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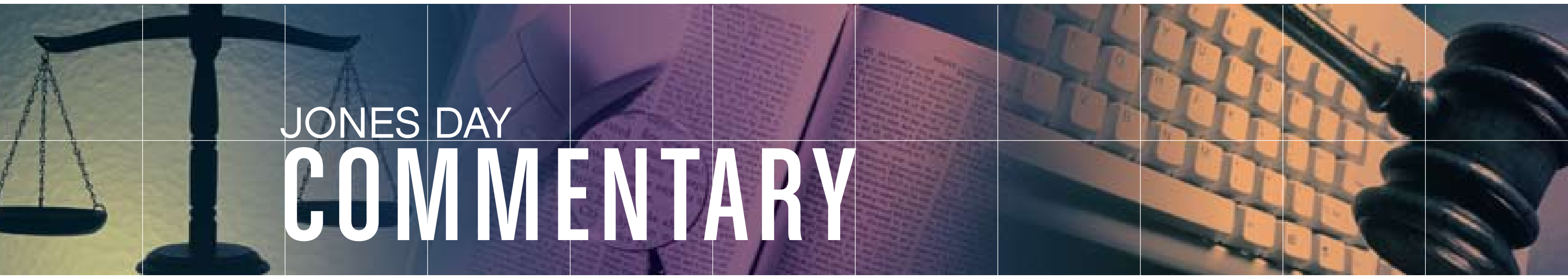

THE TARP CAPITAL PURCHASE PROGRAM: CAPITAL FOR U.S. FINANCIAL INSTITUTIONS

The Treasury Department, following similar actions outside the United States, announced on October 14 a direct investment program (the "Treasury Program") in U.S. banks, S&Ls, and financial, S&L, and bank holding companies ("Eligible Entities" or "QFIs"). Up to $250 billion of capital is being made available by the Treasury. Participation is voluntary, but elections to participate must be made by November 14, 2008.

PREFERRED STOCK

QFIs may issue cumulative (noncumulative in the case of stand-alone banks), perpetual, nonvoting senior preferred stock ("Preferred Stock") to the Treasury in amounts of not less than 1 percent nor more than 3 percent of the QFI's risk-weighted assets under applicable bank regulatory capital rules. The Preferred Stock will have the following terms:

- **Dividend Rate**. Five percent annual dividends payable quarterly for the first five years after issuance, and 9 percent thereafter.
- **Restrictions on Dividends**. At any time when dividends on the Preferred Stock have not been paid in full, QFIs will not be able to redeem or repurchase, or pay dividends on, shares of their capital stock that are *pari passu* or junior to the Preferred Stock. Dividends on the issuing QFI's common stock ("Common Stock") may not be increased prior to three years after the Preferred Stock has been issued, without prior Treasury consent, unless all the Preferred Stock has been redeemed or transferred by the Treasury.
- **Limited Voting Rights**. Preferred Stock is nonvoting, except for authorizations of capital stock senior to the Preferred Stock or any proposed changes in the rights of the Preferred Stock, including changes upon any merger, exchange, or similar transaction that would adversely affect the rights of the Preferred Stock holders. Similar to NYSE Rule 313.00, Preferred Stock will entitle the holder to elect two directors when dividends are not paid for six periods, whether or not consecutive.

- **Redemption**. Preferred Stock is redeemable at the issuing QFI's election, subject to applicable regulatory approval, in the first three years following issuance only with proceeds from an offering of Tier 1 preferred stock or common stock by the issuing QFI (a "Qualified Equity Offering"), subject to a minimum redemption of 25 percent of the amount of Preferred Stock originally issued. Thereafter, Preferred Stock is redeemable at the issuing QFI's election, subject to any required regulatory approval, in whole or in part. The redemption price is the Preferred Stock's issue price *plus* accrued but unpaid dividends.

- **Transferability**. No contract restrictions are permitted. The issuing QFI will have to file a shelf registration statement promptly for resale of the Preferred Stock and provide the Treasury with piggyback registration rights. Shelf registration statements that provide for resale should satisfy this resale shelf requirement.

- **Listing**. The Treasury may request that the Preferred Stock be listed on a national securities exchange.

WARRANTS

In connection with the purchase of any Preferred Stock, the Treasury will require the issuing QFI to issue warrants ("Warrants") to purchase shares of the QFI's Common Stock equal to 15 percent of the amount of Preferred Stock purchased. The initial exercise price and the market price for determining the amount of the Warrants will be the average trading price of such Common Stock on the 20 trading days preceding the sale of the Preferred Stock.

The Warrants' exercise price shall be reduced by 15 percent of the original exercise price on each six-month anniversary of issuance, if any required shareholder approvals have not been received, subject to a maximum reduction of 45 percent of the original exercise price.

Other terms of the Warrants include:

- **Term**. Ten years.

- **Exercise Period**. Immediately, in whole or in part.

