

Plenary Session

Past Presidents Panel: Current Developments in Bankruptcy and Reorganization

Melissa Kibler Knoll, Moderator | Mesirow Financial Consulting, LLC; Chicago

John W. Ames | Greenebaum Doll & McDonald PLLC
Louisville, Ky.

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Reginald W. Jackson | Vorys, Sater, Seymour and Pease LLP
Columbus, Ohio

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August 12th, 2010



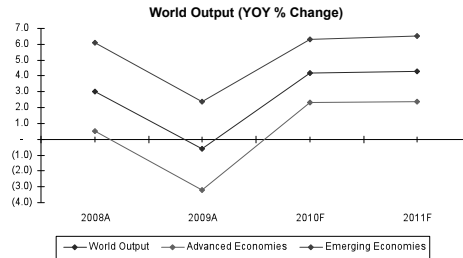
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The Global Economy – Overview



Overview of the Global Economy – Now and Looking Forward:

- The global economy has recovered better than many expected, but in certain economies (particularly advanced economies), the strength of the rebound has been moderate given the severity of the recession
- “World Output” is expected to rise by approximately 4.2% in 2010, and to rise again in 2011 by approximately 4.3%



- Most advanced economies will try to maintain a supportive thrust by managing fiscal and monetary policies through the remainder of 2010 and into 2011 to further sustain some form of growth and stem unemployment
- Given prospects for relatively weak growth in advanced economies, the challenge for emerging economies is to absorb high capital inflows and nurture domestic demand without triggering a new boom-bust cycle

Note: “Advanced Economies” include the US, Europe (including Germany, France, Italy, Spain), Japan, UK, Canada, and others. “Emerging Economies” accounts for approximately 77% of the emerging and developing economies, including, among others, Central and Eastern Europe, Russia, “Developing Asia” (China, India, SE Asia), Middle East, North Africa, Sub-Saharan Africa, Brazil, and Mexico.

Source: International Monetary Fund – “World Economic Outlook” (April 2010).
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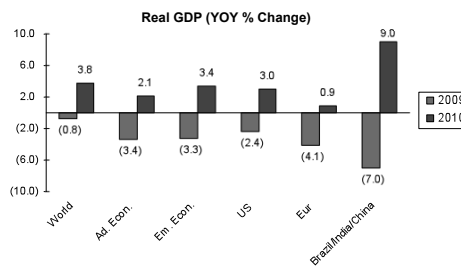


The Global Economy – Recovery



Recovery is Stronger than Expected, but Speed Varies:

- Global activity has rebounded since 2008 recessionary lows, as evidenced by accelerated world trade, industrial production, and retail sales in both advanced and emerging economies
 - Retail sales, particularly in Emerging Asia, are forecast to increase dramatically throughout 2010
- Employment continues to contract in advanced economies, but is expanding again in emerging economies; industrial confidence in advanced economies has returned to precrisis levels, but household confidence continues to lag, reflecting subdued employment
- Advanced economies, as demonstrated by the Real GDP data below, are forecast to recover more tepidly, while emerging economies are forecast to recover at a more accelerated pace
 - Each sector forecasts positive Real GDP growth (year over year) in 2010 from the prior year
 - Real GDP in Brazil/India/China is forecast to increase approximately 9.0% (year over year) in 2010 from the prior year, but also experienced the most significant declines in 2009



Source: Roubini Global Economics "Macro Forecast: Q2 2010 Outlook Update" (April 12, 2010).

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The Global Economy – Asia Overview



Asia is Staging a Vigorous and Balanced Recovery:

- Although the downturn in many Asian economies in late 2008 was steeper than expected, the recovery came quickly and was just as sharp
 - Real GDP increased 3.5% year over year in 2009, and is forecast to increase 6.9% and 7.0% in 2010 and 2011, respectively
- The recovery in Asia has been more balanced than elsewhere, with output growth in most economies supported by both external and domestic demand
- The following factors have, and will continue to support Asia's recovery:
 - The rapid normalization of trade following the financial dislocation in 2008 greatly benefited the export-oriented economies of the region
 - The bottoming-out of the inventory cycle is now boosting industrial production and exports
 - A resumption of capital inflows into the region has created abundant liquidity in many economies
 - Domestic demand has been resilient, with strong public and private components of many economies
- In addition, among emerging and developing economies, Emerging Asia (including China, India, Indonesia, Malaysia, Philippines, Thailand, and Vietnam) is leading the recovery
- Emerging Asia posted a 6.6% year over year increase in output in 2009, and is forecast to increase 8.7% in both 2010 and 2011; China is forecast to increase 10.0% and 9.9% in 2010 and 2011, respectively
- Many emerging Asian economies entered the crisis with relatively low public debt levels and can afford to maintain an expansionary fiscal stance
 - However, these economies will need to be alert to growing price pressures and emerging financial instability and to allow their currencies to appreciate to combat overheating

Source: International Monetary Fund – "World Economic Outlook" (April 2010).

