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In Favor of a “Bail-In”: How a Trillion Dollars Might Better Used to Start a Recovery

J. Scott Colesanti
Maurice A. Deane School of Law at Hofstra University

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J. SCOTT COLESANTI*

INTRODUCTION

Between October 2008 and February 2009, the federal government ("Government") took unprecedented action to keep a short list of very large corporate entities out of bankruptcy.[1] Specifically, the Treasury Department appropriated approximately $1 trillion from sources unknown to, in large part, buoy the coffers of companies believed to have been victimized by a collective myopia on Wall Street. Spanning two Presidential administrations, the philosophy of this economic rescue belied partisan ties; overall, the monies contemplated were simply unfathomable.

Simply put, if we agree that immediate and massive Government spending was warranted, that unfathomable amount of money should have been spent elsewhere.

Not just because the handout was not always needed, as Congress later

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1 Statistics show that approximately $514 billion of the initial bailout was committed to 11 entities and their subsidiaries. *See* Where is the Money? Eye on the Bailout, Pro Publica, http://bailout.propublica.org/main/list/index (last visited Sept. 15, 2010). A.I.G. received an additional $64 billion in federal rescue funds/lines of credit. *See generally*, Emergency Economic Stabilization Act of 2008 12 U.S.C. §5201 (2010) ("EESA"). The $1 trillion referenced in this Article combines (conservatively) the EESA monies and the separate monies expended in the subsequent American Recovery and Reinvestment Act. *See generally,* American Recovery and Reinvestment Act of 2009, 111 Pub.L. 5, 123 Stat. 115 (2009) ("ARRA"). ARRA committed another $787 billion in tax breaks, contracts, incentives, and grants to various entities and causes public and private, but nonetheless included a $224 billion commitment to "entitlements". *See* Track the Money, Recovery.gov, http://www.recovery.gov/Pages/home.aspx (last visited Sept. 15, 2010). This total for ARRA and EESA monies is then averaged against the reported $1.5 trillion in Federal Reserve money loaned to "banks, brokers, businesses and investors to keep the financial system functioning" at a time when the government agency was "trying to entice investors back into the markets." *See* Sewell Chan and Jo Craven McGinty, Fed Documents Breadth of Emergency Measures, N.Y. Times (December 1, 2010).

learned from executives disclosing pressure from the government to accede to the recovery plan,[2] nor consistently successful, as 130 banks fell *after* the famed Troubled Asset Relief Program ("TARP") was implemented.[3]

Not just because the gift money could not be monitored, although excesses and waste in the form of Super Bowl events and notorious bonuses pervaded the headlines throughout 2009.[4] And not just because the overseer of the Bailout funds herself excoriated both the greed of banks and the blameless cash that rescued them.[5]

Not just because the economic collapse may have been gamed by the Wall Street savvy.[6]

Not just because discreet groups of market victims were reimbursed for market losses under disputed calculations.[7]

Not just because the printing of Bailout money devalued American currency worldwide.[8]

And not just because the Bailouts largely failed in their lofty goals of forestalling home foreclosures, minimizing unemployment, and loosening credit, although the data on each of these topics is harrowing and

[2] *See* Ari Levy, *Wells Fargo Assails TARP, Calls Stress Test 'Asinine'*, BLOOMBERG, March 16, 2009, http://www.bloomberg.com/apps/news?pid=20601110&sid=ayqseC8JU2.I (reporting that banks were forced to take TARP money).

[3] *See* Troubled Asset Relief Program [EESA]: Year-End Review, Committee For a Responsible Federal Budget, Dec. 9, 2009, http://crfb.org/document/troubled-asset-relief-program-year-end-review (discussing the effectiveness of TARP as of the end of 2009) (noting in particular that 130 banks have closed since TARP came into effect); Over 100 Banks Closed in 2009, Committee For a Responsible Federal Budget, Oct. 26, 2009, http://crfb.org/blogs/over-100-banks-closed-2009 (discussing bank closings in 2009).

[4] *See, e.g.*, Megan Chuchmach et al., *Bailed Out Bank of America Sponsors Super Bowl Fun Fest* ABCNEWS.COM, Feb. 2, 2009,http://abcnews.go.com/Blotter/WallStreet/story?id=6782719&page=1& page=1 (reporting on excesses indulged in by some bailed out companies); Louise Story, *Bank's Deal With S.E.C. is Approved*, N.Y. TIMES, Feb. 22, 2010, at B1, *available at* http://www.nytimes.com/2010/02/23/business/23bank.html (describing decision of a federal judge to accept a $150 million settlement between the bank and the SEC over inadequate disclosure of employee bonuses during the Merrill Lynch merger of 2008).

[5] *See* Ethan Porter, Editorial, *The Woman Democrats Need*, BOSTON GLOBE, Jan. 24, 2010, at 9 http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/01/24/the_woman_democrats_need/ ("I think the problem has been all the way throughout this crisis, that the banks have been treated gently and everyone else has been treated really pretty tough.").

[6] *See* William D. Cohan, *The Great Goldman Sachs Fire Sale of 2008*, N.Y. TIMES OPINIONATOR, Feb. 18, 2010, http://opinionator.blogs.nytimes.com/2010/02/18/the-great-goldman-sachs-fire-sale-of-2008/?ref=business (describing the sales of personal stock holdings by executives at Goldman Sachs during the dark days of September and October 2008).

[7] *See* Noeleen G. Walder, *Trustee, Madoff Investors Spar Over Payout Calculation*, LAW.COM, Feb. 3, 2010, http://www.law.com/jsp/article.jsp?id=1202441913520 (discussing the 4-hour court hearing in Manhattan to decide the payouts to be accorded defrauded Bernard L. Madoff Investment Securities LLC investors).

[8] *See* Historical Exchange Rates, http://www.oanda.com/currency/historical-rates (detailing the drop in the U.S. dollar against the Euro and the Chinese Yuan from .78 to .69 between February 2009, the month of the second Bailout, and December 2009).

unavoidable.

The Bailout is arguably most culpable of ignoring market realities by shunning broad support for faltering stock market prices in favor of rescuing a 1-page roster of financial giants.[9] These drastic and selective lifelines did little for the many entities and individuals who had trusted the stock market to act within reason. Concurrently, the most harmful bow struck by the Bailouts may have been to the faith of the retail investor, who has come to realize that, in times of exigency, he shall be last on the lifeboats.[10]

Accordingly, this Article thus posits that, in terms of maintaining an economy that both benefits from and trusts the stock market, the Bailout money would have better served the masses had it been allocated across the spectrum of stocks comprising the Dow Jones Industrial Average ("DJIA"). Such direct Government intervention - equally costly and almost as unprecedented[11] – would have served the dual purpose of 1) over the short term, permitting pension and retirement fund administrators the breathing room to diversify holdings, and 2) over the long-term, comforting both institutional and individual stock market participants that their savings and investments were just as vital as the well-being of A.I.G. and corporate bonuses.

