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Successfully Financing Operations and Projects

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foreign and domestic licensing and distribution, intellectual property, product development and technology transfer, foreign trade, and other related matters. Janá is a graduate of the University of Wisconsin. She studied international and comparative law at the Pontifica Universidade Catolica in Rio de Janeiro, Brazil, and received her law degree from Cleveland Marshall College. She gained international legal experience working in Brazil. Her experience is something from which we all can benefit, as she has lectured and written for diverse groups throughout the region.

I. SUCCESSFULLY FINANCING OPERATIONS AND PROJECTS

A. *Recent Developments in Project Financing*

MODERATOR — JANÁ SIGARS:

Two components of international business and trade are trade and investments. Investment, which involves the development and financing of large infrastructure projects, is the cement that binds different countries' interests to each other. It can be more powerful than conventional politics, and in fact, it can motivate the political system to operate to the economic advantage of all.

My political friends tell me that one of the first lessons of politics, whether international or domestic, is to follow the money. That rule sets the format for many relationships. Clearly, project financing in an enabling investment environment is the engine that drives the future. Governments in Latin America are making improvements in their infrastructures that will cost billions of dollars. However, this time the bureaucracies are in the passenger seat, and the private companies are at the wheel. To the extent that we can create an investment environment in which international financing can flourish, such infrastructure projects, among others, can be completed. This will allow us to continue to enhance the growth of their economies and hopefully, free trade. As countries invest more in each others' business activities, the relationships between their political systems will grow.

We will begin with the heart and soul of international business, that is, the financing component. The panelist to speak on recent developments in project financing is Raul Herrera, General Counsel of the InterAmerican Investment Corp. of Washington, D.C. Mr. Herrera serves as a member of the senior management of the InterAmerican Investment Corporation (IIC). He sits on its credit, finance, portfolio supervision, and management committees. He leads a five-lawyer staff. Mr. Herrera hires external counsel, as well as domestic counsel, to assist the IIC. He has been involved in a transactional practice for over fourteen years, eight of which have been at the IIC. He is a graduate of George Washington University School of Law, where he also earned a B.A. in international relations with a focus on

Latin America. He speaks regularly at international symposia and has published numerous articles on the subject of international project financing.

Andrew J. Markus is be the second panelist. Josh is a shareholder of the Miami office of Popham, Haik, Schnobrich & Kaufman. He concentrates his practice in the areas of international and domestic business transactions, finance, and counseling. He is in charge of the Latin American business group of the firm. He has an incredible background of knowledge and experience and represents both U.S. and non-U.S. corporations in forming joint business ventures and project financing.

Josh was chairman of The Florida Bar International Law Section and the ABA Membership Committee, and sits on the section's Advisory Committee on Latin American Technical Assistance Project. He is a graduate of Duke University and obtained his J.D. from the University of Florida.

1. The InterAmerican Investment Corporation

RAUL R. HERRERA:

The IIC is a member of the InterAmerican Development Bank (IDB) Group. The IDB Group is composed of the Bank, the IIC, and the Multilateral Investment Fund. The IIC was created under IDB Group auspices with its operations commencing in the fall of 1989. We pursue our investment strategy through two modes of activity. The first is direct financing for projects through merchant banking operations, and the second is indirectly through the financial sector or capital markets transactions.

From a financing perspective, the most important recent development in Latin America and the Caribbean has been the end of the capital flight crisis. The end of the debt crisis was heralded three to four years ago, and today, we see the end of the flight crisis. Latin America itself is the region that probably has the greatest amount of money nestled away and available for investment in the region. We are seeing many Latin Americans redirecting funds back into the region, demonstrating the confidence in their own markets. Issuers from the region are increasing the volume of placements, as foreign investors show an interest in the renewed stability and economic growth in the region. International support, particularly from the multilaterals including the IIC, is another sign of increased confidence and awareness of the interconnectedness of events in an emerging market. Despite the private sector fallout due to the Mexican crisis in December, 1994, that is, the so-called "Tequila Effect," capital flows to emerging markets in 1995 remain unchanged with respect to 1994 figures. Total flows actually increased if we include the emergency lending to Mexico and Argentina of about US$20 billion. The Institute of International Finance reports that 1995 levels should actually meet the 1993 peak levels of US$215 billion, which includes borrowing in Latin America of about US$18 billion for bond financing. In the region, the economic weakness experienced in the first half of 1995 was reversed in the second half. As investor confidence returns, investors differentiate amongst borrowers and more precisely determine risks. Borrowers in Argentina, Brazil, and Mexico have had to pay higher spreads due to the perceived risks. The most attractive investment opportunities in 1996 will be found in economies with strong potential for growth in gross domestic product (GDP), which in addition to other factors, will lead to open market reforms and an aggressive export orientation.

Reflecting renewed confidence in the region, capital flows to the region are expected to increase by at least as much, if not more than the previous year. The flows are estimated to be about US$52 billion in 1996, up from US$37 billion in 1995. There is a moderate recovery in international issues in Latin America, largely due to the backlog of the Mexican transactions that were not launched in 1995. This growth will not represent a significant development, however, because there were less than twelve issues, and they were mostly from Brazil.

From our perspective, two basic themes drive domestic equity markets. One is the accelerating drive toward privatization and the emergence of investment funds in the region. Secondly, on the debt side, debt financing will rebound in 1996 as investors gain confidence in the region and in alternative financing structures that go beyond the U.S. dollar-denominated Eurobond offerings.

In Latin America, there are three areas emerging with respect to debt financing in 1996: asset-backed securitization, diversification of borrowing from Euromarkets, and the reemergence of syndicated loan markets for Latin America. Asset-backed securitization financing for Latin America doubled in 1995 as investors sought higher yields but were sensitive to the credit risks, therefore requiring some sort of asset collateral.

The second area is created by the shift in financing from dollars to yen and deutsche marks. German and Japanese investors are increasingly attracted to Latin American issues by higher yields and the ability to denominate those issues in their own currencies. Following the end of commercial bank lending to the region in 1995, the syndicated loan market for Latin American borrowers continued to expand in 1996, as an alternative to international capital market transactions. Despite the publicity on the Eurobond market, from 1994 to 1995 the global syndicated market has outpaced bond activity as investors have shied away from Latin American credits because of the Mexican crisis. The areas that will continue to reach and utilize international debt financing will be those that are export-oriented with relatively stable currencies in Argentina, Chile, and Columbia.

The IIC's Charter mandates that projects must be commercially viable. The companies in which it invests must be majority-owned by nationals of Latin America or the Caribbean. At our annual meeting in Israel in April

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1995, that requirement was modified so that under limited circumstances, the IIC can finance companies when the majority ownership is not Latin American. Although the IIC shares a common directorship, its resources and management are separate from the InterAmerican Development Bank. The IIC Charter mandates that the IIC complement the activities of the IDB, which has a new emphasis on structural change and enabling the environment for the private sector in the region. In that respect, our role, although in a smaller segment of the market, is similar to the International Finance Corporation of the World Bank. We have US$200 million paid-in equity capital. At our shareholders' meeting in Israel, the Board of Governors agreed to increase our debt-to-equity leverage threefold, thereby providing about US$800 million in financing. The IIC's debt financing are for up to twelve years, and its equity investments are in place until its presence is deemed to be no longer required. For a new enterprise, the IIC can finance up to 33% of project costs, and for an expansion, it can provide up to 50% of the capital costs of the expansion, provided that the financing is not greater than 33% of the value of project assets. The total IIC exposure to any one project is US$10 million. The average financing is US$4 to US$6 million.

Our role as investor is to deal directly with project sponsors as the director investor meeting the needs of the clients. Typical forms of direct financial support include loans, equity investments, quasi-equity instruments, equity and joint partner searches, and resource mobilization activities. The impact of IIC financing in a project is substantial and far exceeds the level of its direct participation. The IIC brings additional investors into transactions. When the IIC considers an investment, it looks at not only the project, but also at the capital markets and the financial instruments in that country. We always seek to take the markets a little deeper or to introduce different instruments.

This was the case in Nicaragua where in 1991, the IIC invested seed capital in Banco Mercantil, the first private commercial bank to be chartered in Nicaragua after the banking system was nationalized in 1979. The IIC's involvement as a creditor for a US$2 million loan and an equity investment of US$1 million in this *de novo* institution was critical because of the confidence that it demonstrated in the institution and in the country, notwithstanding the risks. This included political, foreign exchange rate, deposit, and growth risks, in addition to the human resources factor, as Nicaragua was beginning to return to the international fold in the financial sector. Concerning the debt financing to the bank, the IIC finances the bank, which in turn uses the funds to reach a target market, smaller than would be reached out of Washington. The average loan size is about US$300,000, primarily for productive sector investments for fixed assets and permanent working capital. To mitigate the risks and as a condition for disbursements, we established prudential banking regulations to which the bank must adhere in light of the nascent superintendency of banks, which was just coming into being. It is very interesting to go through U.S. banking regulations and put together contractually prudential banking orders, loans to one borrower, sectorial investments, capital requirements, and so forth. Over the last few years, as the superintendency and its enforcement capability have come into to their own, we have modified and reduced the banking notices to which the bank was subject.

The IIC structured the transactions so that when the bank made any loans with our funds, it was required to assign to us all the underlying collateral that was given to it for the debt financing. This was done so that, in the event of default, we could collect directly from the borrower. In countries where the regulatory framework is well-developed, the IIC may seek to enter into transactions that support and promote the development of capital markets in which both debt and equity instruments are issued and traded as a means of helping the IIC's target market — private small- and medium-sized companies — to mobilize funds. The IIC has expanded access to capital markets through the use of local underwriting lines, as in Panama and Argentina where it financed local institutions which in turn purchased issues of small- and medium-sized companies, which traditionally have had extremely limited access to these types of funding. Generally, the transaction is structured so that the bank, with IIC financing, must sell the paper within six months, place that paper within six months, or take it for its own account. Then it recycles the funds. The IIC also has done leasing lines. Again with the new leasing law, which is an attractive incentive, the IIC put a credit line for leasing transactions in place in Panama, and in Brazil.