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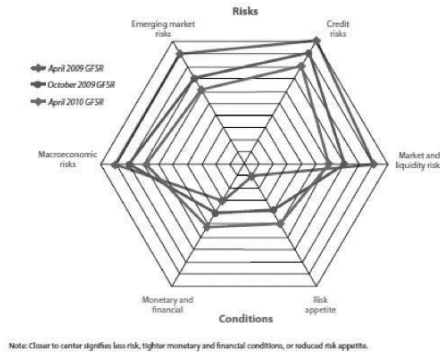


The Global Economy – Financial Stability and Risk Profile



Global Financial Stability and Risk Profile:

- As displayed below, based on the International Monetary Fund's "Global Financial Stability Report," (GFSR) the health of the global financial system has improved since the April 2009 and October 2009 reports as risk factors have, for the most part, decreased in severity
- Specifically, the improving growth outlook has reduced credit risks, emerging market risks, macroeconomic risks, and market and liquidity risks
- In contrast, monetary and financial conditions and an "appetite" for risk have increased
- The need to address the consequences of the credit bubble has led to sharply higher sovereign risks amid a worsened trajectory of debt burdens
- With markets less willing or less able to support leverage, sovereign credit risk premiums have more recently widened across mature economies with fiscal vulnerabilities
- Quantitative and credit-easing policies, extraordinary liquidity measures, and government-guaranteed funding programs have helped improve the functioning of short-term money markets and allowed a tentative recovery in some securitization markets



Source: International Monetary Fund – "Global Financial Stability Report" (April 10, 2010).
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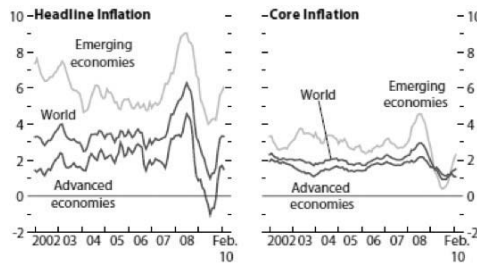


The Global Economy – Inflation



Inflation Pressures are Generally Subdued but Diverge:

- Inflation pressures are projected to remain low, held down by high unemployment rates and excess capacity
- Inflation has been higher and more volatile in emerging economies, and inflation pressures could resurface more easily than in advanced economies
- Core inflation in Europe has lately fallen under 1.0%, down from 2.0% at the peak in 2008; in the United States it has been approximately 1.5%, down from slightly over 2.0%
- In general, the correlation between the drop in core inflation from its 2008 peaks and the increase in unemployment rates is weaker than during the 2001 recession
- Significant upside inflation risks are confined to economies with a history of unstable price levels and to those that are growing strongly but have little excess capacity – including a number of Asian economies



Source: International Monetary Fund – "World Economic Outlook" (April 2010).
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The Global Economy – European Debt



European Debt Crisis:

- The May 2010 emergency financing deal, on behalf of Greece, made clear the institutional shortcomings within the current European Monetary Union (EMU) framework to deal with emergency situations and to prevent emergencies from materializing in the first place
- Also missing is a "lender of last resort" to sort out emergencies before calling on the International Monetary Fund or, at the very least, to organize an orderly debt restructuring and prevent contagion should one member default.
- If the EMU is to succeed in its current form (without countercyclical fiscal transfers that have cushioned the blow for U.S. states, for example), a shift towards policy coordination with the aim of preventing fiscal imbalances from building up in the first place is indispensable

European "Web of Debt":

- The graphic on the following page lays out the inter-nation debt obligations of five European nations (Ireland, Greece, Italy, Spain, and Portugal)
- Banks and governments of these nations owe each other billions of Euros (converted to dollars in the graphic), with significantly greater obligations to Britain, France and Germany
- Fears that the current European debt structure is fragile and unsustainable are widespread among economists both in Europe and throughout the rest of the world
- Greece, whose debt woes initiated the current crisis, has the smallest debt of these five nations at \$236 billion, compared to Spain and Italy with \$1.1 trillion and \$1.4 trillion, respectively

Source: Roubini Global Economics "Eurozone: Q2 2010 Outlook" (April 12, 2010).

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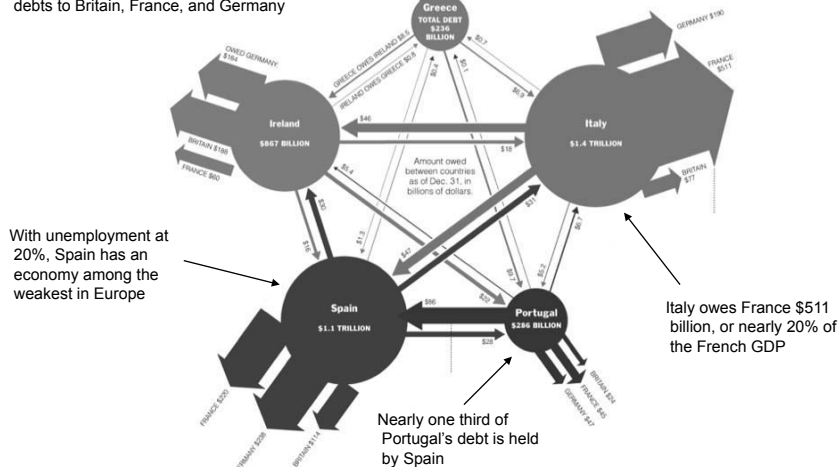


The Global Economy – European Debt (continued)



"European Web of Debt"

Banks and governments in these five European economies owe each other many billions of dollars – and have even larger debts to Britain, France, and Germany



Source: The New York Times – "Europe's Web of Debt" (May 1, 2010).

