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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Utilization of Tax Losses on Bad Debts

Recently the Internal Revenue Service ("IRS") issued Notice 2008-83, which provides significant relief from the impact of corporate federal income tax in connection with an ownership change of a bank. Prior to the issuance of the Notice, the IRS limited the ability of an acquiring bank to use certain losses of an acquired bank to 5% of the purchase price per year for a five year period. Under this Notice, any deduction properly taken after an ownership change of a bank with respect to losses on loans or bad debts, including any deduction for a reasonable addition to a reserve for bad debts, will not be treated as a built in loss or a deduction that is attributable to periods before the ownership change for purposes of section 382(h) of the Internal Revenue Code. This Notice permits an acquirer to obtain the maximum federal income tax benefit from a problem loan portfolio of an acquired bank.

Fair Value Accounting

The Securities and Exchange Commission ("SEC") has issued Release 2008-234 regarding clarifications on Fair Value Accounting. The purpose of the Release is to provide guidance in the current market environment. The Release provides (i) when an active market for a security does not exist, the use of management estimates that incorporate current market participant expectations of future cash flows is acceptable, (ii) broker quotes may be an input when measuring fair value, but are not necessarily determinative if an active market does not exist for the security, (iii) the results of disorderly transactions are not determinative when measuring fair value because a fair value measurement assumes an orderly transaction between market participants and (iv) quoted market value in an active market for the identical asset is most representative of fair value and is required to be used.

When considering whether an other-than-temporary impairment exists, factors to consider are (i) the length of the time and the extent to which the market value has been less than cost, (ii) the financial condition and near-term prospects of the issuer, or (iii) the intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value. A copy of the Release is available on the website of the SEC at www.sec.gov.

Emergency Economic Stabilization Act

On October 3, 2008, the Emergency Economic Stabilization Act (the "Act") was signed into law. There are numerous aspects of the Act, some of which are in the developmental stage. The initial key element of the Act is to allow banking

institutions to participate in the Treasury Capital Purchase Program, whereby the U.S. Treasury will purchase senior preferred shares from eligible institutions. A number of financial institutions have already received capital infusions under this program authorized by the Act. Although Subchapter S corporations may not have more than one class of stock, it appears that Subchapter S corporations will be eligible to participate in this program either through Congress amending the Internal Revenue Code, or allowing the Subchapter S corporation to issue some other type of instrument such as senior debt.

Along with the Act, the Federal Deposit Insurance Corporation ("FDIC") has invoked the systemic risk exception of the FDIC Improvement Act of 1991 in connection with the ability of the FDIC to guarantee newly issued senior unsecured debt issued by eligible institutions on or before June 2009, in amounts that do not exceed one hundred twenty-five percent of debt that was outstanding as of September 30, 2008, and that was scheduled to mature before June 30, 2009. The guarantee fee for all newly issued senior unsecured debt is seventy-five basis points multiplied by the amount of the debt issued under this program. The FDIC will also guarantee funds in non-interest bearing deposit accounts not otherwise covered by the existing deposit limit of two hundred fifty-thousand dollars (the Act increased the deposit insurance coverage to two hundred fifty-thousand dollars until December 31, 2009, from the current coverage of one hundred thousand dollars) for a guarantee fee of ten basis points. The ability of eligible institutions to issue guaranteed debt under the FDIC's program will expire on June 30, 2009. Those eligible institutions not participating in the FDIC's guarantee program have until December 5, 2008, to opt out of this program. The FDIC has dedicated a website at www.fdic.gov/tlgp to answer questions and to communicate information under its program.

Another portion of the Act creates the Trouble Asset Relief Program authorizing the Treasury to purchase trouble mortgage related debt from financial institutions. The Act defines troubled assets to include, among other things, securities, residential or commercial mortgages, obligations and instruments related to such mortgages which were originated or issued on or before March 14, 2008. The procedure for purchasing assets, the methods for pricing and valuing troubled assets and the criteria for identifying assets available for purchase will be available on the website of the Treasury Department.

In determining the purchase price of troubled assets, the Act requires the Treasury to take into consideration a number of factors including, but not limited to, protecting the interest of taxpayers, stabilizing financial markets, preserving ownership of homes by families and stabilizing communities, ensuring that financial institutions are eligible to participate, the needs of local communities and the long term viability of the financial institution owning the troubled asset.

The Act also requires The Treasury Department to create an insurance program for troubled assets that would include mortgage-backed securities which would be funded by premiums from the various participating financial institutions.

The Act allows the Federal Reserve Board to pay interest on reserves, authorizes the Securities and Exchange Commission to suspend the application of the mark-to-mark accounting under Financial Accounting Standards Board Statement Number 157 and extends the current law providing tax forgiveness on the cancellation of mortgage debt.

Our firm is closely monitoring developments relating to the Act and is available to answer questions concerning the various aspects of the Act.

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