SUPREME COURT OF THE UNITED STATES

ROBERT L. SCHULZ,

Plaintiff-Appellant,

-against-

LEAD CASE:
District Court 1:08-CV-991
Circuit Court 08-4810-cv

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, Chairman of the United States Federal Reserve System, UNITED STATES DEPARTMENT OF THE TREASURY, HENRY M. PAULSON, JR., Secretary of the United States Department of the Treasury, and the UNITED STATES

Defendants-Respondents

ROBERT L. SCHULZ,

Plaintiff-Appellant,

-against-

MEMBER CASE:
District Court 1:08-cv-1011
Circuit Court 08-4810-cv

UNITED STATES EXECUTIVE DEPARTMENT, GEORGE W. BUSH, President of the United States, HENRY M. PAULSON, JR., Secretary of the Treasury; UNITED STATES CONGRESS, NANCY PELOSI, Speaker of the House of Representatives, HARRY REID, Senate Majority Leader; UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, Chairman of the Board of the United States Federal Reserve System,

Defendants-Respondents

DECLARATION IN SUPPORT OF APPLICATION FOR A STAY

Robert L. Schulz, under penalty of perjury, declares:

1. I am the Plaintiff –Appellant in the matter captioned above and I make this affidavit in support of the application for a stay pending completion of the appeals process/petition for a writ of certiorari.

2. October 12, 2008, I downloaded from the New York Times website the article titled, “White House Overhauling Rescue Plan,” reporting that in addition to purchasing bad assets and investments from private entities, Defendants will be using the $700 Billion bailout money to purchase stock in banks and that Defendants hope to begin to begin to do so, “within the next two weeks.” See Exhibit A.

3. October 14, 2008, I downloaded from the New York Times website the article titled, “U.S. Investing $250 Billion in Banks,” reporting that Defendants will use $250 Billion of the $700 Billion “authorized” by EESA to buy preferred shares of stock in banks, making the taxpayer “the ultimate guarantor for banking in the United States.” See Exhibit B.

Dated: October 14, 2008

____
ROBERT L. SCHULZ
2458 Ridge Road
Queensbury, NY 12804

The New York Times
nytimes.com

PRINTER-FRIENDLY FORMAT SPONSORED BY BA TH

October 12, 2008

White House Overhauling Rescue Plan

By EDMUND L. ANDREWS and MARK LANDLER

WASHINGTON — As international leaders gathered here on Saturday to grapple with the global financial crisis, the Bush administration embarked on an overhaul of its own strategy for rescuing the foundering financial system.

Two weeks after persuading Congress to let it spend $700 billion to buy distressed securities tied to mortgages, the Bush administration has put that idea aside in favor of a new approach that would have the government inject capital directly into the nation's banks — in effect, partially nationalizing the industry.

As recently as Sept. 23, senior officials had publicly derided proposals by Democrats to have the government take ownership stakes in banks.

The Treasury Department's surprising turnaround on the issue of buying stock in banks, which has now become its primary focus, has raised questions about whether the administration squandered valuable time in trying to sell Congress on a plan that officials had failed to think through in advance.

It has also raised questions about whether the administration's deep philosophical aversion to government ownership in private companies hindered its ability to look at all options for stabilizing the markets.

Some experts also contend that Treasury's decision last month to not use taxpayer money to save Lehman Brothers worsened the panic that quickly metastasized into an international crisis.

The administration's new focus was announced late Friday as part of a rescue plan in coordination with six of the world's richest nations. It came during a week when the Dow Jones industrial average plummeted 18 percent, one of the worst weeks in stock market history.

While the Treasury says it still plans to buy distressed assets, the scope of that plan is unclear. Treasury Secretary Henry M. Paulson Jr. has refused to say whether the capital infusion

program for banks would be bigger than the original plan to buy troubled assets.

Still, Treasury has directed Fannie Mae and Freddie Mac, the government-controlled mortgage giants, to ramp up their purchases of hard-to-sell mortgage bonds, in what could be a speedier and less formal process than the auctions proposed by the Treasury.