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Proposed European Financial Reform



Group of 20 Explores Standard Capital Requirements

- Proposals to implement increases in bank capital requirements have been under discussion since governments were forced to bail out lenders during the recession
- At a G-20 meeting in early June 2010, officials separately targeted deadlines of November 2010 to design new rules to raise the quality and quantity of capital held by banks and December 2012 to introduce them
- UBS AG, Switzerland's biggest bank, estimated that the proposals may force banks to raise as much as \$375 billion in fresh capital
- Countries such as the United States, whose economies are largely financed by markets, want banks to be required to hold more assets on their balance sheets to buffer against future crises
 - However, policy makers in continental Europe, where banks provide more financing, are concerned that too-high reserves risk choking off growth

European Union's Proposed Bailout Fund

- The proposed bailout fund consisting of loan facilities operated by the European Commission, European government-backed special entities, and the International Monetary Fund, may bring the total safety net to as much as €750 billion, or about \$900 billion
- Euro-zone countries that cannot refinance their debts on private markets would be entitled to ask for aid; in return, those countries would have to agree to strict budget overhauls and probably structural reforms that would be overseen by the IMF
- In effect, the bailout fund is a promise that Greece's deal — sufficient liquidity, but with tough austerity conditions attached — would be available to Portugal, Spain or other Euro members if investors abandoned them

Source: Bloomberg.com and The Wall Street Journal
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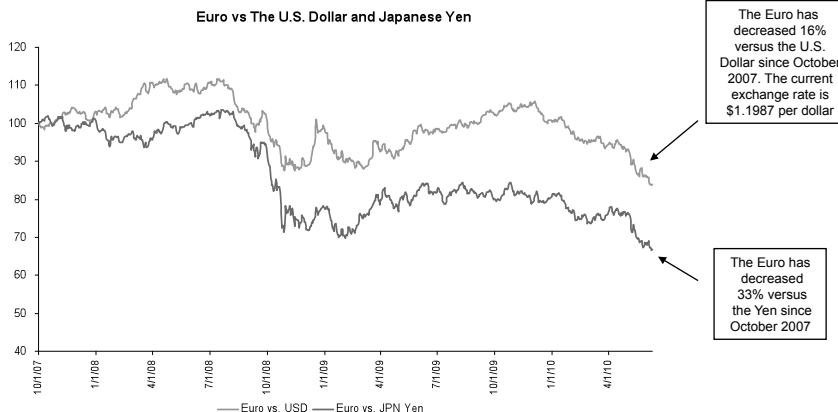


State of the Euro vs. the Yen and US Dollar



Euro Loses Value

- The Euro's value has fluctuated significantly over the past few years with respect to the U.S. Dollar and the Japanese Yen
- The Japanese Yen has held up more favorably than the U.S. Dollar against the Euro



Notes: Indexed to October 1, 2007, exchange rate as of June 9, 2010
 Source: Oanda.com – Historical Exchange Rates

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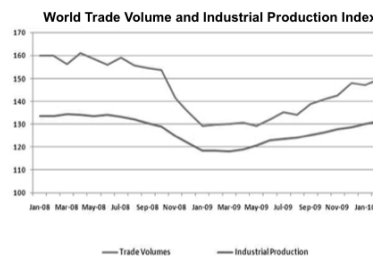


The Global Economy – Foreign Trade



Global Trade Outlook:

- World trade volumes have grown steadily after bottoming out in Q2 2009
- With trade volumes still 7.0% below their 2008 peak as of early 2010, the recovery of global trade has lagged those of global GDP and industrial production
- Exports (especially from Europe and Latin American) and imports (especially into the U.S. and Europe) remain significantly below their 2008 peaks due to commodity prices below 2008 levels, exporters' weak pricing power and, most importantly, feeble demand in the U.S. and Europe, which account for 50% of global imports
- Inventory restocking and investment recovery, economic activity in emerging markets (especially in Asia and Latin America), fiscal stimulus spending on goods and infrastructure, and strong commodity demand and prices will drive trade in consumer and capital goods and industrial commodities
- World trade volume is projected to increase by approximately 7.5% in 2010, led by strong trade flows in emerging markets, after a contraction of 12.2% in 2009
- Trade momentum is forecast to ease later in 2010 and grow at a slower pace in 2011
- Global trade growth is unlikely to reach its pre-recession highs in the short term as imports by emerging markets with strong domestic demand will be insufficient to offset weaker import demand in the U.S. and European Union amid deleveraging and fiscal austerity



Source: Roubini Global Economics "Trade Outlook Update" (May 13, 2010).

