EMTA

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Argentina's Finance Secretary Nielsen Addresses EMTA's 2003 Annual Meeting

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The Pari Passu Clause – What is Fair Treatment?

An overflow crowd of 350 market participants attended EMTA's 2003 Annual Meeting on December 4, 2003. Argentina's Secretary of Finance Guillermo Nielsen delivered the keynote address, becoming the fourth Argentine official to deliver a keynote address at an EMTA meeting (following Annual Meeting keynote speakers Economy Minister Domingo Cavallo in 1992, Secretary of Finance Daniel Marx in 2000, and former Secretary of Finance Guillermo Mondino, who addressed EMTA's Spring Forum in May 2003). The event was again hosted by Citigroup at its headquarters in the Tribeca area of Manhattan.

Nielsen: Unprecedented Debt Restructuring Will Require A Deep Write-off

Secretary Nielsen recalled that he had attended EMTA's 2002 Annual Meeting as the guest of keynote speaker John Taylor of the US Treasury, having trudged through last year's blizzard. Nielsen reminded the audience that the topic of last year's speech by Taylor, the IMF's proposed Sovereign Debt Restructuring Mechanism (SDRM), now seemed a "very out of date discussion." Next year, Nielsen declared, "When you resume your Annual Meeting here at EMTA, I hope my topic – the restructuring of Argentina – is as distant from today as SDRM is now."

Nielsen admitted that he rarely accepted speaking engagements, and tried to limit his public speeches to once or twice per year. "But I felt I had to be here," he commented, adding that he hoped his appearance would advance efforts to normalize relations with creditors, while also allowing for the government to respond to its own citizens.

EMTA Annual Meeting (continued)

Nielsen Recounts Failure of Previous Governments to Address Solvency Issue

In prepared remarks, Secretary Nielsen attributed Argentina's past inability to promote robust and stable growth to the Convertibility regime, which he termed "the problem" rather than the solution. As a result of the lack of structural reforms and a sound fiscal stance during the 1990s, he continued, Argentina borrowed heavily from the international capital markets, which were "remarkably not impaired by its large fiscal imbalances, thriving in fact on global growth and financial market exuberance." When external borrowing dried up, the country tapped domestic savings and multilateral financing in order to avoid default, he recounted.

Nielsen blamed the 2001 mega debt swap for then exacerbating Argentina's problems, asserting that the exchange allowed the government to avoid the necessary corrections and postpone the debt restructuring reality. By 2001, Nielsen stated, "any sharp observer" of the debt problem should have realized that Argentina was not facing a mere liquidity crisis, but "a fairly evident solvency crisis." An IMF rescue package served only to finance capital flight, while domestic pension funds were "irresponsibly used to sustain an economic model, even as it fell apart," he remarked, with such funds having an average 70% holding of sovereign bonds in their portfolios.

Post-War Germany, not Ecuador or Russia, More Accurate Comparison

Turning to the "guidelines" for restructuring unveiled at the Dubai IMF meeting, Nielsen acknowledged that the implicit write-off which had been presented surpassed those of recent restructurings, such as those in Russia and Ecuador. "Unfortunately, these are not useful comparisons," he asserted, observing that the sustainability of Ecuadorian debt remains far from certain, and highlighting the more limited scope of the Russian debt default. Nielsen argued that a more accurate comparison of the Argentine case was to post-war Germany, which included a write-off of 77% of debt.

Recently, Nielsen pointed out, the government had succeeded in stabilizing the economy and restarting growth, and its 3% primary fiscal surplus was at the highest level in over a decade. "We will face up to our duty, but not at the expense of the further suffering of the Argentine people," Nielsen affirmed, noting that half of Argentines today live at or below the poverty line.

"Unfortunately, some market participants are not interested in either debt sustainability or the coherence of the [restructuring] proposal, but only on maximizing short-term market value," he cautioned. Nielsen warned that this would lead only to market debate about whether a further write-off would eventually be needed.

Declaring that a debt write-off must be combined with "decades of sound, responsible economic policy" in order for the country to attract private investment from abroad, Nielsen forecast that Argentina would achieve 7% growth in 2003, and that 2004 "also looks promising." He highlighted technological changes in the agricultural sector and import substitution industries as being encouraging. Unfortunately, debt incurred in past administrations failed to translate into improving infrastructure and was "evidently misused on an unprecedented scale," according to the Finance Secretary.

Turning to the Dubai guidelines, Nielsen urged the audience to understand that Argentina's capacity to pay should be based on "realistic assumptions" and not be reduced to thinking of the country as "a mere Excel spreadsheet." He underscored Argentina's desire to share the potential upside with investors, and that it is analyzing the possibility of GDP-indexed bonds as one of the restructuring options.

EMTA Annual Meeting (continued)

Nielsen Affirms Argentina Will Not Impose Unilateral Offer, Pledges Equal Treatment of Creditors

The market structure is vastly different from the 1980s and even from the past decade, Nielsen remarked. As an attempt to address this new environment, Argentina established Consultative Working Groups in Frankfurt, Rome, Zurich, Tokyo and New York; however, issues of representation remain not only among retail investors, but also among institutional investors.

Nielsen reiterated that Buenos Aires did not intend to "impose a unilateral offer," and that "equitable treatment is key." He specified that retail creditors would be treated equally with institutional creditors, and that the former need not "pay fees to advisors to ensure fair and equal treatment." The aim for the economic team was "progress through dialogue" and Nielsen pledged to give consideration to "any serious and feasible suggestions."

A final solution to the Argentine crisis must be one of "trust and partnership," he argued. Nielsen reaffirmed that the government is committed to transparency, and remains willing to discuss the assumptions behind the Dubai guidelines. International banks had been invited to become Regional Managing Banks for the debt restructuring, he informed the audience, and details of the Argentine proposal should be ready "by the end of January, or early February."

Nielsen concluded his speech by stressing that the Argentine restructuring has no precedent because of the amount of the write-off, the magnitude of the debt involved, the diversity of investor goals and the variety of applicable laws. He promised that Argentina would do its "part of the job" to constructively solve the debt problem, and looked forward to "counting on [creditors]."

In response to questions from the audience, Nielsen declined to comment on the substance of a meeting held the previous day with members of the creditor community [see page 5 below], calling it more constructive to limit any discussions or comments to the group itself. However, he voiced optimism that the meeting was helpful in developing "a certain common ground, a certain degree of trust."

When asked to address concerns of some creditors that Argentina had little incentive to conclude a prompt restructuring, Nielsen responded that the only thing Argentina could do was to remain consistent in its behavior vis-à-vis bondholders, and attempt thereby to develop trust. Nielsen refused to comment on the possibility that external Argentine assets could be attached to enforce New York court judgments, although he suggested that the government would prefer negotiation rather than litigation to address the debt issue.

Secretary Nielsen's prepared remarks can be found on EMTA's website. Click Here for the English version or Here for the Spanish version.

EMTA Annual Meeting (continued)

Investor Panel: Lower Risks Mean Lower Returns In EM Debt

Citigroup's Tom Trebat steered the annual investor panel through a number of topics on the state of the Emerging Markets and forecasts for 2004. Trebat initiated the session with a question to panelists for their general thoughts on the direction of the global economy and EM debt.

Dave Rolley (Loomis Sayles) offered that his team is working with forecasts of Fed hikes of 75 to 100 bp in 2004, in line with market expectations. Rolley asserted that, people reduce their leverage only when the cost of funding increases, and noted that with recent statistics from EMTA showing trading volumes at 5-year highs, "it is very difficult to believe that there is not a lot of leverage left in the market which will have to be unwound" when rates rise. Rolley predicted that there would soon be an end, "to the asset class' 13-year period of outperformance—not just of every other fixed income category but of most of the equity categories as well." He concluded, "EM debt as the single best investment idea on the planet – that time may have passed and we may find our natural place as a fixed income performer— kind of low, single digit boring numbers and may give way to our equity colleagues."

Mark Dow (MFS Investment Management) concurred that a paradigm shift may have occurred. From a fundamental perspective, emerging country leaders such as Brazilian President Lula have realized that, "if they don't produce economic results, they are out, that's the bottom line," he declared. These leaders are progressively reducing their imbalances in order to remain in power. As a result, Dow surmised, risk is a lot lower, and returns are going to be "a lot less exciting."

Alliance Capital Management's Jim Barrineau argued that a shift to local currency is well underway as a result of modest expectations of US dollar-denominated asset returns. "I would hope that EM countries take advantage of this shift to open their capital accounts," he stated. The extent of this shift will not be reined in by investor demand, according to Barrineau, but rather the means an investor has to do so, noting restrictions and taxation which discourage or prevent holding local currency-denominated debt.

Investors Warned to Watch for Shifts in Brazil, Additional Reforms Needed in Mexico

Responding to Trebat's request to discuss individual country and instrument outlooks, Hari Hariharan (NWI Management) recommended that investors focus on corporates, encouraging attendees to look for issues which are from interesting industries, have good parentage and are high yielders. Hariharan declared that the most interesting EM trade currently is the Chinese yuan. The dollar is correcting against the euro but "very little is happening with the non-Japan Asia bloc, which is where the US has the bulk of its trade deficit," he noted.

Barrineau stressed that as long as Brazil is buying back dollars, extinguishing dollar-linked debt and aggressively lowering interest rates, he would recommend an overweight in Brazil. "When these things change, we might dramatically change our view on Brazil but until that happens, pointless to focus on the exact amount of the overweight," he reasoned. Dow concurred, "The wind is clearly at Brazil's back, watch for signs of that wind shifting."

Barrineau and Dow also agreed on Mexico. "While it's hard to see spreads blowing out, the country is setting itself up for a crisis somewhere down the road if they don't fix energy policy," remarked Barrineau. Dow added, "Hopefully they will learn to deal with democracy, that's really what is going on." Dow expressed optimism that second and third generation reforms would eventually be carried out by the Fox government.

EMTA Annual Meeting (continued)

Turning to other countries, “Venezuela is an example of a country with lousy politics where you can make money,” Barrineau pointed out. The prospects for dollar investors are bright unless one believes that a “willingness to pay” issue might arise for political reasons.

As for Argentina, Dow questioned whether President Kirchner is “playing the populist game to consolidate his power base and then tackle economic reforms, or is he just someone lacking the ability to make diplomatic deals?” Dow conceded that he tended to be pessimistic.

