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EMTA @ 25
(1990-2015)

Trade Association for the Emerging Markets
www.emta.org

Table of Contents

EMTA's 25th Anniversary

After a year or more of informal meetings (mostly organized by Peter Geraghty) to discuss the impending restructurings by first Mexico and then Venezuela under the Brady Plan (which culminated in the development of confirmation forms for spot trades), the traders of what was then known as LDC debt, with some encouragement from banking regulators (notably Gerry Corrigan), decided to organize themselves as a trade association to promote greater efficiency, transparency and professionalism in their trading market. The resulting LDC Debt Traders Association was formed by representatives of eleven firms on December 11, 1990 (within two years its name was changed to the much hipper Emerging Markets Traders Association). The new Association's first Board of Directors (chaired by Nick Rohatyn) was composed of the following:

Nicolas Rohatyn (Morgan Guaranty Trust)
Peter Geraghty (NMB Bank)
Kathy Galbraith (Chase Manhattan)
Stephen Dizard (Salomon Brothers)
Alex Rodzianko (Manufacturers Hanover Trust)
Peter Drittel (Bear Stearns)
Manuel Mejia-Aoun (Merrill Lynch)
Rick Haller (Morgan Grenfell)
Hugo Verdegaal (Citibank)
Neil Allen (Bankers Trust)
Robert Trisciuzzi (Bank of Tokyo)

Just a quick glance at their firm affiliations gives a good indication of some of the many changes that have occurred in the financial industry over the past 25 years.

By 1993, EMTA's Volume Survey showed that market trading volumes had increased over ten-fold, NAFTA had been signed and EMTA had issued its Code of Conduct and first when-issued trading forms (for Brazil).

The first decade of EMTA's existence was characterized by the development of many market practices (who can forget Kathy Galbraith's definitive declarations that consensus had been reached?), standard documentation for trading loans, bonds and options, and trading infrastructure (including a matching service and clearing corporation) to keep pace with the rapid growth of the trading markets, followed by the speed bump of the Tequila Crisis and then a severe contraction in the EM debt industry in the wake of the Asian and Russian debt crises of 1997-98.

From a market standpoint, EMTA's second decade was much less of a roller-coaster and, despite notable defaults (and restructurings) in Ecuador and Argentina, saw Mexico, Brazil and Russia (among others) achieve investment grade ratings. Official reserves waxed and original sin waned. Much about the Emerging Markets debt trading industry mainstreamed, and if EMTA had been formed in 2010, its name might be the even hipper Frontier Markets Traders Association. Trading volumes recovered strongly, and the influence of credit and FX derivatives grew, throughout the early years of the 21st Century. Then, in what might have been unthinkable a decade earlier, contagion washed across Europe, much in the way it did across LatAm in the 1980's and 1990's, and EM eventually became, at least for a time, a global safe haven for capital.

The last few years have seen reduced market liquidity, accompanied by increased volatility throughout the trading markets (not just in EM), continued drama regarding Argentina, Venezuela and Russia, conflict in the Middle East and concerns about the role of China in the world economy. The Emerging Markets have seen great progress in so many respects, have been buoyed by quantitative easing and massive capital flows, and more recently have been whipsawed by the effects of falling commodity prices, tapering and impending tightening.

As good as the past 15 years or so have been in so many respects, few will ever forget the painful memories of September 2001, and EMTA joins the EM marketplace in mourning the loss of colleagues then, and some more recently.

EMTA's 25th Year - A Look Back to:

EMTA's Beginnings

by Bruce Wolfson,
General Counsel of Jaguar Growth Partners
and Former EMTA Director

[EMTA was formally incorporated in December 1990. To help mark EMTA's 25th anniversary, EMTA's Bulletin is featuring a series reprinting articles on the early periods of EMTA's history. This issue contains Bruce Wolfson's nearly 'prehistoric' recollections of the informal meetings in the late 1980's that eventually led a group of leading Emerging Markets (then LDC!) debt traders to establish an industry trade association.

Bruce has been a leading EM lawyer and aficionado since the early 1980's, chaired EMTA's first Documentation Committee and has served as an EMTA Director on behalf of several firms off and on since 1994. These recollections of EMTA's beginnings were first published in 2000, when Bruce was a Senior Managing Director at Bear Stearns.]

Not long after the first restructurings for Latin American debt were agreed in December 1982, the first loan trades were consummated. At first, the trades were for the limited purpose of allowing lenders to reallocate their portfolios of sovereign credits. Trades (called 'ratio' or 'cocktail' swaps) were structured as exchanges of assets, avoiding any mention of prices that might force the parties to adjust the value of billions of dollars of similar credits still on their books.

A few years later, provisions allowing creditors to exchange sovereign debt for equity or other assets were introduced into the new restructuring agreements. This brought added impetus to the trading markets, as prospective investors became purchasers of restructured debt. Financial institutions representing such investors often accumulated debt to be used in debt/equity and other swaps.

The restructuring process continued in Latin America throughout the 1980's and then spread to other Emerging Markets around the world. The first round of restructuring was succeeded by others, vastly increasing the supply of tradable loans. When Citibank established a significant reserve against its LDC debt in the spring of 1987, most other major lenders followed. Sales for cash by some lenders to generate tax losses occurred in late 1987, and throughout 1988 the cash market further developed. Loan trading volumes soared, heralding the creation of a new trading asset class and bringing considerable attention to this young industry.

Unfortunately, not all of the attention was favorable. Press coverage of the trading industry (as well as coverage of bank debt negotiations) was somewhat hostile, and market rumors abounded. Banking regulators had begun to express their concerns that sovereign loan trading resembled a 'Wild West Show'.

As book values of loans became more realistic, it became harder to get commercial banks to make the new money loans required under the Baker Plan. At the same time, public concerns were growing about the ability of sovereign borrowers to repay loans, and about the cost to the countries of doing so. Mexico's Aztec Bonds in 1988 represented one of the early efforts by a debtor country to 'capture the discount' that the trading markets had made plain to all.

Against this backdrop, U.S. Treasury Secretary Nicholas Brady delivered an address at Bretton Woods in March 1989 proposing partial forgiveness of LDC debt in exchange for collateralized instruments that would be easier to trade. Mexico's negotiations began the next month, resulting in a deal by July and a term sheet in September. The deal was set to close in March 1990.

There were many significant aspects of the so-called "Brady Plan". Principal maturities were to be extended to thirty years. Debt relief was provided by means of a reduction in principal (in the case of Mexico, by 35%) or interest (in Mexico's case, to 6.25% fixed). The U.S. Treasury sold borrowers zero-coupon bonds to be used as principal collateral. Interest was to be partially collateralized as well. Oil warrants, called Value Recovery Rights, were issued to Mexico's creditors, and Venezuela, Uruguay, Nigeria and Costa Rica issued similar instruments. Perhaps most importantly for purposes of this article, loans were to be exchanged for bonds in a variety of series and currencies, all of which were designed to be instruments capable of trading freely in the secondary markets.

From the term sheet, Brady Bonds looked like they would be complicated trading instruments, and the trading community pondered the approaching deadline for their creation. For years, Emerging Markets trading desks had devoted enormous amounts of time and money to preparing, negotiating and executing loan trading documentation on a trade-by-trade basis. Although a small group of commercial banks had worked out confirmation forms for the Aztec Bonds, there were no other standard documents or market practices, and loan trades routinely took weeks to settle. Most of the major players were commercial banks or former commercial bankers with just enough experience in bond trading to know that individually negotiated documentation and delayed settlements would not work for Brady Bonds.

A few traders had long harbored hopes of creating a trade association to bring greater efficiency and transparency to the markets. The advent of the Brady Plan, along with the added regulatory focus on the growing loan trading business, made the moment ripe. One afternoon in late 1989, Peter Geraghty, then head of the LDC debt trading business at NMB, invited a few of his colleagues around the Street to discuss procedures for trading Brady Bonds.

The urgent need to develop standard documents for trading Brady Bonds was recognized by all, but most firms were hesitant to confer any authority to enforce their use or define market practices. As the meeting adjourned, a small group of lawyers was formed to prepare draft confirmations, but no decision to form a trade association was taken.

In the weeks and months that followed, Peter Geraghty continued to lobby his colleagues to form a trade association to bring greater order and efficiency to the markets. Nick Rohatyn of JP Morgan argued that industry standards had to be above reproach and that such an association could address concerns of regulators that LDC loan trading was in need of increased regulation. As the effort to create standard bond confirmations proceeded, the firms seemed to grow more comfortable with the idea of working together under the auspices of a trade association. In due course, trade confirmation forms for Mexico's Brady Bonds were completed and put into use.

The first issuance of Brady Bonds [March 1990] gave further fuel to the market's growth and development. Before long, the first broker's screens were introduced. If LDC debt trading was still a club, its membership was growing.

As interest in a trade association grew, many of the fears remained. There was widespread agreement on the wisdom of developing standard documentation that counterparties could use to facilitate settlement. There was also significant support for publishing standard market practices that would govern all trades unless the parties otherwise agreed. On the other hand, there was no appetite for a self-regulatory organization. Participation in the new trade group, provisionally called the LDC Debt Traders Association, was to be wholly voluntary. There was to be no authority to require members to use standard documents or to follow published market practices. The Association was to act only on matters as to which a broad consensus could be reached.

Thus, the decision was made to form the association that is today the Emerging Markets Traders Association. The eleven original Directors, which included a number of the traders who had attended the early Aztec and Brady Bond meetings, were Rick Haller of Morgan Grenfell, Kathy Galbraith of The Chase Manhattan Bank, Nick Rohatyn of JP Morgan, Peter Geraghty of NMB, Alex Rodzianko of Manufacturers Hanover, Peter Drittel of Bear, Stearns, Manuel Mejia-Aoun of Merrill Lynch, Steve Dizard of Salomon Brothers, Hugo Verdegaal of Citibank, Neil Allen of Bankers Trust, and Robert Trisciuzzi of Bank of Tokyo. Nick Rohatyn served as the first Chair and later contributed EMTA's first offices and Executive Director — Tom Winslade, a JP Morgan attorney, who was seconded to EMTA full-time from June 1992 through 1993. Following a 'beauty contest', Michael Chamberlin of Shearman & Sterling was named outside legal counsel in late 1990 and was charged with incorporating the Association.

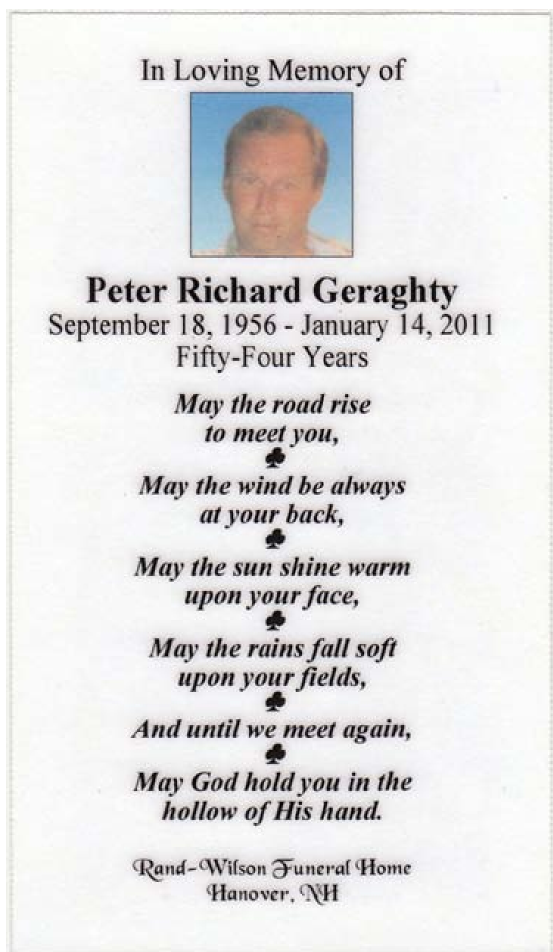
In December 1990, the LDC Debt Traders Association was formally incorporated. What began the 1980's as a few heavily negotiated asset swaps greeted the 1990's as a major industry. The subsequent years have been challenging for EMTA, and for the business it represents. But through the many highs and lows, there can be little doubt that the efforts of those who met in that conference room at NMB just over a decade ago have contributed more to the stability and transparency of the Emerging Markets than even they could have imagined.

A postscript: Sadly, Peter Geraghty passed away in 2011, but he is fondly remembered by everyone in EM trading and investment who knew him. Please see his EMTA memorial here.

In Memoriam

Peter R. Geraghty
Forum Advisors
An EMTA Founder and Former Co-Chair
Long-Time EMTA Director on behalf of
NMB, ING, Darby and Dresdner Kleinwort

Peter Geraghty was among EM debt trading's pioneers, one of EMTA's founding fathers and a former EMTA Co-Chair. A close personal friend of many in the markets and well-respected by all as a trader and a visionary, Peter was a consistent advocate of the high road and coined the memorable phrase that the Emerging Markets are a "state of mind". Peter's memorial mass was celebrated in Hanover, NH on Friday, January 21, 2011, and we extend our deepest sympathy to his wife Norah, their six sons and other family members. To know Peter was to love him.



Peter Richard Geraghty
January 14, 2011

Peter Richard Geraghty, 54, of Etna, NH, died Friday, January 14, of a heart attack while skiing with his boys at Sugarloaf Mountain in Maine.

He was born in Baltimore, Maryland, the son of Patrick Joseph Geraghty Jr. and Jane Morrill Geraghty.

Peter had a distinguished career in banking, most recently with Forum Advisors in NYC. He was an emerging markets specialist and licensed trader. He spent his career in the US and Europe, with Bank of Boston, Citicorp Investment Bank, NMB Bank, NMB/Postbank, ING Group (President of ING US Securities and ING US Capital; Executive Committee ING Barings), Darby Overseas Investment (with Nick Brady, former Sec. of the Treasury).

He attended Lehigh University, Thunderbird International Business School and the College of Europe in Belgium.

As a recent member of the Hanover community he was very actively involved with, and a strong supporter of, the school lacrosse and football programs. In the last year, he was helping to put together a local junior lacrosse team with the aim of making the Hanover junior program more competitive in the sport.

Peter is survived by his wife Norah of 30 years; six sons: Ciaran of Woodstock, Vermont; Brendan and Danny, both active Marines; Charlie (17); Teddy (15) and George (12); his mother Jane of Maryland; his brother Scott and sister Kathy, his nieces Paige, Colleen and Marciana; his nephews Nick and Alex.

Peter was universally regarded by his many, many friends and colleagues as a force of nature. He was generous to a fault and his lived his life as fully as could be done. He was a devoted husband to his wife and father to his six boys. Whether football or lacrosse, hiking or boating Peter was there for twice as long as everyone else and always with his boys. His personal accolades meant nothing to him, he always wanted to be with his family and encouraged his boys in good times and in bad to always do the right thing.

He has two sons who serve in the US Marine Corps, both are veterans and he was enormously proud of their service. He loved having an older son living close by and they would often hike with their dogs and ski together. He still spent most of his time with his three sons who are still at home, devoting himself to their lacrosse and snow-boarding schedules, laughing with them on their long trips and mentoring them always.

Peter was always drawn to the sea. He was an avid boater who spent countless summers at their home on Cape Cod surrounded by Norah, the boys, and their many friends. Everyone will always remember the gatherings and of course the robust discussions on politics, finance or the events of the day that he enjoyed so much. These were always very festive times providing opportunities for all to catch up outside of the hustle and bustle of everyday life and a time to make new friendships from the diversity around the table. He loved to fish and serve up big fish dinners to the crowd. Their son Brendan was married there and their happy, lively house was again filled with friends and visitors.

Peter and Norah met when they were eighteen years old. They traveled back and forth between the US and England as students, married in England and finally settled in Boston, where Peter began his credit training, followed immediately by a move to New York. They have moved many times since, always with a new baby and spent five years in England where the older boys grew up. They then moved to Virginia where they spent ten wonderful years with close family and friends until they decided to make a lifestyle change and move to Hanover where they also had close friends. Peter continued to commute to New York several days a week but lived for the day he could drive home to his family and the work on his property. When Norah first saw it, she thought the house looked as though it were sitting in the Palm of God's Hand, an old Irish saying. We pray that Peter is in the Palm of His Hand.

Visitation will be held on Thursday, January 20, 2011 from 6:00-9:00 PM at the Rand-Wilson Funeral Home on School Street in Hanover.

Services will be held at Saint Denis Catholic Church at 11 am on Friday, January 21 followed by a private burial.

Contributions may be made in his memory to the American Diabetes Association.

Click Here To View Condolence Messages

Rand - Wilson Funeral Home
11 1/2 School Street
Hanover, NH 03755
603-643-2552

Driving Directions

EMTA's Early Years (1992 and 1993): EMTA Emerges as an Independent Trade Association for the Emerging Markets Trading Industry
by Thomas Winslade*

[From its formation until the end of 1993, Tom served on secondment from J.P. Morgan as EMTA's first Executive Director, guiding EMTA's growing agenda of activities and building EMTA's credibility as an effective industry forum.

After beginning his legal career at Shearman & Sterling (where his assignments included several years in S&S's London office), Tom joined J.P. Morgan, eventually working with Nick Rohatyn as J.P. Morgan's internal lawyer for the EM trading area. Most recently, Tom worked for Bank of America in the Far East.]

1992 and 1993 was a visionary period for EMTA, as it developed into an established, independent trade association for the Emerging Markets trading industry. Led by a public board of directors of leading professionals in the industry and chaired by Nicolas Rohatyn from J.P. Morgan, the industry leaders took the initiative to promote the development of the Emerging Markets trading industry, as described by Mr. Rohatyn at EMTA's 1992 annual meeting…"to show leadership, and to ensure that our market continues to develop in an orderly and responsible manner, consistent with applicable laws and high standards of integrity, open to all participants, promoting growth in the capital markets, and increasing transparency in the marketplace". This effort coincided with a profound transformation in Emerging Markets trading, from a market for trading commercial loans of Emerging Markets obligors to a broadening and recognized market for Emerging Markets securities and related derivatives. EMTA's Board of Directors and rapidly growing number of member firms (more than 100 by the end of 1993) recognized that this presented an unusual opportunity for industry leadership.

In 1992 and 1993, EMTA's Board of Directors developed and implemented a strategy to pursue five major industry goals: continuing development of consistent market practices and standard trading documentation; establishment of a Code of Conduct; creating an on-going forum for industry issues; advancing market transparency; and providing leadership for industry advocacy. This effort culminated in the formation of EMTA's independent staff and headquarters in 1994.

Market Practices and Standard Documentation. Documentation and market practices were the core of EMTA's activities in 1992 and 1993. For documentation, EMTA's standard procedure was to prepare a detailed set of confirmation forms and related papers for the most frequently traded Emerging Markets instruments, together with explanatory material, and to distribute these widely to its members and other firms in the industry and hold a series of open meetings to answer questions and provide more details.

Major documentation efforts in 1992 and 1993 included documentation for trading Brady bonds for Argentina, Brazil and Venezuela and related instruments. During this time, EMTA also continued to lead the development, adoption and distribution of voluntary industry market practices. A group of market professionals engaged in trading specific instruments would meet initially to identify the need for fair and transparent practices for those products, the proposed practice was then drafted and distributed for comment throughout the industry, subsequently adopted in final form by the EMTA Board, and then explained in open meetings and distributed to the industry and to the press. In 1992 and 1993, EMTA developed and issued a wide range of

* Mr. Winslade would like to thank J.P. Morgan, and especially Nick Rohatyn and Diane Genova, for their generous commitment and support throughout his tenure as EMTA's first Executive Director.

market practices for Emerging Markets instruments relating to Mexico, Argentina, Brazil, Venezuela, Eastern Europe, and for less widely traded instruments, usually relating to other Latin American countries. Long-time market participants will remember how many of EMTA's early meetings to develop and adopt market practices were chaired by Chase's Kathy Galbraith ("I think this should be the market practice...anyone disagree?").

Code of Conduct. One of EMTA's most significant initiatives in 1992 and 1993 was the development of a Code of Conduct for the industry. EMTA's Board of Directors determined that a voluntary industry code of conduct would not only respond to many of the concerns expressed by industry regulators but would promote the integrity and credibility of the industry. An EMTA working group developed and drafted the Code in 1992. Progress was slow, but steady, as many controversial issues were tackled by traders and lawyers. In 1993 the resulting Code was adopted by the Board of Directors, distributed to EMTA's membership, financial regulators and the press, and was the focus of a series of seminars and presentations during that year. The Code has two major components; broad industry standards, and more detailed trading principles for specific financial instruments. The industry can be justifiably proud that individual firms put aside their differences and achieved consensus on a Code of Conduct that was widely accepted by market participants and drew quiet approval from industry regulators and observers.

Market Transparency and the EMTA Volume Survey. Promoting transparency in the Emerging Markets trading industry was a major objective of the EMTA Board of Directors in 1992 and 1993. Although many of EMTA's activities (its market practices, its open meetings, many of the provisions of its Code of Conduct) are consistent with and provide greater transparency, in 1992 EMTA commenced a major initia¬tive, the first of its periodic volume surveys of trading volumes for Emerging Markets instruments, directly designed to promote market transparency. The initial survey, covering Emerging Markets trading during calendar year 1992, took a number of months to prepare and was tremendously welcomed in the industry and the press. 58 major firms participated in the initial survey, a substantial majority of the active participants in the industry at that time. The results were astounding and highly revealing of the extent and depth of Emerging Markets trading. Total volume of Emerging Markets assets traded in 1992 was US$733 billion, relatively small in the context of trading volumes in the 21st century, but at that time the equivalent of Brazil's GDP. Since the initial survey, EMTA's volume surveys have expanded and continue to be a leading source of information for Emerging Markets trading.

EMTA 1994-98: The Golden Age of EM Debt Trading?

[Formerly a Partner at Shearman & Sterling with a law practice split between public and private sector Latin American debt restructurings and capital market transactions, Michael Chamberlin led Shearman & Sterling's representation of the international banking community in Mexico's Brady Bond restructuring and worked on many financings, refinancings and debt swaps in the 1980's and early 1990's. He became EMTA's principal outside legal counsel in 1990 and its Executive Director in early 1994.]

By Michael M. Chamberlin
EMTA Executive Director

The EMTA that I joined over the Christmas Holidays in late 1993 (tucked away in an unused corner of JP Morgan's rabbit warren at 37 Wall Street) could not have been more different in size or scope of activities from the one that existed by the time of the Russian debt debacle in August 1998. The rapid evolution in EMTA's agenda and staffing mirrored the substantial changes that occurred throughout the Emerging Markets and the EM debt marketplace in the mid-1990's.

Forum for Industry Issues. Another of EMTA's major strategic goals in 1992 and 1993 was to establish an open forum for industry issues. EMTA launched a major expansion of its practice of having open "town hall" meetings for its members, and started a series of industry working groups, industry lunches and speaker presentations, both in New York and London. These groups, based on the Board of Directors' concept of EMTA as a "working democracy" of its member firms, served to raise relevant issues for the industry to consider, as well as produce much of the flow of market practices and other materials. A highlight was the EMTA 1992 annual meeting, where Domingo Cavallo addressed several hundred members of the industry and the broad financial press to review the details of Argentina's Brady plan.

Industry Advocacy. The fifth major initiative for EMTA during 1992 and 1993 was to act as an industry advocate for important industry issues. The volume survey and statistics from EMTA's member firms showed that the Emerging Markets trading industry had grown exponentially since the late 1980's, and had created thousands of jobs, both in the United States and abroad, reaching the point where a trade association could be an effective industry advocate. EMTA's efforts as an advocate began in 1992 with EMTA informally participating in the Emerging Markets debt restructuring process, providing input to the creditor steering committees in creating tradable and more liquid debt securities in the Brady debt exchanges. In 1992, EMTA also assisted in issues such as obtaining licenses permitting expanded trading of Yugoslavian instruments, and a proposal to the U.S. Treasury Department for relief from some of the onerous compliance requirements under TEFRA. In late 1992, EMTA also started an ongoing press relations program, involving press releases, interviews with both the industry press and the broader financial media, and a series of articles and presentations. EMTA's advocacy efforts expanded in 1993 with briefings to government agencies such as the Federal Reserve System and the Comptroller of the Currency, and culminated with EMTA's active participation in the multi-industry effort to ensure passage of NAFTA, the landmark free trade agreement between the United States and Mexico.

Independent Headquarters and Staff. Early in 1992, it became clear that EMTA's aggressive industry strategy required full-time support. With Nick Rohatyn as EMTA's chair for those two years, J.P. Morgan seconded Tom Winslade to work full-time as the first Executive Director of

EMTA, initially with a staff of only two. EMTA's staff grew slowly in 1992 and 1993, as member firms contributed additional staff. In late 1993, EMTA's Board determined that EMTA's successful initiatives had proven that EMTA was ready for a fully independent, more permanent infrastructure. Following an extensive search, EMTA named Michael Chamberlin as its independent Executive Director, and in 1994 EMTA acquired independent office space at 63 Wall Street and additional staff.

Evolution of the EM Trading Markets. During the 1990's, the market for Emerging Markets debt rapidly grew not only in volume, but also in the types of instruments traded, the number of trading houses and investors involved, and the size of the market in relation to others worldwide. The investor base for EM instruments expanded from its traditional investors to include many cross-over investors from the more mainstream high-yield and high-grade investment areas.

Investors were drawn to the Emerging Markets during this period by high yields and high growth potential, as well as by a general market trend toward positive economic and political reforms and improving economic performance in many Emerging Market countries. Despite these encouraging trends, however, investments and trading opportunities throughout the Emerging Markets continued to share certain char acteristics that presented common risks. In addition to the customary risks stemming from the issuer's economic or financial performance and its capacity to service its payment obligations, these common risks included a variety of cross-border risks such as legal and regulatory uncertainties, enforcement difficulties, foreign exchange fluctuations and restrictions and changes in government or government policies, including the risk that a country's willingness might fall short of its capacity to honor its debt.

Despite a continuing trend that saw the transformation of most EM debt from the form of loans to bonds (first to Brady bonds and then to more traditional Eurobonds), with the creditor base shifting from commercial banks to other institutional investors, these risks and the volatility that they brought to the marketplace for EM debt, together with a number of weaknesses in trading infrastructure, in many respects kept the Emerging Markets separated from the trading and investment mainstream.

Market Events; Tequila Crisis. 1994 saw the completion of Brazil's Brady Plan restructuring, the last of the major Latin American restructurings coming out of the LDC debt crisis of the 1980's. Despite improving fundamentals in many EM countries (accompanied by numerous credit rating upgrades), the growth of the EM trading markets was punctuated by several market events that highlighted the potential volatility and riskiness of Emerging Markets investments. A long period of growth in both trading volumes and asset values was interrupted in 1994, first by the market's adverse reaction to rising interest rate levels in the Spring and then by the sharp decline in investor confidence that occurred after Mexico's peso devaluation in December. The Mexican devaluation, which now seems almost as long ago and remote as the LDC debt crisis and the Brady bonds that largely resolved it, set in motion a so-called "Tequila effect" of contagion that depressed market values throughout the Emerging Markets during early 1995. Following the massive rescue package organized for Mexico by the US and other G-7 nations, however, investor confidence in the Emerging Markets rebounded by mid-1995, and trading volumes and asset prices, as well as capital flows, showed considerable growth for the next several years.

In reviewing the market events of 1994, and the market's reaction to them, EMTA's Annual Reports for 1994 and 1995 noted the distinction between market performance and the performance of the marketplace. Many investors were disappointed by the adverse effect that the events of 1994 and early 1995 had on asset values throughout the Emerging Markets. Performance of the marketplace was less easily measured, although one could make some judgments based on factors such as liquidity, efficiency, transparency and settlement risk. Looking at these factors, market participants responded well to the market's challenges by maintaining orderly markets and by processing higher transaction volumes with greater efficiency.

In the memorable words of Peter Geraghty (one of EMTA's founding directors and a Board member during much of the 1990's), the Emerging Markets established themselves in the mid¬1990's as more of a "state of mind" than a separate asset class, in which market events taught one to "expect the unexpected". Difficult market conditions throughout the Emerging Markets in 1994 and early 1995 helped build the case for why stronger systems were necessary and desirable, and why a substantial investment in market infrastructure was worth making. During a very difficult period, EMTA proved remarkably successful at mobilizing market participants to work productively on improving the performance of the EM debt trading marketplace. In its Annual Report for 1994, EMTA was able to point with pride, particularly during a year of market challenges, to the relatively smooth operation of the marketplace that was in significant part due to EMTA's projects and to the forum that EMTA provided to market participants to address pressing industry needs.

What had obviously been a crisis of potentially severe systemic magnitude was averted by decisive official sector intervention (at a particularly fragile time for the fixed income trading markets generally, because of the rising interest rate environment that prevailed during 1994), and instead of a systemic crisis, the markets treated it largely as a buying opportunity in what proved to be the start of an extended period of improving EM fundamentals and trading market and investment growth. Although a useful reminder of the inherent risks in EM investing, one of the most lasting legacies of the Tequila crisis was the unfortunate lingering perception in the official sector (eventually sowing the seeds of the IMF's Sovereign Debt Restructuring Mechanism proposal in 2001) that investors in the Emerging Markets expected to be 'bailed out' in times of financial crisis.

<u>Asian Flu; Russian Debacle</u>. Sovereigns and other EM issuers generally took advantage of favorable market conditions from 1995 through 1997 to refinance a portion of their stock of debt, and investors generally welcomed the higher yields available in local currency instruments and more market-oriented dollar-denominated assets. EMTA's Annual Report for 1996 noted the considerable progress that had been made toward the successful completion of the restructuring process throughout the Emerging Markets. As a result, by then three themes had become evident—the broadening of the investor base from to include cross-over investors, the broadening of the asset class, both in terms of geographical diversity and in the types of available instruments, and the transformation of the debt from Brady bonds to capital markets financings.

