



New Federal Programs Support the Banking System – Step One is the Capital Assistance Program and Economic Assessments

As expected, today the U.S. Department of the Treasury (Treasury) released details of the new Capital Assistance Program, or CAP. Additionally, in a joint statement, the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency and Office of Thrift Supervision announced plans to conduct “forward-looking economic assessments” of the country’s banking institutions with assets exceeding \$100 billion – 19 institutions. Participation in the economic assessments (formerly known as “stress tests”) is not mandatory for participation in CAP. Nor do institutions participating in the economic assessments need to wait for that process to be completed prior to applying for a CAP investment.

In addition, the FDIC Board is scheduled to consider amendments to the temporary guarantee liquidity program’s debt guarantee program on Friday, February 27th. As announced, these amendments would provide an extension of the FDIC’s guarantee program to include mandatorily convertible debt securities.

Links to the information posted today can be found below. For more information about the government intervention efforts in response to the financial crisis, please see our Client Alerts and resources at [Financial Crisis Legal Updates and News](#).

Capital Assistance Program (CAP)

CAP provides eligible institutions an opportunity to sell mandatorily convertible preferred stock to Treasury. CAP does not replace the Capital Purchase Program (CaPP) created on October 14, 2008, but CAP mandatorily convertible preferred stock can be issued in exchange for preferred stock sold to Treasury under the Capital Purchase Program and the Targeted Investment Program. Issuance under CAP must be no less than one percent of risk-weighted assets and no greater than the combination of two percent of risk-weighted assets and other securities being exchanged for CAP securities. The application deadline for publicly-traded institutions is March 25, 2009, with a closing required no more than six months after receiving preliminary approval.

The preferred securities will convert to common stock after seven years and will be Tier 1 securities. Mandatorily convertible securities provide financial institutions higher quality capital securities than the preferred securities issued to Treasury under the prior program. As a result, we expect institutions will utilize CAP, at a minimum to exchange their existing preferred shares held by Treasury.

In summary, CAP is different from CaPP. A qualifying financial institution may participate in CAP and in CaPP, or only in CAP or CaPP. Also, CAP mandatorily convertible preferred stock may be issued as a “qualifying offering” for CaPP participants. Similarly, CAP mandatorily convertible preferred stock may be issued or exchanged for other existing securities.

Mandatorily Convertible Preferred Stock

Market commentators, research analysts and rating agencies have been particularly focused on the “tangible common equity” position of our financial institutions. Traditionally, mandatorily convertible instruments have been seen as boosting tangible common equity. The term sheet published by Treasury outlines the terms of the mandatorily convertible preferred stock. These terms are similar to the terms of mandatorily convertible instruments that have previously been offered by financial institutions.

We will be circulating an alert regarding structuring considerations for mandatory instruments.

Additional Information

Joint Bank Regulatory Announcement of Economic Assessments of Major Banking Organizations
<http://www.federalreserve.gov/newsevents/press/bcreg/20090225a.htm>

FAQs on Economic Assessments
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090225a1.pdf>

Capital Assistance Program (CAP) Announcement
<http://www.ustreas.gov/press/releases/tg40.htm>

Capital Assistance Program (CAP) White Paper
http://www.ustreas.gov/press/releases/reports/tg40_capwhitepaper.pdf

Capital Assistance Program (CAP) Term Sheet for Mandatorily Convertible Preferred Stock
http://www.ustreas.gov/press/releases/reports/tg40_captermsheet.pdf

Capital Assistance Program (CAP) FAQs
http://www.ustreas.gov/press/releases/reports/tg40_cap_faq.pdf

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