Dow termed Turkey an “inertia story” and continued, “If they can keep the top spinning then they can make it, but their imbalances are even larger than Brazil’s; it ends up being such a psychological story which is hard to call.” Hariharan opined that Turkish equities were more interesting than Turkish debt.

Implications of Argentine Rescheduling Debated

Trebat solicited comments on the implications of the Argentine rescheduling. Barrineau replied that the current situation in Argentina matters less to the asset class than conventional wisdom dictates. “Their defaulted debt is a speed bump on the road that most of us have driven around,” he commented. Rolley countered that it might have market-negative ramifications, calling it a “non-trivial concern” that if Argentina is able to cut its debt stock dramatically yet regain market access shortly, other Latin leaders might be tempted to follow suit. Dow offered his assessment that despite Rolley’s concern, defaulting on debt is not a strategy ever voluntarily followed by governments because of a strong link between a government defaulting on debt and it falling from power.

Hariharan saw little incentive for Argentina to conclude a deal currently. No matter the outcome, Buenos Aires must address the “fundamental problem of the dichotomy between who owes the external debt and who accrues whatever dollar-generation exists in the economy,” he warned. Failure to solve this mismatch would make any deal a “farce,” he cautioned.

Following another excellent year of EM debt returns in 2003, panelists were conservative in their expectations of total returns in 2004. Hariharan forecast a 3.7% contraction, while other panelists predicted a 3% to 5% increase.

Argentina Bondholders Committee Briefs Audience On Talks With Secretary Nielsen

A short and impromptu briefing by members of the Argentina Bondholders Committee (ABC) followed the investor session. In introducing the Committee members, EMTA Executive Director Michael M. Chamberlin noted, that EMTA “offers a forum to the marketplace and does not normally take sides in deals or market disputes, and we have not done so in the Argentine crisis.” He added that it was EMTA’s intention in welcoming Finance Secretary Nielsen, as well as the ABC, to promote a better dialogue about how to restructure Argentina’s debt.

ABC Committee members declared that “any exchange that is based on Dubai terms will fail,” while being “quite encouraged” by comments from Secretary Nielsen in a meeting held in New York on December 3rd that appeared to show greater flexibility on the part of the Argentine government. They also voiced their preference for negotiation rather than litigation. Committee members outlined, and supported, their counter proposal for a 35% write-down on the face value of Argentine debt, with full recognition of past due interest.

EMTA Annual Meeting (continued)

As a new development, the ABC announced that agreement in principle had been reached to form a global steering committee with members of other creditor groups around the world representing both retail and institutional investors, as well as to the formation of technical and legal subcommittees. ABC representatives stated that they were looking forward to engaging in a dialogue with the Argentines, and concluded, “the first steps towards a comprehensive and sustainable solution are ahead of us.” Click Here for ABC’s restructuring counterproposal.

Sell-Side Analysts: Argentine Restructuring Seen As Protracted, Importance Of Mexican Reforms Debated

In introducing the Sell-Side panel, Joyce Chang (J.P. Morgan) pointed out the huge crowd at the EMTA meeting, commenting that it was not only due to the successful year but quite possibly a sign of “how stretched all of us are for finding value when spreads are at 6-year lows.” Chang prefaced the panel discussion with her observation that strong commodity prices, record inflows into the asset class from a diversified investor base, a revitalized Brazil, and an unexpected credit rating upgrade for Russia that boosts the asset class more into the spectrum of investment grade all boded well for the asset class in 2003.

Panelists were in agreement on their concern about the effects of eventual Fed interest rate hikes on Emerging Market debt. Tulio Vera (Merrill Lynch) forecast flat returns for the year, and reasoned that equities are probably now more attractive than debt. Goldman Sachs’ Paulo Leme expressed his concern with market volatility, with the bigger borrowers being the most vulnerable to the effects of US rate increases. David Sekiguchi (Deutsche Bank) admitted that a reversal of inflows into the asset class in the nearer term wouldn’t surprise him (although he expected that EM debt will eventually account for a greater share of global fixed income portfolios).

Arturo Porzecanski of ABN Amro opined that the asset class would be vulnerable in the 1st half of 2004 because sovereigns would offer a “deluge” of issues before the expected rate increases. However, Porzecanski was optimistic that once the supply pressure abated in the second half of the year, investors would “go out fishing again.” Chang offered her own opinion, agreeing with Porzecanski that there would be supply pressure, but expressing confidence that large strategic inflows would continue to come into the market.

As for political risk, Sell-Side speakers concurred that they could foresee no major problems that would have a systemic effect, although Colombia, Ecuador and Peru were highlighted as the most vulnerable countries politically. Opinion was also unanimous that the biggest EM election next year – that of Russia’s president – was likely to be a non-event.

Porzecanski described the lack of “nail biting” elections in any major EM country as a “very big plus” for the asset class in 2004. He conceded there may be some pre-election jitters in the Philippines but stated that these could not be equated with the level of concern during the Brazil presidential campaign in 2002.

EMTA Annual Meeting (continued)

Opinions varied to some degree on the likelihood that President Chavez would not remain in power in 2004 (with Vera the most outspoken about an early exit for the Venezuelan president). Porzecanski agreed that an ouster of Chavez would be "market positive" and cited the market reaction to the renewed attempts to the opposition to hold a recall referendum. Sekiguchi cautioned the audience not to forget that the aftermath of potential succession is "one with many risks." Leme calculated that the downside risk to owning Venezuelan debt is greater than the upside, when one factors in the unknown direction of economic policy under an opposition government.

Relevance of Mexican Reforms Debated

Sell-Side analysts discussed the relevance of progress on Mexican reforms to its debt performance. Leme acknowledged his disappointment with the performance of the Mexican legislature, and stressed that even simple things that should be "sure things," such as the confirmation of Central Bank Governor Ortiz, became a complicated political issue in the Senate.

Vera echoed Leme's skepticism. "The bottom line is that we are going to get very minimal reform in Mexico this year and the foreseeable future," he declared, adding that whatever legislation is passed is likely to be watered down and disappoint the market. However, Vera remarked, from the point of view of a sovereign balance sheet and a sovereign cash flow, Mexico remains impressive. Vera specifically praised Mexico's performance on liability management, and argued that its financial health and growing integration with the US will result in credit upgrades despite stagnation on reforms.

Porzecanski defended his earlier labeling of Mexico as "boring," noting that, because of the willingness of "credible, effective Mexican" officials to adjust spending to the level of revenues, the lack of structural reform would cause little damage.

Analysts Recommend Against Adding to Argentine Defaulted Debt Holdings

Chang also polled panelists on what recommendations they were making to Argentina's bondholders. Sekiguchi offered his assessment that the uncertainty is so large that he is not expecting a restructuring proposal for awhile, and is advising clients to consider Argentina corporates and inflation-linked assets rather than defaulted debt. Porzecanski warned that signs of recent flexibility by Buenos Aires is not enough to finalize a deal, and voiced concern that legal remedies might be pursued by some more creditors.

Leme predicted that a restructuring would likely be protracted and would advise bondholders to sell. "The main issue is the underlying cash flow machine that could generate a nice income stream for bondholders after a restructuring is still not there," he stated. Leme seconded comments by bondholders who had urged the Argentine government to take advantage of their window of opportunity to "get the fundamentals right."

Vera suggested that owners hold, but not add to, their current holdings, a change from recent days in which he would have recommended selling such assets. He conceded that his relative optimism was likely his most "out of consensus" view.

EMTA Survey: Emerging Markets Debt Trading Nearly US$4 Trillion for 2003

Volumes in the Final Quarter at US$1 Trillion

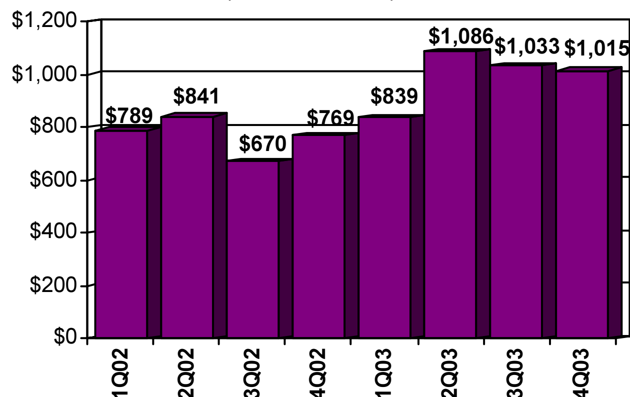
Emerging Markets debt trading volume reached US$3.973 trillion in 2003, according to EMTA's 2003 Annual Debt Trading Volume Survey. This represents a 29% increase in trading levels compared to the US$3.068 trillion reported by Survey participants in 2002, and is the highest level of annual trading since 1998, when fallout from the Asian and Russian financial crises soon resulted in a sharp and extended contraction in the Emerging Markets debt industry.

Fourth quarter 2003 volumes stood at US$1.015 trillion, down slightly from US$1.033 trillion in the third quarter, but 32% higher than the US$768 billion reported for the fourth quarter of 2002. Quarterly volumes have now remained above the US$1 trillion mark for three consecutive quarters.

Joyce Chang, Head of Global Currency, Emerging Markets and Commodities Research at JP Morgan, stated, "Emerging Markets have benefited from record inflows as investors shift from a more opportunistic to strategic approach to investing." Chang added that "the structural rotation since early 2003 out of equities and into fixed income has boosted demand for higher-yielding credit products," and noted that the rally in commodity prices and an earlier-than-anticipated awarding of an investment-grade rating to Russia further boosted interest in the Emerging Market asset class.

Aggregate Trading Volume

(in US$billions)



Mexican Local Instrument, Brazilian Bond Turnover Dominate

Mexican instruments remained the most frequently traded instruments for the third consecutive year. Mexican volumes stood at US$1.304 trillion in 2003, or about one-third of total reported volume (up from 31% in 2002). Mexican volumes rose 37% vs. US$949 billion in 2002. On a quarterly basis, Mexican turnover reached US$383 billion in the fourth quarter of 2003, up 18% vs. third quarter volumes of US$324 billion. Mexico, the first country to issue Brady bonds in 1990, also became the first country to fully repay its Brady issues in 2003.

