CONCERNS FOR SUBCHAPTER S CORPORATIONS

This group consists of companies that have elected Subchapter S tax treatment.

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

Senior Preferred Stock

Type of Security: The Internal Revenue Code ("IRC") currently does not permit Subchapter S corporations to have two classes of stock outstanding. Therefore, a Subchapter S bank cannot issue preferred stock under TARP without terminating its Subchapter S election. For a Subchapter S bank to participate in TARP, either the IRC will need to be amended to allow Subchapter S banks to issue preferred stock, or Treasury must authorize an alternate investment vehicle for the program, such as common stock or notes.

If the IRC were amended to permit Subchapter S banks to issue preferred stock, such banks would need to call a special shareholders meeting to approve an amendment to the bank's articles of incorporation authorizing preferred stock. In addition, banks without holding companies may be required to seek prior regulatory approval to amend their charters.

Initial Holder: Treasury is not a permissible shareholder for a Subchapter S corporation under the IRC. In addition, shareholder agreements designed to protect a bank's Subchapter S election may require any new shareholders to sign the agreement as a condition of receiving the stock. Treasury would then be required to adhere to the transfer restrictions included in the shareholders agreement. See "Transferability."

Shelf Registration: Although it is possible for a Subchapter S company to file a shelf registration statement with the SEC, the registration process (1) will be tantamount to "going public," (2) would involve significant effort and expense, and (3) may not be in the company's long-term best interest. For example, management would need to prepare extensive disclosure regarding, among other things, the company's business, financial condition, results of operations, cash flows, executive compensation, management, capital structure and other information. Furthermore, the company may be required to obtain a new audit of its prior financial statements to address the auditor independence requirements of the Sarbanes-Oxley Act.

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 process. After registration, the company would need to update the shelf registration statement on an ongoing basis and to continue filing periodic SEC reports. Post-effective amendments will again be subject to SEC review.

While this process provides a valuable benefit for Treasury if fully liquid securities are the result, we believe the benefit is outweighed by the effort and expense involved, particularly given the limited trading volume of the securities that will be issued.

© Powell Goldstein LLP 2008

Reasonable Efforts to List the Securities: Because exchange listing requires registration of the securities, the listing process would involve unreasonable time and expense for the reasons identified in "Shelf Registration" above.

Restrictions on Dividends: For as long as any Senior Preferred is outstanding, unless the full dividend for the last completed dividend period has been declared and paid in full, a Subchapter S bank will not be permitted to (1) pay a tax distribution to its common shareholders to cover the tax liability attributable to the shareholder based on the bank's income, or (2) repurchase any common shares unless the full dividend for the latest completed dividend period has been, which may conflict with a provision in the shareholders agreement requiring the bank to repurchase shares if a transfer would cause the bank's Subchapter S election to terminate. This restriction also impedes a Subchapter S bank's ability to manage its number of shareholders and protect its Subchapter S election by repurchasing shares as it deems appropriate.

Common dividends: For three years following the date of Treasury's investment, a Subchapter S bank will be required to obtain Treasury's consent before increasing the tax distribution paid to common shareholders.

Repurchases: For three years following the date of Treasury's investment, a Subchapter S bank will be required to obtain Treasury's consent before repurchasing any common shares. See "Restrictions on Dividends."

Transferability: A Subchapter S bank's shareholders agreement may require that any new shareholders sign the agreement. In that event, Treasury would either be subject to the transfer restrictions included in the agreement, which would violate the provision in the term sheet that the Senior Preferred will not be subject to any contractual restrictions on transfer, or the existing shareholders of the bank would need to vote to amend the agreement.

In addition, if the shareholders agreement were amended to permit Treasury not to sign the agreement, the agreement may require that the transferees of Treasury's shares sign the agreement, which would impose a burden on Treasury's ability to transfer the shares.

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 the 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).

© Powell Goldstein LLP 2008

Warrants

Exercise Price: The exercise price is required to be equal to the 20-trading-day trailing average of the common stock, which a private company will not typically be able to determine.

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, except that listing is required as opposed to a "reasonable efforts" undertaking. If the company's common stock does not meet applicable listing requirements, then the company will not be able to meet this requirement. Perhaps the "substitution" provisions of the warrant would apply automatically at this point, although those provisions on their face address the loss of exchange listing, as opposed to the inability to list the stock in the first place.

Transferability: The same issues exist with respect to the warrants as exist with respect to the Senior Preferred. See "Transferability."

© Powell Goldstein LLP 2008