

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

October 6, 2008

To Our Clients and Friends

Re: Highlights of the Emergency Economic Stabilization Act of 2008

The Emergency Economic Stabilization Act of 2008 is now law. The act establishes the Troubled Assets Relief Program (“TARP”), which authorizes the Secretary of the Treasury to purchase up to \$700 billion of troubled assets from financial institutions in order to restore liquidity and stability to the U.S. financial system. The following presents an overview of the major provisions of the legislation.

TARP

Under TARP, the Treasury Secretary may purchase and make commitments to purchase troubled assets from any financial institution on terms determined by the Secretary in an amount up to \$700 billion. Initially, the authority is limited to \$250 billion. The limit increases to \$350 billion if the President notifies Congress that the Secretary needs additional amounts. The amount increases to \$700 billion if the President subsequently provides Congress with a detailed plan and Congress does not disapprove the plan within 15 days. Troubled assets consist of residential or commercial mortgages or related securities originated or issued before March 15, 2008 and any other financial instrument that the Treasury Secretary determines the purchase of which is necessary to promote financial market stability. Asset purchases can be made from any financial institution that is established and regulated under U.S. law, including banks, savings associations, broker-dealers, credit unions and insurance companies. In order to manage the assets, the Secretary is further authorized to establish vehicles to purchase, hold and sell troubled assets and issue obligations, as well as retain financial institutions to perform services.

SCHWARTZ & BALLEN LLP

Guidelines are required to provide mechanisms for purchasing troubled assets, methods for pricing and valuing assets, procedures for selecting asset managers and criteria for identifying troubled assets for purchase. The Treasury Department must take steps to prevent unjust enrichment of financial institutions, including preventing the sale of an asset to the Secretary at a price higher than the price paid by the seller.

The Secretary is to establish a plan to maximize assistance to homeowners and to encourage servicers to take advantage of the HOPE program. Loan guarantees and credit enhancements may be used to facilitate loan modifications to prevent avoidable foreclosures. With regard to existing investment contracts, the Secretary is to consent, where appropriate, to reasonable requests for loss mitigation measures, including term extensions and rate reductions.

Any financial institution that sells troubled assets under the TARP is subject to the executive compensation requirements of the act. If the Secretary makes direct purchases from an institution, and receives equity or debt of the institution as a result of the transaction, the institution is required to limit compensation for senior executive officers (five highest paid executives of a public company) in the following manner: (1) to exclude incentives for the executives to take unnecessary and excessive risks that threaten the value of the institution; (2) to recover any bonus or incentive compensation based on financial statements that are later proven to be materially inaccurate; and (3) to prohibit payment of any golden parachutes. If assets purchased from an institution through auctions exceed \$300 million, the institution may not enter into new employment contracts with senior executives that provide a golden parachute in the event of an involuntary termination, bankruptcy, insolvency or receivership.

In connection with the purchase or commitment to purchase troubled assets, the Secretary is required to receive from the institution a warrant for nonvoting or preferred stock. The purpose of the warrant is to enable the government to share in the institution's equity appreciation.

In the event TARP results in a net cost to the government, the President is to submit a legislative proposal that recoups the shortfall from the financial industry.

INSURANCE PROGRAM

The legislation also calls for the establishment of an insurance program that guarantees troubled assets originated or issued before March 14, 2008, including mortgage-backed securities. Premiums may be established for all institutions participating in TARP by category or class of assets. The guarantee may cover up to 100 percent of timely payment of principal and interest. Premiums are to be set at a level that results in reserves sufficient to meet anticipated claims based on an actuarial

SCHWARTZ & BALLEN LLP

basis. The amount of troubled assets that may be purchased under TARP will be reduced by the an amount equaling the total amount of the outstanding guarantees less amounts in the troubled assets insurance financing fund.

JUDICIAL REVIEW

The act provides for judicial review of the Secretary's actions for the TARP and insurance program under the standards established by the Administrative Procedures Act, which provides that actions shall be set aside if found to be arbitrary, capricious, an abuse of discretion or not in accordance with law. However, a court may not issue an injunction or provide other equitable relief for actions taken in connection with the TARP or insurance program unless it constitutes a constitutional violation.

TERMINATION

TARP and the insurance program terminate on December 31, 2009. However, the program may be extended for two years after the date of enactment if the Secretary certifies to Congress why an extension is necessary.

FINANCIAL STABILITY OVERSIGHT BOARD

The Financial Stability Oversight Board will review the Secretary's use of his authority under the act. The Board consists of the Chairman of the Federal Reserve Board and the Securities and Exchange Commission, the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency.

REPORTS

The act calls for the Secretary of the Treasury to provide numerous reports to Congress. One of the more significant provisions requires a report by April 30, 2009, analyzing the current state of the regulatory system and its effectiveness in overseeing participants in the financial markets, including the over-the-counter swaps market and GSEs.

FDIC PROVISIONS

The act contains several provisions that enhance the authority of the FDIC. The act authorizes the FDIC to take enforcement action against any person if the FDIC recommends that the primary federal banking agency take action against such person and the agency does not take the recommended action or respond with an acceptable action plan.

SCHWARTZ & BALLEN LLP

The act also provides that no confidentiality or standstill agreement that affects the ability of a person to acquire or disclose information in connection with an acquisition of an insured institution or its assets or liabilities, where the FDIC is exercising its authority as receiver or is providing assistance, will be enforceable against or impose any liability on the person proposing to acquire the institution.

The act also increases federal deposit insurance to \$250,000 per depositor until December 31, 2009.

PAYMENT OF INTEREST ON RESERVES

The act accelerates the Federal Reserve's authority to pay interest on reserves to October 1, 2008. Previously, the Fed's authority became effective in 2011.

MARK-TO-MARKET ACCOUNTING

The SEC is given authority to suspend mark-to-market accounting for any issuer of publicly-held securities and with respect to any class or category of transaction.

The legislation includes numerous provisions granting tax relief and other benefits that are unrelated to the financial assistance programs described above.

A copy of the legislation can be found on our website at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.