Turnover in Mexican instruments remained highly concentrated in purchases or sales of local treasury instruments (US$1.042 trillion), with such trading alone accounting for 26% of total Emerging Markets volume. Chang observed that the Mexican government has "deliberately shifted its focus from external financing to deepening its local markets and extending local debt maturities."

Survey respondents reported trading US$909 billion in Brazilian debt in 2003, a 29% increase from 2002 volume of US$707 billion. Despite the annual increase, volume in Brazilian instruments declined steadily during the last three quarters of 2003, from a high of US$269 billion in the second quarter down to US$217 billion in the fourth quarter. The benchmark C-Bond led this trend, standing at US$59 billion in the fourth quarter, down 18% from third quarter turnover of US$72 billion and off 29% from US$84 billion in the second quarter. On an annual basis, C-Bond levels dropped slightly to US$287 billion, a one per cent decline from 2002 volume of US$289 billion. Brazilian instrument turnover accounted for 23% of total reported trading, unchanged from 2002.

EMTA Volume Survey (continued)

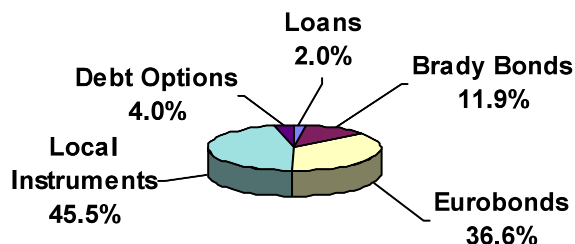
Russian instruments were the third most frequently traded, at US$288 billion, accounting for 7% of total volumes. This compares with US$245 billon in 2002 (an 18% increase), when Russian volumes had an 8% market share. The majority of Russian trades included the Russian 2030 bond, of which Survey participants reported trading US$149 billion in 2003 vs. US$137 billion in 2002 (a 9% increase).

South African volumes, at US$158 billion (down 4% from US$164 billion in 2002), were the fourth most frequently traded instruments in 2003. Turkish instrument trading rose 71% to US$142 billion in 2003 from US$83 billion in 2002 and were the fifth most frequently traded assets.

Local Markets At 46% of Volume, Eurobonds at 37%

Local instruments turnover stood at US$1.837 trillion in 2003, accounting for 46% of total reported volume. This represents a 30% increase from local markets volume in 2002 (US$1.411 trillion). Although the vast majority of local instrument trading involved Mexican instruments, market participants also reported trading US$108 billion in South African local instruments, US$99 billion in Polish local debt and US$87 billion in Singapore local instruments. On a quarterly basis, local instrument share of Emerging Markets volume ranged from 41% of trading in the second quarter to just over 50% in the fourth quarter.

Volume by Type of Instrument 4Q 2003



Eurobond trading represented almost 37% of annual volume, its highest annual level. US$1.486 trillion worth of Eurobonds were traded in 2003, vs. US$1.063 trillion in 2002, a 40% increase. 82% of Eurobond trading included sovereign issues, with 17% in corporate issues (and a small amount of unspecified trades). Brazilian issues dominated Eurobond trading (US$361 billion), followed by Russian (US$248 billion), Mexican (US$241 billion) and Turkish issues (US$114 billion).

Brady bond trading continued to decline as outstanding debt was bought back or exchanged for new issues; Brady debt accounted for US$456 billion in 2003 (vs. US$459 billion in 2002), and a 12% share of overall trading in 2003, although market share dropped consistently from 13% in the first quarter to 9% in the fourth quarter. Option trading totaled US$138 billion, or 4% of reported volume. Loan trading stood at US$58 billon, a 2% share of Survey turnover.

Market to Retrench in 2004?

Strong volume in 2003 was accompanied by a large rally in the asset class, with the benchmark EMBI Global Index returning 26% for the year. In fact, in a recent research report JP Morgan noted that Emerging Markets debt has provided annualized returns of 15% since 1991.

However, Chang cautioned that the strong rally in Emerging Markets debt at the end of 2003 and into the first weeks of 2004, “has left Emerging Markets valuations at levels that were priced to perfection,” and that the market is now consolidating. Chang is predicting a flat return for Emerging Markets debt in 2004.

For a copy of EMTA’s 2003 Fourth Quarter and 2003 Annual Debt Trading Volume Surveys, please contact Jonathan Murno at jmurno@emta.org.

EMTA Board Meeting on February 12, 2004

The Organizational Meeting for EMTA's 2004 Board was held on February 12 at the offices of J.P. Morgan in New York City and in London, with the usual video and teleconferencing links. Elected to the Board at the beginning of the meeting were Peter Carril (Dresdner Kleinwort Wasserstein), Steve Kenny (UBS) and Marcy Swank (ING). The composition of EMTA's Board of Directors for 2004 is as follows:

Co-Chairs

George Grunebaum (J.P. Morgan)
Steve Kenny (UBS)
Mark L. Coombs (Ashmore)

Vice Chairs

Andrew W. Alter (Citigroup)
Mohammed Grimeh (Lehman Brothers)
Dean Menegas (Spinnaker Capital)
Kay Haigh (Deutsche Bank)
Juan A. del Azar (Merrill Lynch)
John Cleary (Standard Asset Management)

Other Board Members

John J. O'Toole (Bank of America)
Bruce A. Wolfson (Bear Stearns)
Redwan Merouani (CAI/IIF)
David A. Mayes (CSFB)
Michael Sonner (DIT)
Peter J. Carrill (Dresdner Kleinwort Wasserstein)
John McIntire (Goldman Sachs)
Tung Siew Hoong (Gov't of Singapore Investment Corporation)
Marcy Swank (ING)
Diego Ferro (Morgan Stanley)
Abigail L. McKenna (Morgan Stanley Investment Management)
Ruggero de'Rossi (OppenheimerFunds)
Michael E. Gagliardi (Trust Company of the Atlantic)
Keith J. Gardner (Western Asset Management)

In addition, outgoing Board member Ruth Laslo (UBS) was re-elected Board Treasurer.

Commenting upon the 2004 Co-Chair and Vice-Chair group, EMTA Executive Director Michael Chamberlin noted that the new slate represented a conscious step toward a fairer and more effective system of rotating Board officer positions among the various firms represented on EMTA's Board of Directors. He also expressed, on behalf of the entire Board, EMTA's gratitude to Juan del Azar, who 'has more than ably served as an EMTA Co-Chair since early 2000, an admirable run by any measure'.

In addition to reviewing EMTA's unaudited results for 2003 (showing a modest surplus of $48,000) and 2004 budget (projecting a small surplus of $25,000), the Board also discussed EMTA's proposed new amicus brief policy. A small (but potentially important) part of EMTA's work involves monitoring the legal environment and taking amicus curiae ('friend of the court') positions where appropriate. One of the core issues facing EMTA in this area is maintaining effectiveness in the context of its diverse constituency. EMTA Executive Director Michael Chamberlin suggested to the Board that consensus decision-making about whether EMTA should file any such amicus curiae briefs should be placed mainly in the hands of a small Advisory Group of senior lawyers.

The Board also discussed that EMTA had not adopted any official position on the Argentine situation (other than 'watchful waiting') and EMTA has posted numerous new developments on its website, such as information relating to litigation). Privately, EMTA has encouraged Argentina to engage more constructively with its creditors. Consistent with this, one goal of EMTA's on-going discussions with other trade associations regarding 'financial architecture' is to identify the lack of mechanisms and incentives to ensure such constructive engagement as a 'gaping hole' that needs to be fixed. The Board also discussed some of EMTA's ongoing projects, such as the month-end pricing, with the view toward determining the best use of EMTA's present resources in delivering its services.

The next EMTA Board meeting will be held on or about May 6.

EM Sovereign Bond Documentation Charts

In the past year, many Emerging Markets countries (led by Mexico, and now including Bahamas, Belize, Brazil, Chile, Colombia, Costa Rica, Guatemala, Hungary, Indonesia, Israel, Korea, Latvia, Lithuania, Morocco, Panama, Peru, Philippines, Poland, Romania, Slovak Republic, South Africa, Thailand, Tunisia, Turkey, Ukraine, Uruguay and Venezuela) have issued bonds with Collective Action Clauses (CAC's) under NY or English law. These bond issues have been generally well-received by the marketplace. EMTA has worked to develop a format for summarizing the terms of CAC bonds based upon IPMA's existing architecture for the launch of new issues in the Euromarkets, and has prepared and posted a number of the completed summaries on its website (please visit the New Developments area (http://www.emta.org/ndevelop/) and specifically the entries under EM Sovereign Bond Documentation Charts on the right-hand side of the screen).

Even a quick review of these summaries shows significant variations in the terms of CAC bonds issued to date. Among these variations, the percentage vote necessary to amend payment terms ranges from 75% (the % recommended in the mid-2002 G-10 report (or 'Quarle's report') and adopted by Mexico) and 85% (essentially the % recommended in the Marketable Bond Package proposed by the group of six financial trade associations), see http://www.emta.org/ndevelop/Final_merged.pdf) and later used by Brazil and Venezuela). Various factors (ease of interpretation, e.g.) may support a trend toward greater uniformity in CAC terms, but others (such as differences in credit quality) may justify the maintenance of certain variations, or 'tiers'.

To date, at least $39 billion face value of bonds with CAC's have been issued since March 1, 2003. For a cumulative list of the bond issues brought to EMTA's attention (and their basic characteristics), please Click Here.

EMTA welcomes your comments on the format of these EM Sovereign Bond Charts and their utility.

FX & Derivatives: NDF Update

Brazil

In late February 2004, the Brazil NDF Working Group successfully brought EMTA's almost year-long effort to overhaul the BRL NDF documentation architecture to completion. Through the publication of Recommended NDF Market Practice 33, EMTA made available to the market a complete revision of the original BRL Template Terms, which dated back to October 2000. The new documentation framework, effective March 1, 2004, includes revised Template Terms for BRL Non-Deliverable Foreign Exchange Transactions, new Brazilian Real rate source definitions (amending Annex A of the 1998 FX and Currency Option Definitions), and new BRL survey rate methodologies. To facilitate the implementation of the new template terms, EMTA is currently sponsoring a signing protocol for EMTA members pursuant to which EMTA members may amend the terms of any outstanding BRL/USD foreign exchange transactions with all other participating EMTA Members. The changes to the BRL NDF architecture are built upon the blueprint for addressing the risks of long-term market closures that was laid by the EMTA NDF Working Group in early 2003 with its revisions to the ARS NDF architecture.

