

# Legal Alert

October 21, 2008

## TREASURY CAPITAL PURCHASE PROGRAM AND FDIC TEMPORARY LIQUIDITY GUARANTEE PROGRAM

**Who is Affected:** FDIC-Insured Institutions and Bank Holding Companies

**Route To:** CEO, CFO

On Tuesday, October 14, 2008, the U.S. Department of Treasury ("Treasury"), the Board of Governors of the Federal Reserve System, and the FDIC issued a joint statement announcing (1) a voluntary capital purchase program where the Treasury will purchase senior preferred stock of certain financial institutions and (2) an exception to the FDIC Improvement Act of 1991 ("FDIC Act") enabling the FDIC to temporarily guarantee newly-issued senior unsecured debt and non-interest bearing transaction deposit accounts of all FDIC-insured institutions and their holding companies.

Please keep in mind that the responsible federal agencies have not finalized the details of the following plans, and the descriptions below likely will be revised and/or supplemented in the coming weeks.

### Capital Purchase Program

The Treasury has allocated \$250 billion from the \$700 billion under the Troubled Asset Relief Program ("TARP") created under the Economic Stabilization Act of 2008 ("EEAS") to purchase senior preferred stock in banks through the Capital Purchase Program. Half of the allocated \$250 billion is earmarked for the purchase of senior preferred stock in nine major U.S. banks, and the remaining \$125 billion will be available to small and mid-size institutions that apply for the investment by 5:00 pm on November 14, 2008. The Treasury will determine eligibility of institutions and allocation of purchases after the institution has requested to be included in the program.

According to publicly-available information pertaining to the program as of October 20, 2008, this program, unlike the Temporary Liquidity Guarantee Program described below, only may benefit large financial institutions listed on a national securities exchange. First, a participating institution must file a shelf registration statement for the shares of senior preferred stock issued under this program. Therefore, this program may only be economically practical for institutions that are S-3 eligible (SEC reporting companies who have timely filed all reports required to be filed by the Securities Exchange Act of 1934 for the past 12 calendar months and who have a public float of \$75 million). Second, the Treasury may require the senior preferred stock be listed on a national securities exchange. Third, a participating institution must issue warrants to the Treasury in connection to the sale of senior preferred stock, and the common stock of an institution into which the warrants may be exercised must be listed on national securities exchange. We have attached application information and the details of the term sheet issued by the Treasury for the purchase of preferred shares.

The foregoing notwithstanding, EEAS contemplates that the Treasury may directly purchase senior debt from institutions that are not publicly-held and/or whose stock is not traded on a national securities exchange. Furthermore, the Independent Community Bankers of America stated that the Treasury informed them that non-publicly traded institutions would have access to the Capital Purchase Program; the American Bankers Association also stated the Treasury may accept non-voting stock, voting stock, or senior debt securities in lieu of preferred shares for these institutions. Beyond this speculation, the terms of the Capital Purchase Program as they may pertain to non-publicly traded institutions remain unknown.

The Treasury has advised that interested institutions should contact their primary federal regulator for specific enrollment details.

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Unlike the Capital Purchase Program, all FDIC-insured institutions are eligible to participate in the Temporary Liquidity Guarantee Program.

### **Temporary Liquidity Guarantee Program**

The Secretary of the Treasury has invoked the systemic risk exception of the FDIC Act. This action will provide the FDIC with flexibility to provide a 100 percent guarantee for newly-issued senior unsecured debt and non-interest-bearing transaction deposit accounts at FDIC insured institutions subject to the terms outlined below.

#### *Eligible Entities*

Eligible institutions include: (1) FDIC-insured depository institutions, (2) U.S. bank holding companies, (3) U.S. financial holding companies, and (4) U.S. savings and loan holding companies that engage only in activities that are permissible for financial holding companies to conduct under section 4(k) of the Bank Holding Company Act ("Eligible Entities").

