

*This Annotated Form of Term Sheet is based on the CaPP documents executed by Bank of America Corporation. The substantive differences between the Public Term Sheet and the definitive documents are set forth below in red.*

## **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.)

[The liquidation preference per share varies by QFI.]

**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.

[The definition of Parity Stock includes any class or series of stock that may be created in the future. See Section 3(f) of the Certificate of Designations.]

**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.

[Section 3(a) of Annex A calls for a cash dividend. The dividends and cumulative and compounding ]

**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 noncumulative 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.

[The three-year period ends on the first Dividend Payment Date falling after the third anniversary of the original issuance date, which is November 15, 2011 in this case. Accordingly, the Issuer is subject to this restriction for almost one extra month. See Section 5(a) of Annex A.]

“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.

[The definition in Annex A limits this definition to offerings to persons other than the Issuer or any of its subsidiaries but allows the type of securities sold in the offering to include

combinations of the specified securities. The definition also excludes sales and issuances made pursuant to agreements or arrangements entered into or pursuant to financing plans which were publicly announced on or prior to October 13, 2008. See Section 2(n) of Annex A.]

**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.**

[The repurchase right is also triggered if the UST transfers all of its Treasury Preferred to one or more third parties not affiliated with the UST.]

**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.

[Section 3(b) of Annex A includes the following list of transactions that are exempt from the restriction on repurchases or redemptions of junior preferred shares, preferred shares ranking *pari passu* with the Treasury Preferred or common shares:

- redemptions, purchases or other acquisitions of shares of common stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined therein) pursuant to a publicly announced repurchase plan) and consistent with past practice, provided that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount;
- purchases or other acquisitions by a broker-dealer subsidiary of the Issuer solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business;
- purchase by a broker-dealer subsidiary of the Issuer of capital stock of the Issuer for resale pursuant to an offering by the Issuer of such capital stock underwritten by such broker-dealer subsidiary;
- any dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan;
- the acquisition by the Issuer or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Issuer or any of its subsidiaries), including as trustees or custodians; and
- the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or less aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or

exchange thereof for common stock.]

**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.

[Section 4.8 of the Stock Purchase Agreement clarifies that the dividend amount is subject to standard adjustments and that no consent is needed for dividends payable in shares of the Issuer's common stock or the distribution of rights or junior stock in connection with a stockholders' rights plan.]

**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".

[The prohibition in Section 4.8(ii) of the Stock Purchase Agreement applies to redemptions, purchases and acquisitions of the Issuer's capital stock or trust preferred securities of the Issuer or its affiliates. However, the section includes a list of transactions that are not subject to the prohibition that is substantially similar to the list set forth in the row entitled "Restrictions on Dividends" above. In addition, redemptions, purchases and other acquisitions of the Treasury Preferred are not subject to the prohibition.]

**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.

[Section 7(c) of Annex A provides as follows:

(i) The provision contemplates a class vote for any amendment to the Certificate of Designations or the Charter to authorize or create or increase the authorized amount of, or any issuance of any shares of, or securities convertible into or exchangeable or exercisable for shares of, any class or series of the Issuer's capital stock ranking senior to the Treasury Preferred with respect to the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer.

(ii) The provision is limited to amendments that adversely affect the rights, preferences, privileges or voting power of the Treasury Preferred.

(iii) The provision applies to share exchanges, reclassifications, mergers and consolidations and has a carve-out for such transactions if (A) the Treasury Preferred remain outstanding or, in mergers or consolidations in which the Issuers is not the surviving entity, the Treasury Preferred are convertible into or exchangeable for preferred securities of the surviving entity

or its ultimate parent and (B) the shares (or the new securities) have rights, conditions, etc., that are not materially less favorable to the holders thereof than the rights, conditions, etc., that exist immediately prior to the transaction. In addition, increases in the amount of authorized preferred stock necessary to satisfy preemptive or similar rights existing before the signing date of the CaPP documents, or the creation and issuance, or increase in the authorized amount, for any reason, of any series of Preferred Stock ranking equally with or junior to the Treasury Preferred will not be deemed to materially adversely affect the rights, preferences, etc., and shall not require the consent of the Treasury 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.