Korea

On December 2, 2003, EMTA, ISDA and the FXC jointly announced an amendment to Annex A of the 1998 FX and Currency Option Definitions to revise the Korean Won rate source definitions. Last amended in 2002, the Korean Won rate source definitions were amended to clarify a two-business day settlement convention for the Korean won, deleting, as a consequence, the reference to the "tom rate". This amendment may be found on EMTA's website and on the websites of the FXC and ISDA. Click Here for the amendment.

Asia - General

EMTA continues to be an active participant on the Asia NDF Working Group, supporting the Foreign Exchange Committee in its efforts in this region.

FXC Operations Managers Meeting

In the fall of 2003, EMTA was pleased to be invited by the FXC to participate in a panel discussion for Operations Managers from Global Foreign Exchange Committees. The panel discussion centered on derivatives and related operations matters, with EMTA describing its role as an industry association in addressing issues raised by the Argentine financial crisis.

Market Activities and Services

Documentation Updates

In addition to the new BRL Template terms, rate sources definitions and survey methodologies detailed above, on March 8, 2004, EMTA, ISDA and the FXC posted on their respective websites a collection of amendments to Annex A to the 1998 FX and Currency Option Definitions published since September 25, 2000. Click Here to access the Compendium on EMTA's website.

Rate Quotation Information

EMTA currently provides its members access to primary and/or back-up rate quotations for the Russian Ruble (in conjunction with the CME), for ARS/USD, and with the implementation of the changes to the BRL NDF architecture described above, for BRL/USD. Click Here for this information.

NDF Market Practices

Members Only requiring further or background information in the NDF area generally may review the applicable Market Practices in the NDF Market Practices area of EMTA's website.

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For further information regarding the above, as well as FX and Derivative matters generally, please contact Leslie Payton Jacobs at lpjacobs@emta.org or (646) 637-9103.

Bond & Warrant Trading & Settlement

Argentina and Brazil Bonds

On February 9, 2004, the Fiscal Agent announced that the 25% voting threshold had been met to release interest collateral to pay the November 30, 2003 interest payment on the Argentina USD Discount Series L Bonds. Click Here for the notice of the Fiscal Agent's request to FRBNY, as Collateral Agent, for the release of interest collateral on the Discount Bonds. The Fiscal Agent set February 24, 2004 as the new Record Date and March 2 as the new Payment Date for the interest collateral proceeds on the Bonds.

EMTA has posted a Press Release issued by Brazil (available in Portuguese only) in connection with the possible redemption or repurchase of its Bonds, as well as relevant documentation reprinted from the terms and conditions of the Bonds, in the event that Brazil decides to redeem or repurchase such Bonds.

EMTA has previously distributed Primers on Argentina USD Par and Discount Bonds and on Brazil's most heavily traded Brady Bonds (Par and Discount Bonds, C-Bonds, EI Bonds and Debt Conversion Bonds).

The Primers detail principal and interest payment terms; release of interest collateral provisions; redemption and repurchase provisions; cross-default and cross-acceleration provisions; and provisions relating to bondholder meetings (including minimum percentage requirements necessary to change non-payment terms).

Click Here for the Argentina Primer and Click Here for the Brazil Primer.

Costa Rica Bond Redemption

On January 9, 2004, Costa Rica redeemed its entire remaining outstanding principal amount of Series B 6-1/4% Bonds due 2015. Click Here for the Redemption Notice.

Mexico VRR Payment

The March 31, 2004 payment was made to Series B VRR holders of record as of March 15, 2004, and EMTA recommended that trades be settled 'ex-dividend' on March 11. Click Here for the Fiscal Agent's notice regarding the VRR payment's calculation.

Numerous claims among market participants for this payment, as well as for previous payments, are expected.

Click Here for EMTA's Primer on Mexico VRR's.

Venezuela Oil Obligations and Nigeria Payment Adjustment Warrants

Fails in settlements of Venezuela's Oil Obligations and Nigeria's Payment Adjustment Warrants (collectively, "Warrants"), which accompany their respective Bonds, have been a continuing problem, similar to the VRR fails in Mexico.

Adequate and accurate reconciliation among market participants continues to be the key to resolving disputes regarding failed Warrant transfers.

Market participants are strongly encouraged to continue their efforts to reconcile internally and with their counterparties their individual accumulated failed Warrant transfers, so that net bilateral positions can

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For further information, please visit the New Developments area of EMTA's website or contact Aviva Werner at awerner@emta.org or (646) 637-9110.

Bond & Warrant Trading & Settlement (continued)

be ascertained and settled. In addition, EMTA encourages EMCC members to work with EMCC in pairing off as many failed trades as possible so that any buy-ins of those failed trades can be executed for much lower net Warrant trade amounts.

Click Here for EMTA's Primer on Venezuela's Oil Obligations, including the formula for determining the number of Oil Obligations related to USD Par and Discount Bonds. No payments have yet become due on the Oil Obligations.

Click Here for EMTA's Primer on Nigeria's Payment Adjustment Warrants, including the formula for determining the number of Payment Adjustment Warrants related to Bonds and a history of prior payments.

As of publication date, the May 15, 2003 Payment Adjustment Warrants payment had still not been made to holders of record as of April 30, 2003. Click Here for the Fiscal Agent's Notice regarding the payment's calculation.

Numerous claims among market participants for this payment (when and if made), as well as for previous payments, are expected.

Website Updates & Additions

Key Industry Views

EMTA continues to recognize publications by leading research analysts and others that highlight noteworthy industry topics. In recent weeks, EMTA has made the following additions to the Key Industry Views area of EMTA's website:

- "Statement to the Senate Banking Subcommittee on International Trade and Finance Hearing on the Argentine Financial Crisis." March 10, 2004 - Michael Mussa (Institute of International Economics).
- "Emerging Debt is a Safe Haven from G7 Volatility." February 6, 2004 - Jerome Booth (Ashmore Investment Management).
- "What Happened to Fiscal Policy?" February 5, 2004 - Walter Molano (BCP Securities).
- "Argentina's Debt Restructuring - 'Terminator 3?'" January 2004 - Gintaras Shlizhyus (Raiffeisen Research).
- "Sovereign Upgrades to Exceed Downgrades in 2004." January 30, 2004 - John Chambers and David T. Beers (Standard & Poor's).
- "Capital Flows to Emerging Markets Economies." January 15, 2004 - Institute of International Finance.
- "EM Debt Return Update: Beat Major Asset Classes by 300 BP Per Year for 12 Years." January 15, 2004 - Jane Brauer (Merrill Lynch).
- "Has Argentina Found a True Amicus?" January 15, 2004 - Guillermo Mondino, Esteban Fernandez Medrano and Luciano Laspina (Latin Source).
- "Bubbly Fundamentals." First Quarter 2004 - Karim Abdel-Motaal (Morgan Stanley).
- "Strategy for 2004." December 17, 2003 - Arturo Porzecanski (ABN Amro).
- "A Challenging '04, But, Before That, '03 Has Further To Deliver." December 12, 2003 - Filippo Nencioni (CSFB).
- "The Pari Passu Clause in Sovereign Debt Instruments." Working Draft December 11, 2003 - Lee C. Buchheit and Jeremiah S. Pam (Cleary Gottlieb Steen & Hamilton).
- "Emerging Markets Outlook for 2004." December 9, 2003 - Joyce Chang (J.P. Morgan).
- "Latin America Economic Outlook: The Region Should Recover 2004-2005." December 9, 2003 - Thomas Trebat, Seth Antiles, Leo Goldstein, Carlos Kawall, Andres Lederman and Pradeep Kumar (Citigroup).
- "Market Outlook: The Year Ahead 2004 for EM Debt - A First Cut." December 2, 2003 - Tulio Vera (Merrill Lynch).
- "Pari Passu Clauses - What Do They Mean?" November 2003 - Philip R. Wood (Butterworths Journal of International Banking and Financial Law).

EMTA is paperless.
Visit
www.emta.org
for the
latest information.

EMTA Members: To obtain the password for the Members Only area, please e-mail sortiz@emta.org

New Developments

These and other recent news items can be found in the New Developments area of EMTA's website.

- March 17, 2004 - Calculations for Payments on Mexico VRR's, Series B, Announced.
- March 12, 2004 - Citibank, Fiscal Agent for the Dominican Republic PDI Bonds, Confirms Penalty Interest Paid.
- March 10, 2004 - Citibank, Fiscal Agent for the Dominican Republic PDI Bonds, Confirms that the Dominican Central Bank Has Deposited Funds to Pay the Principal and Interest on PDI Bonds that Were Due on February 27, 2004. Citibank Confirms Payment was Distributed to the Registered Holders on March 9.
- March 10, 2004 - Transcript of Conference on March 5, 2004 Before Judge Griesa Regarding the Freezing of Bank Deposits.
- March 9, 2004 - Clarification on Uruguay PIK Bond Settlements.
- March 5, 2004 - Mexico VRR, Series B, Record Date of March 15 and Payment Date of March 31 Expected. Trades are 'Ex-Dividend' on March 11. Calculations for Payments on the VRR's will be Announced by the Fiscal Agent Shortly.
- February 26, 2004 - EM Sovereign Bond Documentation Chart for Israel.
- February 19, 2004 - EMTA Announces 2003 Annual Emerging Markets Debt Trading Volume Stood at Nearly US$4 Trillion.
- February 18, 2004 - EMTA Announces NDF Market Practice 33, Publishes BRL Revised Template Terms for BRL Non-Deliverable FX Transactions, Amended BRL Settlement Rate Options for Annex A, New BRL Industry Survey Rate Methodology and New BRL Indicative Survey Rate Methodology.
- February 10, 2004 - EM Sovereign Bond Documentation Charts for Philippines and Poland.
- February 9, 2004 - Citibank, as Fiscal Agent, Requests FRBNY, as Collateral Agent, to Release Interest Collateral on Argentina's USD Discount Series L Bonds. Record Date of February 24 and Payment Date of March 2 Expected.
- February 6, 2004 - EM Sovereign Bond Documentation Charts for Chile and Panama.
- February 2, 2004 - Brady Bond Holiday Schedule for US Presidents' Day Holiday.
- January 30, 2004 - Amended Opinion in District Court Decision in Urban vs. The Republic of Argentina (Granting Class Action Certification).
- January 26, 2004 - Transcript of Conference on January 15, 2004 Before Judge Griesa Regarding Pari Passu.
- January 23, 2004 - Brazil Press Release on Brady Bonds (Only Available in Portuguese). Relevant Documentation if Brazil Decides to Repurchase such Bonds.
- January 23, 2004 - EM Sovereign Bond Documentation Chart for Hungary.
- January 22, 2004 - Brazil C-Bond Redemption - Procedures and Relevant Documentation if Brazil Decides to Redeem such Bonds. For information on Brazil's Bonds generally, see EMTA's Primer.
- January 22, 2004 - EM Sovereign Bond Documentation Charts for Colombia and Costa Rica.
- January 15, 2004 - EMCA Letter States its Views on Pari Passu Question Before Judge Griesa.

