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Katten Creates Task Force to Address Treasury's Distressed Asset Purchase Program

Katten has formed a multidisciplinary task force to address the Treasury Department's proposal to purchase up to $700 billion of distressed assets. The task force draws upon Katten's experience representing the Resolution Trust Corporation in its disposition of defaulted illiquid assets, and will involve members of Katten's structured finance and securitization, real estate, banking, financial services, derivatives, bankruptcy and litigation practices. Treasury's proposed plan has been outlined in the legislative proposal submitted to Congress, the fact sheet released by Treasury, and public comments made by the Treasury Secretary.

As outlined in the legislative proposal submitted to Congress, the plan gives the Treasury Secretary broad authority to purchase, manage and dispose of up to $700 billion of whole residential or commercial loans or other "securities, obligations, or other instruments that are based on or related to" such loans. However, according to the Treasury fact sheet, even non-mortgage-related assets would be subject to purchase, at the discretion of the Treasury, in consultation with the Federal Reserve Chairman, if doing so is "deemed necessary to effectively stabilize financial markets." All assets, however, must have been originated or issued on or before September 17, 2008. Asset prices are to be determined through market mechanisms, such as reverse auctions, when possible, and the $700 billion cap is to be measured by the purchase price of the assets.

Although the plan originally only allowed purchases from financial institutions headquartered in the United States, it has been expanded to include financial institutions with "significant operations in the U.S.," and could even include institutions not meeting that test if the Secretary, in consultation with the Federal Reserve Chairman, determines that doing so "is necessary to effectively stabilize financial markets."

Treasury may designate financial institutions as financial agents to administer the purchase program and to manage purchased assets; may establish vehicles authorized, subject to Treasury supervision, to purchase mortgage-related assets and issue obligations; and may enter into contracts without regard to normal government contracting rules. Treasury must report to Congress within three months of the first exercise of its authority under the program, and semi-annually thereafter.

Crucially, the Treasury Secretary's decisions under the proposed legislation would be "non-reviewable and committed to agency discretion" and would not be reviewable by any court of law or any administrative agency. Treasury's authority would terminate after two years, other than with respect to its exercise of rights received in connection with asset purchases, its holding and managing purchased assets (thereby allowing Treasury to hold assets until maturity), and its purchasing or funding assets under commitments entered into prior to the termination date.

Many possible amendments have already been suggested, and the legislation may rapidly and materially evolve as Congress attempts to pass it no later than Friday, September 26. The final legislation will have sweeping economic and legal ramifications, and Katten's team will provide regular updates regarding developments and be available to answer any questions.

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For Additional Information

If you have any questions about the Treasury Department's Distressed Asset Purchase Program or how it affects your business, please contact one of the Katten Muchin Rosenman LLP attorneys listed below:

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