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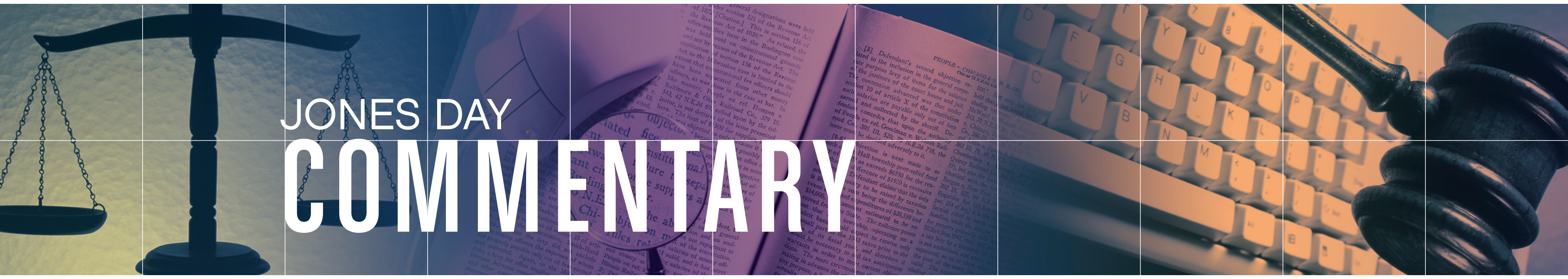

TARP CAPITAL PURCHASE PROGRAM EXTENDED TO QUALIFYING NONPUBLIC FINANCIAL INSTITUTIONS

The Treasury announced, late on November 17, its new TARP Capital Purchase Program ("CPP") for qualifying financial institutions that are not "publicly traded" (the "Private Company CPP"). For purposes of the TARP CPP, "publicly traded" means that a company is both required to file periodic reports under the Securities Exchange Act of 1934, as amended (the "1934 Act") *and* whose stock is traded on a national securities exchange, such as Nasdaq, the NYSE, or the AMEX. Thus, nontraded 1934 Act filers are "private," as are those non-1934 Act reporting companies whose securities are traded on the bulletin board or the pink sheets.

Financial institutions need to apply for the Private Company CPP by December 8. The terms are very similar to those provided for public companies, except for the warrants and "Warrant Preferred Shares." The Private Company CPP is not available to Subchapter S corporations and mutual depository institutions or their mutual holding companies. Coverage of these entities under the TARP CPP is still being considered. Certain banks that are certified "community development financial institutions," and where the TARP investment is $50 million or less, will not be required to issue warrants or Warrant Preferred Shares to the Treasury.

Other differences include:

- Instead of warrants on common shares of the issuer, in an amount equal to 15 percent of the amount of the TARP Preferred purchased, the Treasury will receive warrants exercisable for Warrant Preferred Shares having an aggregate liquidation preference equal to 5 percent of the TARP Preferred's aggregate liquidation amount. These warrants will be exercisable at $.01 per share or such greater *de minimis* amount as the issuer's charter may require. The Treasury intends to exercise the warrants immediately.
- The Warrant Preferred Shares will have the same rights, preferences, privileges, and voting rights as the TARP Preferred Shares, except that the Warrant Preferred Shares will pay dividends immediately at the rate of 9 percent per annum and may not be redeemed until all the TARP Preferred has been redeemed.

- The Treasury's consent is required for any increase in an issuer's common dividends through the third anniversary of the date of its investment. Thereafter, through the 10th anniversary of the investment, the Treasury's consent is required for any increase in aggregate common dividends per share greater than 3 percent per annum, and no increase in dividends may be made as result of any dividend paid in shares of common stock, stock splits, or similar transactions, until the TARP Preferred and the Warrant Preferred Shares have been redeemed in whole, or the Treasury has transferred all its interest in TARP Preferred and the Warrant Preferred Shares to third parties.
- Prior Treasury consent is required for any repurchase of an issuer's equity securities or trust preferred securities through the 10th anniversary of the date of investment, as long as the Treasury holds any TARP Preferred or Warrant Preferred Shares of the issuer.
- Beginning with the 10th anniversary of the TARP Preferred investment, the issuer is prohibited from paying common dividends or repurchasing any equity securities or trust preferred securities until no TARP securities are held by the Treasury.
- Like the public TARP CPP, if dividends on the TARP Preferred are not paid in full for six dividend periods, whether or not consecutive, the TARP Preferred has the right to elect two directors.
- The TARP Preferred and the Warrant Preferred Shares are transferable, but the Treasury will not transfer the TARP Preferred or the Warrant Preferred Shares in any transaction that would require the issuer to become subject to the 1934 Act's periodic reporting requirements.
- If the issuer becomes subject to 1934 Act reporting requirements, the issuer will file a shelf registration statement covering the TARP Preferred and the Warrant Preferred Shares and will provide the Treasury and its transferee with piggyback registration rights.
- The executive compensation provisions of the TARP CPP will apply.
- Nonpublic issuers will also be subject to limitations on transactions with "related persons" (as defined in Item 404 of SEC Regulation S-K), unless such transactions are on terms no less favorable to the issuer and its subsidiaries than could be obtained from unaffiliated third parties *and* have been approved by the audit committee or a comparable body of the issuer's independent directors.

Applications for the Private Company CPP must be submitted by December 8, and any holding company applicants must be, or must have filed an application to become, a bank or thrift holding company on or before that date. No TARP funding will be provided unless the regulatory applications to become a bank or bank holding company have been approved by January 15, 2009. This addresses the issues that the public company TARP CPP encountered with last-minute applications by entities seeking to become bank or thrift holding companies or commercial banks. Further, a bank or thrift holding company that receives funding under TARP must maintain its status as a bank or thrift holding company for as long as the Treasury holds TARP Preferred, warrants, or Warrant Preferred Shares. If a company desires to end its status as a bank or thrift holding company, it must redeem all TARP Preferred, warrants, and Warrant Preferred Shares at that time.

Nonpublic financial institutions should consider participating in this program immediately, especially if they need to call a shareholders' meeting to authorize preferred stock issuable in two or more series. This program should not discourage acquisitions of or by participants.

LAWYER CONTACTS

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