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The Global Economy – Mesirow Financial Outlook for 2010-2011



The following are excerpts from Mesirow Financial's Chief Economist, Diane C. Swonk:

- "The pace of growth since the start of the recovery has been subpar, averaging about half of the six-to-eight percent one would expect given the depth of the losses we endured. Unemployment is still excessively high and consumer confidence has improved but remains close to the lows we hit after Bear Stearns collapsed in March 2008."
- "Add to that the increased risks of a double dip associated with the sovereign debt crisis in Europe, and it is little surprise that financial markets have taken a nose dive in recent weeks. It is unclear whether European banks have written off the losses associated with the financial crisis, let alone those that have emerged since then."
- "The European policymakers appear willing to do whatever is necessary to stabilize the financial situation in Europe, which means that problems in Europe could mute, but will not derail, the recovery."
- "Growth for the global economy continues to be revised up, as the developing nations – where we sell the bulk of our exports – continue to surprise on the upside. The only fly in the ointment is the recent appreciation of the dollar against the euro, which has increased competition for our producers against their European counterparts."
- "The primary risk to the near-term forecast is that policy policymakers in Europe will fail to reassure investors of their commitment to the euro-zone, and that the problems in Europe's banks become more systematic and spread to the U.S."
- "There is also a risk that even if investors are reassured, Europe's most indebted economies can't make the cuts necessary to reduce their debts without causing prolonged recessions. In that case, however, the fallout for the European banking system is less clear-cut, especially if the International Monetary Fund is involved in the negotiations."
- "The China trade data for May shows a slowdown in domestic demand, which will ultimately hurt our export growth. Separately, they are trying to drive their economy more with export growth than with domestic demand. This is problematic as we must see a fundamental shift in the global economy which still relies too heavily on the U.S. as the buyer of last resort."

Source: "Themes on the Economy" by Diane C. Swonk (June 7, 2010), "Fed Flash" by Diane C. Swonk (June 10, 2010).

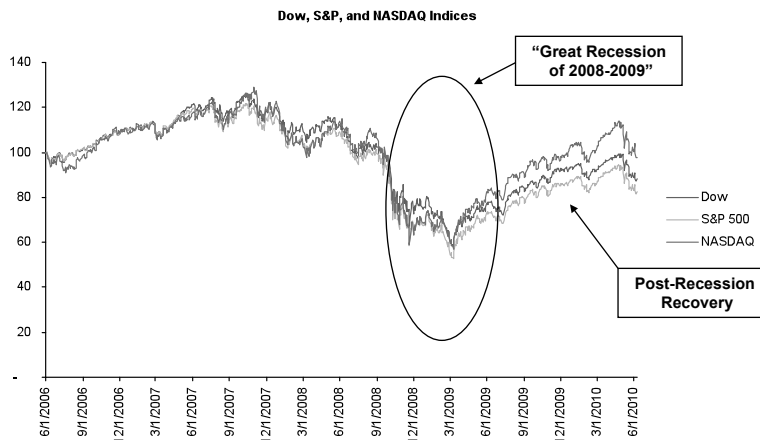
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The U.S. Economy – Recovery Celebrates its One-Year Anniversary



- Many economists believe that the National Bureau for Economic Research (NBER) will declare June 2009 as the bottom of the "Great Recession of 2008-2009"
- Many financial industry experts question how long the recovery will last given the decline of the U.S. financial markets in recent weeks



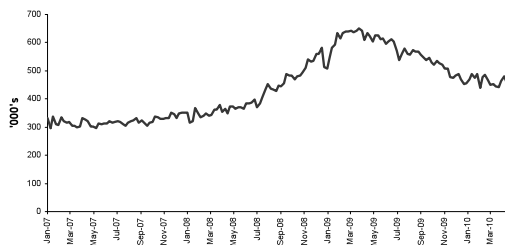
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The U.S. Economy – Unemployment Remains High, Impacting Consumers

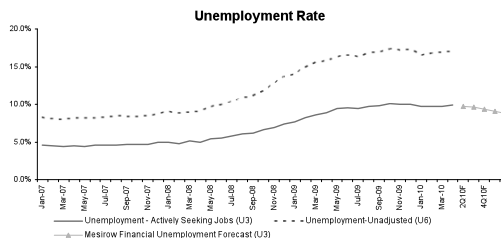


Initial Jobless Claims - Seasonally Adjusted



- Jobless claims in the U.S. market remain high, but are showing signs of slowing

- There is still a long way to go before real signs of recovery can be celebrated as unemployment for active job seekers continues to hover just below 10% (currently 9.9%)
- Mesirov Financial forecasts unemployment to improve to 8.8% by the second quarter of 2011



Source: Bureau of Labor Statistics; U6 Unemployment – includes discouraged, marginally attached, and part-time workers

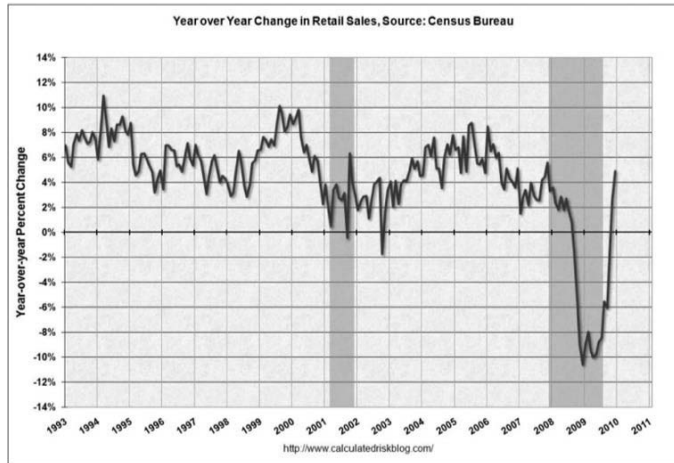
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The U.S. Economy – Recovery Aided by Rebounding Retail Sales



