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NEWSLETTER OF THE **BANKING AND SPECIALTY FINANCE** PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

Treasury Shines A Light

Harold P. Reichwald

The Treasury's interim chief of the TARP program shined a light on some of the inner workings of the Capital Purchase Program on November 10, 2008. Banks should take note of these comments as the November 14, 2008 deadline for submission of applications by qualifying banks under the Capital Purchase Program nears.

First, Interim Assistant Secretary Neel Kashkari emphasized that his office is hard at work developing the required legal documents so that privately held banks can participate "on the same economic terms as public banks." The deadline for submission of applications from private banks will be extended although no new date has been set.

Second, as to the application process itself, banks are encouraged to have a dialogue with their federal regulator. The clear implication is that if as a result of this consultation the federal regulator is discouraging, there is little likelihood that an application will be approved.

Once an application is formally submitted, the federal regulator takes one of three actions: (1) if there is to be no recommendation, the bank will be encouraged to withdraw the application and no public disclosure of this will result; (2) if there is a strong recommendation for approval from the federal regulator, the application is forwarded directly to the TARP Investment Committee; and (3) in what the regulator deems are "less clear cases," the application is forwarded to a newly established Regulatory Council (senior representatives of the four federal banking regulators, with Treasury as an observer), which makes the final recommendation to Treasury.

If approval is recommended, the Assistant Secretary makes

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the final decision, taking into account the recommendations from the Treasury's Investment Committee. A denial of an application will not be publicly disclosed by Treasury. Banks whose application has been approved will then have thirty days to complete the documents before funding.

Notwithstanding the political pressure from Congress and elsewhere about requiring banks receiving CPP funds to make new loans, the mode of deployment of the new capital clearly is not mandated. Rather, Treasury continues to believe that banks will realize that sitting on the new capital will not help their financial ratios while putting the new capital to work in extending credit to creditworthy businesses and consumers will enhance their ratios, notably the return on capital. Time will tell whether this soft approach will bring the desired result.

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Harold P. Reichwald Mr. Reichwald is a highly experienced banking and finance attorney whose career encompasses domestic and international matters for banks and specialty finance institutions. His experience comprises a broad range of matters including: governance matters, sophisticated financial transactions such as asset securitization, LBOs, project finance, corporate lending and restructuring; representation of a variety of domestic and foreign financial institutions before the FDIC, Comptroller of the Currency, the Federal Reserve Board and other bank regulatory agencies in connection with new product development, chartering new banks and branches, issues arising out of the bank examination process and enforcement actions demanded by regulatory authorities.

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