



BROWN RUDNICK'S STRUCTURED RESOLUTION GROUP

US TREASURY BAIL-OUT ALERT

October 1, 2008

"If at first you don't succeed (in the House), try, try again (in the Senate)" appears to be the motto of the White House and the legislators favoring the financial market bail-out. The defeat of the draft legislation in the House on Monday and the subsequent one-day record decline of the Dow Jones industrial average have not derailed the rescue proposal.

The Senate is scheduled to vote Wednesday evening on its own rescue bill which, while including every substantive provision of the House version (reviewed in our Monday's alert), adds new provisions aimed at assuring the bill's safe passage in the Senate. The now sizeable 451-page document (compared to the 110-page House version) includes the following modifications:

- **FDIC Insurance Limit:** The Senate draft legislation would *temporarily* raise the Federal Deposit Insurance Corporation's insurance cap on most bank accounts from \$100,000 to \$250,000 per account. The \$100,000 limit was set in 1980. The increase, however, would only be in effect until December 31, 2009. This change appears to have broad Congressional support, and both Sens. John McCain and Barack Obama endorsed the idea.
- **Energy Improvement and Extension Act of 2008:** Attached as a separate division to the bail-out bill, this act would provide for an institution and/or extension of various renewable energy and other energy-related tax credits. The 149-page act includes renewable energy incentives, transportation and domestic fuel security provisions and provisions relating to carbon and coal mitigation and energy efficiency and conservation.
- **Alternative Minimum Tax Relief and Other Tax Extensions:** In an attempt to build additional support from wavering members of Congress, the Senate draft legislation includes (i) relief from the Alternative Minimum Tax, (ii) extension of individual tax provisions (such as deduction for state and local sales taxes, deduction of qualified tuition and related expenses and additional standard deductions for real property taxes for non-itemizers), (iii) extension of business tax provisions (including credits for economic development, training and environmental remediation costs) and (iv) disaster relief and other tax incentives. The draft bill also includes the "Mental Health Parity and Addiction Equity Act of 2008," which would require medical insurance companies to provide mental illness coverage at parity with physical ailments.

In another related development, the Securities and Exchange Commission announced on Tuesday its decision to ease the mark-to-market accounting rule requiring holdings, assets and loans to be valued at their current value. Under the

SEC's guidance, "[w]hen an active market for a security does not exist, the use of management estimates that incorporate current market participant expectations of future cash flows, and include appropriate risk premiums, is acceptable." The SEC is essentially saying that, in the absence of an active trading market, the valuator can take other factors into account when determining the true value of a security. There are also reports of discussions being held in Congress about a temporary or permanent suspension of the mark-to-market rule.

Finally, there are also reports that progress on the rescue bill is being made in the House. Stay tuned.

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