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### Capital Purchase Program Questions

United States: Department of the Treasury

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## CAPITAL PURCHASE PROGRAM REPURCHASE QUESTIONS

March 1, 2012

FAQs addressing Capital Purchase Program (CPP) changes under the American Recovery and Reinvestment Act of 2009.

### **Can my bank redeem its CPP investment under terms other than those specified in the original transaction documents?**

Yes. This answer applies to all CPP Participants, irrespective of funding dates but this does not apply to participants in the Capital Assistance Program, announced on February 25, 2009.

## **If my bank determines that it would like to redeem its CPP investment, what is the process?**

Please notify your primary regulator of your desire to redeem. Also please notify Treasury at [CPPRedemption@treasury.gov](mailto:CPPRedemption@treasury.gov). After receiving your notice, Treasury and your primary regulator will consult about the request. When all consultations have been completed, we will contact you to discuss the redemption request and provide contact information for UST outside counsel that will be handling the redemption. Details of the redemption and completion of all necessary documentation will be handled by outside UST counsel.

## **What does the consultation with my primary regulator involve?**

Treasury will request that your primary federal regulator directly contact Treasury to consent to your redemption request. Treasury cannot accept correspondence between your institution and its appropriate federal banking agency in lieu of the formal notification described above.

## **Can my bank redeem part of its CPP investment at this time?**

CPP participants wishing to repay part of its CPP investment must pay a minimum of the greater of (i) 5% of the aggregate liquidation preference or principal amount of the preferred or subordinated debentures issued on the original issue date or (ii) \$100,000.

## **Where should my bank send the money?**

It is important that you go through the process noted above to get detailed transfer instructions to make sure that all payments are attributed correctly.

## **Can my bank repurchase the warrants at the time we redeem Treasury's investment?**

Yes. This right is given under Section 4.9 of the Securities Purchase Agreement, which permits the issuer to repurchase the warrants at 'fair market value' as defined in the agreement, which details the procedure for determining this value. Treasury will work with you to facilitate the repurchase process. Your warrants cannot be sold to an investor until you have had an opportunity to repurchase them. Warrants cannot be repurchased until all outstanding preferred stock has been repurchased.

## **If my bank does not purchase the warrants at this time, what happens to them?**

If your bank does not choose to exercise its option to repurchase the warrants, Treasury will attempt to liquidate the warrants as soon as possible.

## **My bank participated in CPP under the private company transaction documents, and the warrants we issued to Treasury were exercised immediately upon closing. Can we redeem the warrant preferred shares or warrant subordinated debentures at the same time we redeem the original preferred or subdebt investment?**

Yes. CPP participants are required to repurchase any preferred stock or subordinated debentures issued due to the exercise of the warrant when making a full repurchase or repurchasing the remaining amount of the original issue.

## **When my bank repays Treasury's investment, are we responsible for unpaid dividends?**

Yes. In the case of the cumulative senior preferred and subordinated debentures, you must pay any accrued and unpaid dividends. In the case of the non-cumulative senior preferred, you must pay accrued and unpaid dividends for the current dividend period, regardless of whether any dividends are actually declared for that period.

## **CAPITAL PURCHASE PROGRAM (CPP)**

Additional guidance on repayments (issued May 2009)

## **What is the policy for returning CPP money?**

Under the original terms of the CPP, banks were prohibited from repaying within the first three years unless they completed a qualified equity offering. However, the provisions introduced by the American Recovery and Reinvestment Act of 2009 indicate that once an institution notifies Treasury that it would like to repay its CPP investment, the Treasury must permit a TARP recipient to repay subject to consultation with the appropriate Federal Banking Agency. All institutions seeking to repay CPP will be subject to the existing supervisory procedures for approving redemption requests for capital instruments. Supervisors will carefully weigh an institution's desire to redeem outstanding CPP preferred

stock against the contribution of Treasury capital to the institution's overall soundness, capital adequacy, and ability to lend, including confirming that the institution has a comprehensive internal capital assessment process.