There are three areas where the IIC has undertaken financing, which has an interesting structure. In Guatemala in 1993, the IIC made a US$4.2 million loan to finance a fourteen-story, four-star, all-suite hotel, the Quality Suites Hotel. It was the first of its kind to be built in Guatemala. Tourism was deemed to be its most dynamic industry and the second largest generator of foreign exchange after coffee. As part of that US$14.5 million financing, of which the IIC provided US$4.2 million, our investment was deemed to be a credit enhancer. The local investment bank wanted to place this paper on the market so it did something that was very interesting. It issued a US$2 million offering with a six-month redeemable on the paper. At the expiration of six months, it then offered the investors the opportunity to convert them into a preferred position with an attractive rate for the duration.

We identified two major risks. Foreign exchange earnings and cost overruns, which are prevalent in hotel financing. For the cost overruns, we established an offshore escrow account to capture hard currency payments for our debt services and then took the standard security positions on the hotel. All the operating agreements, that is, leases, construction, and management, were assigned to the corporation. With regards to the overrun risk and delays, we required the engagement of an independent consultant to review and monitor disbursements on the project; took a project completion from the individual sponsors to infuse funds if we deemed it necessary to finish the project; brought in and supported an affiliation with Choice International Hotels for its marketing network and reservations; and then brought in an experienced operator. We negotiated an agreement with the operator, stating that fees would be paid after the debt service was paid. In that way, we encouraged the hotel operator to maintain the occupancy levels deemed necessary for the debt service.

That same year, in Argentina, an economy with very active capital markets, the IIC again found a very interesting niche. We provided a US$3 million and a US$1 million equity investment in Banco Mayorista. It was the first private sector, second-tier banking institution in Argentina to promote the development of the cooperative banking system. This de novo bank's shareholders, including the IIC, comprised the entire cooperative banking system. There were twenty-two cooperative banks, each with a market niche and a sound portfolio. There are less today, as a result of the fall-out over the last eighteen months. However, because of their specific niche, each bank had inherent limitations on growth and financing potentials. Therefore, along with some of the key players in these cooperative banks, the IIC structured the second-tier institution, based in Buenos Aires, which with cross-guarantees from each of the twenty-two cooperative banks, was able to seek borrowing at lower cost, having had that critical mass of the twenty-two cooperative banks. It represents an opportunity that had not yet been taken, and in fact, today the bank is seeking to acquire another financial institution's assets.

Board approval for the transaction that I am going to discuss next has not been obtained. This transaction involves an agriculture and cogeneration power project. The IIC plans to put in about US$4 million of financing, US$1 million in senior debt, and US$3 million of quasi-equity or convertible debt. The agriculture component involves sugarcane and molasses production with its related infrastructure, such as irrigation and drainage. It will be about a US$14 million project. It is in a Central American economy, and therefore it is considered medium-sized. The power side of the project is a co-generation hydro project, with an interesting use of renewable sources of energy from sugarcane, gas, and woodchips, which lower the energy production costs. These components also will have a power purchase agreement with the local utility, thereby guaranteeing a portion of our debt service, again as a risk mitigator.

In addition to the standard risks, such as foreign exchange, volatile commodity prices and local utility risks, there were several other project risks that we identified. One involved land ownership; the land on which the agriculture component would be built is not owned, but leased. Another risk concerned water-rights, which is an area that has not been fully regulated and needs to be put in place. We sought to set up a structure having separate corporate entities by isolating the power operator, the power equipment manufacturer, which would lease to the power generator, and the agricultural component and then take assignment of the water concession rights and all the operable agreements. It is a risky project. The returns, aggressively, are projected to be about 30% with a very strong development component for our purposes as a multilateral institution.

There are six, some or all of them, development criteria that we seek to obtain in our investments. Initially, the IIC took a cautious position in financing venture capital funds in order to enhance equity financing in the region. However, now we take a more aggressive position. The IIC looks at direct equity funds, making direct equity positions with minority positions.

The IIC has three objectives in venture funds: (1) leveraging private capital in order to reach the IIC's target market while maximizing returns; (2) scarce equity resources to small- and medium-sized companies in the region; and (3) participating directly in specific strategic sectors of an economy.

The IIC has an investment fund with Fondelec, an energy group, with a focus on acquiring energy investments, and they have concluded energy investments in Peru and in Bolivia. One criterion for investing these funds is a divestment after ten years, with one or two years of orderly liquidation. The IIC requires the on-site presence of an established, seasoned, local fund manager, ideally with private equity investment experience. Not someone who is a former banker or capital markets investor, but rather someone who knows the private equity markets in a particular country. An important factor in these investments is the potential of the sponsors to raise funds or to commit investors early on to pick up the momentum.

The involvement of the IIC as a foreign investor is critical in fundraising, and we consider it opportune to influence the target market of the funds as well as to focus on the environmental matters of their investments. It often takes a position on the investment committee or advisory committee.

In Central America, the IIC is launching a Central American investment fund. It will provide investments in that region. We view it as an opportunity to provide scarce equity financing with generally comparable high returns. It is interesting to note that in this area they are establishing funds on a more aggressive basis.

Previously, when there were only two or three Latin American venture funds, the IIC conceived of the Latin American Development Capital Program, a two-tier or double-decker regional investment program which targets investments in nonlisted equity participation in the region and was cosponsored with Advent International of Boston. The first tier and cornerstone of the program is the IIC's equity investment in the regional

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Latin American Private Equity Fund. This fund has a US$200 million target capitalization and had its first closing of US$80 million from institutional investors in the United States, Canada, and Europe.

The second tier of the program is made up of four country funds: Grupo Bozano Simonsen in Brazil, Banco de Santiago in Chile, Grupo Financiero Probursa in Mexico, and Banco de Galicia in Argentina. Each of these institutions cosponsors the program through their own equity investments as well and taking on the role of fund manager. A regional fund can catalyze international funds into the country funds or into specific investments in the countries.

In addition, the IIC's involvement in the financial sector goes beyond traditional intermediation. In Bolivia, the IIC invested US$1.3 million in BancoSol. Within the first year it was turning a profit. BancoSol's target market average loan is about US$300 and provides financial services to over 50,000 microentrepreneurs.

A novel investment that we made in 1995 was a US$2.5 million equity investment in a pension fund administrator. Peru has modified its pension fund laws, providing for a private system. There the IIC saw an opportunity to play a catalytic role in deepening the capital markets. As the pension administrator seeks to find instruments to invest the resources which it manages, it will, in effect, drive the market to provide such instruments, as well as finance privatizations of parastetal entities and encourage domestic savings. The IIC approved that transaction at the end of 1995. It is about to close, and there is a large international bank that now is seeking to make an equity investment as well.

The last area that I will discuss is cofinancing. With a US$200 million capital base and US$800 million financing capacity, our relevance and significance rest in the extent to which we can catalyze and mobilize additional funds into Latin America. It is a very broad mandate, and since initiating its cofinancing activities in 1991 with Banca Serfin, S.A., in Mexico, the IIC has brought in Japanese and European banks. The Serfin cofinancing transaction represented the first long-term, voluntary lending for European and Japanese commercial banks to Mexico after the nationalization of banks in 1982. Three of the five banks had taken significant hits after that nationalization, but through our co-financing structure. The IIC agreed to lend US$22 million to Banca Serfin.

The structure is as follows: the IIC structures a loan to the borrower, which then has two parts: the A-loan, which is for the IIC's account, and the B-loan, which is funded by commercial banks participating in the IIC credit and ranks *pari passel* with the IIC portion. The IIC is the lender of record. It administers the credit and handles the servicing, when and if the borrower pays. It is a nonrecourse both ways from the borrower to the IIC or from a participant to the IIC. This is a common mode the IFC has used for the past

25 to 30 years. As a regionally specialized institution, the IIC is recognized as having a commercial familiarity with the environment, the institutions, and in identifying promising investments.

By its very nature, the IIC has three characteristics that uniquely position it to undertake projects which private international financial institutions may not consider attractive: its Charter-mandated immunities and privileges in each of its member countries, affiliation with the IDB, and investment horizon. Based upon the Agreement Establishing the Inter-American Investment Corporation, an international treaty, the IIC granted immunities from expropriation, moratoria and taxation with regard to its assets and operations in member countries. In addition, the IIC's advance notification to the host government of an activity that the IIC intends to undertake serves to confirm that the host government has no objection to the proposed financing of the project. The IDB's decades of experience in regional development, strong research and economic analyses, as well as it network of offices in each country of the region, have proven invaluable for the IIC and has permitted strategies in developing the private sector of the region.

It is not surprising that the IIC has mobilized funds in Argentina, Brazil, Chile, Columbia, Peru, Uruguay, and Mexico. The funding is primarily European and Japanese. The IIC has done co-financing for financial institutions. We have raised US$60 million for one bank in Argentina. We also have done co-financing for projects. For example, the IIC identified a project in downtown Montevideo, Uruguay, where there was a need for a cost-efficient and effective transportation system. We then made a US$300,000 equity investment and an US$11.1 million loan, of which we would finance US$4.4 million and raise US$6.6 million on the international markets. This was not an oil or a gas deal in Argentina but a bus transportation project in Uruguay; traditionally, a sector reserved for the government and with some inherent limitations structurally, due to concessions and other factors. The transaction was structured with 9 principle bus operators, in addition to the IIC who would operate about 130 buses on a peak basis and service approximately 16 million passengers.