Underscoring the gravity of the situation, President Bush convened an early morning meeting at the White House on Saturday with finance ministers from the Group of 7 industrialized countries.

“All of us recognize that this is a serious global crisis, and therefore requires a serious global response, for the good of our people,” Mr. Bush said afterward in the Rose Garden, flanked by the ministers, who are in Washington for the annual meetings of the International Monetary Fund and the World Bank.

Mr. Bush said the countries had agreed to general principles to respond to the crisis, including working to prevent the collapse of important financial institutions and protecting the deposits of savers. But he offered no details on other measures, suggesting that there were still differences among countries about which steps to take to shore up their respective financial systems.

To some extent, the effort to agree on a coordinated plan is being driven less by the hope that such measures will carry more punch than by the fear that nations acting alone could destabilize the system.

Those worries grew in recent days when Iceland seized its three major banks, which were failing, and appeared to guarantee the deposits of Icelanders over those of foreigners. That provoked a fierce reaction from Britain, which is now in talks with Iceland to get back the deposits of British citizens.

With the United States and Europe working together on ways to secure their banking systems, economists are concerned that money may flow out of other countries, particularly emerging markets, to Western countries if investors decide that those markets are not as safe.

The United States sought to reassure these countries in a meeting on Saturday evening of the Group of 20, which includes countries with large emerging markets, like China and Russia.

“We want to reaffirm, reinforce our commitment that we’re going to take these actions in a way that doesn’t undermine the economies of other countries,” said David H. McCormick, the

under secretary of the Treasury for international affairs.

Like the United States, Britain plans to provide capital directly to banks. But the United States and other countries have not adopted Britain's proposal to guarantee lending between banks as a way to unlock the credit market.

Germany has been reluctant to put state capital directly into banks, though officials said there were signs of movement in that position on Saturday. Europeans leaders were scheduled to meet in Paris on Sunday, amid reports that Germany may announce a large rescue plan of its own.

Some experts said the delay in carrying out the Bush administration's $700 billion bailout plan had only hurt its prospects for success.

"Even if it was adequate before, it's not adequate now," said Frederic Mishkin, a professor of economics at Columbia University's business school who stepped down as a Federal Reserve governor at the end of August. "If you delay and create uncertainty, the amount of money you have to put up goes up."

As recently as late September, the idea of letting the government buy part of the banking system had been unthinkable in the Bush administration. To many officials, such intervention seemed like a European-style government intrusion in the markets.

"Some said we should just stick capital in the banks, take preferred stock in the banks. That's what you do when you have failure," Mr. Paulson told the Senate Banking Committee on Sept. 23. "This is about success."

Mr. Paulson told lawmakers it made more sense to jumpstart the frozen credit markets with "market measures," by which he meant buying up assets rather than institutions. He staunchly resisted Democratic proposals to require that the government receive an equity stake in the companies it was helping.

But on Friday, Mr. Paulson not only confirmed his intention to buy stakes in banks but gave the idea central billing. "We can use the taxpayer's money more effectively and efficiently, get more for the taxpayer's dollar, if we develop a standardized program to buy equity in financial institutions," Mr. Paulson said.

Treasury officials said they hoped to make the first capital investments within the next two weeks. That would be earlier than any government purchases of unwanted mortgage-backed

securities. One reason for Mr. Paulson's rapid reconsideration was that global financial markets have been going downhill faster than anyone had seen before.

Credit markets seized up and all but stopped functioning, making it impossible for most companies to borrow money on more than an overnight basis. Bank stocks plummeted, making it much more difficult to shore up their balance sheets by raising more capital from investors.

Investors panicked as the House initially rejected the bailout bill on Sept. 29. They panicked even more after Congress passed a bill on Oct. 3 that was packed with sweeteners that added $110 billion to the price tag.

