

Memo to: Oaktree Clients

From: Howard Marks

Re: Will It Work?

The other day, my son Andrew – college senior and credit-analyst-to-be – asked whether I think Treasury Secretary Geithner is doing the right things. As has happened before, his question elicited a fatherly response that grew into this memo.

When you want a bridge built, you hire a civil engineer whose “calcs” will determine exactly how much concrete and steel should be used. Then it’ll be sure to hold the weight of the cars you expect to cross it. And if you have to perform a task in carpentry, you can employ specialized tools developed and tested expressly for the job: esoteric things like miter boxes, routers and extractors.

One of the most important things to bear in mind today is that **economics isn’t an exact science**. It may not even be much of a science at all, in the sense that in science, controlled experiments can be conducted, past results can be replicated with confidence, and cause-and-effect relationships can be depended on to hold. It’s not for nothing that economics is called “the dismal science.”

Solutions in economics aren’t nearly as dependable as engineers’ calculations, and there may not be a tool that’s just right for fixing an economy. Of course, the toolbox offers lots of possibilities, including interest rate reductions; quantitative easing; tax cuts, rebates and credits; stimulus checks; infrastructure spending; capital injections; loans, rescues and takeovers; regulatory forbearances and on and on. **But no one should think there’s a “golden tool,” such that solving the problem is just a matter of figuring out which one it is and applying it.** Anyone who holds the problem solvers to that standard is being unfair and unrealistic. There are a number of reasons why, including these:

- Every situation is different, and none is exactly like any that has come before. That means fixed recipes can’t work. Certainly this one has never been seen before.
- Most policy actions aren’t all good or all bad. They merely represent imperfect compromises as to ideology, goals, problem solving and resource allocation.
- Economic problems are multi-faceted, meaning the solution for one aspect might not work on – and in fact might exacerbate – another aspect.
- Economies are dynamic, and the problems are moving targets. The environment changes constantly, rather than sitting still and waiting for a solution to work.
- **The main ingredient in economics is psychology, and the workings of psychology clearly can’t be fully known, controlled or fixed.**

Here's how Thomas Friedman put it in *The New York Times* of January 31:

Everyone is looking for the guy – the guy who can tell you exactly what ails the world's financial system, exactly how we get out of this mess and exactly what you should be doing to protect your savings. . . . But here's what's really scary: the guy isn't here. He's left the building. . . .

There is no magic bullet for this economic crisis, no magic bailout package, no magic stimulus. We have woven such a tangled financial mess with subprime mortgages wrapped in complex bonds and derivatives, pumped up with leverage, and then globalized to the far corners of the earth that, much as we want to think this will soon be over, that is highly unlikely.

The "I know" school (which first appeared in a memo in 2001) is still making predictions. Statistical comparisons are being made to past recessions and solutions extrapolated from those experiences. Thus it's the consensus of this school that the recovery will start during the first quarter of 2010. I also see people projecting a stock market rebound based on the average time between past declines and the recoveries therefrom.

I think it's a mistake to hold confident opinions about the events of today. Instead, I think this is a great time to reaffirm faith in the "I don't know" school, of which I'm a card-carrying member. No one should feel certain they know what's going to unfold, or when. **The only things we have to fall back on at this juncture are intrinsic value, company survival and our own staying power as investors.** Of course, even these things mean we have to make judgments about what the future is likely to look like. That requirement, in turn, means nothing can be approached with complete safety or certainty. Nevertheless, we can take action if we think those three elements will be present under most circumstances. That's the right mindset for today.

Harder Than Sudoku

The impossibility of reaching into the economic toolbox for that one perfect tool is easily illustrated with a list of some of the challenges present today. For a learning exercise, skip today's Sudoku or crossword puzzle and take a crack at resolving these dilemmas:

- Consumer confidence and spending are weak. We want to stimulate, but we don't want to replace weakness with hyperinflation.
- We're willing to drop fiscal discipline in favor of stimulus through deficit spending, but we don't want to scare away offshore investors from the Treasury securities we'll issue to fund our deficits.
- We're willing to distribute stimulus checks, but we seem unable to make frightened individuals spend the money rather than save it.
- In fact, we know consumers got into trouble by spending more than they earned, and

now they should build some savings. But whereas in the recent past consumer spending grew faster than incomes, a rising savings rate means spending would grow slower than incomes, just at a time when incomes are falling and spending is needed.

