

**DAVIS POLK & WARDWELL**

Date:           *November 3, 2008*

To:             *Interested Persons*

From:          *Davis Polk & Wardwell*

Re:            *US Government Capital Injections – Important Changes from  
the Term Sheet*

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Last week, Treasury completed its investment in the nine systemically important banks and, on October 31<sup>st</sup>, Treasury posted standardized final documents on its website. The final documents, reflecting comments from the nine systemically important banks, clarify a number of points and contain certain differences from the Term Sheet originally published on October 14<sup>th</sup>.<sup>1</sup> Although the final Term Sheet is little changed from the Term Sheet that Treasury originally published, an analysis of the underlying documents – the securities purchase agreement, the Warrant and the certificate of designations for the Preferred Stock – reveals some significant differences between those documents and the published Term Sheet. A revised Term Sheet, which has been marked to reflect the important differences between the Term Sheet and the final documents for the Capital Purchase Program, is attached as Annex A. In this memorandum, we review those differences and certain other significant issues that financial institutions should consider before applying for funding under the program.

Treasury has stated that it will invest in each publicly-traded financial institution that participates in the program on the same terms in a “one-size-fits-all” approach, without change for individual financial institutions. We believe, however, that Treasury will consider modifications to accommodate important institution-specific issues, but otherwise will not agree to changes. Each financial institution will need to review carefully the final terms and the underlying documents to see if it can and would want to comply with them.

The application deadline for publicly-traded financial institutions is 5:00 p.m. (EDT) on Friday, November 14, 2008. Treasury has stated that it will post application information for privately-held financial institutions at a later date and establish a reasonable application deadline for them.

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<sup>1</sup> For those not familiar with the original Term Sheet, see the Davis Polk memorandum entitled “***Emergency Economic Stabilization Act of 2008: US Government Capital Injections (October 15, 2008)***” available at [www.dpw.com](http://www.dpw.com).

## Overview

**Authorization; Stockholder Approvals.** The financial institution should confirm that its organizational documents permit the issuance of a new series of preferred stock and, if so, whether there are a sufficient number of authorized but unissued preferred shares. Treasury may agree to purchase Preferred Stock with a liquidation preference exceeding \$1,000 per share if the number of authorized shares is limited and, in this case, Treasury may require the appointment of a depositary to hold the Preferred Stock and issue depositary receipts. In addition, the financial institution should determine whether it has a sufficient number of authorized but unissued shares of common stock for issuance upon any exercise of the Warrant and if the issuance of the maximum number of shares of common stock under the Warrant would exceed 19.9% of the shares outstanding at the time the Warrant is issued, triggering the stockholder consent requirements of the New York Stock Exchange or Nasdaq for companies with common stock listed on one of those exchanges.<sup>2</sup>

**Consents; Preemptive Rights.** The financial institution should confirm whether the consent of holders of any outstanding preferred stock is needed to issue the Preferred Stock and the Warrant to Treasury<sup>3</sup> and whether any existing preemptive rights would be triggered by Treasury's investment.<sup>4</sup>

**Executive Compensation Requirements.** At or before signing the securities purchase agreement, the financial institution must have changed its executive compensation arrangements as required to comply with Section 111(b) of the Emergency Economic Stabilization Act of 2008.<sup>5</sup> This provision will

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<sup>2</sup> A financial institution can still issue the Preferred Stock and Warrant and obtain the necessary stockholder approvals after closing but the exercise price of the Warrant will be reduced by 15% if the approvals are not obtained in 6 months and an additional 15% for every 6 months afterwards up to a cap of a 45% reduction in the exercise price. If the approvals are not obtained within 18 months, the Warrant can be exchanged for other permanent equity as noted below.

<sup>3</sup> **Technical point:** Preferred stock consent requirements vary and, for example, consent of existing convertible preferred stockholders may be required if the terms of that preferred stock require consent when new preferred stock is issued for consideration that is less than its liquidation preference. Since the Warrant has value but is issued without separate consideration, the financial institution may be forced to conclude that consent is necessary as the Preferred Stock is being purchased for something less than its liquidation preference.

