Treasury's TARP Capital Purchase Program & FDIC's Temporary Liquidity Guarantee Program

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Yesterday morning the U.S. Department of the Treasury announced details of its plans to make equity injections into financial institutions. In addition, the FDIC announced the creation of the Temporary Liquidity Guarantee Program. Below is a summary of each program.

TARP Capital Purchase Program

- Treasury will purchase up to a total of $250 billion of senior preferred shares in eligible U.S. financial institutions.
- The following types of financial institutions are eligible to participate: (i) any U.S. bank or U.S. savings association not controlled by a bank holding company ("BHC") or savings and loan holding company ("SLHC"); (ii) any U.S. BHC, or any U.S. SLHC which engages only in activities that are permissible under Section 4(k) of the Bank Holding Company Act (i.e., activities that are financial in nature), and any U.S. bank or U.S. savings association controlled by such a qualifying U.S. BHC or U.S. SLHC; and (iii) any U.S. BHC or U.S. SLHC whose U.S. depository institution subsidiaries are the subject of an application under Section 4(c)(8) of the Bank Holding Company Act. Institutions that are controlled by a foreign bank or foreign company are not eligible.
- The minimum subscription amount available to a participating financial institution is 1% of its risk-weighted assets. The maximum subscription amount is the lesser of $25 billion or 3% of risk-weighted assets.
- Financial institutions must elect to participate in the program by 5:00 p.m. EDT, on November 14, 2008. Treasury will determine eligibility and allocations for interested financial institutions after consulting with the appropriate federal banking agency. Institutions interested in the program should contact their primary federal regulator for enrollment details. Treasury will fund the purchases by year-end 2008.
- The preferred shares will qualify as Tier 1 capital.
- The preferred shares will pay a cumulative dividend of 5% per annum for the first five years and will reset at 9% per annum after year five. Dividends on preferred shares issued by banks that are not part of a holding company structure will be noncumulative.
- Preferred shares will be non-voting.
- Preferred shares are callable at par after three years at the option of the financial

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institution (primary federal regulator consent required). Prior to the end of three years, the preferred shares may be redeemed with the proceeds from a qualifying equity offering of any Tier 1 perpetual preferred stock or common stock.

- Treasury must consent to any increase in common dividends per share until the third anniversary of the date of the investment. Treasury must also consent to any share repurchases during the first three years.

- Treasury will also receive warrants to purchase common stock with an aggregate market price equal to 15% of the senior preferred stock investment. The exercise price will be the market price of the participating institution's common stock at the time of issuance (calculated on a 20-day trading day trailing average). The warrants are immediately exercisable and have a term of 10 years. The Treasury will agree not to exercise voting rights with respect to such common stock.

- Financial institutions that participate in the program must adopt the Treasury's executive compensation standards for the period during which Treasury holds its investment.

- Preferred stock and common stock warrants are transferable by the Treasury to third parties.

- According to media reports, Treasury has already agreed to purchase preferred shares from the following financial institutions aggregating $125 billion: Bank of America (including Merrill Lynch) ($25 billion), JP Morgan ($25 billion), Citigroup ($25 billion), Wells Fargo ($25 billion), Goldman Sachs ($10 billion), Morgan Stanley ($10 billion), Bank of New York ($3 billion), and State Street ($2 billion).

- In his speech, Secretary Paulson stated that the Treasury will make equity investments in a wide range of financial institutions, including mid-size and smaller banks.

FDIC's Temporary Liquidity Guarantee Program

- The FDIC has established the Temporary Liquidity Guarantee Program.

- The following institutions are eligible to participate: (i) FDIC-insured depository institutions; (ii) U.S. bank holding companies; (iii) U.S. financial holding companies; and (iv) U.S. savings and loan holding companies that engage only in activities that are permissible for financial holding companies.

- Under the program, the FDIC will guarantee the following liabilities for participating financial institutions: all newly issued senior unsecured debt issued on or before June 30, 2009, including promissory notes, commercial paper, inter-

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bank funding, and any unsecured portion of secured debt.

- The amount of debt covered by the guarantee may not exceed 125% of debt that was outstanding as of September 30, 2008, that was scheduled to mature before June 30, 2009.
- For eligible debt issued on or before June 30, 2009, coverage would only be provided for three years beyond that date, even if the liability has not matured.
- For all newly issued senior unsecured debt guaranteed under the program, the participating financial institution would pay an annualized fee equal to 75 basis points multiplied by the amount of debt subject to the guarantee.

- Also under the program, the FDIC will guarantee all non-interest bearing transaction deposit accounts for participating financial institutions until December 31, 2009.
    - Participating institutions will pay a fee for such coverage equal to 10 basis points which would be applied to all non-interest bearing transaction deposit accounts not otherwise covered by the existing deposit insurance coverage limit of $250,000.
- Financial institutions participating in either program will be subject to enhanced supervisory oversight to prevent rapid growth or excessive risk-taking.

We have prepared a related E*Zine on the Executive Compensation rules under EESA that is available at www.joneswalker.com/assets/attachments/1324.pdf.

Visit our **Fiscal Recovery Resource Center** at www.joneswalker.com/practices-103.html for copies of federal guidelines and documents related to the Emergency Economic Stabilization Act of 2008. We will be updating this resource page as new information becomes available.

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Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact:

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