New Developments (continued)

- January 15, 2004 - Korean Government Authorities Announce Restrictions Limiting USD Positions By Local Financial Institutions To 110% of Jan. 4 Levels In an Effort To Curb Speculative Activity in the Korean Won. Some Impact on KRW/USD NDF Market Predicted.
- January 13, 2004 - U.S. Statement of Interest, New York Fed Amicus Curiae Brief, New York Clearing House Amicus Curiae Brief, Plaintiffs' Memorandum of Law and Argentina Memorandum of Law in the Macrotecnic International Corp. and EM Ltd. vs. Argentina District Court Case.
- January 7, 2004 - EMTA Winter Forum in London to be Held on January 29, 2004.
- January 7, 2004 - Brady Bond Holiday Schedule for Martin Luther King, Jr. Holiday.
- January 6, 2004 - District Court Decision in Urban vs. The Republic of Argentina (Granting Class Action Certification).
- December 30, 2003 - Revised Brady Bond Holiday Schedule for Wednesday, December 31.
- December 19, 2003 - EMCC Files Rule Change with the SEC Relating to ISMA's New Buy-In/Sell-Out Rules.
- December 18, 2003 - ISMA Issues New Buy-In/Sell-Out Rules.
- December 17, 2003 - Calculations for Payments on Mexico VRR's, Series B, Announced.
- December 11, 2003 - Brady Bond Holiday Schedule for Christmas, Boxing Day and New Year's Holidays.
- December 11, 2003 - 2004 Holiday Schedule.
- December 11, 2003 - 2004 Batch Settlement Schedule for Certain Class I Loan Assets.
- December 4, 2003 - EMTA's Annual Meeting Focuses on Argentina.
    - EMTA Seeks to Promote Better Dialogue [Excerpt from Michael Chamberlin's Remarks]
    - ABC Describes their Counterproposal; Announces Agreement in Principle among Creditors to Form Global Steering Committee to Negotiate with Argentina.
    - Secretary Nielsen Senses Common Ground with Creditors; Reaffirms that Argentina will not Make Unilateral Offer. While declining to discuss in any detail his December 3 meeting with ABC, or his reaction to the ABC Counterproposal, Secretary Nielsen did note his sense that Argentina and its Creditors were "getting closer to common ground" in their restructuring dialogue.
- December 3, 2003 - Costa Rica Announces Redemption of All Outstanding Series B 6 1/4% Bonds Due 2015.
- December 3, 2003 - Argentina Bondholders Committee presents Counter Guidelines to Argentina.
- December 3, 2003 - EM Sovereign Bond Documentation Chart for Peru.
- December 2, 2003 - Amendment to Korean Won Rate Source Definitions Published by EMTA, ISDA and the FXC.
- December 1, 2003 - Treasury Imposes Special Measures Against Burma: Davis Polk & Wardwell Memorandum and US Treasury Regulations.
- November 26, 2003 - EMTA's Fourth Quarter Bulletin is Now Available in our Bulletin Section.

Other Industry Projects/Initiatives

ISMA Issues New Buy-In/Sell-Out Rules

On December 12, 2003, the International Securities Market Association (ISMA) distributed new buy-in and sell-out rules for international bonds, effective January 1, 2004. These new rules shorten the buy-in/sell-out period from 12 to 5 business days.

According to the new rules (and focusing on buy-ins (the rules for sell-outs are identical)), a buy-in may be executed as early as 5 business days from the time a delivery failure occurs. The 5 business day period is comprised of the following:

1. A buy-in pre-advice notice can be initiated as early as the date of non-delivery (as opposed to waiting 5 business days from the date of the fail). A buy-in notice may be issued on the second business day following the date of the pre-advice notice (same as under the pre-amendment ISMA rules).
2. A buy-in may be executed 3 business days after the date of the buy-in notice (as opposed to the previous 5 business day period between the buy-in notice and the execution of the buy-in).

On December 19, 2003, EMCC filed a rule change with the SEC to conform EMCC's buy-in/sell-out rules to ISMA's new rules. On December 30, 2003, the SEC approved such rule change.

For further information on this topic, please Click Here for the text of ISMA's letter and new rules, Click Here for the text of EMCC's notice relating to ISMA's new rules or contact Aviva Werner (EMTA) at awerner@emta.org or (646) 637-9110.

TBMA Guiding Principles for Fixed Income Research

The Bond Market Association (TBMA) has recently released an exposure draft of "Guiding Principles to Promote the Integrity of Fixed Income Research". Comments were due on February 17, with the final document expected to be issued shortly.

Through TBMA, the U.S. securities industry has voluntarily undertaken the job of creating a comprehensive baseline set of standards that member firms can use in developing their own procedures to promote the integrity of fixed income research. This is clearly an exercise that is driven by high-level, non-EM factors. The draft contains separate asset class commentaries, and EMTA has helped coordinate Emerging Markets input on the EM asset commentary.

For further information on this topic, please contact Aviva Werner (EMTA) at awerner@emta.org or (646) 637-9110.

Miscellany

EM Benefits Surpass $5 Million Level in Donations Distributed to EM Charities Following December Gala in New York

Organizers of the NY Emerging Markets Charity Benefit announced they had raised over $200,000 at the industry gala held on Thursday, December 4, 2003. Since the first benefit was held nine years ago, the Emerging Markets industry in New York City and London galas has raised over $5 million for Emerging Market charities. This year's NYC event was held at the Altman Building in the Chelsea section of Manhattan.

The evening's theme was Exotica, and featured live belly dancers and food from the Middle East, Asia and Latin America. Live and silent auctions contributed almost $50,000 to the pot, as bidders vied for holidays in Kiawah Island, South Carolina and Provence, France, golf outings, fishing trips, a vintage car race, a gym membership and a professional photography shoot. Mike Gagliardi of Trust Company of the Atlantic was joined as auctioneer by CNBC anchor Michelle Caruso-Cabrera.

This year's beneficiaries included EMPower, ProMujer and World Education and Development Fund. Former Emerging Markets professionals founded both EMPower and World Education and Development Fund, while ProMujer counts a number of Emerging Markets professionals amongst its Board of Directors. Further information on these worthy organizations can be found at: www.empowerweb.org, www.promujer.org, and www.worldfund.org.

Michelle Cabrera-Caruso of CNBC served as a surprise guest auctioneer.

EMTA's Director of Research Jonathan Murno, fresh from working on the October 2 London benefit, succeeded in some cross pollination between the New York and London fundraisers, including a trans-Atlantic swap of auction items (thanks to Marta Cabrera of EMPower, Monika Machon of AIG and former Bank of America officer (and EMTA Director) Alex McLeod), improvements on the souvenir program booklets, the donation of souvenir shot glasses from the London event to New York, additional fundraising ideas, and, of course, the spectacular event invitation (produced by Guy Cross of Bear Stearns).

Initial disbursements of $37,000 were made to each of the three beneficiaries in December 2003; a final disbursement will be made as soon as the final commitments are received. The money will be used to fund, among other projects, classrooms in Argentina and Brazil, HIV/AIDS prevention in Uganda, healthcare for street children in Mexico, India and Vietnam, children's centers in South Africa and scholarships in Mexico.

Those interested in joining the Benefit Committee for the 2004 EM Benefit next year are urged to contact Denise Simon of Atlantic Company at (646) 364-2312, Sue Waterbury of Goldman Sachs at (212) 902-5789 or Jonathan Murno of EMTA at (646) 637-9105.

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While EMTA is not affiliated with, and does not officially support, any particular charitable organization, EMTA does believe in promoting and giving greater visibility to the industry's most worthy efforts to support charitable and other public service activities throughout the Emerging Markets.

Miscellany (continued)

EMTA Inaugurates London Winter Forum

Sell-Side Panel Debates "Bubble" in EM Debt

EMTA continued to bolster its presence in the European market by inaugurating its London Winter Forum on January 29, 2004. JP Morgan hosted the event, which attracted a crowd of approximately 150 Emerging Markets professionals despite problematic weather conditions (which almost prevented two panelists from flying in from the Netherlands) and market volatility (following unexpected Fed comments on rates). The event, which featured two panel discussions of Sell-Side and Buy-Side experts, was held in the 19th Century former home of the prestigious City of London School on the Thames.

Sell-Side panel moderator Jonathan Bayliss (JP Morgan) set the tone of the discussion by projecting a chart detailing key economic predictions from his co-panelists. Bayliss stressed analyst bullishness on year-end Fed Fund predictions, with two panelists predicting that there would be no rate hikes at all in 2004. Bayliss also highlighted speaker predictions for the EMBI+ at year end, which were generally more bullish than the implied forward value, although he conceded all five panelists expected an end to years of double digit returns for the asset class (and three panelists forecast negative returns.) Click Here to see Panelist Economic Predictions.

Bayliss polled speakers for their take on the Institute of International Finance's recent report that implied that Emerging Markets debt prices were overvalued. Tulio Vera (Merrill Lynch), observed that, on a historical basis, the asset class had some elements of a "bubble," which he defined as when market valuations are perceived to be ahead of fundamentals. Vera speculated that this bubble could be burst by a reversal of some of the trends that created it, for example, signals of US rate hikes which would lead to decreased global liquidity, and reduced risk appetites.