<sup>4</sup> **Technical point:** Note that customary preemptive rights provisions are triggered by issuances of common stock or common stock-linked securities and so would not technically include the Preferred Stock. But since the Warrant is issued without separate consideration, a banking institution would want to require any preemptive rights holder to purchase both the Preferred Stock and the Warrant and not just the "free" Warrant.

<sup>5</sup> **Technical point:** The financial institution must continue to comply with Section 111(b) until Treasury no longer holds any Preferred Stock, Warrants or underlying common stock. Once Treasury no longer holds any Preferred Stock, the financial institution may repurchase any

require the financial institution to review carefully the necessary changes and to determine how best to change them before signing. The senior executive officers of the financial institution will also be required to sign waivers releasing Treasury and the financial institution from any claims related to these changes to their compensation arrangements.

**Public Disclosure.** We expect that most financial institutions that choose to participate in the program will issue a press release and therefore the key question for most will be the timing of that release. Treasury will post on its website the name and the investment amount of each participating financial institution within 2 business days of Treasury's approval of the investment. The financial institution will need to file a Form 8-K with the SEC disclosing the investment. This Form 8-K could be filed after closing of the investment as long as the filing date occurs within 4 business days of either the signing of the securities purchase agreement if the investment is material to the financial institution or the filing of the Preferred Stock's certificate of designations with the secretary of state of the financial institution's state of organization, if the investment is not material.<sup>6</sup> We expect that most financial institutions that choose not to participate will announce that decision by press release, although this press release would likely not be strictly required by law.

### **Certificate of Designations**

**Dividends.** In contrast to the Term Sheet:

- dividends on the cumulative Preferred Stock<sup>7</sup> not only accumulate, but unpaid dividends compound at the dividend rate then in effect; and
- the dividend payment dates can be changed, with the consent of Treasury, from the February 15, May 15, August 15 and November 15 dates specified in the Term Sheet to allow a financial institution to determine the best payment dates in light of its other ongoing payment obligations.

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Warrants or underlying common stock then held by Treasury pursuant to section 4.9 of the securities purchase agreement.

<sup>6</sup> The filing of the certificate of designations amends the financial institution's charter, and a Form 8-K filing would be required even if the financial institution could otherwise conclude that the investment is not material to it.

<sup>7</sup> Preferred Stock issued by a bank that is not a subsidiary of a bank holding company will be non-cumulative.

***Qualified Equity Offerings.*** One or more qualified equity offerings can count towards the specified threshold of 25% of the issue price of the Preferred Stock that is required to be met before any redemption is permitted in the first three years.<sup>8</sup> The Term Sheet had implied that the 25% threshold would need to be met in a single transaction. A qualified equity offering is defined as a sale for cash of common stock or perpetual preferred stock that qualifies as Tier 1 capital. Issuances of trust preferred securities or other Tier 1 qualifying instruments will not count. Issuances made pursuant to “agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008” also do not count.<sup>9</sup> The proceeds of the qualified equity offering are not required to be used to redeem the Preferred Stock. After the third anniversary of the issue date, the Preferred Stock may be redeemed at par, plus any accrued and unpaid dividends. There is no premium payable on any redemption.

Meeting the qualified equity offering threshold is the only optional redemption permitted in the first three years. Some had hoped that the Preferred Stock would contain an optional redemption provision to allow, for example, redemptions necessary to preserve the tax-free treatment of a business combination but Treasury did not include this feature in the final documents.

***Repurchase of Equity.*** The Term Sheet states that the financial institution’s right to purchase the Warrant or common stock issued pursuant to any exercise of the Warrant held by Treasury will be triggered by the redemption in whole of the Preferred Stock. This right will also be triggered by Treasury’s transfer of all of the Preferred Stock to one or more third parties.

***Restrictions on Dividends and Repurchases.*** The Term Sheet’s only stated exception to the limitation on share repurchases is for those related to employee benefit plans consistent with past practice. The terms of the final documents, however, add several additional technical exceptions to this restriction, including for purchases related to:

- market making and related activities;
- stockholders’ rights plans;

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<sup>8</sup> **Technical point:** if two participating financial institutions were to complete a business combination, the total outstanding Preferred Stock will be aggregated to determine the new higher threshold for the surviving entity.

