

UPDATE ON U.S. BAILOUT PLAN

Despite the reports of growing opposition in Congress, negotiations between the Administration and the Senate Banking and House Financial Services Committee Chairmen moved toward a compromise that is now expected to be completed on Wednesday, September 24. Once the deal is struck it will take part of Wednesday to turn it into legislative language and move it through the House and Senate Committees and to the floor for votes. This could extend the process to Thursday or even Friday, and if complications arise it could stretch into the weekend. The House and Senate Committees are expected to take up identical bills so that no House-Senate negotiations will be necessary once the bills have been passed. This will allow Democratic and Republican leaders to focus on collecting the necessary majorities quickly.

As of the end of the day on Tuesday, the following key points appear to have been settled:

- Oversight -- there will be a board or some other type of authority to oversee and “audit” the program.
- Individual mortgage assistance -- coordination between Treasury and other federal housing entities to make money available to individual homeowners with distressed mortgages, including the \$300 billion fund enacted earlier this year and administered by the Federal Housing Administration.
- Executive compensation -- despite Treasury Secretary Paulson’s resistance, there is now a substantial, bipartisan demand in the House and Senate that will almost certainly mean that there will be limits on executive compensation.

Outstanding issues still under discussion Tuesday night were:

- Upside participation -- Democrats want warrants in “participating” firms but Treasury Secretary Paulson is still resisting, particularly with respect to acquirers of distressed assets.
- Bankruptcy law changes -- Democrats are insisting on authorizing judges to adjust mortgage terms and/or reduce principal. Republicans and the Administration remain adamantly opposed. There is speculation that this may be the one point on which Democrats may be forced to concede.

A plan being circulated by Senate Finance Committee Chairman Baucus (D-MT) touches on a number of these areas, and some of his suggestions (summarized below) could be included in the final compromise plan:

- Allowing banks holding Fannie Mae and Freddie Mac preferred stock to treat losses on stock owned on September 6 or sold between January 1 and September 6 as ordinary losses.

- Allowing Real Estate Mortgage Investment Conduits to sell distressed mortgages to Treasury without triggering a 100 percent tax on net income from the sale.
- Extend the expiration date for the provision in the new housing bill that allows homeowners to avoid paying tax on forgiven mortgage debts from the end of 2009 to the end of 2012.
- Reduce the amount of excess compensation paid to a corporation’s top five highly compensated executives that is deductible from the current \$1 million to \$400,000, and impose a 20 percent excise tax on “golden parachutes” paid to any of those top five highly paid executives.

Democrats in the House are insisting that the Republicans produce a sufficient number of votes in support to assure that the package is passed by a true bipartisan majority. The Senate vote is expected to be somewhat easier because most Senators seem to believe that the package is the best way to address the current market crisis.

This memorandum was prepared by Gregory B. Astrachan and Russell Smith. If you have any questions about this memorandum, please contact the foregoing or any of the members of the WF&G Government Rescue and Credit Crisis Task Force listed below or the attorney with whom you regularly work. The Task Force (which includes UK insolvency professionals from our strategic ally, Dickson Minto W.S., and attorneys from our European offices) was formed to respond to client questions and provide targeted advice in connection with the proposed Government bailout and the credit crisis (including the Lehman Brothers Holdings Inc. bankruptcy).

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