

# 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

## 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)

## 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 (or with approval of regulators)
- 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

## Executive Compensation Requirements

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

## Take-Out

(NOTE: These contract terms were superseded by the Recovery Act)

- **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

## 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](http://www.treasury.gov/initiatives/eesa/docs/CAP_App-Guidelines.pdf)

## 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

## 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

## 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?
- Exit strategy?