<sup>9</sup> We understand from Treasury that issuances publicly announced and completed after October 13 pursuant to preemptive rights obligations in existence before October 13, 2008 count towards the threshold.

- acquisitions for the beneficial ownership of any other person, such as in the capacity of a trustee or custodian; and
- exchanges or conversion of junior stock for other junior stock or preferred stock ranking in parity with the Preferred Stock into other parity preferred stock or junior stock to the extent required pursuant to agreements entered into before the date of the signing of the securities purchase agreement or pursuant to any subsequent agreement providing for the accelerated exchange or conversion of such securities but only if the exchange or conversion is for common stock.

Notwithstanding these exceptions, a financial institution will not be able to defend its stock price through share repurchases or by increasing its dividend rate while these restrictions are in force.<sup>10</sup> For more details, see the section on “Repurchases” in the marked Term Sheet in Annex A.

**Voting Rights.** The final terms clarify an ambiguity in the Term Sheet by providing that the right to elect two directors in the event of the non-payment of dividends for 6 quarters, whether or not consecutive, is not in addition to any director election rights of other preferred stockholders with like voting rights. In other words, Treasury and any other holder of the Preferred Stock will be required to vote with the holders of other voting parity preferred stock and will not be able to appoint 2 directors in addition to any directors elected by those other preferred stockholders. The right to elect directors ends when all dividends on cumulative Preferred Stock have been paid for all past dividend periods and not, as the Term Sheet states, when dividends have been fully paid for four consecutive periods.

**Ranking.** The Term Sheet titles the Preferred Stock “senior preferred stock” but, to avoid confusion, the final terms make clear that the term “senior” is not needed in the title since the Preferred Stock ranks *pari passu* with any other preferred stock, other than junior preferred stock.

### **Warrant**

**Exercise Price.** The Warrant’s exercise price is now based upon the date Treasury accepts the financial institution’s application to participate in the Capital Purchase Program and uses the 20-trading day trailing average closing price ending on the trading day immediately before that date. The calculation of the exercise price uses closing prices and not a volume weighted average price

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<sup>10</sup> The restriction on share repurchases is contained in section 4.8 of the securities purchase agreement and applies until the third anniversary of the date of Treasury’s investment, unless before that date, the Preferred Stock is redeemed or Treasury has transferred all of the Preferred Stock to third parties.

concept. Note that the financial institution will have market risk between the date it submits the application and the date that Treasury approves it, unless the financial institution withdraws the application before approval.

**Exercisability.** The Term Sheet states that the Warrant is immediately exercisable in full. In order to preserve the financial institution's right to have the number of shares underlying the Warrant reduced by half if the financial institution raises 100% of the issue price of the Preferred Stock in qualified equity offerings before December 31, 2009, Treasury can only exercise or transfer the Warrant with respect to up to half of the initial underlying shares before that date. In addition, the 50% reduction, while calculated on the basis of Treasury's total initial investment, applies only to the portion of the Warrant then held by Treasury. For example, if the financial institution raises the required amount and Treasury had transferred half of the Warrants to third parties, Treasury's portion of the Warrant would be reduced to zero while the third parties' Warrants would not be affected – a net reduction of the entire Warrant to half of the initial underlying shares.

**Settlement of Exercise.** Any exercise of the Warrant will be net share settled unless Treasury and the financial institution agree to gross physical settlement. The closing price of the financial institution's common stock on the date of exercise will be used to determine the number of shares to be withheld in order to effect the net share settlement.

**Anti-Dilution Adjustments.** There are several customary anti-dilution adjustments, including for stock splits and dividend payments in excess of the last dividend paid before the issue date of the Warrant, but two are unusual:

- ***Below Market Issuances of Common Stock or Convertible Securities.*** Until the earlier of the third anniversary of the issue date and the date Treasury no longer holds any portion of the Warrant, the number of shares underlying the Warrant and the exercise price will be adjusted in favor of the Warrantholder if the financial institution issues common stock or convertible securities for consideration per share (or having a conversion price per share) that is less than 90% of the then current market value of the financial institution's common stock. Non-cash consideration will count towards the 90% and there are certain exceptions to this adjustment provision for issuances related to benefit plans, acquisitions of businesses, public or broadly marketed offerings for cash and securities issued upon exercise of preemptive rights existing on the issue date of the Warrant. This anti-dilution adjustment could restrict the financial institution from obtaining financing in private transactions that require a discount of more than 10%.