Unfortunately, local currency asset values fell sharply following the onset of financial and economic difficulties in Southeast Asia beginning in mid-1997, leading to more general financial problems throughout the region. By the middle of 1998, market contagion had spread these difficulties to Russia (which in August experienced an abrupt and precipitous foreign exchange crisis and resulting default on its internal and external debt), which in turn led to a severe, and more general, contagion throughout the Emerging Markets in the latter half of 1998. The resulting loss of investor confidence eventually led to Brazil's devaluation of the Real in January 1999. These events, and their contagion effects, raised questions regarding the effectiveness of fundamental analysis in isolating potential investment opportunities in the Emerging Markets.

EMTA's Annual Report for 1997 noted that official sector support for the Emerging Markets had fallen short of market expectations, and that policymakers must appreciate that, "in today's world of interconnected global markets, their first responsibility is to provide a stable anchor for market expectations". What was most needed from the official sector was for it to review its role in monitoring economic performance, in encouraging and supporting the reform process, and, when appropriate, in taking decisive action to restore market confidence.

Market trading volumes (as measured by EMTA's Volume Survey) shot up in the mid-1990's from US $ 1.979 trillion in 1993 to a peak of nearly US $ 6 trillion in 1997, before falling off sharply after the Russian default in August 1998, as investors re-evaluated the volatility and returns on EM assets and dealers reduced their trading lines. During this time, face-to-face trading of EM debt between major dealers was almost entirely replaced by anonymous trading through the screens introduced by several interdealer brokers (IDB's) in the early 1990's.

EMTA Tackles Trading Infrastructure Projects as well as New Documentation. EMTA's activities during the mid-1990's responded largely to the needs of the dealer community, which were driven in large part by the increase in trading volumes that occurred as a result of the Brady Plan restructurings for Argentina in 1993 and for Brazil in 1994 and the large increase in investor interest in Russia Vnesheconombank loans. The expanded trading volumes tended to create a backlog in all stages of the processing of executed trades, which substantially increased counterparty risk for market participants. Although EMTA continued to support trading activity in these and other instruments with the recommendation of market practices and trading documentation, increasingly EMTA's agenda involved the development of trading infrastructure, such as multilateral netting facilities for loan trades, a trade confirmation and matching ser vice (Match-EM) and a feasibility study that led to the launch in 1998 of the Emerging Markets Clearing Corporation. These initiatives all tended to promote the continued expansion of the EM trading market, while improving trade processing efficiency and reducing settlement backlogs and related counterparty and systemic risks.

Standard Terms. With the exception of Russian loans, trading activity in loans, which had comprised almost the entire trading market until the first Brady Plan restructurings were completed in 1990, fell off sharply following the Argentina and Brazil restructurings, and it was replaced by a surge in bond trading. The increase in bond trading volumes, coupled with increased demand for Russian and various exotic loans, highlighted the relative inefficiency of the process of documenting loan trades. This led to the development of standard terms for the assignment of loan assets, which was recommended to the marketplace in 1995. The standard terms for loan assignments, which replaced a frustrating case-by-case

negotiation process, proved a great success, and quickly led to the development and recommendation of standard terms for loan participations (in 1996). Under these Standard Terms, counterparties were able for the first time to exchange confirmations that incorporated the standard terms into binding contracts, thus avoiding the need for negotiating the terms of individual trades. These projects were led by Bruce Wolfson (Bear), Kathleen Wells (JPM) and Bob Salvador (Chemical).

Multilateral Netting. As one might have anticipated, the increased efficiency in documenting loan assignments, coupled with high agent fees for processing individual assignments and increased counterparty risk as loan trading volumes in certain assets grew, also created additional pressure for greater efficiency in settling loan trades, especially after trading volumes surged in anticipation of the Russian rescheduling in 1997. In response to these needs, EMTA developed forms for bilaterally netting and, in 1994, a facility for multilaterally netting loan trades (with the assistance of Price Waterhouse). This facility became the accepted industry utility for reducing counterparty risk and, by settling a massive spike in trading activity for Russian loans trades, compressed months of painstaking settlement work into several difficult weeks in late 1997, thus facilitating the timely completion of Russia's massive loan rescheduling and continuing EMTA's long tradition of supporting the sovereign debt restructuring process. In connection with this rescheduling, the facility settled over 2,500 bilateral net positions aggregating over US$ 7.3 billion in Russian VEB loans, so-called 'when-restructured' trades of loans and when-issued trades of Interest Notes submitted by 160 market participants. In addition to reducing counterparty risk and expediting settlement, EMTA's multilateral netting facilities for loans also enabled market participants to minimize the payment of costly agent processing fees.

The development of multilateral netting was led by Marc Helie and Manuel Mejia-Aoun (Merrill Lynch), Kathleen Wells (JPM), Ellie Winberg (Chase) and Bob Salvador (Chemical).

Match-EM. Until 1995, loan and bond trades were primarily confirmed by fax, which tended to lead to delays in matching and other uncertainties in the confirmation process. These delays were tolerable in a relatively low volume trading environment, but became increasingly problematic as trading volumes increased, particularly as the trading markets approached the reduction of settlement time from T + 5 to T + 3. In 1994, EMTA began to explore technologies to automate the confirmation and matching of trades with representatives of TRAX, which serves the Eurobond markets out of London. Because EM trading was conducted largely from New York and London, these discussions were eventually abandoned in favor of a joint venture with General Electric Information Services (GEIS) to build a new electronic system that would be dedicated to the confirmation and matching of EM loan and bond trades. Called Match-EM, the new service, which was launched in May 1995, replaced the delivery of hardcopy confirmations with nearly instantaneous electronic matching and confirmation. Match-EM, whose development was led by Alex Rodzianko and Lou Bonavita (Chemical), became the first step toward more transparent and efficient (and less risky) clearing mechanisms and eventually was incorporated into the Emerging Markets Clearing Corporation as its original matching engine.

EMCC. By 1995, most 'face-to-face' trading directly between dealers had been replaced by trading through screens offered by a number of IDBs. These trading screens, which have remained the primary mechanism for trading in the interdealer market, are not 'live' in the sense of permitting instantaneous electronic execution, but rather anonymously indicate current market bids and offers that must be 'hit' or 'lifted' through oral communication with the IDB. Trades through these screens are generally executed on a 'no-name give-up' basis, with the IDB entering into offsetting transactions with the buying and selling dealers. Seemingly cumbersome, this process resulted in efficient price discovery and promoted considerable liquidity, especially in a number of benchmark instruments, as early as the mid-1990's.

Unfortunately, this increase in liquidity also tended to lead to a substantial concentration of counterparty risk in the private firm that provided clearing services to the IDB's, inasmuch as the private clearing firm became the common counterparty for substantially all of the trades entered into through the IDB trading screens prior to their settlement in Euroclear or Clearstream (formerly Cedel).

In 1995, EMTA's Board of Directors, in an effort to support the trading screens but address the resulting concentration of counterparty risk, authorized a working group (led by Joe Willing and

Donna Reino of JP Morgan) to study the feasibility of developing a clearing corporation to assume and mutualize this counterparty risk. The resulting feasibility study, published in early 1996 and reviewed and debated for several months, recommended that EMTA sponsor development, in collaboration with the National Securities Clearing Corporation (NSCC), of an industry utility to clear Emerging Markets bond trades through the IDB trading screens. The resulting clearing entity, the Emerging Markets Clearing Corporation (EMCC), which began operations in April 1998, brought improved efficiency and reduced counterparty risk to the marketplace for Brady bonds and sovereign Eurobonds by assuming matched trades and delivering settlement instructions directly to the European settlement systems. EMCC was formed as a stand-alone corporation, subject to regulation by the US Securities and Exchange Commission, and owned primarily by leading market participants and with its own board of directors, while operated and managed as part of the NSCC family of clearing corporations.

From the outset, EMCC's trade matching rates were consistently high, with over 90% of trades successfully matched and assumed on trade date and settled on T + 3. Unfortunately, some of the expected benefits of EMCC (as well as anticipated economies) were never realized because of participation by less than all of the major dealer firms (and EMCC was eventually subsumed into the DTCC corporate structure in 2002 and then dissolved in early 2005).

Nevertheless, EMCC served the EM trading community well by bringing much greater administrative efficiency to the settlement of interdealer bond trades and by reducing counterparty and related systemic risk, particularly during times of real and potential market crisis. During its existence, EMCC's board of directors was chaired first by Joe Willing (JPM) and later by Paul Masco (Salomon Brothers).

New Directions for EMTA. At some point in the mid-1990's, EMTA's Board initiated a more or less continuous process of reviewing EMTA's own activities and performance against its original mission (to enhance market efficiency and professionalism) and market expectations. On several occasions (notably in EMTA's 1995 and 1996 Annual Reports), this somewhat introspective process seemed to lead almost inexorably to the conclusion (again in Peter Geraghty's memorable words) that it was not yet time for EMTA "to declare victory" over the forces of market inefficiency and disorder. There was an increasing appreciation, however, that EMTA's projects were no longer being undertaken solely in reaction to market events and to the resulting emergency needs of the marketplace, but rather, more often than not, more proactively to meet future needs. As the Emerging Markets had evolved, so had EMTA's role—from fire-fighting to architecture.

From Fixed Income to FX Trading. The 1997 Asian financial crisis, which was for the most part quickly resolved, culminated in Russia's massive default in August 1998 (and a resulting wave of contagion) and pointed out the need for the Emerging Markets financial community to pay more attention to disruptions in the foreign exchange markets. In 1997, EMTA began collaborating with the Foreign Exchange Committee of the FRBNY (the FXC) and the International Swaps & Derivatives Association (ISDA) to develop what eventually became the 1998 FX and Currency Option Definitions, which provided the market with an architecture for documenting transactions in EM currencies. Among other things, the 1998 Definitions created a common vocabulary for addressing market disruptions, which enabled market participants to standardize documentation for, and reduce a growing backlog in the settlement of, forward trading in various non-deliverable currencies (NDF's).

Responding to the Russian Ruble crisis in August 1998, EMTA's experience in standardizing NDF language for market disruptions led to a joint project with the Chicago Mercantile Exchange (CME) to develop a back-up survey mechanism for valuing the Ruble/USD exchange rate, which later became the primary settlement rate for the market and provided a model for similar back-up mechanisms for other EM currencies.

EMTA's work in the FX area, which has led to the development of market practices, NDF templates and back-up valuation mechanisms for various EM currencies (as well as providing a forum for responding to market crises), has generally been led by Bill Arnold of JP Morgan Chase and other members of an NDF working group.

Local Markets Initiatives. Investor interest in local market instruments accelerated in the mid¬1990's, and EMTA responded with a number of initiatives designed to make the trading of local market instruments more transparent and efficient. Using EMTA's network of contacts within the global trading community and with governmental officials and regulators throughout the Emerging Markets, these projects included the review of local law in major EM jurisdictions relating to netting, bankruptcy and derivatives, as well as a variety of issues related to securities regulation and processing. One thing that EMTA discovered in the context of its work in various local markets was that expertise in one market was often helpful when another market reached a similar stage of development. As a result, EMTA was able to facilitate a certain amount of cross-pollination both within and across regions, with an overall goal of bringing not only better transparency to individual local markets, but also greater consistency of standards and practices among them.

While an interesting characteristic of EMTA's work in the EM local markets was the obvious need to pursue local projects in collaboration with existing trade groups in the relevant local market, another, less obvious, aspect was the constant tension that existed between investment banks that wanted to pursue projects in various local markets and commercial banks with extensive franchises throughout the Emerging Markets that did not want such projects to amount, in their view, to a transfer of expertise to institutions without such local franchises.

After a promising start (which lasted for several years), EMTA's local markets initiative, with the exception of the FX projects described above, was a casualty of the cutback in EMTA staffing and activities that resulted from trimming expenses in response to the declining trading volumes caused by the Asian crisis and Russian default.

EMTA's Leaders during its Middle Years. There is a great tradition of change in the Emerging Markets and in the trading markets generally. The years from 1994 through 1998 were no exception. During this time, many of EMTA's founding directors stepped down in favor of a new generation of industry leaders.

In 1996, EMTA's first Chairman (and in many ways its guiding spirit), Nick Rohatyn (JP Morgan), resigned from the EMTA Board in favor of Guido Mosca (who by 1999 had become NYC Co-Chair).

Peter Geraghty (ING and ING-Barings) served as EMTA's Co-Chair or Vice-Chair from 1994-1996 and remained on the Board through 1997 (and later returned on behalf of Darby Investments and, more recently, Dresdner Bank).

Alex Rodzianko (Chemical Bank) served as EMTA's Chairman or Co-Chair in 1994 and 1995 and remained on the Board through 1997.

Rick Haller (Morgan Grenfell and later Deutsche Morgan Grenfell) served as Vice-Chair from 1994-96 and as London Co-Chair from 1997-98.

Paul Masco (Salomon Brothers) served on EMTA's Board throughout this period and was a Vice-Chair from 1995-98 (and was later an NYC Co-Chair in 1999).

Jorge Jasson (Chase and later JP Morgan Chase) served as EMTA's NYC Co-Chair from 1996¬98.

Other market leaders who served on EMTA's Board as officers during this period included Daniel Canel (JP Morgan Chase and later UBS) and Manuel Mejia-Aoun (Merrill Lynch)

And notably, Juan del Azar (Merrill Lynch) first joined the Board in 1998 (later serving as London Co-Chair from 2000-2005), Bruce Wolfson (Bear Stearns and now at Rohatyn Group) first joined EMTA's Board in 1995 (and reluctantly declined many opportunities to serve as a Vice-Chair) and Mark Coombs (ANZ, and now Ashmore) served on the Board throughout this period (and as a Co-Chair from 2001 to date).

A list of a few other names of individuals who at one time or another served on EMTA's Board during this period reads almost like a Who's Who in EM trading: Vince Perez, Abe Curdumi, Alex McLeod, Hugo Verdegaal, Joe Boyle, Alexis Habib, Jose Pedreira, Ignacio Sosa, Wayne Lyski, Americo DaCorte and Gail Segal, among others.

EMTA's Consensus Approach. EMTA was founded in 1990 on the principle that the size of the trading pie was more important than the size of the individual slices. Competitive positions were, for certain purposes, subordinated to the greater good of the industry (or at least it often seemed that way).

This principle, that all would prosper more as the trading markets became more transparent and efficient (and as a result expanded), evolved over the years into a somewhat unusual consensus approach toward decision-making, which was never itself articulated very transparently or written into any of EMTA's governing documents. Neverthless, it served to determine EMTA's decision-making process from the early 1990's (dating from the last time that Kathy Galbraith asked if there was any objection to her description of a proposed market practice, waited two or three seconds and then announced that the market practice had been adopted) until the present.

Early on, EMTA's founders had determined that EMTA would not have any enforcement or regulatory authority, but would be a voluntary trade association with power only to recommend market practices and documentation, and this approach was reconfirmed several times during the mid-1990's. But the founders had not clearly provided for how EMTA's market recommendations were to be determined.

What ultimately evolved was an informal consensus approach toward decision-making, not unlike that often used informally to govern Bank Advisory Committees in the 1980's and early 1990's, that is neither majority rule nor a unanimous voting requirement, but something falling in between.

Quite intentionally, decisions are not made by a prescribed majority or super-majority vote (EMTA's by-laws are silent on the point). Rather, through a process of explanation and discussion, individual market views and concerns are expressed, considered and addressed, and the marketplace is encouraged through an informal polling process to reach a common view. Above all, reaching consensus within EMTA has always required a balancing of interests. The majority has never overridden a reasonable objection from a significant minority, and a minority has never insisted upon an objection if and when it became clear that it had been raised and fairly considered. Following a process of give and take, concerns are considered, objections incorporated or graciously dropped and consensus forms. While 'talking one's book' certainly occurs in the early stages of the process, it is expected to be set aside in the later stages.

Speed and certainty of result are sometimes sacrificed for the greater legitimacy that comes from a fair consideration of all views. Weighing factors such as the influence of a market participant and the strength of its conviction or the reasonableness of its views requires subjective judgment, and determining when consensus is reached (and sometimes guiding the process toward where consensus can be found) may be more art than science.

Is EMTA's consensus approach toward decision-making infallible? I doubt it, but it has never been challenged. Although EMTA recommendations are advisory only and not binding on market participants, they generally have been followed by the marketplace, in large part because the process has respected concerns and required consensus before any recommendation is made.

The Continuing Warrant Saga. While EMTA has had its share of successes, the exception that may prove the rule has been EMTA and the EM trading community's continuing inability to resolve longstanding difficulties in the trading and settlement of the commodity-oriented warrants that were attached to some of the early Brady bonds (most notably Mexico's Value Recovery Rights and Venezuela's Oil Obligations). Originally issued in 1990, these warrants were attributed little or no value for many years by the marketplace, which more or less ignored relatively clear market practices for Brady bond and related warrant trading and settlement. As a result, in a great many cases, the failure to submit separate settlement instructions in the early years of Brady bond and related warrant trading led to massive confusion in warrant ownership and a huge backlog in settlement, that only became pressing in more recent years when sharply higher oil prices triggered payments on them and moved them into the money.

Over the years, several EMTA working groups struggled (without much success) with how to reconcile their current ownership and minimize these trading and settlement difficulties going forward. Reconciliation efforts in the mid-1990's failed, and the original market practices (requiring separate settlement instructions) were reaffirmed in 1996, but again did not seem to prevent the proliferation of ownership

confusion and settlement backlog. In 1997, EMTA began seeking new approaches to trading and settling warrants and their related Brady bonds that were designed to simplify settlement (eg, by bundling them into units that only required a single settlement instruction), but by then sufficient seeds of confusion had already been sowed to create reconciliation and settlement problems that have continued to the present.

The clear lesson from the warrant debacle is that, in designing market practices (particularly in the case of more exotic trading instruments such as warrants), front and back offices must work together to develop approaches that reconcile the preferences of traders with the practical realities of their back offices.

EMTA's Independence and Growth in Staffing and Activities. At the end of 1993, EMTA had four employees, three seconded from JP Morgan (including its first Executive Director, Tom Winslade) and one from Chemical Bank, on an annual budget of about $1.6 million (and 118 members). By early 1995 (as part of a plan to further confirm its independence), EMTA had moved from JP Morgan's offices at 37 Wall Street to its own space in the old Brown Brothers Harriman building at 63 Wall Street (where its offices, which included terraces with plantings, remained until late 2002), and by the end of that year had expanded to 18 employees on an annual budget of $4.8 million (with 146 members). As intended by its Board of Directors, EMTA had become a fully independent trade association with a diversified array of activities ranging well beyond the recommendation of market practices and standard documentation. In the midst of the severe market contraction that occurred as a result of the Asian crisis and Russian default, EMTA had a staff of 13 at the end of 1998 and had revenues of $4.7 million (but with expenses of only $3.3 million) and 147 member firms.

The Closing of the 'Cowboy' Market. Nick Rohatyn, Peter Geraghty, Kathy Galbraith, Stephen Dizard, Alex Rodzianko, Rick Haller, Manuel Mejia-Aoun and the rest of EMTA's founding directors and their firms hoped and expected that their new trade association would help make the EM trading markets more efficient, transparent and professional. By the end of 1998, eight years after EMTA's formation, the Emerging Markets trading industry was well on its way toward joining the trading and investment mainstream, with well-understood and widely observed documentation and market practices (other than those relating to warrants!) and trading infrastructure as safe and sound as that of any established market. Whatever early perceptions there had been that the Emerging Markets were 'cowboy markets' were by then a thing of the past, if not a fading memory.

EMTA's Annual Report for 1996 contained the following paragraphs, which pretty well describe the trends in the Emerging Markets and in the EM trading markets that were evident then (and have continued into the present):

"Years ago, it was fashionable to compare our marketplace to a frontier town. Recently, things have become a great deal more civilized. The frontiers of our marketplace are now in the Local Markets themselves, as sophisticated investors increasingly look directly to Local Markets for purer risk and higher yields. Many Emerging Markets countries are admirably meeting the challenges of reforming their economies and adapting their capital markets to meet the needs of foreign investors.

"…we [at EMTA] hope and believe that we are on the right path, but as has often been the case in the past, without a very clear map. As always, we need and welcome our members' input, involvement and support to make sure that we keep moving at the right speed and in the right direction."

All as true now as it was then.

Seeds of the Burden-Sharing Controversy. As early as 1997, EMTA had advocated a stronger official sector role in the area of encouraging the economic reform process, monitoring performance and preventing sovereign crises. By 1998, concerns in the official sector about the potential budgetary and moral hazard implications of widespread ownership of sovereign bonds on the process of resolving sovereign crises began to be taken seriously by the EM trading and investment communities, as Ecuador's impending economic difficulties became clearly evident.

In its 1998 Annual Report, EMTA acknowledged the important role of the private sector's participation in crisis prevention and management, but expressed concerns that recent signals from the official sector suggested an under-appreciation of the risks, costs and difficulties in forcing such participation. Although rescheduling bonds may sometimes be necessary, EMTA cautioned that the bond markets were among the most stable sources of funds available to the Emerging Markets countries, and that great care should be taken to ensure that this flow of funds was encouraged and not driven away. EMTA further expressed its concerns that any policy that emphasized bond rescheduling more than the need for EM countries to take all measures to avoid them was likely to be counter-productive.

Future events (from 1999 continuing to the present) confirmed a lack of consensus between the official and private sectors on the appropriate balancing of interests among sovereign debtors, their private and public sector creditors and the official sector in resolving sovereign financial crises, but that is a story to be developed in a succeeding chapter of EMTA's history. Suffice it to say that the seeds of this lack of consensus were sowed in the mid-1990's beginning with Mexico's so-called Tequila crisis, and warning signals were apparent soon thereafter.

Conclusion. The Emerging Markets debt trading industry grew rapidly and began to mature in the early and mid-1990's. By 1998, it was apparent that the trading community's heavy investment in stronger systems and infrastructure had paid off. Market losses due to the roller coaster of market events in the mid-1990's were not compounded by systems failures or the breakdown of market practices or liquidity.

EMTA also grew rapidly in the mid-1990's in terms of staff, budget and scope of activities, and survived a severe market shock in 1998 and resulting contraction by shedding expenses well ahead of declining revenues and returning to its core missions of working to make the EM trading markets more efficient and providing a forum to enable market participants to identify, discuss and resolve industry challenges. During the mid-1990's, the EM trading industry began a process of mainstreaming, which has continued to the present, punctuated by occasional market events that have emphasized that wherever EM may seem to be from time to time in its evolution, it requires its own forum to deal with the twists and turns that make it unique.

By 1998, it had become clear that EMTA would continue to be that forum, but that it would increasingly function in collaboration with the trading and investment mainstream.

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EMTA's 25th Year—A Look Back to:

EMTA 1999 to 2007: The EM Debt Trading and Investment Market Matures and Mainstreams

By Michael M. Chamberlin

EMTA Executive Director

[EMTA was formally incorporated in December 1990, in the wake of the so-called LDC Debt Crisis and the pioneering Brady bond debt restructurings by Mexico and Venezuela. To help mark EMTA's 25th Anniversary, EMTA's Bulletin this year has featured a series of articles on EMTA's history.

The 1st Quarter Bulletin reprinted Bruce Wolfson's recollections of the informal meetings of LDC debt traders beginning in 1989 that, with some 'encouragement' from then-FRBNY President Gerald Corrigan, eventually led to EMTA's formation in 1990 as the LDC Debt Traders Association. The 2nd Quarter Bulletin reprinted Tom Winslade's article on EMTA's Early Years (1992 and 1993), when it emerged as an independent trade association with a growing agenda of activities, and Michael Chamberlin's perspective on the evolution of the EM debt trading and investment markets and the growth and diversification of EMTA's activities during the period 1994 through the auspicious year of 1998.

The series continues in this 4th Quarter with Michael Chamberlin's reflections in 2010 on the development of EMTA, and the market that it represents, following the Asian crisis and Russian debacle of 1997/98 up until the first signs of the mortgage crisis and global market slowdown in 2007. Formerly a Partner at Shearman & Sterling with a law practice split between public and private sector debt restructurings and capital market transactions in Latin America, Michael Chamberlin led Shearman & Sterling's representation of the international banking community in Mexico's Brady bond debt restructuring and worked on many financings, refinancings and debt swaps in the 1980's and early 1990's, before becoming EMTA's Executive Director at the beginning of 1994.]

The views expressed in this series of articles are personal views only, and do not represent official EMTA views or necessarily reflect the views of any of its member firms.

At the time, the Asian financial crisis and Russian meltdown in August 1998 resulted in a big setback for the EM debt trading and investment industry. Asset values and debt trading volumes plummeted, and investor confidence in the Emerging Markets fell considerably. Among other things, these events changed EMTA's priorities, resulting in several important new projects, greater emphasis on certain existing ones, and the postponement of several others. As always, however, setbacks lead to new opportunities, and from these events soon came a gradual and strong recovery of the EM debt markets that, supported by a long period of low interest rates and continuing economic and financial reforms and reserves accumulation in many EM countries, continued for nearly a decade. The EM debt markets grew, matured and prospered, and the overall period from 1999 through 2007, despite a shock or two, was generally characterized by a strengthening of many EM economies and a steady mainstreaming of the EM debt markets into the broader capital marketplace. With this mainstreaming came a much broader class of new investors in the EM debt markets and debate about the adequacy of the architecture for resolving financial crises in the Emerging Markets.

During this time, EMTA diversified its activities to keep pace with the evolution of the marketplace, incorporated a new class of market participants into its membership—the EM buyside—and added a variety of investor-oriented activities to its more traditional sellside agenda.

<u>Asia's Financial Crisis, Russia's Devaluation and Default and their Aftermath</u>. The 1997 Asian financial crisis, which was largely a local markets crisis that was fairly quickly resolved, pointed out the need for the EM financial community to pay more attention to potential disruptions in the foreign exchange markets. Shortly thereafter, EMTA began collaborating with the Foreign Exchange Committee of the FRBNY (the FXC) and the International Swaps & Derivatives Association (ISDA), initially to set priorities and undertake specific FX-related projects in several Latin American and Eastern European currencies, with one goal being to improve the local legal environments for netting. An early project to develop standard definitions and confirmation forms for documenting non-deliverable forward transactions (NDF's) in various EM currencies evolved into a broader effort to revise ISDA's 1992 FX and Currency Option Definitions. The most significant new concepts in the revision were the inclusion of Disruption Events and Disruption Fallbacks, which permitted counterparties to allocate certain event risks on the trade date by providing alternative means of settling transactions in the event of a market disruption, such as occurred in various Asian countries in 1997. These revisions eventually became the 1998 FX and Currency Option Definitions, which provided the market with an architecture for documenting various transactions in EM currencies. Among other things, the 1998 Definitions, which were finalized and published late in the first quarter of 1998, created a common vocabulary for addressing market disruptions, which later enabled market participants to begin standardizing documentation for, and

reduce a growing backlog in the settlement of, forward trading in various non-deliverable currencies.

In the second half of 1998, the markets (and EMTA) were forced to focus a lot of attention on Russia, which had only recently (in December 1997) succeeded in completing a massive restructuring of US$ 28 billion in defaulted VEB loans. Speaking at EMTA's 1997 Annual Meeting just a week after the closing, Mikhail Kasyanov, Russia's Deputy Finance Minister, noted that it would put Russia's relationship with the international financial community "on a new footing" and "pave the way for investor confidence" in Russia.

As it turned out, the new footing lasted only a few months, until August 1998, when Russia was forced to devalue the Ruble and declare a 90-day moratorium on its indebtedness. Responding to the crisis, EMTA's experience in standardizing NDF language for market disruptions led to a joint project with the Chicago Mercantile Exchange (CME) to develop a back-up survey mechanism for valuing the Ruble/USD FX rate (the CME/EMTA Rate), which soon became the primary settlement rate for the market and provided a model for similar back-up mechanisms for other EM currencies.

On August 28, shortly after the suspension of spot auction currency trading on the Moscow Interbank Currency Exchange (MICEX), EMTA and CME began publishing the daily CME/EMTA Rate as a back-up valuation for the settlement of the CME's Ruble futures contract and for use by market participants as the basis for valuing their NDF's. Developing this new rate required extensive consultation with and among market participants, as well as daily surveys of major international and Russian banks active in the Russian interbank currency market. EMTA provided the forum for these consultations, and the resulting CME/EMTA Rate was quickly built into the 1998 Definitions and became widely used.

Aside from contagion that resulted in freefalling asset prices for most EM debt assets, the most immediate effect of the 1997/98 crises was a sharp fall in EM debt trading volumes, which had peaked in the first and fourth quarters of 1997. After increasing rapidly to US$ 5.3 trillion in 1996 (up from US$ 2.378 trillion in 1995!), trading volumes topped off at nearly US$ 6 trillion in 1998. Trading activity then dipped somewhat in the first three quarters of 1998, before sharply falling in the fourth quarter to levels not seen since 1994 and early 1995. Overall trading volumes for 1998 dropped to US$ 4.2 trillion, and eventually fell much further in 1999 to US$ 2.185 trillion, before recovering somewhat in 2000 to nearly US$ 2.9 trillion.

The Russian default also called into question, as if the Asian debt crisis had not already, the assumption that local market instruments issued by sovereigns were somehow immune from default and restructuring because they were not subject to transfer risk.

In addition to the obvious market disruptions, which spread from Asia and Russia into LatAm and other EM assets, the Russian meltdown directly led to the postponement or curtailment of a number of EMTA projects, particularly those relating to making the trading of Restructured VEB Loans, so-called Min-Fin Bonds, and Russian equities more efficient. In addition, the resulting decline in overall trading activity, and contraction in the size and scope of the EM trading industry, led eventually to EMTA's scaling back its local markets agenda and staffing considerably.

EMCC. Most of EMTA's projects throughout the early to mid-1990's were oriented toward building EM debt trading infrastructure, in the form of standardized documentation, market practices and systems designed to make the global EM debt trading markets more efficient or more secure. These projects were normally initiated at the request of the larger sellside firms, and included the Match-EM automated trade confirmation and matching system, as well as the Emerging Markets Clearing Corporation (EMCC), which was launched in April 1998 and whose origins and early history were described in " EMTA 1994-98: The Golden Age of EM Debt Trading?".

