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Client ALERT

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Squire Sanders Multidisciplinary Legal, Government Relations Team Helps Clients Through Financial Crisis

Last week was the most dramatic week in financial markets since the Great Depression. Within a span of seven days, Lehman Brothers filed for bankruptcy, Bank of America agreed to acquire Merrill Lynch, the federal government loaned US$85 billion to AIG to prevent its collapse, and the Secretary of the Treasury sought unprecedented and nearly limitless authority from the Congress to purchase US$700 billion of distressed mortgage-related assets from financial institutions.

The legislation proposed by US Secretary of the Treasury Henry Paulson is intended to stabilize financial markets by making it easier for financial institutions to replenish their capital after selling large quantities of illiquid, distressed mortgage-related assets. While the proposed legislation is likely to be changed by Congress, if enacted as proposed, the legislation grants sweeping authority to the Secretary of the Treasury to purchase up to US$700 billion of distressed mortgage-related assets. It also would allow the Secretary to complete purchases over a two-year period but places no limitations on the time Treasury may hold such assets or the actions the Treasury Secretary may take to manage the acquisition or sale process. There would be no judicial or administrative review of the Secretary's decisions.

With only one week left in its current legislative session, Congress is under immense pressure to enact legislation to calm the storm. Issues it will likely consider include:

- Defining the "financial institutions" for which the bailout will be available.
  - Should they include investment banks, hedge funds and other institutions?
  - Should they include non-US institutions?
- Limitations on the authority of the Secretary of the Treasury to conduct the purchase and sale of securities.
- Executive compensation restrictions on financial

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institutions that sell assets to Treasury.
- Additional funds to assist homeowners facing foreclosure.
- New authority for bankruptcy judges to modify the terms of existing mortgages.

Some in Congress will be very concerned by the increase in the national debt – to approximately US$11.3 trillion – and the unprecedented new authorities given to the Secretary of the Treasury.

If Congress passes legislation this week, it will reflect their priorities in dealing with the issues identified above and will require Treasury to draft and implement new rules consistent with those priorities. In anticipation of the adoption of these new rules and to guide our clients through this crisis, Squire Sanders has created a global multidisciplinary team of government affairs, financial services, restructuring, real estate and other lawyers to analyze and address the myriad issues associated with the bailout program, the sale and remarketing of assets and the potential structures through which such transactions could be completed.

We remain in regular contact with Treasury officials, the White House and key members of Congress to ensure that any proposed legislation or rules satisfy the needs of market participants and achieve the objectives of the program. Please do not hesitate to contact us if you have questions about the bailout program.

Squire Sanders regularly advises leading financial institutions, corporations and governmental entities in a wide variety of matters regarding corporate finance, capital markets, restructurings, regulatory capital matters and effective government relations. For more information about these developments and their implications for your company, please contact the person you usually work with at Squire Sanders or Squire Sanders Public Advocacy, or any contact linked to this alert.

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