To this end, Part II of the Article examines the goals and efficacy of the Bailouts. Part III looks at the DJIA, its peculiarities and some of its most glaringly unrecompensed victims since 2008. Part IV details the proposed alternative by demonstrating that $1 trillion of government money would have supported DJIA company stock prices for at least an additional nine months. Finally, Part V concludes by encouraging both creativity in fashioning repair strategies and concomitantly fostering skepticism of narrowly-drawn rescue plans.

[9] As of June 2010, of the initial 829 recipients of EESA/TARP funds, 11 large entities and their subsidiaries had received commitments of over $427 billion, 83% of the $514 billion in total commitments. *See* Pro Publica, http://bailout.propublica.org/main/list/index (last visited Sept. 15, 2010).

[10] *See* Nina Easton, *Will Fear of Big Government End Obama's Audacity?*, TIME, Dec. 14, 2009, http://www.time.com/time/magazine/article/0,9171,1945357,00.html ("While the New Deal is often remembered as a bailout for the little guy, the bailouts of Wall Street – launched by the Bush Administration and sustained by Obama – have been aimed at the affluent and have not merely made Americans skeptical of the explosion in spending but left them feeling shortchanged as well."); Betsy Morris, *Chuck Schwab Is Worried About Small Investors. Should We Worry Too?*, BUSINESSWEEK, May 27, 2010, http://www.businessweek.com/magazine/content/10_23/b4181058561674.htm ("[I]t felt like one more sign that the deck was stacked against the little guy.").

[11] *See, e.g.*, William L. Silber, *Birth of the Federal Reserve: Crisis in the Womb* NYU STERN Department of Finance Working Paper Series FIN-03-27, Oct. 2003, *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1299468* (describing the suspension of NYSE trading for four months following the outbreak of World War I while President Wilson launched the Federal Reserve).

I. BACKGROUND: WHERE DID THE MONEY GO, AND DID IT COME COME BACK?

A. The Costs

Statistics reveal that the majority of "takers" under the Bailouts were financial service providers (and not banks injured by mortgage foreclosures). For example, of the $700 billion authorized for TARP, as of year end 2009, nearly half was borrowed by A.I.G and the large investment houses.[12] Some companies recouped twice,[13] for on occasion sizeable chunks of the Bailout passed through the borrower to existing counterparties who were separately receiving TARP funds.[14]

Of course, another recipient of Bailout largesse was the U.S. government itself, which saw Treasury debt sales rise and borrowing costs plummet in 2009.[15]

Most alarmingly, the largest bailed out company proved to be a bad investment. A.I.G. – which received over $130 billion in Bailout funds in return for a 80% government stake – posted a loss exceeding $8 billion for the fourth quarter of 2009 (down from a loss exceeding $61 billion in the fourth quarter of 2008).[16] In 2010, other government proposals enlightened that a large sum of the Bailout money will not be coming back.[17] Truly, the elimination of so much paper wealth might seem comical were it not for the attendant inflation, unemployment, and overall despair.

[12] Troubled Asset Relief Program: Year-End Review, Committee For a Responsible Federal Budget, Dec. 9, 2009, http://crfb.org/document/troubled-asset-relief-program-year-end-review (discussing the effectiveness of TARP as of the end of 2009).

[13] *See* Gretchen Morgenson & Louis Story, *Testy Conflict With Goldman Helped Push A.I.G. to Precipice*, N.Y. TIMES, Feb. 7, 2010, at A1, *available at* http://www.nytimes.com/2010/02/07/business/07goldman.html (describing that the insurance giant paid $2 billion to Goldman Sachs in 2007/2008 to cover losses in "complex mortgage securities").

[14] *See* Gretchen Morgenson, *Behind Biggest Insurer's Crisis, Blind Eye to a Web of Risk*, N.Y. TIMES, Sept. 28, 2008, at A1, *available at* http://www.nytimes.com/2008/09/28/business/28melt.html (explaining that Goldman Sachs was "A.I.G.'s largest trading partner").

[15] *See* Min Zeng, *Treasury Debt Sales Top $2.1 Trillion for Year*, WALL ST. J., Jan. 4, 2010, at C3, *available at* http://online.wsj.com/article/SB10001424052748704152804574627903356937442.html (reporting on the increased demand for government debt offerings).

[16] *See* Mary W. Walsh, *A.I.G. Reports $8.87 Billion Loss in Fourth Quarter*, N.Y. TIMES, Feb. 26, 2010, at C2, *available at* http://www.nytimes.com/2010/02/27/business/27insure.html?hpw (noting A.I.G.'s financial losses).

[17] *See* Jackie Calmes, *Obama Weighs Tax on Banks to Cut Deficit*, N.Y. TIMES, Jan. 12, 2010, at A1, *available at* http://www.nytimes.com/2010/01/12/business/economy/12bailout.html (describing the President's plan to make up $120 billion in TARP shortfall over a period of 10 years). *But see* Dan Fitzpatrick. *TARP Losses Revised Down, to $117 Billion*, WALL ST. J., Mar. 2, 2010, http://online.wsj.com/article/SB10001424052748704358004575096044265249772.html (estimating that proceeds from A.I.G.'s sales of two units should allow a 40% repayment to the Government of loaned funds).

Not surprisingly, the Bailout that was sold to the American public as a necessary evil has been recast by many (the judiciary included) as Main Street paying for Wall Street excesses.[18]

And yet the indirect consequences of the Bailout might be even worse.

The Government's demands that these borrowers of the emergency loans meet heightened net capital requirements coerced a conservatism that worked foremost to curtail credit to the market.[19] Specifically, the "stress test" demanded by the Treasury Department in 2009, strangely, asked banks receiving the Bailouts to conserve capital while fostering consumer credit.[20] Consequentially, with bank ledgers under new and intense scrutiny, government treasuries became the soundest investment; in short, banks bypassed consumers and the pesty risks they present and simply ceased being banks.[21] Simultaneously, the Government's rush to salvage the largest institutions created a handful of super-institutions that collectively control about 40% of all deposits and two-thirds of all credit cards.[22]

Further, there lingers the very real threat of the insolvency of numerous States. For while the federal government may adhere to a print, borrow, and spend economy, State governments are obliged to balance budgets, forcing them to "raise taxes or cut spending" after the Bailouts' $140 billion of federal aid runs out.[23]

18 *See* Louise Story, *Bank's Deal With S.E.C. Is Approved*, N.Y. TIMES, Feb. 22, 2010, at B1, *available at* http://www.nytimes.com/2010/02/23/business/23bank.html?src=linkedin (referencing the written decision of Honorable Judge Jed Rakoff, S.D.N.Y., who, in approving a settlement of charges against Bank of America related to its faulty disclosure of employee bonuses, commented that the Merrill Lynch-BOA merger "could have been a bank-destroying disaster if the U.S. taxpayer had not saved the day").

