

CONCERNS FOR SMALLER, EXCHANGE-LISTED PUBLIC COMPANIES

This group consists of companies that file 10-K/10-Q/8-K reports with the SEC (or FDIC or OCC if there is no holding company) and are listed on Nasdaq, AMEX, or the NYSE. Although these companies can comply with the program as currently structured, they may have very little trading volume in their stock. They may also have more limited financial or managerial resources than larger public institutions.

The TARP Capital Public Term Sheet presents the following issues and concerns:

Senior Preferred Stock

Type of Security: If the company's articles of incorporation do not authorize preferred stock, the shareholders will need to approve, and the company will need to file, an amendment to the articles of incorporation authorizing preferred stock and allowing the board to issue it and set its terms. In addition, banks without holding companies may be required to seek prior regulatory approval to amend their charters.

Before the proxy materials are mailed to shareholders, preliminary materials will need to be filed with the SEC for review. A lengthy review process could result in the inability to mail the proxy materials in time to provide adequate notice to shareholders, which would then make the company unable to issue the Senior Preferred Stock within the required time frame.

Shelf Registration: Although a company in this category will be able to file a shelf registration with the SEC, the registration process is likely to involve significant effort and expense. Although this process would greatly benefit Treasury if fully liquid securities are the result, the benefit will not be as great given the relatively limited liquidity of the securities issued by many community banks, even if they are exchange-listed. Furthermore, the SEC will have an opportunity to review the registration statement before declaring it effective, and the company will not be able to control the timing or outcome of this review process.

Reasonable Efforts to List the Securities: As is the case with shelf registration, the listing process will involve time and expense that may not be offset by the resulting liquidity of the securities.

Executive Compensation: Management needs to be sure that the "senior executive officers," as defined under the TARP Capital rules, will sign an agreement consenting to "clawback" rights regarding future bonus and incentive compensation paid based on materially inaccurate earnings statements or other criteria. The board also needs to be comfortable with limitations on payments made to terminated executives and with the inability to deduct more than \$500,000 of annual executive compensation for the senior executives. Finally, management needs to make sure it is in a position to make any amendments to senior executive compensatory arrangements to address these requirements before Treasury makes the investment (i.e., before the end of this year).

Warrants

Underlying common stock: If the company's articles of incorporation do not authorize the issuance of sufficient shares of common stock upon exercise of the warrants, the company will need to amend its articles of incorporation to authorize the additional shares. Although the Warrant Term Sheet does not require that these shares be authorized when the warrants are issued, penalty provisions will apply if shareholder approval is not obtained within six months thereafter. When shareholder approval is sought, the preliminary proxy filing requirements described in "Shelf Registration" above will apply.

Shelf Registration: The same issues are presented as in the case of the Senior Preferred described above.

Requirement to List on an Exchange: The same issues are presented as in the case of the Senior Preferred described above.