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Financial Services Report

Special Report

Nonpublic Company Term Sheet for Capital Purchase Program

On November 17, 2008, the U.S. Department of the Treasury ("Treasury") published the term sheet for privately-held banks, savings associations, bank holding companies, and savings and loan holding companies that choose to participate in the Capital Purchase Program ("CPP"). The deadline for private companies to apply is *December 8, 2008*. Except as otherwise noted, this report focuses on the differences between the public company term sheet and the private company term sheet. **NOTE:** The private company term sheet does *not* apply to companies organized as Subchapter S Corporations or Mutual Organizations.

- **General Terms.** As with public companies, Treasury will purchase preferred stock of private companies in an amount not less than 1% and not greater than 3% (or $25 billion) of the institution's risk-weighted assets; such preferred stock will have a liquidation preference of $1,000; redemptions of the preferred stock are generally prohibited until the third anniversary of the investment date, except with proceeds from a Qualified Equity Offering; and participating private companies must comply with the executive compensation requirements outlined in Section 111 of the Emergency Economic Stabilization Act of 2008.

- **Preferred Dividends.** Equivalent to public company terms, the preferred stock issued by private companies will pay a 5% annual dividend for the first five years and a 9% annual dividend thereafter. Such dividends will be payable quarterly in arrears on February 15, May 15, August 15, and November 15 of each year.

- **Warrant.** The private company must issue a warrant to Treasury to purchase additional preferred stock having an aggregate liquidation preference equal to 5% of the preferred investment. The warrant will have an initial exercise price of $0.01 per share or such greater amount as the charter may require as the par value of the warrant preferred stock. Treasury intends to immediately exercise the warrant. The warrant preferred stock will pay a 9% annual dividend and may not be redeemed until all of the preferred stock originally purchased by Treasury has been redeemed. This represents the most significant difference between the public and private company term sheets. Effectively, private companies will pay a current yield of 5.45% on the total preferred stock (5% on the investment preferred and 9% on the warrant preferred). In addition, it appears that the private institution must redeem the warrant preferred stock at the $1,000 per share liquidation preference, even though Treasury may only have purchased each warrant preferred for $0.01. When private companies redeem all of the preferred shares, therefore, such redemption will be at 105% of the original investment amount. If the private company redeems all of the preferred stock in three years, the total effective yield on the investment would be 6.96%. At five years, the total effective yield would be 6.31%.

- **Common Dividends.** Private companies may not increase common dividends without Treasury's consent prior to the third anniversary of the investment date. Unlike public companies participating in the CPP, private companies may not increase common dividends more than 3% annually for the period commencing after year 3 through year 10 without Treasury's consent. The restrictions will no longer apply if the institution redeems the preferred stock and the warrant preferred stock or if Treasury transfers the preferred stock and the warrant preferred stock in full to a third party. We expect a forthcoming standard securities purchase agreement for private companies to provide additional specific information regarding the dividend restrictions, e.g., the last dividend payment date that will serve as the basis for any increases over the first three years.

- **Repurchases.** Private companies may not repurchase other equity securities or trust preferred securities without Treasury's consent during the 10-year period following the investment date (public companies are restricted for three years). Exceptions exist for preferred stock repurchases, and for junior preferred stock or common stock repurchases in connection with any benefit plan. The repurchase restrictions will no longer apply if the institution redeems the preferred stock and the warrant preferred stock or if Treasury transfers the preferred stock and the warrant preferred stock in full to a third party.

- **Other Dividend/Repurchase Restrictions.** After the 10th anniversary of the investment date, the private company term sheet restricts the institution from paying any common dividends or repurchasing any equity securities or trust preferred securities until the institution redeems the preferred stock and the warrant preferred stock or if Treasury transfers the preferred stock and warrant preferred stock in full to a third party.

- **Related Party Transactions.** As long as Treasury holds equity securities, the institution may not enter into transactions with related parties unless (i) the transaction's terms are no less favorable than could have been obtained from a nonaffiliated party and (ii) the transaction was approved by the institution's audit committee or other comparable body of independent directors.

- **Voting Rights.** The preferred stock is nonvoting, except the shares will have class voting rights on (i) any authorization or issuance of shares ranking senior to the preferred stock, (ii) any amendment to the rights of the preferred stock, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the preferred. As with public companies, Treasury will have the right to elect two directors to the private company's board if dividends on the preferred stock are not paid in full for six dividend periods. The right to elect will end when full dividends have been paid for (i) all prior dividend periods in the case of cumulative preferred stock or (ii) four consecutive dividend periods in the case of noncumulative preferred stock.

- **Transferability.** The preferred stock will not be subject to any restriction on transferability associated with any stockholder's agreement or similar arrangement that may be in effect among the private company's stockholders. Treasury will not affect a transfer that would require the public company to become subject to periodic reporting rights under Section 13 or 15(d) of the Securities Exchange Act of 1934.

- **Potential Shelf Registration Rights.** If the private company otherwise becomes subject to the periodic reporting requirements under Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (i.e., becomes publicly held), the private company must file a shelf registration statement covering the preferred stock as promptly as practicable and shall take all action required to cause such shelf registration statement to be declared effective as soon as possible.

- **Community Development Financial Institution ("CDFI") Exemption.** If an institution is a CDFI and the amount of the Treasury's preferred investment is less than $50 million, then Treasury will not require the institution to issue the warrant preferred stock. To become certified as a CDFI, an institution must apply to Treasury and satisfy several criteria, including (i) having the primary mission of promoting community development by providing services to underserved communities, (ii) serving primarily one or more underserved or low-income target markets, (iii) demonstrating accountability to the target market, and (iv) providing development services to the community along with its financial products.

The remaining terms are similar to the public company term sheet published by Treasury on October 14, 2008. We expect additional information to be provided when Treasury publishes the standard securities purchase agreement and related documentation for privately-held companies.

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