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Dear Friends and Valued Clients:

On Friday, April 24, 2020, President Trump signed the Paycheck Protection Program and Health Care Enhancement Act ("Enhancement Act"). This legislation infuses \$310 billion into the Paycheck Protection Program ("PPP") with more than \$250 billion in unrestricted funds for the program and an additional \$60 billion allocated specifically for smaller lending institutions.

As you may remember, the *Coronavirus Aid, Relief, and Economic Security Act* ("CARES Act") provided a \$2.2 trillion stimulus package that allocated funding to small businesses through new and enhanced loan programs administered by the Small Business Administration ("SBA"). The PPP was one such program designed specifically to provide eligible small businesses immediate relief if they believe that **"current economic uncertainty" of the COVID-19 pandemic makes such a loan for their business "necessary to support their ongoing operations,"** and were willing to certify to the lender to that affect.

Offering funds covering up to eight weeks of payroll, the program's purpose is to reduce the growth of unemployment, help small businesses retain employees, and enable them to rebound quickly once the pandemic is under control. **Unfortunately, the initial guidance promulgated by the SBA did not provide any definition or specifics regarding the nature or extent of the required impact to operations or the "current economic uncertainty" that would make the loan request "necessary to support ongoing operations."** In addition, the PPP loan has a forgiveness component if a business meets certain conditions. Consequently, demand for PPP loans has been unprecedented, exceeding loan availability.

The SBA recently updated its [*Frequently Asked Questions Document*](#) to add FAQs 31 and 37. The new FAQs provide much-needed clarity regarding program qualifications specific to businesses with access to other sources of liquidity to support their ongoing operations. Any business that received a PPP loan prior to the issuance of this new

guidance and who now believes that they do NOT demonstrate the necessity for the loan, can repay the loan in full by **May 7, 2020**. Any business that does so will be deemed by the SBA to have made the required good faith certification on their PPP loan application.

There has been a justifiable rush for eligible small businesses to expedite processing of these loans and you may be primed to submit your PPP application, but we do want to caution you as to the potential risks of receiving these funds as these loans will be subject to regulatory and public scrutiny. We anticipate heightened government scrutiny will be forthcoming to investigate potential fraud and abuse. Businesses who have received PPP loans and are later found to have not qualified under the eligibility rules and/or businesses who do not use the funding in accordance with the terms of the program, could be subject to significant legal or regulatory consequences.

Given the revised guidance issued by the SBA and the pending May 7, 2020 deadline for returning loan proceeds, we strongly encourage you, your organization's management, and board of directors to carefully and immediately review your company's financial situation and reconsider the relief you may have already received with a PPP loan. Specifically, consider whether your circumstances fall within the spirit and intent of this economic relief program. If you do receive and keep PPP funding, it is critical that you maintain complete and accurate documentation to support your eligibility for such funding, the specific use of these funds, as well as your qualifications for forgiveness under the terms of the program. This documentation will be crucial were your business to be audited and/or investigated. This defensive documentation will greatly minimize your potential exposure to fraud and abuse allegations related to your participation in this loan program.

Many of the factors influencing whether you qualify or should apply for these loans are organization specific. We encourage you to consult with legal counsel if you have questions regarding your organization's eligibility to receive funds.

We recognize that these are difficult times and we remain committed to supporting you. If you have other questions or concerns, please contact your LLME advisor at (858) 455-1200 or by email.

We hope that you and your loved ones will continue to be safe and healthy during this uncertain time. Thank you for your continued trust and confidence in our firm.

Lavine, Lofgren, Morris & Engelberg, LLP

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