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Banks and the Newly-Enacted Stock Buyback Tax

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Included within the Inflation Reduction Act of 2022 (the Act) signed into law by President Biden on August 16, 2022, is a one percent excise tax on corporate stock repurchases. For banks and bank holding companies, it's important to note the law does not contain any express exemptions for banking organization, or any minimum thresholds based on asset size. The law applies to all domestic corporations with stock traded on an "established securities market." This includes all publicly traded banks (those with shares listed on a national securities exchange), as well as those banks with shares traded on regional or local exchanges or interdealer quotation systems, e.g. over-the-counter (OTC).

For banks, and all corporations, the Act will impose a tax equal to one percent of the fair market value of all share repurchases during a taxable year, which is broadly written to include all redemptions in which a corporation acquires its stock from a shareholder. The amount subject to the tax, however, is to be reduced by the fair market value of any stock issued by a corporation during the taxable year, including the fair market value of any stock issued or provided to the corporation's employees, whether or not such stock is issued or provided in response to the exercise of an option to purchase such stock.

The Act does include several exceptions of which banks should be aware. Most notably, the excise tax only applies when the total value of the repurchased stock exceeds \$1,000,000. The tax is also inapplicable to any shares repurchased as part of an Internal Revenue Code Section 368(a) reorganization (certain qualifying corporate mergers and acquisitions) and no gain or loss is recognized on such repurchases by reason of the reorganization (e.g. the exception does not appear to include taxable "boot"). The Act also excludes from the tax, among other things, stock repurchases (or an amount of stock equal to the value of the stock repurchased) contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan.

It should be noted the tax applies to any repurchases made after December 31, 2022. While the Act is broadly worded and short on details, the hope is that many of the outstanding questions will be

addressed via IRS guidance or rulemaking in the coming months. In the interim, please see this earlier Vorys [client alert](#) for additional information or contact your Vorys lawyer if you have questions about the stock buyback tax or its potential impact on your institution.