As originally conceived and operated, EMCC was, in effect, a joint venture among EMTA, the National Securities Clearing Corporation (NSCC, a predecessor to the Depositary Trust & Clearing Corporation (DTCC)) and the International Securities Market Association (ISMA, predecessor to the International Capital Market Association—ICMA). EMCC was developed by the EM debt trading industry and formed as a stand-alone clearing corporation, subject to regulation by the US Securities and Exchange Commission, and owned primarily by leading market participants and with its own board of directors, while operated and managed as part of the NSCC (later DTCC) family of clearing corporations. In forming EMCC, the EM debt trading industry's principal goal was to support screen-based trading by reducing counterparty and settlement risk and improving certain operating efficiencies.

From the outset, EMCC's trade matching and settlement rates were consistently high, with over 90% of trades successfully matched and assumed by EMCC on trade date and settled on T+3 (in addition, individual firm positions were netted, with the resulting net positions collateralized). Beginning with ten market participants, and clearing only Brady bonds, by 2000 EMCC had grown to include 21 market participants clearing 319 eligible securities, including both Brady bonds and a wide range of EM sovereign Eurobonds. During this time, EMCC established a pair-off capability and a Y2K contingency plan and helped the industry to navigate through the temporary surge in trading volumes (accompanied by extreme price volatility) that occurred in the late Summer of 1998 and Daiwa's 1999 exit from the EM debt clearing business.

Although EMCC reached critical mass in 1999, served most of the major dealer firms and was profitable as a stand-alone affiliated clearing corporation, DTCC concluded by

2001 that it was necessary to start integrating its operations and management more closely with DTCC's other fixed-income clearing corporations as part of a broader consolidation of DTCC's family of clearing corporations intended to take better advantage of economies of scale and other synergies. Despite some misgivings within EMTA about the wisdom of this based upon the loss of independence and EM industry ownership and control, this consolidation was approved by the EMCC and DTCC Boards and became effective at the end of 2001. Concerned about losing EM focus and momentum, as a member of the EMCC Board of Directors I spoke out against including EMCC in the overall consolidation and ultimately abstained from the final vote to proceed.

DTCC continued to own and operate EMCC for another several years before deciding that EMCC was not financially viable, due in large part by the failure to expand its membership beyond the core group of major dealers. One of the problems faced by DTCC in maintaining EMCC's viability was the lack of EM input into EMCC's decision-making process, natural fall-out from DTCC's decision to take over EMCC and disband its Board and EM advisory bodies. Intensive efforts by an EMTA working group to persuade DTCC to keep EMCC operating (or, alternatively, to locate another EM clearing provider) were ultimately not successful, and EMCC was shut down by DTCC effective March 31, 2005. Thereafter, trades have been submitted for bilateral settlement by individual dealers, normally against a private clearing firm acting on behalf of one or more of the interdealer brokers (IDB's) who operate the screens through which most of the interdealer market trading is conducted.

When it became clear that EMCC would inevitably be shut down by DTCC, the EMTA working group concentrated its efforts on finding a replacement provider of EM clearing services. Following an extensive beauty contest, LCH.Clearnet was selected to build and operate the replacement clearing facility offshore, but due to a combination of circumstances, the replacement was never implemented.

At the time (early to mid-2005), most of the IDB screens were cleared by an affiliate of REFCO, and LCH.Clearnet's efforts to develop its EM clearing product were delayed, in part as a result of its inability to reach satisfactory collateral arrangements with REFCO. Due to subsequent credit problems at REFCO, the IDB's replaced REFCO as their clearing firm later that Fall with more creditworthy firms. The effect of the REFCO situation on the business case for the LCH.Clearnet EM clearing entity presented an interesting question. Although REFCO's credit difficulties tended to support the need for mutualizing and collateralizing EM clearing risk through an industry utility (such as an EMCC or the proposed LCH.Clearnet entity), rather than concentrating risk in a private entity, the substantially improved creditworthiness of the new private clearing arrangements, and the speed and ease with which they were implemented, ultimately persuaded many dealer firms that the industry utility was no longer worth its expense and effort. As a result, the LCH.Clearnet proposal eventually lost industry support and was abandoned.

To this day, the vast majority of interdealer trading in EM fixed income instruments is conducted through the interdealer broker screens, and trades are matched and settled through Euroclear, Clearstream or DTC against one or more private clearing firms acting on behalf of the IDB's as aforesaid. Although this process has worked well enough, obviously there is no assurance that some market or credit events will not occur in the future that could affect the private clearing firms or otherwise disrupt the normal settlement process. With the demise of EMCC, the dealer community assumed a permanent short-term (one or two days) increase in broker counterparty risk, as well as greater eventual clearing risk in private clearing firms.

During its short life, EMCC served the EM debt trading community well by bringing much greater administrative efficiency to the settlement of interdealer bond trades and by reducing counterparty and related systemic risk, particularly during times of real and potential market crisis (notably, August 1998). Perhaps even more importantly, EMCC brought cohesion to the discussions and arrangements between the dealers, the IDB's and the private clearing firms. Unfortunately, some of the expected benefits of EMCC (as well as anticipated economies) were never fully realized, and ultimately EMCC was not successful or long-lived because of participation by less than all of the major dealer firms and a perception that its benefits, while real, could not be amortized over a sufficiently high volume of trading and therefore were simply not worth their out-of-pocket running costs.

<u>Ecuador Brady Bonds, the Burdensharing Debate, and Investor Rights and a Changing EMTA Agenda</u>

Inherent in the mainstreaming of the EM trading markets and asset class was a broader distribution of EM debt instruments throughout the investment community, which had some policy implications for the industry and for EMTA.

One of the policy goals of the Brady plan was to take the concentration of EM credit risk within the banking system and distribute it more broadly throughout the financial system. The various Brady restructurings largely accomplished this goal by the mid-1990's, creating a new class of EM creditors, the EM buyside, and giving EM countries greater access to new sources of capital. Despite the maturing and mainstreaming of the EM asset class, occasional financial crises continued to occur (notably in Russia in 1998, Ecuador in 1999 and Argentina in 2001), and the broader distribution of EM credit risk, coupled with a reduced official sector appetite for offering bail-out packages to EM countries in economic and financial distress, led policymakers to conclude that they had no alternative but to "bail-in" the private sector by encouraging EM debt issuers to get the EM buyside to participate in crisis resolution by restructuring their bonds. As one can imagine, this was not necessarily what the EM buyside expected from their EM bond investments, and it led to considerable discussions about the adequacy of the EM bond restructuring "architecture".

Key to the implementation of the Brady plan's exchange of bank loans for more marketable Brady bonds was that the new Brady bond instruments would represent a permanent reduction in the debt and debt service levels for the issuing debtor countries. As a result, the two most prevalent forms of Brady bonds were Discount bonds issued in a face amount substantially discounted from the principal amount of the loans exchanged therefor (and bearing interest at a floating market rate, usually of 13/16ths over LIBOR) and Par bonds issued without such a discount but bearing interest at a concessionary fixed rate. These discount rates for Discount bonds and concessionary fixed interest rates for Par bonds were heavily negotiated with the bank advisory committees in part in reliance upon an "exit undertaking" included in the bond documentation stating to the effect that the Discount and Par bonds would never be subject to restructuring. As a practical matter, of course, these exit undertakings added little to the explicit promise to pay already included in the bonds, but they nevertheless were intended to represent a moral undertaking on the part of the obligor that it would meet its payment obligations under the Brady bonds as they became due.

Throughout the 1980's and early 1990's, bonds were traditionally considered 'excluded debt' for purposes of the many country debt restructurings, along with many other debt categories (such as project financings, other secured financings, interbank lines and trade debt) that were considered de minimis, too important to discourage or too difficult to restructure. In some cases, categories of debt were excluded from restructuring for the simple reason that there was a consensus among debtors, creditors and the official sector that the providers of such debt should not be 'punished', but rather encouraged to continue providing such credits—in short, that it would be counter-productive to try to restructure them because the inevitable result would be for countries to lose access to them as a source of financing.

As bond indebtedness replaced bank loans as the leading source of country financing for many countries, and creditor governments felt (or manufactured) greater taxpayer pressure to avoid moral hazard and "bailing out" private creditors, the official sector began to emphasize (in what appeared to be a coordinated series of IMF, G7, G10, G22 and US Treasury statements and reports) the need for private sector bondholders to share the burden for resolving sovereign financial crises in the Emerging Markets. Concerns in the bond marketplace about this change in official sector policy increased in early 1999 following various official sector statements about the need for holders of

Russian, Romanian and Pakistani bonds to grant debt relief. In response to concerns that debtor countries were being pressured to restructure their outstanding bonds, EMTA issued a position paper in April 1999 that emphasized the following points:

(1) Greater effort should be made by the official sector to encourage more market-oriented approaches to private sector burden-sharing, as forced rescheduling of Eurobonds was likely to make it all the more difficult for the private sector to contribute resources in support of EM countries.
(2) Forcing Eurobond investors into involuntary rescheduling would raise legal and practical difficulties that would likely lead to litigation and the loss of access to the bond markets, as well as to increased borrowing costs for all EM countries.
(3) The treatment of sovereign Eurobonds should be left for countries to determine on a case-by-basis and the doctrine of comparable treatment should not be applied rigidly.
(4) Radical changes in bond documentation (such as the inclusion of sharing clauses or substantial reductions in voting requirements) would lead to higher borrowing costs and possible tiering of the bond markets, while more modest changes (such as reducing voting requirements to 95% or so) might be perceived as having advantages for both issuers and investors.

While there were indications that this message (as well as similar ones from other trade groups) was helpful in moderating some official sector policies, these and similar issues regarding creditor's rights and the restructuring of bonds continued to feature prominently in EMTA's agenda for much of the following decade.

More tangible and immediate concerns about official sector policies toward bondholders surfaced in August 1999 when Ecuador announced that it would be deferring $96 million in interest payments on its $6 billion outstanding face amount of Brady bonds, which had been issued in 1994 in a debt exchange that had granted Ecuador debt relief of about 45%. At the same time, Ecuador announced that it would be proposing a restructuring of its Brady bonds using 'market mechanisms' (so much for Ecuador's exit undertaking, and it is important to note that at the same time Brazil and Mexico were in the process of retiring their Brady bonds). In addition to triggering a lengthy discussion about how these bonds would trade and settle, Ecuador's announcement suggested to some market commentators that burden-sharing was being unfairly targeted at Brady bondholders, and not spread across all classes of Ecuador's creditors. In a notable research note, Michael Gavin of UBS Warburg referred to this as "burden-shifting", noting that what was most significant was not the default itself (which had long since been anticipated by the market), but how it was being handled. Among other things, Gavin expressed concerns about the implications of a seemingly arbitrary situation where Brady bondholders were apparently being asked to restructure, with little or no bondholder input, outside of a comprehensive restructuring plan supported by official sector debt relief and an IMF-approved reform program.

In view of the importance of Brady bonds to the overall EM debt trading and investment marketplace, Ecuador's announcement pushed EMTA's agenda further into advocating policies on behalf of creditor's rights. In late September, EMTA released a position paper (reinforced by a speech given at the Council of the Americas on December 7, 1999 entitled "Ecuador's Default: Burden-Sharing and the Future of Brady Bonds") on the Ecuador restructure asking whether burden-sharing was being pushed too far, and making the following points:

(1) Dishonoring the exit undertaking in the bonds and requiring holders to give debt relief beyond the 45-55% previously granted, on top of the market losses already incurred, would create a precedent that would make future debt restructurings for Ecuador and other countries more difficult.
(2) Targeting the Brady bonds violated sound work-out principles inasmuch as the lack of a comprehensive plan to address Ecuador's entire debt profile represented a piecemeal approach that was likely to jeopardize the prospects for Ecuador's eventual financial recovery.
(3) Targeting the Brady bonds did not address moral hazard because the Brady bonds represented previously restructured bank loans and not new extensions of credit.
(4) Targeting the Brady bonds was not comparable treatment to any debt relief granted or to be granted by official creditors.

In addition, EMTA's paper articulated principles for clarifying and legitimizing the concept of burden-sharing, including

(1) The official sector should make greater efforts to hold debtor countries accountable for steadfastly pursuing economic reform programs and policies that enable them to meet their payment obligations.
(2) The specifics of burden-sharing should only be developed and applied to the circumstances of individual debtor countries on a case-by-case basis, but such case-by-case approach must be guided by clearer and more consistent principles, including that all financial instruments and sources of financing should be considered subject to burden-sharing, though possibly on differing bases, depending on consideration of the importance of that funding source and the likely effect that burden-sharing would have on future access.
(3) Proposals to make bonds easier to restructure must not undermine the legal responsibility of debtors to meet their payment obligations or unduly interfere with the delicate balance that exists between the mutual rights and responsibilities of sovereign debtors and their creditors.

These principles have now guided EMTA's agenda to advocate policies on behalf of the EM asset class for over a decade. EMTA consistently counseled that the value of bonds in the market depended on a perception shared among the issuer and investors that the bonds would be performed in accordance with their terms, and warned of the moral hazard that making bonds too easy to restructure would make it more likely that payment obligations would not be met, but instead would be restructured. On the contrary, bond restructurings should be viewed as a last resort only, because the likely consequence, loss of market access, was so severe.

The Keynote Address at EMTA's 1998 Annual Meeting had been given by former US Secretary of the Treasury Nicholas F. Brady, who noted that there had been "too much talk about financial architecture" and that what was needed was "somebody becoming operational". In October 1999, Ecuador asked EMTA to sponsor a series of meetings (not as a negotiator, but to facilitate and provide logistical support for them) between representatives of the government and a group of its bondholders to discuss Ecuador's economic and financial situation and to obtain bondholder input on the possible terms of an exchange offer to restructure Ecuador's debt profile. Referring to Mr Brady's remarks, I opened the first meeting by noting that it was encouraging to see that Ecuador and its bondholders were getting "operational". Although EMTA hosted and distributed materials in connection with several of such meetings, the sessions proved contentious and not particularly fruitful, and by year-end the effort was postponed (and eventually abandoned) after Ecuador's economic and political situation worsened and its discussions with the IMF stalled.

To promote further dialogue between the official and private sectors, EMTA's 1999 Annual Meeting featured keynote remarks by Stanley Fischer, First Deputy Managing Director of the IMF, and Timothy Geithner, then Under Secretary for International Affairs at the US Treasury. Mr Fischer's remarks specifically addressed EMTA's policy paper (Is Burden-Sharing Being Pushed Too Far?), reviewing the Romania, Ukraine, Ecuador and Pakistan case histories, and noting that the official sector was "in the process of drawing lessons from the experience" and that the official and private sectors "surely have a common interest in many aspects of reform … of the international financial architecture". Speaking of Russia (where a far larger amount of debt was in default), he noted that "moral hazard exists, and for a clear example of the dangers that it poses, look no further than Russia". Many investors had thought that Russia was "too big to fail", and "the IMF does not have enough money to ensure that countries can always service their debts". Mr Geithner's remarks focused on three major challenges for the international financial community: (1) how to reduce the vulnerability of EM economies to risks, (2) how to create a system of more stable flows to the Emerging Markets and (3) how to strengthen the capacity to catalyze market-based solutions to financial crises. He ended with the prescient observation that "Probably the most important lesson of the last decade [ie, 1990-99] is that governments, in Emerging Market economies in particular, need to plan for the worst…".

Of course, as much later events demonstrated, many Emerging Markets countries took this lesson to heart, and their continued reform efforts, and reserves accumulation (as well as, in some cases, the attainment of investment grade debt ratings), through the succeeding years 1999-2007 enabled them to weather the global recession of 2008-09 surprisingly well.

If the years 1997 and 1998 were filled with pessimism, crises and default, things started looking up in 2000, as several debtor countries were able to start putting their defaults behind them, Brazil successfully completed a large voluntary exchange offer (retiring many of its Brady bonds) and investors previously discouraged by the Asian and Russian debacles were slowly attracted back into the EM asset class. Early in the year 2000, Russia and its London Club Advisory Committee pleasantly surprised most market participants by announcing proposed terms for restructuring US$ 31.8 billion principal amount of its defaulted Restructured Prin and IAN debt. The restructuring was successfully completed in the third quarter in what was largely heralded as a major step in the normalization of Russia's relations with the global financial community. Shortly after Russia's restructuring terms were announced, Moody's gave the markets another piece of good news by upgrading Mexico's foreign currency debt to investment-grade status (ten years after its historic Brady plan restructuring and only five years after the so-called Tequila crisis and subsequent rescue package).

Of somewhat lesser importance, but nevertheless significant in several respects, at mid-year Ecuador also announced, and later completed, its exchange offer to restructure its Brady bonds and Eurobonds. As in the case of Russia, EMTA prepared when-issued confirmation forms and recommended market practices in connection with the new bonds issued, but Ecuador's restructuring was not as successful as Russia's in normalizing its relations with the international financial community. To paraphrase an EMTA buyside director, the result wasn't too bad (the incremental debt relief was about 30%), but the "process stunk".

In a development that seemed relatively minor at the time, but which had lasting significance, Peru delayed an interest payment due on its Brady bonds in early September 2000 as a result of enforcement actions brought against it in multiple jurisdictions by a prominent non-bank creditor that had opted not to participate in Peru's 1996-97 Brady plan restructuring and instead had obtained federal court judgments in the Southern District of New York (Elliott Associates v Peru). After a delay of nearly a month (during which EMTA issued a somewhat long-winded explanation of why it was not recommending that trading of Peru's Brady bonds be taken "flat" unless the non-payment continued beyond a 30-day grace period), Peru and its "hold-out" creditor settled their dispute with a reported payment of US$ 58 million, thus enabling the interest payment on the Brady bonds to be made. The dispute, and particularly its resolution, was highly controversial at the time, and later became somewhat of a cause célèbre used by many in the official sector, and by the debt forgiveness lobby, as justification for pursuing changes in the international financial architecture to make EM debt easier to restructure.

Largely as a result of these developments (and also due to industry consolidation and declining trading volumes caused by the Asian, Russian and related debt crises that led to a decrease in EMTA's sellside membership), EMTA re-examined its mission and agenda in 1999 and early 2000, and at mid-year 2000 added five new buyside directors to EMTA's Board of Directors (bringing the total number of buyside firms represented on EMTA's Board to seven (out of 24)). An additional two buyside directors were added to EMTA's Board in early 2001. In addition, investor frustration with Ecuador's restructuring process also led to the formation in late 2000 of the Emerging Markets Creditors Association by eight large EM buyside firms (who, among other things, apparently believed that EMTA's traditional sellside orientation precluded it from putting bondholder interests first).

The addition of these new buyside directors to EMTA's Board was soon accompanied by changes in EMTA's official name (from the Emerging Markets Traders Association to simply EMTA), and in EMTA's mission statement and agenda. Added to EMTA's traditional mission of working to make the trading markets more fair, efficient and transparent, was the effort to build greater confidence in the EM asset class by promoting investor rights, and much of EMTA's work over the next few years was focused on this new, more buyside-oriented mission, including a partially successful effort in late 2000 and early 2001 to make the workings of the Paris Club more transparent, an analysis of the permissible scope of exit consents (At the Frontier of Exit Consents) and repeated efforts (alone and in collaboration with other trade groups) to influence and moderate the official sector's proposals to reform the sovereign debt restructuring process.

As a practical matter, these changes reflected a realization that, with Eurobonds (and then local instruments) rapidly replacing Brady bonds as the most heavily traded debt instruments and EMTA's involvement with EMCC decreasing, much of EMTA's sellside work in the fixed income area had been more or less successfully completed, the investment community had diversified, matured and grown well beyond EMTA's traditional sellside constituency, that the Board needed to be opened up to a wider group of market participants, and that more staff time needed to be dedicated to investor interests. While the name change was largely symbolic, what it symbolized was significant—an EM debt marketplace dominated by traders and their interests was well on its way to developing into a broader trading and investment community. EMTA needed to evolve with its marketplace, and fortunately we recognized that and started the necessary process in motion.

Not that the process was linear, or without some challenges. At the time, re-orienting EMTA and its Board from representing almost solely sellside interests to representing both sellside and buyside interests encountered some initial resistance from several sellside firms, who felt that the potential conflicts would be too great. After all, recent experience in the derivatives area tended to suggest that very significant issues separating the sellside and the buyside might be too contentious and difficult to bridge. At the time, I felt that the consensus approach that had consistently guided EMTA, as well as the constant and ongoing experiences in handling trading issues involving the sometimes conflicting interests of buyers and sellers, would give us the tools to navigate through the potential conflicts that representing both the sellside and buyside might raise. In addition, I was confident that my various experiences as a lawyer representing investment banks, commercial bank lenders and bank advisory committees were good background for this kind of challenging work.

Over the intervening years, various conflicts did arise from time to time, and it was clear that EMTA could not be all things to all market participants, but such conflicts were not limited to those between the sellside and the buyside. Because of sellside business relationships with debtor countries, EMTA was able to promote the principle of creditor rights effectively, but not as aggressively in the context of specific credits as some investors would have liked. And as the Elliott v Peru case amply demonstrated, with some investors supporting Elliott's assertion of creditor rights, while others preferred to take advantage of the market opportunities that the aggressive assertion of individual rights would have prevented, investors were more than capable of having their own conflicting interests or holding inconsistent views on matters of principle or practice. The one factor that enabled EMTA to retain credibility, and to avoid fracturing on a faultline of such conflicts, was that rather than necessarily coming to and expressing a single position on many issues, EMTA more often provided a forum to enable market participants to exchange (and clarify) views, much as a market provides a forum to enable them to buy and sell.

The EM Debt Market Mourns and Responds to the 9/11 Tragedy. Against a backdrop of cautious optimism as inflows into the EM asset class replaced improving fundamentals as the main market driver in the Summer of 2001 (along with concerns about a teetering Argentina), the EM marketplace demonstrated great resiliency in the face of the horrible tragedy of 9/11. Several interdealer brokers located in the World Trade Center suffered devastating personal losses, and EMTA in particular mourned the loss of its director from Cantor Fitzgerald, Frank McGuinn.

In addition to the personal losses, which obviously caused unimaginable shock and mourning throughout the financial community, the terrorist attack created widespread dislocations for firms located in lower Manhattan, and as a result EM debt trading was severely disrupted. Along with the fixed income markets generally, the EM debt trading markets in NYC were effectively closed on the following Wednesday, but reopened on Thursday, September 13. The NYC market observed early closings until the middle of the following week, and during this time much trading activity and processing was redirected to London, thus taking some pressure off of New York's capacity to handle transaction flows. Back-up systems and locations generally worked well, and the industry's seemingly superfluous preparations for Y2K in the run-up to January 1, 2000 were helpful in enabling the financial markets to cope with the dislocations. In varying degrees, communications disruptions and office dislocations lasted for most of September, but mourning continued.

Along with much of lower Manhattan, EMTA's offices at 63 Wall Street (with those inviting terraces) were evacuated on Tuesday afternoon, following a feverish period of locating, circulating and downloading contingency plans and lists of home contact information. EMTA's offices were reopened on the following Monday, again along with a large part of lower Manhattan, and access into the Wall Street area was for a time only available through a limited number of checkpoints. In the days immediately following the attack, EMTA worked in collaboration with The Bond Market Association and other industry trade groups to review systems availability and readiness, to advise market participants daily of the status of the market and to ensure that temporary contact information was available throughout the marketplace. EMTA staff participated in daily conference calls and communicated information to the marketplace by email, telephone and through the EMTA website daily for nearly two weeks following the attack.

As might have been expected, due to the concentration of offices in lower Manhattan, the weakest link in the New York EM trading infrastructure was the availability of broker screens and the processing of screen trades. It became apparent early on that, despite sharply reduced screen capacity in NYC and occasional outages in London, most dealer firms no longer considered "face-to-face" trading to be a viable alternative. Remarkable efforts by dealers, brokers and clearing firms substantially restored screen availability and processing capacity in New York by late September.

The next few months were a bleak time that no one working in lower Manhattan is likely to forget.

<u>Argentina, the SDRM and Collective Action Clauses</u>. A looming Argentina default increasingly hung over the marketplace over the course of 2001, and an increase in EM debt trading volumes was fueled by speculation over what was described by one analyst as Argentina's "roller coaster ride" and another as a "slow-moving trainwreck".

Just before Christmas 2001, Argentina's FX markets became erratic and the government declared a moratorium on its bond payments. Shortly thereafter, EMTA issued recommendations to the effect that all Brady bonds and other global Eurobonds issued by the Republic of Argentina, unless otherwise agreed, be traded "flat" and invoking back-up valuation and deferred settlement procedures for Argentina Peso NDF's.

A month earlier, on the Monday after Thanksgiving, the IMF's First Deputy Managing Director Anne Krueger proposed that sovereign financial crises be subject to a Sovereign Debt Restructuring Mechanism (SDRM). Shockwaves reverberated throughout the EM trading and investment community, and the private sector (and especially the EM investor community) began to mobilize against the proposal. Within days, for delivery at EMTA's 2001 Annual Meeting, I published a paper (entitled The IMF's Sovereign Bankruptcy Proposal and the Quest for More Orderly Sovereign Work-Outs) criticizing the SDRM proposal and suggesting a more practical approach.

Against the backdrop of the massive rescue packages for Mexico in 1995 and South Korea in 1997-98, Elliott Associates' enforcement action against Peru had combined with Ecuador and Argentina's defaults to ignite a small powder keg of policy turbulence for Emerging Markets investors that has abated, but in some respects continues to this day.

Ostensibly intended by policymakers to make sovereign debt restructuring more 'orderly', the SDRM proposal had a number of fundamental flaws that were quickly pointed out.

(1) Among others, the SDRM proposal appeared to be based upon the dubious assumption that the existing mechanisms for resolving sovereign financial crises in the Emerging Markets did not work (or did not work well enough) because sovereign debt restructurings were too prone to disruption by hold-out bondholders or so-called 'rogue' creditors, an assumption largely contradicted by the recent experience of Ecuador, Pakistan, Russia and Ukraine in restructuring their bond debt (even in Peru, the Elliott enforcement actions had minimal effects on Peru's Brady plan restructuring and were successful in obtaining payment from Peru only several years later, at a time when Peru had accumulated ample reserves from which to make payment). In short, the perceived threat that a small minority of creditors would prevent a debtor country from restructuring was highly exaggerated, and much more theoretical than real.

(2) The second basic flaw in the SDRM proposal was that it would have severely compromised the legitimate right of creditors to enforce their claims and thereby upset the delicate balance between the rights of sovereign debtors and their

creditors. The fundamental types of creditor protections present in workable insolvency regimes (sales of non-strategic assets, changes in management and/or business and comprehensive treatment of all classes of debt) were lacking, in part because they simply cannot be enforced against a sovereign. Such protections are a part of the necessary checks and balances that legitimize and make a bankruptcy regime fair and effective. When such key elements are missing, the appropriate balance between debtor and creditor rights is upset, and credit would stop flowing as a result.

(3) Third, the legitimacy of a bankruptcy regime also depends upon there being an impartial arbiter whose judgments of fairness and efficacy strongly influence the reorganization process. The IMF's status as a creditor owned and controlled by debtor and creditor countries would inevitably create conflicts of interest and a resulting perception of bias (if not outright impartiality) that would damage the regime's legitimacy.

(4) Finally, the proposed solution, a bankruptcy procedure, did not address the real problem, which was the failure of some sovereign debtors to develop the institutions and systems (and discipline), and to pursue the policies, that could provide greater protection over the long-term from severe economic and financial difficulties. A crisis prevented is one that never needs to be resolved. A sovereign bankruptcy mechanism would not have helped to address the problems that led to Argentina's crisis. Other policy measures and incentives applied much earlier might have. The 'gaping hole' in the current financial architecture was the apparent lack of effective policy measures and incentives to prevent sovereign financial crises, not the lack of mandatory mechanisms to ensure orderly debt work-outs.

For these reasons, the IMF's SDRM proposal seemed a serious step in the wrong direction. Instead, my paper, which was presented at a variety of forums in late 2001 and early 2002, argued in favor of a more market-oriented and case-by-case approach to resolving sovereign debt crises.

Galvanizing the private sector into an unprecedented (in my experience) degree of cooperation, by early February 2002, the SDRM proposal resulted in five financial trade associations (SIA, EMTA, IPMA, ISMA and TBMA) writing the Managing Director of the IMF a joint letter criticizing the proposal for these and other reasons. Shortly thereafter, John Taylor, Under Secretary of the US Treasury for International Affairs, without explicitly commenting on the IMF's SDRM proposal itself, encouraged the private sector to develop a market-based alternative pursuant to which debtor countries and their bondholders would insert into their bond contracts a new package of provisions known as 'collective action' clauses. In his view, these CAC's would provide for (a) majority-action voting to change payment terms (his suggestion was 75% instead of the 100% required in most bonds governed by NY law), (b) an 'engagement' clause describing the process for restructuring (including how the creditors would be represented during restructuring negotiations) and (c) an 'initiation' clause specifying how the sovereign would initiate a restructuring (including a temporary standstill or suspension of payments while the restructuring discussions were being organized).

Despite the Taylor proposal, the SDRM proposal was not withdrawn, and it soon became clear that the official sector was directly or indirectly pursuing a two-track approach that involved simultaneously pressing ahead with the SDRM proposal and also promoting the more voluntary development and adoption of bond contract clauses along the lines of the Taylor proposal. Faced with this choice of alternatives, the Taylor proposal almost immediately received qualified support from the private sector, and various groups began the process of preparing a formal response.

Despite widespread agreement that the Taylor proposal was preferable to the SDRM (at least one very senior executive at a major sellside firm strongly disagreed, stating privately that the Taylor proposal should be resisted in its entirety because it was "proposed by people with no understanding of markets and is merely the first step in an effort to control them"), several months passed without any sign that a unified private sector position on the Taylor position would coalesce. The IMF floated a revised SDRM proposal, putting increased pressure on the private sector to respond. Working together with a group of five other leading financial trade associations (SIA, TBMA, IIF, EMCA and IPMA), EMTA was in a nearly unique position to assist in a constructive effort to develop specific clauses (or principles) that reconciled differing private sector interests and views. Other groups tended to represent sellside or buyside views only, or had much less experience and expertise in the area of EM bond financing altogether.