The 19 bank holding companies (BHCs) that were subject to the Supervisory Capital Assessment Program (SCAP) or "stress test" process must have a post-repayment capital base at least consistent with the SCAP buffer, and must be able to demonstrate its financial strength by issuing senior unsecured debt for a term greater than five years not backed by FDIC guarantees, in amounts sufficient to demonstrate a capacity to meet funding needs independent of government guarantees.

## **What will happen to the warrants that Treasury owns in these banks?**

After repaying their CPP preferred stock, institutions also have the right to repurchase the warrants issued to Treasury for their appraised market value. If an institution chooses not to repurchase the warrants, Treasury may liquidate registered warrants. The warrants cannot be sold to an investor until the bank has had an opportunity to repurchase them.

## **How will you value the warrants that you own in banks that are repaying CPP investments?**

The issuer can repurchase the warrants at "fair market value," as defined in Section 4.9 of the Securities Purchase Agreement. Specifically, the bank wishing to repurchase warrants will hire an independent advisor that will use standard industry practices to value the warrants and will present the offer to Treasury, which will independently calculate its own determination of fair market value using a robust process which includes third party input. If those values differ, then Treasury and the bank will followed the process defined in Section 4.9 to reach a mutually agreed upon fair market value.

## **How will the public know when a firm has repaid its CPP preferred or repurchased Treasury's warrants?**

Information on CPP preferred repayments and warrant repurchases is made available online and updated regularly in the TARP Transactions Reports. [Click here to find the latest TARP Transaction Reports.](#)

For CPP participants who have used the public institution transaction documents, how is the warrant exercise price calculated?

Treasury is aware that there is some confusion around this calculation. All warrant exercise

prices have been calculated in a consistent manner, taking the average of the closing prices for the twenty trading days up to and including the day prior to the date on which the TARP Investment Committee recommends that the Assistant Secretary for Financial Stability approve the investment. Please note that (i) the recommendation of the Investment Committee constitutes preliminary approval, but final approval of an investment occurs only when the transaction documents are executed and delivered by Treasury; and (ii) a trading day is defined as a day on which there was trading activity in a given name.

## **CAPITAL PURCHASE PROGRAM (CPP) - MISSED DIVIDEND OR INTEREST PAYMENTS AND TREASURY'S EXERCISE OF CONTRACTUAL RIGHTS**

Questions Related to Missed Dividend or Interest Payments and Board Observers

### **Why does Treasury request permission to send observers to the board of directors of CPP participating institutions?**

When an institution decided to participate in the CPP, it entered into a securities purchase agreement (Agreement) with Treasury, which provided Treasury the contractual right to nominate up to two members to the board of directors upon the sixth missed dividend or interest payment. Treasury requests permission to send observers to certain institutions once they miss five dividend or interest payments to help determine how to best exercise its contractual rights to nominate up to two directors.

### **Who does Treasury send to act as an observer to the board of directors of institutions that have missed five dividend or interest payments?**

Treasury selects qualified members of the Office of Financial Stability (OFS) staff to act as observers. Observers, therefore, are at all times Treasury employees and not employees of the institutions they are sent to observe.

### **How do observers participate in board of director meetings?**

Observers limit their participation to asking clarifying questions on materials distributed, presentations made and actions proposed or taken. They also respond to questions concerning the observer's role. Observers leave a meeting, or any portion, if asked by the members of the board of directors.

### **How does Treasury treat the information received by an observer?**

The information disclosed during, or in connection with, board of directors meetings is treated as any other information received pursuant to the Agreement, in particular, Section 3.5 (“Access, Information and Confidentiality”). As set forth in Section 3.5, Treasury uses its “reasonable best efforts to hold... and cause its agents, consultants, contractors and advisors to hold, in confidence [information received]” subject to certain exceptions.

### **If an institution voluntarily grants permission to Treasury to send observers, what expenses in connection with the observer is paid by the institution?**

Treasury is responsible for all of the observer’s compensation and travel expenses, if any, as part of the observation of board of director meetings.