The IIC identified several risks. One was the lack of foreign exchange generated. They were charging local fees, and we were making a dollar-denominated credit. We mitigated that with the existing free convertibility structure that exists in Uruguay by requiring that the operators set up an off-shore sinking fund in which the company could convert local currency to dollars and over-collateralize the account with hard currency.

Another risk was the fifty-year concession granted by the government to the operator to maintain this passenger and small-cargo transport service. Again, eighty-five percent of the bus operators in that market were shareholders in the company. Each of them pledged their shares to us. In none of these instances am I suggesting that the risks can be eliminated,

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however, they can be mitigated and reduced to a comfortable level vis-à-vis our development objectives as well as the potential returns.

Lastly, there was an issue of hard guarantees on fixed assets, which had been prohibited under the government concession. We took an assignment of the space leasing, since the terminal was a multi-use operation. We raised the US$6.6 million from international commercial banks. The terminal is operational, and the company is now planning to do a private placement in the near future. Obviously, our investment serves as a credit enhancer.

The IIC's financial advisory services can be divided into two broad categories: governmental and corporate. We act as a financial advisor to governments either directly or indirectly through the IDB. It serves as a consultant in the structuring and execution of privatization efforts. On the corporate advisory side, the IIC conducts private equity searches as well as joint-partner and financial reengineering for companies. An interesting project is as a principal advisor to the AIGGE Latin American infrastructure fund. It is a closed-end, one-of-a-kind, billion-dollar fund that will have penciled-in commitments from AIG and GE Capital of about US$100 million each. The fund will take long-term, direct minority positions in privately-financed Latin American infrastructure projects and to date, it is the largest of its kind.

On a final note, it is particularly noteworthy that the IIC has achieved these results while dedicating the majority of its resources to small- and medium-sized businesses. Through careful selection of projects that promise economic viability and a positive developmental impact, the IIC is able to support Latin American and Caribbean efforts to achieve a balanced growth.

2. Government Support and Risk Mitigation

ANDREW J. MARKUS:

I will be discussing mitigation of risks in project financing. A project is like a watch. There is an inter-relationship among the pieces. There are an incredible number of pieces in a watch that work together so that it runs properly just as there are a large number of interests that have to be balanced in any project. Rather than discussing mitigation of risk in terms of risk assurance institutions, for example, Overseas Private Investment Corporation (OPIC) insurance and Multilateral Investment Guarantee Agency (MIGA) insurance, I would like to discuss the role of the host government.

The host government's role is crucial for the mitigation of risks to the lender, for the bankability of the project, and for ensuring the atmosphere necessary to create the infrastructure of the infrastructure, as it were. The host government must initially authorize the project. This generally requires special governmental approvals and legislation. The tangible agreements of the government are typically set up in some sort of documentation. For instance, in a Build, Operate, and Transfer (BOT) Project, you typically have a concession agreement, where the host government indicates exactly what support it will provide and then grants a license or concession to make the project run. Often, there is a government support agreement or an implementation agreement, which may be two parts of the same thing or may be part of a concession agreement. The agreement essentially outlines the plans for the project and nails down some of its crucial aspects so that you feel protected. There are a number of reasons for the government to actively support a project. Often a project will not be realized without this support. In the late 1980s, the World Bank wrote that many BOT projects did not come to fruition because the governments did not know how to support or operate them. Governments have taken this point, and now BOT projects are going forward.

The main reason for a government to support a project is political. It is indispensable for the government to be squarely behind a project. In many locations, such as Brazil, governments have stopped, started, and stopped again privatizations because the political climate was not right for them to come to fruition. Public sector support for the project must be formally established, and the public and the bureaucracy brought on board. Government support establishes what the government's contribution is going to be to the project, and it provides assurance to lenders and sponsors in regards to the political and regulatory environment in which the project is going to be developed. Governments often give lenders contractual rights aimed at shifting risks.

There are two types of government support: financial and nonfinancial. The bottom line is that without government acceptance of some of the risks, projects are not going to go forward. The government must be prepared to accept some risks. The lenders are going to seek to mitigate their risks to the maximum extent possible, and they are probably right. They will shift their risks onto the sponsors, the development company, the operators, and to a large extent for noncommercial risks, to the government. It is the government's objectives that are being served by financing many of these projects, so they should be able and willing to carry some of the risks.

There are some circumstances in which government support is crucial. For example, there are many up front costs incurred in complying with project documents, preparing the bid, and having a team visit the project, do some due diligence, and cost-out on the project. The government sometimes may need to defray some of these costs. In addition, there are projects that have a significant market risk. Without government support, people may not want to take that risk. There may be uncertainty as to the direction of future government policy; the government has to reassure investors and make sure that everyone feels that everyone is rowing in the same direction. Sometimes, there is greater political risk because you are in a less-developed economy; the government should formally announce that it stands behind the project. If there are international lenders in the project or if there is equity capital being contributed, government support is crucial because of the comfort factor. Finally, sometimes a project might be a new approach to private sector development; the government should state its support for this new type of development.

Governments can demonstrate support through legislation relating to a project. Typically, the government first has to authorize the project. It has to authorize the entity that is going to deal with the project and many times, establish a regulatory environment and regulations for the project. If you plan to do a mining project and do not have clear environmental regulations to follow, you know you are taking a risk. Sometimes, you are willing to take that risk; other times you want the path to be clearer. If you are going into a regulated industry, for example, the electric industry, you want to make sure that the regulators have clear duties and cannot arbitrarily hold you up.

One contractual form of government support is a comfort letter, where it feels constrained, politically or otherwise, to give you some kind of legally binding agreement. It usually is not a guarantee, but it has moral force. It is a written assurance of continued support for a project or interest in a project, or assurance that a borrower is someone acceptable to deal with. A comfort letter can be legally binding. However, usually it is not, and you need to make sure of its language. Otherwise, although the letter may sound good, in reality, it will not hold up. Maybe you are willing to take that risk. Governments know that if they resist giving a contractual agreement, often times, the project will not be bankable. Sometimes, however, it may be an emerging-country fund that is willing to take a fair amount of risk, as opposed to a lender who wants to be assured of repayment. Another type of contractual agreement is a concession agreement, which is a very important document. Typically, you have a government support agreement, and you may have an implementation agreement. In a BOT project, the government's support is generally in the concession agreement.

An implementation agreement sets up what the project company is going to do. It gives the government the information about what the project company is going to do in terms of investment. It can provide for a term for the project, or under certain circumstances, it can provide for termination of the project. It can then lead to a government support agreement. The implementation agreement may state that the project company is going to enter into a government support agreement (GSA).

There are again two types of support in the GSA itself. There is a financial component and a nonfinancial component. From a financial perspective you have both pre-project assurances and assurances that continue throughout the operation of the project. When the costs of setting up a bid are very high, the government says, "If you comply with our bidding documents, but do not make it, we may defray part of your costs." That makes it attractive for people to bid. But you must be qualified in order to bid. Also, the government might say, "We have some difficult legislation that must pass in order for the project to pass. We want to get this started now. But in the event that we are unable to get the legislation passed, we may defray your costs." The GSA also states in various terms what the equity capital contribution of the government will be, what other financial support may be available, like grants or subordinated loans, and what the transfer of the assets to the project company will be so you can start to either build or operate the project.

The clauses or provisions in a GSA depend upon the nature of each project. There are many key things to look for:

> (1) the maximum level the government can take from the project in the form of taxes, royalties, and other levies and duties;
> (2) the amounts of direct financial contributions to be made to the project by the government;
> (3) protection from competition, for example, you would not want to go into a large-scale capital investment only to find that the government has authorized three others just like it, and the length of protection you are going to receive, if any;
> (4) the right of the sponsor to export and sell products offshore and keep foreign currency sales proceeds offshore;
> (5) the availability, transferability, and convertibility of foreign exchange and the exchange rate involved;
> (6) nondiscrimination provisions, so that the government cannot pass laws that affect foreign investors but not domestic industries;
> (7) whether or not a change in legislation is anticipated;
> (8) the passage of necessary legislation required for the implementation and development of the project;
> (9) noninterference/intervention by any state organ in respect to the project except where state action can be justified on major public policy grounds;
> (10) the ability to import plant and the equipment necessary for the operation, repair, and maintenance of the project; and
> (11) the required permits and approvals that the government is going to issue.

The government might need to maintain support of your project. If you were building a bridge, for instance, perhaps you would require the government to maintain the roads that access the bridge. Explore the possibility of a "tax holiday" for a certain number of years or a value added tax exemption. Another important consideration is the inclusion of a step-in

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provision in the event of a default whereunder the lender can step in to operate the project and save the concession. For example, if you were to foreclose on a bridge, you would not be able to take the bridge back to your own country and use it. Instead, you need the ability to substitute an operator or a manager. Also, the project company should have the right to take the proceeds of escrow accounts if they are in-country or if you have an off-shore escrow account in order to limit financial risks. Those are the type of things to look for in terms of financial assurance.

In terms of nonfinancial support, the things that you should look for basically are linked to the bankability of the project. The government agrees to behave in a particular way, and it recognizes the security rights of lenders. Therefore, everyone knows the project has validity and can go forward. Sometimes, the government will recognize and approve the financing. Sometimes, it will guarantee the credit worthiness of the state-owned entities with whom you are dealing. The government agrees not to expropriate the project except in the case of some great necessity, in which case it assures payment of prompt, adequate, and effective compensation. If the license or the concession were to be terminated, perhaps the government would agree to give a substitute license to the new operator who steps in. The government might give you advance notice of possible events of default and an opportunity to effect a cure.

