Deleveraging Commercial Real Estate: Equity Investment Market Dynamics

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Tom Wolfe's 1998 novel, *A Man in Full*, portrays the fictional fall from grace of a formerly acclaimed real estate developer, Charlie Croker. In one of its more famous chapters, Croker is summoned to a breakfast meeting that quickly turns into an unpleasant grilling at the hands of his lender. The scene evokes the often-uncomfortable images that surround the archetypical commercial real estate loan workout, but more importantly it demonstrates the strong dynamics of the two-party relationship of lender and borrower. During the real estate crash of the late 1980s and early 1990s, borrowers and their lenders often had similar uncomfortable interactions. But these interactions frequently led to a productive working out of problematic investments, resetting expectations of both the equity investors and the debt lenders. In conjunction with the policies of the Resolution Trust Corporation (RTC)[1], these workouts were a critical component to the resolution of the troubled assets of institutions not subject to insolvency in a market characterized by massive overbuilding and a major national recession.

The nature and source of commercial real estate debt and equity capital changed through the course of the current cycle. Today, the relationship between borrower and lender has been diluted by a myriad of participants in any given real estate investment – including Commercial

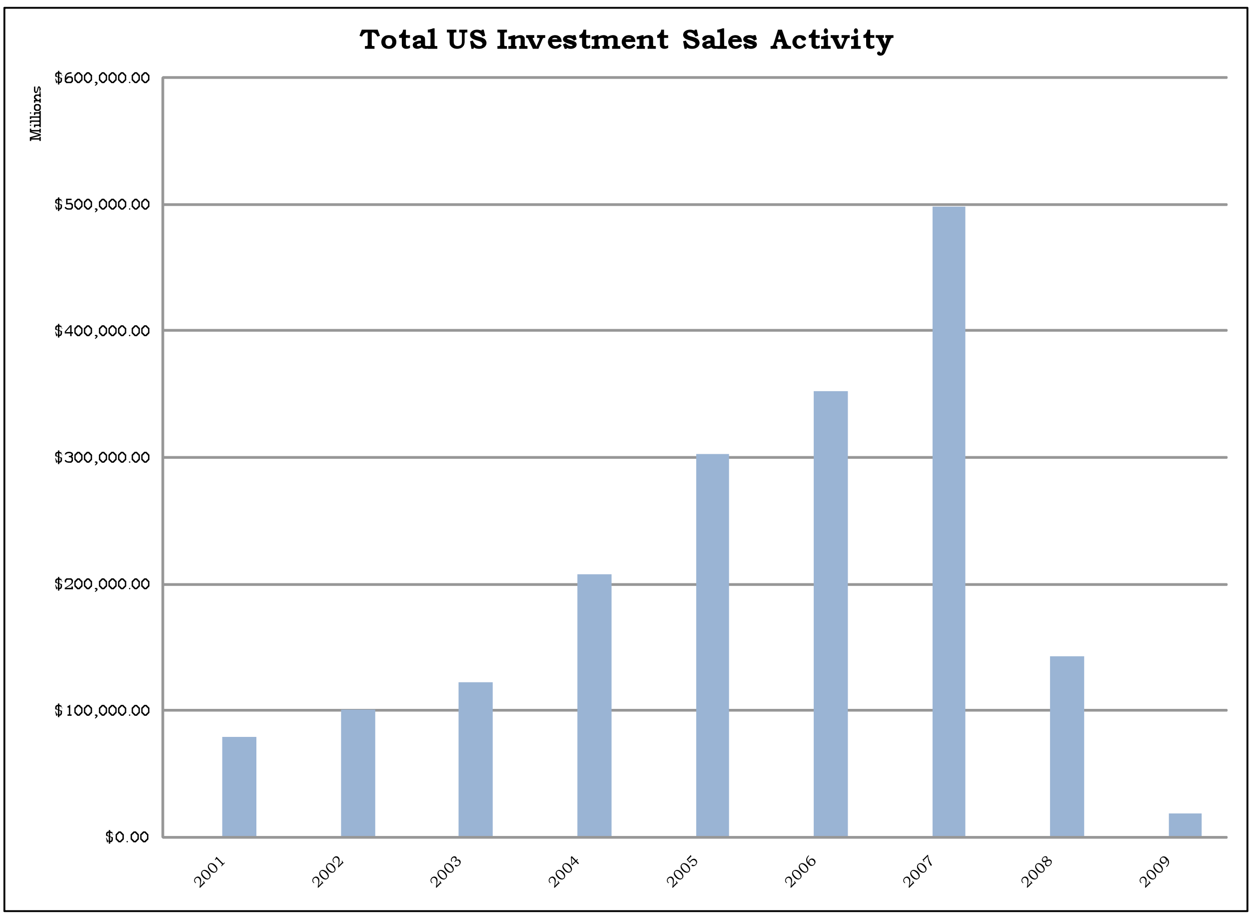
[1] The Resolution Trust Corporation was the U.S. Government-owned asset management company charged with liquidating assets of savings and loan institutions declared insolvent by the Federal Office of Thrift Supervision.

Mortgage-Backed Securities (CMBS) bondholders, large loan syndication participants, junior and mezzanine lenders, preferred equity and institutional equity investors and entrepreneurial investment sponsors. This dilution seemingly has led to an environment where no single participant can take the first step towards truly resolving troubled real estate investments.

Indeed, the commercial real estate investment industry finds itself in one of the worst down-market cycles in decades. Instead of suffering from oversupply issues that were characteristic of the real estate crash of the early 1990s, today's commercial real estate market is reeling from an unprecedented and dramatic tightening in global capital flows and a sudden and substantial slackening in tenant demand across all real estate asset classes. In this article we explore current economic trends that are driving deterioration in commercial property markets, analyze trends in the global capital markets relative to commercial real estate investment and discuss practical strategies that are being employed by market participants in order to maximize commercial real estate value in the context of the deleveraging economy.

Current Market Trends

Many real estate market participants have commented that the current real estate downturn is the worst we have seen in decades, including the savings and loan crisis of the late 1980s. Transaction activity has dropped to minimal levels. Indeed, from 2007 to 2009, the number of commercial real estate transactions fell 92%, representing a drop in dollar volume from $421 billion in 2007 to $17 billion in year-to-date 2009.

