Capital Purchase Program *Public* (TARP)

Sponsor: U.S. Treasury

Summary: Capital investment by Treasury in Public Institutions

- Purchase of Senior Preferred by Treasury
- Issuance of Warrant to Treasury
- Authorized by EESA; $250 billion allocated to CaPP
- Submit application to primary federal banking regulator
- Treasury determines eligibility and allocations
- Term sheet for private companies published Nov 17 – see CaPP Private reference guide for details and definition of "public"

Subscription Amounts:

- Min: 1% of risk-weighted assets
- Max: lesser of 3% of risk-weighted assets or $25 billion

Update from American Recovery & Reinvestment Act

- Participants in the Capital Purchase Program can apply to redeem their senior preferred without completing a qualified equity offering
- Details available at: http://www.treas.gov/press/releases/reports/CPP-FAQs.pdf

Update from Capital Assistance Program

- Participants in Capital Assistance Program can exchange CaPP preferred for CAP mandatory convertible preferred
- Details available at: http://www.treasury.gov/initiatives/eesa/docs/CAP_App-Guidelines.pdf

Senior Preferred - Key Terms

- Tier 1 capital; senior to common stock; *pari passu* with existing preferred shares (other than junior preferred)
- Transferable by Treasury
- Dividend: 5% for 5 years; 9% after; quarterly pay (2/15/09)
- Cumulative unless not a subsidiary of a holding company (then non-cumulative)
- 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)
- Callable at par after 3 years
- Liquidation preference of $1,000 per share (or higher, depending on authorized preferred stock)

Warrants - Key Terms

- Number of shares underlying equals 15% of aggregate Senior Preferred issued divided by share price
- Exercise price is, and number shares based on, 20-day average market price
- 10-year term; immediately exercisable
- Transferable by Treasury on the earlier of offering of replacement Tier 1 capital or December 31, 2009
- The number of shares of common stock underlying the warrants is subject to reduction by half upon qualified equity offering with proceeds equal to 100% of aggregate liquidation preference of senior preferred.
- 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

Corporate Limitations/Consents

- Consent required for equity repurchases (except benefit plan in the ordinary course and other limited exceptions) until 3rd anniversary
- Consent required to increase dividend (expires: after 3 years, on redemption or on transfer)
- Redeemable with replacement capital transaction (Tier 1 or common stock) before December 31, 2009
- Must file registration statement, grant piggyback registration rights for Senior Preferred, warrants and underlying common stock and apply to list the underlying common stock
- No dividends unless Senior Preferred receives dividends
- No equity repurchases unless Senior Preferred receives dividends

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, or whose depository institution subsidiaries are the subject of an application under Section 4(c)(8) of the BHCA
- Not eligible: foreign institutions or U.S. branches or agencies of foreign institutions
- Applications filed with primary federal banking regulator

Executive Compensation Requirements

- Executive Compensation Requirements for this program were **retroactively amended** by the American Recovery and Reinvestment Act
- Please see our related one-page reference guide on Executive Compensation at: http://www.mofo.com/news/updates/files/14605.html

Take-Out

- **Of Senior Preferred within first 3 years:**
  - "Qualified Equity Offering" of common stock or Tier 1 securities for cash
  - Must be 25% or more of Senior Preferred investment amount
  - Consent of primary federal banking regulator
- After 3 years: any time, any amount
- After senior preferred redeemed in full – can buy all other equity securities from Treasury at fair value
- **Of warrants:** Issuer receives gross proceeds equal to at least 100% of the issue price of Senior Preferred from one or more Qualified Equity Offerings before December 31, 2009, the number of shares of common underlying warrants reduced by half

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?

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