

October 2, 2008

Progress on the “Bailout” Proposal – The Senate Passes an Expanded Emergency Economic Stabilization Act of 2008

As we reported on Monday,¹ the Administration, working with U.S. Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke, proposed legislation² that would provide for the U.S. government’s purchase of \$700 billion of illiquid mortgage and other assets currently held on the books of U.S. financial institutions. Following a week of intense negotiations among key Democrats and Republicans on Capitol Hill, the House unexpectedly voted down the “Emergency Economic Stabilization Act of 2008” (the “Act”) on Monday, September 29. As a result of the market’s continued instability, the Congressional leadership took the unusual procedural move of working the Act through the Senate prior to restarting efforts in the House. In a move intended to accelerate the process, they accomplished this by characterizing H.R. 1424 as a tax bill. By a vote of 74-25,³ last night the Senate passed an expanded bill, which not only contains the Act that failed in the House, but also an extensive set of new measures, particularly tax incentives, designed to ease its passage in the House.⁴

The key substantive additions to the Act are broadly supported provisions relating to the Federal Deposit Insurance Corporation (“FDIC”). Most notably, the Act temporarily increases the FDIC deposit insurance limit from \$100,000 to \$250,000 and does not permit the FDIC to charge member banks for such increase. The revised Act also lifts the \$30 billion cap on the line of credit from the Department of Treasury to the FDIC and gives the FDIC permission to seek a loan from the Treasury Secretary in any amount necessary. All of these new provisions relating to the FDIC would initially expire on December 31, 2009; however, the increased deposit insurance limit may become permanent under future legislation.

Other significant new measures included in the Senate-approved bill provide for a broad range of tax incentives and relief with the goal of garnering expanded support on both sides of the aisle. These measures include tax breaks to encourage the development of clean and renewable energy sources, tax relief to victims of recent natural disasters (including Hurricane Ike as well as tornadoes and flooding in the Midwest), and Alternative Minimum Tax relief for certain middle class taxpayers, to name a few. The bill also includes mental health parity legislation that would prohibit insurers or group insurance plans that cover mental health or substance addiction benefits from imposing different treatment or financial limitations than those applied to medical or surgical services.

The House of Representatives, where the Act reportedly faces greater opposition, is tentatively expected to vote on the bill Friday, October 3.

Sutherland Regulatory Reform Task Force

In the wake of the recent credit crisis, regulators and Congress are accelerating their efforts to address the governmental oversight of U.S. financial markets. The current bailout and adverse economic

¹ For a copy of our prior legal alert that discusses the Act in more detail, please see: <http://www.sutherland.com/files/News/fd62a747-e198-4669-be5d-0598509712aa/Presentation/NewsAttachment/4285c534-ed36-4088-a997-ef5a0078e548/CORPAlertEvolvingBailoutUpdate92908.pdf>.

² Available at <http://www.nytimes.com/2008/09/21/business/21draftcnd.html>.

³ Senators John McCain, Barack Obama and Joe Biden voted in favor of the measure.

⁴ The full text of the expanded bill is available at http://banking.senate.gov/public/ files/latestversionAYO08C32_xml.pdf. A section-by-section summary is available at http://banking.senate.gov/public/ files/latestversionBill_sectionbysectionF.pdf. An executive summary is available at <http://banking.senate.gov/public/ files/latestversionEESASummary.pdf>.

conditions have assured action by Congress as it questions whether our existing regulatory regime can adequately maintain the competitiveness and integrity of our financial system and provide appropriate protection to investors and consumers. To help our clients respond to this ever-changing marketplace and evolving regulatory landscape, we formed a Regulatory Reform Task Force in June of this year that is made up of a diverse group of lawyers with experience in banking, securities, insurance, energy regulation and enforcement. Please click [here](#) for more information on Sutherland's Regulatory Reform Task Force.



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