- “*Other Events*” *Adjustment*. The final terms include a catch-all adjustment that, for so long as Treasury holds any portion of the Warrant, the financial institution’s board of directors shall make such adjustments to the anti-dilution provisions not otherwise covered by the existing provisions as are “reasonably necessary, in the good faith opinion of the [board],” to protect the purchase rights of the Warrantholders.

**No Make-Whole or Fundamental Change Adjustments.** Unlike most capital markets convertible securities, the Warrant does not contain a provision that increases the conversion ratio if the financial institution undergoes a cash merger (known as a “make-whole”) or if the financial institution undergoes certain changes of control (a “fundamental change” adjustment).

**Substitution.** The Warrant contains an unusual term that requires the Warrant to be substituted for another “economic interest” if the financial institution’s common stock is no longer listed on a national securities exchange or any necessary stockholder approval is not obtained within 18 months of the issue date of the Warrant.<sup>11</sup> In order to avoid any US GAAP requirement to treat the Warrant as a liability due to the potential substitution of the Warrant for a debt security as set out in the Term Sheet, the final terms of the Warrant provide that the new security will be an economic interest that is classified as permanent equity under US GAAP (with a value equal to the fair market value of the Warrant as determined by Treasury). Following this change, the SEC and the FASB have confirmed that they will not object to treating the Warrant as permanent equity.<sup>12</sup>

**Voting the Underlying Common Stock.** Treasury agrees not to vote the common stock at all, as contemplated by the original Term Sheet. Some had hoped that Treasury would agree to vote it in proportion to other holders in order for Treasury’s shares to be counted to meet any quorum requirements, but no change was made in the final terms.

**Appraisal Procedures.** For so long as Treasury holds any portion of the Warrant, Treasury can invoke third-party appraisal procedures to determine the fair market value of any non-cash distributions on the financial institution’s common stock for the purpose of determining the applicability of an anti-dilution adjustment.

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<sup>11</sup> There is an exception for delistings as a result of business combinations.

<sup>12</sup> This treatment is only available if the financial institution has sufficient authorized but unissued shares of common stock and has obtained any other necessary stockholder approvals on the issue date. If not, the financial institution must take the necessary action to obtain the necessary approvals before the end of the fiscal quarter in which such Warrants are issued.

## Securities Purchase Agreement

**Representations and Warranties.** Each of the representations and warranties is qualified by the information contained in the financial institution's SEC filings and the financial institution should determine whether its filings are current before signing.

**Capitalization Table.** The securities purchase agreement requires a current capitalization table to be included as a schedule, and the representation and warranty on the financial institution's capitalization states that there are no preemptive rights other than as set forth in the capitalization table. The financial institution should include in the table any shares that could be issued in connection with any outstanding preemptive rights, whether triggered by Treasury's investment or other recent capital raises by the financial institution.

**Information Rights.** The financial institution should note that the securities purchase agreement permits Treasury to examine, among other things, the financial institution's books and records. The securities purchase agreement provides that Treasury must act through the financial institution's appropriate Federal banking regulator in an attempt to minimize unplanned disclosures of sensitive information through Freedom of Information Act requests (as information provided to such banking regulator is generally exempt from FOIA) but Treasury has stated that it cannot guarantee that such unplanned disclosures will not occur.

**Registration Rights; Clear Market.** The securities purchase agreement contains robust registration rights, including director and officer lock-ups and a clear market provision for 10 days before and up to 90 days after an underwritten offering on behalf of Treasury or other holders, as well as a provision requiring the financial institution to use its reasonable best efforts to amend any existing agreements that are inconsistent with these registration rights provisions. Accordingly, the financial institution should review its existing registration rights obligations to determine if they would conflict with those being afforded to Treasury.

