

The CARES Act: An Overview of Programs Impacting Financial Businesses

March 27, 2020

KEY POINTS

The widely publicized Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), providing an estimated \$2 trillion dollars of COVID-19 relief to Americans, has passed both chambers of Congress and was signed into law by the President this afternoon. Although most provisions are not directly helpful to participants in the financial services industry, there are provisions worth reviewing. This advisory explores the following important provisions:

- Treasury money market fund guarantees and Federal Reserve backstops of certain money market funds
- The expansion of the Small Business Act (SBA) loan program to include paycheck protection
- Tax relief for businesses
- COVID-19 related SBA economic injury disaster loans and grants

While the CARES Act contains a number of measures that are focused on broadly supporting the US financial system during these unprecedented times, the legislation does not include any targeted financial assistance specifically directed to affected financial services businesses. However, these businesses may qualify for certain financing programs and tax relief discussed below. The potential impacts of the legislation on the financial markets and fund community appear to be mostly indirect. We expect, however, that given the breadth of direct financial assistance relief provided under the CARES Act, it may have several unintended consequences on financial markets, the pricing and valuations of financial instruments, and correlations among financial assets. These unintended consequences may deleteriously impact the performance of certain financial assets, as well as create trading opportunities.

The CARES Act passed the Senate on March 25 and the US House of Representatives earlier this afternoon. The President signed the legislation into law moments ago.

We summarize below a number of the financing programs, tax relief and other measures in the CARES Act, which may be relevant to our Financial Markets and Funds' clients.

- **Treasury money market fund guarantees and Federal Reserve backstops certain money market funds.** The CARES Act temporarily suspends restrictions on loan guarantees from the Treasury's Exchange Stabilization Fund (ESF) until December 31. This temporary suspension will allow the Treasury to establish a guarantee program for US money market mutual funds. The CARES Act also automatically appropriates money to make the ESF whole if the Treasury's Money Market Funds Guaranty Program pays out claims that exceed assets held by the ESF. Guarantees will be limited to the value of a money market fund shareholder's holdings as of the close of business the day before the announcement of the guarantee.

Separately, in response to the COVID-19 crisis, the Board of Governors of the Federal Reserve Board (FRB) has taken a number of steps to support the financial markets. Following the playbook from the 2008 financial crisis, on March 18, the FRB launched the Money Market Mutual Fund Liquidity Facility (MMLF). Under this program, the MMLF (which is operated by the Federal Reserve Bank of Boston) extends loans to financial institutions. These loans are collateralized by various types of high quality money market securities purchased by the financial institutions from certain prime and tax-exempt money market funds.

This backstop facility was needed because investors in money market funds were redeeming significant assets from the money market funds. To meet these redemption requests, the funds were selling securities. However, due to disruptions in the financial markets, it was difficult to sell these securities despite the fact that these securities were short-term, high-quality securities. As the FRB noted, the MMLF "will assist money market funds in meeting demands for redemptions by households and other investors, enhancing overall market functioning and credit provision to the broader economy."

- **Expansion of the Small Business Act (SBA) loan program to include paycheck protection.** The CARES Act will amend Section 7(a) of SBA to establish a new program for eligible small businesses from February 15 to June 30 of this year. In particular, this new program – which is titled the Paycheck Protection Program (PPP) – will allow the Small Business Administration rapidly to provide federal loans to eligible small businesses (including financial markets businesses that qualify) in order to support those businesses in meeting ongoing operating expenses such as employee salaries, payroll costs (capped at \$10 million), costs related to group health care benefits, interest on mortgages, rent and utilities.

The legislation provides that eligibility in the PPP for businesses with investment or related activities in securities, commodity contracts and other types of financial investments will be limited to those businesses with fewer than 500 employees.¹

- **Tax relief for businesses.** The CARES Act also includes various tax measures that are designed to provide relief to both individuals and businesses. For the latter, the legislation will provide, among other things, deferrals for the employer portion of social security payroll taxes, a payroll tax credit by affected employers, five-year carrybacks of net operating losses and easing of interest deduction limitations. For more information regarding the specific tax-related relief in the CARES Act, please reach out to your Katten Tax Department contact.
- **COVID-19 related SBA economic injury disaster loans and grants.** Eligible small businesses can also apply for economic-injury disaster loans (EIDLs) due to COVID-19. EIDLs are low-interest, long-term loans that are designed to help qualifying small businesses overcome the temporary loss of revenue they are currently experiencing. EIDLs are designed to assist these businesses with working capital needs up to \$2 million until normal operations resume after a disaster.

¹ There appear to be no limitations on the types of businesses that may obtain such assistance under the CARES Act provisions even though there were limitations previously on the types of businesses that could apply for SBA loans. More information and regulations will be available once the SBA implements the PPP.

The CARES Act broadens the EIDL program to address the needs of businesses impacted by COVID-19. Eligibility standards and determinations for qualifying small businesses is the same as in the PPP. Thus, it appears that financial service firms with fewer than 500 employee may apply for an EIDL. The EIDL amount that is awarded relating to the COVID-19 outbreak will be based on the small business' actual economic injury and its current financial needs.

Under the CARES Act, the EIDL program will not require: (1) that small businesses provide a personal guarantee with respect to these loans if their principal amount is less than \$200,000; (2) that the small businesses have been in business for one year;² and (3) the SBA to find that the applicant is unable to find credit elsewhere. The CARES Act also creates a new emergency grant that allows eligible businesses that have applied for an EIDL to receive an immediate advance of up to \$10,000. For more information on the EIDL program, click [here](#).

² The CARES Act requires that any applicant for a loan through the EIDL Program have been in operation on January 31, 2020.

CONTACTS

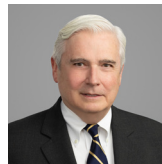
For more information, contact your Katten attorney or any of the following [Financial Markets and Funds](#) attorneys.



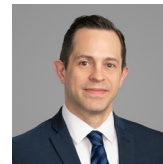
Wendy E. Cohen
+1.212.940.3846
wendy.cohen@katten.com



Gary DeWaal
+1.212.940.6558
gary.dewaal@katten.com



Kevin M. Foley
+1.312.902.5372
kevin.foley@katten.com



Michael T. Foley
+1.312.902.5452
michael.foley@katten.com



Mark D. Goldstein
+1.212.940.8507
mark.goldstein@katten.com



Carl E. Kennedy
+1.212.940.8544
carl.kennedy@katten.com



Allison C. Yacker
+1.212.940.63285
allison.yacker@katten.com



Lance A. Zinman
+1.312.902.5212
lance.zinman@katten.com

Katten

katten.com

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | HOUSTON | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2020 Katten Muchin Rosenman LLP. All rights reserved.

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at [kattenlaw.com/disclaimer](#).

3/27/20