19 *See* Cybele Weisser, *Could Your Credit Be Too Good?*, TIME, June 22, 2009, at 96, *available at* http://www.time.com/time/magazine/article/0,9171,1904129,00.html (noting that credit card issuers trimmed approximately $1 trillion in credit lines since 2008).

20 *See* Tom Petruno, *U.S. Bank Parent Slashes Dividend 88% to Conserve Cash*, L.A. TIMES, Mar. 4, 2009, http://latimesblogs.latimes.com/money_co/2009/03/us-bancorp-divi.html (reporting that U.S. Bancorp cut back on dividends to conserve cash in light of the government stress test). *See generally* The Supervisory Capital Assessment Program: Design and Implementation, April 24, 2009, http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090424a1.pdf (describing the SCAP process undertaken from February to April 2009).

21 *See* George Melloan, *Government Deficits and Private Growth*, WALL ST. J., Nov. 24, 2009, at A23, *available at* http://online.wsj.com/article/SB10001424052748703932904574511243712388988 .html ("The credit market has been tilted to favor a single borrower with a huge appetite for money, Washington. Private borrowers, particularly small businesses, have been sent to the end of the queue.").

22 James Suowiecki, *Why Banks Stay Big*, NEW YORKER, Nov. 2, 2009, at 46, *aviable at* http://www.newyorker.com/talk/financial/2009/11/02/091102ta_talk_surowiecki (discussing how government-sanctioned mergers resulted in the country's four biggest banks actually growing during the economic downturn).

23 *See* James Surowiecki, *Fifty Ways to Kill Recovery*, NEW YORKER, July 27, 2009, at 23, *available at* http://www.newyorker.com/talk/financial/2009/07/27/090727ta_talk_surowiecki (arguing that the states are an impediment to economic recovery because of their tactic to increase taxes and cut

Depression-era unemployment levels remain the largest unsolved problem. As a reminder, in 2009, the national unemployment rate rose steadily from 7% to 10%.[24] Perhaps expectedly, Federal Reserve Chairman Bernanke recently called unemployment "the biggest problem we have."[25] Further, white collar jobs have disappeared in record numbers,[26] with little hope of the trend reversing in the near future.[27] New York unemployment numbers have been particularly hard hit by the economic crisis, prompting the Governor to call upon Congress in 2010 to extend unemployment benefits to assist approximately 575,000 New Yorkers.[28]

Largely unrecognized as of yet are the victimized savings accounts of millions of Americans. There currently is simply little incentive for middle class Americans to place money in intermediate term banking vehicles. Witness the decline of the certificate of deposit interest rate, another casualty of the economic crisis:

FIGURE 1

	6-month CD	*1-yr.CD*	*2.5 yr. CD*
Nov. 2008	2.03%	2.49%	2.51%
Nov. 2009	0.55%	0.87%	1.32%[29]

spending during the economic downturn).

24 *See* Bureau of Labor Statistics Data, http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=latest_numbers&series_id=LNS14000000 (last visited Sept. 12, 2010) (showing national unemployment statistics for 2009).

25 Sewell Chan, *Bernanke Reassures on Rates*, N.Y. TIMES, Feb. 25, 2010, at B1, *available at* http://www.nytimes.com/2010/02/25/business/economy/25fed.html.

26 *See* Debra C. Weiss, *BigLaw Laid Off More Than 12,000 people in 2009, the Worst Year Ever*, A.B.A. J., Jan. 4, 2010, http://www.abajournal.com/news/article/biglaw_laid_off_more_than_12000_people_in_2009_the_worst_year_ever (describing law firm jobs lost in 2009).

27 *See* Peter S. Goodman, *Despite Signs of Recovery, Chronic Joblessness Rises*, N.Y. TIMES, Feb. 20, 2010, at A1, *available at* http://www.nytimes.com/2010/02/21/business/economy/21unemployed.html (noting that 6.3 million Americans have been unemployed for six months or longer, the largest number since the government began keeping track in 1948).

28 The full, February 24th statement of Governor Paterson reads as follows:

> As we in government work to rebuild a broken economy, we must continue to protect those most affected by this catastrophic downturn: the unemployed. Many of our neighbors without jobs have come to rely on the unemployment insurance benefits that provide them with the means to make their mortgage payments, buy groceries or simply make ends meet. However, if Congress does not act quickly, this much-needed resource will expire, leaving many without the support they need to weather this storm.
>
> I strongly urge Congress to extend the unemployment insurance benefits beyond the February 28 deadline through the end of this year. Without this extension, approximately 575,000 New Yorkers will see an end to their benefits. With it, we will help to ensure the economic security of those who have already made sacrifices, scaled down spending and gone without.

Press Release, Governor David A. Paterson, Calling for the Extension of Unemployment Ins., Feb. 24, 2010, *available at* http://www.labor.ny.gov/pressreleases/2010/Feb24_2010.htm.

29 *Snapshots*, USA TODAY, Nov. 27, 2009, at 1.

Meanwhile, the traditional savings account has all but evaporated.[30]

Of course, the core obstacle of depressed real estate remains mammoth. In March 2009, the White House provided details on its "Home Affordability and Stability Plan," which disclosed the ideal of helping 4-5 million homeowners to refinance their mortgages.[31] One year later, less than 120,000 of eligible homeowners had progressed through offer and trial modifications to "permanent modifications" under the noble project;[32] moreover, after a year of scrutiny and relief, housing market statistics revealed that still one in 409 housing units received a foreclosure filing in January 2010.[33] Also, annual mortgage delinquencies, which exceed 14%, were conceded by the Government at year-end 2009 to be "the highest ever recorded."[34]

B. The Payback

While exact numbers vary, fluctuating between 40% and 69% as of June 2010,[35] it is undisputed that the actual payback of TARP monies will produce a shortfall measured in the billions of dollars.[36] Of course, the intangible declines in stock market fortitude and Government trust are even more difficult to quantify, but surely no less worth mention. And any such mention must start with an honest appraisal of the significance of the stock market to our nation's confidence.

