

# International Finance & Treasury

Weekly Report for International Finance Executives

## Web-Based Treasury

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*Using the Internet for cash and treasury management is a rapidly growing facet of treasury technology. Ability to share information on a real-time basis is a key benefit, making centralized management of global positions feasible.*

Raffi Basmadjian, France Telecom

Cash and treasury management have always been based on an efficient sharing of information mechanisms, this information being related to cash in-flows and outflows of a company or a group of companies. Efficiency here means that this sharing of information is:

- as cheap as possible (simple, automated)
- as immediate as possible (no delay)
- as secure as possible (no risk of misleading, no risk of mistakes)

Historically, treasurers have set up procedures to get this information (or a part of it) through fax, phone calls, e-mails or even paper bank account statements. In a small company or a small group, this type of treasury management, although quite cumbersome, is always possible given the amount at stake.

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## A Mooring Line Lets Go

*The Russian central bank decides to abandon its dollar-based regime and introduce a currency basket incorporating the euro. This could portend a sea-change for the greenback's future as a numeraire currency.*

Matt De Clercq

Early this month, the Central Bank of the Russian Federation announced that it had begun targeting the ruble exchange rate against a euro-dollar basket, abandoning the traditional crawling peg against the dollar that had governed the exchange rate.

The central bank said in a statement, as of February 1<sup>st</sup>, it had begun targeting a dual currency basket—made up of 90 U.S. cents and 10 euro cents (equivalent to a ratio of 87:13, because of exchange rate considerations). It indicated that it would gradually raise the weighting of euros.

“Increases of the weighting of the euro in the twin currency basket, to a level appropriate for the task of exchange rate policy, will take place step-by-step as market players adapt,” the statement said.

This will expand the bank's strategic possibilities, since it will

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## APE: An Argentine Tale

*The concluding installment considers technical issues involved with execution of an APE restructuring and likelihood of an extraterritorial challenge. It also describes innovative alternatives being used by Argentine companies to duplicate the results of an APE without the concomitant problems.*

Rohit Chaudhry and Carlos Albarracin, Chadbourne & Parke, LLP

The first part of this article (F&T, 2/15) described development of the *acuerdo preventivo extrajudicial* (APE) as a measure to expedite restructuring of troubled Argentine corporations. It also related how internal shortcomings of the procedure and unexpectedly active involvement by the courts had confounded that goal and mired many APE procedures in delays and litigation.

This concluding installment describes the technical problem of determining a creditor majority for purposes of instituting an APE. It also considers the likelihood that the results of the proceeding may be reversed by an extraterritorial court challenge.

Finally, it describes the continuing search for alternatives to the APE and recognizes innovative procedures that some troubled com-

**It is not clear whether all outstanding unsecured notes need to be counted, or only notes represented at a meeting...to approve the restructuring.**

panies have used to achieve relatively rapid restructuring of their capital.

### Counting and Defining a "Majority"

Another issue with APEs is how to count whether one has support from a majority of the creditors.

APE rules require the support of creditors representing two-thirds of the total outstanding unsecured debt amount and a majority in number of unsecured creditors. Although this seems simple enough, these calculations can get complicated in the case of noteholders. Moreover, the APE rules provide little guidance.

There is a procedure governing this issue that applies to *concurso preventivo*, which was not expressly contemplated under the APE rules, but that has been upheld in APE cases such as *Multicanal*.

For instance, in the case of head-count majorities, it is not clear how noteholders should be counted. Under the *concurso* procedure, once a noteholders' meeting is called and validly held, all votes of the noteholders of a particular series supporting the APE are computed as given by one person and all votes opposing the APE are computed as given by one person, regardless of the actual number of noteholders of that series that vote in favor of or against the APE.

Then, the votes are added to the individual consents of the other creditors included in the APE to determine whether a majority in number of all unsecured creditors has voted in favor of the APE.

Further, it is not clear whether all outstanding unsecured notes need to be counted, or only notes represented at a meeting of holders convened to approve the restructuring. Court decisions have not been consistent on this issue.

For instance, in the APE initiated by *Multicanal*, the court held that the rules governing *concurso* proceedings also had to be followed for counting majorities in the context of an APE. *Concurso* rules provide that only the notes represented at a meeting of holders convened to approve the restructuring should be counted in the calculation of qualifying majorities.

In *Autopistas del Sol*, the APE was endorsed without a noteholders' meeting and, when dismissing an opposition from a creditor, the court in the *Autopistas* case held that the procedures described above were just one of the options for providing consent to an APE but not the only method.

The manner in which qualifying majorities are calculated is extremely important since the method chosen could determine (and, in many APEs, has determined) whether or not qualifying majorities have been

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# International Financing

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achieved. However, there continues to be uncertainty under the APE rules and case law on this important issue.

### Extraterritorial Exposures

Even if a restructuring pursuant to an APE is successful in Argentina and receives court endorsement, there is a risk that the restructuring may not be honored in other jurisdictions.

If a company's debt is governed by New York law, then a creditor could bring action in New York courts. To address this risk, an Argentine company might seek recognition of the Argentine bankruptcy proceeding in the U.S. in order to, among other things, bar separate

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actions in the U.S. An ancillary proceeding under §304 of the U.S. bankruptcy code is the mechanism by which this is accomplished.

In order to obtain relief in a §304 proceeding, certain minimum standards must be satisfied. Until recently, it was unclear whether an APE would satisfy these minimum requirements since a restructuring under the APE procedure occurs outside of actual bankruptcy with less court involvement than in other judicial restructurings. This issue was recently addressed by a U.S. bankruptcy court in the Multicanal case.

Multicanal filed a petition under §304, commencing a case ancillary to its APE. It wanted a temporary restraining order and preliminary injunction to bar two lawsuits commenced by *W. R. Huff Asset Management* (Huff), a noteholder holding a significant amount of Multicanal's unsecured debt.