Perhaps, the government will recognize a remedy. For instance, U.K. law allows a "floating charge." A floating charge carries with it the right to have a receivor appointed for those assets. In most places in Latin America, a receivor is unavailable. Perhaps the government would allow the choice of law to appoint a receivor, consenting to the security that is created in the assets. Sometimes it will subordinate its claim to a lender's claim. The government also might waive sovereign immunity by the governmental grantor and establish that their activities are commercial as opposed to governmental. Many times the concession agreement establishes a dispute resolution procedure. You should be inventive in a dispute resolution provision. Escalate the negotiations to a certain level before getting into anything that is adversarial. Most project finance contracts call for arbitration in a neutral forum.

It is important for project documents to provide for predictable law that allows the lender's security interest to attach with as many rights as possible in the event of default. Questions of choice of law and whether a court in a particular jurisdiction will recognize a particular choice of law need to be included. Most people choose U.K. or New York law for their project documents because they are predictable. There is a whole body of case law that supports them, but some governments, notably those of Argentina and Mexico, may be adverse to using a New York choice of law. The concept of "depecage" also is sometimes used to mitigate the choice of law dilemma.

Depecage is the express choice of two different bodies of law to apply to the same contract. It may be used alternatively. For instance, if the project is in Mexico and the dispute arises in a Mexican court, one would use the law of Mexico, but if the dispute arises in a New York court, New York law would apply. Also, different laws could apply to different portions of a contract.

Let me conclude by saying that government support is crucial, and it can make or break a project. Government has to take some risks, and it has to contribute to the relationship. It allows for predictability in the environment within which the project occurs. It allows the project to run smoothly, helping to ensure that the lenders will be repaid.

B. *The Programa Bolivar of the InterAmerican Development Bank*

MODERATOR — JANÁ SIGARS:

I am very excited to introduce our next speaker, Susan Vodicka. We are honored to have her at the conference. Susan is the President and Chief Executive Officer for the Florida Partnership of the Americas, a not-for-profit corporation dedicated to the implementation of the goals set forth in the Summit of the Americas Declaration of Principles and the furthering of hemispheric economic integration. Under her leadership, since May of 1995, the Florida Partnership has aggressively developed three primary projects, including the Commercial Dispute Resolution Center of the Americas (CDR). The CDR is dedicated to the use of arbitration and mediation as a cost-effective means of resolving business, trade, and investment disputes in the Americas.

The second project in which Susan was involved was the development of the InterAmerican Development Bank's Bolivar Program Office, which began operation in Miami, in March 1996. This project provides joint venture opportunities and assistance to small- and medium-sized businesses throughout the Western Hemisphere.

Her third project is the Business Network for Hemispheric Integration, which focuses on private sector leadership in carrying out the Summit mandate of a free-trade area by the year 2005. It currently is preparing recommendations from the private sector to be presented in Cartagena, Colombia at the Second Western Hemisphere Trade Ministerial Summit.

After she was appointed by Governor Lawton Chiles and Lieutenant Governor Buddy McKay as Chief of Operations for the Summit of the Americas 1994 Host Committee, Susan coordinated the local community and the State of Florida. She also negotiated and coordinated the logistics with the White House, the State Department, the Governor's office, and Miami leaders. She worked with thirty-four heads of state, cabinet ministers, ambassadors, dignitaries, and journalists from throughout the Western

Hemisphere. A long-term resident of Miami, for over twenty-three years, she has vast experience in the economic development programs.

SUSAN VODICKA:

The Florida Partnership of the Americas is a public/private partnership. In a state as complex as Florida, this innovative approach to planning is a necessity. We began with private sector funding. Contrary to some opinion, we not only hosted the Summit of the Americas, but also successfully raised money from the public and private sectors for that venture. We carefully budgeted our operation and ended up with money in the bank, which is almost impossible to comprehend for such a public event. We began with private sector investment from very substantial corporate entities in our communities and throughout the United States. We added public sector funding from the state legislature, the governor's office and Metro-Dade County through the support of the airport and the seaport. This is why we are on track. We are relatively low profile. We are a lean operation with a small board of directors and have a narrow focus. We are very specifically targeted on the projects that Janá has referenced.

One of the projects that often comes up in discussions about international economic development for the state of Florida is an IDB project, an OAS project, and a commercial dispute resolution center. This project has been near and dear to the hearts of creative people in this community for many years. The IDB was interested in having a Miami presence but is prohibited by their rules from establishing a branch office in a developed country. Their headquarters are in Washington. The mission of the IDB is to build and support the infrastructure of developing nations.

The Programa Bolivar was begun by the IDB almost three years ago in Venezuela. They moved very quickly to establish offices in twenty nations within the first two years. It is a simple process, actually, because with today's computer technology and our ability to communicate, there is no longer a need for a person who owns a small business in Iowa to travel to Brazil, where she or he may not speak the language and has limited knowledge of the cultural differences and the way business is done in Brazil as compared to Iowa. People can be linked through a network. For a relatively small fee, a small- to medium-sized company can access this network of information.

Some of the projects that began during the last three years involve larger companies, such as large real estate projects in some of the island nations. However, the primary goal of this program was to provide a means for small- and medium-sized companies to become international. The opportunity arose when twenty offices were established throughout the hemisphere to set up a liaison office for the entire United States and a liaison office for Canada. The office in Canada opened near the end of 1995, and the liaison office for the entire United States will open up here in Miami in 1996. The Florida Partnership took on this project because the community needed to demonstrate its willingness to support this project.

The IDB could not invest its own money here. Primarily, the success of the program in various capital cities in Central and South America and the Caribbean has been due to the fact that the professional service providers, such as lawyers, accountants, financial institutions, insurance companies, manufacturers, and entrepreneurs, saw the value of supporting something like this as a means of further integrating the hemisphere.

We have an opportunity, and we are not going to let it pass. Opening an IDB office of the Bolivar Program in Miami will open the door for the InterAmerican Investment Corporation and other projects. Because Miami is such a perfect crossroads for meeting and planning in this hemisphere, we anticipate a much higher profile for IDB planning sessions and projects in our community. It is important to understand that this is a network of networks. The IDB and the Bolivar Program have a wealth of information that can be shared through our office by connecting into the International Network of the Bolivar Program. This liaison office is a boon to the professional service providers in our community and throughout the United States. There is no doubt that if properly marketed as a gateway into the markets, the potentially lucrative markets in Central and South America and the islands will be very attractive to companies throughout the United States.

The most important of these networks is the so-called political and social support network, formed by national commissions within each member country. In the United States these commissions are composed of business people, scientists, legislators, and other government officials. The Florida Partnership for the Americas, however, will not play a role in this. The role of the Florida Partnership is that of a catalyst for launching projects that are substantive in the international economic development of this community. This is an opportunity for the business people of Miami. While members of this commission must come from throughout the United States, it is clearly the intent of the IDB that South Florida be the focal point. One priority over the first six months will be to develop the U.S. commission.

Another key network is the financial network or Financial League, which was set up in 1993. Nearly 100 financial institutions throughout the region are involved in this network, offering financing alternatives for Bolivar Program deals. This is an ideal situation for financial institutions in Florida and the international banking community in Miami. We can anticipate that all financial institutions will have the opportunity to participate in this network. It will not be exclusive in the same way as a commission.

Additional networks offer legal support and link academic institutions to the business sector. We have had continuing conversations with the university system in Florida, as well as with private colleges and universities in Florida. A natural link exists between our academic institutions, financial institutions, and entrepreneurial community. This link is at play in Florida in the innovative Enterprise Florida Program, which offers the potential for Florida to serve as a leadership model on this type of project. Within this network of the IDB project, there is plenty of opportunity for providers of legal services to participate in the planning, development, and approval of these joint venture projects, so that they are attractive to lending institutions. Monies are going into the larger projects from the world lending institutions, that is, the financial arm of the IDB. Program Bolivar initiates the necessary mechanisms to distribute information on international bidding and provides assistance on how to successfully access them. Once professional people have participated with the entrepreneurs, the manufacturers involved, and others who have had an opportunity to adjust the project to its highest potential for success, then the project will become more attractive to venture capital. This community will begin to understand this to be mutually beneficial and that certainly will lend itself to the mission of integrating this hemisphere.

Finally, more networks are being created for (1) training in international business; (2) technical project formulation and the transfer of technology between the United States and Latin America and the Caribbean; (3) harmonization of legislation governing crossborder transactions; and (4) marketing products destined for foreign markets. What is happening here is extraordinary. It is a wonderful time in which to live and work in this community. It is tailor-made for a body of professionals such as yourselves.

C. *Securitization in Latin America: Real Property, Equipment, Intangibles, and Other Assets*

MODERATOR — JANÁ SIGARS:

Horacio Gutiérrez is an international consultant with the firm of Morgan, Lewis & Bockius in Miami. He received a LL.B. in 1986 and a Specialist in Commercial Law degree in 1988 from the Universidad Catolica Andres Bello in Caracas, Venezuela, and an LL.M. in 1991 from Harvard University. Mr. Gutiérrez is a member of the American, InterAmerican, and Federal District (Venezuela) Bar Associations.

HORACIO GUTIÉRREZ-MACHADO:

The first question that we should ask is: "Why are we discussing securitization of assets?" It is an easy question for people who have followed the financial markets in Latin America over the last two to three years. In 1989, total corporate debt issued by Latin American issuers was only US$297 million. In 1990, it almost doubled to US$552 million, and in 1991, it continued to grow to US$4.4 billion. In 1992, it grew to US$10 billion, and in 1993, peaked at US$21.8 billion.