- As indicated below, retail sales have rebounded sharply, adding support to the economic recovery
- Given the depth of the recessionary declines, which exceeded 10% at the low point in 2009, year-over-year sales growth at current levels (approximately 5%) will require some time to return sales dollars to pre-recessionary amounts



Source: ABI Chart of the Day (<http://charts.abi.org>)

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The U.S. Economy – Housing Beginning to See a Recovery



- This past recession witnessed the steepest recorded drop in real housing prices followed by a significant rise in the unemployment rate
- The small uptick in real housing prices seen in 2009 was largely the result of support provided by the homebuyer tax credit, which ended April 30, 2010



- The actual stock of new homes on the market is now at its lowest level since 1970
- Mesirow Financial forecasts housing starts to increase over the next 12 months from 620,000 in the second quarter of 2010 to 1,120,000 in the second of 2011

Source: ABI Chart of the Day (<http://charts.abi.org>), "Fed Flash" by Diane C. Swonk (May 18, 2010).

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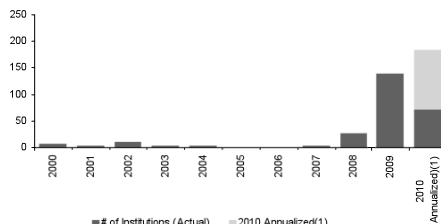


The U.S. Economy – Pace of Bank Failures in 2010 Exceeds Pace of 2009

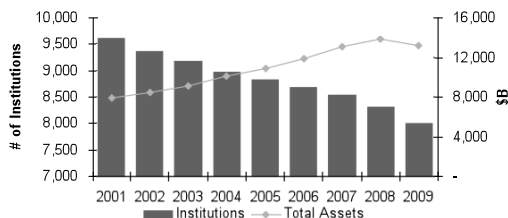


- Since the beginning of 2008, there have been approximately 240 bank failures
- Approximately 72 banks have been taken over by FDIC for the first five months of 2010, compared to 36 for the same period in 2009. The number of banks on the FDIC watch list has soared to over 700 banks

Number of Failed Institutions: 2000 to 2010⁽¹⁾



FDIC Insured Banking Institutions



- Since 2001, the number of FDIC insured banking institutions has declined steadily
- During the same period, total assets held by FDIC insured banking institutions has increased at a similar rate
- While banks have decreased in numbers, it is clear that a smaller number of banks are now holding more in assets than at any time in recent years

Note: (1) Annualized YTD data through May 21, 2010.
Source: FDIC.

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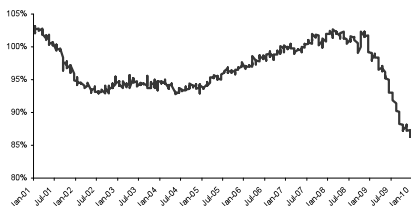
The U.S. Economy – Loan Activity and Upcoming Debt Maturing



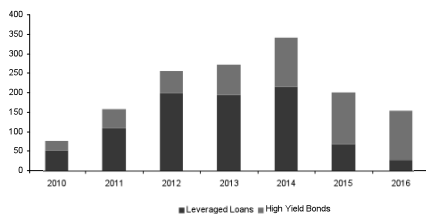
U.S. Banking Industry Historical Trends

- Since the recent highs in 2008, loans as a percentage of deposits have fallen precipitously as banks tightened lending standards
- Specifically loans and leases outstanding have declined approximately 10.6% from recent peak of \$7.3 trillion in October 2008 to \$6.6 trillion in May 2010
- After bottoming out in early 2010, lending has begun to pick up in U.S. banks

Loans as a % of Deposits



Profile of Debt Maturing 2010-2016 (\$billion)



Nearly \$900 Bn of Leveraged Loans Maturing

- Since 2007, LBO volume has significantly declined as a result of the credit crisis; funding and financial covenants have "tightened"
- During the crisis, the strategy of "Pretend-Amend-Extend" was often used to defer problems with hopes that a future better economy would help work out problems
- Looming debt maturities may force lenders and businesses to the negotiating table if the economic recovery is too slow or is insufficient for borrowers to refinance obligations as they come due

Note: 3/31/10 to 5/12/10 loan data normalized to exclude impact from changes in accounting rules from amended FIN 46R and adoption of SFAS 166 and SFAS 167.

Source: Federal Reserve, FitchRatings.

