

Financial Services Report

Special Report

S Corporation Term Sheet for Capital Purchase Program

On January 14, 2009, the U.S. Department of the Treasury ("Treasury") published the term sheet for qualifying institutions organized under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code ("S corporation") that choose to participate in the Capital Purchase Program ("CPP"). If an S corporation desires to participate in the CPP, it must submit its application by *February 13, 2009*; however, S corporations that have already applied with their federal regulator do not need to reapply, except to the extent that the proposed investment amount has changed due to a change in the risk-weighted assets of the S corporation, as reported in the entity's latest call report. NOTE: The S corporation term sheet does not apply to mutual organizations.

General Terms. Consistent with the private company term sheet, the Treasury will purchase securities equal to an amount not less than 1 percent and not greater than 3 percent (or \$25 billion) of an entity's risk-weighted assets. However, as discussed below, the Treasury will purchase debt securities rather than equity securities from an S corporation. Participating S corporations are generally prohibited from redeeming the securities until the third anniversary of the investment date, except with proceeds from a Qualified Securities Offering. Participating S corporations also must comply with the executive compensation requirements outlined in Section 111 of the Emergency Economic Stability Act of 2008. In addition, participating S corporations are generally prohibited from repurchasing any equity or trust preferred securities without the consent of the Treasury until the tenth anniversary of the investment, unless the Treasury has transferred all of the investment securities to third parties.

Debt Securities. In contrast to the private company term sheet, participating S corporations will issue debt securities to the Treasury instead of issuing preferred stock. The debt securities will be senior to the S corporation's equity, but must be subordinated to all other debt of the S corporation, unless such other debt specifically states that it is equal or subordinated to the Treasury debt securities. Each subordinated debt note will have a value of \$1,000 and a maturity of 30 years. The issuance of debt securities to the Treasury instead of preferred stock is necessary because the relevant Internal Revenue Code provisions permit S corporations to have only one class of stock and also restrict the types of shareholders that are permitted to hold stock in an S corporation. The Treasury is not a permissible S corporation under these Code provisions and the issuance of preferred stock by an S corporation would violate the one-class stock rules. Violation of either of these rules would result in termination of the S corporation's status under the Code.

Interest Payments; Voting Rights. The debt securities will pay interest quarterly, at a rate of 7.7 percent per annum for the first five years and 13.8 percent per annum thereafter. The Treasury set these rates to be the equivalent of the 5 percent and 9 percent rates used for preferred stock issued by privately-held institutions participating in the CPP, taking into account the fact that the S corporation can deduct the interest on the debt securities while privately held institutions cannot deduct the dividend payments made on the preferred stock. A qualifying holding company may defer the interest payments for up to 20 quarters, but any unpaid interest will cumulate and compound at the then applicable interest rate. Notwithstanding the right of a holding company to defer interest payments, the Treasury (or any other holder of the debt securities) will have the right to elect two directors if any qualifying entity does not fully pay the interest on the debt securities for six quarters, whether consecutive or not. The right to elect directors will cease only when all such interest payments are made in full. The debt securities will otherwise be non-voting, except for class voting rights on (i) any authorization or issuance of any equity securities that purport to rank senior to the debt securities, (ii) any amendment to the rights of the debt securities or (iii) any merger, exchange or similar transaction that would adversely affect the rights of the debt securities.

Warrant. Similar to the private company term sheet, the participating entity must issue to the Treasury a warrant for the purchase of additional debt securities having an aggregate amount, after net settlement, equal to 5 percent of the initial debt security investment. The warrant will have an exercise price of \$0.01, and the Treasury intends to immediately exercise the warrant. The warrant debt securities will pay an interest rate of 13.8 percent per annum and cannot be redeemed until all of the investment debt securities are redeemed.

Regulatory Capital Status. The proceeds from the debt securities will qualify as Tier 2 capital for banks or savings associations. For holding companies, the proceeds will qualify as Tier 1 capital, provided that the applicable federal regulatory agencies issue an interim final rule designating the debt securities as Tier 1 capital for holding companies.

Dividend Restrictions. The dividend restrictions are generally consistent with the private company term sheet. Until the third anniversary of Treasury's investment, the participating S corporation may not increase dividends per share without the Treasury's consent. For the period commencing after year three and through year ten, the S corporation may not increase dividends by more than 3 percent per year without the Treasury's consent. Notwithstanding the foregoing, however, a participating S corporation may increase dividend payments without the Treasury's consent when the increase is solely proportionate to the increase in taxable income of the S corporation, and such dividends are distributed to shareholders in order to fund their individual tax payments on such taxable income.

Dividend; Repurchase Prohibitions. After the tenth anniversary of the investment date, participating S corporations may not pay any common dividends or repurchase any equity securities or trust preferred securities until the entity redeems or repurchases, in whole, the debt securities and the warrant debt securities.

Acceleration. Principal and interest will accelerate and become immediately due, with respect to holding companies, only if the holding company files for bankruptcy protection, a major bank

subsidiary of the holding company is placed into receivership or the institution defers interest on the debt securities for more than 20 quarters and, with respect to a bank or savings association, only upon such institution being placed into receivership.

Transferability; Registration Rights. The debt securities will not be subject to any contractual restrictions on transfer or the restrictions of any stockholders' agreement; provided that the Treasury shall use its commercially reasonable efforts not to effect any transfer of the debt securities that would require the institution to become subject to the periodic reporting requirements of Section 13 or 15(d) the Securities Exchange Act of 1934. Please note that the term sheet does not otherwise contain a provision specifically prohibiting a transfer by the Treasury that would upset the entity's S corporation status.

The remaining provisions of the S corporation term sheet are similar to the private company term sheet released by the Treasury on November 17, 2008.

FEDERAL TAX NOTICE: Treasury Regulations require us to inform you that any federal tax advice contained herein is not intended or written to be used, and cannot be used by any person or entity, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

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