On April 23, 2002, the Emerging Markets Creditors Association (EMCA) released their draft of Model Covenants for New Sovereign Debt Issues (a revised draft was released in May and posted on EMTA's website).While apparently not developed in specific response to the Taylor proposal, these Model Covenants nevertheless contained a number of provisions that did respond to the three concerns expressed by Mr Taylor and others in the official sector. My Commentary on the Taylor Proposal and the EMCA Model Covenants reviewed both in detail, concluding that "bondholders would consider it a fair trade if EM sovereign bonds were made easier to restructure so long as, at the same time, greater efforts were made, contractually and otherwise, to ensure that making them easier to restructure would not simply result in their default and/restructuring becoming more likely". To this end, the Model Covenants (as revised) responded to the Taylor proposal by supporting a form of majority-action clause (with a suggested voting level of 90-95% for amending payment and other key legal terms) and prescribing procedures to facilitate a better dialogue between sovereign debtors and their bondholders in times of financial difficulty. Responding also to the Taylor proposal in its broader context, the Model Covenants also invited a dialogue about contractual provisions (and other mechanisms) designed to provide greater assurance that debtor countries would remain more creditworthy and, when confronted with financial problems, that they treated their bondholders more fairly.

On June 3, 2002, EMTA and the five other trade associations sent to the G10 finance ministers a joint letter that articulated a set of general principles for private sector involvement in resolving financial crises in the Emerging Markets. Among other things, the letter emphasized that any such involvement must be market-oriented to ensure the best chance of maintaining market access and restoring private sector credit flows. Specifically, the joint letter expressed support for <u>limited</u> collective action clauses (including super-majority provisions (at 90-95%) to amend payment and other key terms) in the context of other mechanisms (including greater transparency as well as enhanced financial covenants) intended to reinforce a higher level of financial discipline. Following on from their letter, the six trade associations continued their collaboration by working together to develop a private sector consensus regarding specific, marketable bond contract language that balanced the Taylor proposal with the legitimate concerns of bondholders that bonds be made more creditworthy at the same time that they be made easier to restructure.

The consensus represented by this joint letter, and the collaboration that resulted in it, was remarkable in that almost the entire private sector financial community was able to "get on the same page" and agree on a single approach; what it took was a general recognition that bond contracts had to include stronger creditor protections. It was not obvious that IIF would support this principle, or that EMCA would support the collective action clauses at all, and EMTA took the leading role in brokering the consensus, both by revising EMCA's Model Covenants to make them more feasible, and by persuading IIF that increased creditor protections were necessary to make bonds with collective action clauses more marketable. EMTA's specific contribution was to provide technical, legal and market input into the policy debate, to help find common ground for market participants and thus to form a more effective working coalition among the financial trade associations.

Despite increased private sector support for the Taylor proposal for CAC's, many in the G10 preferred the SDRM, and as a result the official sector continued to pursue the 'two-track' approach through the Summer and the Fall of 2002. It was unclear whether or not the SDRM, or a UST-driven effort to draft specific bond language, could be pre-empted. Representatives of the six trade associations met with the G10 in the Fall and both reaffirmed their opposition to the SDRM and announced that they were developing model collective action clauses for marketable bonds under both NY and English law (including a summary of their terms). In support of the collaborative private sector effort to steer the official sector away from the SDRM and toward marketable CAC's, EMTA published a position paper entitled The Quest for More Orderly Sovereign Work-Outs that summarized the flaws in the SDRM and the advantages of Marketable CAC's. Speaking at EMTA's 2002 Annual Meeting, UnderSecretary Taylor praised EMTA's position paper, noting that it fleshed out many of the details of how collective action clauses should be developed. Taylor affirmed that he agreed "wholeheartedly" with the two main principles of EMTA's paper: that CAC's must be acceptable to both debtors and investors, and that the new clauses must not increase the likelihood of a sovereign's decision to seek a restructuring. "Conditions now appear ripe" for the actual writing of the new clauses, he said, and, echoing the sentiments of former Secretary Brady spoken at a previous EMTA Annual Meeting, he termed 2003 the time for market participants and sovereign issuers to "roll up their sleeves and get to work".

In January 2003, the group of financial trade associations (now expanded with the addition of ISMA to a group of seven) released its Marketable Bond Package, which included specific bond language for bonds under NY and English law, as well as a Code of Conduct for resolving financial crises in the Emerging Markets and a form of Bond Documentation Chart to be used in summarizing and publicizing the key terms of EM bond issues.

Within several months, Mexico surprised the markets by becoming the first EM country to include CAC's in its bond documentation. Mexico's initiative was strongly supported by the US Treasury but given only qualified support by EMCA, which noted that the Mexico's CAC's would permit the amendment of payment terms by a 75% vote of bondholders and that the CAC's seemed to lack some of the creditor protections that had been recommended by the group of seven trade associations. Not wanting to interfere with a market transaction, EMTA declined comment on Mexico's CAC's, other than to say that this aspect of bond documentation and crisis resolution had now moved "out of the hands of government policymakers, and trade associations, where it never really belonged, and into the marketplace, where it properly does." Soon after Mexico's pioneering bond issue was successfully completed, other debtor countries followed (including Uruguay, Brazil, South Africa, Korea and the Ukraine), for the most part following the example of Mexico's clauses (with some variations in super-majority voting percentages), and to enable the marketplace to compare them more easily, EMTA began preparing and publishing summaries of their terms with its Bond Documentation Charts. Little further was heard of the IMF's SDRM proposal, which was quietly withdrawn by the IMF and G7 in the Spring of 2003.

The IMF's SDRM proposal and the EM industry's effort to oppose it, and to influence the official sector toward a more market-oriented approach toward involving the private sector in the resolution of financial crises in the Emerging Markets, was a long, drawn out affair, marked by intensive collaboration among a broad spectrum of trade associations against a backdrop of considerable industry concern that Argentina's economic crisis and default were not being adequately addressed. Although the rest of the market decoupled from Argentina soon after its default, there was much at stake for Argentina's bondholders, and the memory of Ecuador was fresh in the collective mind of EM investors. Many EM investors were clearly uncomfortable with the general lack of credit protections built into bond documentation, and unhappily surprised by the way they were treated by Ecuador and later Argentina, and by the apparent indifference of the IMF and other official sector bodies and lack of remedies they had in response.

Although the Taylor proposal itself, and perhaps the trade association effort in support of it, took much of the wind out of the SDRM's sails, what ultimately seemed to tip the balance against the SDRM and in favor of marketable CAC's was that major debtor countries were strongly, but quietly, against the SDRM proposal, out of a concern that it would drive up borrowing costs and limit the control that they had over their own debt strategies. Mexico's adoption of CAC's largely settled the matter, although for a time there were variations in the voting levels included in the CAC's of different countries, variations that indicated a continuing conflict between the interest of debtors and investors, as well as some unresolved tension between the somewhat conflicting goals of standardizing bond documentation and the traditional case-by-case approach toward resolving financial crises in the Emerging Markets.

EMTA's efforts to forge a consensus between the EM sellside and buyside were important in catalyzing an effective industry response to the SDRM. Although CAC's were not a perfect solution to the problem of how to resolve financial crises in the Emerging Markets, they did help preserve a more market-oriented, case-by-case approach to future crises than would otherwise have been the case under the SDRM. At least for the time being, the Argentina default notwithstanding, the policy debate about this aspect of resolving financial crises in the Emerging Markets, and how to involve the private sector in it, and the resulting distractions, seemed at last to have ended. More importantly, the markets moved on.

The confluence of Ecuador, Argentina and the SDRM brought the EM trading and investment community, and even the broader financial community, together to an unusual degree. Most importantly, the trade association collaboration, and particularly the cooperation between EMTA and EMCA, demonstrated that the two organizations, and the EM sellside and buyside generally, could work together toward common goals. This common undertaking laid a good foundation for future cooperation between the EM sellside and buyside, and that it had occurred within EMTA meant that EMTA was likely to be a forum shared by the sellside and buyside going forward. In addition, the working relationship with ISMA, IPMA, TBMA, SIA and EMTA showed that the organizations all shared common interests and goals, albeit each within its separate spheres of expertise and influence.

<u>Industry and Trade Association Convergence/EMTA's Office Move to 360 Madison Avenue</u>

EMTA's increasing visibility on buyside issues was accompanied by a steady increase in buyside membership. By mid-2003, ten of EMTA's 22 directors were representatives of buyside firms, and for several years nearly half of EMTA's agenda had been focused on issues that could be said to be mostly buyside in nature. Among other things, the collaboration among financial trade associations to oppose the SDRM and to shape the evolution of CAC's, as well as the continued Argentina default, eventually led to discussions between EMTA and EMCA regarding a possible combination between the two organizations. The direct impetus for the possible combination probably came from a joint EMTA/EMCA effort to oppose certification of a class action against Argentina (including the imposition of a formal stay that would in effect have reversed the <u>Allied</u> decision) and instead suggest ways in an <u>amicus curiae</u> brief that the federal district court might help guide Argentina toward as constructive a restructuring process as possible. Argentina generally was in favor of the brief, in part because a class action would have subjected the restructuring process to the untoward influence of class action plaintiff's counsel (the court eventually ruled against both the class action and the stay). Throughout the process of developing the legal brief (which was never finalized), it became increasingly clear that EMCA's substance lay in its membership and Board leadership, but that it did not have sufficient staff resources to follow-up on its Board's policies.

Early discussions quickly led to the shared conclusion that EMTA and EMCA should affiliate as sister organizations under a new umbrella organization (tentatively called

EMA) with three semi-autonomous organizations representing the sellside (EMTA), buyside (EMCA) and FX derivatives (EMDA) businesses. In general, all trade associations serving the financial sector had been under considerable pressure to improve their efficiency and reduce their cost structures. The trend toward consolidation that had existed generally in the financial industry for several years had clearly reached the financial trade associations. The proposed affiliation of EMTA with EMCA could be seen as part of this trend, as well as evidence of the continued maturing of the EM trading and investment businesses. In addition to a fairly obvious overlap of membership interests, the proposed affiliation was driven by a mutual need for a better economy of scale—EMCA had suffered from an apparent under-capacity of staffing and other resources, while EMTA had somewhat of an over-capacity. The proposed affiliation was intended in part to provide a more efficient (and effective) matching of resources against services needed. Unfortunately, the discussions with EMCA first lagged, and then stalled in 2004, mostly as a result of difficulties that EMCA had in focusing its attention on the proposed affiliation. One conclusion that could be drawn from this was that it demonstrated EMCA's need for the affiliation as clearly as EMTA's eroding finances showed EMTA's need for it.

Meanwhile, the industry drive toward greater efficiency (the trend that had become known as 'convergence') continued, as did the trend of EMTA's increasing work on behalf of buyside interests.

Dating back to its formation in late 1990, EMTA's offices had always been in the Wall Street area, first within JP Morgan's complex at 23/37 Wall Street and 15 Broad Street, and later in the Brown Brothers Harriman building at 63 Wall Street. EMTA's lease at 63 Wall was due to expire early in 2003, and EMTA began searching for new space in 2001. On the assumption that midtown rent levels were prohibitively expensive, the search focused on the Wall Street area.

In August 2001, the heads of fixed income at 21 major financial institutions (including 11 EMTA Board firms) wrote a letter to their financial trade associations (specifically, SIA, TBMA, ISMA, ISDA, IPMA, LSTA, FIA and EMTA) asking for greater organizational and operating efficiency among industry trade associations in view of the increasing integration of financial products within individual firms. The associations were asked to meet to review alternatives that would achieve these objectives. This letter, and the obvious trend toward industry convergence that was behind it, precipitated discussions among all of the associations, but particularly between TBMA and EMTA regarding how the two organizations could work together more effectively (after several months, the group of trade associations responded with a joint letter summarizing some of their current efforts to work together more efficiently, at the same time stating some concerns about organizational integration and requesting further guidance from the fixed income heads). At about the same time, EMTA was offered the opportunity to join TBMA in a real estate parcel that it was assembling midtown for a possible group of financial trade associations.

TBMA soon proposed, in a draft letter, a combination in which EMTA would become a semi-autonomous affiliate of TBMA, maintaining its own Board of Directors, staff and agenda for an indefinite period, while working toward a closer integration in the future. My initial reaction to this proposal was colored by issues that had arisen in connection with the more or less contemporaneous integration of EMCC into DTCC and with our prior experience with TBMA's predecessor, PSA (a prior effort in 1997 by PSA to take over EMTA had ended when key EMTA Board members thought the idea premature). From EMTA's side, the most obvious concerns involved the reactions of EMTA's non-US and buyside members (at the time, TBMA did not permit buyside members and was generally perceived outside the US as an almost exclusively domestic US organization) and about the potential weakening of EM decision-making and 'voice' within a broader, integrated organization (the same thing that had happened to EMCC).

Of three possible alternative ways of structuring a closer relationship between EMTA and TBMA (EMTA as an integrated Division, EMTA as an affiliated Forum or EMTA as a tenant with some sharing of administrative staff), I recommended that we work with TBMA staff to explore the middle alternative. Under this alternative, EMTA would become a 'forum' of TBMA on terms that addressed EMTA's basic concerns about TBMA's mainly domestic US and sellside orientation. EMTA would retain its separate corporate identity, Board, membership, finances and senior staff. Certain administrative staff would be transferred to TBMA and 'leased back' on an as-needed basis, thus (A) giving EMTA greater access to TBMA resources in areas such as IT, communications and advocacy and (B) enabling EMTA to shed about enough in annual administrative expenses to offset the increased expense for midtown office space. Future steps toward further integration of the two organizations would be reviewed over a two-year period, based on such factors as how well the affiliation was working and what further progress TBMA made toward becoming a more globally-oriented and buyside-oriented organization. This type of arrangement was discussed at several EMTA Board meetings over the course of the first half of 2002, and the negotiation of a formal memorandum of understanding to implement the affiliation of EMTA as a TBMA forum was approved. Throughout the negotiation, TBMA's CEO Micah Green was extremely reasonable in resolving issues that arose, and during this time, EMTA and TBMA were working in close collaboration to put together the private sector alternative to the IMF's SDRM proposal.

I recommended the resulting MOU essentially because I thought that the affiliation would put EMTA on a somewhat sounder financial and institutional footing without sacrificing its credibility or effectiveness. In my view (the rest of EMTA staff did not necessarily agree), the MOU, as negotiated, adequately balanced a number of considerations: EMTA would have greater access to some key resources, better technology and better opportunity to coordinate policies with other associations, without losing the independence it needed to set and execute its agenda and serve its membership. EMTA's affiliation with TBMA was supported by the representatives on EMTA's Board of several US investment banks, but viewed somewhat skeptically or opposed by most other Board members.

Following a lengthy discussion at a Board meeting in the Summer of 2002, a strong consensus of EMTA's Board welcomed EMTA's relocation into the TBMA premises at 360 Madison Avenue, as well as the related resource-sharing arrangements, as a substantial step toward greater efficiency, coordination and cost-savings, but decided that any further integration of EMTA with TBMA (as a forum, affiliate or otherwise) might adversely affect EMTA's credibility and status as a global organization with significant buyside orientation and extensive activities outside the fixed income area (notably, FX derivatives). This decision was strongly supported by EMTA's Co-Chairs, Juan del Azar (Merrill Lynch), George Grunebaum (JP Morgan Chase) and Mark Coombs (Ashmore).

Accordingly, in November 2002, EMTA relocated from 63 Wall Street to 360 Madison Avenue, and within several years, ISMA and IPMA in London had merged to form ICMA (2005), and TBMA and SIA (located primarily in NYC and Washington, DC) had merged to form SIFMA (2006), which has subsequently worked to develop a more global presence. EMTA, LSTA and ISDA remain independent trade associations. In the final analysis, the combination of the lease and resource-sharing arrangements with TBMA effectively decreased EMTA's overall annual expenses by about $170,000 (increased occupancy expense of $50,000 offset by a decrease in staffing costs of $220,000), thus relieving EMTA of some of the financial pressure that it had been under since the contraction of the EM trading industry after the Asian and Russian debt crises.

<u>The Continuing Warrant Debacle</u>

As recounted in EMTA 1994-98: The Golden Era of EM Debt Trading?, there have been longstanding difficulties in the settlement of trading in the commodity-based warrants that originally accompanied the issuance of certain Brady bonds (most notably, Mexico's Value Recovery Rights, Venezuela's Oil Obligations and Nigeria's Payment Adjustment Rights). Though initially attached to the underlying Brady bonds, these warrants became detachable, with their own ISIN codes, and therefore settlement of trading in them required submission of a separate instruction to the settlement systems (Euroclear, Cedel (later Clearstream) or DTCC). Unfortunately, this separate settlement instruction was often forgotten or disregarded, the result being a long chain of failed or non-settlements, which only became a practical problem years later when the warrants came into the money. In 1997, EMTA adopted a new set of market practices for Mexico's Value Recovery Rights that were designed to simplify warrant settlement (by bundling them with their underlying Brady bonds into units with a single ISIN code so that only a single settlement instruction was required to effect settlement of the unit). Unfortunately, by then, sufficient seeds of confusion had been sown to create reconciliation and settlement problems that continued for many years.

After nearly a year of consideration, a new market practice for trading Mexico Value Recovery Rights became effective on February 1, 2001, providing that VRR's would trade separately from their related Discount and Par Bonds (and vice versa) (a comparable revision in market practice was recommended for Venezuela Oil Obligations effective early in 2002 and for Nigeria's Rights effective late in 2002). Previous market practice, dating back to 1991, had been that a trade of such bonds was assumed, unless otherwise agreed, to include the related VRR's (the previous market practice being justified by the fact that, historically, the VRR's had only occasionally been in the money (and then not substantially so) and therefore were generally perceived as having little or no market value).

The change in market practice was largely driven by a sharp increase in global oil prices during 2000 that put the VRR's in the money and increased their market value. Providing for separate trading of VRR's from their related bonds was perceived as offering several advantages to the marketplace: (1) separate trading would create a market for the VRR's, thereby enhancing and "unlocking" their market value that, under the former market practice, was embedded in the price of the related bond and (2) separate trading would permit Discount and Par Bonds to settle without the need for separately transferring the related VRR's, a transfer that, unfortunately under the former market practice, was not always (perhaps rarely) done, thus creating over the years the massive accumulation of failed VRR transfers. To assist the marketplace in better understanding Mexico VRR's and their trading characteristics, EMTA prepared and published "EMTA's Primer on Mexico Value Recovery Rights".

Eventually, the new market practice was enthusiastically received by the marketplace, but the process of developing and implementing it was convoluted and slow-moving. Many market participants had wanted the new practice to become effective in mid-year 2000, before payments on the VRR's began to become due, but its implementation was delayed by six months when the fragile consensus in its favor broke down in the late Spring of 2000 over concerns about several potential disadvantages. While ultimately successful, EMTA's experience in connection with adopting this new market practice illustrated both the pros and cons of EMTA's consensus-oriented decision-making process.

From the outset, the marketplace seemed in uniform agreement on the two advantages of the new market practice described above. Many market participants also believed that, in addition to halting the increase of failed VRR transfers ("stopping the bleeding"), the new practice would actually help reduce the outstanding backlog by creating a supply of VRR's in the market for use in settling old fails and by establishing a VRR market value that would quantify the potential risks associated with the backlog. Several other major market participants disagreed, however, arguing that, while trades in the Discount and Par Bonds would settle without problems under the new market practice, any separate trades of VRR's would likely fail, thus aggravating the existing backlog; moreover, the change in market practice, they felt, would increase the likelihood of disruptive buy-ins and potentially contentious claiming for VRR payments. In effect, these market participants strongly believed that the new market practice should not be adopted until further progress had been made in the reconciliation and clean-up of the accumulated backlog of failed or otherwise unsettled VRR trades.

In the absence of clear consensus, EMTA reluctantly decided to defer the new market practice until later in the year 2000 (and then later into early 2001) and in the interim to concentrate on the reconciliation and clean-up process. This decision was not uniformly popular, particularly with buyside firms that understandably wanted to recognize the embedded value of the VRR's as early as possible.

A Digression on Market Practices and EMTA's Decisionmaking Process. For an organization that works to promote greater transparency in the marketplace, it is perhaps odd that EMTA's own decision-making process is somewhat opaque. But making decisions for a marketplace that is composed of buyers and sellers with diverse and often-opposing interests is hardly simple or straightforward. Despite by-laws that provide, in most cases, for decision by majority voting of the Board of Directors, by long-standing custom, most EMTA decisions, and certainly those involving market practices, are made by consensus, a process that has been worked out over time but may not always be self-apparent.

Market practices are proposed by EMTA members. These proposals are typically developed and circulated by EMTA's staff in consultation with (mostly) ad hoc working groups as draft recommendations for review by market participants, often with the reasoning for the proposed recommendation as articulated by its leading proponents. If consensus is not reached in the first instance, the draft recommendations are revised and recirculated to the market for further review and comment. When consensus is reached, the recommendations are republished prior to their becoming effective. Occasionally, so-called 'final' recommendations are revised before their effective date. Following their formal recommendation, market practices are subject to further review and may be revised from time to time. In general, EMTA's market practices are recommendations only, and as such, are not binding on market participants except to the extent that they agree, explicitly or implicitly, to be bound by them in the context of specific transactions. I cannot think of a market practice recommendation that did not contain the phrase "unless otherwise agreed".

How well have these informal procedures served the marketplace? And what constitutes a "consensus"?

For two decades, EMTA's decision-making procedures have enabled the industry to address many of its most pressing problems with a minimum of controversy or acrimony. While they have sometimes slowed down market-wide decision-making, they have never resulted in stalemate. For the most part, in an environment of volatile uncertainty, they have worked well to allow market participants with diverse, and often strongly-held, views to resolve their differences and make progress on complex issues. While mistakes are sometimes made, serious ones have been avoided.

As it has evolved, EMTA's consensus approach clearly requires more than a majority and somewhat less than unanimity. Above all, reaching consensus requires a balancing of interests. The majority implicitly agrees not to override a reasonable objection from a significant minority, and the minority agrees not to raise unreasonable objections and to graciously drop their objections when (and if) it becomes clear that they have been raised and fairly considered. All commit in good faith to work to resolve differences and reach an acceptable consensus view as soon as practicable. This approach seems to balance the interests of all market participants, whether they are in the majority or the minority. Speed is sometimes sacrificed for the greater certainty and legitimacy that usually comes from considering all views seriously. Weighing factors such as the influence of a market participant and the strength of its conviction or the reasonableness of its views requires considerable subjective judgment, and determining when consensus has been reached (and sometimes where it can be reached) may be more art than science.

This consensus approach has generally served the marketplace well. Did it work perfectly in the case of the 2001-02 market practice for VRR's (or necessarily in later efforts to resolve the continuing warrant settlement problem)? Perhaps not quickly enough in 2000-2001, but well enough considering the serious concerns that were raised. Although the 2001-02 market practice was delayed for over six months, during the delay sufficient progress was made in reconciling old trades and cleaning up the existing backlog to allay previous concerns and enable a stronger consensus to form. As it turned out, the new market practice worked reasonably well (certainly in terms of "stopping the bleeding" and allowing bond trades to settle), and the buy-ins and claiming that some had feared did not materialize. While the market practice was undoubtedly successful, its benefits came later than some market participants would have wanted.

Venezuela's Warrants Come into the Money. Unfortunately, "stopping the bleeding" was not enough to save the patient. Once the warrants came into the money, the somewhat theoretical problem of not being able to reconcile and settle warrant positions became the more practical and immediate one of warrant payments not ending up in the hands of the right counterparties.

Although the difficulties in reconciling warrant positions was common to Mexican, Venezuelan, Nigerian and, to a lesser extent, Uruguayan instruments, various circumstances (including their issuance in series and Mexico's retirement of its bonds by 2003) limited the worst of the problem to Venezuela's Oil Obligations, which came into the money for the first time in the last quarter of 2004. This payment was not made when due, and its delay until March 2005 raised many trading questions. The EMTA Warrant working group immediately began an intensive effort to focus on the reconciliation of the Venezuela Oil Obligations, and in June 2005 EMTA released a communication to the marketplace in support of this effort, advising that "In the interests of an orderly market, EMTA wishes to remind all market participants that, although progress has been made toward the industry goal of resolving this settlement backlog satisfactorily, until this reconciliation is substantially completed, and a strategy to address the current problem comprehensively (such as a global multilateral netting facility) can be developed and implemented, a certain amount of patience and forbearance in dealing with counterparties is likely to contribute a great deal more to the overall resolution of the settlement backlog than the aggressive pursuit of individual payment and settlement claims".

The reconciliation effort focused initially on an internal reconciliation (particularly important for those dealer firms that had participated in mergers), and then proceeded in the Fall to reconciliation among dealers and between dealers and the settlement systems, and finally between dealers and custodians for buyside firms. EMTA assisted in this reconciliation effort by collecting and disseminating contact information and by hosting monthly conference calls to review reconciliation progress. During the course of this work, it became apparent that poor recordkeeping and the lack of cooperation from many custodians were significant hurdles to addressing the overall settlement backlog, as were a number of legal issues relating to the considerable length of time that the backlog had existed (in particular, the length of time that settlement fails had existed and related issues involving statutes of limitations and measurement of damages). Legal uncertainty and complex and differing factual circumstances combined to help frustrate the development of a comprehensive solution. In mid-Summer 2005, the EMTA Board was informed that "Realistically, beyond facilitating reconciliation through better information-sharing and some nudging, reducing agreed positions through bilateral and/or multilateral netting and facilitating cash settlement, there may be little that EMTA can do to help address the overall settlement backlog."

By late in 2005, sufficient progress had been made by the dealer community in reconciling their positions internally, and with the settlement systems and with each other, to enable JP Morgan Chase to propose a large multilateral netting facility as an effort to provide a comprehensive solution to the longstanding problem. As proposed, positions would be netted multilaterally among a critical mass of market participants and the resulting net positions would be cash-settled at a price determined by a market mechanism. The facility was authorized by EMTA's Board in early 2006, and work began on its construction, with a view to completing it by the Summer of 2006. The facility was publicly announced in February 2006 and it remained clear that reconciliation with custodians and legal issues bearing on the appropriate pricing of the cash-settlement mechanism would be the main hurdles to the completion of the facility. Regulatory pressure was applied by the New York Stock Exchange in the Spring of 2006, and operations personnel worked intensively to complete the necessary reconciliation. At its October 2006 meeting, EMTA's Board recognized that the earliest possible date for completing the facility was some time early in 2007 and that very significant issues would need to be worked out before any such facility would be feasible, including much more reconciliation work (especially with customers and their custodians) and consensus on the structure and pricing methodology (which were, as noted above, dependent on a combination of uncertain legal and factual issues).

During the course of collecting data for the proposed multilateral facilities, EMTA became aware of many opportunities for firms to reduce risk and facilitate settlement by entering into trilateral netting and other arrangements that would prove much more feasible due to their relative simplicity and lesser vulnerability to the non-participation or withdrawal of counterparties. By the Spring of 2007, it had become apparent that the barriers to completing a multilateral netting as a comprehensive solution were insuperable, both for Venezuela and for Nigeria, and EMTA shifted its attention to attacking the overall problem in a series of smaller steps by preparing documentation for and encouraging a series of these trilateral arrangements among interested market participants. Often, these transactions were structured as trilateral "step outs" or "offsets" without settlement to avoid pricing and delivery problems and thereby ensure their completion.

With the onset of the subprime mortgage crisis in the third quarter of 2007, the EM industry's effort to resolve the warrant settlement backlog, particularly with the elusive industry-wide comprehensive solution, gradually lost steam. Much progress had been made in reconciling positions among market participants (especially on the sellside), but several factors (and particularly differing perceptions of the value and enforceability of warrant claims, and the relative lack of progress in engaging cooperation from buyside firms that were net sellers of the warrants) combined to prevent a comprehensive solution. With the exception of a netting facility for Nigeria's warrants, completed in the run-up to a Nigerian exchange offer for them, the effort to arrange a multilateral netting facility proved to be impossible. An unknown number of smaller trilateral and bilateral facilities were successfully completed, however, which makes it possible to say that although we were not aware of any large-scale break-throughs in resolving the overall situation, the problem was pecked away at, and that may have been the best that could have been hoped for under the circumstances.

More on Argentina and the 'Unfinished Business' of the Burden-Sharing Debate

At a time when many Emerging Markets countries truly emerged, the Argentina default continued to have market and policy implications throughout the decade of the 2000's, long after the implementation of CAC's had taken the wind out of the SDRM's sails.

The keynote speaker at EMTA's 2003 Annual Meeting was Argentina's Finance Secretary Guillermo Nielsen, a somewhat controversial choice especially in the view of a number of EMTA's buyside members, who felt that permitting him to give the keynote was, because of Argentina's recalcitrance in dealing with its bondholders, giving Argentina a platform that it did not deserve. Officially, EMTA remained neutral in the obvious dispute between Argentina and its bondholders, though some private efforts were quietly made to encourage Argentina to recognize a negotiating committee, a process that Argentina firmly rejected as against its interests. In response to the objections of some EMTA buyside members, I tried to ensure that Mr Nielsen's remarks were placed in an appropriate context, by making sure that his address was preceded by panel presentations that would highlight market concerns, as well as a special briefing by members of the Argentina Bondholders Committee on their recent counterproposal to Argentina's initial restructuring offer, and by inviting him to respond. During the meeting, I noted that Mr Nielsen, and also the ABC, had been invited to speak as part of EMTA's role to provide a forum for the discussion of important market issues, and to promote the dialogue between Argentina and its bondholders. Mr Nielsen's remarks were comprehensive, and delivered graciously, though his description of the restructuring process that Argentina intended to follow was more inclusive, and less recalcitrant, than most investors, then or now, would be willing to give Argentina credit for.