- Likewise, with tax revenues down, states and cities have to balance their budgets. One way to do so is to raise income tax and sales tax rates, but this will further depress local economies and increase the burden on their beleaguered citizens.
- We want to recapitalize the banks, but we don't want to reward past mistakes.
- We're thinking about buying the banks' "toxic" assets. But if we pay above-market prices, that's a subsidy to the reckless (see above), and if we pay market or below-market prices, that will further erode bank capital through write-downs.
- We know suspending mark-to-market accounting would end write-downs, but doing so might also reduce confidence in balance sheets and postpone the day of reckoning needed for our financial institutions to reach bottom and recover.
- We want the banks to lend, but we can't – and shouldn't – make them extend loans to non-creditworthy borrowers.
- We want to reduce the incidence of home foreclosure, but we don't want to reward people who speculated by buying multiple homes or lied on mortgage applications. And we'd rather not treat people who bought more house than they could afford better than those who acted prudently.
- We want to make mortgage relief available to those who are unable to service their mortgages, but we don't want to give people incentives to stop making payments.
- We're considering letting bankruptcy judges reset mortgage contracts, but we don't want to tell lenders that loan contracts are no longer sacrosanct, which certainly would deter them from making new loans.
- We don't want the depressant impact of auto companies going bankrupt and suppliers and dealers following suit. But we also don't want to pump money into the industry unless we're confident it can produce good cars at competitive prices.
- We want to see the auto industry "rationalized," but that means seeing people lose their jobs or have their paychecks reduced, which would spread pain, put stress on benefit funds, and cut into GDP.
- We want taxpayer-supported automakers to use American steel, but (assuming it's more expensive than imported steel) that will either (a) raise car prices, making cars more expensive for hard-pressed buyers and making the Big 3 less competitive, or (b) require the companies to eat the difference, making it harder for them to achieve profitability.
- We want to curb speculation in derivatives, but we don't want to make it harder for businesses, farmers, insurers and investors to legitimately hedge risk.
- In fact, we want to prevent excesses on the part of business, but most people don't think it's a good idea to nationalize companies or have the government tell them how to operate.

It's abundantly clear from this list – and it's only a partial list – that solving the current problem will require compromises and a combination of disparate elements. Some will work, while others will fail and have to be replaced. And some will work with regard to one facet of the problem but aggravate another. Lastly, no one should think that even a wise combination will produce quick results.

Regulating Excess Compensation

Some of the excesses the government wants to stop are in the area of compensation at rescued banks. Excessive compensation seems to have a lot in common with hard-core pornography: As Potter Stewart, Associate Justice of the United States Supreme Court, wrote about the latter, it's hard to define but "I know it when I see it."

It's easy to react adversely when an institution that lost billions and needed a taxpayer bailout is seen paying millions or billions in executive bonuses. But how do we define excessive compensation, and what should be done about it? **More importantly, how do we make sure the cure won't be worse than the disease?**

On February 14, *The Wall Street Journal* reported that,

The giant stimulus package that cleared Congress Friday includes a last-minute addition that restricts bonuses for top earners at firms receiving federal cash . . . The most stringent pay restriction bars any company receiving funds from paying top earners bonuses equal to more than one-third of their total annual compensation.

Some limitation on compensation at taxpayer-supported institutions seems reasonable and unavoidable. But is this provision a good thing? Here are some of the problems:

- It doesn't limit compensation, just bonuses.
- **Bonuses – especially if tied to achievements – should be preferable to high salaries from the point of view of shareholders and taxpayers.** In fact, it was just a few years ago that federal legislation created a preference for incentive compensation tied to benchmarks.
- An executive with a \$1 million salary is in compliance with this restriction if he receives a bonus of \$500,000. But one who's paid \$250,000 is in violation if he receives a bonus of \$200,000. Should the taxpayer prefer the former to the latter?
- Past challenges, like mobilizing industry for World War II, were met by recruiting "dollar-a-year" leaders. **One hope here might be that able businesspeople will come forward to work for nothing but a big success fee.** Citigroup CEO Vikram Pandit is receiving a salary of \$1. Should we really limit his bonus to 50 cents?
- **The new law will limit bonuses at taxpayer-assisted banks, not all banks. Will that doom the rescued banks to second-rate management? And thus second-rate profitability? Is that desirable?**
- **Bank managements and boards may want to avoid this limitation, and to do that they may turn down or rush to repay federal money. Doing so may reduce the banks' capital, weakening them and inhibiting their ability to lend.**
- Even the biggest losers among the banks had some profitable units and excellent managers. Do we want the weak institutions to lose these to their stronger peers because they can't pay competitively?
- **Does the fact that some bank managers made grave mistakes in recent years mean no bank executives can be deserving of high compensation? Does the**

government really want to stigmatize the field of banking and chase able executives from it to industries where compensation is unregulated?