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The U.S. Economy – Congress Passes Sweeping Financial Regulation



- U.S. Senate passed the most extensive overhaul of financial-sector regulation since the 1930's in May 2010, creating new oversight responsibilities and providing broad powers to various government entities and officials; this bill must be reconciled with House bill, which passed December 2009
- FASB recently proposed new rules that require banks to mark loans to fair value on their balance sheets

Summary of Recently Passed Legislation	
Consumers	<ul style="list-style-type: none"> • Create a new consumer protection division charged with writing and enforcing new rules that target abusive practices in businesses (i.e. mortgage lending and credit card issuance) • Limit the ability for mortgage lenders to assess early payoff penalties • Prohibit paying brokers and loan officers more to steer borrowers to higher interest rates or certain risky features; commissions based on size or number of loan originations
Financial Institutions	<ul style="list-style-type: none"> • Completely eliminate or absorb Office of Thrift Supervision under OCC • Banks generally barred from using their own capital to engage in speculative trades • State banks and holding companies supervised and regulated by Federal Reserve or FDIC • Allow government to seize and liquidate failing financial companies
Markets	<ul style="list-style-type: none"> • Requires hedge funds with assets above a set amount to register with SEC • Requires many derivatives and OTC financial products be traded on regulated platforms and cleared through third parties • Companies that package and securitize loans to hold at least 5% of the credit risk
Insurers	<ul style="list-style-type: none"> • Create Office of National Insurance within the Treasury to monitor industry; new Office to recommend to the systemic-risk council insurers that should be treated as systemically important • Recommend ways to modernize insurance regulation
Other	<ul style="list-style-type: none"> • Create office or advisory board at SEC to administer credit rating agencies' rules and practices • Create Financial Stability Oversight Council (FSOC) to identify systemic risks to the economy, promote market discipline and respond to emerging risks; regulate risk-based capital, leverage and liquidity requirements • More control for the government to break up or liquidate failing companies • Costs to manage the dissolution of failing firms considered systemically significant funded by large firms

Source: Wall Street Journal

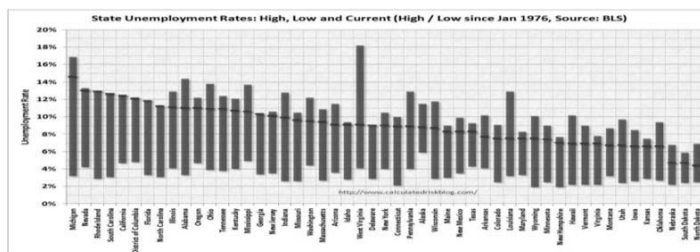
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The U.S. Economy – Economic Uncertainty Impacting Municipalities



- The deep economic difficulties have had a dramatic effect on local economies
- As their revenue declines faster than expenses, some public entities are scrambling to keep making payments on municipal bonds
- As indicated by the chart below, state unemployment levels are near all-time highs, resulting in reduced tax revenue and increased social outlays
 - The states with the highest unemployment include Michigan, Nevada and Rhode Island



- The economic slump is forcing debt-laden cities, towns and smaller taxing districts throughout the U.S. to consider using Chapter 9
- Since 1934, when Chapter 9 became a chapter of the Bankruptcy Code, there have been 600 cases
 - The largest Chapter 9 filing was in 1994, when Orange County, California filed due to failed investments
- To keep cities and towns from filing for Chapter 9, more states are likely to make use of state laws to assume oversight of financially distressed municipalities

Source: ABI Chart of the Day (<http://charts.abi.org>)

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The U.S. Economy – Recovery Aided by Rebounding Retail Sales



- No one really knows what to make of BP Plc's recent oil spill in the Gulf of Mexico, which has yet to be contained
 - What happens to the value of property and municipal bonds in the worst-affected areas?
 - How many jobs will we lose in the domestic oil industry if the spill causes the U.S. to ban or drastically curtail off-shore drilling?
 - Will there be offsetting gains in green energy?
- The effects have reached beyond the worry of ecological devastation, and infiltrated local economies including the region's abundant fishing industry
 - Economic forecasts currently predict that possible job losses related to this incident will be in the thousands as many businesses will not be able to cope with the short-term financial impact
 - The Gulf Coast industries that may be most impacted by the oil spill have significant estimated value
 - **\$20 billion**—Value of the Gulf Coast's tourism industry ⁽¹⁾
 - **70%**—The estimated percentage reductions in hotel occupancy rates during Memorial Day along the Florida panhandle ⁽²⁾
 - **\$21 billion**—The value of the commercial seafood harvest that was to begin on May 15th ⁽³⁾
- As a result, the impacted coastal area's may see an increase in overall business and consumer bankruptcy filings
 - The impact from this event may also lead to an increase in Chapter 12 filings as many financially distressed family fishermen are put out of business

Source: (1) US Environmental Protection Agency, (2) Wall Street Journal, May 15, 2010, (3) Wall Street Journal, May 3, 2010

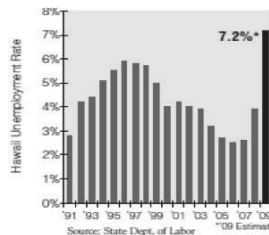
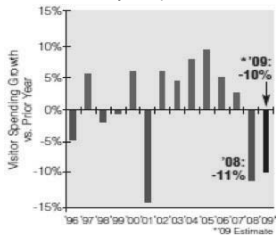
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The U.S. Economy – Local Impact to Hawaiian Economy



- The Hawaiian economy was hit extremely hard by the recent global recession and is experiencing a significantly slower recovery compared to the rest of the United States