By the closing bell last Friday, the Standard & Poor's 500-stock index had suffered its worst week since 1933. A growing number of analysts argue that Mr. Paulson's original plan, called the Troubled Assets Relief Program, would have been unhelpful and possibly unworkable. Some noted that Mr. Paulson presented Congress a proposal that was only three pages long and that Treasury officials have yet to provide details how the auctions will work.

As envisioned, the Treasury or its agents would hold so-called "reverse auctions" in which financial institutions are invited to compete against each other in offering to sell their mortgage-backed securities at a low price.

Though auctions are common for all sorts of products, including electricity that utilities sell one another, experts said that mortgage-backed securities would pose difficult headaches because they are extraordinarily complex, difficult to value and come in almost limitless varieties.

The bonds for a single pool of mortgages are divided into more than a dozen "tranches," or slices, which have different seniority, different credit ratings and different rules for being paid off. The performance of the underlying mortgages varies greatly from one pool to another, even if both pools are made up of seemingly similar loans.

"I am not aware that the Treasury Department presented any evidence on auctions that have been successful when they are used for assets that are so heterogeneous," said William Poole, who retired in August as president of the Federal Reserve Bank of St. Louis.

Because Fannie Mae and Freddie Mac, the mortgage giants, buy and sell mortgage securities every day, they could absorb some of the hard-to-sell securities without going through the untested auction process.

The Federal Housing Finance Agency, which last month seized the companies and placed them into a conservatorship, lifted capital restrictions on them last week and effectively gave them a green light to buy more mortgage securities of all types, including those backed by subprime loans, given to borrowers with weak credit.

The companies have a lot of money; Congress authorized Treasury to lend them as much as $100 billion each as part of the rescue plan created for them. That could free up money in the separate $700 billion bailout plan for injecting capital directly into the banks. People familiar with the early planning efforts for a systemic bailout said the chairman of the Federal Reserve, Ben S. Bernanke, argued that it would be easier and more efficient to inject capital directly into banks. But Treasury officials balked, in part because they were ideologically opposed to direct government involvement in business.

But as the financial markets spiraled further downward during the last 10 days, a growing number of top-tier institutions, including Goldman Sachs and Morgan Stanley, became worried about their survival.

“The crisis in confidence goes way beyond the actual losses that will be incurred from debt securities,” Mickey Levy, chief economist for Bank of America, said in an interview on Friday. “It’s truly incumbent on policy makers to address that crisis.”

Treasury officials began canvassing banks and investment firms about the possibility of having the government buy stakes in them. The new bailout law gave the Treasury the authority to buy up almost any kind of asset it wanted, including stock or preferred shares in banks.

Industry executives quickly told Mr. Paulson that they liked the idea, though they warned that the Treasury should not try to squeeze out existing shareholders. They also begged Mr. Paulson not to impose tough restrictions on executive pay and golden-parachute deals for executives who are fired.

Mr. Paulson heeded those pleas. In his remarks on Friday, he carefully noted that the government would acquire only “nonvoting” shares in companies. And officials said the law lets the Treasury write most of its own restrictions on executive pay, and those restrictions can be lenient if they are applied to a set of fairly healthy companies.

Mark Landler contributed reporting.

Copyright 2008 The New York Times Company

Privacy Policy | Search | Corrections | RSS | First Look | Help | Contact Us | Work for Us | Site Map

The New York Times
nytimes.com

PRINTER-FRIENDLY FORMAT SPONSORED BY BA TH

October 14, 2008

U.S. Investing $250 Billion in Banks

By MARK LANDLER

WASHINGTON — The Treasury Department, in its boldest move yet, is expected to announce a plan on Tuesday to invest up to $250 billion in banks, according to officials. The United States is also expected to guarantee new debt issued by banks for three years — a measure meant to encourage the banks to resume lending to one another and to customers, officials said.

And the Federal Deposit Insurance Corporation will offer an unlimited guarantee on bank deposits in accounts that do not bear interest — typically those of businesses — bringing the United States in line with several European countries, which have adopted such blanket guarantees.

