PUBLICATION

Treasury to Purchase Preferred Stock Directly from Banking Institutions

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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, led by members of its Financial Stabilization Task Force and Washington, D.C. Public Policy Advisors, continues to actively monitor the progress of the economic stabilization package and other federal efforts. On October 14, 2008, Treasury announced that it will purchase up to $250 billion of senior preferred stock from qualifying U.S. controlled banks and savings associations and certain bank and savings and loan holding companies which engage only in financial activities (i.e., Morgan Stanley and Goldman Sachs). Institutions that desire to participate in the program must elect to do so on or before November 14, 2008, and must meet certain eligibility and allocation requirements to be established by Treasury. In addition, participating institutions must adopt standards for executive compensation and corporate governance to be established by Treasury, which will apply during the period that Treasury holds the securities.

Treasury's action marks a significant shift in its original strategy of purchasing distressed assets. That strategy was criticized for focusing primarily on the purchase of troubled assets, and doubts arose as to whether such purchases would in fact ease the current credit crisis. In contrast to that earlier criticism, Treasury's decision to take equity positions in U.S. banks has been widely supported by Democrats and Republicans, as well as leading economists. Treasury's action is also consistent with action taken by other foreign governments to inject capital into their troubled banking systems.

It is anticipated that $125 billion of the initial $250 billion would be used to purchase preferred stock from the nine institutions that originally signed up for the program, and the other $125 billion would be used to purchase preferred stock from other institutions. The President has authorized the use of an additional $100 billion as allowed by law. The remaining $350 billion will have to be approved by Congress and, according to news reports, that may occur during the lame duck session after the upcoming Presidential election.

the terms of the preferred stock are as follows:

Preferred Terms - Preferred stock will carry a liquidation preference of $1,000 per share and will be senior to common stock and existing junior preferred stock and pari passu with any existing, non-junior preferred stock. The preferred stock will qualify as Tier 1 regulatory capital and have a perpetual life. There are also restrictions on an institution's ability to repurchase or redeem common stock or junior preferred stock while the preferred stock purchased by Treasury is outstanding.

Dividends - For the first five years, the preferred stock issued by a holding company or its subsidiary will earn a cumulative dividend of 5% per year and 9% per year thereafter. Dividend rates are the same for preferred stock issued directly by institutions which are not subsidiaries of holding companies, except that the dividend will not be cumulative. No dividends may be declared or paid on common stock or junior preferred stock until any and all accrued and unpaid dividends on the senior preferred stock issued under the program have been paid in full. For three years after the investment, Treasury's consent will be required for any increase in dividends paid to common shares.

Voting Rights and Transferability - The preferred stock will be nonvoting and will not subject to any contractual restriction on transfer. Treasury has emphasized that it intends to be a passive investor in participating institutions and that it will not serve on the Boards of Directors of these companies or participate in their management. Treasury has also stated that it does not intend to hold these securities forever, and intends to either sell it back to the issuing institution or to the market. To facilitate the government's liquidity, the institution is required to file a resale registration statement to allow public resales of the preferred stock by Treasury.