Summary of Terms
Private 'C' Corporation Bank TARP CPP

Interested financial institutions can contact ICBA Securities for additional information on the Capital Purchase Program www.icbasecurities.com.   Jim Reber at jreber@icbasecurities.com 800-422-6442

Following is our summary and analysis of terms for the TARP Capital Purchase Program (CPP) for Private, 'C' Corporation Banks. The actual term sheet and the Treasury's FAQ are available via the following links:

- Term Sheet- Privately Held Institutions
- FAQ- Privately Held Institutions

Which banks does this term sheet apply to?
This term sheet applies to the following entities, provided that the institution is not an S Corporation or a Mutual Institution.

1. Top-tier Bank Holding Company ("BHC"), or top-tier Savings and Loan Holding Company ("SLHC") that engages solely or predominately in activities permissible for financial holding companies, and is not publicly traded
2. Bank or savings association organized in a stock form that is neither publicly traded nor controlled by a BHC or SLHC
3. Bank or savings association that is not publicly traded and is controlled by a SLHC that is not publicly traded and does not engage solely or predominately in activities that are permitted for financial holding companies.

For the purposes of the term sheet "publicly traded" means a company (1) whose securities are traded on a national securities exchange and (2) required to file, under the federal securities laws, periodic reports such as the annual (Form 10-K) and quarterly (Form 10-Q) reports with either the Securities and Exchange Commission or its primary federal bank regulator.

The SEC defines and identifies ten National Securities Exchanges - http://www.sec.gov/answers/exchanges.htm.

What about Sub S Banks and Mutual Institutions?
Treasury is considering separate term sheets for these institutions and an appropriate deadline will be set at the time the term sheet is published. The terms of this private bank term sheet should provide an indication of how Subchapter S and Mutual terms might be structured.

What is the deadline to apply?
Under the new Private Term Sheet, the deadline is December 8, 2008

What are the general terms?
The investment from Treasury will count at Tier 1 Capital.

The TARP CPP consists of three instruments:

1. Preferred Stock, purchased by the Treasury at par, carrying a 5% dividend rate for the first five years and 9% thereafter.
2. A Warrant allowing Treasury to purchase Warrant Preferred stock in an amount equal to 5% of the value of the Preferred Stock purchased by Treasury. Treasury intends to exercise these Warrants to buy the Warrant Preferred immediately. The purchase price for the Warrant Preferreds will be $0.01 per share, essentially a nominal price.
3. Warrant Preferred stock is a separate class of preferred stock. It carries a 9% dividend rate. The Warrant Preferred may only be redeemed once all of the Preferred Stock has been redeemed. The Warrant Preferred shall have the same rights, preferences, privileges, voting rights and other terms as the Preferred Stock, including transferability.

In essence, only two securities – the Preferred Stock and the Warrant Preferred Stock – exist for any length of time.[1]

Are the dividend payments tax-deductible?
No.

What is the effective cost of the capital?
The effective cost, not considering executive compensation, legal, administrative, and similar expenses is roughly 6.45% annually assuming the bank redeems the Preferred Stock and the Warrant Preferred Stock at the end of five years. Since that is an after-tax cost, it works out to 9.77% tax-equivalent cost for institutions in the 34% tax bracket and 9.92% tax-equivalent cost for institutions in the 35% tax bracket.

Breaking down the costs, assume a $10mm TARP CPP injection:

Preferred Stock amount $10,000,000 (sold to Treasury at par)
Warrant Preferred amount $ 500,000 (note, Treasury pays only a nominal amount for this)

Annual dividend during the first five years:
Preferred Stock @ 5% $500,000
Warrant Preferred @ 9% $45,000

Approximate cost of issuing Warrant Preferred $100,000
(straight line $500,000 over first five years)

Total reduction in income available to
shareholders for the first five years $645,000 or 6.45% of the $10mm received.

How does the cost to private banks compare to the cost to public banks?
There are a number of variables that influence such a cost comparison including: public bank stock price versus book price per share, stock volatility, future stock prices, and accounting approaches.

[1] Treasury will exempt institutions that are certified Community Development Financial Institutions from the Warrant Preferred requirement, if Treasury's investment is $50 million or less. An institution may qualify for this exemption of it has an application filed for certification as a CDFI by December 8, 2008. For more information about the CDFI certification, see www.cdfifund.gov.

Some banks would find the private bank approach to be cheaper than the public bank approach while other banks would find the opposite. In particular, significant stock price appreciation in the coming years would make the public terms more costly.

The Warrant Preferreds represent 5% of the amount of Preferred Stock investment from Treasury versus the public banks which provided Treasury with warrants to buy common stock equal to 15% of the value of the Preferred Stock investment.

The structural differences will make the private bank terms less dilutive for most profitable institutions.

Should all banks apply for the TARP Capital Purchase Program?
Each bank should consider its circumstances and draw its own conclusion. All banks should consider whether they need or want the additional capital, discuss it at the board level, and be prepared to discuss decisions with regulators and shareholders. While the TARP CPP offers a good source of capital in this environment where capital is so scarce, it is not cheap compared to capital options available in the past. In addition, it is not an attractively priced source of *funding*. It is, however, an attractively priced source of *capital*.