- Global economic recession curtailed travel and construction, the two most important aspects of the Hawaiian economy
 - Hawaii visitor spending growth declined by 11% in 2008 and an estimated additional 10% in 2009
 - Declines in Hawaii visitor arrival growth, 10.4% in 2008 and an estimated 5.5% in 2009, contributed to the decline in visitor spending; however, spending declines far outweighed the decline in visitor arrivals
 - Hawaiian construction growth declined by an estimated 20% in 2009, due to both the crash in the housing market as well as the halt in the construction of commercial and resort
- The unprecedented declines in travel and construction caused by the recession led to severe reductions in personal income, employment and consumption
 - The unemployment rate rose over 3% to an estimated 7.2%, the highest rate in nearly 30 years
 - Despite global signs of economic recovery, 2010 appears to be a year of stabilization for Hawaii, while sustained economic recovery isn't likely until 2011

Source: First Hawaiian State Economic Forecast™ – 2009-2010 Edition, State Dept. Business Economic Development and Tourism
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The U.S. Economy – Mesirow Financial Outlook for 2010-2011



The following are excerpts from Mesirow Financial's Chief Economist, Diane C. Swonk:

- “**Consumer spending** is expected to slow after a spurt in the first half of 2010.”
- “The rebound in **housing** is expected to remain muted as lower mortgage rates offset with the end of homebuyer tax credits to support the market.”
- “**Business investment** is expected to post some of its strongest gains, with a rebound in spending on new equipment and technologies more than offsetting continued weakness in the commercial real estate sector.”
- “**Inventories** are expected to continue to be replenished, but not be as large of a contributor to overall economic gains as they were at the start of the recovery.”
- “**Government spending** is expected to moderate as the push from federal stimulus plays out, and cuts to state and local government budgets mount.”
- “The **trade deficit** is expected to widen slightly more as a result of an increase in imports rather than due to a decrease in exports. This is more a reflection of the economy's strength rather than weakness.”

Source: “Themes on the Economy” by Diane C. Swonk (June 7, 2010).

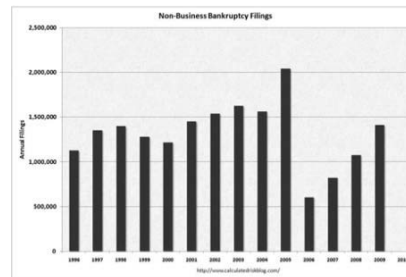
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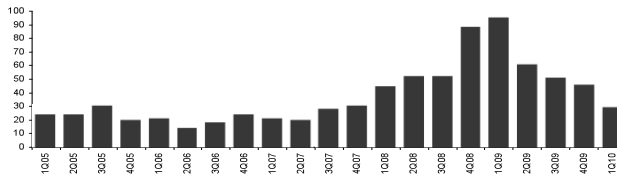
Bankruptcy Statistics – Pace of Bankruptcy Filings in U.S. Slows



- Total business bankruptcy filings peaked at 95 in Q1 2009 and have fallen each quarter since
- Non-business bankruptcy filings, however, have increased in each of the past three years from their post-BAPCPA lows in 2006



Public and Large Private Company Bankruptcies (number of companies)



Note: Large private bankruptcies defined as greater than \$100 million in total assets. Includes filings for Chapter 7, 9, 11, 15 and 304 (1 case)
Source: BankruptcyData.com

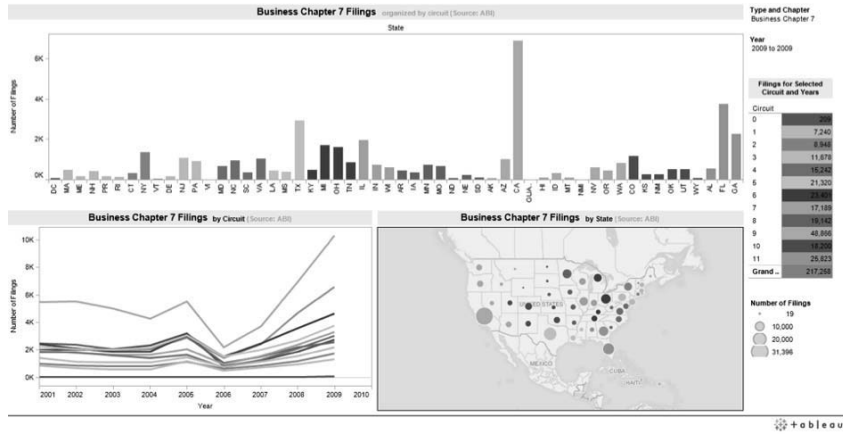
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Bankruptcy Statistics – Business Chapter 7 Filings (2009)



- California lead the way in business Chapter 7 filings, followed by Florida and Texas