Unlike the prior years, 1994 and 1995 were marked by high volatility and political and economic turmoil in the Latin American region. The financial crisis in Venezuela in 1994; the Zapatistas' insurgence in Chiapas; the murder of political leaders and the nuevo peso devaluation in Mexico, which has had an adverse effect on the economies of other Latin American countries (the so-called Tequila Effect); the liquidity crisis in the financial sector in Argentina; and more recently, the political scandals involving the President of Colombia, among others, have exacerbated the general perception of risk in connection with Latin American securities as a whole. As a result, the number of issues, as well as the total amount issued by Latin American entities, suffered a dramatic decrease during 1994 and 1995.

This is a very long list of events that have occurred in a relatively short period of time, resulting in a tremendous scare for international investors, including institutional investors and large investment funds throughout the world. Unfortunately, they have viewed the situation without a clear understanding of each country and its particular economy. They basically have made a blanket judgment and decided that this market, which was so attractive three years ago, is suddenly no longer attractive. Only blue-chip companies and triple-A companies that have export operations with access to hard currency because of exports to Europe or the United States still have access to traditional debt financing. They have access not only to traditional banking loans, credit facilities, and trade financing facilities, but also to international capital markets where they can play their Eurobonds, commercial paper, and other types of debt instruments.

Because of the manner in which the international debt markets for Latin America have changed over the past years, securitization has, in fact, become a viable financing alternative through which local companies in Latin America can access financing. It is the rule rather than the exception. Securitization is a financing technique that takes place when assets, basically loans or receivables, are sold by their original owner, known as the originator. They are sold to an entity established for the sole purpose of holding these assets, that is, a special purpose vehicle (SPV), which finances the purchase using the acquired assets as collateral. The financing of the purchase price of the assets can be accomplished in any number of different ways, including through a public or private offering of notes or Eurobonds, or with more traditional credit facilities such as syndicated or straight bank loans. Basically, the idea of securitization is taking an asset or a portfolio of assets, which normally would be illiquid in the financial markets like Latin America where there is no liquidity for mortgage loans, for example, and transforming it into a negotiable instrument. There is no ready market for people buying and selling these kinds of assets. You take those liquid assets and convert them into a paper instrument, which is basically a negotiable

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instrument that can then be placed on the international markets. Or perhaps, participation can be sold to international financial entities. Consequently, a market that previously was not there is created by these instruments.

In essence, every securitization has three essential features. First is the transfer of assets from an originator, which is the company that holds the assets. A company issuing credit cards would be an example. When the cardholder uses his card to finance the purchase of goods or services, those receivables are transferred from the credit card issuer to an SPV. The SPV might be a trust or a corporate entity, depending on the laws and regulations of the company where the originator is located. Secondly, every securitization has an SPV, which finances the acquisition of the assets. The SPV is created solely for this purpose. Normally, it does not have capital of its own to acquire those assets from the originator. Therefore, it uses loans, traditional one-on-one loans, syndicated facilities, or the issuance of instruments into international capital markets. The latter option is the most attractive because it results in the production of a prospectus and placement under Rule 144A[1] among the qualified institutional buyers in the United States or under a section of Regulation S[2] when outside of the United States.

The main consequence of this process is the conversion of the assets into securities, sometimes referred to as asset-backed securities, thereby transforming illiquid assets into negotiable instruments. As a result, the investors in the securities look primarily to the cash flow from the assets backing the securities and not to the originator as the principal source of payment for the securities. However, the similarities between securitization structures in different countries and even for different issuers in the same country end there. I have to make the *caveat* that there is no such thing as a typical securitization structure. The design of an actual securitization largely depends on the nature of the assets to be securitized, the particular goals of the originator, and the demands of the credit rating agencies and of the prospective investors.

The structure also is largely dictated by tax, accounting, regulatory and marketing considerations. For example, tax implications of a transfer of an asset from the originator to the SPV depend on the tax laws of the particular country, and whether the transfer is subject to a stamp tax. This is especially true if the receivables are secured through collateral such as mortgages, which in Latin America are very formal and require registration and the payment of registration taxes, value added taxes, sales taxes, taxes applicable to the issuance of the negotiable instruments, and withholding taxes on the interest payments made on the instrument.

1. 17 C.F.R. § 240.144A.
2. *Id.* § 230.901-.904.

From an economic point of view, the securitization structure is a simple concept. Implementation might be difficult, however, because it requires a very thorough understanding of the characteristics of the portfolio being securitized, in terms of default rates and late payments, for example. Each securitization is different when it comes to tailoring the transaction to the particular legal accounting and tax environment of each country.

The parties of a typical securitization are the originator and the SPV, both mentioned previously, and the investors and the credit enhancers. In principle, a typical securitization transaction involves an originator, which is the original lender that initially holds the assets to be securitized in its balance sheet. The originator sells the assets to either a trust or an SPV or some other legal characterization. In Colombia, for example, there is a very thorough and extensive regulation on securitization; it basically is a textbook on securitization. Colombia is an exception in that sense. There are other types of legal entities that can be used for purposes of local securitization, but normally, in the context of an international securitization, it is either a trust or an SPV. In many countries, the concept of a trust has not evolved. The trust is a notion that comes from the common law, and Latin American countries have a civil law tradition, inherited from either the Italian Civil Code or the French Civil Code, known as the Napoleonic Civil Code. Therefore, the concept of a trust in many Latin American countries does not exist. In those cases and others, for a variety of reasons, securitizations are done using an SPV as a corporate entity. The form of the SPV is basically motivated by tax and accounting considerations, more than legal ones. It is necessary to have an entity that has the ability to own assets in its own name and has legal personality. It should be a legal persona in and of itself, separate from the originator.

Another party involved in a securitization is the investor. The investor purchases the securities resulting from the securitization. Financing can be provided in the form of a loan, granted by an international or a local financial institution, which in turn can sell participations to other banks, thereby creating a syndicated facility. Very frequently, the financing is provided in the form of the placement of negotiable instruments, such as (1) Eurobonds, (2) commercial paper, or (3) some other type of security that usually is placed in the international capital markets. Finally, you need credit enhancers for a securitization. They are entities that produce some kind of support to provide for cash flow and liquid funds in order to pay the securities issued. These are needed in case the underlying portfolio for some reason generates a deficit, or in case there is a problem in the generation of cash flow for the payment.

Those are the four most important parties to a securitization, although the reality of the financial world makes it necessary that a structuring agent, normally an investment bank, participate in the evaluation of the receivables portfolio. The structuring agent should be able to thoroughly explain, in the form of a prospectus, the risks involved to potential investors. Typically, a servicing agent may be retained. The servicing agent has as its main role the management and administration of the portfolio of receivables. Sometimes, one finds that there is a mismatch between the terms and especially the maturity of the securities issued by the SPV and the average life of the receivables backing the securities. In the example using the credit card receivables, in Latin America, the average life of receivables is between 90 days to 120 days. However, in some countries, even by law, the instrument cannot have a tenure of less than a year. So, there is a mismatch. The servicing agent collects the interest and principal payments on the receivables. He then uses part of the funds to create a sinking fund or a reserve account to generate the cash necessary to make payments of principal and interest on the securities. Any excess funds over and above that portion used to create the sinking fund is used to purchase new receivables from the same originator. Therefore, there is always a portfolio of receivables generating the interest and principal cash flow needed for future payments.

The servicing agent is a critical part of the securitization structure. It is common for the servicing agent, that is, the person who receives the collection and manages the funds activities, to be the same as the originator. Of course, under a servicing agent agreement that has the proper protection, it is only normal that the originator, the entity that has had direct contact with the end obligor or debtor of these receivables and has developed a relationship, would want to keep issuing credit cards. The originator would want these individuals to keep using their credit cards, thereby generating more receivables. This is an arrangement that ends up being very convenient for the originator, the end debtor that generates the receivables, and for the investors as a whole. Nobody knows the receivables and the debtors better than the originators themselves.

In addition, underwriters are involved in order to structure and provide the financing for the transaction. If a placement, that is, a public proffering of securities, is involved, an underwriter will set the conditions. Last but not least, credit rating agencies, such as Standard and Poors, will be involved. They rate the security to be issued at the end of the structuring of the transaction. They will allow the originator to dramatically reduce the financing costs, as compared to traditional financing methods, by giving a rating that takes into account the assets that are collateralizing these instruments. The credit rating agencies' role is normally understated. In addition to giving a rating, they have an active role in determining how the transaction will look at the end of the day. It is a very intensive process of negotiation between the arranger, the originator, and the credit rating agency. During the process, the transaction is shaped in such a way that allows a certain credit rating to be obtained from the agency so that at the end, the originator can benefit from a lower applicable interest rate or a yield that would have to be offered with the instruments issued. The rating agencies are a very critical part of this process. There are securitizations that are not rated because they are very simple and the analysis of the risk is not complicated. However, in more complicated transactions, the credit rating agencies play a very important role, and in some countries, like Argentina and more recently Venezuela and Colombia, they are required participants in public offerings of securities, either locally or internationally. Sometimes, two credit agencies are required to give a rating before the paper can be publicly offered in these countries.

After this first stage, where the portfolio of assets is sold to the SPV, the flow of funds, which occurs on a periodic basis (monthly, quarterly, or semi-annually), depends on the structure of the transaction. The obligors of the receivables pay the principal and interest to the trust or the SPV. The trust or the SPV allocates part of the funds to pay the servicing fee to the servicer and other costs and expenses, which might be required under the structure. The fees of the trustee are one of the main concerns of the trust when it receives the funds in addition to the other costs and expenses. These costs are recurrent throughout the life of the financing, and funds have to be set aside for these purposes. Other amounts typically paid out are to the investors as principal or interest payments. The structure can get more complicated when reserve accounts or escrow accounts also are created.

