

Capital Purchase Program *Private* (TARP)

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Sponsor: U.S. Treasury

Summary: Capital investment by Treasury in “Private” Institutions

- Purchase of Preferred by Treasury
- Issuance of Warrant; to be immediately exercised for Warrant Preferred
- Authorized by EESA; \$250 billion allocated to CaPP
- Submit application to primary federal banking regulator
- Treasury determines eligibility and allocations
- **Subscription Amounts:** Min: 1% of risk-weighted assets; Max: lesser of 3% of risk-weighted assets or \$25 billion

Key Dates

- Application Due:
5:00 p.m. December 8th (only for “Private”)
- Compliance with Terms: 30 days after signing
- Announcement Date:
48 hours after authorization of funds
- Investment Date: TBD

Eligibility

- Qualified Financial Institution (QFI):
- Top tier US BHC or US SLHC engaged solely or predominately in FHC activities and not publicly traded (or application on file by Dec 8 for subsidiary bank or savings association in existence before Dec 8 and final approval by 1/15/09)
- US bank or US savings association in stock form, not publicly traded, not controlled by a BHC or SLHC
- US bank or US savings association not publicly traded, controlled by a SLHC that is not publicly traded and does not engaged solely or predominately in FHC activities
- **Not eligible:** foreign institutions or U.S. branches or agencies of foreign institutions
- **Not eligible:** S corporation or mutual depository institutions (different program to come)

Applications filed with primary federal banking regulator

Publicly Traded Definition

- Securities traded on a national securities exchange **AND**
- Reporting co. under Exchange Act (based on listing, public issuance or holders); reports filed with SEC or primary federal bank regulator

No Warrant If:

- Treasury investment \$50 million or less
- QFI is certified Community Development Financial Institution (CDFI)
- Application for certification filed by 12/8/08

Preferred - Key Terms

- Tier 1 capital; senior to common stock; *pari passu* with existing preferred shares (other than junior preferred); perpetual
- Transferable by Treasury
- Dividend: 5% for 5 years; 9% after; quarterly pay (2/15/09)
- Cumulative unless issued by entity that is not a subsidiary of a holding company (then non-cumulative)
- Fail to pay dividends for any 6 quarters – Treasury elects two directors (right terminates upon (1) payment for 4 consecutive quarters non-cumulative or (2) all prior periods for cumulative preferred*)
- Non-voting other than market terms for similar securities (class voting rights on matters that could adversely affect the series)
- Liquidation preference of \$1,000 per share (or higher, depending on authorized preferred stock)

Warrants - Key Terms

- Warrant for preferred stock (Warrant Preferred)
- Number of preferred shares underlying will have aggregate liquidation preference equal to 5% of aggregate liquidation preference of Preferred issued
- Exercise price \$0.01 per share unless greater amount required by charter (par value per share of Warrant Preferred)
- 10-year term; Treasury plans to immediately exercise the warrants
- Warrant Preferred have same terms as Preferred, except:
 - Dividends 9% per annum
 - Not redeemable until all the Preferred redeemed
- No restrictions on transfer; Institution will facilitate transfer; Treasury will not cause institution to be a reporting company

Corporate Limitations/Consents

- Consent required for equity or trust preferred repurchases (with limited ordinary course exceptions) until 10th anniversary
- Consent required to increase dividend until 3rd anniversary
- Consent required to increase dividend more than 3% from 3rd anniversary until 10th anniversary (no increase as a result of dividend paid in common shares or from stock split or similar transaction)
- Consent requirements terminate on transfer or redemption of both Preferred and Warrants
- **From 10th anniversary forward:** no dividends or repurchases of equity or trust preferred until all Treasury-held securities redeemed or transferred
- Redeemable upon replacement capital transaction (Tier 1 or common stock) before 3rd anniversary; thereafter with any source of cash
- No dividends unless Preferred receives dividends
- No equity repurchases or redemptions unless Preferred receives dividends
- Transferability (Preferred and Warrant Preferred) shall be facilitated by QFI, and
 - Upon becoming SEC reporting company – file and have declared effective a registration statement
 - Also grant piggyback registration rights
- No related party transactions (Item 404 of Reg S-K) unless on no less favorable terms than with unaffiliated party and approved by audit committee or comparable body of independent directors

Take-Out

Of Preferred within first 3 years:

- “Qualified Equity Offering” of common stock or Tier 1 securities for cash (not based on any agreement on or before Nov 17)
- Must be 25% or more of Preferred investment amount
- Consent of primary federal banking regulator

After 3 yrs: any time, any amount

Of warrants: After Preferred redeemed in full, Warrant Preferred can be redeemed.

Executive Compensation Requirements

- Applies to senior executive officers (CEO, CFO, top three highest compensated officers)
- Compensation committee to review and certify: no incentive structure for excessive risk taking
- No golden parachute payments for involuntary termination, receivership or bankruptcy
- Claw-back for bonus/incentive payments made based on statements made in investment period later found materially inaccurate
- No tax deduction for compensation in excess of \$500,000

Some Things to Think About

- * Clarification will be needed for the ability of Treasury to elect directors if dividends are not paid on cumulative preferred stock. Term sheet is unclear.
- See “Some Things to Think About” for public program