Does Treasury receive any Common Stock or Warrants to purchase Common Stock?
No. For private banks, the Warrant Preferreds serve the role that common stock warrants played for public banks.

Are the dividends on the Preferred Stock cumulative?
Preferreds issued by holding companies are cumulative. For Preferred issued by banks which are not subsidiaries of holding companies, the 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.

Under what terms can the preferreds be redeemed?
The Preferred Stock can be redeemed:

1. Within the first three years with the proceeds from a Qualified Equity Offering (Tier 1 qualifying perpetual preferred stock or common stock, sold for cash) which results in aggregate gross proceeds to the institution of not less than 25% of the issue price of the Preferred.
2. After three years, in whole or in part, at any time.

The Warrant Preferred cannot be redeemed until the Preferred Stock has been fully redeemed, after which it can be redeemed at any time.

Are there restrictions on payment of dividends to common shareholders?
Yes. In general, however, institutions can continue current dividend level. Treasury must approve to any increase in common dividends per share until the third anniversary of the date of the transaction. After the third anniversary and prior to the tenth anniversary, Treasury approval is required for any increase in aggregate common dividends per share greater than 3% per annum; provided that no increase in common dividends may be made as a result of any dividend paid in common shares, any stock split or similar transaction.

If dividends on the Preferred Stock are not current, no dividend can be paid on common stock, junior preferred stock, or preferred shares ranking pari passu with the Preferred Stock, and the institution cannot redeem any junior preferred shares, preferred shares ranking pari passu with the Preferred Stock or common shares.

This restriction ends once the Preferred Stock and Warrant Preferred Stock has been redeemed OR if the Treasury has transferred all of the Preferred and Warrant Preferred to third parties.

Are there restrictions on share buybacks?
Yes. Other than repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice, institutions cannot repurchase equity securities or trust preferred securities without the approval of Treasury.

This restriction ends once the Preferred Stock and Warrant Preferred Stock has been redeemed OR if the Treasury has transferred all of the Preferred and Warrant Preferred to third parties.

Can the Preferred Stock and Warrant Preferred Stock be left outstanding indefinitely?
Yes, but there is <u>a significant restriction on dividends and buybacks that starts after the tenth year</u>. From and after the tenth anniversary of the date of this investment, the institution shall be prohibited from paying common dividends or repurchasing any equity securities or trust preferred securities until all equity securities held by Treasury are redeemed in whole or Treasury has transferred all of such equity securities to third parties.

Does the Preferred Stock convey any voting rights?
Only in limited circumstances:

1. The Preferred shall be non-voting, other than class voting rights on (i) any authorization or issuance of shares ranking senior to the Preferred, (ii) any amendment to the rights of Preferred, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Preferred.
2. If dividends on the Preferred are not paid in full for six dividend periods, whether or not consecutive, the Preferred will have the right to elect 2 directors. The right to elect directors will end when full dividends have been paid for (i) all prior dividend periods in the case of cumulative Preferred or (ii) four consecutive dividend periods in the case of noncumulative Preferred.

Can Treasury transfer ownership of the Preferred Stock and the Warrant Preferreds to third parties?
Yes, but the institution shall take all steps as may be reasonably requested to facilitate the transfer of the preferreds.

Even so, Treasury and its transferees shall not effect any transfer of the Preferred which would require the institution to become subject to the periodic reporting requirements with the SEC (under Section 13 or 15(d) of the Exchange Act). If the institution otherwise becomes subject to such reporting requirements, it must promptly file a shelf registration statement covering the Preferred Stock and take other action to make the shelf registration declared effective as soon as possible. In addition, Treasury and its transferees shall have piggyback registration rights for the Preferred.

What are the executive compensation restrictions?

The institution and its top five highly paid 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 comply 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 the investment.

Are there limits on related party transactions?
Yes. For as long as the Treasury holds any equity securities of the institution, the institution and its subsidiaries will not enter into transactions with related persons (within the meaning of Item 404 under the SEC's Regulation S-K) unless (i) such transactions are on terms no less favorable to the institution and its subsidiaries than could be obtained from an unaffiliated third party, and (ii) have been approved by the audit committee or comparable body of independent directors of the institution.

Are there restrictions on the use of the capital?
Not explicitly. There are, however, recitals in the Securities Purchase Agreement (http://www.ustreas.gov/press/releases/reports/spa.pdf) worth noting. Two of them read as follows:

WHEREAS, the Company agrees to expand the flow of credit to U.S. consumers and businesses on competitive terms to promote the sustained growth and vitality of the U.S. economy;

WHEREAS, the Company agrees to work diligently, under existing programs, to modify the terms of residential mortgages as appropriate to strengthen the health of the U.S. housing market;

Once the agreements are signed, can the restrictions or other terms change?
The Securities Purchase Agreement signed between Treasury and the institution provides that the Treasury "may unilaterally amend any provision of this Agreement to the extent required to comply with any changes after the Signing Date in applicable federal statutes." (Section 5.3.)