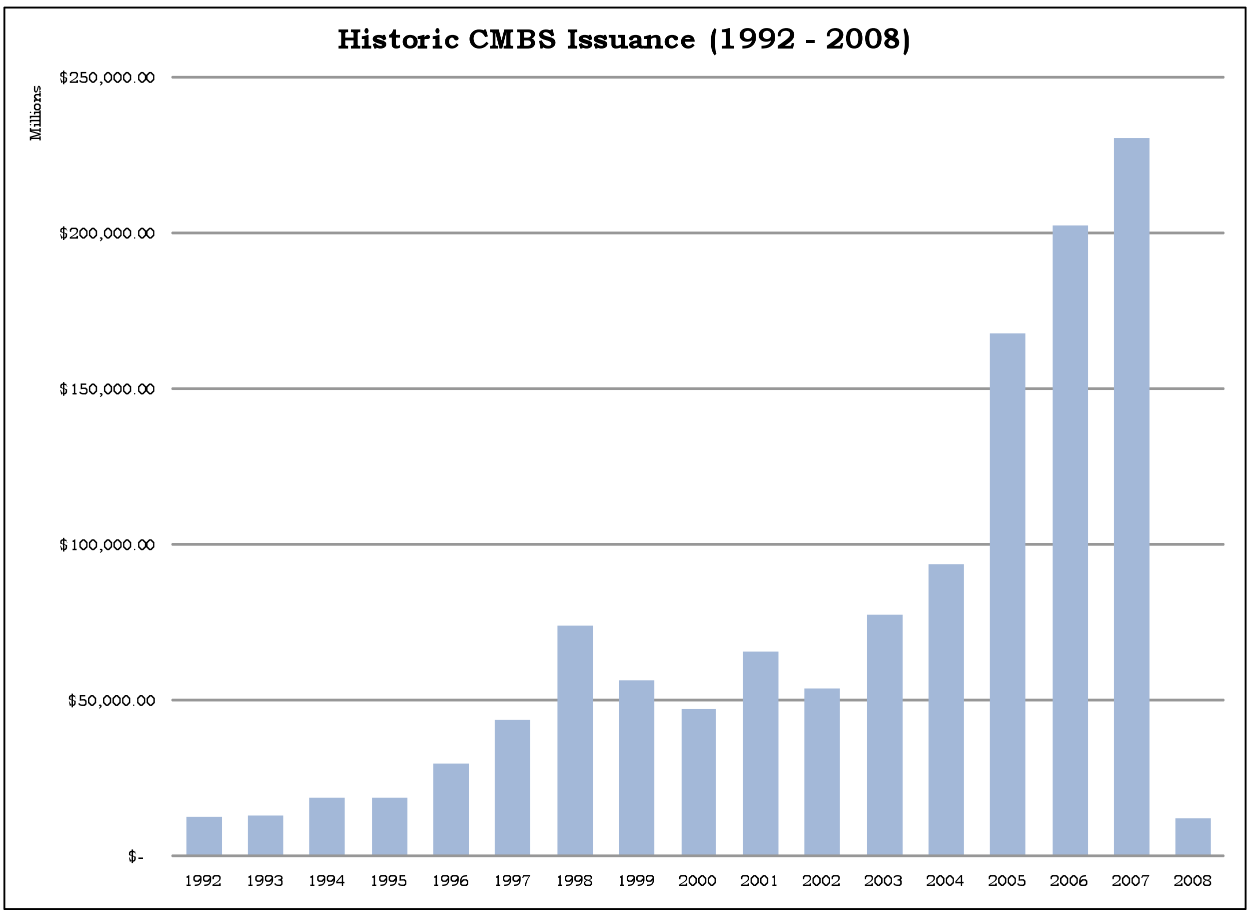


Source: Real Capital Analytics Inc.

With the institutional equity investment market reeling from significant losses, redemption issues and the denominator effect,[2] transaction activity throughout the commercial real estate sector has ground to a halt. As a consequence of the decline in transaction activity, owners have few data points to reference when valuing a portfolio, and lenders have few data points to guide them in ascertaining exposure risk. The commercial real estate sector as a whole is hard pressed to identify appropriate risk-weighted returns on capital, fair market capitalization rates and, as a result, to determine the appropriate valuation of real estate assets.

What spurred the dramatic decline in transaction activity in the first place? Commercial real estate investment performance began this decade on a strong note. Despite economic hiccups related to the dot-com bust and 2001 national recession, commercial real estate continued to deliver strong returns on investment. Additionally, the growth of the Real Estate Investment Trust (REIT) market, standardization of financial reporting and the globalization of the financial markets led to a continued and long-term influx of capital into real estate as an asset class.

The globalization of the financial markets and a long-term low interest rate environment led to an exponential increase in the issuance of CMBS. Volumes soared, reaching a peak issuance of $230 billion in 2007. At the same time, institutional investors, ranging from life insurance companies to pension fund advisors, increased their overall allocations to commercial real estate estate. Real estate, as an asset class, transformed from an alternative or tactical asset class to



Source: Commercial Mortgage Alert

[2] Commercial real estate sales required by asset value declines in institutional investor asset pools' target-restricted real estate asset allocations.

a crucial, strategic component of a diversified investment portfolio.[3] As a result, from 2001 to 2005, annual net investment in U.S. commercial real estate assets increased by 251 percent.

By 2005, increased pressure from the bond-buying community to purchase CMBS led major investment banks to increase the size and frequency of their loan securitizations. This increase could only be accommodated by lax underwriting standards, higher leverage and, ultimately, less attention to detail. First mortgages were often written up to 90 percent of value at historically low interest rates — sometimes interest-only and almost always on a nonrecourse basis. Increasingly, CMBS lenders began underwriting future, unrealized income to capture additional loan volume, exposing CMBS investors to the potential of greater default risk if market fundamentals were ever to slip.