30 *See* Andy Kessler, "Was It a Sucker's Rally?", WALL ST. J., May 12, 2009, at A17, *available at* http://online.wsj.com/article/SB124208415028908497.html (noting, sarcastically, that "[s]avings accounts pay a whopping 0.2% interest").

31 *See* Home Affordable Modification Program Guidelines, Mar. 4, 2009, http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf (providing a series of guidelines for the program).

32 *See* U.S. Departmentt of the Treasury, January 2010 Loan Modification Report, Feb. 16, 2010, http://www.financialstability.gov/docs/press/January%20Report%20FINAL%2002%2016%2010.pdf (discussing an existing 116,000 permanent modifications).

33 *See* Dan Levy, *U.S. Foreclosure Filings Top 300,000 for 11th Month*, BUS. WK., Feb. 11, 2010, http://www.businessweek.com/news/2010-02-11/u-s-foreclosure-filings-surpass-300-000-for-11th-month-in-row.html (reporting on January 2010 foreclosure statistics).

34 *See* Troubled Asset Relief Program: Year-End Review, Committee For a Responsible Federal Budget, Dec. 9, 2009, http://crfb.org/document/troubled-asset-relief-program-year-end-review (noting the continued rise in mortgage delinquencies).

35 *Compare* David Goldman, *CNNmoney.com's Bailout Tracker*, CNNMONEY.COM, http://money.cnn.com/news/storysupplement/economy/bailouttracker/ (last visited Sept. 14, 2010) (listing approximately $118 billion returned as of June 10, 2010) *with* Companies That Have Refunded Bailout Money, Pro Publica, http://bailout.propublica.org/main/list/refunds (last visited Sept. 14, 2010) (listing approx. $160 billion returned as of the same date).

36 *See* Major Garrett, *Obama to Bankers: 'We Want Our Money Back'*, FOXNEWS.COM, Jan. 14, 2010, http://www.foxnews.com/politics/2010/01/14/obama-propose-fees-high-flying-banks/ (acknowledging a TARP shortfall of at least $117 billion).

II. THE IMPORTANCE OF THE STOCK MARKET

It is axiomatic that the DJIA reflects economic wealth and health. But, atop of its reflections of varied news from other sectors, the index itself creates and destroys wealth. Its effect upon oil prices has been empirically proven.[37] Its stumble caps college hiring projections.[38] Its downturn curtails further stock offerings,[39] thus freezing capital formation and causing layoffs among its dependent professionals. Of course, its ebb and flow directly determines if trusts are solvent, university endowments are safe, and couples may retire. Thus, with all the daily references to the DJIA's rises and falls, what seems to have been forgotten is that the Dow itself *is* wealth and health.

All of which enlightens us that focus upon the disparate consequences of the crisis is perhaps misplaced. If seeking to restore equilibrium, emphases needed to be placed on the embodiment of collective health – namely, the 30 companies of the DJIA.

A. Background on the 'Index'

A weighted tally that has measured market fortunes for over 110 years, the Dow Jones Industrial Average is comprised of 30 equity stocks.[40] Approximately two thirds of this group are manufacturers of industrial and/or consumer goods. Originally centering on 11 railroad stocks (the number of 30 was arrived at in 1928), the barometer remains the most quoted market measure in the world and has itself become a vehicle for investment (through speculative options).[41] The actual number representing the "DJIA" is "calculated by adding the trading prices of the [30] component stocks and using a divisor adjusted for stock dividends and

[37] *See* Emmanuel Anoruo & Muhammad Mustafa, *An Empirical Investigation Into the Relationship of Oil to Stock Market Prices*, 1 N. AM. J. FIN. AND BANKING RES. 1 (2007), *available at* http://globip.com/pdf_pages/northamerjournal-vol1-article2.pdf (discussing the links between stock markets and oil price).

[38] *See Comparing College Hiring Projections to Unemployment and Dow Industrial Average*, NACE Research, Oct. 29, 2008, http://www.naceweb.org/spotlight/2008/october/hiring_projections_unemployment/ (providing statistics on the DJIA and changes in unemployment and hiring projections).

[39] *See, e.g.*, Tali Arbel, *IPO Market Resumes with Small Pharma Offering*, ABCNEWS, Feb. 19, 2010, http://abcnews.go.com/Business/wireStory?id=9890296 (describing the postponement of five IPOs by mid-February 2010 after the stock market's "bumpy" first six weeks).

[40] A listing of the current roster of the 30 Dow companies is attached as "Appendix A." A.I.G. was removed from the list in September 2008. *See* Chronology of Dow Jones Industrial Average, http://www.islandnet.com/~kpolsson/dowjones/dow1954.htm (last visited Sept. 14, 2010) (indicating that A.I.G. was removed Sept. 22, 2008).

[41] *See generally* Dow Jones Industrial Average Overview, http://www.djaverages.com/?view=industrial&page=overview (last visited Sept. 14, 2010) (offering a brief history of the DJIA).

splits, cash equivalent distributions equal to 10% or more of the closing prices of an issue, and substitutions and mergers."[42]

And yet, this aged and delicately gauged indicator resists outright steerage. It defies actions by the Federal Reserve to preserve stability,[43] and by the White House to stimulate trading.[44] It even has proven impervious to the carefully calibrated constraints on volatility fashioned by the stock exchanges themselves.

For example, between October 2008 and February 2009 – as an inflated DJIA gradually declined over 40% - the NYSE 'circuit breakers' were not triggered once, raising questions concerning their purpose and effect.[45] In fact, these artificial barriers (implemented in 1989 to halt trading during periods of excessive volatility) failed to trip during the famed market's worst trading day (September 29, 2008: 778 point/7% decline), week (October 1 – 7, 2008: 1400 points/13%), or overall period (September 2008 – February 2009: 38%).[46]

B. Its Less Publicized Victims

The direct consequences of the slow but steady market meltdown have manifested in the financial services industry; indeed, of the 45 banks receiving the most TARP money, 43 were public companies.[47] But devastation on Main Street is just as noteworthy.

There being no true sanctuary in limit orders or circuit breakers, pensions and retirement funds were forced to suffer as the "stock-market

[42] DICTIONARY OF FINANCE AND INVESTMENT TERMS 595-596 (John Downes & Jordan E. Goodman eds., 5th ed. 1998).