Richard Segal (Exotix) suggested the market would better be characterized as a balloon rather than a bubble. Segal continued that if Emerging Market debt prices are inflated, the asset class isn't alone in having "heightened valuations." Bear Stearn's Tim Ash asserted that most market analysts believe that debt prices are ahead of fundamentals. However, he reminded the audience of the general improvement in Emerging Markets economies in recent years.

Walter Molano (BCP Securities) and moderator Bayliss disagreed with the majority that pricing might be inflated. "The market is still relatively cheap," countered Molano, citing low US rates, a rebound in commodity pricing and several important ratings upgrades "waiting in the wings." Molano affirmed that such positive factors had not yet been priced into the market. Bayliss opined that the market lacked the speculative element that was characteristic of a bubble.

Local Instruments, Equities Recommended

Asked to identify the source of the best returns in 2004, Ash recommended local markets in Latin America based on the weak U.S. dollar, as well as Emerging Markets equities in general. Molano spoke positively on Brazil, Venezuela and Argentina ("the restructuring will go much better than people expect…and the final deal will be much better than the one that is being talked about in the press.") Vera and Segal agreed with Ash in recommending equities (although Segal cautioned that the market could turn bearish in six to eight months). Vera expected outperformance from Turkish, Polish and South African local instruments, as well as from Uruguayan, Venezuelan and Philippine external debt.

London Winter Forum (continued)

Asked for some non-mainstream suggestions, Segal recommended Sudanese paper (for non-US investors), Iraq ("for those who are willing to do their homework and read the documentation"), as well as Jamaica, Uruguay and, in the second half of 2004, the Dominican Republic. Asked whether Iraqi debt will become a commonly traded instrument in the near future, Segal predicted that at least a "handful of investment banks" would start trading Iraqi paper in 2005 or 2006. Segal explained that, while the amount of London Club debt is currently small, eventually bilateral loans, letters of credit and other instruments will become standardized with London Club debt and offer a more liquid instrument.

Bayliss opened the floor to audience questions, and one audience member requested panelist opinions on when the credit derivatives market would surpass the cash market. Bayliss commented that, with the exception of the very liquid Asian credit derivatives market, the cash market would continue to be the larger market, although he acknowledged the strong growth in the derivatives market.

Another attendee solicited panelists' thoughts on potential political surprises in emerging countries in 2004. Molano offered his assessment that the outlook was largely benevolent, with 2004 a generally quiet year in terms of elections (and no major Latin elections until the 2006 contests in Brazil and Mexico). Ash saw getting the "no brainer" Russian presidential election over with as an important step for the country's ratings prospects. Ash voiced his optimism that reformers within the Russian government would be promoted once the election was concluded. Segal warned that a victory in the Dominican Republic presidential election by the market's preferred candidate would probably not "come soon enough to prevent a sovereign debt restructuring." Segal also expressed concerns about the Ukrainian and Serbian elections. Vera pointed out the volatile nature of most Emerging Markets elections, regardless of how hotly contested the vote actually was.

Buy-Side Panel Discusses Argentina, Venezuela

Deutsche Asset Management's Brett Diment led investor panelists through a session that was more focused on the outlook for individual countries while also managing to address several big picture issues.

Foreign and Colonial Management's Robin Hubbard noted that Argentina was "probably cheap," although he conceded that he "wouldn't bet the bank on it." Jerome Booth of Ashmore Investment Management disagreed, "Argentina is not worth anything like current prices." The country remains plagued by century-old structural problems, according to Booth, who also expressed concern that Buenos Aires might be headed toward isolationism. Booth supported an IMF cut-off of the Argentines, fearing an erosion of IMF credibility.

Ingrid Iversen (Insight Investment) also expressed little interest in Argentine debt at current prices. She hypothesized that the government's incentive to complete a restructuring now should be greater than in the future if politicians expect the economic recovery to continue. The longer they wait, she reasoned, the more ability they would appear to have to pay; and thus investors should listen to the politicians as the timing of a deal seems a political rather than economic decision. Finally, Diment argued that there was little downside risk to Argentine debt and that a deal might be facilitated as many creditors purchased the debt at already marked-down prices.

Panelists spoke more in unity on Venezuelan debt, with near unanimity that such instruments were fairly valued. Rob Drijkoningen (ING Investment Management) stood out as the most bullish panelist, calling Venezuela "still relatively cheap." Iversen echoed other panelist comments by remarking that investors are being paid for assuming political risk, but the credit is "not one you can take your eyes off of."

London Winter Forum (continued)

Turkey as a Ponzi Scheme?

As for Turkey, the panel debated whether Turkey was best understood as a classic Ponzi scheme or an attractive EU accession play. Iversen suggested that Turkey's external debt could be classified as a Ponzi scheme, with prices built not on fundamentals but on confidence, technicals and momentum, "and debt prices will be supported as long as those trends continue."

Hubbard disagreed, highlighting Turkey's strong primary surplus, and both he and Diment underscored the strong incentives Ankara has to remain on track for EU accession. Hubbard considered the credit fundamentally expensive and would not be long (or short) at current levels. Booth acknowledged that Turkish debt was one of the riskiest assets he owned. "You have to be very tactical—we look at it very day, it requires a lot of attention." He cautioned, "Sitting on long-term debt is not something I would recommend."

Panelist opinions on the local Hungarian and Polish markets also diverged. Drijkoningen described the markets were interesting but "not for the faint hearted." Iversen reasoned, "yields haven't risen enough to compensate for the fiscal deterioration and market volatility over the last six months or so." Booth saw better value elsewhere, and did not rank Polish or Hungarian domestic instruments as core holdings.

Lukewarm Investor Interest in Credit Derivatives

Diment asked whether Buy-Side speakers considered credit derivatives a useful tool. Hubbard responded that most of his clients do not allow him to trade credit derivatives, and further suggested that Sell-Side firms might underestimate the importance of their own "massive amount of infrastructure" to support credit derivative operations; the Buy-Side's operational abilities were probably more limited. "Tedious and practical considerations" have to be taken into account before an investor starts taking positions, Hubbard stated, and "personally, I'd rather look at doing plain vanilla interest rate swaps either to hedge out Treasury duration or to do local markets" as these would enhance his portfolio, while he wasn't yet convinced credit derivatives offered "fantastic new opportunities that I am missing out on."

Booth's interest in credit derivatives was limited although he acknowledged sporadic use. "We don't buy protection because we like default risk, we like its being mispriced," he explained. Iversen surmised that there would be opportunities for credit derivatives with new clients, although as for existing clients, "the time spent convincing them to broaden their portfolio to include credit derivatives is probably not the best use of an investment manager's time."

Recommendations Vary Widely

Investor recommendations for specific assets to own in 2004 varied greatly, with limited instances of assets getting multiple recommendations. The only asset to receive three "thumbs-up" was Argentina, which Diment, Drijkoningen and Hubbard recommended on a risk-adjusted basis. Diment and Drijkoningen also concurred in encouraging investors to consider Turkish t-bills, and Drijkoningen and Iversen both speculated Dominican debt might offer better-than-average returns.

In addition, Hubbard advised the audience to look at Russia for "steady outperformance, but not spectacular returns." Booth's top selections included Uruguayan external debt; Russian and Turkish local currency debt, and special distressed debt situations in South Korea and China. Iversen recommended South African locals, and Venezuela, and short positions in Turkish external debt, "at some point in the future."

Brazilian local instruments and Ivory Coast hard currency assets were among Drijkoningen's choices. Finally, Diment spoke positively on the "admittedly boring EU conversion stories" of Bulgaria and Romania.

London Winter Forum (continued)

Liquidity Not a Major Obstacle, Inflows Should Remain Strong

The panel was asked for feedback on the liquidity provided by dealers given the buy-side's increased amount of assets under management. Hubbard offered his assessment that, "Liquidity from the street has obviously deteriorated substantially, and the asset manager has to change the way he manages his funds accordingly." Hubbard viewed lower liquidity as "neither good nor bad," and that perhaps most importantly it wouldn't affect the inflows into the asset class. (He speculated that his clients, not wanting to see their portfolios actively traded, might even see limited liquidity as a positive factor.)

Booth concurred that inflows would not be affected, and that although the job of the asset manager is more difficult over the short-term, eventually the liquidity issue would "sort itself out." In a similar vein, Iversen admitted it was "disappointing" that dealers hadn't kept up with client inflows but had no doubts it would eventually increase. "Maybe being forced to take more long-term measured views is not a bad thing for the market," she added. Drijkoningen described it as more of an issue for larger trading accounts than for his firm.

Investor bullishness on inflows into the asset class remained strong. Iversen commented, "A lot of institutional money has yet to even start thinking about EM, and as optimal portfolio analyses are always backwards-looking, the numbers for EM will get better and better." Booth seconded the optimistic outlook. "We are in year two of a five-year trend, inflows are not slowing down at all," he affirmed.

EMTA's annual London Summer Forum will be held on June 21, 2004.

Murillo de Aragao to Speak at EMTA NYC Spring Forum

Noted Noted Brazilian political analyst Murillo de Aragao will deliver a keynote address at EMTA's Fourth Annual Spring Forum on Thursday, April 15, 2004 in New York. Bear Stearns will host the event.

The event will also feature a panel discussion on the prospects for the Emerging Markets. Confirmedpeakers include Tom Cooper (GMO), Joyce Chang (JP Morgan), Karim Abdel-Motaal (Morgan Stanley) and Michael Gagliardi (Trust Company of the Atlantic). A cocktail reception will follow.

Attendance for EMTA Members is complimentary, and invitations were distributed on March 19. There is a $250 registration fee for non-members.

For further information, please contact Jonathan Murno at jmurno@emta.org or (646) 637-9105.

Miscellany (continued)

NDF, Credit Derivatives Surveys Delayed

EMTA's NDF and Credit Derivative Volume Surveys, originally targeted for publication on March 1, 2004, have been delayed.

EMTA is endeavoring to collect data from a number of firms which remains outstanding. We hope that we will be able to release final results shortly, and thank participating firms for all their help in preparing these reports.

Month-End Pricing To End Unless EMTA Sees Greater Interest

EMTA has proposed suspending its month-end pricing report (currently featuring the average bid and ask prices of approximately 120 frequently traded EM instruments), unless market participants indicate greater interest in supporting it. The monthly charge to market participants wishing to receive the month-end pricing report is currently $200. On behalf of EMTA's Board of Directors, Peter Carril (Dresdner Kleinwort Wasserstein) is leading an effort to assess and improve the project's utility. Market participants interested in this product should contact Jonathan Murno at jmurno@emta.org or (646) 637-9105.