But the spark that triggered the commercial real estate liquidity crisis ultimately came in the form of delinquencies and defaults observed in the Residential Mortgage-Backed Securities (RMBS) market. Bond buyers began to analyze more closely the risks inherent in the aggressive loans in the underlying CMBS bond pools. After evaluating the underwriting of these loans, bond buyers lost confidence that CMBS were risk- rated and priced appropriately. As a result, bond buyers devalued these securities as an investment class, driving CMBS yields to astronomical levels, subsequently leading to rapid inflation of the cost of capital for borrowers. This paralyzed the CMBS market and CMBS issuers were left laden with commercial real estate debt that was immediately mispriced and with no discernable market buyers. Unable to sell this mountain of debt intended for the securitization market, CMBS originators became unintended balance sheet lenders. With no source of new liquidity and no practical means to liquidate their current holdings, these lenders have virtually remained out of the permanent lending market since the credit crunch began in early 2007.

While easy access to credit was a major factor in rising values and today's current lack of debt capital, conversely, it is a major contributor to the current cycle of falling asset values. In fact, according to a recent RREEF research report, during this decade market participants became increasingly reliant upon the availability of inexpensive debt capital in order to meet ever-increasing return thresholds demanded by the global investment community. By the end of 2008, the global commercial real estate debt market accounted for about 58 percent of the $12 trillion real estate investable universe.[4]

After the collapse of the CMBS lending market, commercial real estate investors could no longer achieve their yield requirements at market pricing. In fact, yield requirements have widened, driving up capitalization rates and driving down values.

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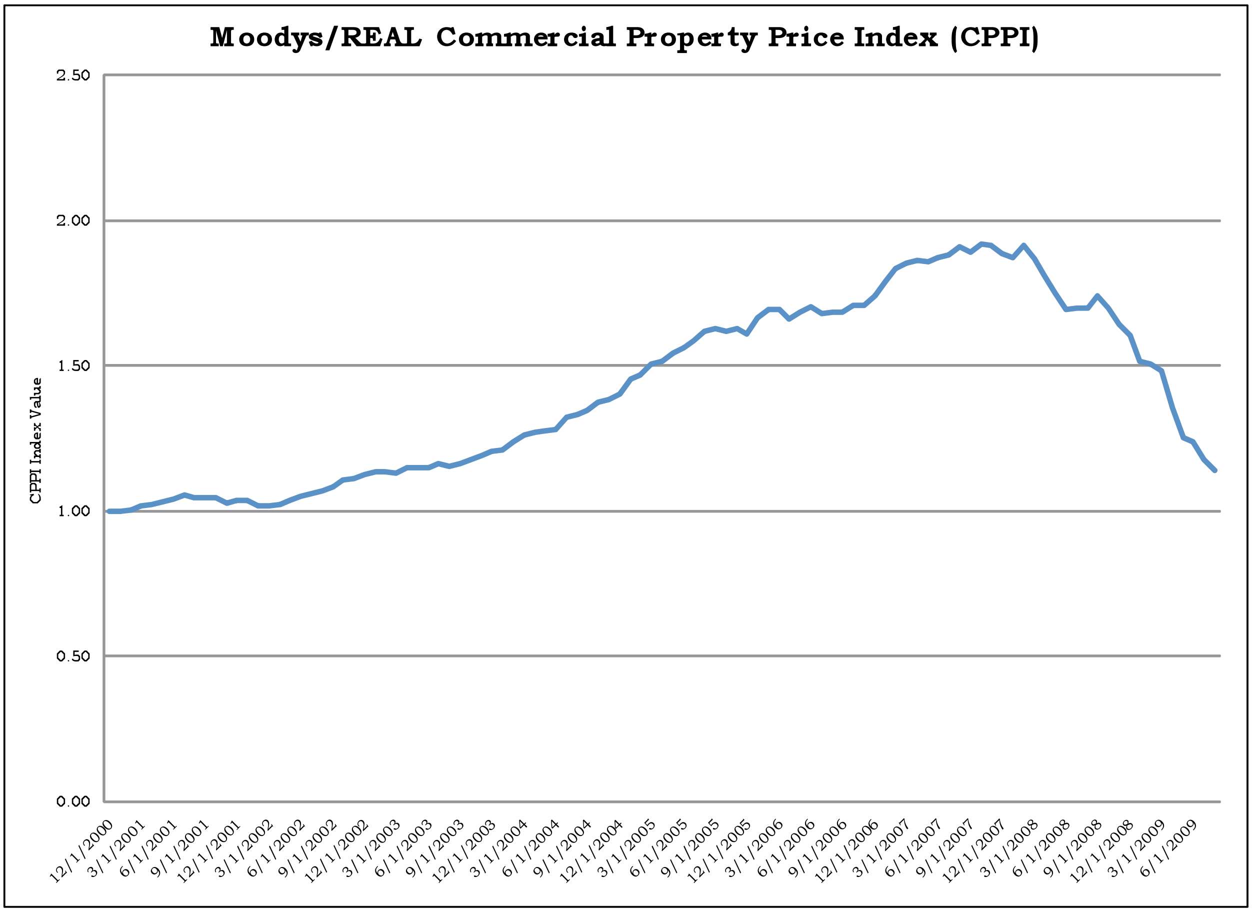
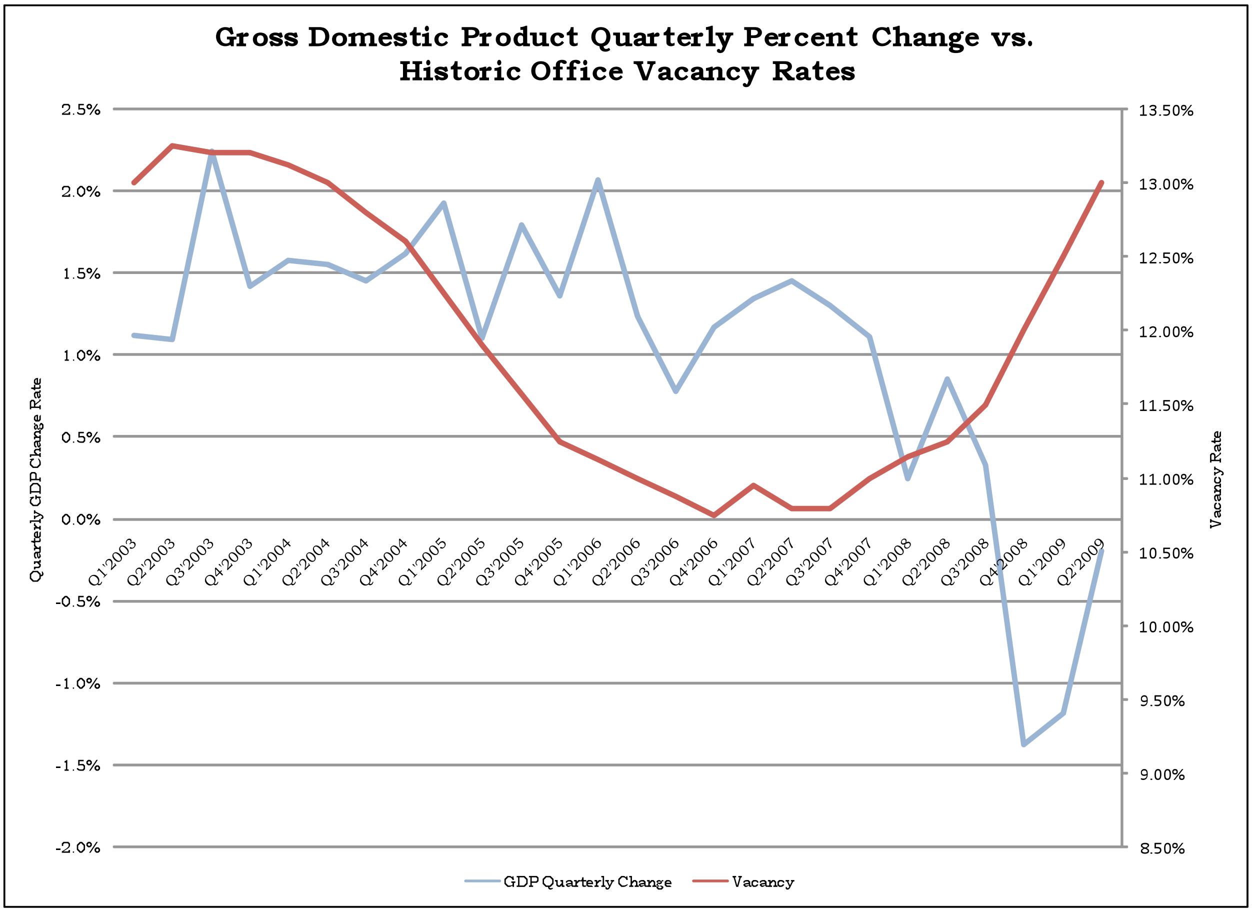
[3] David J. Blum and Scott Urdang, "Repricing Risk in the U.S. Commercial Real Estate Market," PREA Quarterly Winter 2008: 32-35.
[4] Global Commercial Real Estate Debt: Deleveraging Into Distress (RREEF Research, June 2009).



