

Capital Assistance Program *Public* (CAP)

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Sponsor: U.S. Treasury

Summary: Capital investment by Treasury in Public Institutions

- Purchase of Mandatory Convertible Preferred by Treasury
- Issuance of Warrant to Treasury
- Authorized by EESA
- Submit application to primary federal banking regulator
- Treasury determines eligibility and allocations
- Terms announced for publicly-held institutions (additional term sheets for other institutions to be released shortly)

Subscription Amounts:

- Min: 1% of risk-weighted assets
- Max: 2% of risk-weighted assets *plus* any the exchange of any securities previously issued to Treasury under Capital Purchase Program and Targeted Investment Program

Convertible Preferred - Key Terms

- Tier 1 capital; senior to common stock; *pari passu* with existing preferred shares (other than junior preferred)
- 7 years – mandatory conversion into common stock
- Transferable by Treasury
- Dividend: 9% annual, compound quarterly (20% dividend if required shareholder consent not obtained after six mos)
- Conversion price is 90% of avg. daily trading price 20 days ending February 9, 2009
- Fail to pay dividends 6 quarters – Treasury elects two directors (right terminates upon payment for 4 consecutive quarters)
- Non-voting other than market terms for similar securities (class voting rights on matters that could adversely affect the series); Treasury will vote upon conversion to common stock (guidelines to be published)
- Liquidation preference of \$1,000 per share (or higher, depending on authorized preferred stock)

Corporate Limitations/Consents

- Dividend no more than \$0.01 without Treasury consent
- Failure to pay dividend: no equity repurchases, no dividends on junior and *pari passu* securities
- Consent required for common stock and trust preferred repurchases (except benefit plan in the ordinary course and other limited exceptions)
- Redeemable with regulatory consent with proceeds of cash sale of common stock (in transaction no smaller than 25% of CAP size)
 - First two years – redeem at par, plus accrued unpaid dividends
 - After first two years – redeem at greater of par (plus accrued unpaid dividends) and as-converted value
 - After conversion, redeem with common stock sale proceeds or retained earnings – price greater of conversion price and average 20-trading day closing price beginning the day after notice of repurchase given to Treasury
- Must file registration statement, grant piggyback registration rights for Senior Preferred, warrants and underlying common stock and apply to list the underlying common stock

Executive Compensation Requirements

- Executive Compensation Requirements for the Capital Purchase Program were retroactively amended by the American Recovery and Reinvestment Act – As a result, there are no corporate governance advantages to using the old program over this newer program
- Please see our related one-page reference guide on Executive Compensation at <http://www.mofo.com/news/updates/files/14605.html>

Economic Assessments

- Banking regulators conducting “stress tests” on 19 largest institutions (over \$100 billion assets as of December 31, 2008)
- Institutions needing additional capital to withstand base case or more adverse test will be required to commit to use the CAP program
- Committed institutions have 6 months to find private capital in lieu of CAP

Some Things to Think About

- Sufficient authorized shares?
- Contractual limits on issuance? Poison pills triggered? Covenants triggered?
- Stock exchange requirements?
- Conflicts with existing preferred or other securities? Future issuance conflicts?
- Triggers in outstanding securities with a conversion or exchange feature?
- Changes to executive compensation plans?

Key Information

Announcement Date: February 25, 2009

**Application Deadline (Public Institutions):
May 25, 2009**

**Funding Deadline (Public Institutions):
6mos After Preliminary Approval**

Applications:

Send to Primary Regulator

Additional Information:

www.financialstability.gov

Warrants - Key Terms

- Number of shares underlying equals 20% of aggregate Convertible Preferred issued divided by share price
- Exercise price is, and number shares based on, 90% of 20-day average market price ending February 9, 2009
- 10-year term; immediately exercisable
- If insufficient common stock authorized, exercise price reduced by 15% each 6-mo anniversary until stock is authorized or 45% price reduction
- If shares not authorized or company no longer public, warrant will be exchangeable for senior term debt or another instrument
- Redeemable in full upon redemption of convertible (or common stock)

Eligibility

- Determined by Treasury
- Qualified Financial Institution: all U.S. FDIC-insured depository institutions, including: U.S. bank, U.S. savings institution, U.S. BHCs and U.S. S&L holding companies engaging predominately in Section 4(k) activities under Bank Holding Company Act
- Not eligible: foreign institutions or U.S. branches or agencies of foreign institutions
- Applications filed with primary federal banking regulator