

Private Equity Alert

July 2012

Treasury Department Pooled Auction Initiative to Sell TARP Investments

Treasury Department preferred stock sales that will present opportunities for Private Equity firms in the coming months

Implications for Clients

In 2008 and 2009, the US Department of the Treasury acquired preferred stock from more than 700 banks and bank holding companies as part of the Capital Purchase Program (CPP) under the Troubled Asset Relief Program (TARP). The CPP preferred stock is a perpetual preferred stock that pays a 5 percent dividend that increases to 9 percent over the next two years. The Treasury Department has since exited more than half of its CPP positions. As part its ongoing efforts to wind down and recover its remaining CPP investments, the Treasury Department is currently pursuing a new initiative focused on its CPP investments in smaller institutions.

On June 19, the Treasury Department notified approximately 200 institutions with outstanding CPP preferred stock that it will be conducting a series of pooled auctions of CPP investments and that it intends to include the CPP shares of those institutions in the pooled auctions. The Treasury Department has given those institutions until October 9 (if they notify Treasury by August 6) to opt out of the pooled auctions by, among other things, designating a single outside investor (or group of investors) to make a bid to purchase the institution's CPP preferred shares.

On July 9 and July 19, the Treasury Department issued guidance and bid forms to be used by institutions electing to opt out of the pooled auction process and their designated bidders. A bid submitted by an institution's designated bidder(s) must meet a minimum price level set by the Treasury Department to ensure good value for taxpayers and certain other requirements in order to be considered by Treasury. After evaluating opt-out bids, the Treasury Department will notify institutions if their CPP shares will be removed from the pooled sales process and provide guidance on the next steps in the opt-out process. Institutions for which the Treasury Department does not receive an acceptable bid will have their CPP preferred stock included in the pooled auctions, which the Treasury Department expects to commence this Fall. It is expected that purchase discounts on CPP preferred shares acquired through this private sale process, either through the opt-out process or the pooled auctions, could be up to 25 percent or more.

What You Need to Know Now

A number of private equity firms are exploring:

- Opportunities to be designated by banks as preferred bidders under the opt-out option and, if successful, possibly exchange the CPP preferred shares for common stock
- Opportunities to participate in the Treasury Department pooled auctions for CPP preferred shares

Latham is working closely with the Treasury Department and the Federal Reserve on the regulatory issues that will impact private equity firms' ability to participate in this Treasury Department initiative.

If you are interested in exploring opportunities to participate as a bidder under either the opt-out process or the pooled auction process, we would be glad to discuss those opportunities with you.

If you have any questions about this *Private Equity Client Alert*, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

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