#### *Extent of Guarantee*

The FDIC's guarantee would apply only to the following liabilities:

1. All newly issued senior unsecured debt issued by Eligible Entities on or before June 30, 2009, including promissory notes, commercial paper, inter-bank funding, and any unsecured portion of secured debt. The amount of debt covered by the guarantee may not exceed 125 percent of debt that was outstanding as of September 30, 2008 that was scheduled to mature before June 30, 2009. For eligible debt issued on or before June 30, 2009, coverage would only be provided for three years beyond that date, even if the liability has not matured; and
2. Funds in non-interest-bearing transaction deposit accounts held by FDIC-insured banks until December 31, 2009. Funds held in interest-bearing accounts, such as money market accounts, will continue to be insured up to \$250,000 until December 31, 2009.

#### *Fees Payable to FDIC for Guarantee*

Fees for coverage would be waived for the first 30 days. After the first 30 days, a fee would be imposed as follows:

1. For all newly issued senior unsecured debt, an annualized fee equal to 75 basis points multiplied by the amount of debt issued under this program.
2. For non-interest-bearing transaction deposit accounts, a 10 basis point surcharge would be applied to non-interest-bearing transaction deposit accounts not otherwise covered by the existing deposit insurance limit of \$250,000. This surcharge will be added to the participating bank's existing risk-based deposit insurance premium paid on those deposits.

#### *Opting Out of Guaranteed Debt*

The ability of Eligible Entities to issue guaranteed debt under this program would expire on June 30, 2009. Initially, all Eligible Entities will be covered under this program for a period of 30 days. Prior to the end of this period, Eligible Entities must inform the FDIC whether they will opt-out of the guarantee program. If an Eligible Entity does not opt out in the 30-day period, it will be subject to the terms of the program until December 31, 2009. If an Eligible Entity does opt out of the program, the guarantee on newly issued senior unsecured debt and non-interest-bearing transaction deposit accounts will expire at the end of the 30-day period, regardless of the term of the instrument.

According to the summary of the plan released by the FDIC, Eligible Entities availing themselves of the guarantee program will be subject to enhanced supervisory oversight to prevent rapid growth or excessive risk-taking. However, the extent of the enhanced supervisory oversight is unclear. In an October 16, 2008 conference call, the FDIC stated that an Eligible Entity would continue to receive the same level of oversight it received before participation in the plan; the enhanced supervisory oversight would be with respect to plan compliance though the FDIC has not yet determined the details of this oversight. The FDIC will maintain control over eligibility in consultation with the primary Federal regulator.

#### *Opting Out of Guaranteed Non-Interest Bearing Deposit Transaction Accounts*

Under the program, all non-interest bearing deposit transaction accounts held in Eligible Entities automatically will be fully insured, regardless of dollar amount, effective immediately. That will remain the case for a 30-day period. Before the end of the 30-day period, an Eligible Entity can opt out of this part of the program. If an Eligible Entity does not opt out in the 30-day period, it will be subject to the terms of the program until December 31, 2009. If the Eligible Entity does not opt out, it must pay fees according to the fee schedule above. If it does choose to opt out, FDIC coverage will revert to the \$250,000 level and will remain there until December 31, 2009, at which time it will change to a \$100,000 level. The FDIC has not yet determined how it will notify the public regarding Eligible Entities that opt out of the program, but it is considering publishing a list of those who opt out on its website in addition to other means of public disclosure. Therefore, it does appear at this time that an Eligible Entity would shoulder the burden at this time.

For more information on this Legal Alert, please contact our office at 717.731.1700 or:

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## **TARP Capital Purchase Program**