In a typical securitization in Latin America, the originator sells the financial assets to the SPV. The SPV obtains the proceeds of the placement of securities from the investors and uses them to pay the asset purchase price to the originator. The SPV also reimburses the structuring costs to the originator, although this is a totally optional feature that may or may not be built into a securitization structure. Then, throughout the life of the securitization, the originator pays the receivables to the SPV. The SPV sets aside reserves that are created normally in hard currency, in the currency that is required to repay the investors. Typically, in Latin America it would be dollars. Those dollars earn interest or some other kind of return and are used to the extent necessary to make the principal and interest payments to the investors. This is a very frequent structure with certain modifications that can be made depending on the nature of the receivables. If they have an average life shorter than the life of the securities that are issued to the investors, the assets that are sold at the initial securitization, would have to be again collected, and then the proceeds would have to be used to purchase new receivables in order to keep the portfolio going and to generate principal and interest. In this case, this is achieved by creating a mechanism whereby the originator commits, offers, and grants a commitment to sell new receivables generated in the future that have the same credit quality and nature as the original assets.

The next point is what are the assets — and we have touched on this point before — that are normally securitized? Securitization is not an old financing method, although in the United States it has existed since the creation of the federal agencies that were created to help people to secure mortgages in order to buy their houses and realize the American Dream. Since Ginnie Mae and Fanny Mae, primary financers of mortgages that are then sold on the mortgage markets, were created, a market for securitization also was created with a view to generating liquid paper, this in turn creates yet another market. Since then, however, the concept of securitization, not only in the United States but elsewhere in the world, has been used for the most unbelievable kinds of receivables. I have been involved in transactions whereby the proceeds of a lease created under a sell-lease transaction of aircraft are securitized. Export receivables or even receivables under time-share arrangements or car loans or boat loans or any kind of asset that meets the central characteristic — a predictable flow of funds over a relatively easy to determined period of time — can be securitized. One of the most important characteristics of the asset is its quality or the likelihood that it will end up being repaid. For example, in the case of real property securitization structures, one would want to set a geographic limit regarding what kind of real estate assets can be securitized. Having a building in one part of Lima would not be the same as having it in another part of the city. People that are familiar with Peru would realize that this is the case, in terms of value and in terms of the risk of actually getting that receivable collected. Second, the assets must produce a steady and predictable cash flow, although there is always the risk of prepayment that can mess up the whole financial matching but there are ways to correct that. There must be attractive interest rates or returns or yields, so that the paper or instrument that is issued to the investors also is attractive in the marketplace and even leaves some spread or room to pay the costs involved in structuring the transaction. The receivables portfolio must be diversified geographically and in terms of the number of debtors. With reference to diversification, some countries in Latin America have limitations as to the percentage of the portfolio that can be generated by the same originator. In Chile, for example, a limit of 15% of the total portfolio of assets can be generated by the same originator. Diversification is important to assure that a collapse in one segment of the market where the receivables originate is not going to cause a collapse of the whole system.

Typical securitizable assets in the United States and in Europe consist of everything. In Latin America the most common have been export receivables, and the reason is very easy to see — when a company in Latin America is exporting goods, it has a credit against the importer, which is denominated in foreign currency. If a company in Brazil is exporting to the United States, the credit is denominated in dollars; if it is exporting to Japan, it is yen, and so forth. Export receivables are the most common assets securitized in Latin America and have been securitized for years, even before any country in Latin America even started to think about issuing particular regulations or laws in the area of securitization, because it was very easy. If the debtor, the obligor, of this credit is a company outside of the local country, you can simply use a structure similar to a factoring structure, whereby the receivable is assigned to a trust that normally also is located outside of the Latin American country. Therefore, there is almost no intervention whatsoever of the local regulating authorities in that country.

Many times, I have heard people in the financial area in a particular country in Latin America say, "No, securitizations are not possible in this country because the legal framework is not developed." Well, securitization might be a fancy concept from a mathematical, statistical, and financial point of view, but from a legal point of view, all that it requires is a legal entity, which all these countries have in their legislation, and the transfer of the assets, which can be accomplished by a variety of ways. These include: (1) a simple "sale" of the assets by the originator to the SPV, which we will call here "an assignment" of the credit, and which is probably the best way, (2) a novation, which is the transfer of receivables from the originator to an SPV, which is the simplest way from a legal point of view, (3) a subrogation, which is the substitution of one person in place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the right of the other in relation to the debt or claim and its rights, remedies, or securities, or (4) a participation of those credits, which in Latin America, is not very well developed as a concept and which originates from common law. Although in some countries, it is contemplated very briefly in their commercial codes, but otherwise, as long as it does not contradict public policy, participation is possible because under the party autonomy principle, which is recognized in all Latin American jurisdictions, all agreements between the parties, even if not typical, are valid, binding, and enforceable. So, from a legal point of view, the core aspects of the securitization, that is, the sale, the setting up of the SPV, and the financing, by which I mean the granting of a loan, are very typical transactions that exist and have existed in the legislation of these countries for many, many years.

Why is it so attractive to securitize assets? Why do investors look at a securitized paper with more complacency than when they look at a typical Eurobond, promissory note, or other instrument coming from the originator? First, from the point of view of the investor, a securitization is asset-backed. In a way, it is a secured lending transaction, in the sense that there are assets behind the paper that can eventually be foreclosed and assets that can generate the liquidity necessary to get repayment on the securities. But it has other characteristics that are interesting for investors, especially sophisticated investors. In a securitization, when the investor looks at the transaction in order to make a credit analysis, it is much simpler to do the credit analysis of an SPV, which has no other operations but those involved in the securitization and basically has no other liabilities on all the credit. These are entities that are structured to be bankruptcy and insolvency remote entities, that is, entities designed in order to stave off the prospects of bankruptcy and insolvency. These entities are not going to be messing around, entering into other kinds of agreements that could result in lawsuits or a company's being declared bankrupt or insolvent. So, a securitization is very easy to analyze and is asset-backed; therefore investors like it. Also, depending on the nature of the receivables, if we are talking about receivables that are denominated in hard currency and where the debtors are outside of the Latin American country involved, there is no currency risk, which is one of the most important risks that have to be tackled by the arrangers of a securitization program.

Taking into account that this is an asset-backed security, the yield or return offered by the securitized paper is very attractive when compared to interest rates charged for other kinds of financing. When these kinds of instruments are issued, you have a credit rating that is acceptable and a rate that continues to be very competitive with the rate established for other, unsecured papers. There is a distortion of the market that occurs when investors look at Latin America, and even though they realize they have a secured lending transaction, they are not willing to go all the way and treat these transactions in terms of their interest rates in the same way that they treat a secured lending transaction elsewhere in the world. Although the originator tends to save in terms of financing costs, the savings are not extraordinary. The investor ends up having an asset-backed paper that is easy to analyze from a credit point of view and still the interest rates are very, very attractive.

That is from the point of view of the investors. But what about the originator? We have discussed that there can be certain savings in terms of financing costs, but by far, the characteristic that most attracts originators or companies having the assets or the receivables on their books is the ability under certain circumstances to structure an off-balance sheet financing. The originator removes from its balance sheet the assets that are constituted by the receivables and removes the liabilities and risks associated with such assets, including currency risk, interest rate risk, and default risk. If you look at the balance sheet of a credit card company, they have a huge number of accounts receivable, which are basically their credit or rights against the cardholders who finance purchases with their cards and have credit lines with financial institutions. Sometimes, these institutions have very stringent minimum capital requirements, especially banks, which also are issuers of receivables or have on the asset side of their balance sheet consumer loans that normally are securitized. So, the off-balance sheet treatment is definitely the icing on the cake, and that is what they are looking for. The removal of assets from the originator's balance sheet results in increased liquidity enabling the originator to engage in more business without expanding its capital base, or to restructure its overall finances to reduce financing costs. This is why it is so attractive.

It is not easy, though, to obtain the off-balance sheet treatment in Latin America, and a whole range of accounting and legal considerations have to be taken into account. The transfer of the assets from the originator to the SPV has to be considered a true sale, that is, an outright sale of the assets from the originator to the SPV. If the originator were given a simple beneficial ownership in the form of a participation, it is very likely that the transfer would not be considered a true sale, and therefore, the off-balance sheet feature would not be achieved. This is not essential, and securitizations have been structured where the originator is not interested in the off-balance sheet feature. But normally, especially with regard to assets generated by a financial entity that is an entity subject to all the stringent regulations by the superintendency of banks and the requirement of placing expensive capital in the central bank, off-balance sheet financing is very attractive.

Finally, credit enhancement can take many shapes and forms. Credit enhancements are the rule in Latin American securitizations. Investors want to have a mechanism to minimize or eliminate the effect on cash flow caused by a temporary distortion in collections because the late payment or default rate suddenly grew dramatically. This is not a hypothetical case taken out of the textbooks, but rather it happens very frequently in Latin America. In Argentina, the default rate for credit card receivables has been, and I think continues to be, close to 20% of the whole portfolio of assets. That is a very significant chunk of the financial assets with which the entities structuring the securitization have to deal. Credit enhancements tend to generate the liquidity that may be missing at any one period throughout the duration of the securitization.