Source: ABI Interactive Charts

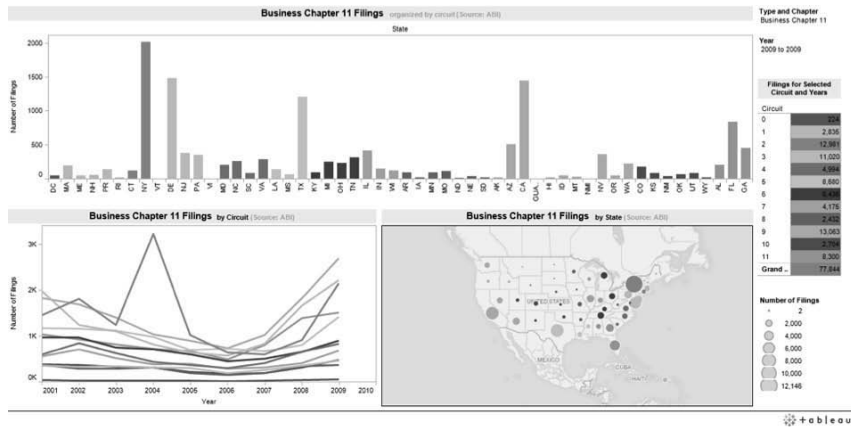
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Bankruptcy Statistics – Business Chapter 11 Filings (2009)



- New York lead the way in business Chapter 11 filings, followed by Delaware and California



Source: ABI Interactive Charts

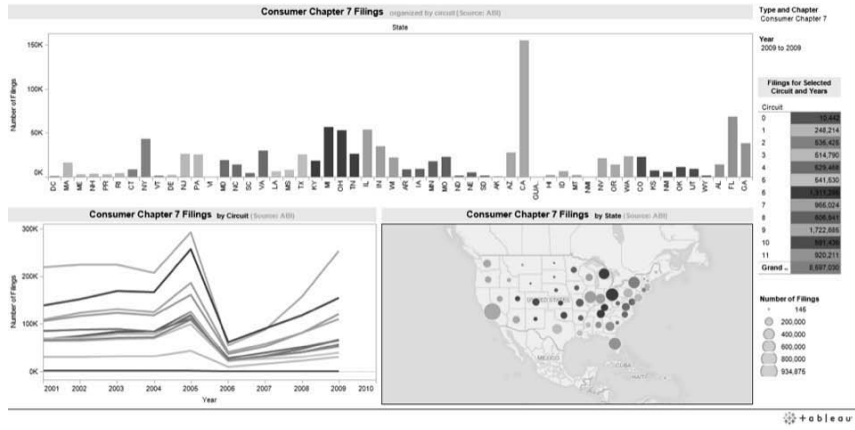
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Bankruptcy Statistics – Consumer Chapter 7 Filings (2009)



- California lead the way in consumer Chapter 7 filings, followed by Florida and Michigan



Source: ABI Interactive Charts

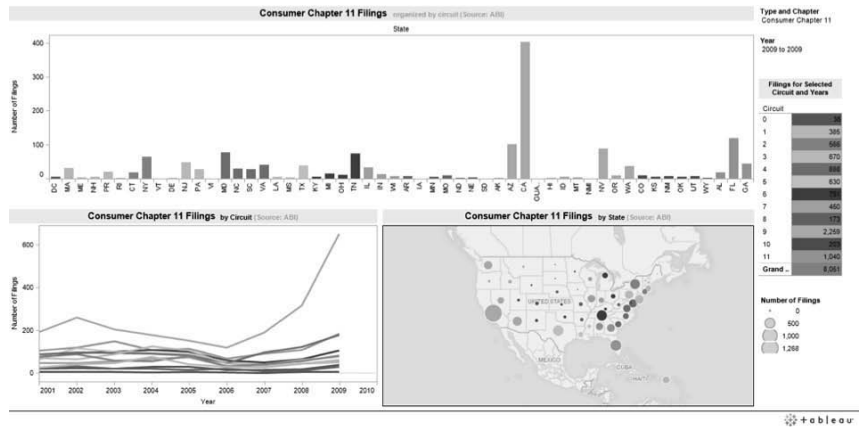
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Bankruptcy Statistics – Consumer Chapter 11 Filings (2009)



- California lead the way in consumer Chapter 11 filings, followed by Florida and Arizona



Source: ABI Interactive Charts

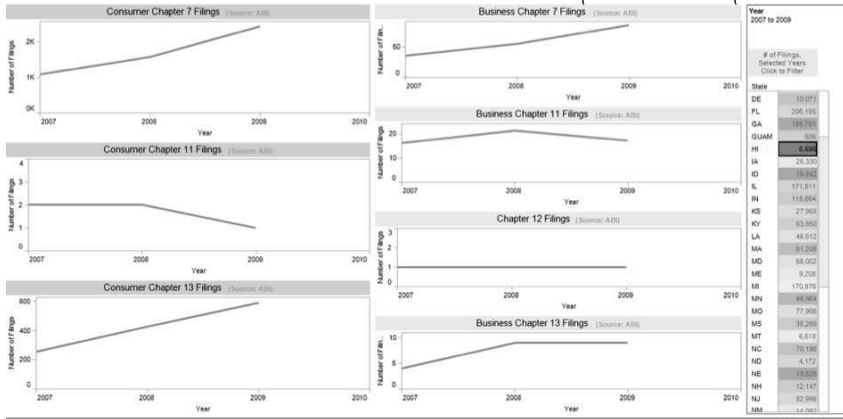
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Bankruptcy Statistics – Recent Bankruptcy Filing Trends in Hawaii



- Hawaii saw a decrease in business Chapter 11 filings in 2009
- Consumer Chapter 7 and 13 filings as well as business Chapter 7 filings increased in Hawaii in both 2008 and 2009



Source: ABI Interactive Charts

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