Within a year or so of Mexico's pioneering inclusion in March 2003 of CAC's in its bond issues, nearly 30 other EM sovereigns brought to market bonds with CAC's under either NY or English law aggregating over US$47 billion in face amount. During this time, general market conditions were very favorable for issuing EM bonds, and, regardless of how investors may have felt about CAC's generally, these various CAC bond issuances were generally well-received. EMTA's bond chart summaries of the terms of these bonds showed that there were significant variations among them. Of course, none of this affected Argentina, but the Argentine default, and its difficult restructuring process, continued to have its effect on the burden-sharing debate.

While all of these bond issues included provisions to permit payment and other key terms to be changed by majority action (thus responding to what had been perceived as a potential holdout or 'rogue' creditor problem), with the exception of two issues (one by Hungary and the other by Latvia), they failed to address concerns (expressed by Mr Taylor in his original proposal, and also expressed by many investors frustrated by Argentina's restructuring process) that EM sovereign bonds lacked adequate mechanisms to facilitate the constructive 'engagement' of sovereign debtors and their creditors in times of financial distress. To some (including me), the lack of such engagement mechanisms (which include the formation of negotiating committees and reimbursement of their reasonable legal and financial advisory expenses) seemed a remaining 'hole' in the existing architecture for resolving financial crises in the Emerging Markets that permitted 'rogue debtors' to avoid negotiating their way out of default.

Argentina's relationship with its creditors remained polarized throughout 2004, and the burden-sharing issue was increasingly seen through an Argentine prism. IIF pushed hard for a set of Principles that would articulate guidelines for the conduct of debtors, creditors and the official sector in the context of EM sovereign financial crises. Over the Summer of 2004, EMTA worked intensively with a group of five other major financial associations (SIA, TBMA, ISMA, IPMA and EMCA) in an effort to improve the IIF's draft Principles. The effort was only partly successful, as IIF broke off the collaboration after refusing a final set of comments that the group felt was necessary to ensure that the Principles would be supported by a sufficiently broad spectrum of the marketplace (and particularly, investors) to validate them and make them successful.

While the IIF Principles appropriately emphasized that debt restructurings should be voluntary and as market-oriented as possible, they failed to provide useful guidance on two areas that many investors considered important to the integrity of the restructuring process, constructive engagement with creditors and the aggressive use of exit consents. The final version of the Principles was silent on the issue of exit consents (rather than, as was suggested, discouraging their aggressive use), and did not support the inclusion of engagement provisions as a part of CAC's (which would have included the recommendation that debtor countries reimburse creditor committee expenses). By not dealing with these two issues adequately, the IIF Principles did not add much, if anything, to the then-existing framework for resolving crises, and as a result, investors did not support them, and despite considerable pressure from IIF, EMTA declined to take a formal position on them (I had to remind IIF that EMTA could recognize market consensus, but could not manufacture it). Ultimately, IIF's goal was to submit their Principles to the G-20 countries at their Fall Summit; the G-20 issued a statement welcoming the Principles, but tellingly declined to endorse them.

Argentina's long-awaited exchange offer to restructure its bonds was finally launched in January 2005, and following several delays due to pending litigation that threatened to attach tendered bonds, the exchange offer was completed in early June, restructuring about 76% of Argentina's bond debt. In connection with the restructuring, EMTA recommended forms for trading the various instruments issued pursuant to the exchange offer on a when/issued basis. Legal actions by non-tendering bondholders against Argentina to enforce their judgment claims continued, however, though without a great deal of success, and EMTA continued to monitor the situation closely.

There is little that can be said about Argentina's economic difficulties, default and 2005 restructuring that all market participants would agree with, other than that the whole situation was deeply unfortunate and that it highlighted the lack of consensus about country debt restructurings. Many investors, for example, sharply criticized Argentina's restructuring tactics, which involved what can fairly be described as a "take-it-or-leave-it" offer, at a time when many believed (particularly with the benefit of hindsight) that Argentina could have offered its creditors more generous restructuring terms. Other investors (some pointing to the subsequent performance of Argentina's innovative GDP instruments and other assets offered in the restructuring) have criticized the so-called 'hold-out' investors for not participating and, in effect, for not simply 'moving on'. Similarly, the resulting legal actions against Argentina have been criticized by some (as disruptive, unsuccessful and, in effect, shortsighted), and applauded by others (for defending the interests of creditor's rights and pressuring Argentina to reopen its 2005 offer). A clear example of the differing opinions that together make markets.

Beginning with the Mexican 'Tequila' crisis in 1994, there was much debate about international financial architecture, whether or not there are 'holes' in it, and if so, how to fill them (the debate was continuing in mid-2010, particularly with the Euro-Zone crisis). Much of this debate was overblown, and focused on perceived demons such as 'rogue' creditors, 'rogue' debtors and even 'rogue' international financial institutions.

<u>Lessons Learned</u>. After some of this dust had settled, over the course of 2006, EMTA presented four panel discussions relating to various aspects of what we called "Partial Sovereign Restructurings". The purpose of these discussions was not to take sides in the debate about Argentina's default and restructuring, or necessarily to develop any sort of consensus position on any of the questions raised by it or other recent restructurings, but simply to explore the lessons, if any, that could be learned from recent experience, an experience that was difficult for all concerned, and for the market in general. Panelists included a range of lawyers (for both debtors and creditors), representatives of the official sector, rating agencies, investors and the sellside. Various observations can be drawn from these presentations.

(1) Rating agencies may have quite different policies on how to treat sovereign debtors that are in, or emerging from, default scenarios, and in particular, they may have differing views on the relative importance of capacity and willingness to pay. These discrepancies are probably mirrored in a certain inconsistency of investor views regarding the significance of a debtor country's track record in servicing its debt. This inconsistency certainly can be seen if one looks at the differing investor attitudes regarding Argentina.
(2) Creditor participation levels in sovereign restructurings may or may not have declined from the 95%+ critical mass levels of the Brady and pre-Brady era, but it seems clear that the diversification of bondholders, low carrying costs, debtor country populism and the trend toward CAC's at the 75% level put some downward pressure on future participation levels, with one implication being greater potential for litigation. Regardless of the factors that led G-8 governments to encourage the market to adopt the 75% CAC's that are now standard, the many prior bond issues without CAC's will probably require that most country debt rescheduling will continue to be structured in the form of exchange offers. Despite some signs of a trend toward greater populism (eg, Ecuador), each country that determines that a restructuring is necessary will

likely do so in the context of its own facts and circumstances. Belize, which completed the restructuring of its debt in 2007 with a participation rate of 98%, signaled early on that its restructuring would be market-friendly (other examples of market-friendly deals would include Uruguay and the Dominican Republic). Compared with Argentina, that establishes a wide bid/offer in restructuring approaches and participation levels, and at this point, there is no more reason to assume that other debtor countries will follow the Argentine model than the Belizean one. Presumably, future restructurings will be guided less by populism than by a practical balancing of the degree of debt relief needed with the benefits of early return to the normally functioning voluntary markets, and it seems clear enough that the main factors in determining the level of creditor participation are the nature of the debtor's engagement with its creditors and whether or not the restructuring process is considered market-oriented.

(3) Predictably, there is a significant split in perceptions between investors and debtor countries regarding whether or not the US Foreign Sovereign Immunities Act is working properly, or as originally intended, with debtors and many in the official sector pointing to the somewhat greater prevalence of creditor litigation, and investors emphasizing the surprising few instances where creditor litigation has actually resulted in any recovery. Despite the fact that one of the fundamental purposes of the FSIA was to 'de-politicize' the granting of sovereign immunity and to make the judicial process more transparent and objective, it seems that the question of litigation against sovereigns has become more political than ever before.

(4) At the same time, there is a significant spectrum of private sector attitudes, and even split views within the investor community, regarding whether or not the existing financial architecture is adequate in balancing the interests of debtor countries and their creditors. Some investors seem much more inclined than others to approve of aggressive actions taken by some creditors that could interfere with the flexibility of other investors to enter into restructurings or other financings with debtors. In fact, the divide between investors seems to extend almost to the point where some investors care passionately about the enforceability of their rights under bond legal documentation, while others seems almost not to care whether or not their bonds are enforceable. If one can generalize, EMTA members seem to believe that while the enforceability of bonds generally underpins the market, thus establishing a bedrock of value, actual enforcement by a single creditor can have the potential to reduce value for other investors. The beauty of bond enforceability is very much in the eye of the bondholder.

(5) The prevailing view among investors, despite their differences, is that G-7 (or in these days, G-20) policies are significantly more in favor of debtor countries, and less in favor of creditor interests, than they were a decade or more ago. This trend probably traces back to the mid-1990's, when with the increasing securitization of EM debt into bonds, came a growing sense in the official sector that their traditional approach toward supporting EM debt restructurings needed to be reviewed. Before Argentina, there was a

widespread sense throughout the official sector that the presumed 'hole' in the international financial architecture was the potential that a 'hold-out', or 'rogue', creditor might disrupt a restructuring. This perception was generally consistent with the prevailing official sector philosophy of 'burden-sharing', but largely seemed to stem from the relatively isolated experience of Elliott v. Peru, where a creditor who had bought its debt at a discount in the secondary market succeeded in collecting a substantial claim, but only several years after Peru's restructuring was successfully completed. The 'disruption' was more theoretical than real, but it ultimately led to a series of official sector proposals designed to fill the perceived 'hole'. One of the more enduring legacies of the Argentine default and restructuring may be that the official sector has gained a greater appreciation of the appropriate balance between debtors and creditors, as well as of its limitations to influence outcomes, that may lead it to be more modest about what it can or should do to help resolve future sovereign financial crises.

(6) Finally, the ability to make accurate judgments about the efficacy of the international financial architecture is affected by the prevailing economic and investment climate, which in the period 2000-2007 was characterized by high commodity prices, low interest rates, substantial accumulation of reserves and reduction of debt levels by many debtors, substitution of local currency financing for financing in external currencies and generally high levels of liquidity. During EMTA's 2006 presentation series, several speakers noted the inability of market forces to impose much in the way of discipline on sovereign debtors under then-current market conditions, in the absence of stronger enforcement rights. Just as the favorable economic environment bolstered the performance of Argentina's economy, it may also have made investors generally less risk averse and more tolerant of the apparent erosion of creditor rights represented by such things as the market's adoption of collective action clauses and recent developments in the interpretation of the FSIA by US courts. It would be a mistake automatically to assume that either the particular economic and market environment, or the investor or debtor behavior that it encouraged, would remain constant. Perhaps with the passing of time, and changes in market conditions to a less favorable environment, EM investors will become more discriminating and inclined to impose more in the way of market discipline on debtors, and debtors may become subject to different influences as they form and implement their economic and financial plans and, if need be, their restructuring strategies. Similarly, changing circumstances may affect judgments about how well the international financial architecture works or how it should be changed.

(7) Because creditor reactions to a debt restructuring are strongly influenced by how effectively the debtor engages with its creditors, process does matter, though how much it matters may vary depending upon prevailing economic and market circumstances. Clearly, one way to make the restructuring process more 'orderly' (to the extent that is necessary or desirable) is to find mechanisms that encourage such engagement to be as constructive as possible. Because country debt restructurings must be approached on a

> case-by-case basis, their modalities and outcomes cannot be standardized. This almost inherent lack of uniformity is inevitable and may result in a somewhat ad hoc process that has sometimes seemed unpredictable and therefore disorderly. The starting point in determining how to make the restructuring process more 'orderly' is in recognizing that even countries in financial crisis nevertheless retain considerable power (they are sovereign, after all) to determine how that crisis will be resolved. Because of the limited remedies available, and the tendency of courts to proceed cautiously, even legal actions that may be brought by some creditors against the debtor country seem likely to prove more of a nuisance than a serious disruption. Whether or not a country's policies and actions can effectively prevent an economic crisis, the timing and manner of a restructuring are in many respects within the debtor country's control. While a debtor country may not, under the prevailing architecture, be able to control creditor reactions to its financial crisis and restructuring proposals, such reactions can generally be anticipated and influenced by the debtor country's conduct. This influence over creditor reactions is in part exerted through the debtor country's engagement with its creditors. If there has been a 'hole' in the financial architecture, it was that how (or in some cases, whether!) a debtor country chose to engage with its creditors was too uncertain, and that uncertainty had the potential for resulting in an unconstructive engagement or, even worse, a perceived lack of it at all, as was the case in Argentina.

Frankly, it is hard to evaluate how effective EMTA's efforts were to influence policy in the area of sovereign default, its resolution and burden-sharing. In general, during the period 1999-2007 there was considerable official sector interest in these issues, which resulted in numerous proposals that, without good private sector input, would certainly have created a less favourable legal and contractual environment. Direct input from individual firms from the private sector, invaluable when given, is not always provided (or may not be provided as effectively) for a variety of reasons. Clearly, EMTA played a useful role as an industry resource in soliciting and marshalling industry input, as well as in providing some protection for firms that did not wish to be seen, for whatever reason, to be directly participating in the advocacy process. Equally clearly, EMTA's size, while probably contributing to the nimbleness of some of our responses, put pretty severe constraints on the resources that it was able to devote to this work. It is probably fair to say that, over the years, EMTA developed a certain amount of experience and expertise in this area and with that came some capability as well as credibility. EMTA's views are now widely cited, and sought by members, official sector groups and the media. There are other advocacy organizations, of course, but probably none that was as focused on EM or as responsive to the specific and immediate concerns of EMTA's constituency.

Laying specifics aside, the main lessons that I took away from these aspects of the burden-sharing debate was that the markets work remarkably well to price in risks, and that bond documentation, while important, must be understood in its context—ultimately, documentation is less important than process, and documentation and process together are less important than basic factors such as yields, fundamentals and the overall investment, financial and economic environment. Clearly, CAC's or their specific terms, or other aspects of the broader burden-sharing debate, were simply not to be the tail that wagged the dog, particularly at a time when interest rate levels were at historic lows and many EM countries were earning investment-grade debt ratings.

EMTA's Activities in the FX Derivatives Area date back to late 1995, when an FX working group was formed, initially to look into the standardization of trading forms and market practices for Mexico and Brazil FX transactions, as part of an effort initiated by JP Morgan to reduce a tremendous settlement backlog. Shortly thereafter, EMTA began soliciting opinions of local counsel in Argentina, Brazil and Mexico regarding such matters as onshore and offshore trading restrictions and the extent to which netting was enforceable under local law. As noted above, and in EMTA 1994-98: The Golden Age of EM Debt Trading, the Asian and Russian financial crises established EMTA over the next several years as the forum for developing mechanisms to permit counterparties to allocate Emerging Markets FX risks and settle transactions in the event of market disruptions and for managing the resolution of the crises that resulted when such disruptions occurred. This work created within EMTA great expertise in developing spot and back-up survey rates and procedures that EMTA later used in addressing market closings and other events that arose in Brazil (1999), Taiwan (1999), Venezuela (1999 and 2003), Argentina (2001-02) and elsewhere. Meanwhile, several regional EMTA NDF working groups led by Starla Griffin (nee Cohen) worked for several years on developing standard templates, market practices and rate-source definitions for NDF's in a number of EM currencies in the LatAm, Eastern Europe and Asian regions (including the Brazilian Real, Hungarian Forint, Taiwan Dollar, Chinese Renminbi, Indian Rupee, Korean Won, Philippine Peso, Argentine Peso and Indonesian Rupiah). When Starla Griffin left EMTA at the end of 2001 (to write a children's book—she later returned to focus mostly on policy issues), EMTA's work in the FX derivatives area became the responsibility of Leslie Payton Jacobs.

In the next five years, the marketplace for Emerging Markets FX products grew rapidly, and by 2005 EMTA had essentially completed developing an architecture (including standard documentation, market practices and user's guides) for trading NDF's and NDO's throughout Latin America (specifically, Brazil, Argentina, Colombia, Chile, Peru and Venezuela) and Asia (South Korea, China, Taiwan, India, Indonesia, the Philippines, Malaysia, Vietnam and Pakistan (though notably not the Thai Baht)), as well as Russia. Primary or back-up FX rate determination mechanisms were developed and implemented for Argentina and Brazil (the mechanism for Russia was revised), many rate definitions were revised and EMTA was employed as the principal forum for addressing unscheduled market closings and other disruptions in numerous countries.

This work was developed organically, as EMTA and its FX derivatives working groups responded to specific market needs as they arose, often in collaboration with other trade groups or service providers (such as the Foreign Exchange Committee in New York, other foreign exchange committees in Singapore, Hong Kong and Tokyo (for the various Asian currencies), the Chicago Mercantile Exchange (mainly in Russia and Brazil) and ISDA). While EMTA developed considerable expertise in the FX area, industry decision-making was spread across various industry bodies and was not particularly transparent, and EMTA, and the industry generally, probably devoted insufficient resources to ensuring that its infrastructure (such as rate determination mechanisms) was adequately automated (or 'fail-safe') to meet best industry standards. Fortunately, during the period in question, none of these rate determination mechanisms, though perhaps vulnerable, was ever tested by a market crisis.

Market Trends Generally; Development of the Local Currency Market. Though much of this description of EMTA's activities during the period 1999-2007 dwells on various market problems, these years were generally prosperous ones for the EM debt trading and investment industry. Investment opportunities abounded, and surging commodity prices and historically low interest rate levels combined to result in rising reserve levels and strong investment flows into the Emerging Markets and generally tightening spreads for many EM debt instruments.

In response to this favorable environment, trading volumes in Emerging Markets fixed instruments generally grew throughout the early 2000's, from a 1999 bottom of US$ 2.2 trillion to a high of US$ 6.5 trillion in 2006 and 2007 (before falling off substantially in 2008). More specific information evident from successive EMTA volume surveys showed a steadily declining importance of Brady bonds (Mexico retired its pioneering Brady bonds in 2003, followed by Brazil, Nigeria, Panama, Philippines, Uruguay and Venezuela—even Argentina retired a large percentage of its Brady's as part of its 2005 exchange offer). Increasingly, external currency borrowings were comprised of Eurobonds (whose annual trading volumes peaked at US$ 2.675 trillion (41% of total trading volumes) in 2006), but the most significant trend was the rapid development of investment interest and trading in local market instruments, as the prevailing economic environment enabled many debtor countries to overcome the "original sin" of borrowing in foreign currency and investors sought yield and became more comfortable with EM policy reforms and fundamentals, local currency FX risks and the enhanced liquidity that accompanied greater investor interest and higher trading volumes. For many EM countries and their investors, it was an era marked by a virtuous cycle. Trading in local market instruments surged from US$ 1.54 trillion in 2001 (44% of 2001's overall trading volume of US$ 3.5 trillion) to US$ 4.264 trillion in 2007 (66% of 2007's overall trading volume of US$ 6.5 trillion), and many debtor countries generally continued to accumulate reserves that eventually prepared them better than many so-called 'more developed' countries for the eventual economic downturn that began in mid-2007 as a result of the subprime mortgage crisis and bursting of the US residential housing bubble. EMTA's volume survey for the fourth quarter of 2007 showed a sharp drop-off in trading volumes (that continued throughout 2008).

During this time, some instruments declined in importance or disappeared almost entirely (loans gave way to Brady bonds and Warrants by the mid-1990's, with sovereign Eurobonds gradually replacing the Brady's by the mid-2000's), while others once seen as novel or problematic became much more prominent or popular (local market instruments generally, as well as corporate bonds and GDP-type instruments). At the same time, investment ratings climbed throughout this period, with a number of countries (such as Mexico (2000-2002), Russia (2003-2005), Brazil (2008) and Peru (2008)) reaching investment grade (though not entirely graduating from EM), while others (such as Argentina, Ecuador and Venezuela) seemed mired in credit doldrums mostly of their own making.

With this evolution of the market came significant changes in EMTA's work (particularly as it involved the sellside). Some problems were solved or just went away; others emerged. In their day, EM loans and Brady bonds (with their related Warrants) generated the need for a lot of documentation and market practices, which over the years required considerable follow-up attention (mostly provided by Aviva Werner). Local Markets instruments and corporate bonds tended to develop with less need for this type of standardization. An important outgrowth of this evolution was the extensive work that EMTA took on in the general area of investor rights (as discussed above), and, to a lesser extent, in the so-called Frontier Markets that were developing in Africa and around the periphery of the relatively well-developed Emerging Markets. EMTA's work in the FX area, on the other hand, has tended more to follow the Brady bond model of requiring extensive standardization of legal documentation and development of market practices and infrastructure.

One area in which EMTA's activities grew substantially was in the presentation of events designed to provide a forum for the discussion either of country developments and prospects or of specific topics thought to be of particular interest to EM market participants. Of course, EMTA's annual meeting in NYC dated back almost to its earliest years, and various programs relating to EMTA projects (the so-called open meetings) occurred regularly, particularly in EMTA's early years. In 1998, EMTA launched its Summer Forum in London, an effort to respond to the needs of London market participants for a forum similar to that provided by the annual meeting, as well as to address uniquely London-oriented investment opportunities. A London Winter Forum was added in 2004, giving EMTA an annual line-up of seasonal forums, which included Spring and Fall Forums in NYC. Responding to regional interest, two Asian forums Singapore and Hong Kong) were launched in 2006 and two LatAm forums (Sao Paulo and Buenos Aires) were initiated in 2008. A special effort was made throughout this period to present topical presentations of particular interest to investors, and after years of insisting that EMTA was not in the business either of giving parties or promoting charities, EMTA (largely through Jonathan Murno) began to sponsor EM industry benefits in both NYC and London.

In mid-2003 EMTA initiated a short-lived effort to collect and publish CDS and NDF volume information, comparable to its traditional survey of fixed income trading volumes that dates back to 1992. By year-end, however, the effort was suspended, and then abandoned in late 2005, when it became apparent that EMTA was not receiving sufficient reports from market participants to produce credible industrywide CDS and NDF volume surveys. Feedback from several major market participants among EMTA's membership indicated that, at the time, the potential results did not justify the dedication of the necessary resources to collect and report the data to EMTA. We continued, however, to believe that this data was valuable in the interest of promoting market transparency, and the effort was put on the back burner for later development (ultimately the EM CDS survey was restarted in 2010, with hopes that the NDF survey would follow shortly).

EMTA's Leaders from 1999 through 2007

Of course, there have always been great traditions of leadership (and change) in the Emerging Markets trading and investment community, and this period was no exception. Many of EMTA's founding Directors stepped down from EMTA's Board during the mid-1990's (notably, several others continued to serve for a few more years or longer, as noted below), but their successors were in many cases already industry leaders in their own right, having played prominent roles on early EMTA committees and working groups, and in the marketplace, in helping to establish market practices and standard documentation during EMTA's formative and early years. EMTA and the EM trading and investment industry owe a great debt of gratitude to them for their leadership, wisdom and hard work on EMTA's behalf.

Leaders on EMTA's Board of Directors during the period 1999-2007 included the following, many of whom are still active in the markets today (though in many cases, not at their original sellside firms):

Guido Mosca (JPM) assumed the Board seat originally held by EMTA founding Director Nicolas Rohatyn and served on the Board from 1996-2000 (and as Co-Chair in 1999 and before that, as a vigilant Board Treasurer for several years). Among other things, Guido was always a forceful advocate for the high road (as well as principal advocate of the school of thought that EMTA should not be in the business of throwing parties) .

Paul Masco (Salomon Brothers) replaced Mark Franklin and served on EMTA's Board from 1994-2000 (and as Co-Chair in 1999). Paul also served on the Board of Directors of the Emerging Markets Clearing Corporation. Among other things, it was Paul who most impressed on EMTA staff the need for EMTA to always strive to represent both sellers and buyers in the marketplace.

Modesto Gomez (Chase/JPM Chase) assumed the Board seat held by Jorge Jasson and served as EMTA Co-Chair from 1999-01, and encouraged the development of many of EMTA's local markets activities.

Juan del Azar (Merrill Lynch), who managed Merrill's global EM trading and sales business for many years, served on EMTA's Board of Directors from 1998-2007 (and as Co-Chair from 2000-06). During times of market convergence, Juan was a consistent and forceful advocate for EMTA and the EM trading and investment industry.

Mark Coombs (Ashmore), EMTA's longest-serving Director, has served on EMTA's Board of Directors from 1994-2010 (from 1994-99 on behalf of the sellside firm ANZ and since then, on behalf of his buyside firm Ashmore). Since 2001, Mark has been an EMTA Co-Chair, providing much of the continuity that has characterized EMTA's philosophy and activities over the years.

George Grunebaum (JPM Chase), a trader's trader, served as an EMTA Co-Chair from 2002-05.

Steve Kenny (UBS) served as a Co-Chair from 2004-06.

Bo Bazylevsky (JPM Chase) served as a Co-Chair from 2005-06.

Martin Marron (JPM Chase) joined EMTA's Board in 2007 and served as Co-Chair from 2007-2010.

Matt Clinton (Lehman) served as Co-Chair (and also Board Treasurer) from 2007-09.

Among others, the following Directors also served notable terms on EMTA's Board of Directors during this time:

Peter Geraghty, an EMTA founding Director (then from NMB), also served as a Director from 2005-08 from Dresdner Kleinwort, 2000-03 from Darby and 1994-97 from ING and ING/Barings, and from 1994-97 was an EMTA Co-Chair or Vice-Chair. Among other things, it was Peter who first articulated the EMTA mantra that the Emerging Markets were a "state of mind."

Bruce Wolfson has served as an EMTA Director since 1995 (1995-2004 from Bear Stearns and 2005-10 from The Rohatyn Group). One of EMTA's longest-serving

Directors (along with Mark Coombs and Peter Geraghty), Bruce's legal judgment was a guiding force in the development of EM standard documentation and market practices.

Ruth Laslo (UBS) served on EMTA's Board of Directors from 2003-04 and 2006-07. She also has served as Board Treasurer and as a long-time alternate Director who has played a leading role in the development of EMTA's FX and derivatives activities.

Dean Menegas (Spinnaker) replaced Alexis Habib and has served on the Board of Directors from 2002-2010 (and as a Vice-Chair from 2005-10). Dean has been instrumental in providing EMTA with expert legal advice and European market perspective.

Manuel Mejia-Aoun, also a founding EMTA Director, served on EMTA's Board of Directors from 1999-2000 while he was at Deutsche Bank and before that, from 1990-95 while he was at Merrill Lynch.

Gail Segal replaced Alex McLeod on EMTA's Board on behalf of Bank of America and served from 1997-2000.

Abigail McKenna (Morgan Stanley Investment Management) served on EMTA's Board of Directors from 2001-04. Abby is well-known for her leadership of the EM investment community.

Keith Gardner (Western Asset Management) has served on EMTA's Board of Directors from 2001-10, and, with Abby, was a leader in EMCA's efforts to promote investor rights.

Mohamed el-Erian (PIMCO) served on EMTA's Board of Directors in 2001.

Mike Gagliardi served on EMTA's Board of Directors from 2002-09 on behalf of TC Atlantic and Halbis, and before that in 1999 on behalf of Wasserstein Perella. Mike participated in many EMTA Forum panels, always preceding his accurate market predictions with the phrase "I could be wrong, and a lot of you are a lot smarter than I am, but…"

Fran Bermonzohn (Goldman Sachs), a former general counsel of the Public Securities Association (a predecessor of TBMA and SIFMA), served on EMTA's Board of Directors from 1999-2002.

Brian Lazell (BNP Paribas), for many years a leader of ISMA and ICMA market practice committees, served on EMTA's Board of Directors from 2000-2002.

Alexis Habib served on EMTA's Board of Directors from 1995-2002 on behalf of Indosuez Capital, Credit Agricole and Spinnaker Capital.

Richie Prager served on EMTA's Board of Directors from 2000-03 on behalf of Bank of America.

Diego Ferro (Morgan Stanley) served on EMTA's Board of Directors from 2003-07.

Diego Gradowczyk (Barclays Capital) joined EMTA's Board of Directors in 2004 (eventually becoming Co-Chair from 2009-10).

Last, but not least, Francis McGuinn served on EMTA's Board of Directors in 2000 and 2001 on behalf of Canter Fitzgerald (tragically passing away at their offices on September 11, 2001).

Other Directors who served on behalf of their firms as EMTA Vice-Chairs during this time included Andy Alter (2000-05 from Salomon Smith Barney and Citigroup), Gaby Szpigiel (2001-03 from Deutsche Bank), Kay Haigh (2004-09 from Deutsche), John Cleary (2001-03 from INVESCO and 2004-06 from Standard Asset Management), and Mohammed Grimeh (2004-06 from Lehman Brothers).

As noted above, the growth of Local Markets investment interest and trading activity has not been accompanied by the same degree of need for standardization that typified the development of the market for Brady bonds (and that characterizes the EM FX derivatives market), so there has been some shift in the orientation of EMTA's work, at least in the fixed income area, away from the development of documentation and market practices and toward more general policy issues (such as maintaining a level playing field for foreign investors). Whether this continues to be the case is probably anybody's guess.

Despite the change in the nature of EMTA's workload, what has tended to stay more or less the same over the years is that (1) EM itself has remained somewhat separate from other business areas (despite some mainstreaming of EM into the broader investment business, EM continues to require some skills, attitudes and attention distinct from the mainstream), (2) buyside issues involving credit and investor rights seem to transcend the ebb and flow of differing instrument types and (3) there is a continuing need for institutional memory, expertise and coordination that cannot be met entirely from within the industry itself.

When asked what EMTA does, my typical response (based on the diversity of market circumstances and their effect on EMTA's activities) is to say that EMTA is the EM debt community's "clubhouse" and "firehouse". Clubhouse in the sense that EMTA provides the main forum for members of the industry to gather, sometimes just to socialize but most often to discuss and debate industry developments and prospects, and firehouse in the sense that, though the Emerging Markets and the EM debt trading markets have prospered in ways that the LDC debt traders of the late 1980's could scarcely have imagined, there are still occasional market events or "situations" that require the industry to mobilize a response. In many cases, EMTA provides the 'first responders' to such market situations.

EMTA 2008-2012—AN OVERVIEW—From Cowboy Market to Safe Haven?

