

Client Alert

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Treasury Department's Statement on the Process for Financial Institutions to Apply for Funding under the Capital Purchase Program

On Monday, October 20, 2008, U.S. Treasury Secretary Paulson convened a press conference at which he explained the process for banks to apply for funding under the Capital Purchase Program (the "Program"). Secretary Paulson stated that although there are many banks that have enough capital to get them through this period of market turmoil, these financial institutions are not in a position to lend money at the levels that are necessary to support the U.S. economy. The Program is designed to fill that gap. The Program's purpose is two-fold: (i) to encourage financial institutions to build capital to increase the flow of financing to U.S. businesses and consumers, and (ii) to increase confidence in U.S. banks with the hope that such confidence will lead to increased lending. Secretary Paulson reiterated that, for banks that participate in the Program, they are expected to increase their lending efforts.

Last week, nine of the largest financial institutions agreed to participate in the Program. Yesterday, Secretary Paulson announced that the Treasury Department has received "indications of interest" from various other banks of all sizes that are considering the possibility of seeking funds from the Treasury to recapitalize their operations.

The Application Process

With the help of various financial regulators, the Treasury Department finalized the application process for participation in the Program. Interested financial institutions must use the standardized application form, which can be found at www.ustreas.gov/press/releases/hp1222.htm.

Eligible financial institutions must consult with their primary federal regulator (e.g., the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, or Office of Thrift Supervision) regarding participation in the Program before submitting an application to Treasury. After consulting with its primary regulator, a financial institution must submit the application to that regulator for review. The Treasury Department and the federal regulators have established a standardized procedure to review and evaluate submitted applications. Once an applicant's primary regulator has reviewed the application and formulated its own recommendation, it will forward the application to the Treasury's Office of Financial Stability. The regulator's recommendation will be given considerable weight in this process. The Office of Financial Stability will then evaluate the application and the regulator's recommendation and make a determination as to whether it will make a capital purchase from the applicant. All transactions will be publicly announced within 48 hours of execution. Those applications that are denied or withdrawn will not be disclosed to the public.

The deadline to apply for this program is no later than 5 P.M. (EST) on November 14, 2008. The Program will *not* be implemented on a first-come-first-served basis.

The Application Guidelines

The Treasury, Federal Reserve, Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation released on Monday the application form that must be used to request participation in the Program and issued general guidelines for completing the application form. In addition, the Treasury and each of the federal regulators released on their respective websites a “Frequently Asked Questions” document that provides additional process-related details of the Program.

a. Eligible Institutions

Any bank, banking holding company, savings association, or savings and loan holding company established and operating in the United States is eligible to participate in the Program.

b. Certain Conditions for Participation

To be eligible for the Program, an applicant must agree to certain terms and conditions and make certain representations and warranties. The representations and warranties are described in various agreements prepared by Treasury that are, or will be, available on its website. A summary term sheet is currently available on Treasury’s website. In the near future, Treasury expects to post a detailed investment agreement and related documentation.

If an applicant is unable to comply with all of the terms and conditions, including the representations and warranties, contained in the Treasury agreements by November 14, the applicant must provide an explanation as to the reasons why it cannot satisfy a particular term or condition. If Treasury grants preliminary approval to participate, the applicant will have 30 days from the date of notification to submit the investment agreements and related documentation.

Other conditions to participation in the Program include:

- Restrictions on executive compensation during the period that Treasury holds equity issued through this Program;
- Restrictions on increasing dividend payments on common shares; and
- Restrictions on repurchasing or redeeming any junior preferred shares, preferred shares ranking *pari passu* with the Senior Preferred, trust preferred, or common shares (other than in connection with certain employee benefit programs)

c. Form of Capital Qualifying for Purchase

The Application Guidelines also provide the following general information on capital purchases:

- All capital purchases will be considered Tier 1 capital.
- The *maximum* amount of capital eligible for purchase is the lesser of (i) an amount equal to 3 percent of the financial institution’s total risk-weighted assets or (ii) \$25 billion. The *minimum* amount eligible for purchase is the amount equal to 1 percent of the total risk-weighted assets of the financial institution.
- The shares purchased will have a dividend rate of 5 percent annually until the fifth anniversary of the investment date, and a dividend rate of 9 percent annually thereafter.
- Treasury must obtain warrants for common stock from the financial institution. The warrants must be convertible into an amount of common stock equivalent in value to 15 percent of the amount of the capital purchased, which is to be calculated based on the average of closing prices of the common stock on the 20 trading days ending on and including the last trading day prior to the date of execution of the purchase agreement.

d. Confidentiality

Any request for confidential treatment for any portion of the application must be submitted in writing with the application and must specifically explain the type of harm that would result from public release of such information.

Process-Related FAQs for the Program

Treasury has issued a Frequently Asked Questions document, the purpose of which is to provide additional guidance on the mechanics of applying for participation in the Program. A copy of the FAQ document can be found at www.ustreas.gov/press/releases/hp1222.htm.

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