



BROWN RUDNICK'S STRUCTURED RESOLUTION GROUP

US TREASURY BAIL-OUT ALERT

JUST IN ... As this Alert was being released, we received word that a bipartisan agreement to the Bail-Out Plan has been reached. Details of the agreed upon Plan will be included in tomorrow's edition of the Alert.

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Our Tuesday's alert included references to the Senate bail-out bill introduced by the Senate Banking Committee Chairman, Christopher Dodd. The Dodd bill, however, is not the only existing counterproposal to the draft legislation proposed by the Treasury. A House bill entitled "Troubled Asset Relief Act of 2008" was introduced by Rep. Barney Frank, chairman of the Financial Services Committee, as another alternative to govern the bail-out program.

From a helicopter view, there are no major substantive differences between the Senate and the House drafts. Both proposals would authorize the Secretary of the Treasury to purchase, and to make and fund commitments to purchase, troubled assets from domestic and, possibly, foreign financial institutions. The "troubled assets" to be included in the program are defined in both cases as mortgage-related instruments and other assets the purchase of which the Secretary believes necessary to promote market stability. The limit of the program would not exceed \$700 billion at any one time. Both versions of the bill include similar limits on the compensation of executives of the participating financial institutions and require foreclosure mitigation efforts on behalf of the Treasury.

The House and the Senate drafts, however, include a number of variations which, while not being of the greatest importance, can play a significant role in the negotiation proceedings.

- **Pricing:** Unlike the Treasury and the Senate bills, the House bill includes a slightly higher degree of specificity as to the pricing of the troubled assets to be purchased. It requires the Secretary of the Treasury to maximize the efficiency of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate. At the same time, however, the Secretary would receive a broad discretion to initiate direct purchases when and if appropriate.
- **Oversight and Reports:** While the Dodd bill provided for the establishment of the so-called Emergency Oversight Board (consisting of, *inter alia*, the Chairman of the Federal Reserve, the chairperson of the Federal Deposit Insurance Corporations Board of Directions and the chairperson of the Securities and Exchange Commission), the House bill entrusts the Comptroller General with overseeing and auditing the bail-out program and also provides

for a system of internal controls. The House bill also authorizes the creation of a Congressional Oversight Panel to review and report to the Congress on the ongoing impact of the program.

- **Ownership Shares:** While Dodd's bill mandated that the Secretary of the Treasury receive a contingent debt or equity interest in the selling financial institutions, there is no such requirement in the House bill. Instead, it requires the Secretary of the Treasury to pursue additional measures to share potential benefits of the purchase with the financial institution, including warrants and other similar mechanisms.
- **Bankruptcy Provisions:** The House bill would amend Chapter 13 of the Bankruptcy Code relating to residential mortgages that would allow modifications of certain terms of non-traditional and subprime mortgage loans, and the House bill specifies the types of modifications that would be allowed.
- **Coordination with Foreign Authorities and Central Banks:** The bill requires the Secretary of the Treasury to cooperate with foreign financial authorities and central banks to work towards the establishment of similar bail-out programs abroad and makes troubled assets held by foreign authorities and banks eligible to participate in the bail-out program.

As of Wednesday, the Democratic leaders in the Senate and the House were working on reconciling the two versions of the bail-out legislation. Although there is little doubt that majorities in Congress, Wall Street and even Main Street agree that expedited action is necessary in the face of the current financial crisis, an agreement on the actual content of a rescue plan and on its implementation remains, not surprisingly, much harder to reach.

Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke weathered another stormy day of Congressional hearings on Wednesday, where many of the questions and criticisms raised on Tuesday's Senate Hearings were repeated with increased intensity by the Congressional Joint Committee in the morning, followed by the House Financial Services panel later in the afternoon. Since this colossal rescue effort was first delivered in a shockingly brief three-page proposal, it came as no surprise that further development and much debate were to follow. In fact, Paulson has admitted to purposefully producing such a brief document due to his belief that the details were more properly worked through in conjunction with Congress. Nevertheless, the initial unfettered powers given to the Treasury and lack of implementation details, coupled with the public confusion and outright anger for the Wall Street excesses leading to this situation, have created, and continue to create, a strong headwind for the two men at the center of the storm. Following is a summary of some of the political colloquy from the last two days of Congressional hearings:

- **Timing considerations:** the Bush administration's call for a swift passage of a "clean bill" came loaded with what many deemed to be hyperbolic depictions of a depressed U.S. economy in which neither businesses nor consumers would be able to borrow money. The Democratic pushback was led by Senator Chris Dodd, who made it clear that since "there is no second act to do this," thoroughness trumps speed. Representative Mike McNulty



remarked that the push was “eerily similar to the rush to war in Iraq.” Moreover, the administration’s argument fails to acknowledge that many Americans already find themselves living the doomsday scenario of his warning. As noted by Republican Senator Lindsey Graham, the option presented is “to choose the bad choice over the catastrophic choice.” While no final date has been agreed to as of Wednesday evening, many believe that a deal should be ready by the opening of the markets on Monday and that some of this continued debate is mainly for the benefit of voters back home, since last Thursday both sides stood together to announce a rescue plan.

- **Government Intervention with Private Markets:** While the Democratic leadership is working productively with the Administration to resolve differences over the bail-out plan, the strongest pushback to the plan is coming from the Republican ranks, where members like Senator Shelby of Alabama have expressed outright opposition to any such government bail-outs. Senator Bunning from Kentucky went so far as to call the massive bail-out “financial socialism and un-American.” Some Republican alternatives to the bill include a proposal championed by Representative McCotter of Michigan that would eliminate gains tax on the distressed assets to be purchased by the Treasury so as to encourage an increase of liquidity in the market by the private sector, and plans to develop a “free-market alternative” that members of the Republican Study Committee announced last Monday. However, no proposal has been circulated as of yet. Despite opposition from the GOP ranks, signs that a deal will, nonetheless, be reached were clear after the House Republican leaders emerged from Wednesday hearings stressing the negative repercussions of the financial crisis on the average American and the call for action. For other Republicans, support of the bail-out plan came down to a “lesser evil” consideration, as evidenced by Representative Davis of Virginia’s remark that “it’s a terrible plan, but I haven’t heard anything better.”
- **Presidential Politics:** one area where both Democrats and Republicans have agreed is on the erosion of President Bush’s credibility with the American people. Specifically, members of Congress fear that any attempts by the President to portray the consequences of not passing the bill as Armageddon would garner little credibility and instead result in embarrassing comparisons to the war in Iraq. Democratic Senator Harry Reid of Nevada went as far as blaming Bush’s “Republican philosophy of removing all accountability from big businesses” for the financial crisis. Moreover, Republicans have decried the President’s failure to communicate to the American people the objective and inner workings of the rescue proposal. This, in turn, prompted the President’s address to the nation on Wednesday night and an invitation to Republican presidential nominee John McCain and Democratic presidential nominee Barack Obama, along with Congressional leaders, to a White House meeting on Thursday to discuss the bail-out. Whether Bush’s speech has the desired effect of bringing the American people on board with the rescue and further gathering the necessary Congressional support for the passage of the bill by Monday morning is yet to be seen.

While as of Wednesday Paulson had given in to bipartisan demands for curbs on executive compensation, taxpayer protection and increased oversight, questions remain on possible cuts to the size of the rescue and changes to bankruptcy laws. Nonetheless, in spite of the many wrinkles still left to be ironed out, rumors began



circulating after President Bush's televised speech on Wednesday night that a bipartisan bill could be finished by Thursday morning and that a relatively quick passage should follow. We will continue to monitor both the micro- and macro-aspects of the bail-out plan, and will provide a more detailed analysis of the final bill.

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