### **Can an institution request that Treasury send observers prior to having five unpaid dividend or interest payments?**

Yes, while Treasury does not request permission to send an observer to an institution until it has five unpaid dividend or interest payments, an institution can request that Treasury send an observer before the institution has five unpaid dividend or interest payments.

Questions Related to Missed Dividend or Interest Payments and Director Nomination

### **When does Treasury consider nominating up to two members to the board of directors?**

Pursuant to the Agreement, Treasury has a contractual right to nominate up to two members to the board of directors of an institution after the institution has six unpaid dividend or interest payments. Treasury determines how to best exercise this contractual right after a full evaluation of its investment including information provided by the observers. Among institutions that have missed six dividends or interest payments, Treasury will set priorities as to the ones for which it nominates directors based on the size of its investment, Treasury’s assessment of the extent to which new directors may make a contribution and Treasury’s ability to find appropriate directors for a given institution. Treasury will focus first on institutions where Treasury’s investment exceeds \$25 million. Treasury may send observers to an institution’s board of directors meetings in the interim and its assessment of whether new directors can make a contribution will be informed in part by any information provided by the observers.



## **How does Treasury select the members to be nominated to the board of directors if Treasury believes that exercising its nomination right is in the best interest of taxpayers?**

Treasury engages executive search firms to find a list of candidates suitable to act as members of the board of directors of financial institutions. After obtaining a list of candidates for each institution for which Treasury is considering exercising its rights, Treasury reviews and select members from this list to serve on an institution's board of directors. Treasury has developed criteria and protocols to guide the review and selection process.

## **Are the members nominated to the board of directors by Treasury government employees? Who bears the compensation and other expenses related to the members of the board of directors nominated by Treasury?**

Members nominated to the board of directors by Treasury are not government employees. The compensation and other expenses related to any member of the board of directors nominated by Treasury is paid by the related financial institution to the same extent as any other member of the board of directors.

## **Do members of the board of directors nominated by Treasury represent Treasury?**

No. Members of the board of directors nominated by Treasury do not represent Treasury. Members of the board of directors nominated by Treasury have the same fiduciary duties and obligations to the shareholders of the financial institution as any other member of the board of directors.

## **Can the members of the board of directors nominated by Treasury require an institution to make dividend or interest payments?**

No. Members of the board of directors nominated by Treasury have the same fiduciary duties and obligations to the shareholders of the institution as any other member of the board of directors. The board of directors, using its best business judgment, decides when and how to deploy the institution's capital, including whether to make dividend or interest payments.

## **How long do members of the board of directors nominated by Treasury serve on the board of directors?**

Once nominated by Treasury, members of the board of directors serve until (a) Treasury's rights to nominate members to the board of directors expires due to the payment of dividends or interest pursuant to the legal documentation governing Treasury's investment or (b) Treasury chooses to nominate a replacement director. Nonetheless, even after Treasury's right to nominate a director expires, a financial institution can voluntarily choose to retain the director if it believes that it is in the best interest of the institution to do so.

## **Do Treasury observers continue to attend board of directors meetings if Treasury nominates members to the board of directors of an institution?**

No. Once Treasury nominates members to an institution's board of directors, Treasury discontinues having a Treasury employee observe the board of directors meetings of that institution.

## **CAPITAL PURCHASE PROGRAM DEADLINE**

**Please note, the final investment under the CPP was made in December 2009. These FAQs are provided for historical purposes only.**

When is the deadline for CPP applicants to complete the funding process?

All CPP applicants who have received preliminary approval must complete funding by December 31, 2009. This includes applicants to the CPP for Small Banks expansion launched in May 2009. While the application deadline for CPP for Small Banks is November 21, 2009, we encourage qualifying institutions to submit their application as soon as possible to allow for sufficient time for application processing. There will be no funding transactions under the CPP after the end of this year.

Employ American Workers Act and the Capital Purchase Program

## **If Treasury holds only warrants in an entity, will that entity be considered a “recipient of funding” for purposes of the Employ American Workers Act (the “EAWA”)?**

No. An entity in which the Treasury holds only warrants is not a “recipient of funding” for purposes of the EAWA.