LEGAL ALERT

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Treasury Releases Terms for Rescue of Private Banks and Savings & Loans

Privately held banks and savings & loans are now eligible to participate in the Treasury's $250 billion Capital Purchase Program. U.S. Department of the Treasury ("Treasury") recently released guidelines for privately held qualified financial institutions ("QFIs") with respect to such program. The Capital Purchase Program is a program being offered under the Emergency Economic Stabilization Act of 2008 (i.e. the bailout legislation) where Treasury will purchase preferred equity in QFIs. QFIs have until **December 8, 2008**, to apply to receive such preferred equity financing.

QFIs generally include (i) privately held top-tier bank holding companies ("BHCs"); (ii) privately held top-tier savings and loan holding companies ("SLHCs"); (iii) privately held U.S. banks and U.S. savings associations organized in stock form that are not controlled by BHCs or SLHCs; and (iv) privately held U.S. banks and U.S. savings associations that are controlled by privately held SLHCs. QFIs do not include S corporations and mutual depository institutions as well as institutions that are controlled by foreign banks or companies. We expect Treasury to issue guidance relating to S corporations and mutual depository institutions in the near future.

Under the Capital Purchase Program, Treasury will purchase preferred shares from QFIs in an amount equal to not less than 1%

of the QFI's risk weighted assets and not more than the lesser of (i) $25 billion and (ii) 3% of its risk-weight assets. The preferred shares will be senior to the QFI's common stock and pari passu with existing preferred shares other than existing preferred shares which are junior to any existing preferred shares. The preferred shares will pay cumulative dividends at a rate of 5% per annum for the first five years and thereafter at 9% per annum. For preferred shares issued by QFIs which are not subsidiaries of holding companies, the dividends will be non-cumulative. Dividends must be paid quarterly.

Treasury's preferred shares will generally be non-voting, other than voting rights with respect to (i) the issuance of shares ranking senior to Treasury's preferred shares and (ii) mergers, exchanges, or similar transactions that could adversely affect Treasury's preferred shares. Treasury's preferred shares will be callable after three years or under certain limited conditions prior to the expiration of the three year period. A QFI issuing preferred shares to Treasury must agree to certain restrictions with respect to the payment of dividends and the redemption of other shares in order to participate in the Capital Purchase Program.

In conjunction with the purchase of preferred shares, Treasury also will receive (with certain exceptions) warrants to purchase a certain amount of preferred stock of the QFI. The per share exercise price will be the greater of $0.01 per share or the par value of such preferred stock. Lastly, in order to participate in the program, the QFI will need to comply with strict executive compensation requirements.

So far, thirty banks have received approximately $158.56 billion under Treasury's $250 billion Capital Purchase Program. QFIs interested in the Capital Purchase Program should apply as soon as possible.

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