- The last time I saw legislation with near-unanimous appeal on a corporate-behavior issue was in 2002, after the Enron scandal. American business is still suffering from some of Sarbanes-Oxley's less-well-conceived provisions.

Observers are disappointed when recovery plans aren't announced quickly or in detail. Yet here's a provision that was inserted quickly and in detail, and it doesn't do a lot to advance the ball. Bottom line: a quick fix will prove hard to come by.

Who's Right?

My mother used to tell a story about the *shtetls* – villages – in the old country where disagreements were settled by the rabbi. In one, an argument was raging with no possible grounds for compromise. The villagers brought the two parties to the rabbi. "Tell your side," the rabbi said to one fellow, and he did. "**You're right,**" the rabbi declared.

One of the bystanders piped up: "You can't tell him he's right, rabbi; you haven't heard the other side of the story." So the rabbi told the other party to tell his side, and he did. His story was the polar opposite of the other party's. "**You're right,**" said the rabbi.

"Hold on, rabbi," a villager said, "the first guy told his story and you said he was right. Then the other guy told his story – different in every regard – and you said he was right. They both can't be right." "**And you're right,**" said the rabbi.

The current disagreement over bank nationalization shows that (a) there can be valid arguments on both sides of an issue and (b) it can be hard to figure out who's right. Here are a few of the pros and cons as advanced by *The Wall Street Journal* on February 24:

What are the pluses to nationalizing firms?

Some banks are bleeding slowly toward insolvency. Nationalizing them promptly would allow the government to wipe out the most toxic assets, reorganize what is left and sell the remains to private investors. On a broader front, nationalization could help heal the banking system and encourage the remaining firms to boost lending.

What are the minuses?

Investors in the nationalized bank would likely be wiped out. And nationalizing even one or two banks could create a chain reaction of failing confidence. . . .

Nationalization would also be expensive and complicated, taxing a bureaucracy that isn't set up to operate mega-firms. And while the goal of

nationalization may be to return companies to private hands, the temptation to run them for political purposes would be immense.

Obviously, there are arguments on both sides.

One Proposal

The other night, I had dinner with my friend Richard Ressler, principal and founder of CIM Group. He has an idea as to how things can be fixed (as usual), and it's a pretty good one. I'll summarize below his thoughts on the banking industry:

- There are banking institutions which, because of their magnitude and significance, should be supported through deposit insurance, government guarantees and rescues.
- These banks should engage only in the prosaic acts of accepting deposits and making loans. They should not take on ultra-high leverage or make exotic investments. And they shouldn't do business through unregulated, off-balance-sheet subsidiaries.
- Institutions that wish to do things that are off-limits to these banks should do so, but without the benefit of government protection. If they want to take on 30-times leverage and pursue proprietary profits, they should bear the consequences themselves.
- Thus banking and risky investing should be separated.

In *The New York Times* of February 2, Professor Paul Krugman of Princeton argued that we have to avoid "lemon socialism: taxpayers bear the cost if things go wrong, but stockholders and executives get the benefits if things go right." One way to prevent this, as Richard suggests, is to make sure government support and high-octane risk taking don't take place in the same firms.

I've been told it isn't his, but a saying widely attributed to Mark Twain seems to be on the mark: "History doesn't repeat itself, but it does rhyme." There's no need to invent the mechanism through which to accomplish the above; we can look to history and gain inspiration from the Glass-Steagall Act.

After the Great Crash, congressional committees investigated its causes, some of which remind one of today's. The result was this 1933 law, which mandated that banking be separated from investment banking and investment services. It's far from irrelevant to the current situation that Glass-Steagall's powers ended in 1999, when key parts were repealed by the Gramm-Leach-Bliley Act. This new law had the goal of encouraging competition in banking, investment services and insurance, by permitting common ownership by financial conglomerates.

Protecting society against risky investment activities on the part of government-insured institutions is a good thing. And competition in providing financial services is a good thing. But the two goals can be in conflict and have to be balanced, and the consensus as to which should prevail will oscillate from time to time. **So in addition to**

there not being perfect solutions, there also may not be permanent solutions. That's why crises will recur and history will continue to rhyme.

