CLIENT ALERT: TREASURY ANNOUNCES DETAILS ON THE PUBLIC-PRIVATE INVESTMENT PROGRAM

March 31, 2009

Background

On March 23, 2009, Timothy Geithner, United States Secretary of the Treasury, announced details of the Public-Private Investment Program ("PPIP") pursuant to which the United States Department of the Treasury (the "Treasury") will make targeted investments in multiple Public-Private Investment Funds ("PPIFs") that will purchase legacy (pre-2009) real estate-related assets. Broad outlines of PPIP were first announced on February 10, 2009, as part of the Financial Stability Plan. Investments made by the Treasury in accordance with PPIP are intended to address problems created by "legacy assets" or securities on the books of U.S. financial institutions. In addition to announcing the guidelines for PPIP, the Treasury's announcement also included an expansion of the Term Asset-Backed Securities Loan Facility ("TALF") to legacy securitization assets.

The two key components of PPIP are (1) the Legacy Loans Program, a program to combine a guarantee of debt financing from the Federal Deposit Insurance Corporation (the "FDIC") with equity capital from the private sector and the Treasury to support the purchase of troubled loans from insured depository institutions and (2) the Legacy Securities Program, a program to combine financing from the Federal Reserve and Treasury through TALF with equity capital from the private sector and the Treasury to address the problem of troubled securities.

The Treasury's announcement indicated that the Treasury would receive warrants in connection with these two programs as required by the Emergency Economic Stabilization Act of 2008 (the "EESA"), but the warrant terms were not provided.

The Legacy Loans Program

The Legacy Loans Program component of PPIP is intended to attract private capital to purchase eligible loan assets from participating banks through the provision of FDIC debt guarantees and Treasury equity co-investment. The FDIC will provide oversight for the formation, funding and operation of a number of PPIFs that will purchase certain assets (the "Legacy Loans") from depository institutions. The Treasury and private investors will invest equity capital in PPIFs and the FDIC will provide a guarantee for debt financing issued by the PPIFs to fund asset purchases. The FDIC's guaranteed financing will be collateralized by the purchased assets and the FDIC will receive a fee in return for its guarantee. The Treasury plans to provide 50% of the equity capital for each PPIF, but private asset managers will be retained to manage the PPIFs, subject to the strict oversight of the FDIC.

Insured banks and savings associations organized under the laws of the United States, any State, the District of Columbia or any U.S. territory will be eligible to sell assets under the Legacy Loans Program, subject to determinations of eligibility and allocation by the FDIC and Treasury. Foreign owned or controlled banks are ineligible. The process will begin with banks identifying to the FDIC the assets, typically a pool of loans, that they wish to sell. At this point, it is unclear as to whether or not there will be a required minimum pool size, in terms of either dollar amount or number of loans, for any single transaction. Assets eligible for purchase will be determined by the participating banking institutions, including the primary banking regulators, the FDIC and Treasury. The FDIC intends to hire third party contractors to analyze the asset pools and determine the level of debt to be issued by the PPIF that the FDIC is willing to guarantee. A PPIFs debt-to-equity ratio is not permitted to exceed 6-to-1.

Eligible pools of Legacy Loans, with committed FDIC guaranteed financing, will then be auctioned by the FDIC to qualified bidders, with the selling institutions having the right to accept or reject offer prices. During the auction, private investors will bid for the opportunity to contribute 50% of the equity for the PPIF with Treasury contributing the remainder. While a complete list of investor qualifications has not yet been specified, mutual funds, pension plans, insurance companies and other long-term investors are particularly encouraged to invest in the PPIFs. However, private investors may not participate in any PPIF that purchases assets from sellers that are affiliates of such investors or that represent 10% or more of the aggregate private capital in the PPIF.

Certain details surrounding the requirements and structure of the Legacy Loans Program remain subject to notice and public comment. The FDIC is requesting that all comments to the program be submitted by April 10, 2009 (see www.fdic.gov).

<u>The Legacy Securities Program</u>

The Legacy Securities Program component of PPIP consists of (i) the expansion of TALF to permit non-recourse loans to be made available to investors to fund purchases of legacy securitization assets and (ii) partnership with private fund managers to support the market for legacy securities.

Expansion of TALF for Legacy Securities

The proposed expansion of TALF will make non-recourse loans available to certain investors to finance purchases of legacy securitization assets. "Eligible Assets" will now include certain non-agency residential mortgage-backed securities that were originally rated AAA and commercial mortgage-backed securities and asset-backed securities that are currently rated AAA. Borrowers will need to meet certain eligibility criteria, which criteria have not yet been determined. Lending rates, minimum loan sizes, and loan durations have not yet been determined. These and other terms of the program will be determined through discussions with market participants. The Treasury is prioritizing the expansion of TALF ahead of the PPIP. Expectations are that the expansion will be rolled out some time late in the second quarter.

Any private investor, including those who do not partner with the Treasury under PPIP, subject to eligibility requirements, will be able to access TALF to purchase legacy securities.

Legacy Securities PPIFs

The Legacy Securities Program component of PPIP is also intended to attract private capital to purchase Eligible Assets through Treasury equity co-investment and debt financing. The Treasury and a vehicle controlled by a private investment manager ("Fund Manager"), through which private investors will invest in the PPIF, will be the sole investors in a legacy securities PPIF.

Under the Legacy Securities Program, private investment managers will have the opportunity to apply for qualification as a Fund Manager. To be considered as a Fund Manager, interested asset managers must submit an application to the Treasury no later than 5:00 pm Eastern Standard Time on April 10, 2009. The Treasury expects to inform applicants of their pre-qualification on or prior to May 1, 2009, after which pre-qualified applicants will have a limited period of time to raise at least $500 million of committed private equity capital before receiving final Fund Manager approval from the Treasury. The Treasury expects to approve approximately five Fund Managers, possibly more depending on the quality of the applications. Applicants will be pre-qualified based upon criteria that are expected to include:

- Demonstrated capacity to raise at least $500 million of private capital;

- Demonstrated experience investing in Eligible Assets, including through performance track records;

- A minimum of $10 billion (market value) of Eligible Assets currently under management;

- Demonstrated capacity to manage PPIFs in a manner consistent with the Treasury's stated investment objective; and

- Headquarters in the United States.

The private capital raised by a Fund Manager will be matched with equity capital from the Treasury and, subject to certain conditions, debt financing from the Treasury. Treasury debt financing will be secured by eligible legacy mortgage-backed securities. However, only those financial institutions from which the Secretary of the Treasury may purchase assets under Section 101(a)(1) of the EESA are qualified to sell legacy mortgage-backed securities under the Legacy Securities Program. PPIFs may also finance the purchase of eligible legacy mortgage-backed securities through the expanded TALF program in which case TALF financing will be senior to the financing by the Treasury.

Executive compensation restrictions will not apply to private investors participating in the Legacy Loans or Legacy Securities PPIFs. However, it is not clear whether asset managers will be subject to compensation restrictions.

The Treasury's equity and debt commitments under the Legacy Loans Program and Legacy Securities Program will be counted against the $700 billion Troubled Asset Relief Program of the EESA.

We will continue to monitor the developments related to the structuring and operation of the Legacy Loans Program and Legacy Securities Program and will issue further updates as significant events transpire.

This Client Alert is prepared for the general information of our clients and other interested persons. This Client Alert is not, and is not intended to be, comprehensive in nature. Due to the general nature of its content, this Client Alert is not and should not be regarded as legal advice. If you have any questions related to the Public-Private Investment Program and/or its impact, please feel free to contact:

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