- **Transferability**. No contractual restrictions on transfer are permitted. The Treasury may transfer or exercise up to an aggregate of 50 percent of the Warrants prior to the earlier of (i) the date the issuing QFI has received aggregate gross proceeds of not less than 100 percent of the issue price of the Preferred Stock from one or more Qualified Equity Offerings and (ii) December 31, 2009. The issuing QFI is required to file a shelf registration statement covering the resale of the Warrants and the underlying Common Stock and to grant the Treasury piggyback registration rights for the Warrants and the underlying Common Stock.

- **Listing**. The issuing QFI will apply for listing of the Common Stock issuable upon exercise of the Warrants.

- **Voting**. Upon exercise of the Warrants, the Treasury will not exercise voting rights with respect to such shares of Common Stock.

- **Reduction in Warrants for Certain Early Redemptions of Preferred Stock**. If the issuing QFI has received aggregate gross proceeds from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of Warrants will be reduced by 50 percent.

- **Shareholder Approvals**. If the issuing QFI does not have sufficiently available authorized shares of Common Stock to reserve for issuance upon exercise of the Warrants, it will hold a shareholders' meeting as soon as practicable and take any other measures deemed necessary by the Treasury to allow the exercise of the Warrants for Common Stock.

- **Substitution in the Event the Issuing QFI's Common Stock Is No Longer Listed or Traded**. If the issuing QFI's Common Stock is no longer listed or traded on a national securities exchange or securities association or where shareholder approval has not been received within 18 months after the issuance of the Warrants, the Treasury may elect to exchange the Warrants for senior debt or another economic instrument or security of the issuing QFI to appropriately compensate the Treasury, as it may determine, for the value of the Warrants.

EXECUTIVE COMPENSATION RESTRICTIONS IN CAPITAL PURCHASE PROGRAM

A condition to any Preferred Stock investment by the Treasury is that the QFI and its "senior executive officers" covered by the Emergency Economic Stability Act of 2008 ("EESA") modify or terminate all benefit plans, arrangements, and agreements (including golden parachute agreements) to the extent necessary to be in compliance with and agree, for as long as the Treasury holds any equity or debt securities of the QFI, to be bound by the executive compensation and corporate governance requirements of Section 111 of EESA and Treasury guidance or regulations thereunder. Section 111 defines "senior executive officers" as the five highest compensated executive officers, which for public companies includes the CEO and CFO and the next three most highly compensated executive officers, whose compensation must be disclosed pursuant to SEC rules. Among other things, the issuing QFI must:

- Ensure that incentive compensation for senior executives does not encourage unnecessary and excessive risks that threaten the value of the financial institution.

- Claw back any bonus or incentive compensation paid to a senior executive based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate.

- Prohibit making any golden parachute payment to a senior executive based on new Internal Revenue Code Section 280G(e).

- Agree not to deduct for tax purposes executive compensation in excess of $500,000 for each senior executive under new Internal Revenue Code Section 162(m)(5).

The QFI and its senior executive officers must also grant the Treasury a waiver releasing the Treasury from any claims that the QFI and such senior executive officers may otherwise have as a result of the issuance of any regulations that modify the terms of benefit plans, arrangements, and agreements not in compliance with the executive compensation and governance provisions of Section 111 of EESA or any Treasury guidance or regulations issued thereunder prior to any investment under the Treasury Program.

A related *Commentary*, "Putting the Brakes on Executive Pay: Executive Compensation Limitations for Financial Institutions Participating in the Troubled Assets Relief Program Under the Emergency Economic Stabilization Act of 2008," may be found on the Jones Day web site at http://www.jonesday.com/pubs/pubs__detail.aspx?pubID=S5506.

OPEN ITEMS

The Treasury's summary is comparable to a customary term sheet for a private transaction. Ambiguities and items left open by Treasury's release will be resolved over the coming weeks. A significant question is whether companies that are not public or that are ineligible for shelf registration statements can participate, and if so, how will the terms of the Treasury Program be modified.

Other ambiguities involve the interaction with existing bank regulatory capital rules. For example, normally cumulative perpetual preferred stock is limited as Tier 1 capital by the Federal Reserve as a "restricted core capital element" together with trust preferred securities and minority interests. Presumably, the Treasury and the bank regulators will treat any Preferred Stock issued to the Treasury pursuant to the TARP as Tier 1 capital. It is unclear whether this treatment will crowd out other existing restricted core capital elements currently on the balance sheet of QFIs as Tier 1 capital and cause these to become Tier 2 capital. Redemption of any preferred stock requires prior Federal Reserve approval, and this may need to be a term added to the definitive Preferred Stock. The Federal Reserve continues to believe that common stock should be the dominant form of Tier 1 capital, and the Preferred Stock may not be sufficient by itself to recapitalize some institutions.

WHAT TO DO NOW

The Treasury has provided a unique opportunity to raise capital in difficult markets. We recommend that every organization that may be a QFI consider participating in the Treasury Program, after reviewing its capital structure and needs, executive compensation arrangements, employee benefit plans, and alternatives. Participation in the Treasury Program may be combined with, and may facilitate, capital raising in the public and private markets.

LAWYER CONTACTS

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