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November 5, 2008

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

TARP 30-Day Report Card

Harold P. Reichwald

It is just short of a month since the Treasury and the federal banking regulators first announced the implementation of programs authorized by the Emergency Economic Stabilization Act, including the Capital Purchase Program (CPP). Since then, the Treasury has funded CPP commitments to the first nine institutions and news of commitments to an array of regional and smaller banks has been made public. The selection process remains somewhat murky with press reports shedding some light on the process. However, other than anecdotal evidence or unofficial commentary, the Treasury has offered a minimum of guidance as to what factors are guiding the decision-making process.

At the risk of adding to the "noise," here are some observations:

- While the identities have been disclosed of a select group of senior Treasury officials who are making CPP decisions based on recommendations of federal regulators, nevertheless, there is a strong suspicion that a "shadow" and as yet unidentified group acts as the final arbiter of which institutions get CPP allocations.
- There is concern at the Treasury that disclosure of the criteria being applied to applicants for CPP funds would only lead to speculation about the viability of applying banks, especially those which are currently struggling.
- While the process starts with a bank's CAMEL rating and the endorsement from its federal regulator, apparently there are other publicly undisclosed conditions being applied as the process moves to decision.

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- There is clear evidence that the Treasury is allocating CPP funds to those banks who suffered losses in their investment portfolio when Fannie Mae and Freddie Mac were put into federal conservatorship.

- There is some evidence that the Treasury is requiring applicants for CPP funds with serious challenges to obtain commitments for private capital as a condition for obtaining a CPP allocation.

- What about privately-held banks (with or without subchapter S status) or banks that file public reports and whose stock publicly trades but not on a national securities exchange? The Treasury has acknowledged a "glitch" in the CPP program because in its current formulation, these banks are excluded. With that in mind, the Treasury is said to be contemplating alternatives and that the November 14, 2008 deadline for banks in this category will be extended.

- Lobbying for CPP funds is by no means foreclosed and banks which have suffered reversals but are not in jeopardy are encouraged to make their case, starting with their federal regulator.

- Many strong, profitable banks are simply caught in the logjam at the Treasury and have not yet heard. This should not carry any negative implications although this situation presents a challenge if the bank is asked publicly for comment on a CPP application.

- Specialty finance companies and other nonbank lenders are asking to be included in a CPP-like program and the Treasury has announced that it is giving these requests serious consideration.

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