[The Issuer is required to increase the size of the board by two members to create the vacancies for the two new directors. The holders of the Treasury Preferred shall vote for the two directors together as a single class with the holders of any Parity Stock that also has the right to vote for such directors. See Section 7(b) of Annex A.

The right to elect the two directors terminates once all accrued and unpaid dividends for all past dividend periods, including the latest completed dividend period on all outstanding shares of Treasury Preferred, have been declared and paid in full. See Section 7(b) of Annex A.]

**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 shelf registration statement must be filed no later than 30 days after the closing date. Note that the Issuer's obligation is to use best efforts to cause the registration statement declared effective, it does not state that the Issuer is required to cause the shelf registration statement to be declared effective *as soon as possible*. See Section 4.5(a)(i) of the Stock Purchase Agreement. The Issuer is not required to file a shelf registration statement for securities that are not "Registrable Securities" as defined in the Stock Purchase Agreement and, subject to certain limitations, the Board may decide not to file the shelf registration statement if, in its good faith judgment, doing so would be materially detrimental to the Issuer or its securityholders. See Section 4.5(a)(iii) of the Stock Purchase Agreement.]

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.

[The Issuer is only obligated to offer piggyback registration rights if the shelf registration statement is not available (and if the securities in question meet the definition of Registrable Securities). See Section 4.5(a)(iv) of the Stock Purchase Agreement. In addition, piggyback registration rights may be limited if the managing underwriter of the applicable offering advises the Issuer that, in its reasonable opinion, the number of shares to be sold must be cut back. See Section 4.5(a)(vi).]

If requested by the UST, the QFI will appoint a depository to hold the Senior Preferred and issue depository 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.

[Not applicable to this particular CaPP.]

**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.

[Note that the Issuer's obligation is to use best efforts to cause the registration statement declared effective, it does not state that the Issuer is required to cause the shelf registration statement to be declared effective *as soon as possible*. See Section 4.5(a)(i) of the Stock Purchase Agreement.]

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.

[The Issuer is only obligated to offer piggyback registration rights if the shelf registration statement is not available (and if the securities in question meet the definition of Registrable Securities). See Section 4.5(a)(iv) of the Stock Purchase Agreement. In addition, piggyback registration rights may be limited if the managing underwriter of the applicable offering advises the Issuer that, in its reasonable opinion, the number of shares to be sold must be cut back. See Section 4.5(a)(vi).]

**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.

[The Reduction provision in the definitive documents is triggered if the Issuer has received aggregate gross proceeds of not less than 100% of the *aggregate liquidation preference* of the Treasury Preferred, not the *issue price*, from one or more Qualified Equity Offerings on or prior to December 31, 2009. The aggregate liquidation preference may be deemed to include the amount of any accrued and unpaid dividends, whether or not declared.]

**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.

[Not applicable to this particular CaPP.]

**Substitution:** In the event the QFI is no longer listed or traded on a national securities exchange or securities association [Section 14 of the Warrant clarifies that the provision does not apply if the common stock ceases to be traded on a national securities exchange in connection with a business combination], or the consent of the QFI stockholders described above has not been received within 18 months after the issuance date of the warrants [not applicable to this particular CaPP.], 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.

Terms and conditions of the definitive warrant that are not part of the Form Term Sheet:

- The Warrants are subject to volume-weighted antidilution protection as long as they are held by the UST and prior to the third anniversary of the issue date, if the Issuer issues shares of common stock at a price equal to less than 90% of the market price of the common stock on the last trading day preceding the date of the agreement on the pricing of such shares. The Warrants are also subject to other standard antidilution provisions.