### **Senior Preferred Stock and Warrants**

#### **Summary of Senior Preferred Terms**

- Issuer:** Qualifying Financial Institution (“QFI”) means (i) any U.S. bank or U.S. savings association not controlled by a Bank Holding Company (“BHC”) or Savings and Loan Holding Company (“SLHC”); (ii) any U.S. BHC, or any U.S. SLHC which engages only in activities permitted for financial holdings companies under Section 4(k) of the Bank Holding Company Act, and any U.S. bank or U.S. savings association controlled by such a qualifying U.S. BHC or U.S. SLHC; and (iii) any U.S. BHC or U.S. SLHC whose U.S. depository institution subsidiaries are the subject of an application under Section 4(c)(8) of the Bank Holding Company Act; except that QFI shall not mean any BHC, SLHC, bank or savings association that is controlled by a foreign bank or company. For purposes of this program, “U.S. bank”, “U.S. savings association”, “U.S. BHC” and “U.S. SLHC” means a bank, savings association, BHC or SLHC organized under the laws of the United States or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. **The United States Department of the Treasury will determine eligibility and allocation for QFIs after consultation with the appropriate Federal banking agency.**
- Initial Holder:** United States Department of the Treasury (the “UST”).
- Size:** QFIs may sell preferred to the UST subject to the limits and terms described below.
- Each QFI may issue an amount of Senior Preferred equal to not less than 1% of its risk-weighted assets and not more than the lesser of (i) \$25 billion and (ii) 3% of its risk-weighted assets.
- Security:** Senior Preferred, liquidation preference \$1,000 per share. (Depending upon the QFI’s available authorized preferred shares, the UST may agree to purchase Senior Preferred with a higher liquidation preference per share, in which case the UST may require the QFI to appoint a depository to hold the Senior Preferred and issue depository receipts.)
- Ranking:** Senior to common stock and pari passu with existing preferred shares other than preferred shares which by their terms rank junior to any existing preferred shares.

**Regulatory  
Capital  
Status:**

Tier 1.

**Term:**

Perpetual life.

**Dividend:**

The Senior Preferred will pay cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. For Senior Preferred issued by banks which are not subsidiaries of holding companies, the Senior Preferred will pay non-cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. Dividends will be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year.

**Redemption:**

Senior Preferred may not be redeemed for a period of three years from the date of this investment, except with the proceeds from a Qualified Equity Offering (as defined below) which results in aggregate gross proceeds to the QFI of not less than 25% of the issue price of the Senior Preferred. After the third anniversary of the date of this investment, the Senior Preferred may be redeemed, in whole or in part, at any time and from time to time, at the option of the QFI. All redemptions of the Senior Preferred shall be at 100% of its issue price, plus (i) in the case of cumulative Senior Preferred, any accrued and unpaid dividends and (ii) in the case of non-cumulative Senior Preferred, accrued and unpaid dividends for the then current dividend period (regardless of whether any dividends are actually declared for such dividend period), and shall be subject to the approval of the QFI's primary federal bank regulator.

“Qualified Equity Offering” shall mean the sale by the QFI after the date of this investment of Tier 1 qualifying perpetual preferred stock or common stock for cash.

Following the redemption in whole of the Senior Preferred held by the UST, the QFI shall have the right to repurchase any other equity security of the QFI held by the UST at fair market value.

**Restrictions  
on Dividends:**

For as long as any Senior Preferred is outstanding, no dividends may be declared or paid on junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares (other than in the case of pari passu preferred shares, dividends on a pro rata basis with the Senior Preferred), nor may the QFI repurchase or redeem any junior preferred shares, preferred shares ranking pari passu with the Senior Preferred or common shares, unless (i) in the case of cumulative Senior Preferred all accrued and unpaid dividends for all past dividend periods on the Senior Preferred are fully paid or (ii) in the case of non-cumulative Senior Preferred the full dividend for the latest completed dividend period has been declared and paid in full.

**Common dividends:** The UST's consent shall be required for any increase in common dividends per share until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties.

**Repurchases:** The UST's consent shall be required for any share repurchases (other than (i) repurchases of the Senior Preferred and (ii) repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice) until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties. In addition, there shall be no share repurchases of junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares if prohibited as described above under "Restrictions on Dividends".

**Voting rights:** The Senior Preferred shall be non-voting, other than class voting rights on (i) any authorization or issuance of shares ranking senior to the Senior Preferred, (ii) any amendment to the rights of Senior Preferred, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Senior Preferred.

If dividends on the Senior Preferred are not paid in full for six dividend periods, whether or not consecutive, the Senior Preferred will have the right to elect 2 directors. The right to elect directors will end when full dividends have been paid for four consecutive dividend periods.

**Transferability:** The Senior Preferred will not be subject to any contractual restrictions on transfer. The QFI will file a shelf registration statement covering the Senior Preferred as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the Senior Preferred and will take such other steps as may be reasonably requested to facilitate the transfer of the Senior Preferred including, if requested by the UST, using reasonable efforts to list the Senior Preferred on a national securities exchange. If requested by the UST, the QFI will appoint a depositary to hold the Senior Preferred and issue depositary receipts.