Source: Moody's Investors Service

Today, observable commercial real estate pricing is dropping quickly and steeply. Prices have already come down 40 percent from their peak in October 2007, according to the Moodys/REAL Commercial Property Price Index, based on repeat sales, from Real Capital Analytics. Equity investors, and in many cases lenders, who entered the market from 2005 to 2007, now find that their initial capital investment is significantly in excess of current market value. For equity investors, this precipitous drop in market pricing has effectively wiped out any prospect of a return on their original investments. For lenders, the current environment means facing the very real prospects of a loss of loan principal.

What is especially troubling is that the commercial real estate market may not yet have hit bottom. In addition to marked value declines driven by the repricing of risk, the fundamental drivers of commercial real estate value are also deteriorating. A sizeable reduction in the national workforce has reduced consumer spending, decreased the demand for retail, office and industrial space, and has led to a decline, and potentially negative growth, in household formation, a driver of housing demand. On October 20, 2009, the Wall Street Journal argued that "the U.S. has shed 7.2 million jobs since the recession began in December 2007, the deepest contraction since the Great Depression. Even if the job market started spitting out jobs as fast as it did during the 1990s boom, adding 2.15 million private-sector jobs a year, the U.S. wouldn't get back to a 5% unemployment rate until late 2017."



Source: Federal Reserve Bank of St. Louis and CoStar Realty Information, Inc.