In addition, section 4.5(o) of the securities purchase agreement gives holders the right to register resales of their securities even after their securities become freely saleable under Rule 144 under the Securities Act.

**Restrictions on Trust Preferred Securities.** The securities purchase agreement restricts the redemption or repurchase of any trust preferred securities issued by the financial institution or any of its subsidiaries, in addition to the more customary restrictions on redemptions or repurchases of common stock or preferred stock. This restriction is not described in the Term Sheet. The same carve-outs apply to redemptions or repurchases of trust preferred securities as for

common stock or preferred stock noted above, including a carve-out for exchanges or conversions of trust preferred securities for or into any parity stock or junior stock. In the case of equity units consisting of trust preferred securities and a forward contract on the financial institution's common stock, the issuance of common stock in exchange for trust preferred securities upon a failed remarketing would fit within this exception. Each financial institution with outstanding trust preferred securities should review the terms of those securities to see if the financial institution can comply with the conversion or exchange provisions of those securities.

If you have any questions about the matters covered in this memorandum, please contact any of the lawyers listed below or your regular Davis Polk contact:

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**ANNEX A**

Term Sheet Comparison

*TARP Capital Purchase Program*

*Senior Preferred Stock and Warrants*

Summary of Senior Preferred Terms

<b>Issuer:</b>	Qualifying Financial Institution (“QFI”) means (i) any U.S. bank or U.S. savings association not controlled by a Bank Holding Company (“BHC”) or Savings and Loan Company (“SLHC”); (ii) any top-tier U.S. BHC, (iii) any top-tier U.S. SLHC which engages solely or predominately in activities that are permitted for financial holding companies under relevant law; and (iv) any U.S. bank or U.S. savings association controlled by a U.S. SLHC that does not engage solely or predominately in activities that are permitted for financial holding companies under relevant law. QFI shall not mean any BHC, SLHC, bank or savings association controlled by a foreign bank or company. For purposes of this program, “U.S. bank”, “U.S. savings association”, “U.S. BHC” and “U.S. SLHC” means a bank, savings association, BHC or SLHC organized under the laws of the United States or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. <b>The United States Department of the Treasury will determine eligibility and allocation for QFIs after consultation with the appropriate Federal banking agency.</b>
<b>Initial Holder:</b>	United States Department of the Treasury (the “UST”).
<b>Size:</b>	QFIs may sell preferred to the UST subject to the limits and terms described below.
	Each QFI may issue an amount of Senior Preferred equal to not less than 1% of its risk-weighted assets and not more than the lesser of (i) \$25 billion and (ii) 3% of its risk-weighted assets.
<b>Security:</b>	Senior Preferred, liquidation preference \$1,000 per share.

(Depending upon the QFI's available authorized preferred shares, the UST may agree to purchase Senior Preferred with a higher liquidation preference per share, in which case the UST may require the QFI to appoint a depositary to hold the Senior Preferred and issue depositary receipts.)

<b>Ranking:</b>	Senior to common stock and pari passu with existing preferred shares other than preferred shares which by their terms rank junior to any existing preferred shares.
<b>Regulatory Capital Status:</b>	Tier 1.
<b>Term:</b>	Perpetual life.
<b>Dividend:</b>	The Senior Preferred will pay cumulative <u>compounding</u> dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. For Senior Preferred issued by banks which are not subsidiaries of holding companies, the Senior Preferred will pay non-cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. Dividends will be payable quarterly in arrears on [February 15, May 15, August 15 and November 15] <sup>1</sup> of each year.
<b>Redemption:</b>	Senior Preferred may not be redeemed for a period of three years from the date of this investment, except with the proceeds from <u>a one or more</u> Qualified Equity <u>Offering</u> <u>Offerings</u> (as defined below) which results in aggregate gross proceeds to the QFI of not less than 25% of the issue price of the Senior Preferred. After the third anniversary of the date of this investment, the Senior Preferred may be redeemed, in whole or in part, at any time and from time to time, at the option of the QFI. All redemptions of the Senior Preferred shall be at 100% of its issue price, plus (i) in the case of cumulative Senior Preferred, any accrued and unpaid dividends ( <u>including, if applicable, dividends on such amount</u> ) and (ii) in the case of <u>nonecumulative</u> <u>non-cumulative</u> Senior Preferred, accrued and unpaid dividends for the then current dividend period (regardless of whether any dividends are actually declared for such dividend period), and shall be subject to the

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<sup>1</sup> Treasury has confirmed that it may agree to other quarterly dividend payment dates.

approval of the QFI's primary federal bank regulator.

