

Summary of the TARP Capital Purchase Program

On Tuesday, the Treasury Department rolled out its voluntary capital purchase program, its first under the Emergency Economic Stabilization Act signed by President Bush on October 3, 2008. The program is aimed at spurring the flow of financing from financial institutions to businesses and consumers through the purchase of senior preferred shares from qualifying institutions. Interested parties have until **November 14, 2008** to elect to participate in the program. According to the Treasury Department, nine major financial institutions have already agreed to participate in the program.

Key highlights of the program include:

Eligibility

Although the program is available to any U.S. bank or U.S. savings association not controlled by a bank holding company, the Treasury will determine ultimate eligibility for interested parties after consultation with the appropriate federal banking agency. It is expected that preference will be given to those institutions that are already well-managed and capitalized.

Security and Limits

The department will purchase preferred shares with a value between 1 and 3 percent of the institution's risk-weighted capital but no more than \$25 billion. .

Description of rights and benefits

The senior preferred shares will qualify as Tier 1 capital and rank pari passu with existing preferred shares. They will pay a cumulative dividend rate of 5% per year for the first five years and will reset to a rate of 9% after that time. There will be no voting rights associated with the shares unless dividends arrearages for six quarters accumulate, in which case they will have the right to elect 2 directors as a voting class. They may be called after three years or before if the institution redeems using proceeds from a qualified equity offering of any Tier 1 perpetual preferred or common stock.

Executive compensation limits

Companies participating in the program must agree to adopt restrictions on executive compensation and corporate governance for the period in which the department holds the equity interests. These limits were announced by the department on Tuesday and discussed in our last client communication.

Warrants

Treasury will receive warrants to purchase common stock with an aggregate market price of 15% of the senior preferred investment. The exercise price will be determined based on a 20-trading day trailing average at the time of issuance.

Registration requirements

Companies must agree to register the preferred shares and warrants with the Securities Exchange Commission, although the term sheet indicates a willingness to work with private companies on alternatives as appropriate.

The program presents an opportunity to shore up capital reserves and secure balance sheets. Institutions interested in pursuing Tier 1 capital under the program are encouraged to contact their regulators.

Additional information is also available through the firm's website at the following address:

Husch Blackwell Sanders

If you have any questions concerning the new TARP Capital Purchase Program, please contact your Husch Blackwell Sanders attorney or one of the attorneys listed below:

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