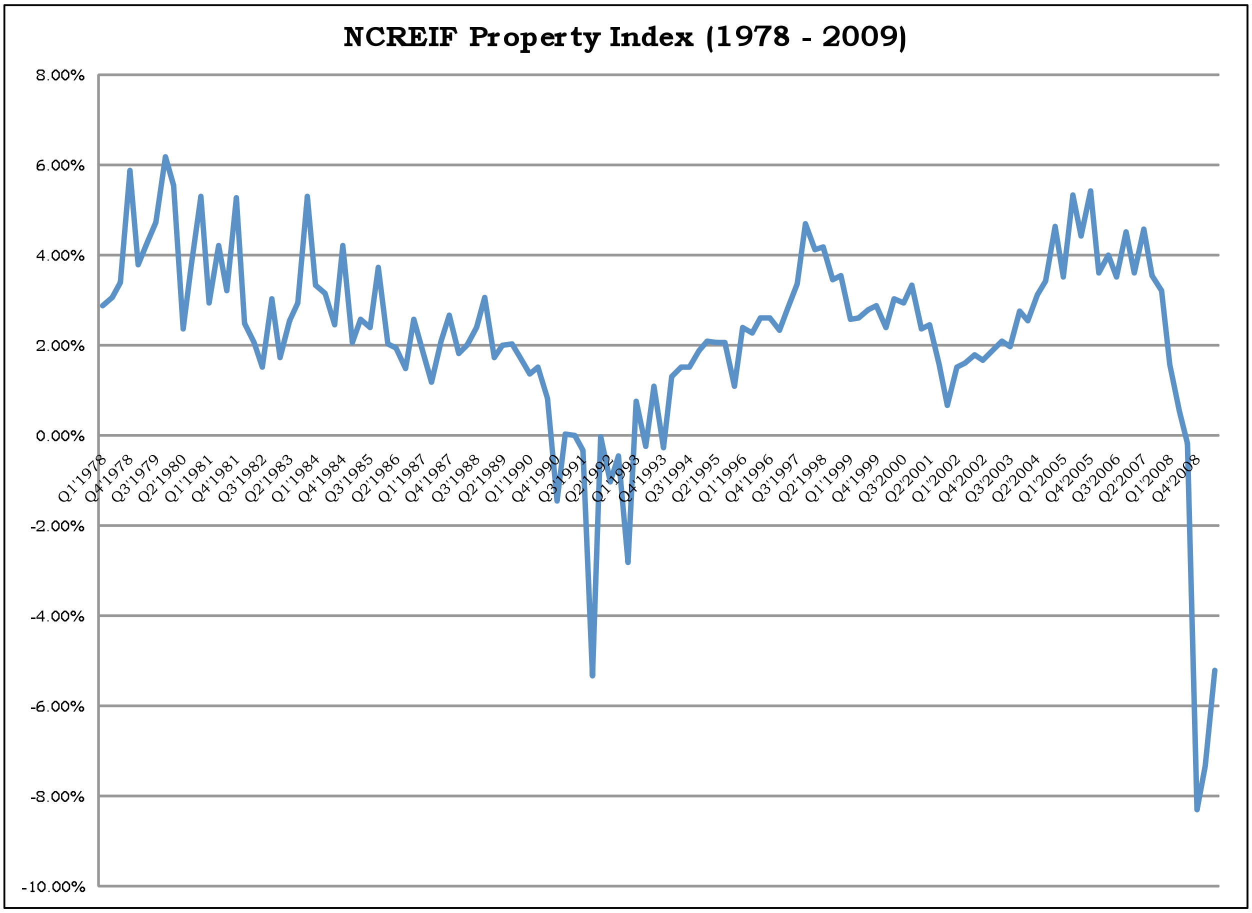
In the long run, it may be owners of commercial real estate who suffer most. Today, owners are facing a market environment where rents are declining, vacancies and concessions are increasing, and operating expenses such as property tax and utilities continue to rise. The extended duration nature of commercial leases suggests that these reductions in revenue will continue to drag down values over the long term and implies further negative consequences for investors who acquired commercial real estate assets during the peak period and relied on lease-up and rent growth for their exits.

Equity Market Implications

It appears that the equity markets have been much quicker to recognize and address their losses in commercial real estate assets than the debt markets. This can be attributed to the ubiquitous structure of the closed-end equity investment funds as a finite pool of capital directed towards certain investment classes or strategies. The fund losses are still distressing and in some cases total, but due to the nature of these investment vehicles, losses can be compartmentalized to a specific fund with broad brush blame attributed to the investment vintage, rather than to fund management itself.

The National Council of Real Estate Fiduciaries (NCREIF), a non-partisan institutional real estate investment industry organization, has published the NCREIF Property Index (NPI) on a quarterly basis since 1978. The NPI reflects the composite total rate-of-return measure of investment performance for a very large pool of individual commercial real estate properties acquired in the private market for investment purposes only. All properties in the NPI have been acquired, at least in part, on behalf of tax-exempt institutional investors – the great majority being pension funds.

The NPI quarter-to-quarter return, which is plotted below, represents an estimate of the quarterly Internal Rate of Return (IRR) as if a property was purchased at the beginning of the quarter and sold at the end of the quarter with the investor receiving all net cash flow (net operating income minus capital expenditures) during the quarter. The index illustrates the depth of losses that institutional investors have realized during the current cycle.



For many investors, this poor investment performance has translated into the total loss of investment equity in certain property holdings. The proliferation of non-recourse debt, which financed most of the deals of this vintage, provides little incentive to continue to dedicate resources to these assets, once investors have abandoned any hope of equity recovery. As a result, experienced fund managers have been able to triage the worst investments through an orderly forfeiture of properties in a series of high profile, deed-in-lieu of foreclosure arrangements with their lenders. Therefore, the larger established owners of commercial real estate, while dramatically impacted by the market downtown, may not find these losses to be fatal. Hines, Maguire, and California Public Employees' Retirement System (CalPERS) have all handed property back to their lenders. In August 2009, the Wall Street Journal highlighted a local example, when the joint venture partnership capitalized by the California Public Employees' Retirement System walked away from its ownership position in Portland, Oregon's KOIN Tower, relinquishing control of the property to its lender, New York Life Insurance Co.

With KOIN Tower, CalPERS stepped away from $39 million of pension fund equity it had invested as recently as 2007. When faced with the need to commit additional capital to carry the deal through the current recession, CalPERS, acting as fiduciary to its pension policy holders, determined that it had simply overpaid for the property to the extent that the recovery of any of its investment equity was highly unlikely. CalPERS facilitated an orderly return of the property to its lender determining it would not be prudent to throw good money after what it perceived to be bad and writing its equity investment down to nothing.

Fund managers have realized tremendous losses in commercial real estate investments. These losses typically stop at the fund level and do not necessarily represent systemic risk to the fund manager, particularly given the non-recourse nature of the debt provided at original acquisition. In fact, sophisticated commercial real estate equity fund managers have been able to maintain investor confidence by directing blame for problem investments on market issues rather than operational issues. The larger fund managers have generally been able to develop a compelling investment premise and raise additional capital with which to reenter the market with new strategies to capitalize on opportunities available in the current market.