**Executive Compensation:** As a condition to the closing of this investment, the QFI and its senior executive officers covered by the EESA shall modify or terminate all benefit plans, arrangements and agreements (including golden parachute agreements) to the extent necessary to be in compliance with, and following the closing and for so long as UST holds any equity or debt securities of the QFI, the QFI shall agree to be bound by, the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection. As an additional condition to closing, the QFI and its senior executive officers covered by the EESA shall grant to the UST a waiver releasing the UST from any claims that the QFI and such senior executive officers may otherwise have as a result of the issuance of any regulations which modify the terms of benefits plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection.

## Summary of Warrant Terms

- Warrant:** The UST will receive warrants to purchase a number of shares of common stock of the QFI having an aggregate market price equal to 15% of the Senior Preferred amount on the date of investment, subject to reduction as set forth below under “Reduction”. The initial exercise price for the warrants, and the market price for determining the number of shares of common stock subject to the warrants, shall be the market price for the common stock on the date of the Senior Preferred investment (calculated on a 20-trading day trailing average), subject to customary anti-dilution adjustments. The exercise price shall be reduced by 15% of the original exercise price on each six-month anniversary of the issue date of the warrants if the consent of the QFI stockholders described below has not been received, subject to a maximum reduction of 45% of the original exercise price.
- Term:** 10 years
- Exercisability:** Immediately exercisable, in whole or in part
- Transferability:** The warrants will not be subject to any contractual restrictions on transfer; provided that the UST may only transfer or exercise an aggregate of one-half of the warrants prior to the earlier of (i) the date on which the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings and (ii) December 31, 2009. The QFI will file a shelf registration statement covering the warrants and the common stock underlying the warrants as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the warrants and the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants and the common stock underlying the warrants. The QFI will apply for the listing on the national exchange on which the QFI’s common stock is traded of the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants or the common stock.
- Voting:** The UST will agree not to exercise voting power with respect to any shares of common stock of the QFI issued to it upon exercise of the warrants.

**Reduction:** In the event that the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of shares of common stock underlying the warrants then held by the UST shall be reduced by a number of shares equal to the product of (i) the number of shares originally underlying the warrants (taking into account all adjustments) and (ii) 0.5.

**Consent:** In the event that the QFI does not have sufficient available authorized shares of common stock to reserve for issuance upon exercise of the warrants and/or stockholder approval is required for such issuance under applicable stock exchange rules, the QFI will call a meeting of its stockholders as soon as practicable after the date of this investment to increase the number of authorized shares of common stock and/or comply with such exchange rules, and to take any other measures deemed by the UST to be necessary to allow the exercise of warrants into common stock.

**Substitution:** In the event the QFI is no longer listed or traded on a national securities exchange or securities association, or the consent of the QFI stockholders described above has not been received within 18 months after the issuance date of the warrants, the warrants will be exchangeable, at the option of the UST, for senior term debt or another economic instrument or security of the QFI such that the UST is appropriately compensated for the value of the warrant, as determined by the UST.



## **Process-Related FAQs for Capital Purchase Program**

**Q: How does a Qualifying Financial Institution (QFI) know if it is eligible to participate in the Treasury Department's Capital Purchase Program (CPP)?**

**A:** A QFI should review the eligibility requirements as described in the TPP term sheet and related documents (which are available at <http://www.treas.gov/initiatives/eesa/>). In addition, a QFI should contact its appropriate Federal banking agency.

**Q: Which financial institutions are eligible as a QFI under the CPP?**

**A:** Generally speaking, any bank, savings association, bank holding company and savings and loan holding company organized under the laws of the United States qualifies as a QFI. Financial institutions controlled by a foreign entity will not be eligible. Specifically, a QFI is defined as:

(i) Any U.S. bank or U.S savings institution not controlled by a Bank Holding Company (“BHC”) or Savings and Loan Company (“SLHC”); and  
(ii) any U.S. BHC, or any U.S. SLHC which engages solely or predominately in activities that are permitted for financial holding companies under relevant law, and any U.S bank or U.S savings association controlled by such a qualifying U.S. BHC or U.S. SLHC; except that QFI shall not mean any BHC, SLHC, bank or savings association controlled by a foreign bank or company.