“Qualified Equity Offering” shall mean the sale and issuance by the QFI after the date of this investment of Tier 1 qualifying perpetual preferred stock ~~or common stock for cash, common stock or combination of such stock for cash (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).~~<sup>2</sup>

Following the redemption in whole of the Senior Preferred held by the UST or the transfer by the UST of all the Senior Preferred to one or more third parties, the QFI shall have the right to repurchase any other equity security of the QFI held by the UST at fair market value.

**Restrictions on Dividends:**

~~For~~Subject to certain exceptions, for as long as any Senior Preferred is outstanding, no dividends may be declared or paid on junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares (other than (i) in the case of pari passu preferred shares, dividends on a pro rata basis with the Senior Preferred and (ii) in the case of junior preferred shares, dividends payable solely in common shares), nor may the QFI repurchase or redeem any junior preferred shares, preferred shares ranking pari passu with the Senior Preferred or common shares, unless (i) in the case of cumulative Senior Preferred all accrued and unpaid dividends for all past dividend periods on the Senior Preferred are fully paid or (ii) in the case of non-cumulative Senior Preferred the full dividend for the latest completed dividend period has been declared and paid in full.

**Common dividends:**

The UST's consent shall be required for any increase in common dividends per share until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third

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<sup>2</sup> The exercise after October 13, 2008 of preemptive rights granted prior to that date to acquire common stock or Tier 1 qualifying perpetual preferred stock for cash is a Qualified Equity Offering.

parties.

- Repurchases:** The UST's consent shall be required for ~~any share~~ repurchases of any common shares, other capital stock, trust preferred securities or other equity securities (other than (i) repurchases of the Senior Preferred ~~and~~, (ii) repurchases of junior preferred shares or common shares ("Junior Stock") in connection with ~~any~~the administration of any employee benefit plan in the ordinary course of business ~~and~~ consistent with past practice~~s~~ (including purchases to offset share dilution pursuant to a publicly announced repurchase plan), (iii) purchases or other acquisitions by a broker-dealer subsidiary of the QFI solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or preferred shares ranking pari passu with the Senior Preferred ("Parity Stock") in the ordinary course of its business, (iv) purchases by a broker-dealer subsidiary of the QFI in connection with an underwritten offering of the QFI's capital stock, (v) any redemption or repurchase of rights pursuant to any stockholders' rights plan, (vi) the acquisition by the QFI or any of the QFI's subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the QFI or any other subsidiary of the QFI), including as trustees or custodians and (vii) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock or trust preferred securities for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the signing date of UST's agreement to purchase the Senior Preferred or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for common stock, until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties. In addition, there shall be no share repurchases of junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares if prohibited as described above under "Restrictions on Dividends".
- Voting rights:** The Senior Preferred shall be non-voting, other than class voting rights on (i) any authorization or issuance of shares ranking senior to the Senior Preferred, (ii) any amendment

~~to that adversely affects~~ the rights of Senior Preferred, or  
 (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Senior Preferred.

If dividends on the Senior Preferred are not paid in full for six dividend periods, whether or not consecutive, the Senior Preferred will have the right to elect 2 directors. The right to elect directors will end when full dividends have been paid for ~~four consecutive all past~~ dividend periods.

**Transferability:**

The Senior Preferred will not be subject to any contractual restrictions on transfer. The QFI will file a shelf registration statement covering the Senior Preferred as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. ~~The During any period that an effective shelf registration statement is not available for the resale by the UST of the Senior Preferred, the~~ QFI will also grant to the UST piggyback registration rights for the Senior Preferred and will take such other steps as may be reasonably requested to facilitate the transfer of the Senior Preferred including, if requested by the UST, using reasonable best efforts to list the Senior Preferred on a national securities exchange. If requested by the UST, the QFI will appoint a depositary to hold the Senior Preferred and issue depositary receipts.