With so many deals gone bad, distressed opportunities are now appealing to investors as many are lured by what is viewed as a historic buying opportunity. Meanwhile, equity investment managers are raising new capital, or repurposing existing funds to make such new investments. Real Estate Alert's annual review of high-yield real estate funds[5] identified a growing number of distressed property and high-yield debt funds. The review surveys closed-end real estate funds of at least $50 million of equity, targeting a return greater than 10%. The increasing supply of distressed opportunities, and a credit constrained investment environment, has led to a change in the reported investment strategies of a larger portion of these funds. Increasingly, funds that categorized themselves as either opportunity or value-added funds, representing almost 75% of investment equity by allocation, report targeting distressed properties and underperforming or defaulted loans. In addition, during a period of time when more than 50 planned funds were either withdrawn from the market or ceased fund raising activities altogether, high-yield debt funds have increased from 54 such reported funds in 2008 to 73 funds in 2009 and are expected to account for 16 percent of the total equity being raised in the marketplace. Real estate is a leveraged asset class, and until such time as traditional real estate lenders return to extending credit to refinance maturing loans or to buy transitional properties, the market clearly anticipates that this void will be partially addressed in the equity markets.

The Real Estate Alert survey also provides insight into investor expectations. Many institutional investors are not sanguine on the prospect of complete return of their capital for investments made in 2006 and 2007. It is estimated that over $106 billion worth of properties may be categorized as distressed or potentially troubled with the most significant volume of distressed asset sales expected to be greatest in 2011.[6]

Investors are aware that large fortunes have been made in the worst of economic times, and are preparing to take advantage of distress. These same investors are not necessarily condemning their fund managers, as long they are demonstrating an aptitude for capable asset management of their troubled holdings.

When Lehman Brothers filed for bankruptcy in September 2008 it directly held real estate loans and assets estimated at $43 billion. On May 2, 2009 the front page of the New York

[5] Real Estate Alert, March 18, 2009.
[6] Ron Zuzack, Chief Operating Officer, Real Estate Equity, BlackRock, "Institutional View of the Real Estate Market", May 27, 2009. (Presentation).

Times business section profiled Mark Walsh, the former head of Lehman Brother's global real estate group who was largely credited (or blamed) with Lehman's aggressive foray into real estate investment and lending. The article portrayed Mr. Walsh as a once admired financier who recklessly burdened Lehman with increasingly risky real estate deals, culminating with the $22 billion purchase in May 2007 of the Archstone-Smith Trust, a publicly traded company that held approximately 360 upscale apartment buildings across the country.

In June 2009, Mr. Walsh and a group of former Lehman employees were back at work at Lehman Brothers managing the private-equity portfolio.[7] Like Mr. Walsh, numerous fund managers throughout the industry are gearing up to take advantage of this pending distress, and in some instances, looking to profit among the ashes of their own ruins.

Debt Market Implications

In order to understand the current real estate debt market environment, we must appreciate the current position of financial institutions. The willingness of debt investors to lend depends upon their own liquidity and the nature of their businesses. The majority of life insurance company real estate loans were issued at ten-year terms, providing for amortization. Maturing debts for these institutions have greater debt-service-coverage ratios and loan-to-value ratios, mitigating refinancing risk.

Depository banks traditionally have lent for three- to five-year terms. As a result, many of the real estate loans coming due in the next two years will be of recent vintage with difficult declining valuation issues. Market pricing declines of 40 percent means that the subordinated investment equity has been eliminated and lenders are experiencing the prospect of principal losses on any asset originated at over 60% loan-to-value. Over the last several years, banks more commonly underwrote loans at 80% - 90% of value, meaning that today's values have migrated well through the investment equity and into the lender's position. Banks are forced to go it alone.

Debt Shortfall Matrix

		New Loan LTV at Refinance				
		70.00%	65.00%	60.00%	55.00%	50.00%
Property Value Decline	0.00%	(5.00)	(10.00)	(15.00)	(20.00)	(25.00)
	-5.00%	(8.50)	(13.25)	(18.00)	(22.75)	(27.50)
	-10.00%	(12.00)	(16.50)	(21.00)	(25.50)	(30.00)
	-15.00%	(15.50)	(19.75)	(24.00)	(28.25)	(32.50)
	-20.00%	(19.00)	(23.00)	(27.00)	(31.00)	(35.00)
	-25.00%	(22.50)	**(26.25)**	**(30.00)**	**(33.75)**	(37.50)
	-30.00%	(26.00)	**(29.50)**	**(33.00)**	**(36.50)**	(40.00)
	-35.00%	(29.50)	**(32.75)**	**(36.00)**	**(39.25)**	(42.50)
	-40.00%	(33.00)	**(36.00)**	**(39.00)**	**(42.00)**	(45.00)
	-45.00%	(36.50)	(39.25)	(42.00)	(44.75)	(47.50)
	-50.00%	(40.00)	(42.50)	(45.00)	(47.50)	(50.00)

Note: The matrix above illustrates debt shortfall of an assumed initial loan based on $100 property value, 75% LTV.
Source: Prudential Real Estate Investors

[7] Peter Lattman and Anton Troianovski, "Lehman Property Boss Returns," Wall Street Journal June 17, 2009.

The table presented on the prior page, adapted from a Prudential Real Estate Investors equity research report[8], presents the potential maturity default risk to real estate owners, and their lenders, as a result of a combination of declines in underlying property values and the new underwriting standards.

It must be remembered that banks, unlike equity investment funds, are not single-purpose entities formed to direct debt capital into specific real estate investments. Depository banks have a fiduciary responsibility to their depositors, and must at all times maintain sufficient capital reserves to account for credit risk related to assets (such as loans) and other off-balance sheet exposures. When a banking institution cannot maintain sufficient capital relative to loan-loss exposure, it is deemed inadequately capitalized and is shut and sold by its regulator.

When a bank writes down the principal value of a debt investment, it must raise capital reserves to offset the write-off. Given the substantial amount of exposure to continued losses related to commercial real estate debt investments, banks are finding it difficult to attract private capital, particularly when banks are competing with new equity opportunities targeting higher yielding opportunities devoid of the drag and uncertainty of underperforming or non-performing legacy assets.