EMTA is Your Forum

Questions arise from time to time about EMTA's policies regarding views expressed in items posted on its website or by speakers or panelists at EMTA events.

For the record, EMTA, by long-standing custom, does not necessarily endorse such views. Items posted on EMTA's website and speakers and panelists at EMTA events are selected because EMTA believes that they will be of topical interest to our Members and to the broader market and will contribute to the expression and free exchange of views and information in the marketplace.

At EMTA, we are always interested in getting market feedback on the effectiveness of our website, events and activities generally. Please take the time to let us know whether or not you agree with what you see on our website or hear at one of our events and, most importantly, whether there is more that EMTA should be doing, or doing differently, to better serve the EM marketplace.

Miscellany (continued)

Former EMTA Co-Chair Paul Masco to Retire

The EM debt industry will soon lose one of its giants when Paul Masco, Managing Director at Citigroup, retires in April 2004. Masco began his EM debt career trading Brazil's MYDFA loans in 1988 for Salomon Brothers. Promoted to head trader for the EM debt desk four years later, he remained a leading figure in the development of the asset class.

Low-key, but always effective, Masco served on EMTA's Board from 1993 until 2000, holding the position of Vice Chair for five years, and served as EMTA's NYC Co-Chair in 1999. He continued to play an influential behind-the-scenes role in EMTA even after his resignation from the Board with his valuable advice and suggestions.

In addition to serving on the EMTA Board, Masco has also been involved in industry philanthropic endeavors, including the industry charity, EMPower.

EMTA Website Updates

EMTA recently added some new features to the already informative website. These sections include the Argentina Economic News area located in New Developments. This section highlights the latest economic developments regarding Argentina. Another new area is a Cultural Events section located at Activities & Services. This section serves as a posting board for upcoming cultural events, which may be of particular interest to our Emerging Markets friends, as well as others.

For further information on Argentina, please contact Jonathan Murno at jmurno@emta.org or (646) 637-9105.

If you know of any functions to be added, please contact Suzette Ortiz at sortiz@emta.org or (646) 637-9106. Please take advantage of this opportunity to enhance your EM cultural experience. Click Here to visit the new Cultural Events section. Enjoy!

EMTA Membership Update

EMTA's newest members include **Stark Investments** and **Central Search**. If you are interested in EMTA membership, or if you know of prospective members, please contact Michael M. Chamberlin at mchamb@emta.org or (646) 637-9101, Starla Cohen at scohen@emta.org , Jonathan R. Murno at jmurno@emta.org or (646) 637-9105, or Suzette Ortiz at sortiz@emta.org or (646) 637-9106. Also, in the Membership area of EMTA's website, we offer information about our various membership categories and benefits and about how to join the Association.

EMTA Hotlines

Topic	Contact	Telephone
Argentina	Michael Chamberlin/Aviva Werner	(646) 637-9100/9110
Burden-Sharing/CAC's/SDRM	Michael Chamberlin	(646) 637-9100
Clearing Corp. (EMCC)	Jeffrey Ingber (EMCC)	(212) 855-7630
Corporate Governance	Michael Chamberlin	(646) 637-9100
EM Benefit Events	Jonathan Murno	(646) 637-9105
EM Bond Charts	Michael Chamberlin/Aviva Werner	(646) 637-9100/9110
EM Code of Conduct	Michael Chamberlin	(646) 637-9100
EMTA Code of Conduct	Michael Chamberlin	(646) 637-9100
EMTA Membership	Starla Cohen/Jonathan Murno/ Suzette Ortiz	(646) 637-9100/9105/9106
EMTA Website	Suzette Ortiz	(646) 637-9106
FX/NDFs/Derivatives	Leslie Payton Jacobs/Starla Cohen	(646) 637-9103/9100
Global Equities	Bruce Wolfson (Bear)	(212) 272-2571
Investor Rights	Michael Chamberlin	(646) 637-9100
Legal/Compliance	Aviva Werner	(646) 637-9110
Loan Trading	Aviva Werner	(646) 637-9110
Local Markets	Aviva Werner/Starla Cohen	(646) 637-9110/9100
Market Information/Research	Jonathan Murno	(646) 637-9105
Market Practices	Aviva Werner	(646) 637-9110
Market Price & Volume Data	Jonathan Murno	(646) 637-9105
Multilateral Netting	Aviva Werner	(646) 637-9110
Paris Club	Starla Cohen/Jonathan Murno	(646) 637-9100/9105
Repos/Securities Lending	Aviva Werner	(646) 637-9110
Warrants/VRR's	Aviva Werner	(646) 637-9110

EMTA staff can also be reached through the general telephone number (646) 637-9100, at the following e-mail addresses or through our website.

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Suzette Ortiz	sortiz@emta.org
Leslie Payton Jacobs	lpjacobs@emta.org
Aviva Werner	awerner@emta.org

EMTA Calendar

Thurs., Jan. 1, 2004	Recommended Market Close (NYC/London) New Year's Day
Fri., Jan. 16	Recommended 2:00 p.m. (NYC) Market Close
Mon., Jan. 19	Recommended Market Close (NYC) Martin Luther King Jr. Day Recommended 12:00 Noon (London) Market Close
Thurs., Jan. 29	**London Winter Forum - (2:00 p.m.) J.P. Morgan Chase, 60 Victoria Embankment (London)**
Thurs., Feb. 12	**EMTA Board Meeting (NYC/London)**
Fri., Feb. 13	Recommended 2:00 p.m. (NYC) Market Close
Mon., Feb. 16	Recommended Market Close (NYC) Presidents' Day Recommended 12:00 Noon (London) Market Close
Thurs., April 8	Recommended 2:00 p.m. (NYC) Market Close
Fri., April 9	Recommended Market Close (NYC/London) Good Friday
Mon., April 12	Recommended Market Close (London) Easter Monday
Thurs., April 15	**Spring Forum - (3:15 p.m.) Bear Stearns, 383 Madison Avenue (NYC)**
Mon., May 3	Recommended Market Close (London) May Day Bank Holiday
Thurs., May 6	**EMTA Board Meeting (NYC/London)**
Wed., May 26	Legal and Compliance Group Meeting - 12:00 Noon Global Financial Markets Conference Center 360 Madison Avenue, 18th Floor (NYC)
Fri., May 28	Recommended 2:00 p.m. (NYC) Market Close
Mon., May 31	Recommended Market Close (NYC/London) Memorial Day/Spring Bank Holidays
Mon., June 21*	**London Summer Forum**
Fri., July 2	Recommended 2:00 p.m. (NYC) Market Close
Mon., July 5	Recommended Market Close (NYC) Independence Day Recommended 12:00 Noon (London) Market Close
Wed., July 14	Legal and Compliance Group Meeting - 12:00 Noon Global Financial Markets Conference Center 360 Madison Avenue, 18th Floor (NYC)

* **Details TBA**

Calendar (continued)

Thurs., July 22	**EMTA Board Meeting (NYC/London)**
Mon., Aug. 30	Recommended Market Close (London) Summer Bank Holiday
Fri., Sept. 3	Recommended 2:00 p.m. (NYC) Market Close
Mon., Sept. 6	Recommended Market Close (NYC) Labor Day Recommended 12:00 Noon (London) Market Close
October*	**Fall Forum (NYC)**
October*	**2004 Emerging Markets Benefit Charity Ball (London)**
Oct./Nov.*	**EMTA Board Meeting (NYC/London)**
Fri., Oct. 8	Recommended 2:00 p.m. (NYC) Market Close
Mon., Oct. 11	Recommended Market Close (NYC) Columbus Day Recommended 12:00 Noon (London) Market Close
Thurs., Nov. 11	Recommended Market Close (NYC) Veterans Day Recommended 12:00 Noon (London) Market Close
Wed., Nov. 24	Recommended 2:00 p.m. (NYC) Market Close
Thurs., Nov. 25	Recommended Market Close (NYC) Thanksgiving Day Recommended 12:00 Noon (London) Market Close
Fri., Nov. 26	Recommended 2:00 p.m. (NYC) Market Close
Thurs., Dec. 2*	**EMTA Annual Meeting** **2004 Emerging Markets Benefit (NYC)**
Thurs., Dec. 23	Recommended 2:00 p.m. (NYC) Market Close
Fri., Dec 24	Recommended Market Close (NYC/London) Christmas Day
Mon., Dec. 27	Recommended Market Close (London) Boxing Day
Fri., Dec. 31	Recommended 2:00 p.m. (NYC) Market Close

* Details TBA

The Pari Passu Clause – What is Fair Treatment?*

A very brief provision known as the pari passu clause, long buried in many, if not most, Emerging Markets sovereign credits, has become very visible in recent months.** Unfortunately, with greater visibility it has become apparent that many market participants (and commentators who really should know better) have forgotten (or perhaps never knew) what the typical pari passu clause was intended to mean. Recently heard views are wide-ranging, with some apparently believing that it means nothing at all and others asserting that it requires, as a matter of contract, that sovereign debtors (or at least those in or nearing default) make debt payments at all times pro rata to all of their creditors.

As background, in the U.S., bankruptcy or other insolvency laws generally seek to prevent a troubled debtor from favoring one creditor to the detriment of another or from favoring one class of creditors over others of greater or equal ranking. These laws generally do not apply to foreign sovereigns, and the lack of a mandatory sovereign insolvency regime deprives sovereigns and their creditors of comparable statutory protection against one creditor or class of creditors being favored over another.

Of course, it is easy to see why a sovereign debtor might want to allocate its limited foreign currency reserves to favor one creditor or class of creditors over others. Trade creditors facilitate the debtor's various on-going commercial and governmental operations and preserve their viability, and therefore may present a good case for favored treatment. In addition to trade creditors, a sovereign debtor may wish to avoid undue interference with secured creditors or providers of project financing and thereby approximate a domestic bankruptcy regime-type hierarchy which preserves their contractual priority. A sovereign debtor may also wish, for various reasons, to maintain good relations with certain other credit providers, such as official sector lenders. Finally, there may be other circumstances where certain creditors seem appropriate candidates for more favorable treatment than others, perhaps due to their de minimis size or some other inherent characteristic of the financing they have provided and could provide in the future.

