FINANCIAL INSTITUTION CLIENT ALERT

TREASURY ISSUES INITIAL TERM SHEET FOR TARP CAPITAL PURCHASE PROGRAM

OCTOBER 2008

As many of you have heard, the United States Department of the Treasury announced on October 14, 2008 a new plan in its attack on the current international financial crisis, namely the TARP Capital Purchase Program. The Capital Purchase Program is intended to "encourage U.S. financial institutions to build capital to increase the flow of financing to U.S. businesses and consumers and to support the U.S. economy." The details are admittedly thin at this point, as the Capital Purchase Program consists only of a five page term sheet and an accompanying press release (see attached). Even officials at the Federal Reserve Bank of St. Louis have very little additional information as to how the Capital Purchase Program will be implemented.

Under the Capital Purchase Program, Treasury will purchase up to $250 Billion of senior preferred stock on standardized terms. Eligible institutions include qualifying United States controlled banks, savings associations, and certain banks and savings and loan holding companies engaged only in financial activities ("QFI"). **INSTITUTIONS THAT DESIRE TO PARTICIPATE IN THE PROGRAM ARE REQUIRED TO SUBMIT AN APPLICATION TO THE TREASURY BEFORE 5:00 PM (EDT) ON NOVEMBER 14, 2008.** The Treasury will determine the eligibility of and amounts issued to eligible institutions after consulting with appropriate Federal banking agencies. Treasury has committed that funding of the investment in senior preferred shares will be delivered by year-end 2008.

As explained below, the Capital Purchase Program offers the potential for relatively quick financing with attractive financial terms, but there appears to be onerous executive compensation strings attached.

KEY TERMS OF THE PROGRAM

Preferred Stock	Treasury will invest in a QFI in exchange for shares of senior preferred stock generally having a liquidation preference of $1,000 per share.
Warrants	Treasury will receive warrants to purchase shares of the QFI's common stock having an aggregate market price equal to 15% of Treasury's initial investment. The exercise price will be the market price of the QFI's common stock on the closing date of the Treasury's investment calculated on a 20-day trailing average. Note: no pricing mechanism is specified for privately owned QFIs, so this will need to be addressed.
Minimum / Maximum Offering	Minimum of 1% of the QFI's risk-weighted assets; maximum of lesser of (i) $25 Billion and (ii) 3% of the QFI's risk weighted assets.
Status of Preferred Stock	Senior preferred stock will qualify as Tier 1 capital and rank (i) senior to a QFI's common stock and (ii) at an equal level in capital structure with any existing preferred shares of a QFI (other than preferred shares which by their terms rank junior to other existing preferred shares).

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Dividends ……………………...	Generally, senior preferred stock will pay cumulative dividends at a rate of 5% per annum for the first 5 years and 9% thereafter. Senior preferred stock issued by banks that are not subsidiaries of bank holding companies will pay non-cumulative dividends at the same coupon rates. Dividends will be paid quarterly.
Redemption …………………...	Senior preferred stock cannot be redeemed for the first 3 years except with proceeds from a sale of Tier 1 qualifying preferred stock or common stock for cash that results in aggregate gross proceeds to the QFI of not less than 25% of the issue price of the senior preferred stock. Shares of senior preferred stock will be callable at par after 3 years.
Voting Rights ……..………..	Treasury will have no voting rights other than class voting rights on matters that could adversely affect the senior preferred stock.
Transferability ……………...	Treasury may transfer senior preferred stock to a third party at any time.
Compensation Restriction ..	Participating QFIs must meet certain standards for senior executives (the top 5 paid executives), including: • ensuring that incentive compensation does not encourage unnecessary and excessive risks that threaten the value of the QFI; • required clawback of any paid bonus or incentive compensation based on statements of earnings, gains or other criteria that are later proven to be "materially inaccurate"; • prohibition on making any "golden parachute payment" based on the Internal Revenue Code provision; and • may not deduct for tax purposes executive compensation in excess of $500,000 for each senior executive.

UNRESOLVED ISSUES

The Capital Purchase Program was clearly put together in haste, and as a result, a number of issues have not been addressed, including:

- What form of application must be submitted to apply for the program?
- When must participating QFIs amend their governance documents to permit the issuance of the senior preferred stock?
- Will the Treasury provide standardized language for charter amendments necessary to issue the senior preferred stock?
- What are the specific requirements and composite ratings required for participation in the Capital Purchase Program?
- How will warrants be priced for privately held QFIs (i.e., without a trading market)?

We anticipate that Treasury will address some, if not all, of these issues before the November 14 application deadline and will continue to provide updates as new information is announced.

EXECUTIVE COMPENSATION ISSUES

The restrictions on executive compensation are obviously a critical component to the program. At the time of the Capital Purchase Program's announcement, there were no clarifying details or proposed regulations. As a sign of how fast this program is developing, proposed regulations were issued overnight on October 15, 2008 to address executive compensation issues. *We will provide a more detailed analysis of these regulations as soon as possible.*

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HOW TO PREPARE TO PARTICIPATE IN THE PROGRAM

At the time of the program's announcement, Treasury had already lined up nine of the largest banks in the country to participate, including Bank of New York Mellon, JPMorgan Chase, Bank of America Corp., Merrill Lynch, Citigroup Inc., Wells Fargo & Co., State Street Corp. and two new comers to the bank holding company world - Goldman Sachs Group Inc. and Morgan Stanley. These institutions have already committed to seek $125 billion of the $250 billion allocated to the program. This means that only $125 billion remains to be allocated to rest of the financial institutions in the country.

If your institution is interested in participating, you should start evaluating the attractiveness of this financing in comparison to market sources. The Program's full term sheet (attached) should be carefully reviewed. Careful consideration needs to be given to the executive compensation restrictions. You should also start reviewing the necessary actions to amend your institution's charter to authorize the issuance of Senior Preferred Stock and shares of common stock required by the warrants. Private institutions will need more clarification from the Treasury as to how warrants will be priced if there is no trading market. In addition, private institutions may also be concerned about the right of the Treasury to transfer the Senior Preferred Stock and Warrants to third parties.

Obviously a lot of work remains to be done by Treasury to explain and implement the Capital Purchase Program, but financial institutions should start evaluating it now to determine if it is an attractive source of capital.

CONTACT GREENSFELDER

If you have any questions or would like to discuss how Greensfelder could assist your institution in participating in the program, contact Phil Stanton at 314-345-4738 (prs@greensfelder.com) or any member of our Banking and Financial Institution Practice Group.

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