**Executive**

**Compensation:**

As a condition to the closing of this investment, the QFI and its senior executive officers covered by the EESA shall modify or terminate all benefit plans, arrangements and agreements (including golden parachute agreements) to the extent necessary to be in compliance with, and following the closing and for so long as UST holds any equity or debt securities of the QFI, the QFI shall agree to be bound by, the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection. As an additional condition to closing, the QFI and its senior executive officers covered by the EESA shall grant to the UST a waiver releasing the UST from any claims that the QFI and such senior executive officers may otherwise have as a result of the issuance of any regulations on or prior to the closing of this

[investment](#) which modify the terms of benefits plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection.

*Summary of Warrant Terms*

<b>Warrant:</b>	The UST will receive warrants to purchase a number of shares of common stock of the QFI having an aggregate market price equal to 15% of the Senior Preferred amount on the date of investment, subject to reduction as set forth below under “Reduction”. The initial exercise price for the warrants, and the market price for determining the number of shares of common stock subject to the warrants, shall be the market price for the common stock on the date of the <a href="#">Senior Preferred investment</a> <a href="#">UST's acceptance of the QFI's application to participate in the Capital Purchase Program</a> <sup>3</sup> (calculated on a 20-trading day trailing average), subject to customary anti-dilution adjustments. The exercise price shall be reduced by 15% of the original exercise price on each six-month anniversary of the issue date of the warrants if the consent of the QFI stockholders described below has not been received, subject to a maximum reduction of 45% of the original exercise price.
<b>Term:</b>	10 years
<b>Exercisability:</b>	Immediately exercisable, in whole or in part, <a href="#">except as described under “Transferability” below.</a>
<b>Transferability:</b>	The warrants will not be subject to any contractual restrictions on transfer; provided that the UST may only transfer or exercise an aggregate of one-half of the warrants prior to the earlier of (i) the date on which the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings and (ii) December 31, 2009. The QFI will file a shelf registration statement covering the

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<sup>3</sup> In the case of the first nine banks to participate, UST used October 13, 2008 as the date of acceptance.

warrants and the common stock underlying the warrants as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. ~~The During any period that an effective shelf registration statement is not available for the resale by the UST of the warrants or the common stock underlying the warrants, the~~ QFI will also grant to the UST piggyback registration rights for the warrants and the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants and the common stock underlying the warrants. The QFI will apply for the listing on the national exchange on which the QFI's common stock is traded of the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants or the common stock.

**Voting:** The UST will agree not to exercise voting power with respect to any shares of common stock of the QFI issued to it upon exercise of the warrants.

**Reduction:** In the event that the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of shares of common stock underlying the warrants then held by the UST shall be reduced by a number of shares equal to the product of (i) the number of shares originally underlying the warrants (taking into account all adjustments) and (ii) 0.5.

**Consent:** In the event that the QFI does not have sufficient available authorized shares of common stock to reserve for issuance upon exercise of the warrants and/or stockholder approval is required for such issuance under applicable stock exchange rules, the QFI will call a meeting of its stockholders as soon as practicable after the date of this investment to increase the number of authorized shares of common stock and/or comply with such exchange rules, and to take any other measures deemed by the UST to be necessary to allow the exercise of warrants into common stock.

**Substitution:** In the event the QFI is no longer listed or traded on a national securities exchange ~~or securities association~~, or the

consent of the QFI stockholders described above has not been received within 18 months after the issuance date of the warrants, the warrants will be exchangeable (in whole or in part), at the option of the UST, for ~~senior term debt or another economic instrument or security of the QFI such that the UST is appropriately compensated for the value of the warrant, an economic interest (to be determined by the UST after consultation with the QFI) of the QFI classified as permanent equity under GAAP having a fair market value (as determined by the UST) equal to the portion of the warrants so exchanged.~~