

# BYBEL RUTLEDGE LLP

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## IMPORTANT MEMORANDUM

**To:** CEOs, CFOs, Boards of Directors of Financial Institutions

**From:** Bybel Rutledge LLP

**Re:** Treasury's Ability to Unilaterally Amend the Securities Purchase Agreement Under Its Capital Purchase Program (the "Program")

**Date:** November 10, 2008

The Treasury is asking public companies interested in participating in the Program to enter into the Securities Purchase Agreement issued by the U.S. Department of Treasury (the "Treasury") on October 31, 2008. However, under section 5.3 of the Securities Purchase Agreement "the [Treasury] may unilaterally amend any provision of this [Securities Purchase] Agreement to the extent required to comply with any changes after the signing date in applicable federal statutes." Though the Treasury has not yet issued the agreements for non-publicly traded banks, this unilateral amendment provision might be present in those documents as well.

Taking into consideration some of the opinions that members of Congress have expressed regarding the Program, the Treasury might have the unilateral ability to amend the Securities Purchase Agreement to comply with future legislation involving a company's use of proceeds under the Program, an increase in the dividends of the preferred shares issued under the Program, stricter executive compensation requirements, requirements that participating companies not foreclose on specified mortgages or modify the terms of existing mortgage loans, or any other aspect of the Program.

With the recent election and the changes in the composition of Congress, companies should take this risk into consideration when contemplating participation in the Program. If you have questions regarding the Program, please do not hesitate to contact any of the following individuals:

- Nicholas Bybel, Jr.: [bybel@bybelrutledge.com](mailto:bybel@bybelrutledge.com)
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