As a result, banks are accessing capital infusions almost exclusively through the government's Troubled Asset Relief Program (TARP) and, if at all possible, very expensive equity issues under unfavorable terms. GMAC is reportedly seeking a third round of federal assistance and demonstrates the difficulty lending institutions are having attracting private capital. After the government published its banking stress tests in May, Bank of America and Wells Fargo succeeded in raising tens of billions of dollars from private sources. However, they do not represent the majority of banks that have been unable to raise any capital.[9]

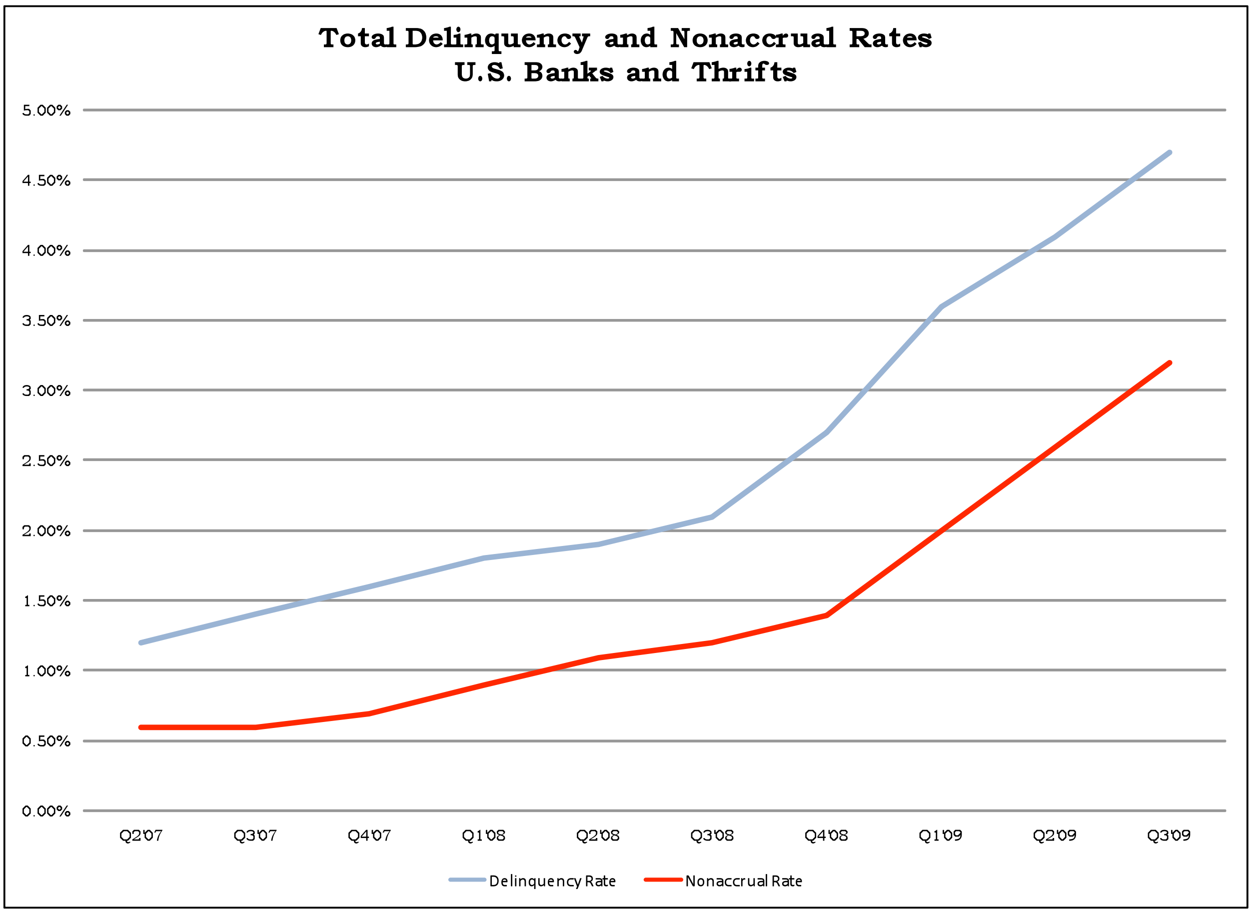
Raising capital as a bank with a deteriorating loan portfolio is an impossibility. As of October 24, 2009, regulators have shut 106 banks this year, the largest number since the savings and loan crisis. Those banks that can raise capital find it extremely costly. Last month, West Coast Bancorp in Lake Oswego was able to raise $155 million from investors. In order to do so, the bank significantly diluted current investors selling new investors stock representing an 83 percent ownership interest at a price less than 20 percent of the bank's September 30 book value.[10] Deals such as these illustrate the need for liquidity by smaller banking institutions to stave off uncertainties surrounding the economy and the performance of their loan portfolios.

Despite access to TARP funds, which are meant to offset additional loan loss reserves, it is widely believed that lenders are not writing down their commercial real estate debt investments to today's market levels. Many lenders are "pretending and extending", in the parlance of market participants, executing loan extensions and renegotiating with their borrowers, in exchange for partial pay-downs and marginal increases to their interest rates. Lenders hope to be able to weather the current market long enough to recover the full debt investment value by the extended maturity date. In the interim, the loan can be booked to the balance sheet as a performing loan garnering the preferential reserve treatment warranted such assets.

8 Life After Debt: Coming to Grips with the Funding Gap (Prudential Real Estate Investors, September 2009).
9 Colin Barr, "GMAC grabs for another lifeline," Fortune Magazine October 28, 2009.
10 Jeff Manning, "New investors take most of Oregon's West Coast Bancorp," The Oregonian October 29, 2009.

The implication of these practices is that banking capital for new lending will be tied up for the foreseeable future, at best, until the banks' investments are repaid. At worst, these institutions are temporarily forestalling failure. Similar to what happened to Japan in the 1990s, deals may be perpetually extended by lenders as equity investors focus on capital preservation in lieu of capital investment. Transactions, new construction and development outside of the public sector could slow to a crawl and the commercial real estate industry overall could continue to experience tremendous downsizing.

The valuation declines to date, coupled with significant impairment in commercial real estate investment asset performance, have led to substantial increases in defaults and non-accrual rates on depository banks' loan portfolios. As the chart below illustrates, commercial mortgage loan delinquency rates have risen sharply (2.10 percent to 4.70 percent) from the third quarter of 2008 to third quarter 2009.