Politics as Usual

Few phrases strike terror in the hearts of businesspeople and many just-plain-citizens more than the three little words that are the title of this section. The other day, a friend with high-up experience explained the facts of life in Washington. He organized his observations into the “Three P’s.”

- **Policy** is fashioned through intellectual debate conducted on a high plane. Well-meaning people can disagree, but policy analysis follows from facts and underlying ideology in a relatively straightforward way.
- **Process** is the mechanism through which policy is turned into action. It is complex and arcane and the exclusive province of people with experience in Washington.
- **Politics** shapes the law that policy becomes. My friend had lots of words for it, but the one that stood out to me was “distasteful.”

As an aside, my friend laid out an important difference between government and business, in which he’s also highly experienced. **In business, he says, everyone’s main goal is the success of the company.** Contributing to the success of the company enables an individual to demonstrate ability and thus rise in the organization. Success for the company creates a pool of profits from which the individual can be well paid. It also amounts to a “win” for a team of which every person wants to be a member.

But in government, success is hard to measure, difficult to connect to any one individual’s contribution, and slow in coming. Thus it’s hard to view success for the government as constituting elected officials’ primary motivation. Instead, the most important thing is getting re-elected. That personal, short-term consideration can have nothing to do with the long-term well-being of the nation. This is especially true in the House of Representatives, he says, where two-year terms mean the members are never done running for re-election.

Despite the crisis facing the country and the crying need for prompt action, we’re seeing a good dose of politics as usual. YouTube provides an up-close look at this stuff. It also gives politicians the audience many seem to crave.

Today a lynch-mob attitude prevails toward bankers, mortgage lenders and credit-rating agencies. I’m not saying a lot of it isn’t deserved, but it still can be overdone. It’s always good political theater to pile on a purported villain, whether through a perp-walk for handcuffed inside traders in 1986 or a televised congressional hearing for bankers in 2009.

Check out Congress’s grilling of bankers on YouTube and you’ll see what I think is vilification and *ad hominem* attack (“appealing to one’s prejudices, emotions, or special

interests rather than to one's intellect or reason" – Random House Dictionary) intended for public consumption. One congressman told Vikram Pandit, Citibank's CEO, he was amazed by a deal the bank had made: "The government gets \$7 billion in preferred stock and the government's on the hook for \$250 billion of losses. . . . You tell me, Mr. Pandit: where can I get a deal like this?" Pandit explained that it was insurance: for a premium of \$7 billion, Citibank got a policy covering \$301 billion of mortgage securities, with Citi taking the first \$30 billion of losses and 10% of any losses beyond that.

Should it come as a surprise that an insurance policy costs significantly less to buy than the amount of risk assumed by the insurer? If it didn't, why would anyone buy one? Under this policy, Citi will lose money if there aren't \$38 billion in losses (in which case Citi would receive nothing on the first \$30 billion but 90% of the next \$8 billion, so proceeds would be equal to the \$7 billion premium it had paid). Was this deal really such a giveaway? And should the Congressman really be surprised to learn the government has a preference for seeing Citi survive and is willing to cut it a good deal?

On the campaign trail and in victory, President Obama called for non-partisanship and united action. With Democrats controlling the White House and Congress, to him that means Republicans should vote in favor of solutions crafted primarily by Democrats. So far, it's not happening. On the stimulus package, only three of the 217 Republican votes in Congress – just over one percent – were cast with the Democratic majority. (And only seven of the 308 Democratic votes went with the Republicans.) Not much aisle crossing in either direction. Of course, there are lots of reasons why broad agreement is rarely seen:

- Genuine **ideological differences** exist between individuals and between parties. Some want an expanded government to fix problems, and others prefer to rely on free markets to do so. Some view increased government spending as holding the key to the solution, and others prefer to reduce taxes. Some want to rescue weak financial institutions, and others want only the strongest, best-run to survive. Thus, failing to go along with the majority isn't necessarily a sign of a character flaw.
- There are also valid **differences in motivation**. The president is a national officer whose job it is to find an overall solution. But legislators are elected locally to represent local interests, and those can diverge from the interests of other regions or the nation. It shouldn't come as a surprise that they push for particular benefits for their constituents.
- Finally there comes **self-interest**. The truth is that each party has the underlying goal of wanting to elect its members and make the other side look bad. And even if it's needed to solve a grave national problem, a conservative answer might be repugnant and unacceptable to voters in a liberal district, and vice versa. Thus, doing the "right thing" can be tantamount to political suicide. How many elected officials will choose the latter?