Michael M. Chamberlin[1]
Executive Director

Ever since its formation in late 1990, EMTA has been the forum of the Emerging Markets trading and investment community for the orderly development of EM debt trading. In its earliest years, as several of the preceding articles in this series have illustrated, EMTA was originally the forum that helped the industry to navigate, through the development of market practices and trading documentation, the successful transition of EM fixed income from sporadic loan trading, mostly in NYC and London, into a large scale global bond origination and trading business. Later advances in efficiency and reduced credit risk were made as a result of EMTA's work in building industry infrastructure such as bilateral and multilateral netting facilities and the Emerging Markets Clearing Corporation. By 2007, thanks in large part to the rebuilding and steady development of the EM marketplace following the market crisis of 1998, EMTA had largely met its goals of bringing greater efficiency and professionalism to the trading of EM fixed income instruments, through various mechanisms addressing pricing, confirmations, clearance and settlement. More recently, of course, many individuals have moved from the sellside to the buyside and most aspects of EM fixed income trading (the exception relating to some local market instruments) have integrated almost seamlessly into the architecture of the global and US domestic debt markets. Systems and standards in the global EM debt marketplace are as strong as any in the world (with those in local markets generally defying generalization, but becoming on the whole much stronger), and it says something about how far EM debt trading has come from the days when banking regulators openly referred to it as a "cowboy market" that, by the time of the dark days of the recent global recession and resulting European credit crisis, EM was being described as a "safe haven" for investors.

EM Fixed Income—EMTA's Core Business Helps Navigate the Speed Bumps. Despite this widespread integration of EM debt, operationally and as an investment alternative, into the global trading and investment mainstream, in 2009-10 EMTA's Board reaffirmed EMTA's commitment to supporting the core business of EM fixed income trading, and in fact, that support has continued to be very useful to the marketplace. As the accompanying article by EMTA General Counsel Aviva Werner describes ("EMTA 2008-2012: As the EM Fixed Income Debt Trading and Investment Market Continues to Mature and Mainstream, EMTA Focuses on New Topics (and a Few Older Ones)"), nuts and bolts work for EMTA continued throughout the 2008-2012 period, often in the context of the occasional troubled country or corporate credit (Ecuador, Ivory Coast and Belize come to mind), and small pockets of inefficiency attracted EMTA's attention from time to time (such as the settlement backlogs for oil-linked warrants from Venezuela and Nigeria, which continued to resist the market's efforts to net them off, or otherwise reduce or eliminate them).

[1] Michael Chamberlin was formerly a Partner at Shearman & Sterling with a law practice focused on public and private sector Latin American debt restructurings and capital market transactions. Among other things, he led Shearman & Sterling's representation of the international banking community in Mexico's pioneering debt exchange under the Brady Plan, represented PDVSA in connection with many of its public financings, helped World Wildlife Fund US develop the debt-for-nature swap and worked on many financings, refinancing and debt swaps in the 1980's and early 1990's before becoming EMTA's Executive Director in 1994. He was educated at Princeton University and George Washington Law School.

Clearly, the biggest story in the EM fixed income area (or if not the most important story, certainly the one that generated the biggest headlines), as it had been since their moratorium and default in December 2001, was Argentina, as the many twists and turns in its on-going litigation with its holdout creditors provided grist for many investment decisions and policy debates.

Although Argentina's 2005 exchange offer had succeeded in restructuring about 76% of its sovereign bond debt, the terms of the offer, and the way they were presented to bondholders on a take-it-or-leave-it basis, polarized the creditor community. Litigation brought by a group of holdout creditors dragged through the US federal courts, while the debt relief provided by the exchange offer and the non-payment on the holdout bought time for Argentina to rebuild its foreign reserves. In 2010, Argentina completed a second debt exchange offer, on substantially identical terms to the 2005 offer, bringing to about 93% the percentage of its 2001 sovereign bonds that had been restructured. The remaining 7% remained elusive, however (a further effort by Argentina to restructure it in 2011 was cancelled), and in late 2011 and early 2012, Judge Griesa of the US District Court for the Southern District of NY ruled in favor of the holdout plaintiffs' arguments that Argentina's continuing failure to pay their bonds, coupled with its so-called Lock Law (which prevented Argentina from settling with the holdout creditors on terms more favorable than the exchange offers), violated the pari passu clause in the bonds and thus prevented Argentina from paying other creditors without paying the holdouts pro rata. Griesa's decision was eventually affirmed by the 2d Circuit Court of Appeals, but the decision effectively foreclosed Argentina's opportunities to pay its other creditors or to raise financing through other global channels. The decision also spawned a series of proposals to further reform the international architecture for restructuring sovereign bonds—but that, along with further legal steps taken by the holdout creditors to enforce their claims, are stories that carry over into 2013 and beyond, and therefore cannot be told here. Needless to say, each effort by Argentina to restructure its debt, and each enforcement action by the holdout creditors, was followed with great interest by the marketplace.

Interestingly, as the EM debt marketplace mainstreamed, and the number and types of participating firms proliferated, the diversity of views among market participants also increased, making more challenging EMTA's time-honored tradition of reaching decisions by consensus. [See 1999-2007, pp 26-7]. The continuing saga of Argentina's unwillingness to satisfy its holdout creditors highlighted the sharp differences of opinion between different groups of creditors, which EMTA found increasingly difficult to bridge. At various times in its history, EMTA has represented creditor views, as was the case rather consistently from 1999 on in connection with various official sector proposals to make it easier to restructure sovereign debt (or, as the official sector generally called it, to make sovereign restructurings "more orderly")[see 1999-2007, pp 14-20 (and 29-35)]. The market took great interest as the Argentine saga unfolded, and in presenting various events designed to keep market participants apprised of the latest developments, EMTA took as neutral an approach to the ongoing litigation as possible, in part to keep a door open to the Argentine government, but mostly because of the split in the investor community between those who cited creditor rights as their reason for backing the holdout plaintiffs and those who, having exchanged their older, defaulted debt for new Argentine bonds, looked more to the interruption of debt service, and the potential price implications of the litigation, on their holdings as their reason for backing Argentina. [see 1999-2007, p 33]. The sellside (always a large EMTA constituency) was, of course, conflicted, caught between Argentina (and other potential country customers) and both categories of their investor customers. Over time, this split in investor attitudes seemed to harden, and eventually began to carry over into investor attitudes toward various official sector and academic proposals to reform the international architecture for sovereign bonds and their restructuring. As a result, the growing split in investor sentiment tended to weaken EMTA's ability to speak firmly with a single voice on matters involving both Argentina and country debt restructuring reform proposals more generally. Such are the complexities of representing market participants in a diverse market naturally composed of buyers and sellers (as well as issuers, the sellside and other intermediaries), some of whom were litigants (or inclined to be) and some of whom were not. While EMTA's decision to respect its various membership constituencies by remaining relatively neutral in the context of the Argentine/holdout litigation, and relatively quiet in the ongoing debate regarding proposals to reform sovereign debt architecture, probably pleased no one, it nevertheless enabled EMTA to stay focused and effective in offering a forum for market participants to debate, discuss and digest these matters, and most likely prevented a rupture in the organization that would certainly have been disruptive and counterproductive to EMTA's effectiveness in other areas.

The difficulties in reaching consensus and speaking with one voice were challenges that represented a new reality for EMTA, ones that had previously been recognized by Paul Masco, who memorably asked me one day in another context if I thought that EMTA should represent the interests of buyers, sellers, or both.

On a somewhat more positive note for the Emerging Markets (though not for the financial community more generally), severe credit problems within the EuroZone eventually leading to the restructuring of Greece's outstanding indebtedness were followed closely by EM market participants, but did not result in contagion spilling over into the Emerging Markets generally. In fact, in a reversal of sorts, many EM countries became perceived as "safe havens" for foreign capital, as the unusually low-interest environment maintained by the leading central banks created a carry trade that diverted substantial capital into the Emerging Markets, and lessons learned from prior EM debt crises were recycled into the European debt discussions. Along the way, a number of developed countries (including the US) lost their Triple A ratings, while many EM countries acquired investment grade ratings.

<u>FX Derivatives—Growth, and Some Volatility, in the Path Toward Greater Efficiency</u>. While EM fixed income trading was more or less integrating safely into the global fixed income markets, EMTA and its members increasingly turned their substantive attention to the orderly development of the trading markets for Emerging Markets FX derivatives, building on the foundational architecture of the 1998 FX and Currency Option Definitions jointly sponsored by EMTA, ISDA and the FX Committee of the Federal Reserve Bank of New York and the CME-EMTA Russian Ruble Rate developed by the financial community through EMTA and CME in response to the Russian Ruble crisis of 1998.

As described in detail by EMTA senior Legal Counsel and Managing Director Leslie Payton Jacobs in her accompanying article ("EMTA's Work in the FX Space—2008-2012"), challenges faced by EMTA in this area included standardizing legal documentation and market practices across multiple currencies and products and identifying reliable rate sources for settling NDF and other transactions in various jurisdictions (or, in some cases where such rate sources were simply unavailable, developing alternative ones).

As a small trade association serving the interests of a formerly niche business that has since mainstreamed into the broader financial services industry, EMTA's activities have necessarily involved close collaboration with other industry bodies. No where has this been more true than in the FX derivatives area, where documentation and market practices are created and must operate within the ISDA architecture, and developing them has required collaboration not only with ISDA, but also with the FX Committee of the FRBNY, the FMLG, AFME in Europe and the Foreign Markets Law Committee in London, as well as a number of regional or local groups and scores of individual firms. For the most part, these collaborations have worked smoothly. Recognizing the importance of this collaboration, and working at it, has been a key element in the success that EMTA has had in helping to bring greater standardization and efficiency to the EM FX derivatives area in recent years, and navigating the differing (and occasionally conflicting) interests and approaches of different industry constituencies can be challenging in its own right.

Occasionally, EMTA's status as often the "junior partner" in its relationship with the larger financial trade groups resulted (or seemed to result) in EMTA's particular priorities being subordinated to those of the other groups (or at times even being set by them as a practical matter). As Leslie's article recounts, the interests of Emerging Markets FX derivatives market participants in avoiding a wide variety of burdensome Dodd-Frank reporting, trading and clearing requirements were overridden by the more compelling goals of the broader financial industry, which did not want to run the risk of jeopardizing the exempt status under Dodd-Frank of FX transactions generally. While failure to receive its own exemption from these Dodd-Frank requirements may complicate the further development of the EM FX derivatives area, and EMTA's future work in bringing greater efficiencies to it, understanding when and where there are outside constraints on EM agendas, and operating within them, will continue to be a key part of EMTA's challenges. Despite these constraints, it has generally been recognized that EMTA has been able to bring considerable value-added to the table in its focus and expertise in providing a forum for EM market participants to raise and address EM issues on a priority basis.

Similarly, another important aspect of EMTA's approach to serving its constituency in the FX derivatives area has been knowing when and how to take on occasional activities outside of those normally undertaken by financial trade associations, when necessary to facilitate market development. A good example of this was EMTA's willingness to help build the architecture of rate-setting mechanisms, beginning in 1998 shortly after the onset of the Russian Ruble market crisis (in a project undertaken more or less jointly with CME—see EMTA 1999-2007, pp 2-3 and 35-6), a role that was later replicated and expanded to include primary and back-up rate determination administrative responsibilities in connection with the Argentine peso after its crisis in 2001 (as well as in later development of back-up rates for a number of other EM currencies). In 2009 EMTA sponsored development of a similar rate-setting mechanism for the Ukrainian Hryvnia, in this case with Thomson Reuters as administrator. These projects, undertaken in the absence of alternative, viable rate sources that could be relied upon by market participants, grew out of EMTA's ordinary work helping to develop trading documentation and market practices and required crafting detailed, polling-based methodologies, which outlined procedures to be followed on a daily basis in the case of primary rates (and following market disruptions in the case of back-up rates).

In late 2009 and early 2010, raising with EMTA's Board some concerns about whether EMTA's growing responsibilities in connection with administering these rate-setting mechanisms were supported by adequate capital and other resources, I recommended that either a larger investment be made to upgrade EMTA's FX infrastructure or in encouraging administratively and financially stronger outside industry service providers to ensure more secure mechanisms for determining and publishing rates. Considering these alternatives, particularly in the context of other industry developments outside of EM, it was the sense of the Board that EMTA's FX work should focus more on market practices and standardized documentation and somewhat less on administrative tasks related to rate determinations. By late 2010, a decision was made to step up efforts to offload some of these administrative responsibilities when possible to other providers. Subsequent developments in the broader financial industry have confirmed the wisdom of this decision.

Promoting Market Transparency, and the EM Asset Class. Promoting market transparency has always been high on EMTA's list of priorities, dating back to the "open" meetings that first brought market participants together, in NYC and in London, to sort through a variety of gnarly market issues in EMTA's (and the EM debt trading market's) early days. Of course, market transparency was always indispensable to the development of greater market efficiency and ultimately the growth of investor confidence in the market, but my sense was that the main purpose of most of EMTA's meetings was originally more internal than that—essentially to make sure that market insiders had a common understanding of basic instrument characteristics and similar market issues so they could make the market more workable. Although economic commentary and market forecasting was always part of the mix, particularly as it affected perceptions of restructuring progress and prospects, the use of EMTA by market participants as a forum to exchange market views and reach out to investors and prospective investors really started to develop as the market recovered from the loss of investor confidence in the several years following the Russian Ruble crisis in 1998. Additionally, in the early days, as EMTA focused intently on building market efficiency and professionalism, there was a natural resistance to expend EMTA resources on industry gatherings that seemed particularly social in nature. With many (though not all) of the inefficiencies squeezed out of the system, and market participation growing almost exponentially, EMTA gradually turned more of its attentions to investor outreach, as evidenced by the increase in EMTA's events agenda during the early 2000's in the areas of presenting an expanded series of EM industry forums and sponsoring charity benefits in NYC and in London. As a harbinger of things to come, EMTA initiated its annual forums in Hong Kong and Singapore in 2006, and its corporate bond forums in 2007.

As described in more detail in EMTA Managing Director Jonathan Murno's accompanying article ("EMTA 2008-2012—Promoting the EM Asset Class and Market Transparency"), the period 2008-12 saw these trends toward greater investor and market outreach continue, as EMTA actively sought new Board members from buyside firms and exported its annual forums from NYC and London to various EM regional and local centers such as Sao Paulo and Buenos Aires (both added in 2008), Dubai (initiated in 2010) and Miami (2011). In addition, EMTA expanded its coverage of regional market developments with the initiation of forums on Central America & the Caribbean (2010), the EuroZone (2010 and 2011) and the offshore Chinese Renminbi market (2011), as well as a continuing series focused exclusively on Argentina. Added to the more established seasonal offerings of Summer and Winter forums in London and Spring and Fall forums (and the Annual Meeting) in NYC, this increased the number of EMTA forums and other presentations in 2012 to 20 (from a dozen in 2007), with a much greater diversity in locations.

This expansion in the number and geographic diversity of EMTA's events presentations helped EMTA (and through it, the EM trading and investment industry) to promote the EM asset class, and also had significant fiscal and staffing implications for EMTA itself. Engaging expert speakers had never been a serious challenge (though it did require some ingenuity in putting together program agendas, as well as some tact and diplomacy in the selection of panelists and other speakers), but the expansion did add considerably to the duties of EMTA staff (notably

Jonathan Murno and through him a number of others) and to EMTA's expense base. Fortunately, in most cases, the expanded calendar of event presentations (again with some ingenuity), though labor-intensive, ultimately added an important new source of revenues to EMTA's bottom line, in part due to increased event attendance, but mostly because of industry sponsorship of most events. As a result, in an effort to avoid stretching EMTA's existing staff resources too far, a decision was made to continue the process of adding forums in new locations on a case-by-case basis, but to do so somewhat cautiously, and only where substantial investor interest (and industry sponsorship) was likely. Together with helping to ensure that EM debt trading remains an orderly market, promoting the EM debt asset class has become an important part of EMTA's mission.

Market and EMTA Growth. Despite the best efforts of David Spegel, Jane Brauer and Jonathan Murno to improve its integrity and promote its participation, EMTA's survey of trading volumes for the EM trading market has never been more than an imperfect measuring stick for charting market growth and trends. Yet, for many years its methodology and participation rates have been relatively stable, and despite its limitations, it remains the most accurate quantitative guide available to market participants and policymakers. Together with data regarding EM flows produced annually by the Institute of International Finance, EMTA's volume survey provides a reasonably accurate guide to trends of global activity in the EM debt trading markets.

Steady growth in EM trading volumes throughout the early 2000's came to an abrupt end in 2008, with reported volumes falling from about US$ 6.5 trillion in 2007 to about US$4.2 trillion in 2008, due of course to the collapse of market confidence and liquidity that occurred during and following the subprime mortgage crisis and resulting global economic slowdown. With gradual recovery of global economic activity and confidence (subject to Europe's credit difficulties and lagging recovery), EM trading activity also recovered to prior levels through 2011 (though increasing regulatory constraints on market liquidity (among other things) have more recently kept reported EM trading volumes within a fairly narrow band of US$5.5 to 5.9 trillion). Looking within the overall volume numbers, trading of local markets instruments continued to represent over 60% of total volumes throughout the period 2008-2012, and the percentage of overall trading activity attributable to corporate Eurobonds increased steadily, but gradually, over the period, somewhat at the expense of activity in sovereign Eurobonds.

In some respects, EMTA's membership numbers tracked trading volumes, falling somewhat for the two years 2008 and 2009 (from 150 members paying aggregate dues of about $1.7 million in 2008 to 148 members paying aggregate dues of about $1.5 million in 2009) and then recovering strongly thereafter (by the end of 2012, to 178 members paying aggregate dues of about $1.96 million). During this time, EMTA's Primary and Associate membership (essentially the sellside) remained stable, with buyside membership increasing from 57 at the end of 2007 to 73 at the end of 2012, and overall revenues declining from about $2.9 million in 2007 to $2.25 million in 2009, before recovering to about $2.76 million in 2012.

EMTA Leaders from 2008 through 2012. Despite a fair degree of market turnover during a time of great stress for the financial industry, the composition of EMTA's Board of Directors, and particularly its core leadership group of Co-Chairs and Vice Chairs, remained relatively stable over this period. EMTA and the EM trading and investment industry are grateful for their leadership on EMTA's behalf.

Mark Coombs (Ashmore Investment Management), EMTA's longest-serving Director, has been an important part of EMTA's Board of Directors since 1994. Since 2001, with the launch of EMTA's increasing outreach and orientation toward the buyside, Mark has been an EMTA Co-Chair, providing much of the continuity and strategic guidance that has characterized EMTA's philosophy and activities over the years.

JP Morgan Chase has had a representative on EMTA's Board consistently since EMTA's formation, and provided a Co-Chair throughout the 2008-12 period, Martin Marron for the years 2007-11 and then Rob Milam beginning in 2012.

For four of the five years in this period, Barclays Capital also provided a Co-Chair, Diego Gradowczyk for 2009-10, and then Matt Clinton for 2011-12. Previously, Matt had served in 2008 as a Co-Chair from Lehman Brothers prior to its demise.

Citigroup has also been represented on EMTA's Board ever since 1990, and their representatives served in a Vice Chair capacity for all five years in the period, Carey Lathrop in 2008 (and previously in 2006-07) and then Alberto Agrest for the four years from 2009-12.

Deutsche Bank and Merrill Lynch (both before and after its consolidation into Bank of America) both also have consistently had representatives on EMTA's Board from its earliest days, and also provided Vice Chairs throughout the 2008-12 period. For Deutsche, Kay Haigh was Vice Chair in 2008 (and before that, from 2004-07), Dalinc Ariburnu in 2009, Karan Madan in 2010 and Christian Binaghi in 2011-12. For Merrill, Paul Reilly was a Vice Chair for the years 2007-10, followed by Brian Weinstein in 2011-12.

Finally, at the Vice Chair level, Dean Menegas served on EMTA's Board on behalf of Spinnaker Capital throughout this period (and in fact dating back to 2002) and as a Vice Chair from 2009-12, and Igor Arsenin also served on behalf of Credit Suisse throughout the period (dating from 2007) and as a Vice Chair for two years 2011-12.

One doesn't need to be an officer of EMTA's Board to provide valuable service to the association over a long period of time. Bruce Wolfson (The Rohatyn Group), Sandy White (Market Axess), Keith Gardner (Western Asset Management), Tung Siew Hoong (Gov't of Singapore Investment), David Spegel (ING) and Bert van Keulen (HSBC) all served throughout the 2008-12 period on EMTA's Board on behalf of their respective firms, while Peter Urbanczyk also was on the EMTA Board for all five years, the first one on behalf of Bear Stearns (dating from 2005) and the latter four from Royal Bank of Scotland. Each contributed substantially to EMTA's mission in his own unique way. In particular, Bruce (a member of EMTA's Board on behalf of several firms dating back almost to EMTA's beginning years) provided continuity and wise counsel from a legal perspective, Sandy (on the Board beginning in 2007) has provided considerable support for EMTA forums and other events, David has been a steady advocate on behalf of the integrity of EMTA's volume surveys and Keith (dating back to 2001) and Tung (serving on the EMTA Board from 2002-12) provided good advice from the buyside perspective thoughout their tenures on the Board.

Other firms and individuals also provided valuable service at the Board level throughout these years. Goldman Sachs, Morgan Stanley, UBS, HSBC Asset Management and Itau provided representatives from 2008-12—Alejandro Vollbrechthausen (2008-10) and Ricardo Mora (2011-12) from Goldman Sachs; Nick Riley (2008), Igor Mansour (2009-10) and Rashique Rahman

(2011-12) from Morgan Stanley; Antoine Estier (2008), Ruth Laslo (2009 and before that, a Co-Chair) and Ritesh Dutta (2010-12) from UBS; Mike Gagliardi (2008-09) and Peter Marber (2010-12) from HSBC Asset Management/Halbis; and Rodolfo Fischer (2006-11) and Eduardo Ikuno (2012) from Itau.

During this time, Mohammed Grimeh (Standard Chartered Bank), Alex Garrard (BTG Pactual) and Ian Dalglish (Standard Bank) also rejoined or served on the EMTA Board.

Last, but certainly not least, Peter Geraghty, one of EMTA's founders and a prior Co-Chair, also served his final tenure on EMTA's Board, in this instance on behalf of Dresdner Kleinwort (2009-2010), having previously represented NMB, ING and Darby Overseas Investments. As many will recall, Peter (who passed away prematurely in early 2011 while on a skiing trip with his family), exemplified the indomitable spirit, optimism and camaraderie of the EM marketplace, having among other things hosted many industry meetings and social gatherings and notably coining the expression that Emerging Markets is not only an asset class, but a "state of mind".

Some Concluding Thoughts. As the Emerging Markets trading and investment businesses have grown and mainstreamed, it is clear that EMTA's role has evolved to meet the industry's changing needs. While EMTA's basic mission has remained more or less constant—to help the industry strive toward a more orderly and transparent marketplace—over the years 2008-12 the EM debt trading market did become more orderly, and EMTA's agenda increasingly tended to move away from market practices and trading documentation (except in the area of FX derivatives, where those functions are still quite active) and toward the presentation of industry forums and other gatherings, where the idiosyncratic concerns of EM trading and investment personnel could be raised and discussed. Broader industry concerns (particularly those relating to governmental regulation as it has developed since the onset of the US subprime mortgage crisis and global economic slowdown) have been largely channeled and addressed through the larger mainstream financial trade associations such as SIFMA, ISDA and (in Europe) AFME.

With this changing role for EMTA generally, the role of EMTA's Board has also evolved, from one involving direct input from fixed income traders, operations personnel and lawyers to one requiring more input from, particularly on the sellside, sales personnel, FX derivative specialists and research/strategists. These changes have been reflected both in the composition of EMTA's Board, and in the frequency of its meetings and the topics on its agenda. The function of EMTA staff has also evolved to keep pace with this general evolution of EMTA's role, with its primary function (outside of the FX derivatives area) to maintain EMTA in the forefront of providing market transparency and promotion of the EM asset class, mostly by sponsoring and presenting meaningful industry forums and other discussions of current market developments, while maintaining readiness to act not only as the EM market's on-going "clubhouse", but also as its "firehouse" for responding to debt default and restructurings and other more urgent situations, should that type of need arise. Fortunately, while critical when they do occasionally come up, the market crises of EM's past have calmed (which is not to say that they exist solely in the EM market's rearview mirror).

If I may insert a personal note, it has been very gratifying to observe (and to a lesser extent, participate in) this evolution and mainstreaming of the EM debt trading and investment marketplace, and to help manage the evolution of EMTA as an industry resource and forum.

EMTA staff originally employed as part of EMTA's "firehouse" function have grown into their somewhat newer roles as providers of market transparency and promoters of the EM asset class.

EMTA at Work in the FX Space 2008-2012

Leslie Payton Jacobs[1]
Senior Legal Counsel and Managing Director

2008-2012 was a productive time for EMTA in the FX space, as the industry worked to round out the tool box available to market practitioners, adding width and depth to the infrastructure it had been working to put in place since 1995. Specifically, EMTA (i) continued its original scope of work in establishing agreed terms and market practices for non-deliverable FX forward transactions (NDFs) by increasing the roster of standardized currency pairs by another seven currencies, (ii) expanded its reach into variants of the non-deliverable FX product, (iii) helped develop tools to increase the efficiencies in documenting transactions, ultimately helping to pave the way toward more automated processing of these products, (iv) continued to support the industry in its efforts to find credible ways to develop valuation constructs in certain Emerging Markets where alternatives were inadequate, and then, (v) toward the end of this time period, began to re-examine some of that infrastructure in the face of the demands of a radically changing legal and regulatory environment.

I. Rounding Out the Documentation Toolbox and Building Infrastructure.

Up until 2007, EMTA's FX-related work was largely (but not exclusively) centered on the production of specific terms for use in trade confirmations (and related documentation) for US$-settled NDF and NDO (non-deliverable currency option) products, and by the beginning of 2008, EMTA had published Template Terms for 13 currency pairs. Over the next few years, these activities continued, and EMTA, through existing or newly constituted subgroups of its primary FX and Currency Derivative working group, completed projects to standardize NDF and NDO documentation and market practices for US$-settled VND, PKR, UAH, KZT, EGP, NGN and GHS NDFs and NDOs, bringing the number of currencies under the EMTA NDF architecture umbrella to 20 by the end of 2012 (which included those for Asian currencies co-sponsored with the Singapore Foreign Exchange Market Committee and the Foreign Exchange Committee of New York (FXC)). This early emphasis on basic documentation began to change over the next several years, as market participants increasingly sought to supplement the existing infrastructure with products and practices that addressed perceived impediments to trading or settlement in various Emerging Markets.

Master Agreements. Around this time, the industry began to push for expansion of the basic toolbox beyond the development of agreed primary legal terms to include more comprehensive documentation and infrastructure that would increase efficiencies in the processing and settlement of NDF transactions. This necessarily involved effort and involvement of market participants beyond the trading desks and legal departments who had, more or less, been the "first responders" focused on defining the baseline legal parameters of the NDF product itself.

[1] Leslie Payton Jacobs, an EMTA Managing Director, joined EMTA as Senior Counsel in 2002 and has primary responsibility for EMTA's FX-related activities. She has also been involved in developing EMTA's local markets projects, EMTA's Asia and Africa initiatives and a variety of other projects. Before joining EMTA, Leslie was in-house legal counsel at Merrill Lynch and Bear Stearns, respectively, after having begun her legal career as an associate in Shearman & Sterling's New York office. Leslie holds a J.D. from Columbia Law School and graduated from Wellesley College, Phi Beta Kappa and Durant Scholar, with her BA degree in Anthropology.

In late 2006, a form of master confirmation agreement for NDFs for bilateral use between parties was pioneered by a joint working group of EMTA, the FXC and the FX Joint Standing Committee (FXJSC) and over the next several years, was gradually absorbed into the marketplace architecture and processes. Significantly, the master confirmation structure allowed counterparties to agree to trade any NDF using the terms in the published EMTA Template Terms by incorporating those terms by reference (essentially collecting ALL currency-specific Template Terms under a single master reference point). This eliminated the need to execute long-form confirmations for individual transactions, easing significantly the operational burden of processing NDF trades and opening the door to more automation. Repeated again in a multilateral format intended for use by "service providers" (originally designed for use in the CLS system), and then for non-deliverable currency options (NDOs), this master agreement infrastructure, supplemented by short-form confirmations, ultimately helped make it possible for some of the clearing houses to set up systems to clear NDFs on what has come to be known as "EMTA Terms."[2]

Increasing the potential for more automation in the trade processing for NDFs was an effort that gained momentum during this time period and began to include a number of industry newcomers. Some of those newcomers, unfamiliar with the basic NDF product, invested time in trying to understanding the contractual underpinnings of the NDF terms and to incorporate as much of the existing structures into their processes as possible, creating close relationships with EMTA to promote this. Other market participants saw value in more independence. That the NDF product at this time was, at best, in a semi-commoditized state, led to some challenges for market participants seeking to automate trade processing for NDFs and also for EMTA, in trying to find ways to accommodate this momentum, given the body of existing EMTA market practices and documentation.

New Products. With much of the basic architecture firmly in place by early 2008, the industry was ready to stretch, and a number of new projects or products were tackled during this time. This second leg of the expansion of the basic toolbox involved moving beyond the "plain vanilla" NDF product into other types of FX derivatives. These included non-deliverable currency options (actually, an unfinished piece of business from much earlier days), non-deliverable cross-currency NDFs and NDOs and non-deliverable swaps and non-deliverable barrier options.[3] In 2007, EMTA addressed the standardization of NDOs by publishing the "User's Guide to Documenting Non-Deliverable Currency Option Transactions (2007, and updated in 2008) (the "NDO User's Guide")." Previously, to document an NDO transaction, industry practice was to bilaterally negotiate contracts using terms extrapolated from the Template Terms for FX Transactions for the relevant currency. Certain terms and provisions specific to NDOs were left unaddressed by this approach and, in a fit of spring cleaning, EMTA returned to the drawing board, consolidated previous industry discussions on NDOs and developed a clear set of standardized NDO contract terms. The approach taken in the NDO

[2] Recently, there has been some industry consideration as to whether a comparable and compatible structure could be developed for SEFs that would help maintain existing practices and documentation, but also allow the SEFs to meet regulatory requirements; however that effort has not progressed – mostly because the regulatory environment itself has not fully coalesced.

