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BANKING LAW

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

As The Dust Settles . . .

[Harold P. Reichwald](#)

The coordinated announcements of earlier this week have significantly changed the capital markets landscape for banks and thrifts and their holding companies. One thing is for sure, each institution eligible for consideration under the Capital Purchase Program (CPP) as a potential recipient of a Treasury infusion of capital should be paying careful attention to the details of the announcement and what they may mean for it.

Here are some important matters to be considered:

- No matter its current circumstances, each institution should contact its federal banking regulator and discuss the possibility of participating in the CPP. While the Treasury has made it clear that not every applicant will be able to participate, nevertheless, the banking regulators are prepared to provide an honest assessment. Treasury has announced that it will be seeking recommendations from the federal banking regulators for eligible participants. A failure to consult with your federal regulator may not be viewed favorably.
- The Treasury and the federal banking regulators have discretion as to which institutions will receive the equity infusions. Commentators have called this a triage system to decide who gets this capital. Using such a system, a well-capitalized institution that is highly rated as a consequence of the latest examination may well not be invited to participate. By the same token, a struggling institution that is experiencing severe problems that go beyond a lack of capital probably will not be given a capital infusion and will be allowed to either sink or swim on its own.
- Involve the Board of Directors fully in the decision-making process, including an analysis of the expected

NEWSLETTER EDITORS

Katerina Hertzog Bohannon
Partner
kbohannon@manatt.com
650.812.1364

Harold P. Reichwald
Partner
hreichwald@manatt.com
310.312.4148

OUR PRACTICE

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uses of the additional capital and an assessment of the effect of the executive compensation rules that would apply. Ultimately, an evaluation of the proper functioning of the Board will involve the degree to which the Board participates in this process and the quality of the judgment it reaches on these questions.

- The time to act is now. The last day to register for the CPP is November 14, 2008 at 5 p.m. Eastern time. The Treasury expects to close all of these transactions by the end of 2008.

Click [here](#) for a copy of the Treasury CPP term sheet.

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FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



[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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