Today's Rhetoric

I think people in government who're addressing the situation have a difficult row to hoe:

- First and most immediately, they've had to play up the emergency in order to convince legislators (and the voters who put them in office) that the situation is dire and strong action is required. Thus we've heard words like "catastrophe," "collapse" and "worst since the Great Depression."
- Second, however, they're well advised to play down the threat. Franklin D. Roosevelt receives a lot of credit for having said, "The only thing we have to fear is fear itself." Given the crucial role of confidence in the functioning of an economy, it's not a great idea to spread panic. The rational response of frightened people is to save rather than spend, and to sell investments rather than buy, making things worse.
- Third, the President likely wants to create modest expectations. If there's a feeling that a valid response should work right away, slow progress will look like failure. No one wants consumers and businesses to further pull in their horns if economic recovery isn't forthcoming in 2009.

It's hard not to be sympathetic to this dilemma. It shows another of the ways in which conflicting goals have to be compromised in the real world of economics and politics.

The Bottom Line

There are so many moving parts to the current situation – and to its causes and what we hope will be its solution – that I've tried to boil things down to the essentials. **In order to right the system and get the economy moving forward again, I think three main things have to be accomplished:**

- **Our economy and its component parts have to be delevered;**
- **The vast destruction of capital has to be dealt with; and**
- **Confidence has to be restored.**

Here's how Paul Krugman described the challenge in *The New York Times* of February 16:

For most of the last decade America was a nation of borrowers and spenders, not savers. . . .

Yet until very recently Americans believed they were getting richer, because they received statements saying that their houses and stock portfolios were appreciating in value faster than their debts were increasing. . . .

Then reality struck, and it turned out that the worriers had been right all along. The surge in asset values had been an illusion – but the surge in debt had been all too real. . . .

. . . this is a broad-based mess. Everyone talks about the problems of the banks, which are indeed in even worse shape than the rest of the system. But the banks aren't the only players with too much debt and too few assets; the same description applies to the private sector as a whole.

As the great American economist Irving Fisher pointed out in the 1930s, the things people and companies do when they realize they have too much debt tend to be self-defeating when everyone tries to do them at the same time. Attempts to sell assets and pay off debt deepen the plunge in asset prices, further reducing net worth. Attempts to save more translate into a collapse of consumer demand, deepening the economic slump.

. . . Government officials understand the issue: we need to “contain what is a very damaging and potentially deflationary spiral,” says Lawrence Summers, a top Obama economic adviser.

Debt has to be reduced, and it's happening (other than at the federal level, of course). But the way it happens is usually unpleasant: bankruptcies, foreclosures and debt restructurings. **“Debt reduction” sounds like a good thing, but it's likely to be accompanied by the painful loss of the assets that had been bought with borrowed money.**

Many assets are worth far less than they used to be – that's one of the main reasons why the debt load has become unbearable and has to be reduced. **Investors, consumers, homeowners and financial institutions will have to rebuild their capital as they – and the economy – attempt to again move ahead.**

And confidence has to be rebuilt, too. **The willingness to borrow, spend and invest will rebound only when people believe incomes and asset values will resume their growth.**

In the past, we've seen a standard pattern unfold, with the best examples falling in the corporate debt arena. **Once denial ends and people accept capital destruction as a fact, restructurings can take place in which debt is discharged and ownership changes hands. The transition of assets to new owners, who may have lower cost bases and the ability to inject additional capital, brings the possibility of attractive returns, the onset of which restores interest in investing. It seems inescapable that this pattern will be a major feature of the next few years.**

The government's actions clearly are aimed at accomplishing the three things I say we need. Some will work, and some won't. **I believe that, eventually, the combination of things they try – along with the pattern described above and the positive bent that**

underlies the free market system – will return us to an upward trajectory. It just won't be easy, quick or painless.

And that's why I think the investment decisions we make today must emphasize value, survivability and staying power. I readily acknowledge that assuring survival in bad times is inconsistent with return maximization in good times. Insistence on these three things won't produce the greatest rewards if the economy and markets surprise on the upside, but that's not my main concern.

Given the uncertainty present today, it's hard enough to find investments that can be relied on to deliver solid returns in good times but also assure survival in bad. **In that interest, we've always been willing to cede to others much of that part of the return distribution lying between "solid" and "maximum." This time is no different.**

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