[3] Not all of these efforts were brought to fruition, however; a joint project with ISDA to develop standards for Latin American inflation-linked swaps languished and was ultimately shelved, for example, most likely the casualty of unfortunate timing in being raised at a time when front-office demand for the product was simply not strong enough to successfully support an industry effort.

User's Guide was somewhat different than other EMTA User's Guides. Since 2002, with the publication of the User's Guide to Revised ARS NDF Documentation (2003) (the "ARS User's Guide"), EMTA had, through the publication of these User's Guides, attempted to memorialize the thinking behind the various terms and provisions of each currency-specific NDF and its related documentation, leaving an explanatory and interpretative record of the documentation that was developed.[4] In contrast, a "modular" approach was adopted for NDOs that included a "plain vanilla" model form of currency option (introducing a long-form and a short-form option, the latter of which never quite caught on, and was later for the most part, overtaken by the master agreement approach), with instructions on how to add currency-specific provisions to create a set of NDO terms for any currency that would reflect all of the recommended terms and provisions for that currency. Also included in the NDO User's Guide were explanations of the model provisions and the thinking behind them. The reason for this approach was fairly straightforward: This was the quickest way to provide the market with standard terms for all currencies, and this approach later was used for EMTA's cross-currency FX transactions (see below). Later circumstances (specifically, the introduction of a master confirmation agreement form for non-deliverable currency options) made it necessary for EMTA to publish the individual template terms for all the currencies, but the NDO User's Guide still stands as a useful explanation of the substantive provisions for NDOs.

In 2007, a few EMTA Members began to talk about "cross-currency NDFs", meaning non-deliverable FX forward transactions involving a non-deliverable currency (such as the Brazilian Real) that would settle in a hard currency OTHER than the US Dollar. There were a few attempts over the next few years to organize an industry effort to look at this topic, but this effort did not gain immediate traction. In 2010, EMTA asked the FXC to help bring some industry attention to this topic, and thereafter, an EMTA working group supported by the FXC, began to examine cross-currency NDFs with a view to standardizing the product. However, the scope of this project was daunting and involved the potential interaction of multiple "soft" and "hard" currencies (with a third factor of potential multiple valuation sources for each hard currency[5]), which required many months of group effort. Ultimately, the group adopted an approach similar to that taken for NDOs in 2007, and published the "User's Guide to Documenting Cross Currency FX Forward and Currency Option Transactions" (2011) (the "Cross Currency User's Guide") which contained model sets of template terms for both cross-currency NDFs and NDOs (long and short-form). A specific series of recommended market practices were included in the Cross Currency User's Guide (and also were published on the EMTA website with the other FX and Currency Derivatives Market Practices) that explained as clearly as possible the presumptions and thinking behind the specific provisions for the model Template Terms. In addition, and in an unusual step, Annex A was expanded to include a completely new Section 4.8, containing hard currency rate source definitions that could be used in preparing the confirmations for cross-currency NDF and NDO transactions. There was some discomfort, at least initially, with the lack of individual currency-specific template terms, and EMTA published a few stand-alone templates over the next few months for what appeared to be the more-highly traded currency pairs to address some of these concerns. What was accomplished with the User's Guide approach was to set out in as clear a fashion as possible principles and guidelines

[4] User's Guides for the following individual currencies were produced: ARS, BRL, the multiple Asian Currencies, CLP, COP, PEN, RUB and EGP.

[5] One market practitioner developed (for operations purposes) an extensive matrix of provisions for all possible reference-rate/settlement-rate rate source combinations and the list involved more than a thousand entries.

applicable across the board to ALL cross-currency transactions, and then to provide a model form that could be used to produce a confirmation for any currency pair.[6]

As noted above, the industry also began to identify a need to conform the terms of non-deliverable FX forward transactions and the highly correlated non-deliverable swap transactions, and a project was conceived jointly between ISDA and EMTA to try to bring these two products in line with each other. The original currencies in focus were the Latin American currencies. This meant adopting, for non-deliverable swaps, the same kinds of Disruption Events and Disruption Fallbacks included in the EMTA Template Terms for NDFs. The working group struggled with, and ultimately was unable to agree on, a common approach at the time for the actual form of confirmation (a “generic” versus a “currency-specific” approach) for non-deliverable swaps for Latin American currencies, and instead, finally determined to issue a market practice that recommended a few specific, critical terms for inclusion in bilaterally negotiated forms of contracts, without prescribing the precise form of contract itself. The hope was that, with the important business points clarified, over time the market would likely organically evolve to an agreement on the actual form (which it basically did[7]). Ultimately, the joint EMTA / ISDA working group hammered out three market practices for specific forms of Latin American swaps, which are still in effect and being followed today. The first dealt with what is known as a “BRL-CDI” swap, the second focused on harmonizing practices regarding payment dates in Latin American NDFs and NDOs and the third addressed “CLP Camara” interest rate swaps. While each of these market practices stands on its own, it is instructive to read and understand them together.

EMTA and ISDA continued to cooperate in areas where there was potential substantive overlap between them, with EMTA usually taking the lead on NDF and NDO matters and ISDA generally taking the lead on swaps and deliverable FX matters. During this time period, an EMTA working group was organized to define market practices for Brazilian Real barrier options, which working group continued to be active for several years. A few years earlier, an ISDA working group had published (and then updated) the New Barrier Options Supplement to the 1998 FX and Currency Option Definitions (2005, updated in 2006) to introduce certain terms into the 1998 FX Definitions to facilitate the documentation of exotic options (which included barrier options and other variants) and was not specific to Emerging Market currencies, but introduced some needed product vocabulary. The EMTA BRL Options working group focused specifically on business and trading practices for the Brazil market, looking to reduce bilateral disagreements and to make transacting and documenting BRL barrier options more efficient. EMTA’s Recommended Market Practice No. 45 [On Determining Breaches in BRL Non-Deliverable Continuous Barrier Options (2007)] addressed some areas of market disagreement and was subsequently updated in 2009 (and then again in 2012) to reflect in each case, changes to the market, and evidenced that the Market Practice continued to be highly relevant. Citing the utility of the BRL effort, a group of Russian Ruble options traders undertook a similar effort in 2012 (updated in 2013) to create standards on observation hours for Ruble barrier options. (This effort was preceded by an earlier effort of the same group regarding expiration times in 2011 for (vanilla) deliverable currency options and non-deliverable Ruble currency options by the same

[6] A particularly thorny issue for this group was the topic of the settlement rate option for the hard currency portion of the transaction. Ultimately, and for both business and legal reasons, the group determined that no recommendations would be made to the market in this regard, and a market practice specifically addressing this topic was identified and published, and is referenced and discussed in the Cross Currency User’s Guide.

[7] ISDA later picked up the task of publishing various forms of agreements for non-deliverable swaps.

working resulting in a recommendation that Ruble currency options (plain vanilla, not barrier), going forward, be traded solely as deliverable and not as a non-deliverable products)[8]. These various strides in the area of vanilla and exotic options well illustrate the expansion by EMTA during this time period into areas beyond the basic NDF and NDO architecture.[9]

One topic that the industry took a number of years to fully absorb was the effect of "post-trade date" holiday changes on a specific transaction for NDFs, NDOs and even for NDSs. What was not broadly understood was that the EMTA Template Terms include provisions that override a number of presumptions contained in the 1998 FX and Currency Options Definitions, including those relating to Business Day conventions, and in particular, those for dealing with a holiday schedule change that occurs post-trade date. Holidays in any particular jurisdiction can change over time, with days being added to the business calendar, taken off or moved around a bit, and in each of these situations, a common market understanding on how to adjust the valuation or settlement timing of the contracts is critical in order to alleviate confirmation mismatch and disagreement. The EMTA Template Terms address these possible situations with specific provisions carefully worked out by the trading community in the earliest days of the product development, sometimes specifically overriding the presumptions of the 1998 FX Definitions. In addition, and possibly not obvious at first, the adjustment or business day convention rules to be followed for NDFs under the EMTA Template Terms and those to be followed for swaps are, in some cases, subtly different, potentially leading to different economic outcomes. These subtleties are manifested in two ways: some were identified and grappled with when EMTA and ISDA jointly worked on developing market practices for non-deliverable swaps (see above) in order to align the swaps and the FX provisions for non-deliverable currencies while others emerged over the course of several years as the market attempted to understand how the provisions worked in particular situations. During this time, a number of "teachable moments" arose. In response, EMTA issued clarifying guidance or market practices (depending on the circumstances) in situations involving the markets in Argentina, Chile, China, Russia and Brazil, including the extended analysis contained in the EMTA "Guidance Note on Understanding Business Day Conventions in the EMTA Template Terms for Non-Deliverable Forward FX and Currency Option Transactions (2008) to produce a comprehensive explanation of the interaction of the EMTA Template Terms to various "holiday" situations. In recent years, questions on this topic have slowed (but not disappeared), suggesting that the industry now has a relatively common understanding of how to apply these rules.

II. Market Crises or "Sounding the Firehouse Alarm"

During the 2008-2102 time period, EMTA's FX and Currency Derivatives working group twice saw the need for an industry "firehouse" in response to significantly disrupted market situations.

At the request of its membership, and with the encouragement of the Foreign Exchange Joint Standing Committee of the Bank of England, EMTA established a conference-call based industry forum for the discussion of the issues arising from the 2008/9 banking crisis in Iceland. While not traditionally thought of as an Emerging Market, Iceland presented a situation that EMTA and its members were well-positioned to address, given EMTA's ability to reach out

8 These steps, taken by the market in response to what appeared to be an increasing normalization of the Russian market, later became complicated (and suffered some reversal) by the market of the Russian-Ukraine geopolitical situation that unfolded commencing in 2013.

9 In progress at the time of this publication is a related, and slightly more ambitious, project by EMTA to establish certain market practices for barrier and binary options across multiple currencies .

quickly and effectively to the traders in the financial community. Following an initial call with a representative of the Central Bank of Iceland, the EMTA working group established regular conference calls to share information about the situation in, and related to, Iceland. As part of this effort, EMTA also gave frequent updates to ISDA, the FXJSC and the FXC to assist in industry coordination. Although the Icelandic banking crisis itself took several years to resolve, EMTA played a useful role in the critical early days as a forum for the dissemination of information to and among the trading community.

EMTA's second experience with market crisis management during this time period stemmed from the 2011 political turmoil in Egypt, which very quickly began to roil the Egyptian financial marketplace. The closure of the financial markets in Cairo in early to mid-February 2011 affected all manner of economic activity, including the valuation of Egyptian Pound / US Dollar NDFs. The EMTA firehouse again was needed, and an Egypt-focused sub-group of the FX and Currency Derivatives working group began to monitor developments in Egypt to attempt to understand the impact of a potential long-term market closure on the FX market. In addition to its obvious importance to the Egyptian financial markets, this represented the first experience by EMTA and its members with the specter of an indefinite or long-term market closure since the closure of the Argentine market in late 2001, and was an important test of the mechanisms that were built into the EMTA NDF (and NDO) contracts to address this risk.

Following the first day on which contract valuations were affected, EMTA convened members of its FX and Currency Derivatives working group to monitor the market closure and also, in its capacity as the administrator of the EGP back-up survey, took steps to organize the survey participant banks in the event that this mechanism needed to be activated. This working group carefully monitored events in Cairo, prepared itself for participation in the back-up survey and was instrumental in ensuring that EMTA members received accurate information about the situation and EMTA's preparations.

The need to activate the survey mechanism was narrowly averted when the market re-opened and the Central Bank of Egypt (after several bumps in the road) resumed regular publication of its foreign exchange rate quotation. This situation presented the EMTA membership with an informative real-time "walk-through" of the Disruption Fallback mechanisms and other contract provisions included in the standard EMTA templates.[10] Stopping short of an actual need to utilize the Fallback Reference Price for the Egyptian Pound, the situation in Egypt was the first real-time blueprint of what was needed to ensure that the disruption mechanisms designed in 2002 for NDF contracts would produce the result as planned by the original architects of these mechanisms. In addition, a greater understanding of the administrative support required to activate and administer such a survey, potentially in the long-term, gave EMTA a good indication of the resources needed to handle the administration of a fallback survey mechanism and perhaps more than one at the same time, or a survey or surveys in time zones that are challenging for EMTA staff.

[10] Several years later, in 2014, the FX and Currency Derivatives working group again faced a challenging market situation -- one that did not resolve as comfortably for the market – in the Ukraine - with a different outcome. In this case, the contracts worked exactly as they were designed to work in the middle of a perfect storm of events, but it was a painful few months for many market participants.

III. Rate Quotation Mechanisms.

Entering 2008, EMTA's involvement in the FX-related rate space was firmly anchored in its involvement as co-sponsor of the CME-EMTA Russian Ruble Reference Rate Survey, (which is administered by the CME), and as sponsor and administrator of the EMTA ARS Industry Survey,[11] along with its role in administering the back-up surveys which provide fallback reference prices across the board (with the exception of the Asian currencies). In 2009, EMTA, partnering with Thomson Reuters sponsored the launch of a daily (and a back-up) UAH/USD exchange rate quotation for valuing UAH/USD NDF transactions. This type of role (i.e., the sponsorship of rate-setting mechanisms, and in the case of the ARS Industry Survey, administering it), originally assumed by EMTA in 1998 (along with CME) after MICEX suspended its rate determination mechanisms, and then again in response to the Argentine Peso crisis of 2001 and the suspension by the Central Bank of Argentina of its official exchange rate quotation, took EMTA outside of its more conventional role of developing standardized documentation and market practices. EMTA's undertaking of this new type of activity was in direct response to a need articulated by its working group members for commercially "transact-table" exchange rate quotations in markets where no other, or no acceptable, alternatives existed. In what can be characterized as a "self-help" effort, the EMTA membership concluded that it could design and build rate quotation mechanisms acceptable to the industry in these few markets where an unmet need had been clearly identified.[12] These rate determination mechanisms were intended to provide transparent, reliable data points for offshore NDF and NDO contract valuations in markets where no other market-acceptable rate existed (but, in fact, as time went on, began to be used far beyond this originally contemplated usage, including in swaps and fixed income products – and potentially more). Arguably, the availability of these rates has contributed substantially to the development of their respective local markets by providing a transparent, reliable rate source, thus facilitating a favorable environment for trading and investment by foreign investors.

This last point is illustrated by the work that has taken place the Middle East / African markets. In 2009-10, a small group of FX traders began to request more focus on the African markets, and trading Egyptian Pound NDFs became the 'first mover" for EMTA in the MENA region. Contracts were standardized and EMTA practices were introduced into the market for the Egyptian Pound (with an interesting twist on the holiday issue driven by a need to accommodate the Islamic work week). This effort was later followed by a similar exercise with the Nigerian Naira. In both these markets, traders at EMTA member firms were able to identity a satisfactory local rate source for valuing NDF contracts. This was not the case, however, with the Ghanaian Cedi market, which surfaced as an area of interest a year or two later. The challenge in Ghana was a bit different. EMTA worked with its membership to identify a local vendor willing to provide a rate source quotation (as EMTA was by then, unable to increase its commitments to provide its members with rate determination mechanisms in any more markets (see below for more). A broker (ICAP) with a local presence in Accra was willing to take on the administration

[11] Following an initial period of time during which CME (at the time, the "Chicago Mercantile Exchange") administered the ARS Industry Survey, EMTA developed a proprietary web-based application for the Survey, which allowed it to assume direct administration of the Survey.

[12] From the beginning, important industry conversations have taken place on topics such as the comparative merits of official rate sources and commercial rate sources, the importance of transparency in rate-setting methodologies and the need for both price materiality measurements and alternate rate sources during market disruption to address basis risk and lend certainty to close-out processes.

of a GHS rate source quote, and EMTA and ICAP worked closely to design and implement a mechanism process for the rate quote – based in large part on principles previously articulated by EMTA in the context of the ARS, Ruble and UAH Surveys.[13]

As more and more standardization took place during this period, and EMTA's obligations related to FX rates and FX-related products increased EMTA's leadership began to question whether EMTA had the resources to reliably support these increasing obligations. With this concern in mind, EMTA began to take steps to to partner with professional data providers and, over time to shift the responsibility for rate administration tasks to these professional vendors, where possible[14].

IV. Seismic Shift in the Regulatory Landscape

Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") in July 2010 presaged a potential paradigm shift in the Emerging Markets FX industry, most notably in whether NDFs would be subject to the new regulatory scheme of Dodd Frank as "swaps" and thereby subject, for the first time, to mandatory trading and clearing of swaps on exchanges and other sanctioned facilities (and to new reporting requirements).

An EMTA working group, formed to monitor these developments and to assess the utility of inserting itself into the legislative comment process, after much deliberation and consultation with other industry bodies, determined that a separate EMTA comment letter would not likely serve a useful purpose given efforts being made by other industry bodies (and might, in fact, be counterproductive).

Ultimately, NDFs were deemed to be "swaps" for purposes of Dodd Frank, unlike other FX products. As a consequence, EMTA members turned their attention to exactly how the trading of NDFs would be affected by the evolving regulatory framework and, in particular, the potential ramifications of being in a clearing and reporting environment. An issue that arose immediately was the need by EMTA members to meet the Dodd Frank delivery requirements for "material economic terms" by dealers to customers. EMTA was able to respond to this Member need by opening access on its website to the terms of its recommended forms of confirmations. The next generation of issues facing the industry would be how much of the product and the infrastructure developed over the years by the industry would survive its transformation from an unregulated, to a regulated, financial product.

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13 Later circumstances led to ICAP's transition of the administration of the GHS/USD rate quotation mechanism to Thomson Reuters. EMTA has complemented this FX focus on Africa with more and more website resources and, recently, dedicated seminars for investors in African assets.

14 Subsequent disaffection by regulators and the financial industry generally over polling-based rate mechanisms in general has created an additional reason for EMTA to wind down its involvement in rate-setting mechanisms generally.

EMTA 2008 to 2012: As the EM Fixed Income Debt Trading and Investment Market Continues to Mature and Mainstream, EMTA's Role Focuses on New Topics (and a Few Older Ones)

Aviva Werner[1]
EMTA General Counsel

EMTA's "core" area of Emerging Markets fixed income trading and investment was generally characterized by the following trends and/or special situations during the period 2008-12:

(1) Continued mainstreaming of the EM asset class into the global debt markets, particularly, for debt denominated in US dollars or in other hard currencies, in respect of industry architecture in areas such as research, trading, clearance and settlement;

(2) Continued evolution of investor appetite for EM assets away from sovereign debt to corporate debt, and from dollar-denominated assets to those denominated in local currency;

(3) Onset of a global financial crisis and recession in 2007-8, leading to aggressive reform of the financial sector in Europe and the US and a continuation (and deepening) of the prevailing low-interest environment (with resulting strong inflows into most EM countries);

(4) Credit deterioration in a number of European countries, while credit quality was generally perceived to have improved throughout much of the Emerging Markets;

(5) A variety of academic and official sector proposals to reform the international financial architecture for restructuring sovereign bonds and other credits, mostly resulting from concerns about Argentina and the EuroZone; and

(6) Episodic market concern over a series of specific EM country situations (namely Ecuador, Ivory Coast and especially Argentina) and several more general debt market concerns (clearing a backlog of failed warrant settlements and addressing the question, in an EM context, of when to trade a defaulted (or near-defaulted) asset "flat").

I. EM Asset Class Mainstreams

The overall period from 2008 through 2012 was generally characterized by a continued mainstreaming of the EM debt markets; in many respects (for investors, sellside personnel, lawyers and regulators) into the broader capital marketplace, a process that had been well underway for many years. Of course, trends in the marketplace, greater investor interest in local market instruments and corporate bonds, for example, opened up new opportunities at EMTA to assist the marketplace as it evolved. Generally, however, the mainstreaming of EM meant less

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need for (and, therefore, less focus on) market practices, trading documentation and infrastructure (traditionally, the type of projects EMTA focused on in its core fixed income area), and greater emphasis within EMTA on special situations and specific problem areas (like Argentina, Warrants and flat trading), on monitoring the steady stream of so-called market reform proposals from academics and policymakers and on designing and presenting forums and other events to help provide greater transparency and promote the EM asset class.

II. Move to Corporates and Local Markets

A decade of steady growth in the trading of overall EM debt instruments ended in mid-2007, and trading volumes fell sharply in 2008, with the loss of confidence in global financial markets generally, before recovering in 2010.

Despite the fluctuation in overall trading activity, and investor appetite, in EM debt throughout the period 2008-2012, prior trends away from US dollar-denominated EM sovereign assets and toward corporate bonds and local market instruments held up for the most part during this period[2], and these trends exerted a strong influence on EMTA's agenda.

(a) EMTA Goes Corporate

In response to increased investor interest, and greater volumes in corporate EM bond trading, in 2007 EMTA launched its first Corporate Bonds Forums in London and NYC, focused solely on issues like record inflows, increasing volume of trading in corporates, sovereign credit spreads at historic lows and the increasing role of local markets instruments. Additionally, the amount of corporate issuance had outpaced sovereign issues, as investors continued to move down the credit curve to look at "exotic" and "frontier" markets (FM) in the quest for increased returns. Rating agencies' methodologies for rating corporate bonds and the circumstances necessary for a corporate to pierce the sovereign ceiling were also noteworthy topics.[3]

As corporate issues continued to dominate Emerging Market debt issuance in 2008, EMTA initiated a series of three events (in NYC and London) focused on the EM corporate bond world,

[2] As trading in sovereign debt declined during this period, as evidenced by EMTA's Volume Survey showing that in 2007 sovereign debt trading represented 21.2% of overall volumes, while that percentage decreased to 17.9% in 2012, trading in EM corporates increased from 10.4% in 2007 (up from a 6.4% share in 2000) to 13.5% in 2012. Local markets debt trading increased from 65.7% in 2007 to 67% in 2012.

[3] Previously, a country's sovereign rating almost always equaled its foreign-currency government bond rating; this was based on an assumption of a 100% probability of a general foreign-currency debt payment moratorium following a sovereign foreign-currency default. However, recent historical examples such as Belize, the Dominican Republic, Moldova, Pakistan, Russia, Ukraine and Uruguay did not include a general moratorium on foreign currency-debt payments, with only Argentina's default resembling the "old-style" defaults of the 1970's and 1980's. At least one rating agency's new methodology, espoused by Vincent Truglia of Moody's, had thus evolved to address recent default history and the new reality, factoring in both the country's foreign-currency default probability and the probability of a subsequent general foreign currency payment moratorium in formulating its country ceiling.

Bonds are still allowed to pierce a country's ceiling under the revised methodology, but an important (and admittedly controversial) pre-requisite is that the bonds be "marketable" and sold under foreign law, thereby decreasing the sovereign's ability to influence local institutions. The rating agency determines whether an issue can be rated higher than its sovereign by an analysis of the government's foreign-currency bond rating, the probability of a moratorium following a sovereign default, the special circumstances of the issuer and the issuer's creditworthiness (i.e., its local currency bond rating).

which looked specifically at the covenants, defaults and creditor remedies included in EM corporate bond documents. The text and intent of these provisions, both under New York and English law, were discussed, as well as an exploration of their practical value in the prevailing EM marketplace and potential alternative deal structures that the market might wish to consider. Comparisons to sovereign bonds were also addressed. The panelists at these events generally shared pessimism that bond covenants could be relied upon to protect investor interests, due to enforcement difficulties (regardless of the governing law provision), and that strong relationships with issuers were key to a successful restructuring. This need for stronger credit protections (whether through better covenants, collateral arrangements, amortization structures or use of trustees) was still being discussed in 2012 at EMTA's Corporate Bond Forum in London.[4]

(b) Emphasis on Local Markets and Creditors' Rights

(but see **The Argentina Saga** for a more focused discussion on Argentina)

In view of continuing investor interest in local markets generally, EMTA first began sponsoring events oriented toward opportunities and challenges in specific local markets, before undertaking any specific local market projects of a more substantive nature. Following two panel discussions in 2006 in NYC and London, which focused on issues in Brazil's financial markets (such as local instrument liquidity in Brazil, clearing and settlement issues, legal and tax implications, as well as derivatives and futures issues), in 2007 EMTA presented a panel discussion entitled A Shortcut to Local Markets in Brazil, which (among other things) addressed macroeconomic issues and equity and interest rate derivatives.

An EMTA Special Presentation in 2007 on the Committee on the Global Financial System's Report "Financial Stability and Local Currency Bond Markets" highlighted how the rapid development of local currency bond markets since 2002 had strengthened the financial systems of many Emerging Market economies. Currency mismatches, the 'original sin' that had caused or contributed to so many earlier crises, had been substantially reduced.

Starting its Focus on Africa program, an EMTA Africa Workshop Post-HIPC, held in London in 2007, provided a broad-based discussion about how African governments could best tap foreign sources of funding for development, while not ending up with an unsustainable debt build-up. As with many such panel discussions, EMTA provided a forum for an exchange of views among the official sector, private sector and relevant local markets governments on a variety of issues regarding sovereign access to private sector financing. A later joint EMTA/Thomson Reuters panel on the return of the Frontier Markets was held in 2009, where the prevailing view was "cautious optimism". And, in 2010, a joint EMTA/World Bank initiative to promote the efficient growth and development of local markets in Sub-Saharan Africa was launched in London, followed up by joint EMTA/World Bank conference calls with market participants

[4] In 2009, EMTA also focused on one of the more troubling credits at that time and hosted a panel discussion on Mexico's Corporate Sector Troubles, Investment Implications and Forecasts.

In 2010, an EMTA panel, comprised of several local markets legal experts, discussed Mexican Bankruptcy – Legislation, Practices, Trends and Cross-Border Issues, including how Mexican courts apply Mexican bankruptcy legislation, the advantages and disadvantages of bringing a bankruptcy case in the US or Mexican courts, how Chapter 15 would work with Mexican insolvency proceedings, how intercompany loans are treated under Chapter 11, out-of-court reorganizations, and other cross-border issues. A year later, EMTA hosted another panel on Mexican bankruptcy, this time focusing on the Vitro case and opportunities for improvement in the Concurso Law, and, in 2012, another panel reviewed the Vitro and Cemex cases.

focusing on Nigeria corporates, specifically, how to unlock liquidity and limit the regulatory and cost burden for new issuers, while also involving more local banks in the discussion.[5]

Shifting somewhat from events presentations to more substantive matters, also in 2010, EMTA submitted a letter to various officials in Indonesia on behalf of foreign creditors in support of the rule of law and against certain arguments raised by Indonesian corporate plaintiffs regarding offshore financing companies.

After the 2006 Forums in Hong Kong and Singapore, two South American Forums were initiated in 2008 in São Paulo and Buenos Aires, a Forum in Dubai originated in 2010, while the Central America & Caribbean Forum in NYC also commenced in 2010. Also in 2010, EMTA and Gulf Bond and Sukuk Association (GBSA) signed a Memorandum of Understanding to collaborate in actively promoting the fixed income markets in the Middle East. Both the advent of the regional Forums, as well as the collaboration with GBSA, attest to EMTA's commitment to not only bring the more general EM issues to the broader marketplace in various regions, but also to provide a forum where market participants who could not attend EMTA's New York and London events could discuss issues of particular relevance to their local market.

III. Global Financial Crisis and Increased Buy-Side Presence in EM

Of course, neither the Emerging Markets nor EMTA exist in isolation from the global economy and the regional events and situations that shape it. While the global slowdown adversely affected Emerging Markets, economic actions taken by global monetary authorities to reduce interest rate levels and to expand the money supply had the unintended consequence of channeling financial flows into many EM countries. It is noteworthy how well the Emerging Markets and the EM asset class, not previously known for their stability and resilience, held up in the midst of extreme volatility and lower liquidity in the financial and commodities markets.

At the same time, increased regulatory pressure on sellside firms tended to combine with greater investor interest in the Emerging Markets to produce more than the usual amount of movement of sellside personnel to the buyside. This, in turn, tended to boost EMTA's buyside membership, as well as buyside interest in EMTA events and other activities.[6]

In light of the various proposed legislative, regulatory and other policy responses to this recent market turmoil, EMTA launched in late September 2008 a new area on its website "Policy Responses to Market Conditions" (now "Responses to 2008 Market Events") that included various items of interest and other communications from regulatory agencies, law firms, other trade associations, etc.

IV. EuroZone – Contagion and What Lessons Can Be Learned from the Emerging Markets?

While the Emerging Markets generally (and EMTA) were weathering the global slowdown fairly well, parts of Europe, of course, were not, and EM members (and EMTA) followed developments there closely. After all, EM market participants were no strangers to sovereign

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[5] A specific Africa Focus Portal was created on EMTA's website (http://www.emta.org/africafocus/) with links to various documentation, working groups and events to better serve the market's interest in the region.

[6] During the period 2008-2012, the number of EMTA's buyside members increased from about 57 to 73.

economic and financial crises and debt restructurings. There were some parallels, as well as clear differences, and potential implications for EM were of particular interest.

While “Greece was no Emerging Market” and, as Daniel Tenengauzer (Bank of America Merrill Lynch) stated, “while one can distinguish Greece from other EM countries in that its debt is mostly issued under Greek law with relatively few holders in a currency that it cannot print”, following a number of credit rating downgrades, and the announcement of an EU/IMF support package, in June 2010 EMTA presented its first panel in NYC on The EuroZone Dilemma, where events surrounding Greece, their implications for the international financial markets, and sovereign debt restructuring precedents in the Emerging Markets, were discussed.[7]

A year later, as the European debt crisis deepened and contagion from Greece threatened Spain, Portugal and Italy, in June 2011 EMTA hosted follow-up EuroZone panels in NYC and London, where panelists remained pessimistic about a resolution of the EuroZone crisis and topics included: Greek Debt - The Endgame Scenarios; CACs for Eurozone Sovereign Bonds; Ways to Tread Water: Portugal and Greece Updates, and Central Bank Drift; Understanding the European Stability Mechanism (ESM), and CDS, CACs and Aggregation; Europe’s Default in Credibility and Role of CDS; and Europe's Crisis in Trust.