In some or all of these cases, it may be perceived that favoring one creditor or class of creditors helps, or hurts, other creditors, depending upon any number of factors, including the debtor's circumstances. As is the case with beauty, much depends on the beholder's particular point of view.

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* The views expressed herein are personal views only of Michael M. Chamberlin, EMTA's Executive Director, and do not necessarily reflect the views of EMTA or of any of its Members.

** As an example, the typical EM sovereign bond contains a pari passu clause that provides essentially as follows: The Bonds rank, and will rank, at least pari passu (or 'equally') in priority of payment [and in all other respects] with the debtor's other external debt.

The 1980's Architecture of Priorities

As part of the massive sovereign restructuring effort of the 1980's, many of these 'favored' categories were specifically excluded from restructuring by contract, through a process of negotiation between sovereigns and their bank advisory committees. Various categories were established or limited by operation of complex mandatory prepayment covenants in the commercial bank new money and restructuring agreements that protected debtors and bank creditors alike and deterred certain forms of "favoritism" by requiring that the sovereign debtor prepay signatory bank creditors pursuant to some agreed formula in the event that other specified credits were repaid, prepaid or paid on a basis more favorable than the bank creditors. This type of protection, essentially implemented by means of prepayment disincentives rather than by outright prohibition, was designed in part to avoid concerns about possible claims of tortious interference with the contract rights of affected creditors and came in many different formulations.

A proper understanding of the pari passu clause, as it was used in the 1980's bank credits, and also in the Brady bonds, requires that it be read in the context of these Excluded Debt categories and mandatory prepayment provisions.

Unfortunately, the somewhat complex architecture of priorities that was painstakingly negotiated in the 1980's faded away as those bank credits were refinanced into Brady bonds, which were believed at the time not to require comparable prepayment protections. Now, over a decade (and several defaults) later, it seems clear that the 1980's system of Excluded Debt categories and mandatory prepayment provisions, and the assumptions on which they were based, are outdated at least in part and need to be revisited. In their absence, there is little (if any) legal restriction on a sovereign debtor's ability to favor one creditor over another, unless the pari passu clause is now interpreted to perform complicated functions that were formerly provided by the heavily negotiated Excluded Debt categories and mandatory prepayment provisions.

The resulting lack of certainty about who a sovereign debtor with limited foreign currency reserves will or will not choose to pay understandably leaves some creditors feeling that the value of their defaulted debt claims is relatively unprotected and more or less subject to the complete discretion of their sovereign debtor.

A Judgment Creditor Goes to Brussels

The formerly obscure pari passu clause first acquired its recent visibility (some might say notoriety) in 2000 when plaintiff in the Elliott v. Peru litigation persuaded a Brussels tribunal ex parte to interpret the clause (as it was used in an old defaulted bank credit) broadly so as to block payment through the Euroclear system on Peru's other debt until plaintiff's NY judgment against Peru was satisfied. Faced with the impending disruption of payments on its outstanding bonds (and perhaps for other, unrelated, reasons as well), Peru quickly settled at par (plus accrued interest and legal expenses). As a result, the Brussels interpretation was never fully contested or resolved, but shock waves soon spread beyond Belgium in the form of a vigorous debate among market participants (and their lawyers), as well as official sector

representatives, as to the proper meaning of the clause and the policy implications of the broader interpretation.

The Basic Legal and Policy Arguments

Proponents of the broader interpretation (notably some prominent creditors) have argued that it is unfair to permit sovereign debtors unlimited flexibility to favor one creditor over another while in default and that the pari passu clause lacks meaning unless it addresses this inequity by contractually requiring debtors to make their debt payments pro rata among their creditors. Judgment creditors have found the broader interpretation particularly attractive, in that the breadth and ease of an injunction based on the clause, as compared with the more traditional remedy of attachment, would potentially give them much greater leverage in enforcing their claims against sovereign debtors.

Proponents of a narrower interpretation (most everyone else) argue, among other things, that the typical clause's use of the term 'rank' evidences that its intended effect is only to prevent effective subordination of a bond (legislatively or through earmarking of particular revenues) and that the clause was never intended to restrict the sovereign debtor's flexibility in making voluntary payments.

Policymakers in particular have expressed their concerns that the broader interpretation unduly strengthens the potential position of holdout creditors and thereby jeopardizes the sovereign debt restructuring process. Creditors have tended to split on the policy implications of the broader interpretation, some favoring its advantages from the standpoint of an individual creditor's rights and others apparently viewing the question more from the perspective of a majority creditor that consents to a restructuring that could be disrupted by potential holdouts.

Lost in the cacophony (as well as liberal axe-grinding and much nonsense) of recent debate and litigation over the meaning of the pari passu clause has been a sensible and informed discussion of, laying the clause itself aside for the moment, what limits, if any, should apply as a matter of good policy, to a defaulted sovereign debtor's discretion to favor one creditor, or class of creditors, over another, and how should any such limits be applied.

Recent Legal Developments

There have been several significant legal developments regarding this pari passu saga within the past several months.

Brussels Redux. In a sign that the ex parte ruling in the Elliott v. Peru case was not a simple fluke, another Brussels tribunal ruled preliminarily in September 2003 that, notwithstanding a growing level of credible legal commentary to the contrary, it would apply the broader interpretation of the pari passu clause in a proceeding brought by LNC Investments to collect an outstanding judgment against Nicaragua.

New York. In view of the growing uncertainty caused by the Brussels interpretation, in late 2003 Argentina sought a declaratory judgment from the federal district court for the Southern

District of New York to the effect that several of its judgment creditors in pending cases there (including EM Ltd. and Macrotechnic Corp.) should not be permitted to use the broader interpretation of the pari passu clause to enforce their judgments by preventing Argentina from making payments to its other creditors (such as the IMF). Plaintiffs countered (among other things) that, because they had not sought (and did not intend to seek) such enforcement relief, Argentina's request was premature and did not then present a justiciable issue appropriate for the court to decide.

In late January 2004, plaintiffs ultimately prevailed on their procedural argument, but not before the proceeding had provoked amicus curiae filings from the US government, the Federal Reserve Bank of New York, the New York Clearing House Ass'n and the Emerging Markets Creditors Association (EMCA). In addition to supporting the narrow interpretation as a matter of contract law and market custom, the US government, FRBNY and the NYCH argued that the broader interpretation would threaten the orderly functioning of the payment and securities settlement systems, undermine the consensual process of restructuring sovereign debt and interfere with the ability of sovereign debtors to service their debts to the IMF and other international financial institutions.

In their submission, EMCA supported plaintiffs' procedural view that the issue of the proper interpretation of the pari passu clause did not present a justiciable controversy, but also stated more substantively that the narrow interpretation of the clause advanced by Argentina did not reflect the diversity of views existing in the marketplace and in fact, contrary to the views expressed by the U.S. government and by the FRBNY, would jeopardize the sovereign debt restructuring process and undermine confidence generally in Emerging Markets finance.

Ultimately, the Southern District court declined to rule on the merits of Argentina's motion and, in effect, determined that the issue of the proper meaning of the pari passu clause was not ripe for the court to decide (in part because plaintiffs had agreed to give ample prior notice of any future enforcement proceeding).*

Back to Brussels. Meanwhile, back in Brussels, in mid-March 2004 an appellate court vacated the Brussels tribunal's Nicaraguan ruling (also without discussing or deciding the pari passu issue on its merits), finding that the lower tribunal's ruling improperly imposed an obligation on Euroclear to help enforce Nicaragua's payment obligation to LNC. So, although this latest decision in Brussels has not provided any greater clarity about the contractual meaning of the pari passu clause, it does appear to have put to rest for the time being the question of whether the broader interpretation of the clause can be used by judgment creditors to enforce their claims by means of injunctions against payments made through Euroclear. If nothing else, this must certainly be a great relief to Euroclear.

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* What the court may or may not have thought is that most of the acted policy arguments advanced by amici, and by the litigants themselves, were typically histrionic, as if Chicken Little acted of counsel to all parties.

Now What?

Although the latest words from Brussels probably ease the fears of policymakers about the worst mischief that could potentially come from the broader interpretation, it does little, if anything, to address the broader policy question of what can or should be done in response to creditor concerns that sovereign debtors in default have too much flexibility under the current architecture to pay certain of their creditors, while unfairly withholding payments from others.

Assuming for the time being that the barebones pari passu clause is ill-suited to accommodate the complexity of the broader policy question* (or alternatively, and perhaps more simply, that litigation is not the optimal way to let policy develop) and that it is neither possible nor desirable to just revert to the 1980's architecture, what are some of possible alternatives going forward for achieving an acceptable meeting of the minds among debtors, creditors and policymakers on this question of sovereign payment priorities? Two come quickest to mind.

The first is the possibility that the current debate somehow leads to negotiation of a new bond clause that helps order debt payments under appropriate circumstances. As effective as such a clause might be, the dynamics of most bond issues, at least the voluntary ones, do not lend themselves readily to such negotiations. Some trade association modeling might be helpful here (as it may have been in the development of CAC's in early 2003), but it seems most likely that the only way that such negotiations would occur is in the context of a restructuring.

A second possibility is that a code of conduct or of best practices could help provide some guidance for the benefit of debtors and creditors alike. Of course, any such code would presumably be non-binding, which might have advantages as well as disadvantages, and, while possibly worthwhile in the long run, would be likely to involve an inefficient and highly political process.

While the subject matter is ripe for discussion and deserves some resolution, neither of these two possibilities is particularly attractive. Perhaps there are others. Meanwhile, however, creditors are left feeling somewhat unhappy, especially when, as now, this aspect of EM finance is being viewed through an Argentine prism. And few can feel entirely comfortable with the notion that, absent some negotiated clause or publicly developed code, the next new development in this area is likely to appear either in a legal opinion from god-only-knows-where or somewhere on the IMF website.

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* See, e.g., Michael M. Chamberlin, "A Casual Observer's Commentary on the Taylor Proposal and EMCA's Model Covenants for New Sovereign Debt Issues" (August 9, 2002), available on EMTA's website in the Key Industry Views area (http://emta.org/ndevelop/modcovc3.pdf).