The Dow Jones industrial average gained 936 points, or 11 percent, the largest single-day gain in the American stock market since the 1930s. The surge stretched around the globe: in Paris and Frankfurt, stocks had their biggest one-day gains ever, responding to news of similar multibillion-dollar rescue packages by the French and German governments.

Treasury Secretary Henry M. Paulson Jr. outlined the plan to nine of the nation's leading bankers at an afternoon meeting, officials said. He essentially told the participants that they would have to accept government investment for the good of the American financial system.

Of the $250 billion, which will come from the $700 billion bailout approved by Congress, half is to be injected into nine big banks, including Citigroup, Bank of America, Wells Fargo, Goldman Sachs and JPMorgan Chase, officials said. The other half is to go to smaller banks and thrifts. The investments will be structured so that the government can benefit from a rebound in the banks' fortunes.

President Bush plans to announce the measures on Tuesday morning after a harrowing week in which confidence vanished in financial markets as the crisis spread worldwide and government leaders engaged in a desperate search for remedies to the spreading contagion. They are desperately seeking to curb the severity of a recession that has come to appear all but inevitable.

Over the weekend, central banks flooded the system with billions of dollars in liquidity, throwing out the traditional financial playbook in favor of a series of moves that officials hoped would get banks lending again.

European countries — including Britain, France, Germany and Spain — announced aggressive plans to guarantee bank debt, take ownership stakes in banks or prop up ailing companies with billions in taxpayer funds.

The Treasury's plan would help the United States catch up to Europe in what has become a footrace between countries to reassure investors that their banks will not default or that other countries will not one-up their rescue plans and, in so doing, siphon off bank deposits or investment capital.

"The Europeans not only provided a blueprint, but forced our hand," said Kenneth S. Rogoff, a professor of economics at Harvard and an adviser to John McCain, the Republican presidential candidate. "We're trying to prevent wholesale carnage in the financial system."

In the process, Mr. Rogoff and other experts said, the government is remaking the financial landscape in ways that would have been unimaginable a few weeks ago — taking stakes in the industry and making Washington the ultimate guarantor for banking in the United States.

But the pace of the crisis has driven events, and fissures in places as far-flung as Iceland, which suffered a wholesale collapse of its banks, persuaded officials to act far more decisively than they had previously.

"Over the weekend, I thought it could come out very badly," said Simon Johnson, a former chief economist of the International Monetary Fund. "But we stepped back from the cliff."

The guarantee on bank debt is similar to one announced by several European countries earlier on Monday, and is meant to unlock the lending market between banks. Banks have curtailed such lending — considered crucial to the smooth running of the financial system and the broader economy — because they fear they will not be repaid if a bank borrower runs into trouble.

But officials said they hoped the guarantee on new senior debt would have an even broader effect than an interbank lending guarantee because it should also stimulate lending to businesses.

Another part of the government's remedy is to extend the federal deposit insurance to cover all

small-business deposits. Federal regulators recently have been noticing that small-business customers, which tend to carry balances over the federal insurance limits, had been withdrawing their money from weaker banks and moving it to bigger, more stable banks.

Congress had already raised the F.D.I.C.'s deposit insurance limit to $250,000 earlier this month, extending coverage to roughly 68 percent of small-business deposits, according to estimates by Oliver Wyman, a financial services consulting firm. The new rules would cover the remaining 32 percent.

"Imposing unlimited deposit insurance doesn't fix the underlying problem, but it does reduce the threat of overnight failures," said Jaret Seiberg, a financial services policy analyst at the Stanford Group in Washington.

"If you reduce the threat of overnight failures," Mr. Seiberg said, "you start to encourage lending to each other overnight, which starts to restore the normal functioning of the credit markets."

Recapitalizing banks is not without its risks, experts warned, pointing to the example of Britain, which announced its program last week and injected its first capital into three banks on Monday.

