

## VIEWPOINT

## For Turnaround Pros, 2008 Offers Rare Opportunity

By Scott Y. Stuart



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Although we are nearing the end of the first quarter of 2008, unbelievable as it seems, turnaround professionals are still talking about the Bankruptcy Reform Act of 2005.

The reasons for this are clear. The meltdown in the sub-prime market, a recession of possibly unprecedented proportions and a presidential campaign field full of position statements regarding what should have been, what is, and what to do to fix it all.

Equally as unbelievable is that the state of the economy in 2008 has made the Bankruptcy Reform Act of 2005 a hot topic in this presidential election. That puts turnaround professionals in the unique position of being able to shape the dialogue, educate the public and, to some extent, force the parameters of what post-election reforms may look like. Hence, the turnaround community sits front and center on one of the hottest topics of this presidential election.

Although the banking and credit-card company lobby carried the day in 2005, when legislative reforms finally became law, it created a backlash which has only recently come into full focus. Predatory lending practices are being questioned. The way the law treats the inability to discharge debt is being questioned. And the turnaround profession is being tested as to how to best respond to an economic crisis including how to best rehabilitate the American economy.

With all this pressure being thrust on the turnaround community, how can one determine who to support in the upcoming presidential election? The issues regarding the sub-prime meltdown, recession and the economy at large have rarely loomed quite as ominously over a presidential election. Moreover, the word 'bankruptcy' has never been invoked by presidential candidates as often as in this election cycle.

The question posed by all this hoopla is how each of the remaining presidential contenders will alter the course of events which were largely set in motion by the passage of the Bankruptcy Reform Act of 2005. The answer to that question talks to the turnaround community, which can and will influence this election. With a little bit of luck, the power of the turnaround community, rendered largely moot in 2005, may actually be able to neutralize some of the reforms that are haunting the American economy and influencing a presidential election three years later. So where do the candidates stand on these critical issues?

The candidate who has the least to say on all this is Republican John McCain.

There is little to report on his position regarding further bankruptcy reform because he has said little to nothing on the topic. A supporter of the 2005 reforms, it seems that Senator McCain favors a limited governmental role in the current mortgage crisis.

In his view, the answer to current economic woes lies in a repeal of the Alternative Minimum Tax and loan disclosure simplification.

While silent on further bankruptcy reform, Senator McCain does support current administration policies regarding the current mortgage crisis. That includes the New Hope Program, which calls for a limited five year interest rate freeze on certain mortgages, and Project Lifeline, in which the nation's six largest lenders agree to a month long moratorium on foreclosures.

By contrast, the Clinton and Obama camps have been particularly vocal on these issues. Both have very strong opinions on what the federal government must do to turn around the economy, stop the foreclosure flood and otherwise remedy the failings of the Bankruptcy Reform Act of 2005.

Senator Clinton, who did not vote on the Bankruptcy Reform Act of 2005 (but publicly claims to have opposed it), seems to have flip-flopped on bankruptcy reform dating back to

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One of a series of opinion columns by bankruptcy professionals.

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2001. At that time she supported legislation which failed to pass the senate, her focus being on women and children, particularly with respect to issues regarding alimony and child support. Neither she nor Senator Obama, who was not in the senate at the time, focused on the ramifications of a sub-prime meltdown and economic slow down, since no one saw those issues coming as fast and furiously as they did.

Although Senator Clinton receives a great deal of support from banking interests and unions, two of the strongest lobby groups who favored reform, she still seems to have been on the side of mitigating the harshness of earlier versions of the reform act. It remains unclear however what she would have done had the sub-prime market and recession hit when the final version of the bankruptcy reforms made it to the senate floor.

Senator Obama, along with all other voting Democrats said no to the 2005 bill.

On the campaign trail, his position today calls for interest rate caps on certain loans, responsible lending legislation and reformation of the bankruptcy laws to at least address the issue of bankruptcy filings which result from a medical crisis.

If one thing is clear from all this candidate positioning, it is that there is a strong nexus between the current state of the bankruptcy laws and economic-stimulus options.

The question of how the tie-in can yield a good result for the American economy, however, has much to be desired, with all candidates (and the Bush administration) wanting to impose immediate and seemingly drastic measures to save the economy from complete collapse.

Can Senator Clinton's proposed 90-day foreclosure moratorium, freezing of fluctuating rates on sub-prime loans and an eventual return to fixed interest rates do the trick? Is Senator Obama's foreclosure prevention fund, bankruptcy reforms to close mortgage company loopholes, mortgage tax credits, and loan disclosure plans the right way to go? Or will Senator McCain's tax cut and loan disclosure simplification plan calm the choppy economic seas?

Turnaround professionals sit in a unique position in 2008. There is an opportunity to influence a presidential election, while at the same time cause the current state of the law in the bankruptcy sector to be re-evaluated and reformed. On top of that however, the impact of the turnaround community on how bankruptcy laws take shape in this election will influence not only a profession, but the entire national economy.

It is critical for turnaround professionals not just to evaluate economic and legal reforms being proposed by the presidential candidates, but to add to the dialogue as well. This is a rare opportunity for a professional community, often criticized for thriving on the bad times, to actually use this economic downturn for the betterment of the United States economy.

Keeping an open and spirited dialogue about reforms including economic stimulus options as well as legal reforms will educate the candidates, and the nation on the important role turnaround professionals play in the process. The result of this could be a renewed respect for an industry that gets little credit for its good work aiding companies and individuals in economic distress. From this perspective, the Bankruptcy Reform Act of 2005, while weak on many fronts, has now given renewed life to a professional community struggling in its aftermath.

***(Opinions expressed are those of the author, not of Dow Jones Newsletters.)***

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