Source: Foresight Analytics LLC

Current Strategies

The similarity of the current credit crisis, compared to the last banking crisis, remains in that carelessness in lending practices resulted in massive balances of commercial real estate debt that cannot be repaid. However, the nature of workouts has changed. The recourse nature of the loans during the S&L crisis of the late 1980s and early 1990s certainly played a factor, in that recourse provided for a certain alignment of interests between borrowers and their lenders. Lenders were willing to work with borrowers given that they deemed recourse provisions would provide an additional measure of credit support. In turn, borrowers were adequately incentivized to work for the lender's principal recovery. However, at that time, banking essentially remained a two party system of lenders and borrowers. Today, there are typically numerous tranches of debt holders, each with its own distinct agenda. It is this change in that fundamental structure which, by far, has had the largest impact on workout strategies.

In fact, it was the proliferation of CMBS debt issuances that irrevocably changed this dynamic. Today's commercial real estate debt structures are easily comprised of multiple securitized layers of credits. The combination of these tranched and securitized structures, subordinate debt holders, mezzanine lenders, and preferred equity participants means more passive players who cannot as easily be brought to cooperate like banks and borrowers in a recourse, two party system. As described by one real estate professional, "there are more chairs in the conference rooms and less alignment of interests." The organizational issues within bank groups can be harder to resolve, and upon which to reach consensus, than even the substantive real estate matters.

All of this has been exacerbated by the complete and rapid meltdown of value that led to most of these lenders being overwhelmed, from the standpoint of management capacity, as they were never staffed to handle an active asset management role. Given that the structure of the commercial real estate capital markets' environment has dramatically been transformed from the two-party system of the 1990s, and that banks are ill-equipped from a management standpoint to deal with the immeasurable wave of troubled deals that we face in today's market, the flexibility to structure creative solutions, such as direct debt-for-equity swaps, simply does not exist.

Still, some market participants have found that certain strategies exist to deal with the current market crisis. The appropriate strategy to implement generally depends upon whether the subject asset is a performing cash flowing asset or if it is a non-cash flowing project still under development, or in a state of transition.

In an effort to stave off maturity defaults, lenders have been receptive to working with borrowers who own properties with in-place cash flow, in an effort to give the borrowers more time to create additional value at the property level, or for the hope of a broader market recovery. Ultimately, if cash flow is apparent and sustainable, banks are much more apt to extend loans, renegotiate interest rates to manageable levels, or otherwise redirect cash flow for the benefit of the property. Sam Zell noted in a recent interview that today "we have a scenario of pretend and extend. If an owner has no equity, just an option – a hope certificate – why would he sell unless he was under complete distress? He'll extend as long as he can keep paying the debt service and the lender will leave him in place."[11]

We also note that balance sheet lenders are able to be much more flexible than lenders who securitized and sold their loans. However, even special servicers who manage loans within commercial mortgage-backed securities pools have some degree of flexibility. A commercial real estate owner we spoke with described a recent restructuring of a CMBS financing, where its lender eliminated certain lender-required impounds (maximizing cash flow available to cover future debt service), and reduced the interest rate in exchange for an interest accrual account and the investment of borrower held cash reserves.

In general, most lenders, balance sheet and securitized alike, are generally reticent to extend for a period of greater than a 24-month extension on the primary term. However, extensions subject to an asset performance test are also commonly reported elements of successful

[11] Zoe Hughes, "To Zell and back," Private Equity Real Estate November 2009.

restructure transactions. Even within the rigid structure of commercial mortgage-backed securities lending, there is room for flexibility.

For non-cash flowing properties, such as development projects still under construction or partially completed asset repositions, lenders face a significant challenge. In many cases, these loans have recently, or are about to, run out of money in their respective debt service reserves. In many of these variable rate financings, lenders funded considerable carrying costs, including reserves to fund future capital expenditures and debt service expenses, with the expectation that by the maturity of these financings, asset values would far exceed the outstanding loan principal balances.

Unfortunately, for many of these transactions those debt service reserves have evaporated, asset values have not increased (and in many cases have decreased) and the lender is left with significant problems. The most extreme example was Corus Bank, which extended loans primarily to condominium and speculative office and retail developers. Corus Bank, which held $8 billion in assets, $6.6 billion in deposits, and 70 branches as of August 2009, was determined to be undercapitalized relative to its portfolio of deteriorating construction and commercial real estate loans. The bank was seized by its regulators on September 11, 2009.[12]

In these situations, lenders have to make a decision either to take back the property or commit additional capital to see the project through to completion. In a two-party system, lenders had the ability to be flexible and restructure the debt in order to enable the borrower to achieve project completion, in some cases even subordinating their debt to the developers to encourage additional equity contributions. In today's market, lenders have limited flexibility as they must align their work outs with the interests not only of the borrower but also of various other debt holders, both senior and subordinate. Still, there have been several recent situations whereby subordinate debt holders have agreed to acknowledge that their position has been wiped out and approve more creative workouts led by senior debt holders in exchange for a hope note, or the promise of an equity-like return on their subordinate unpaid balance, in the event that the workout leads to a positive return on investment at the deal level.

Clearly, in certain cases lenders and borrowers are able to reach consensus on a workout plan that enables the borrower to complete his or her business plan. However, this is much more difficult in the multi-party system prevalent in today's market, with each lender in the capital stack vying to maximize its recapture of invested capital. The resolution of property issues often falls secondary to the difficulties inherent in the debt structure.

As we face the most significant real estate crash since the early 1990s, and one broader in scope, it is instructive to look back at lessons from the past to gain insight into recovery. However, there has been a fundamental shift in the structure of the global financial system generally, and specifically commercial real estate capital markets during this past decade. These changes have rendered many of the tools utilized during the last real estate implosion almost useless, and have necessitated that we conceive new strategies to emerge from the uncharted waters of the current crisis.

This article represents the views of the authors only, and does not necessarily represent the views or professional advice of ScanlanKemperBard Companies or KPMG LLP.

[12] Nick Timiraos and Jessica Holzer, "Corus Bank Is the Latest to Be Seized by Regulators," Wall Street Journal September 12, 2009.