[43] *See* Ray C. Fair, *Fed Policy and the Effects of a Stock Market Crash on the Economy – Federal Reserve Board Unable to Offset Effects of Market Crash*, April 2000, MONEYWATCH.COM, http://findarticles.com/p/articles/mi_m1094/is_2_35/ai_63607827/ ("[T]he Fed does not have the power to prevent a recession from taking place [when] there is a crash.").

[44] See Michael Mcauliff, *Obama Says Buy Stocks Now: Good Deals There for Long Term Investors*, U.S. NEWS & WORLD REP., Mar. 4, 2009, http://politics.usnews.com/news/obama/articles/2009/03/04/obama-says-buy-stocks-now-good-deals-there-for-long-term-investors.html (reporting that the Dow closed down after president had suggested it would be a good time to buy stock).

[45] *See, e.g.*, AnnaMaria Andriotis, *Decode: When Circuit Breakers Get Triggered*, SMARTMONEY, Oct. 24, 2008, www.smartmoney.com/investing/stocks/Decode-Setting-Off-Circuit-Breakers ("For a circuit breaker to go into effect now, the DJIA would have to drop by 1,100 points or more."); Chedley A. Aouriri et al., *Exchanges – Circuit Breakers, Curbs, and Other Trading Restrictions*, INVEST FAQ, Oct. 6, 2008, http://invest-faq.com/cbc/exch-circuit-brkr.html ("The new game in town is how to outfox the circuit breakers and buy or sell quickly before the 50-point move triggers the halting of the automated trading [by broker-dealers] . . . .").

[46] *See* Chronology of Dow Jones Industrial Average, http://www.islandnet.com/~kpolsson/dowjones/dow1954.htm (last visited Sept. 14, 2010) (highlighting bleak periods in the Dow's recent history).

[47] *See* Bailout Recipients, Pro Publica, http://bailout.propublica.org/main/list/index (last visited Sept. 14, 2010) (listing companies that have received TARP money).

collapse of 2008" eradicated at least 30% of market equity.[48] Early in the crisis, disclosures edified that states both large and small suffered sizeable market losses.[49] After the Bailouts commenced, the largest investor plans actually brought suit over a government orchestrated merger, thus clarifying that what Washington, D.C. saw as urgent could in fact be disastrous for shareholders.[50]

The connection between stock market losses and ensuing corporate layoffs cannot be overemphasized. Figure 2 below clarifies the link; note that the examples cross retail, credit and financial service sectors:

In short, the Dow is a mighty and often unwieldy beast. When it is wildly uneasy, the largest personnel departments tend to respond.

FIGURE 2

Public Company	*Fall 2008 High*	*Subsequent Low*	*Sample Layoffs*
1. Wal-Mart	c. $63	c. $47 (mid 2009)[51]	11,000[52]
2. American Express	c $31	c. $10 (March 2009)[53]	4,000[54]
3. Boeing	c. $52	c. $31 (Feb. 2009)[55]	1,020[56]
4. General Electric	c. $23	c. $9 (Feb. 2009)[57]	1,000 (1/09)[58]; 1,480 (9/09)[59]

48 *See* David Denby, *Gods and Victims*, NEW YORKER, Oct. 5, 2009, at 89, *available at* http://www.newyorker.com/arts/critics/cinema/2009/10/05/091005crci_cinema_denby (indicating that the stock market fluctuations of 2008 eradicated 30% of market equity).

49 *See* Heidi Turner, *Lawsuits Follow Stock Market Losses*, PIVOTALDISCOVERY.COM, Nov. 7, 2008, http://www.lawyersandsettlements.com/features/stock-market-losses-6.html (describing North Carolina's class action suit against Freddie Mac to recover $18 million in pension fund losses); Aaron Elstein, *NY State's Pension Fund is 26% Poorer*, CRAIN'S N.Y. BUS., May 29, 2009, http://www.crainsnewyork.com/article/20090529/FREE/905299995 (reporting on losses of 26% in New York State's pension fund for the fiscal year ending March 2009).

50 *See California Public Pension Funds Seek to Lead*, Mar. 23, 2009, http://www.calstrs.com/news room/2009/news032309a.aspx (discussing a lawsuit over the merger between Bank of America and Merrill Lynch).

51 *See* Wal-Mart Stores Inc., WMT Stock Quote, http://www.marketwatch.com/investing/stock/WMT (last visited Sept. 14, 2010) (offering stock price history for Wal-Mart).

52 *See* Taylor Leake, *Walmart's Layoffs Raise Serious Questions*, HUFFINGTON POST, Jan. 25, 2010, http://www.huffingtonpost.com/taylor-leake/walmarts-layoffs-raise-se_b_436090.html (reporting on 11k jobs lost).

53 *See* American Express Company, AXP quotes, http://www.google.com/finance?client=ob&q=NYSE: AXP (last visited Sept. 14, 2010) (providing stock price history for American Express).

54 *See American Express Cuts 4,000 Jobs*, LAYOFF TRACKER, May 19, 2009, http://layofftracker.blog spot.com/2009/05/american-express-cuts-4000-jobs.html (indicating a planned 4000 layoffs by American Express.

55 *See* Boeing Company Historical Prices, http://finance.yahoo.com/q/hp?s=BA&a=08&b=2&c= 2008&d=01&e=28&f=2009&g=d&z=66&y=66 (last visited Sept. 14, 2010) (offering stock price history for Boeing).

56 *See* Don E. Sears, *Boeing Announces 1,020 Layoffs*, EWEEK, Feb. 21, 2010, http://www.eweek.com/ c/a/IT-Management/Boeing-Announces-1020-Layoffs-406469/ (announcing 1020 layoffs by Boeing).

57 *See* General Electric Co. Historical Prices, http://finance.yahoo.com/q/hp?s=GE&a=09&b=1&c= 2008&d=01&e=28&f=2009&g=d&z=66&y=66 (last visited Sept. 14, 2010) (listing historical stock prices for GE).

58 *See GE Aviation Layoffs Job Cut: Fires 1000 Employees*, FIN. TRADING TIMES, Jan. 14, 2009, http://www.finance-trading-times.com/2009/01/ge-aviation-layoffs-job-cut-fires-1000.html (indicating that GE would lay off 1000 people).