Finally, in 2012, EMTA hosted a panel on Greece and the Rule of Law. The then ongoing Greek debt exchange -- the largest sovereign bond default and restructuring in history, which presented European and global policymakers with an enormous threat of contagion throughout Europe -- came on the heels of troubling precedents set by Argentina and Ecuador in recent years that eroded bondholder trust in the validity and enforceability of sovereign bond documentation, and arguably undermined the rule of law in sovereign international finance. Greece’s retroactive application of CACs to its local law bonds to bind its creditors to the exchange offer was, in Arturo Porzecanski’s (American University) view, another example of the lengths a sovereign will go to restructure on its own terms. The paradox facing European and global policymakers was, of course, that, while the Greek default by itself was not large enough to endanger global financial stability, its contagion throughout southern Europe certainly did. This put tremendous pressures on European and global policymakers, as well as many market participants, to entertain restructuring strategies that might not otherwise have been considered.

EM and non-EM practitioners alike were drawn to EMTA’s EuroZone presentations because of the expertise of the panelists that EMTA was able to present -- EMTA’s panelists expert in the lessons learned from their EM experiences were able to comment extremely knowledgeably on current issues being faced in the EuroZone (including the nature and potential implications of the contagion that the Greek default unleashed), and, later in the process, market participants were able to hear firsthand expert commentary on the lessons learned from the EuroZone experience. As one panelist succinctly put it, “what happens in Athens or Buenos Aires does not stay in Athens or Buenos Aires“, emphasizing the interconnectedness of the predicaments of the two countries.

[7] Other topics included: How Will a Restructuring of Greece's Debt -- if and when it comes -- Differ from Previous Sovereign Debt Restructurings?; Overview of CDS Market Practice for European Sovereigns; Implications of the Greek Crisis for Debt Policy and Regulatory Reform; and Confusing Monetary Union with Fiscal Union: The Greek Insolvency and Bailout.

V. The International Financial Architecture Policy Debates

As specific operational and technical trading issues were addressed and the EM asset class became more integrated into the global investment mainstream, and EMTA's agenda accordingly turned increasingly toward promoting the asset class and providing greater transparency by presenting industry events and panels on a variety of general and market-specific topics, one particular area of continuing market interest that EMTA focused on was the appropriate balance between the often-conflicting interests of individual creditors, or groups of creditors (typically, but not always, the holders of bonds), in enforcing (or potentially enforcing) their claims, and other creditors (as well as their sovereign or corporate obligors) in reaching debt restructuring agreements that would effectively bind all creditors and enable the obligor to carry on its activities free of residual litigation. While EMTA presentations on topics such as sovereign immunity[8], partial sovereign debt restructurings, collective action clauses (CACs), *pari passu* clauses and Argentina as a precedent for other debtor countries (see The Argentine Saga, below) were necessarily general in nature, and generally presented as objectively and neutrally as possible, this area, of course, had a great deal of practical significance, particularly in view of the ongoing Argentine debt situation, but also because these same conflicts also arose from time to time in other specific country contexts as well. EMTA's main goal in organizing these presentations was to promote market awareness and understanding of these issues, expressly not by "litigating or relitigating" them, but rather by assembling the best possible combinations of panelists, reflecting all relevant viewpoints. Within the constraints of time, client privilege and confidentiality and market integrity, Q&A was actively encouraged, and many of EMTA's panel presentations were quite lively, as well as well-attended and informative.

A secondary purpose, in the context of the preoccupation of academics and policymakers with an almost constant perceived need to "reform" the international financial architecture[9], was to assess whether or not it might be viable for the EM marketplace to reach consensus on industry proposals, or market responses to official sector[10] or other proposals, relating to this architecture. In this area, particularly in view of the conflicting interests due to the pendency of the Argentine holdout litigation, reaching industry consensus was simply impracticable.

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[8] Several panelists briefly reviewed various developments in the application of the Foreign Sovereign Immunities Act (and, in fact, EMTA hosted a primer panel exclusively on the FSIA in 2009, which was intended to provide the foundation that is needed to understand how sovereign claims can be successfully asserted (and collected) or defended).

[9] In 2009, EMTA, in cooperation with the UN Financing for Development Office, hosted a panel discussing the EM debt market's strengths and weaknesses from the economic, policy and legal perspectives, with a focus on how well its architecture will meet the market's current and future challenges.

[10] EMTA was also involved in 2009 with other industry groups (such as BBA, AIMA and ICMA) relating to the HM Treasury proposed legislation to curb creditors' rights against HIPCs under English law. The purpose of the proposed legislation was to extend the same or nearly the same level of debt relief granted to HIPC countries by the official sector, the multilateral institutions and certain commercial creditors, to any commercial claims still outstanding. The proposed legislation also aimed to prevent "unjust enrichment" by creditors who purchased HIPC debt in the secondary market at low market prices, but sought to recover the full amount of the claim through litigation. In the course of its participation, EMTA argued that the legislative proposal was unnecessary and that the legislation would be contrary to Anglo-Saxon traditions of rule of law and English law's commitment to the sanctity of contract.

VI. Other Specific Situations

(a) The Argentina Saga

If not necessarily the lead story for the period 2008-2012, the continuing Argentine saga certainly generated its share of headlines, and a series of EMTA presentations about various developments in Argentina's efforts to resist collection efforts by its holdout creditors drew large numbers of market participants as attendees. As recounted in "EMTA's 20th Year -- A Look Back to EMTA 1999-2007: The EM Debt Trading and Investment Market Matures and Mainstreams" (hereinafter "EMTA 1999-2007"), in 2005 Argentina restructured about 76% of its outstanding debt, but in the process alienated many bond investors, who felt that Argentina's negotiating strategy had been too heavy-handed. While it is not the purpose of this article to draw conclusions about the wisdom of Argentina's negotiating strategy, it is fair to say that the 2005 restructuring divided Argentina's bondholders into two groups with conflicting interests, those who had restructured their defaulted bonds into new instruments, and those who had not, thus retaining their defaulted debt. Some of the holdout creditors had brought lawsuits against Argentina, mostly in the federal district court for the Southern District of New York, with some, but not all, of the plaintiffs obtaining judgments. From the onset of the credit difficulties in 2001, hardly a week had passed without news of one legal development or another, and by the middle of the decade, a number of holdout creditors were asserting claims against Argentina and pursuing collection efforts and other remedies in support of their claims.

In mid-2007, EMTA presented its fifth panel in a continuing series of presentations relating to Argentina's default, restructuring and recovery, and its implications for the EM trading and investment marketplace. The panel explored Argentina as a precedent for other countries, and, more broadly, the political and economic policy implications for the entire South American region. This panel was one of many presentations that are still being held to discuss Argentina. As clearly expressed at the beginning of each presentation, EMTA's purpose has not been to take sides in Argentina's dispute with its holdout creditors, or to litigate or re-litigate the various legal actions that are still pending against Argentina, but simply to explore what, if any, lessons can be learned from the Argentine experience, an experience that has been difficult for all involved, and for the market generally.

In mid-April 2010, Argentina launched the long-awaited second round of its exchange offer for most of its existing Brady bonds and Eurobonds, containing terms that were similar, but not identical, to those contained in its 2005 exchange offer. A group of plaintiffs in the Southern District of New York attempted to enjoin the exchange offer, but they were unsuccessful and the offer proceeded to completion, bringing to about 93% the percentage of Argentina's 2001 defaulted debt that had been restructured in the 2005 and 2010 exchange offers. Nevertheless, litigation against Argentina by its remaining holdout creditors continued.

Given its importance to the EM marketplace, Argentina's economic and political future was debated at a special EMTA event, "Argentina: Pros and Cons", in November 2010, at which both Argentina's capacity and willingness to pay were discussed, with some panelists asking questions such as "Should Argentina be welcomed back after being shunned for a decade?" and "Was Argentina's current situation, as a country neither headed for default nor investment grade, sustainable?"

The most famous Court Orders relating to the holdout litigation (entered at the end of 2011 and beginning of 2012) reflected Judge Griesa's rulings on the application of the *pari passu* clause and how it should be enforced in connection with future payments on Argentina's Exchange Bonds.

Among other things, the first Order (which interpreted the *pari passu* clause in plaintiffs' bonds and found that Argentina had violated it) held specifically that:

(1) Argentina violates the *pari passu* covenant whenever it "lowers the rank of its payment obligations under [plaintiffs'] Bonds" below that of other External Indebtedness, including by "relegating [plaintiffs'] bonds to a non-paying class by failing to pay the obligations currently due under [plaintiffs'] Bonds, while at the same time making payments currently due" to holders of other External Indebtedness;

(2) Argentina "lowered the rank of [plaintiffs'] bonds in violation of [the *pari passu* covenant] when it made payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under [plaintiffs'] Bonds"; and

(3) Argentina "lowered the rank of [plaintiffs'] bonds in violation of [the *pari passu* covenant] when it enacted Law 26,017 [the so-called "Lock Law" preventing Argentina from any settlement on bonds eligible to participate in the 2005 Exchange Offer] and Law 26,547 [which suspended the Lock Law for purposes of the 2010 Exchange Offer]".

The second Order (which covered the appropriate remedy for the covenant violation) held that:

(1) Whenever Argentina pays any amount due under the Exchange Bonds, it must make a Ratable Payment to [plaintiff] (ie, payments in the same proportions then due); and

(2) Argentina was enjoined from making any payment under the Exchange Bonds without making such a Ratable Payment to [plaintiff], such Order to be binding upon certain Agents and Participants in preparing, processing or facilitating payments on the Exchange Bonds.

Following the stay of the two Griesa Orders by the US Court of Appeals for the Second Circuit, pending appeal, in April 2012, EMTA hosted a roundtable discussion "Argentina and its *Pari Passu* Clause", during which a panel assembled by EMTA explored the differing interpretations of the *pari passu* clause, as well as appropriate remedies for breaches of sovereign obligations.

One key issue discussed was whether the two Orders reflected the "narrow" view or the "broad" view of the *pari passu* clause[11], or something in between. Under the broad view, while in default

[11] The soon-to-become famous (or perhaps infamous, depending on one's point of view) *pari passu* clause made its first court "appearance" in the cases brought by plaintiff creditors against Peru in New York, London, Brussels and Luxembourg relating to an interest payment missed in 2000. The courts never fully interpreted the clause (although a Brussels court granted an ex parte injunction based on an affidavit espousing the broader interpretation), and Peru thereafter settled with the plaintiffs. In a 2003 case against Nicaragua, another affidavit offered the contrary interpretation, and some thought the meaning of the clause would surface again in connection with the Greece exchange (but it didn't).

a sovereign creditor violates a *pari passu* clause if it fails to pay its creditors ratably; the more narrow (and probably more common) view being that the clause protects a creditor from being, in effect, subordinated to other creditors, but it does not protect a creditor against simply being paid less than other creditors (or not being paid at all while other creditors are being paid). This may seem a subtle distinction, particularly where, as in this case, Argentina (1) had enacted a law, the so-called Lock Law, that was alleged to have effectively subordinated plaintiffs' debt claims to those of other creditors who accepted Argentina's exchange offers, while (2) persisting in its refusal to pay plaintiffs when the holders of the exchange bonds were being paid.

Argentina's appeal to the Second Circuit was supported by amicus curiae briefs arguing, among other things, that the remedy approved by Griesa was inconsistent with the FSIA and would threaten the orderly functioning of the global payments system. Other amicus curiae briefs, submitted in support of plaintiff-creditors, argued to the contrary that the remedy was narrow enough to avoid these problems.

In essence, the litigation of this issue by Argentina and its holdout creditors compelled the courts to navigate between an interpretation of the clause (and related remedy) that would (arguably) prove unworkable and one that would deprive it of any practical effect whatsoever and render it effectively toothless. An unusual confluence of events – a deep financial and economic crisis, unusually persistent creditors, an unusually resistant debtor, an unusual local law (the Lock Law), multiple unsuccessful collection efforts, multiple appearances before an apparently frustrated federal court judge and an abundance of talented and expert (and contradictory) amici to guide the court to the appropriate resolution – had led to a difficult path for the appellate judges on the Second Circuit, who had to interpret the clause, determine if it had been violated and, if so, provide the appropriate remedy.

On October 26, 2012, a three-judge Second Circuit panel affirmed Judge Griesa's prior decision and Orders regarding Argentina's breach of the *pari passu* clause in its pre-default sovereign bonds, but remanded the case back to Griesa to clarify how the remedy of pro rata payment was to be applied. In November 2012, Griesa issued an injunctive order directed at intermediaries. The Second Circuit subsequently denied a rehearing on the *pari passu* interpretation by Griesa and the U.S. Supreme Court also denied certiorari to hear the *pari passu* argument, while at the same time giving plaintiffs broader discovery against Argentina than most thought possible under the FSIA.

Whether or not the case against Argentina would have lasting market implications has been actively debated. Some believed it would have limited impact since it's unlikely that other countries would "behave like Argentina", while others claimed that the effects of the case on financial intermediaries, the international payment systems and New York law governed bonds would be "vast and deep-seated".[12]

(b) Warrants – Uncertainties Regarding Enforceability and Value Doom Industry Efforts to Clean Up the Settlement Backlog

As recounted in "EMTA 1999-2007", the EM debt marketplace had long struggled with reconciling and resolving mismatches in ownership positions in Warrants issued by various countries (but particularly Venezuela and Nigeria) caused by over a decade of trading underlying

[12] As of Fall 2015, the plaintiffs' collection efforts remain unsuccessful.

bonds without delivery of appropriate settlement instructions for the accompanying Warrants.[13] While the dealer market was able to make some progress in the tedious process of reconciling their positions, a grand solution to the overall Warrant problem, such as a large multilateral facility, would require considerable buyside participation, and proved elusive.

In fact, the Warrant debacle continued through 2008 (after which EMTA's Board suggested that no further work by EMTA could be accomplished), as market participants worked hard to reconcile and net their trades bilaterally and trilaterally with counterparties pursuant to netting documentation and user's guides and calculations of total dividend payments relating to such Warrants provided by EMTA. In order to increase liquidity and assist in the settlement and netting of the Venezuela Warrants, EMTA, on behalf of the market, requested that the clearing systems permit the transfers of certain Warrants with differing ISIN Codes, represented by non-USD currencies, into the main USD Warrant ISIN Code used by most market participants. EMTA also summarized in its Venezuela and Nigeria Primers the formulas for determining the number of Warrants related to the relevant Venezuela and Nigeria Bonds and a history of prior payments.

Twelve relatively small bilateral or trilateral EMTA-sponsored Venezuela and Nigeria Warrant Delivery Facilities (involving 18 market participants having unsettled Warrant positions with a gross value of perhaps US $100 million) were painstakingly completed in 2007 and 2008, which represented significant progress (but insufficient compared to the overall industry mismatch) in the EM trading industry's then-ongoing effort to clear the longstanding settlement backlog for Nigeria's and Venezuela's Warrants. The Facilities followed several years of intensive activity by the dealer community to reconcile their trading records internally, with the industry clearing systems and with each other.

In theory, a large multilateral netting facility involving a closed circle of dealers seemed feasible, but in practice it was never possible to successfully organize and complete one, probably due to some combination of the lack of consensus in the dealer and buyside communities about the enforceability of Warrant claims (and, therefore, their value), and concerns about mismatches between their buy and sell positions with customers. Various approaches were proposed. One Multilateral Netting Facility was designed to settle the Nigeria Rights deliveries by cash-settlement at a price of $220 per Right delivery (as well as related warrant cash payments); a second Facility was designed for use in situations where the three parties comprise an ABC chain and wished to "step out" the intermediary party (party B in the ABC chain), with the result that party A's former delivery to B (and party B's delivery to C) be replaced by A's delivery directly to C (the resulting delivery to be made contemporaneously or deferred, as parties A and C prefer); and a third Facility was designed for use in situations where each of the three parties would submit the same amount of Warrant deliveries (including the related warrant cash payments) against each other in a three-party circle, so that the effect of the Facility was merely to offset the circle of deliveries against each other, thus leaving no residual positions among the three parties with respect to the deliveries submitted (it being understood that parties might have unsubmitted Warrant deliveries between them that would be unaffected and, as a result of the mutual offsetting, no deliveries were actually required to effect settlement). Despite considerable financial engineering on EMTA's part, none of these proposed approaches proved viable, particularly after the onset of the subprime mortgage crisis in 2007 distracted the

[13] See "EMTA 1994-98: The Golden Era of EM Debt Trading?", pp.9-10; and "EMTA 1999-2007", pp. 24-5.

market's attention away from continuing to expand industry resources on addressing a seemingly intractable, but relatively small, problem.

(c) When to Commence 'Flat' Trading

A third specific area of fixed income trading that EMTA and the marketplace spent considerable time focusing on was the problem of when to commence so-called "flat" trading of an asset in default, a question not unique to EM debt trading, but one for which EM has had considerable experience.[14] To assist the market in better understanding this issue, EMTA prepared a Flat Trading Summary,[15] which described the background of flat trading in the global debt markets generally under the ICMA rules, and then highlighted (1) the price at which the bond trades and settles and when and how does the method for determining that price change and (2) who is entitled to receive interest payments, or any particular interest payment, on the bond. While not purporting to answer these questions in any particular instance (that answer often depends on very specific facts, such as the circumstances surrounding an upcoming or past-due interest payment and the wording of the applicable bond documentation), the Summary was intended to provide some general guidance to EMTA Members for addressing these questions in different cases.

While in most non-EM Eurobond trading scenarios, the ICMA Rule for 'flat' trading had been applied strictly on a more or less "zero-tolerance" basis upon non-payment on the due date, for EM bonds (where experience has shown there to be more instances of administrative error and of unwillingness to pay), the normal practice has been for the market to wait until the applicable grace period for an interest payment default has expired before reaching consensus through a consultative process that an EMTA market recommendation should be made to take trading 'flat'. This "wait-and-see" approach has not been applied, however, in circumstances (such as in the case of Argentina's December 2001 moratorium) where the debtor's intention not to pay was clearly expressed.

In addition to the Flat Trading Summary, EMTA also issued specific Market Practice guidelines from time to time. In light of the uncertainties regarding the then upcoming February 2007 payment on Ecuador's 2030 Bonds and November 2008 payment on Ecuador's 2012 Bonds, EMTA hosted conference calls to discuss whether 'flat' trading should commence immediately upon non-payment or after the expiration of the grace period. Here, market consensus[16] was to trade on a "plus accrued" basis, whereby buyers continued to pay for accrued interest for the new interest period and sellers would be entitled to any accrued interest for the prior interest period (together with any default interest) paid by the issuer to the trustee during the 30-day grace

[14] Under normal circumstances, debt assets trade on the basis of an agreed price (expressed as a percentage of face value), plus accrued interest from the prior interest payment date to the settlement date (thereby, in effect, the buyer purchases accrued interest at par). Trading "flat" means settling at an agree price, which includes the right to receive all accrued interest (ie, without having to make any separate payment in respect of accrued interest – essentially a recognition that payment of such interest is uncertain.)

[15] The substance of the Summary dated back to a memorandum prepared after Ecuador defaulted on its sovereign Eurobonds in 1999 (and was revised several times thereafter), but was published on EMTA's website in its current form in February 2012.

[16] See "EMTA 1999 to 2007" for a description of how EMTA's decision-making consensus approach works.

period (with any such accrued interest or default interest paid to the trustee after the grace period being for the account of the Buyer).

However, when it became clear that Ecuador was not going to make the payment on its 2015 Bonds due December 2008, EMTA recommended that Ecuador's 2012, 2015 and 2030 Bonds all be traded on a 'flat' basis, unless otherwise agreed. And, even when the trustee for the 2015 Bonds notified holders that it received payment from Ecuador on the 2015 Bonds, but was holding such payment in trust for the bondholders until payment was made in accordance with new record and payment dates to be set by Ecuador, EMTA recommended that trades in the 2015 Bonds continue to trade on a 'flat' basis, and such recommendation was not modified until new record and payment dates were set.[17]

For Ivory Coast's 2032 Bonds, in January 2011, EMTA recommended 'flat' trading commence upon the expiration of the 30-day grace period, and then, in November 2012 for trades commencing on January 1, 2013, recommended 'with accrued interest' trading once the sovereign announced an exchange offer and partial interest payments. For Belize's 2029 Bonds, EMTA recommended in August 2012 that 'flat' trading commence on the day after the bonds were not paid because Belize had announced that it would not be making such payment.

Other Meat and Potatoes Work

In addition to providing a wealth of information about the Argentine holdout litigation, Warrants and flat trading (all archived on EMTA's website), throughout the years 2008-12, EMTA also served to provide bondholders with current information on exchange offers, as well as the formation of creditor committees, by publicizing this information on EMTA's website. From time to time, EMTA also circulated communiqués from EM governments, at their request, detailing information about restructurings or other information of interest to the investment community. And, of course, EMTA continued to help develop Market Practices (in the case of Venezuela, Ecuador, Nigeria, Brazil, Ivory Coast and Belize) and when-issued bond confirmations and bilateral netting agreements (in the case of Argentina, Greece and Ivory Coast) as the need arose from 2008 to 2012 (and beyond).

[17] During this time, EMTA was also involved in three related endeavors: (1) The International Swaps and Derivatives Association, Inc. (ISDA), in consultation with EMTA, announced the launch of a CDS auction protocol to facilitate the settlement of credit derivatives trades referencing Ecuador (the first protocol in regards to the settlement of a sovereign credit event), (2) EMTA facilitated bondholder conference calls relating to the formation of an ad hoc committee and (3) EMTA hosted a panel to discuss Ecuador's Tender Offer for its 2012 and 2030 Bonds from the economic, policy and legal perspectives, as well as to hear a rating agency's views on recent sovereign restructurings.

EMTA 2008-2012 – Promoting the EM Asset Class and Market Transparency

Jonathan R. Murno[1]
Managing Director

From its earliest days, one of EMTA's principal missions has been to promote greater market transparency, in part by providing a forum for market participants to discuss issues of common interest.

Various EMTA working groups held regular "open meetings" in the early to mid -1990's to provide EMTA members (then primarily the investment banking affiliates of banks and other sellside market participants) to exchange information about the terms of the various country debt restructurings, and to develop standard documentation and market practices for trading the original instruments of the EM asset class - the mix of defaulted sovereign loans and unpaid interest claims (which were neither securitized, nor intended to be tradeable instruments) and the growing supply of highly tradeable, but unusually complex, Brady bonds that were issued as a result of these restructurings. In addition to helping the marketplace to prepare for these debt restructurings, and then to trade the new (and somewhat novel) instruments that resulted from them, these early "open meetings" soon evolved into discussions of how to make the EM marketplace generally more efficient through mechanisms commonplace in more established and mature asset classes such as trade matching services, netting facilities and, eventually, a clearing house.

In short, EMTA-sponsored meetings helped transform the marketplace from one in which trading transactions involved one-off negotiations of trade terms and documentation to a more liquid marketplace where trades were made and settled on the basis of more common terms, market practices and trading documentation.

As the industry matured and achieved greater efficiency, EMTA transformed itself from a host of working group meetings focused on the development of trading documentation and market practices to a sponsor of events intended to increase marketplace transparency. EMTA Forums and seminars were born, and have since been used to educate market participants on various legal and economic issues, to provide for debate on market issues and to foster a greater sense of community in the ever-expanding asset class.

EM, US and Multilateral Financial Officials Have Been Regular Speakers at EMTA Events

In light of its emphasis to increase transparency, and to serve as a forum for the communication and exchange of views, through the years EMTA has hosted a wide variety of keynote speakers including Finance Ministers Domingo Cavallo of Argentina (1992), Pedro Malan of Brazil (1995), Guillermo Ortiz (1995), Francisco Gil-Diaz (2001) and Agustin Carstens (2007) of Mexico, Tobias Nobrega of Venezuela (2004), Fernando Zavala of Peru (2005), as well as

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Planning Minister Guillermo Chapman of Panama (1996). Central Bank Presidents Henrique de Campos Mereilles (2006), Arminio Fraga (2000), as well as former Central Bank Presidents Afonso Pastore (2010) of Brazil, Augusto De La Torre of Ecuador (1996), and Andrei Kozlov (1996) of Russia have also addressed market participants from the EMTA dais.

The original architect of the Brady Plan, former US Treasury Secretary Nicholas Brady, gave an unofficial valedictory address on the Emerging Markets in 1998. In addition, US Undersecretaries of Finance Lawrence Summers (1996), Timothy Geithner (1999 and 2000) and John Taylor (2002) have also addressed EMTA audiences. IMF officials Stanley Fischer (1999) and Alejandro Werner (2013), and Asian Development Bank Chief Economist Ifzal Ali (2007 and 2008), have also been featured at EMTA events.

Russia's Deputy Prime Minister Alexander Shohkin (1994) , Deputy Finance Minister Mikhail Kasyanov (1997) and Securities Markets Commission Chairman Igor Kostikov (2000 and 2002) discussed their country's economy before EMTA audiences, and Argentine Finance Secretaries Daniel Marx (2000) Guillermo Nielsen (2003), and Adrian Cosentino (2010 and 2011) have addressed creditors at EMTA meetings as well.

EMTA Meetings Expand from NY/London Core to Include Asia, LatAm, Middle East and Other Financial Centers

The transition that occurred during the 1990's from gatherings focused on the development of trading documentation and market practices to events more oriented towards the discussion of economic developments and prospects in various EM regions and countries was not the only important development in EMTA meetings. For the first several years of its existence, EMTA -- with limited resources such as an entirely seconded staff and miniscule budget--produced mostly New York-centered gatherings.

However, by 1998, now several years into hiring its own full-time employees, EMTA inaugurated its first London Summer Forum (just weeks before the 1998 Russian crisis.) The event was held in recognition that the EM debt industry was increasingly diversifying away from a mostly LatAm dominated market headquartered in NYC, with London serving as the center for EM activities in the CEMEA region. A London Winter Forum was added in 2004, giving EMTA an annual line-up of seasonal forums, which included Spring and Fall Forums in NYC.

As investor interest in local market instruments grew in importance, EMTA responded to reflect this broadening of the market as well. EMTA Board firm ING proposed annual EMTA events in Hong Kong and Singapore, to reflect the importance of Asian EM debt trading, and these events began in 2006; Board firm Banco Itau suggested that EMTA hold events in Latin American cities as well, and annual EMTA Forums were started in Sao Paulo and Buenos Aires in 2008. EMTA Board firm Standard Chartered proposed a Dubai conference be held to service MENA markets, with this annual forum first being held in 2010. Finally, EMTA has periodically sponsored forums and workshops in London that focused on opportunities and challenges for investors in various African markets, and in 2010, in response to popular demand, EMTA initiated an event focused solely on the Central American/Caribbean region. These presentations were intended to promote the EM asset class generally as well as to promote market transparency.

In addition to the more general forums featuring the discussion of market developments and prospects in particular countries or regions, EMTA has always tried to convene gatherings to highlight specific issues of interest to market participants. A prime example of this type of topical forum has been the series of corporate bond forums launched in 2007 in London to reflect the diversification of investor interest away from sovereign instruments to the corporate bond market. This enhanced interest in corporate bonds led to a variety of legal seminars focused on covenants, events of default and creditor remedies relating to corporate bond documentation.

Of course, successive sovereign debt restructuring have remained topics generating substantial trader and investor interest, sufficient to justify individual forums or discussion workshops, or in the case of Argentina, an on-going series of them, which have drawn record crowds or attendees in NYC, London and Buenos Aires. Controversial situations in Ecuador, Argentina and in Greece (see below) also led to several well-attended legally-oriented seminars in NYC and in London exploring the more general topic of whether the architecture for resolving sovereign financial crises was acceptable to the marketplace.

Extraordinary market conditions beginning in 2008, and the subsequent Greek default (with its repercussions throughout the EuroZone), led to EMTA's presenting several forums in 2010, 2011 and 2012 examining developments in Greece, and in the EuroZone generally, focused at first on whether there were lessons from the Emerging Markets that could be applied there, and later on whether the Greek restructuring had been consistent with the Rule of Law, and its implications for future EM debt restructurings outside of the Euro Zone.

Other topics explored in EMTA forums and seminars in the period 2008 – 12 included Risk Management (2009), the offshore Renminbi market (2010, 2011, 2012), economic and political developments in Venezuela, and their potential financial implications (2012 and 2013), Mexican corporate bankruptcy law (2010 and 2011), the US foreign sovereign immunities act (2009) and restructuring in the Mexican home building industry (2013).

At various times, members have proposed the EMTA event calendar be expanded to include additional locations (e.g., Mexico City, Moscow, Tokyo, Cape Town, Paris and various cities in the US) and focus on additional topics (e.g., additional corporate-focused events). EMTA continues to evaluate member interest, and the financial viability, of each suggestion.

EMTA Helps Organize Industry Charity Events

Also noteworthy has been EMTA's assumption of leadership roles in the annual industry charity balls in both New York (since 2002) and London (since 2003). In fact, EMTA's involvement in the London Charity ball began during one of its early annual London Summer Forums, when Elaine Skinner-Reid (WestLB) and Clare Turnbull (Bear Stearns) approached EMTA staff about taking leadership of the annual London industry benefit. Though EMTA has always been wary of extending its resources and staff-time on social events or charity matters, the decision was made that supporting annual charity- oriented events in NYC and London were efficient ways to promote EM industry camaraderie and the EM asset class generally.

In the case of both NYC and London, EMTA took the lead in forming separate not-for-profit charity organizations dedicated to raising funds for EM health and education projects. Since their creation, benefit committees organized by EMTA, on behalf of the industry generally, and with the support of many EMTA member firms and market participants have raised and disbursed over $10 million to charities focused exclusively on improving living standards in EM countries.

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In the 25 years that EMTA has served as a gathering place for EM market participants, its events agenda has grown from an end-of-year annual meeting held in NYC to over 30 events per year held in 14 cities on five continents. In addition to promoting greater transparency by hosting a wide variety of influential public officials and knowledgeable industry strategists and analysts, EMTA's events have successfully promoted the EM asset class and given member firms the opportunity to showcase their leading talents, exchange views and meet with existing and potential new clients and customers, while also promoting a sense of industry unity and common purpose.