \*

ii. Qualifying noncumulative perpetual preferred stock, including related surplus, and senior perpetual preferred stock issued to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP), established by the Emergency Economic Stabilization Act of 2008 (EESA), Division A of Public Law 110-343 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

\* \* \* \* \*

c. \* \* \*

ii. \* \* \*

(2) \* \* \*

<sup>8</sup>Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP, established by the EESA, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert into a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, May 21, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-12628 Filed 5-29-09; 8:45 am]

**BILLING CODE 6210-02-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 356

[Docket No. BPD GSRS 09-01; Department of the Treasury Circular, Public Debt Series No. 1-93]

### Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury" or "We") is issuing in final form amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds. This final rule makes conforming changes to several sections of the Uniform Offering Circular to be consistent with Treasury's

<sup>19</sup> 5 U.S.C. 603(a).

<sup>20</sup> 5 U.S.C. 605(b).

<sup>21</sup> See 13 CFR 121.201.