C. Equally Uneasy Investors

Severe stock market losses inevitably affect strategies at the large investor entities. For instance, in mid-2009, approximately 9 months after the commencement of the market meltdown, the California State Retirement System dramatically altered its investor strategy.[60] Moreover, the Bull Market felled by 2008 was said to have victimized even the most conservative of pools. The $64 billion Pension Benefit Guaranty Corporation was described as suffering a 6.5% decline because of its untimely switch from bonds to stocks, drawing heavy criticism from, among others, the White House.[61]

The problem thus becomes one of ensuring an escape window for the entities with glacial investment strategies. The unforgiving market plunge of 2008/2009 afforded no time for adjustment; conversely, the ensuing, selective lifeline was rushed. As a result, the economic/social class that did everything right – *e.g.*, citizens who purchased homes within their means, made timely mortgage payments, stuck with their jobs, provided for health care, saved money for a rainy day and planned for college costs and retirement - learned that they were (and are) last to be rescued. Perhaps such a forgotten class defies title – "indirect investors"? "Main Street"? "The middle class"? But the lack of a moniker or political champion should certainly not further forestall recognition. Maybe the grouping is best named simply "those not receiving the Bailouts."

Then surely 'Those Not Receiving the Bailouts' deserved better.

III. WHERE THE MONEY COULD HAVE GONE

Between the fall of 2008 and the summer of 2009, the stock market exhibited a slow and steady plummet that evaded braking mechanisms and shocked practitioner and academic alike. The lingering downturn at once

[59] *See* GE Layoffs Loom, http://www.erieblogs.com/2009/09/15/ge-layoffs-loom (Sept. 15, 2009) (reporting on 1480 GE layoffs).

[60] *See* Press Release, California State Teachers Retirement System, CalSTRs Acts in Face of Global Historic Market Drop, July 21, 2009, *available at* http://www.calstrs.com/Newsroom/2009/news 072109.aspx (describing the pension fund's "shifting of 5 percent of the portfolio from global equities to fixed income, real estate and private equity to purchase quality assets from distressed sellers" and another 5 percent "to create a new asset class," and adoption of "a new asset allocation mix that further diversifies the portfolio while reducing its stake in the global stock markets.").

[61] *See* Michael Kranish, *Pension Insurer Shifted to Stocks; Concern Increases as Losses Mount Failing Plans Could Overwhelm Agency*, BOSTON GLOBE, March 30, 2009, at 1, *available at* http://www.boston.com/news/nation/washington/articles/2009/03/30/pension_insurer_shifted_to_stocks / (indicating that a shift to stock investments by the Pension Benefit Guaranty Corporation led to a decline).

marginalized stock exchanges from any plans for economic recovery and emphasized the need for government intervention therein; indeed, by the spring of 2009, the nation's new president was openly encouraging retail investors to buy stock to expedite an end to the economic crisis.[62]

All of which raises the question: If the stock market – either empirically or symbolically – is vital to our collective economic recovery, then why have our leaders not bailed out the entire market? Simply put, the unfathomable amounts of money loaned to and/or bestowed upon a short list of teetering titans might just as readily been extended to the market makers and specialists obligated to providing liquidity on the stock markets.[63] If prices kept falling because of a lack of stock buyers, then the parties of first resort should have been loaned money to buy stock. Such unprecedented intervention would have had three immediate advantages.

The first advantage would be inspirational. At the present time, Americans are forced to draw their own conclusions as to why in a recession plowing into its third year certain companies were bailed out, and others seemingly left to the cruel fate of a laissez-faire economy.[64] The unavoidable question is, at best, whether some companies successfully courted favor in Washington,[65] and, at worst, whether the stock market is simply too volatile of a place for investments.[66] Conversely, a Bail-In of the middlemen to stock exchange transactions would be broad based and

[62] *See* Michael Mcauliff, *Obama Says Buy Stocks Now: Good Deals There for Long Term Investors*, U.S. NEWS & WORLD REP., Mar. 4, 2009, http://politics.usnews.com/news/obama/articles /2009/03/04/obama-says-buy-stocks-now-good-deals-there-for-long-term-investors.html (reporting on president Obama encouraging investors to buy stock).

[63] Floored stock exchanges assign listed stocks to a handful of *specialists* (termed "Designated Market Makers" at the New York Stock Exchange since October 2008) to match buyers and sellers and generally provide market liquidity. Cyber-exchanges such as NASDAQ rely on a much broader roster of equivalent *market makers* to perform the same functions. *See generally* J. Scott Colesanti, *Not Dead Yet: How New York's Finnerty Decision Salvaged the Stock Exchange Specialist*, 23 ST. JOHN'S J. LEGAL COMMENT. 1 (Spring 2008) (offering a summary on specialists).

[64] *See* DAVID WESSEL, IN FED WE TRUST 21-26 (2009) (describing the September 2008 decision of the Treasury Department and the Federal Reserve to not put taxpayer money on the line to rescue Lehman Brothers).

[65] *See* Julian Hattem, *Top Bailout Recipients Spent $71 Million in Lobbying in Year Since Bailout*, HUFFINGTON POST, Nov. 5, 2009, http://www.huffingtonpost.com/2009/11/05/top-bailout-recipients-sp_n_346877.html (detailing a list of 25 institutions including GE, Bank of America, Goldman Sachs and A.I.G. that spent in excess of $71 million between October 2008 and September 2009) *and* Jennifer Haberkorn, *Bailout Recipients Also Major Lobbyists*, WASH. TIMES, Jan. 23, 2009, at A1, *available at* http://www.washingtontimes.com/news/2009/jan/23/top-bailout-recipients-also-major-lobbyists/ (detailing that 18 of the 20 top Bailout recipients – including American Express, Citigroup and Bank of America - spent a combined $12.2 million lobbying various parts of the federal government during the last quarter of 2008).

[66] *See* Kirk Shinkle, *What the Economic Bust Left Behind*, IHAVENET.COM, http://www.ihavenet.com/economy/What-Great-Recession-Economic-Bust-Left-Behind.html ("Other studies show that investors buffeted by poor returns in the market over a period of many years (think of the Lost Decade for the stock market) are loathe to take risks over the long term.").

above suspicions of lobbying and influence.

Further, in terms of oversight and control, the stock exchanges have long-monitored each second of the trading day. Thus, any specialist/market maker not utilizing Bail-In funds to keep stock prices afloat could be immediately questioned/disciplined (as exchange analysts and enforcers routinely do in less volatile times).[67] Such supervision of government largesse would stand in stark contrast to the unwieldy grants of cash that all too often evaporated in the form of questionable spending under the Bailout.[68]

Additionally, while stock exchange specialists and market makers have been disciplined for self-dealing in recent years, such opportunism would actually serve to benefit the current markets.[69] The goal of any remedial plan should be to reinvigorate stock trading; increased trading by the insiders – whether overly opportunistic or not – serves this purpose.