Shares of the newly nationalized banks — Royal Bank of Scotland, HBOS and Lloyds — slumped on Monday, despite a surge in banks elsewhere, because shareholder value was diluted by the government.

The move, analysts said, makes the government Britain's biggest banker. And it creates a two-tier banking system in which the nationalized banks are run like utilities and others are free to pursue profit growth. As part of the plan, the chief executives of the three banks stepped down.

Still, Mr. Paulson's strategy was backed by lawmakers, including Senator Charles E. Schumer, Democrat of New York, who said he preferred capital injections to buying distressed mortgage-related assets — a proposal that Treasury pushed aggressively before its turnabout.

In a letter to Mr. Paulson on Monday, Mr. Schumer, chairman of the Joint Economic Committee, urged the Treasury to demand that banks receiving capital eliminate their dividends, restrict executive pay and stick to "safe and sustainable, rather than exotic, financial activities."

"I don't think making this as easy as possible for the financial institutions is the way to go," Mr.

Schumer said in a call with reporters. “You need some carrots but you also need some sticks.”

But officials said the banks would not be required to eliminate dividends, nor would the chief executives be asked to resign. They will, however, be held to strict restrictions on compensation, including a prohibition on golden parachutes and requirements to return any improper bonuses. Those rules were also part of the $700 billion bailout law passed by Congress.

The nine chief executives met in a conference room outside Mr. Paulson’s ornate office, people briefed on the meeting said. They were seated across the table from Mr. Paulson; Ben S. Bernanke, chairman of the Federal Reserve; Timothy F. Geithner, president of the Federal Reserve Bank of New York; Federal Reserve Governor Kevin M. Warsh; the chairman of the F.D.I.C., Sheila C. Bair; and the comptroller of the currency, John C. Dugan.

Among the bankers attending were Kenneth D. Lewis of Bank of America, Jamie Dimon of JPMorgan Chase, Lloyd C. Blankfein of Goldman Sachs, John J. Mack of Morgan Stanley, Vikram S. Pandit of Citigroup, Robert Kelly of Bank of New York Mellon and John A. Thain of Merrill Lynch.

Bringing together all nine executives and directing them to participate was a way to avoid stigmatizing any one bank that chose to accept the government investment.

The preferred stock that each bank will have to issue will pay special dividends, at a 5 percent interest rate that will be increased to 9 percent after five years. The government will also receive warrants worth 15 percent of the face value of the preferred stock. For instance, if the government makes a $10 billion investment, then the government will receive $1.5 billion in warrants. If the stock goes up, taxpayers will share the benefits. If the stock goes down, the warrants will be worthless.

As Treasury embarked on its recapitalization plan, it offered some details on the nuts-and-bolts of the broader bailout effort. The program’s interim head, Neel T. Kashkari, said Treasury had filled several senior posts and selected the Wall Street firm Simpson Thacher as a legal adviser.

It named an investment management consultant, Ennis Knupp, based in Chicago, to help it select asset management firms to buy distressed bank assets. And it plans to announce the firm that will serve as the program’s prime contractor, running auctions and holding assets, within the next day.

“We are working around the clock to make it happen,” said Mr. Kashkari, a former Goldman

Sachs banker who has been entrusted with the job of building this operation within weeks.

As details of the American recapitalization plan emerged, fears grew over the impact on smaller countries. Iceland is discussing an aid package with the International Monetary Fund, a week after Reykjavik seized its three largest banks and shut down its stock market.

The fund also offered "technical and financial" aid to Hungary, which last week suffered a run on its currency. Prime Minister Ferenc Gyurcsany said the country would accept aid only as a last resort.

In a new report on capital flows, the Institute of International Finance projected that net capital in-flows to emerging markets would decline sharply, to $560 billion in 2009, from $900 billion last year.

In Asia, markets continued to rise on Tuesday, lifted further by the announcement that the Japanese government would inject 1 trillion yen ($9.7 billion) into the financial system.

Copyright 2008 The New York Times Company