**Q: If a financial institution cannot qualify for this program, will it still be eligible to participate in other aspects of the TARP program?**

**A:** Yes.

**Q: How does a QFI apply to the Treasury Department's CPP?**

**A:** A QFI must submit an application to the appropriate Federal banking agency. If the applicant is a bank holding company, the application should be submitted to both the applicant's holding company supervisor and the supervisor of the largest insured depository institution controlled by the applicant. Each Federal banking agency has provided information on its public web site regarding where an application for participation in the

Capital Purchase Program (CPP) should be directed. This information is available at:

1. For the Federal Deposit Insurance Corporation: [www.fdic.gov](http://www.fdic.gov)
2. For the Federal Reserve: [www.federalreserve.gov](http://www.federalreserve.gov)
3. For the Office of the Comptroller of the Currency: [www.occ.treas.gov](http://www.occ.treas.gov)
4. For the Office of Thrift Supervision: [www.ots.treas.gov](http://www.ots.treas.gov)

**Q: What is the deadline for submitting an application?**

**A:** The application by a QFI must be received by the institution's appropriate Federal banking agency at the location(s) designated by the agency **no later than 5:00 p.m. (EST) on November 14, 2008.**

**Q: Is there an application form?**

**A:** Yes. The Federal banking agencies, working in consultation with the Treasury Department, have developed a common application form that may be used by all QFIs seeking to participate in the CPP. The application form is available on the public web sites of each Federal banking agency and on Treasury's website referenced above. All inquiries regarding preparation of the application should be directed to the appropriate FBA for the applicant.

**Q: What information will a QFI have to provide on the application?**

**A:** The application form requires the QFI to submit basic information about the institution, the amount of the perpetual preferred stock investment that the financial institution is requesting from Treasury, as well as information regarding the amount of authorized but unissued preferred stock and common stock that the institution currently has available for purchase.

**Q: What happens if a QFI is not able to issue the Preferred Shares by the application deadline due to the need for a shareholder vote, Board authorization, or other constraint?**

**A:** QFIs do not need to complete all of the required authorizations by the submission of the application. If a QFI receives preliminary approval, it will have 30 days in which to submit final documentation and fulfill any outstanding requirements. However, the QFI must robustly explain any

limitations to executing the final documentation or meeting the required conditions on its application form.

**Q. Will applications filed by QFIs or the names of applying QFIs be released publicly?**

**A.** No. The CPP applications are confidential proposals submitted for review by each institution's appropriate Federal banking agency. Applications which are denied or withdrawn will not be disclosed. However, Treasury will provide electronic reports detailing any completed transactions, as required by the Emergency Economic Stabilization Act of 2008, within 48 hours.

**Q: Who should a QFI contact if they have questions regarding how to file an application or the status of a submitted application?**

**A:** The QFI should contact its appropriate Federal banking agency using the contact information provided on the above referenced agency web site.

**Q: Will a QFI receive verification that its application has been filed with its appropriate Federal banking agency?**

**A:** Yes.

**Q: How long will it take for an application to be processed?**

**A:** Treasury, working in consultation with the Federal banking agencies, will process and preliminarily accept applications submitted under the CPP as expeditiously as possible. However, because of the diversity of institutions that are expected to apply, response times may vary.

**Q: How will a QFI that has filed a timely application be notified when a preliminary decision on the application has been made by Treasury?**

**A:** Preliminary decisions on applications will be communicated by Treasury to the representative of the institution identified on the application form.

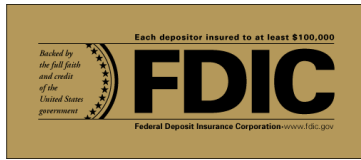
**Q: When does a QFI submit the final documentation to complete the Preferred Share purchase?**

**A:** Final documentation must be submitted no later than 30 days after a QFI has been notified that it has received preliminary acceptance into the program. Instructions for submitting final documentation will be available on Treasury's website at <http://www.treas.gov/initiatives/eesa/>.

**Q: Will capital raised under this program count as Tier 1 capital?**

**A:** Yes.

**Please check back regularly for postings of additional Q&As.**



## **Application Guidelines for TARP Capital Purchase Program**

This application is used to request participation in the Treasury Capital Purchase Program (CPP). Under the CPP, the U.S. Department of the Treasury (Treasury) may purchase qualifying capital in U.S. banking organizations.