Those who speak and write on securitization often talk about internal and external credit enhancements. A typical external credit enhancement is a standby letter of credit issued by a reputable bank, which basically would stand behind the trust or the SPV and generate the funds necessary to make payments under the securities. The standard letter of credit does not have to cover the whole principal amount of the portfolio. Sometimes, it is only for an amount that meaningfully represents the actual risk. If, for example, statistically the record of late payment or default of a particular portfolio is 10% or 15%, you might have a standard letter of credit issued for 20% or 25% giving you some cushion, or another amount determined by the parties involved, particularly, the credit rating agencies, as the reasonable amount needed to cover not only default and late payment, but also currency risks. If the receivables are not denominated in hard currencies, such as dollars, but in local currency, then something like what happened in Mexico, is happening in Venezuela, and has happened a hundred times in Argentina and Peru and Brazil, will result. The devaluation of the currency in which receivables are denominated can make it more expensive to buy dollars, and therefore, a larger pool of the local currency and the local receivables will be needed in order to buy the same amount of dollars to pay the investors if it is structured as an international securitization. There have been some experiences with local securitizations where the instruments that were issued were denominated in local currency, and therefore, the prospects of securitization were not that favorable. Recently, we have this in Colombia with securitization of mortgage loans; in Venezuela with credit card receivables; and even in Brazil with receivables of retail stores.

Another external credit enhancement is a guarantee or recourse that is kept against the originator. The originator either agrees to repurchase for cash those receivables that are not performing (defined as receivables that have been delinquent for a specified number of days), or to substitute the receivables with other receivables of a like quality in terms of performance but which do not have a record of nonperformance. Financial guaranty insurance polices are another kind of external credit enhancement. External credit enhancements are costly and consequently, used only in structural financings that are new or perceived as being speculative.

The internal credit enhancements are probably more interesting. Overcollaterization of an obligation is a typical mechanism that is used as an internal credit enhancement in order to assure the repayment. Basically, what is done is that any excess collections on the receivables, which are not needed to make payment of the interest and principal, are kept in a reserve account and achieve an overcollaterization of receivables to debt, which could be 1.5 or 1.75 or 1.25, depending on what kind of ratio is perceived as necessary given the quality of the receivables and the economic circumstances. The cash flow from the excess collateral offsets any defaults or delinquencies on the assets.

Other very common structures used as internal credit enhancements are subordinated structures, where there are two kinds of papers issued by the SPV: a senior class with first claim on cash flow and a subordinated or junior class. Normally, the junior paper is kept by the originator or by a company that is related to the originator. The difference between the two, apart from the return they offer to the investor is that if there is any default in the assets being securitized, they are imputed to the junior tranche of the paper. Therefore, the people holding the senior tranche of the securities have a performing portfolio that has no experience of default or late payment. So, those are basically the mechanisms that are typically used in Latin America for purposes of enhancing the credit and attaining the credit rating necessary to, in turn, obtain an attractive interest rate.

The most common legal issues in a securitization in Latin America involve the transfer of the assets. There are many ways in which a transfer can be structured. Only some of them will get you to the off-balance sheet treatment that is sometimes desired. The concept of sale or assignment, which is called *cesión de créditos* in most of the countries in Latin America, is probably the most common in the sense that it involves a true sale and transfer of not only the credits but also of all the risks involved. And if that happens, the originator can take the receivables off its balance sheet. Because sales are subject to value-added tax and sales taxes in many countries, the tax implications of that notion have to be evaluated.

Novation, *novación*, where the debt and debtor remain, but a new creditor is substituted, which in this case would be the SPV, also is a way that can be considered. However, it is not practical for many reasons, one being that it requires the consent of the debtor and if you are dealing with portfolios of receivables that are owed by a pool of 1000 or 2000 debtors, there is a problem in terms of how to obtain it. In addition, sometimes the originator does not want the debtor to know that the receivables have been transferred to an SPV. There is a problem of perception, and it can impair their ability to engage in financing activities in the future.

The subrogation, *pago con subrogación*, is a very clever and a very old institution in all Latin American countries. It comes from the French law, and perhaps even from Roman law, and involves an entity paying a credit obligation of another person where there is an express subrogation of the credit by the new creditor and that credit is assigned. In most of the countries, it does not require the consent of the obligor. It has the interesting feature of allowing the new creditor to obtain all the security and collateral that was securing the credit initially without having to do any more paperwork. These are some of the ways in which those transfers are made in Latin America.

Finally, the last part of this transfer involves the issuing of securities. There are many regulations in Latin America regarding the public offering of securities. In South America, all countries, in one way or another, have capital markets laws and regulations that require the preparation of a prospectus, complying with certain conditions to actually issue the securities. In some countries, registration with the local securities exchange commission, payment of stamp taxes, and registration and a properly structured funding will get you preferential tax treatment or even total exemption of the withholding taxes that would otherwise be applicable on interest payments made to holders outside of these countries.

Securitization is a hot item in the financing world right now and in Latin America is going through in a majority of the cases. It achieves the objectives of the companies that need financing in Latin America. They are not going to stop operating because the Mexican peso was devaluated. They

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need financing to continue to operate and export goods, and in an atmosphere of aversion toward risk in Latin American, securitization is a method by which the financing can be put together and allow a company to carry on with its business.

QUESTION:

When receivables are sold, how does the discount rate differ from the regular receivables discount rate?

GUTIÉRREZ:

Discount rates are frequently used in the context of securitizations in order to obtain from the outset the feature of the overcollaterization. It is not necessarily used in all transactions. In many of the transactions that I have seen, the purchase price is equal to the face value, not even the market value, but the face value of the instruments. The reason it is done that way is that if the receivables are bought at a discount, you will have some tax consequences.

First, when receivables are bought at a discount, generally, the SPV will attain a taxable capital gain because it is buying receivables that have a face value exceeding the actual purchase price paid. The originator, on the other hand, will generate a tax loss, because it is selling an asset that on its books shows an amount that corresponds to the face value but which, in reality, is selling for a price lower than the face value (discount value). However, financial institutions do not want to show losses in their income statement at the end of the year when they have to show it to their shareholders. However, it is done especially with respect to companies that are not in the financial sector and do not care and actually, would be very happy to have losses to offset against their taxable income during a particular year. In the context of the regular banking acceptances or discounts, it has these tax consequences that everybody must understands before the transaction is done.

In a securitization the discount has to bear some reasonable relationship with the market value of the receivables so that you do not have undesired tax consequences. What you are trying to achieve in the securitization is the overcollateralization feature. So the amount of the discount is not driven by the value of this receivable on the market but by the overcollaterization ratio necessary to attain the desired interest rates. I do not think it is driven by the market. It depends on what you want to achieve, and therefore, I do not think a fair comparison can be made between the two discount rates.

D. *The Emergence of a Factoring Market*

MODERATOR — JANÁ SIGARS:

Our next speaker is Stephen A. Sims who is a senior vice president of NationsBanc Commercial Corporation, a wholly owned subsidiary of NationsBank Corporation. He is responsible for the development of

NationsBank's factoring group in Latin America. He is currently project manager for the Strategic Alliance with Factoraje Bancomer in Mexico City and serves on that board of directors. He has been with NationsBank for over 13 years. He is originally from Ohio and received his B.A. in Economics from Ohio Wesleyan University. His Masters in Economics is from Ohio State University. I think what he has to say in light of the Tequila Effect and the hemispheric trade growth will be interesting to us all.

STEPHEN A. SIMS:

I would like to give you an idea of how factoring works by reviewing a definition of the term. I plan to cover what factoring is in the United States, and specifically, how it relates to various countries in Latin America. I would like to give you an idea of what we tell the sellers in the United States when they are getting ready to export to Latin America. I also will attempt to give you an idea of what we tell the sellers in the United States when they are getting ready to export to Latin America.

The term "factoring" covers a multitude of sins and has a very broad definition. For purposes of our discussion, factoring means two things: ownership of the invoice and control of the invoice. For the major factors, it also means that we have purchased the invoice on a non-recourse basis. In other words, the financial ability of the buyer to pay is guaranteed. That describes what is done by the major factors in the United States. In the United States, it is about a US$60 billion industry. This figure refers to sales turnover. This number comes from the National Commercial Financial Conference, which is an association of commercial finance organizations.

In contrast to many countries of Latin America, in the United States there is no specific regulatory agency for factoring companies. But, because we are owned by major banks, we get the benefit of the same regulation as our parent bank. We have the same standards in our factoring unit as banks. The difference is that we own the collateral. We actually buy the invoice, post it in our system, collect the checks in our lockbox, and apply the checks to the invoice.

The other segment of factoring in the United States includes independent companies that are much smaller. These companies are normally not owned by banks. They are owned by individual entrepreneurs. Since they are much smaller than the major factors, many of them tend to serve boutique markets. For example, some deal with service industries. There is one in Houston that deals in oil services. There is a company in Washington, D.C. that deals in government receivables. There are medical billing factoring companies all over the United States that deal with a wide variety of medical service providers. There are some factoring companies that deal in the trucking industry. I have even heard of one that works with companies that service 900 number organizations. The small factors often serve a market that could

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not be served by normal banking entities.

For the bulk of the factoring companies in the United States, the lending standards are analogous to those of the banks. Obviously, factors can redefine risk and take a different type of risk because we have actual ownership and control of the collateral. But the fees that we charge on the interest rates are usually comparable with banks. The service fee that we charge is normally analogous to the cost for credit insurance and the outsourcing of the credit function. What the larger factors charge is different from what you have heard about small factoring companies.

Approximately, twelve years ago the companies that we were working with in the United States as factoring clients and bank customers decided that in order to expand their markets, they needed to go into foreign countries. Therefore, we began to work in international factoring through an organization called Factors Chain International. Essentially, this enabled us to provide credit protection on open-account credit sales to other countries. This practice originally began in Europe and the Pacific Rim. The Europeans had been using International Factoring for years, and it was very common for them. In the United States, however, it was a bit newer; we had to learn the international business from the ground up. The markets began growing at a very rapid rate.

