

LUSE GORMAN POMERENK & SCHICK

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 400 ■ WASHINGTON, D.C. 20015 ■ 202.274.2000 T ■ 202.362.2902 F ■ WWW.LUSELAW.COM

Volume 14, Number 7

October 21, 2008

Treasury Provides Update on Application Process for Capital Purchase Program

On October 20, 2008, the United States Treasury Department (Treasury) provided additional guidance regarding applications for participation in the Capital Purchase Program (“CPP”).

Application Procedures

- The deadline for applications is 5:00 p.m. (EST), November 14, 2008. The program *will not* be administered on a first-come/first-serve basis, so that program terms will be the same for all institutions that apply before the deadline.
- Applications must be submitted to the applicant’s primary federal regulator. If the applicant is a bank holding company, the application should be submitted to both the holding company’s supervisor, and the supervisor for the largest insured depository institution controlled by the applicant. *Applicants must consult with their primary federal regulator prior to submitting an application.*
- All applicants will use a standard two page application form, regardless of which regulator has primary oversight. Copies of the application and application guidelines are available through each regulator’s website.
- Applications will be reviewed by primary regulators using a standardized process to ensure consistency. Primary regulators will then send applications, along with a recommendation, to the Treasury.
- Treasury will review the application and the primary regulator’s recommendation and make the final determination on whether to purchase the institution’s stock.
- All completed transactions will be made public within 48 hours of execution. However, there will be no public disclosure of applications that are withdrawn or denied.
- If an institution is owned by a holding company, the application must be completed for the highest tier holding company.
- The application requires basic information about the institution, the amount of the preferred stock that the financial institution is requesting, and data regarding the amount of authorized but unissued preferred stock and common stock that currently is available for purchase.
- The amount of preferred stock that can be purchased by Treasury will be based on risk-weighted assets as measured by the latest quarterly call/thrift financial report, updated to reflect material subsequent events.
- Applicants do not need to meet all requirements for participation in the program at the time of application. If the applicant receives preliminary approval, it will have 30 days in which to submit final documentation and fulfill any outstanding requirements. However, an applicant must “robustly explain any limitations to executing the final documentation or meeting the required conditions on its application form.” Instructions for the submission of final documentation will be available on Treasury’s website.

Treasury stated that the applications would be handled as expeditiously as possible and that, because of the diversity of institutions that are expected to apply, response times may vary.

Additional Considerations

- The executive compensation and the governance limitations will apply for as long as Treasury owns preferred shares or warrants.
- It appears that neither the filing of an application for an investment by Treasury nor the acceptance of the application by Treasury commits an institution to sell the preferred shares to Treasury. Treasury has stated that an institution will have 30 days from acceptance of its application by Treasury to submit executed documents.
- Treasury has informally indicated that CPP will be available to privately held financial institutions and holding companies, as well as public and “private” mutual holding companies. However, in addition to regulatory waivers, further guidelines will be necessary for these entities to participate in CPP.

FDIC Guarantee Program – November 12 Deadline for Opting Out

The deadline for opting out of the FDIC program for guaranteeing senior unsecured debt and insuring non-interest bearing transaction accounts in excess of \$250,000 is November 12, 2008. All eligible institutions are automatically included in the program for the first 30 days and will stay in the program unless they opt out on or before November 12, 2008. This is two days earlier than the deadline for submitting an application for participating in the CPP.

* * *

For further details regarding the above-described program, please contact any of the persons listed below.

- | | | |
|-----------------------|---|----------------|
| Eric Luse | ■ | (202) 274-2002 |
| John J. Gorman | ■ | (202) 274-2001 |
| Alan Schick | ■ | (202) 274-2008 |
| Larry Spaccasi | ■ | (202) 274-2037 |
| Gary A. Lax | ■ | (202) 274-2031 |