The application must be submitted to the appropriate Federal banking agency (FBA) for the applicant. If the applicant is a bank holding company, the application should be submitted to both the applicant's holding company supervisor and the supervisor of the largest insured depository institution controlled by the applicant. All inquiries regarding preparation of the application should be directed to the appropriate FBA for the applicant. All applications must be submitted no later than 5pm (EST), November 14, 2008.

More detailed information, including submission instructions, can be found at the applicable FBA's website:

1. For the Federal Deposit Insurance Corporation: [www.fdic.gov](http://www.fdic.gov)
2. For the Federal Reserve: [www.federalreserve.gov](http://www.federalreserve.gov)
3. For the Office of the Comptroller of the Currency: [www.occ.treas.gov](http://www.occ.treas.gov)
4. For the Office of Thrift Supervision: [www.ots.treas.gov](http://www.ots.treas.gov)

The terms of the CPP are described generally in this application. However, this description is not binding on the Treasury and is intended to provide general information only. The actual terms and conditions of the CPP are contained in documentation that will be available from the Treasury Department on its web site at <http://www.treas.gov/initiatives/eesa/>.

### **Eligible Institutions**

The CPP is available to bank holding companies, financial holding companies, insured depository institutions and savings and loan holding companies that engage solely or predominately in activities that are permissible for financial holding companies under relevant law. To qualify, the applicant must be established and operating in the United States and may not be controlled by a foreign bank or company.

*Institutions must consult with their appropriate FBA prior to submitting this application.*

### **Certain Conditions for Participation in the CPP**

To be eligible for the CPP, the applicant must receive the approval of the Treasury. In addition, the applicant must agree to certain terms and conditions and make certain representations and warranties described in various agreements prepared by the Treasury and available on Treasury's website. A summary term sheet is currently available on Treasury's website and a detailed investment agreement and associated documentation will be posted soon. Each applicant must obtain and review a copy of these agreements and agree to all of the terms and conditions, including representations and warranties, contained in these agreements. In the event the applicant files an application with the appropriate FBA prior to the availability of the investment agreement, the applicant must file an amended application which includes updated responses to any items in the application that required prior review of the investment agreement.

In the event that an applicant cannot, by November 14, 2008, take action to be in compliance with all of the terms and conditions, including the representations and warranties, contained in the Treasury agreements, the applicant must provide an explanation of the condition or conditions that cannot be met and the reasons the condition or conditions cannot be met. This explanation must be attached to the application. Failure to agree to all terms and conditions may result in disqualification from the CPP.

If the applicant receives preliminary approval to participate in the CPP from the Treasury, the applicant will have 30 days from the date of notification to submit the investment agreements and related documentation.

Among the conditions to participation in the CPP is the requirement that, for so long as the Treasury owns shares or warrants in the applicant, certain senior officers of the applicant meet standards established by the Treasury for executive compensation in certain circumstances. These standards are explained on the Treasury web site at: <http://www.treas.gov/initiatives/eesa/executivecompensation.shtml>.

For the first three years that the Treasury owns shares or warrants in the applicant, the applicant may not increase its dividend payments on common shares without the permission of the Treasury. In addition, the applicant may not repurchase or redeem 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) during the first three years of the investment without the permission of the Treasury.

#### Form of Capital Qualifying for Purchase

All capital purchases will occur at the highest-tier holding company in cases in which the banking organization has a bank holding company or a savings and loan holding company. In these cases, the capital eligible for purchase by the Treasury under the CPP is cumulative perpetual preferred stock of the highest tier holding company. The shares must be *pari passu* with the most senior preferred shares available by the applicant.

In the case of an insured depository institution that is not controlled by a company, the capital eligible for purchase by the Treasury under the CPP is non-cumulative perpetual preferred stock

of the insured depository institution. The shares must be *pari passu* with the most senior preferred shares available by the applicant.

The maximum amount of capital eligible for purchase by the Treasury under the CPP is the lesser of (i) an amount equal to 3 percent of the Total Risk-Weighted Assets of the applicant or (ii) \$25 billion. The minimum amount eligible for purchase under the CPP is the amount equal to 1 percent of the Total Risk-Weighted Assets of the applicant. All measurements will be based on the information contained in the latest quarterly supervisory report filed by the applicant with its appropriate FBA, updated to reflect events materially affecting the financial condition of the applicant occurring since the filing of such report.