About five years ago, my company, which at the time was Citizens and Southern/Sovran, thought it would be a good idea to go to Mexico and study the market. Many of our sellers and clients wanted to sell in Mexico. Shortly thereafter, we were purchased by NCNB, and NationsBank was formed. Out of this large bank, we were the only factor. Consequently, our factoring world did not change dramatically except that we acquired more bank customers who were requesting that we go into Latin America and specifically into Mexico. The peso crises of December 1994 changed our direction. Today, instead of selling into Mexico, we find ourselves helping finance exporters selling from Mexico to our customers in the United States.

I would like to cover several Latin American countries and what they are doing with factoring. First, all of the importing and exporting done in Latin America in the factoring business is done in U.S. dollars. This opens up markets by providing credit protection. Guaranteeing buyer credit makes foreign currency funding available to companies that otherwise would not have ready access. It also enables some of the medium and small-sized companies to obtain credit services so that when they sell in the United States, they are selling on a level playing field. They can offer open account credit and do not have to require letters of credit.

Mexico's factoring business is different from the rest of Latin America. In the 1980s when they nationalized the banks, the working capital loans began to dry up. Working capital was not readily available to manufacturers. At that time other entities entered into factoring and used it as a way of providing working capital lending to companies that were shipping both domestically and internationally. The capital requirements in factoring companies were lower. The leverage could be higher so the ROE was higher for factors.

Factoring in Mexico is regulated by a separate agency, "the Hacienda." There also is national association of factors called AMEFAC. They work closely with the "Hacienda." With the development of these factoring companies, the techniques for doing cash flow lending and the individuals who specialized in those techniques tended to migrate into the factors. In the 1990s, the banks and financial entities came together and the factors then became part of the financial group. As of 1995, the total factoring turnover, or sales, was about US$17 billion. That is about forty percent lower than in 1994. Due to the peso crisis, 1995 was a very difficult year.

The factoring business there is similar to our profile in the United States. The volume is concentrated in several of the large factors, such as Bancomer, Banamex, and Serfin. In 1994, the factors tended to overextend on some of the seller credits. Since they were doing recourse factoring, the risk was concentrated on the sellers only. When the crises hit, the factors could not get paid. Their delinquencies have gone up dramatically. Several of the factors have been able to take advantage of the government buyback program, FOBAPROA. This program is helping them get back into step and get their balance sheets in order.

Recently, international non-recourse factoring has begun to develop more significance with our partner at Bancomer. There is another factor there called Banca Quadram. They also are beginning to use factoring to finance exporters' receivables on a non-recourse basis. As the exports have increased, the sellers have needed foreign credit protection and a source of foreign currency. Under this arrangement, when they sell the invoice they sell it for U.S. dollars. Companies in Mexico that are buying raw materials, which in our case is primarily fabric, can buy them for dollars and on terms that give them relief on their pre-export financing. Foreign companies have found that when they sell in the United States, U.S. companies have an aversion to issuing letters of credit. Consequently, they would like to buy on open account credit if at all possible.

A common question is how much does factoring cost for shipments going both ways. There are two rates: one is the interest rate and the other is a factoring fee. The latter is a service fee for the credit and collection. The factoring fee is generally about one and a half percent for shipments in either direction. As a matter of fact, the one and a half percent is somewhat of a world rate. Sometimes you can do it for less, depending on the nature of the invoice and the buyer credit risk. Generally speaking, one and a half percent is a good guideline.

The interest rate for companies exporting from the United States to

Mexico is roughly analogous to what they would pay a bank. For the Mexican companies exporting into the United States, the interest rate is about twelve to fourteen percent depending on the risk involved in the export. The program competes very favorably with Bancomer and Comesec. Comesec being the Mexican export insurance company and Bancomer being a government export bank. Factoring offers the advantage of having a credit pipeline already in place. As soon as the seller delivers the invoice to the factor, the advance is made. There is no waiting period and this tends to be quicker than government programs.

There are other factors in the United States working in Mexico in different ways. Some are factoring Mexican exporters directly and have direct contracts with the Mexican exporter. One difficulty with that lies in using a lawyer who is used to working in the United States and English Common Law System, introducing them to a lawyer in Mexico who is used to the Napoleonic Civil Code System, and then trying to translate. It is imperative for a U.S. exporter to have a U.S. lawyer who understands international law.

Next, I would like to discuss Chile. Chile is sophisticated in the way they handle international credit. The factoring business in Chile is about five years old. They already have a national association with approximately seven members. They are primarily involved in doing domestic factoring. Chile, much like Mexico, has traditionally used factoring as a warehouse for certain bank loans. They did not enter into the non-recourse type of factoring when they started.

About ten years ago, Chilean exporters developed open account credit to U.S. buyers and buyers in other major countries around the world. They did it to merchandise their credit on their exports. So, they understand open account trade credit very well. There are two factors in Chile that are looking into international factoring and both are owned by major banks. Both have joined the international factoring organization called Factors Chain International.

In Argentina, factoring is considerably newer. They have two factors that have opened within the last year. They do not yet have a national association. Both factoring organizations are looking into domestic and international factoring. Because Argentina is a country that wants to learn international factoring quickly, I anticipate that the business will expand there.

Brazil has a limited amount of domestic factoring as we know it and a limited amount of international factoring. It is a very large market, but the factoring industry has yet to be developed. The legal environment is not particularly conducive as it is very difficult for a factor to get ownership and control on a non-recourse invoice. There is a small factor in Ecuador. They too have a limited amount of domestic and international activity.

International factoring offers Latin American companies a means of augmenting business done through letters of credit. Factoring is very good for building relationships because it provides a pipeline or a mechanism by which an exporter can make frequent, repeat sales to a customer while not having to generate a new legal document or a new letter of credit. The credit pipeline is already in place. The exporter makes shipments, which generate invoices, sells them to the correspondent export factor, and receives cash for the invoices. International factoring also helps to open up domestic and international markets that ordinarily might not be open. It provides a domestic and international source of credit protection and working capital for a manufacturer. It enables them to increase working capital and buy raw materials for credit, which can reduce pre-export financing needs.

Finally, international factoring helps small- and medium-sized companies compete with bigger companies, which have their own credit collection departments. In fact, some large companies are outsourcing their credit and collections functions to us because they do not want to be bothered with it.

The organization through which all this takes place is called Factors Chain International. Factors Chain International has correspondents in over forty-four countries. There are seventy-five members operating under the same set of rules and regulations so it is a standardized practice. Exporters can sell to Germany under the same set of rules and regulations under which they sell to Japan and the United States. It is similar to the Letter of Credit UCP 500 regulation. Financial Institutions in Latin America have shown considerably more interest in factoring over the past two or three years. We are anticipating that most of the countries that have shown this interest, such as Chile, Argentina, Brazil, and to some degree Colombia, will end up having the ability to do international factoring.

In order to help our customers enter into international business and expand their markets, we advise them that when they assume foreign trade risks, they need to evaluate how large their company's overall appetite is for risk. They need to add all the risks for domestic business with all the risks from the international business and then, evaluate what would happen to their company in the event that problems developed. Unfortunately, many medium-sized companies do not do this type of assessment.

The next thing we discuss with our customers is when they are dealing in the international market, they need to be prepared for several differences. One, their travel expenses are going to be more. Two, the legal expenses are going to be more complicated and cost more. Three, everything tends to take more time to complete.

We try to have the importers and exporters do some research on what they are getting into so that they can discuss it in an organized fashion. Another aspect is that in international business, and certainly business in Latin America, the management of the company should be prepared for a roller coaster ride. One never knows what is going to happen, but one thing is certain: something unexpected will happen in at least one of the countries in Latin America with whom a company is dealing. It is not like dealing with Ohio and Indiana. Unfortunately, not everyone who attempts to engage in International business is sufficiently aware of the fact that it is a different world.

II. EXPLOITATION OF NATURAL RESOURCES AND ENVIRONMENTAL CONCERNS

A. *Resurgence of Mining Operations and Legal Reform*

MODERATOR — JOSE A. SANTOS:

We are fortunate to have four outstanding speakers to discuss mining operations and the latest legal reforms in Argentina, Chile, Brazil, and Mexico. The first speaker is Pablo Rueda, who is with the Argentine firm of Marval, O'Farrell and Mairal. For the past three years, Mr. Rueda has headed the firm's New York office and is presently assisting foreign mining companies seeking to invest in Argentina. Argentina's law is fairly new, the latest reform came with the help of the InterAmerican and the World banks on the infrastructure side. Our second speaker is Jose Maria Eyzaguirre B. who is a partner with Claro y Cia in Chile. Mr. Eyzaguirre B. was admitted to the bar in both Chile and New York. He was formerly an associate with Sherman and Sterling in New York. He has significant experience in the mining area, and as is well-known, Chile has had a fairly well developed mining sector for a number of years. Our third panel member is Antonio Carlos Goncalves, a partner with Pinheiro Neto-Advogados. He has been in charge of their office in Brasilia since 1974 when it opened. He has broad expertise in civil, commercial, economic, and private international areas at the preventive and litigation levels. He works with the higher courts as well as with the Federal Supreme Court in Brazil. Mr. Goncalves is experienced in mining law, including the organization of mining companies, authorization for developing mining activities, preparation of assignment and transfer of mining rights, and lease of ore agreements. He also assists financial institutions such as the Brazilian Financial Appeal Council. Mr. Goncalves is a member of the Brazilian Bar Association and the Brazilian Mining Institute. He graduated from Sao Paolo Law School of Pontificia Univesidade Católica where he received his Bachelor in Law in 1972 and from Fundacão Alvares Penteado where he received a Bachelor of Accounting in 1966. Our last speaker is Fausto C. Miranda, a senior partner with Miranda, Estavillo y Hernandez in Mexico City. The firm works on a multitude of Latin American legal matters, with a particular emphasis on oil mining, maritime, and environmental law. Mr. Miranda received his B.A.