Huff wanted a New York court to order Multicanal to repay its notes and bar the company from restructuring them through an APE. The U.S. bankruptcy court granted a temporary restraining order preventing Huff and the other related entities that filed litigation in the U.S. against Multicanal from prosecuting the state court lawsuits or taking action in the U.S. which would interfere with Multicanal's restructuring proceedings in Argentina.

In holding that the APE regime is enforceable in the U.S. and that dismissal of the Huff lawsuit was warranted, the court stated that the APE procedure bears strong resemblance to U.S. prepackaged bankruptcy plans and rejected Huff's argument that the APE has to satisfy all the conditions for confirmation of a Chapter 11 case. The court said that the conditions for confirmation of a *concurso preventivo* need not be satisfied either.

Although the bankruptcy court sided with Multicanal, it expressed concern about the treatment of U.S. creditors under Multicanal's APE and directed the company to remedy what the court perceived as unfair discrimination against U.S. retail holders of Multicanal's notes (who were only eligible to receive a discounted cash-only option and were excluded from

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### Post-EMU Cash and Debt Management BANK OF LUXEMBOURG

Across Europe, finance directors and treasurers are anticipating the impact of monetary union, and foremost the introduction of the euro, on their business operations. Much of the cost of EMU will be borne in the preparatory stage, whereas the benefits will only be seen once the single currency is under way. This is particularly true of the corporate treasury function.

**Cash Management**  
The introduction of the euro will simplify cash flow management for companies operating across Europe and will allow them to manage their post-Euro cash flow in one currency. They will also have the ability to hold all accounts in euros with uniform interest rates, which will make cash flow forecasting easier.

The euro will also allow treasurers to pool cash held in different member states. Corporations will be able to take advantage of the single currency by holding euros accounts on each of the member states in which they operate. All euro balances held overnight in the accounts of their parent European bank could be set off against each other, reducing working capital borrowing requirements. The treasury would then only have to manage one working capital balance.

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### Europe Positioning for Boom in Asset-Backed Securities W.B. SCHATZMAN (BRUSSELS)

Following the boom in the asset-backed securitization market (ABS) in the United States in 1997, underwriters are poised to spread their wings in Europe. Unlike in Asia or Latin America, the one-time road-paved market in Europe is continually evolving into a viable sector and issuances in the ABS market will likely jump this year due to recent favorable regulatory changes, as well as the approaching launch of the euro. (See related *ABS* issue, page 19 of this issue.)

The most significant regulatory change that Europe has seen occurred last May, when German banks were given authorization to securitize their own loans. Regulations have also been improving in France and as a result, a surge in asset-class activity may make a large impact on the already changing ABS volume in Europe.

ABS activity so far has been centered mainly on residential mortgages and, to a lesser extent, credit cards. Unlike in the U.S., there is no distinction between mortgage-backed and asset-backed securities in Europe—all deals use an ABS structure.

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the combination of notes, cash and shares offered to Multicanal's other more sophisticated U.S. and foreign creditors).

In addition, the bankruptcy court was troubled by Multicanal's criminal actions against creditors and questioned whether U.S. creditors may be subject to coercion by threats of criminal prosecution in Argentina.

To address these issues, the court demanded evidence that the criminal actions were not commenced for improper purposes. The resolution of these two issues is still pending in the bankruptcy court.

### A Search for Alternatives

As a result of the increasingly contentious nature of, and uncertainties and delays associated with, the APE process, distressed companies and creditors are exploring other ways of restructuring debt.

In many recent APEs, restructuring proposals have included parallel restructuring options depending on the level of creditor support. Under these restructuring proposals, if creditor consent exceeds a specified high threshold (typically more than 95 percent or 96 percent), then instead of an APE, the restructuring is consummated by means of a voluntary exchange offer. However, below such threshold, the APE procedure is used since the level of holdout creditors then becomes too high for an exchange offer.

In the recent *Transportadora de Gas del Sur* (TGS) restructuring, a more creative version of these parallel exchange/APE options was utilized. In TGS, in addition to the 96 percent threshold for an exchange offer without an APE, a second threshold of creditor consent was introduced. If this threshold, which was set at 85 percent, was reached, then the restructuring was to be implemented by means of both an APE and a voluntary exchange.

Under this option, the debtor would file an APE. However, instead of waiting for the APE to be endorsed, the consenting creditors were to exchange their debt pursuant to an exchange offer that would be consummated while the APE was pending.

This exchange offer for the consenting creditors within the APE procedure was to be consummated within a few days after the filing of the APE, thereby allowing the consenting creditors to receive their exchange notes and cash consideration up front, instead of waiting for

the APE to be endorsed.

The holdout and non-participating creditors would receive their new notes and remaining consideration upon a "cram-down" when the APE was endorsed by the Argentine court. However, since the majorities received in the TGS case exceeded the 96 percent threshold for an exchange offer, the restructuring will be implemented by means of an exchange offer without the filing of an APE. Hence, the idea of an exchange during an APE remains untested in Argentina.

Another recent development comes from an amendment to APE rules that was passed by the Argentine Senate in December, 2003. The amendment reduces the qualifying majority required to approve an APE from two-thirds to 51 percent of the unsecured debt.

**In many recent APEs, restructuring proposals have included parallel restructuring options depending on the level of creditor support.**

The headcount majority requirement would remain unchanged.

The amendment would also require that for purposes of calculating qualifying majorities, dollar debt should be notionally converted into Argentine pesos at par, even though the current exchange rate is far more favorable for the dollar.

The amendment has not yet been approved by the Argentine House of Representatives. If it is ultimately enacted, then creditors holding dollar debt will be in a less favorable position. □

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