Most importantly, the propping up of stock market prices, even if short lived, would afford the retail investors, the pension funds, and the college savings plan administrators more time to diversify and shift strategies. On a grander scale, it would signal to countless future stock market participants that the government stands ready to protect everyone's investment, not just those enjoying connection to entities "too big to fail." It bears noting that studies confirm that retail stock market participation has grown dramatically in the last 25 years,[70] and is intrinsically tied to social interaction[71] and a sense of "community ownership."[72] Having grown to

67 . *See, e.g.*, NYSE Disc. Action 2006-174 (accepting a consent to findings that a former Specialist violated Exchange Rule 104.10 by failing to maintain a fair and orderly market).

68 *See, e.g.*, Megan Chuchmach et al., *Bailed Out Bank of America Sponsors Super Bowl Fun Fest* ABCNEWS.COM, Feb. 2, 2009, http://abcnews.go.com/Blotter/WallStreet/story?id=6782719&page=1& page=1 (reporting on excesses indulged in by some bailed out companies); Louise Story, *Bank's Deal With S.E.C. is Approved*, N.Y. TIMES, Feb. 22, 2010, at B1, *available at* http://www.nytimes.com/2010/02/23/business/23bank.html (describing decision of a federal judge to accept a $150 million settlement between the bank and the SEC over inadequate disclosure of employee bonuses during the Merrill Lynch merger of 2008).

69 *See supra* fn. 67.

70 *See* Harrison Hong et al., *Social Interaction and Stock-Market Participation*, 59 J. Fin. 137, 137 (2004), *available at* http://www.economics.harvard.edu/faculty/stein/files/Social_InteractionJofF.pdf (noting that, in 1998, 48.9% of American households owned stock either directly or indirectly, as opposed to 31.6% in 1989).

71 *See* Harrison Hong et al., *Social Interaction and Stock-Market Participation*, 59 J. Fin. 137, 139, 141 (2004), *available at* http://www.economics.harvard.edu/faculty/stein/files/Social_InteractionJofF.pdf (positing that "social households" are much more likely to invest and that the "social" investor finds the market more attractive when his peers participate).

72 *See* Jeffrey R. Brown et al., *The Geography of Stock Market Participation: The Influence of Communities and Local Firms* 27 (Nat'l Bureau of Econ. Research, Working Paper No. 10235, 2004), *available at* http://www.federalreserve.gov/Pubs/feds/2004/200422/200422pap.pdf (finding proof that "individuals are influenced by the investment behavior of members of their community").

include so many denizens of Main Street, Wall Street now needs such retail participation to sustain its growth. And that retail participation has come seriously into question; on top of the vitriolic denouncements of the partially buoyed market filling up the nightly news and YouTube,[73] one need only witness the empirical evidence of mounting and significant numbers of mutual fund withdrawals to appreciate the households and plans turning to alternative investment venues.[74] Accordingly, for reasons ranging from the economic to the spiritual, an antidote for investor mistrust is warranted.

A. Solution: The Proposed Bail-In

The Dow Jones Average is computed by dividing the sum of the price of one share of each stock of the 30 included companies by a 'divisor' (which accounts for stock splits, among other changes).[75] Thus, in order to approximate how long a certain sum of money could keep one Dow company afloat, the first step is to multiply the Dow Jones Average on a particular date by the divisor at the time to arrive at a raw number reflecting the cumulative price of one share of each of the 30 companies.

The solution proposed herein was evaluated in the context of maintaining the DJIA as it stood on December 31, 2007 (13, 364.82).[76] The DJIA divisor at that time was 0.1222831016.[77] By multiplying that divisor by the DJIA average of 13,264.82, we learn that the sum of each of the component stock prices as of December 31, 2007 was 1629.371,[78] "the Price Sum."

Separately, the number of outstanding shares for each of the Dow companies at that time totaled 119,319,150,000. If we divide $1 trillion [the amount of the Bail-In] by that share figure of 119,319,150,000, a resulting figure of $8.31 per outstanding share is arrived at. Multiplying $8.31 by 30 (the number of Dow companies) results in a figure of $249, which indicates a "Prop Amount," or the collective dollar amount needed

[73] *See, e.g.*, Goldman Sachs Bribed Senate to Pass Bailout Bill, YouTube http://www.youtube.com/watch?v=Ek7zc0lJxbM (last visited Sept. 14, 2010).

[74] *See, e.g.*, Mark Hulbert, *Stock Funds Suffer More Withdrawals*, MARKETWATCH, Dec. 4, 2009, http://www.marketwatch.com/story/stock-funds-suffer-more-withdrawals-2009-12-04 (describing equity mutual fund withdrawals of $12.1 billion in November 2009, and an additional withdrawal total of $12.9 billion between March and October 2009).

[75] *See supra* fn. 42 and accompanying text.

[76] *See* Dow Jones Averages, http://www.djaverages.com/ (last visited Sept. 14, 2010) (displaying historical DJIA data).

[77] *Id.*

[78] *Id.*

to prop up the Dow on any day. In our Analysis, as long as the diminishing total share price does not deviate from the Price Sum by more than the Prop Amount, the market is thus sustained.

The ensuing day-by-day subtractions disclose that, using the average from December 31, 2007 as both a baseline and goal, one trillion dollars allotted between each listed company on the Dow Jones Industrial Average would last (*i.e.,* support existing levels) for approximately nine months.

Stated otherwise, "adding" $8.31 per company share throughout 2008 discloses that by September 9, 2008, the trillion dollars would be spent. Thus, at a cost of less than that expended on attempts to sustain a seemingly random roster of market titans, the entire DJIA could have been supported for most of a year.

Such a nine-month grace period would literally afford market participants breathing space to limit losses, adjust portfolios, and diversify holdings. In today's market – where milliseconds count and the SEC has been forced to confront "flash trading" by market professionals[79] - nine months can literally be a lifetime in the health of an investment or fund.[80] Such time would allow pension guaranty funds and institutional investors the breathing room to re-calculate and adjust portfolios; going forward, stock market investment would remain an option, as opposed to a cruel lesson, for providers of massive amounts of liquidity.

B. A Counter-Analysis. . .

For those who would ask why the money should be directed at NYSE companies, it bears noting that 27 of the 30 DJIA companies are listed on the storied exchange.[81] For better or for worse, the DJIA is the benchmark upon which so much is geared in our economy. Authorities from the President to the judiciary cite to it; businesses depend on it, and even employment contracts are geared to it. Most importantly, since we know that the market en masse tends to follow the "blue chip" stocks;[82] the

[79] *See* Roberta S. Karmel, *Securities Regulation*, N.Y. L.J., Feb. 18, 2010, http://www.law.com/jsp/nylj/pubarticlefriendlyny.jsp?id=1202443746370 ("[T]he SEC has tentatively determined that the harm caused by flash orders may outweigh their benefits").