The shares purchased by the Treasury will have a dividend rate of 5 percent per year until the fifth anniversary of the date of the investment and a dividend rate of 9 percent per year thereafter. Dividends not paid must cumulate over the life of the investment in the case of shares purchased from a holding company for an insured depository institution. Shares may be redeemed by the applicant during the first three years following the investment only from the proceeds of a qualifying stock issuance by the applicant.

In all cases, the Treasury also must obtain warrants for common stock of the applicant. The terms of the warrants are explained in the Treasury agreements available on the Treasury web site. In general, the warrants must be convertible into an amount of common stock of the applicant equivalent in value to 15 percent of the amount of the capital purchased by the Treasury from the applicant under the CPP, 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.

#### Other Information

The applicant must identify and describe any mergers, acquisitions, or other capital raisings that are currently pending or are under negotiation and the expected consummation date.

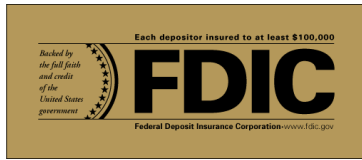
#### Confidentiality

Any applicant desiring confidential treatment of specific portions of the application must submit a request in writing with the application. The request must discuss the justification for the requested treatment. The applicant's reasons for requesting confidentiality should specifically demonstrate the harm (for example, loss of competitive position, invasion of privacy) that would result from public release of information (5 U.S.C. 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." The applicant should follow the same procedure when requesting confidential treatment for the subsequent filing of supplemental information to the application.

The applicant should contact the appropriate regulatory agency for specific instructions regarding requests for confidential treatment. The appropriate regulatory agency will determine

whether the information will be treated as confidential and will advise the applicant of any decision to make available to the public information labeled as "Confidential."





## **Application for TARP Capital Purchase Program (CPP)**

*Please complete the following information and follow the submission instructions as described on your Federal banking agency's website. In addition to completing the information on this form, please provide a description of any mergers, acquisitions, or other capital raisings that are currently pending or are under negotiation and the expected consummation date (no longer than 1 page).*

*In the event the applicant files an application with the appropriate Federal banking agency prior to the availability of the investment agreement, the applicant must file an amended application which includes updated responses to any items in the application that required prior review of the investment agreement.*

Institution Name: \_\_\_\_\_

Address of Institution: \_\_\_\_\_  
\_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Phone Number: \_\_\_\_\_

Primary Contact Fax Number: \_\_\_\_\_

Primary Contact Email Address: \_\_\_\_\_

Secondary Contact Name: \_\_\_\_\_

Secondary Contact Phone Number: \_\_\_\_\_

Secondary Contact Fax Number: \_\_\_\_\_

Secondary Contact Email Address: \_\_\_\_\_

RSSD, Holding Company Docket  
Number and / or FDIC Certificate  
Number, As Relevant:

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Amount of Preferred Shares  
Requested:

---

Amount Of Institution's Authorized  
But Unissued Preferred Stock  
Available For Purchase:

---

Amount Of Institution's Authorized  
But Unissued Common Stock:

---

Amount Of Total Risk-Weighted  
Assets As Reported On The  
Holding Company's Or Applicable  
Institution's Most Recent FR-Y9,  
Call Report, Or TFR, As Relevant:

---

Institution Has Reviewed The  
Investment Agreements And  
Related Documentation On  
Treasury's Website (Yes/No):

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Describe Any Condition, Including  
A Representation Or Warranty,  
Contained In The Investment  
Agreements And Related  
Documentation, The Institution  
Believes it Cannot Comply With By  
November 14, 2008 And Provide A  
Timeline For Reaching  
Compliance<sup>1</sup>:

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Type of Company<sup>2</sup>:

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Signature of Chief Executive  
Officer (or Authorized Designee):

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Date of Signature:

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<sup>1</sup> May be provided as an attachment, no longer than 1 page

<sup>2</sup> Publicly Traded Stock Company; Stock Company Without Publicly Traded Shares; Other (please specify)