[80] *See. e.g.,* Jenny Anderson, *S.E.C. Moves to Ban Edge Held by Fast Traders*, N.Y. TIMES, Sept. 17, 2009, at A1, *available at* http://www.nytimes.com/2009/09/18/business/18regulate.html(describing high frequency "flash trading" on the exchanges as lasting between five and ten milliseconds).

[81] *See* NYSE Listings Directory, http://www.nyse.com/about/listed/lc_ny_name.html (last visited Sept. 14, 2010) (providing a list of all companies listed on the NYSE).

[82] *See Stock Markets Follows Lead of Financial Stocks in Closing Higher*, MASSLIVE.COM, Jan. 13, 2010, http://www.masslive.com/news/index.ssf/2010/01/stock_market_follows_lead_of_f.html (noting that industries seen as safer in a weak economy, like health care and utilities, had the biggest gains of the day).

question is simply why that finite list was made even shorter by the Government through TARP.

Additionally, those seeking to cast the DJIA as merely a derivative index greatly underestimate its value. Simply put, its performance *is* the news. To the extent that need be reiterated, it bears noting that the storied index – on a monthly bases – actually only correlates with unemployment figures and the consumer confidence index about half of the time.[83] Thus, the case for the DJIA as a shadow finishes second to the case for the DJIA as the fire itself.

An added bonus to the Bail-In is the ease with which the money can be monitored. Specialist trading is subject to moment by moment surveillance during the trading day, permitting NYSE regulators to penalize non-performing market makers for the past four decades.[84] Similarly, specialists and market makers not trading per Government design could be easily prodded into action.

For those who ask why so much money need be spent, the figure of $1 trillion actually represents at least a 30% decrease from the costs of the Bailouts. Further, while proponents of the Bailout point to the facts that some noteworthy sums were repaid to the government, substantial sums were also spent on bonuses, promotional events, advertising, etc.[85] Besides, one of the biggest causes remains lobbyists, which received over $344 million from financial services in the first three quarters of 2009 alone.[86] The beauty of spreading Bailouts up and down Wall Street is that it would free up that weighty lobbying cash for more salutary efforts.

[83] *Compare* University of Michigan Consumer Sentiment Survey, http://research.stlouisfed.org/fred2/data/UMCSENT.txt (last visited Sept. 14, 2010) (detailing the monthly rise and fall of the Consumer Confidence Index between October 2008 and January 2010) *and* Bureaur of Labor Statistics Unemployment Rate, http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=latest_numbers&series_id=LNS14000000 (last visited Sept. 14, 2010) (showing monthly unemployment increases for the same period) *with* Dow Jones Industrial Historical Prices, http://finance.yahoo.com/q/hp?s=^DJI&a=09&b=1&c=2008&d=00&e=31&f=2010&g=d (last visited Sept. 14, 2010) (detailing the monthly performance of the DJIA for the same 15-month period).

[84] This allows the disciplining of specialists for failure to maintain a fair and orderly market as mandated by NYSE rules. *See, e.g.*, New York Stock Exchange Hearing Panel Decision 78-69 (Sept. 15, 1978), *available at* http://www.nyse.com/pdfs/78-069.pdf; New York Stock Exchange Hearing Panel Decision 89-061 (July 13, 1989), *available at* http://www.nyse.com/pdfs/89-061-63a.pdf; New York Stock Exchange Hearing Panel Decision 95-29 (March 6, 1995), *available at* http://www.nyse.com/pdfs/95-029-033.pdf; New York Stock Exchange Hearing Panel Decision 05-54 (April 21, 2005), *available at* http://www.nyse.com/pdfs/05-054-055.pdf.

[85] *See supra* n. 4 and accompanying text.

[86] Michael Hirsh, *Why is Barney Frank so Effing Mad?*, NEWSWEEK, Dec. 14, 2009, at 50, *available at* http://www.newsweek.com/2009/12/04/why-is-barney-frank-so-effing-mad.html (reporting that financial industry interests spent $344 million on lobbying efforts in the first three quarters of 2009).

CONCLUSION

In February 2010, the President of the Hispanic Chamber of Commerce scolded the White House for forgetting small businesses and concentrating economic relief efforts on banks "too-big-to-fail."[87] But he was not alone in publicly questioning a repair strategy that all too many Americans believe bordered on good old crony capitalism.

Further, the refrain of "it could have been worse" can easily be supplanted with "it could have gone better." One possible alternative was to spread the exorbitant amount of government money in play up and down Wall Street and Main Street, instead of relying on Washington's representations that it knew best where a handful of weighty relief caches needed to be dropped. Surely, in view of the fact that it took two attempts to pass the initial Bailout,[88] the alternative proposed herein should have at least been discussed.

87 Vytenis Didziulis, *Will Obama Keep His Promises?*, PODER ENTERPRISE, Feb. 2010, at 50, available at http://www.poder360.com/article_detail.php?id_article=3609 (referencing the comments of Javier Palomarez).

88 *See* Greg Hitt & Sarah Lueck, *Senate Vote Gives Bailout Plan New Life*, WALL ST. J., Oct. 2, 2008, at A1, *available at* http://online.wsj.com/article/SB122286874792094117.html ("The House Bill failed on Monday on a 228-205 vote[.]").

APPENDIX A:
THE COMPANIES OF THE DOW JONES INDUSTRIALAVERAGE AS OF FEBRUARY 19, 2008

- 3M Co.
- Alcoa Inc.
- American Express Company
- American International Group
- AT&T Inc.
- Bank of America Corporation
- Boeing Co.
- Caterpillar Inc.
- Chevron Corp.
- Citigroup Incorporated
- Coca-Cola Company
- E.I. du Pont de Nemours and Company
- Exxon Mobil Corp.
- General Electric Company
- General Motors Corp.
- Hewlett-Packard Co.
- Home Depot Inc.
- Intel Corporation
- International Business Machines
- Johnson & Johnson
- JP Morgan & Chase & Co.
- McDonald's Corporation
- Merck & Co. Inc.
- Microsoft Corporation
- Pfizer Inc.
- The Procter & Gamble Company
- United Technologies Corporation
- Verizon Communications
- Wal-Mart Stores, Inc.
- Walt Disney Company

Source: djindexes.com

NOTE: Three of these 30 companies (each recipients of over $40 billion in Bailout funds) have since been replaced on the DJIA roster. *See* http://projects.propublica.org/bailout/list/index.