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A Regional Bank's Perspective: An Analysis of the Differences and Similarities in the U.S. Banking Community's Approach to and Participation in the Mexican Restructuring

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While the billion dollar Mexican loan portfolios of the largest U.S. banks have received substantial media attention, there is little public notice that an estimated 180 U.S. state and national banks are involved in the restructuring of Mexico's foreign debt.[1] Although the nine largest single U.S. bank creditors held slightly more than 50% of the $27 billion-plus owed in August 1982 by the Mexican public and private sector to U.S. banking institutions, $13.5 billion was held by at least 160 U.S. banks, with exposures ranging from approximately $625 million to less than $10,000.[2] While no single bank can be representative of this large and diverse group, the perspective of a regional bank highlights some of the differences and similarities within the U.S. banking community in its reaction and approach to the many issues and problems presented by the Mexican situation.

The differences and similarities have not been a simple function

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1. Although the number of U.S. banks with exposure to Mexico has been placed as high as 400, Deputy Treasury Secretary R.T. McNamar reported at a press briefing on August 23, 1982 that the number of U.S. banks was 180, which more closely coincides with the number which signed the March 1983 new credit facility.

2. The approximate amounts owed to the nine largest U.S. bank creditors have been frequently reported. *See Mexican Loan Agreement Reached*, AM. BANKER, Aug. 23, 1982, at 1, col. 3, *Latin American Exposure of the Top Ten Banking Companies*, AM. BANKER, Dec. 5, 1983, at 3, col. 1. The reported amounts for the debt owed to all U.S. banks range as widely as the reported number of banks. The most commonly reported figure of $27 billion most closely coincides with the U.S. bank commitments to the March 1983 new credit facility since the expected commitment was to be based on 7% of total outstandings. The August 1982 debt figures, however, have since increased largely by reason of the 1983 and 1984 new credit facilities extended to the United Mexican States as part of the restructuring effort.

of relative gross dollar exposure. Notwithstanding the fairly straight-line relationship between a bank's gross dollar exposure and the degree of direct participation allowed the bank in debt restructuring negotiations, relative exposure of any bank is much more meaningful when expressed as a percentage of the bank's capital and surplus. Contrary to the popular conception that lesser-dollar amounts extended by the regional and smaller banks are more easily absorbed or written off, a significant number of the regional bank Mexican loan portfolios reflect debt-as-percentage of capital and surplus at levels comparable to those of the large money-center banks.

In a regional bank's Mexican loan portfolio, the aspect which has most affected the regional bank's response in the restructuring is the amount extended to the private sector. Differences between creditors arising from different characteristics of their respective portfolios of public sector debt have been relatively minimal, for the sheer magnitude and complexity of the public sector debt structure has mandated with few exceptions identical treatment of debt as the only feasible restructuring approach.[3] The stereotype of the regional and smaller bank Mexican loan portfolio as being oriented primarily to trade finance or purchases of participations in short-term public sector debt is not entirely accurate. While there is a tendency toward such orientation by the regional and smaller banks, all U.S. banks tend to have greater private sector exposure than foreign banks. Indeed, many regional banks have substantial private sector exposure, and, in a few cases, their ratios of private sector to public sector debt are higher than those of the money center banks.

Another significant aspect affecting a smaller bank's response to the situation is the degree of the bank's physical presence in Mexico and the resources available to the bank within Mexico to deal directly with the borrowers, particularly private sector borrowers. Although many of the regional banks have representative offices in Mexico, most do not have the staff necessary to conduct the constant negotiations and legwork required to monitor the situation on a daily, sometimes hourly, basis as do their larger bank counterparts.

Several aspects that have arisen during the formulation of the restructuring relate to the U.S. banking laws and regulations. While national banks often are unified in their response to issues because they are all subject to the same legal and regulatory system, these

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3. Although differences in loan currencies and cost of funds were addressed with the object of attaining functional identity of treatment, the few exceptions to identical treatment simply were removed from the basic negotiations as excluded debt.

same laws also have provoked differences. For example, since the U.S. banks as a whole have a much higher ratio of private to public sector debt in Mexico than the other foreign banks, the U.S. banking community usually has been unified in its insistence that attention be given to the private sector debt as part of the restructuring. On the other hand, U.S. national banks have polarized on issues such as the early suggestion by some banks that the private sector debt be nationalized. A given bank's position on this issue depended primarily on the size of its portfolio in terms of capital and surplus, and on the effect of this suggestion on its legal lending limit to the United Mexican States.

The reaction of the U.S. banking community to the new financing principles, which were announced September 8, 1984, for the long-term restructuring of the 1985-90 maturities of Mexican public sector debt to foreign commercial banks is not known at the time of this writing. It is the premise of this writer, however, that most of the differences between U.S. banks surfaced in connection with the announcement in December 1982 of the first restructuring principles for the public sector debt maturing through December 31, 1984 and the concomitant request for the 1983 $5 billion new money facility. Comparatively, the 1984 $3.8 billion new money facility provoked little interbank controversy. Accordingly, this article addresses primarily the context in which the December 1982 restructuring principles were negotiated and the U.S. banking community's response thereto.

I. BACKROUND OF THE RESTRUCTURING PROBLEM

The particular circumstances surrounding the Mexican restructuring effort not only affected the reaction of virtually all banks with outstanding Mexican loan exposure, but largely dictated the manner in which the restructuring was undertaken. The banking community was caught unprepared for the gravity of Mexico's foreign exchange position, which surfaced abruptly on August 5, 1982, when the Mexican government announced it was running out of foreign exchange and could no longer support the peso on foreign exchange markets.[4]

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4. Foreign credit to Mexico which had slowed down beginning in the last half of 1981, reached a virtual standstill in the first half of 1982 in response to the substantial deterioration of the Mexican economy as oil prices weakened. In December of 1981, the largest private sector conglomerate controlled by Grupo Industrial Alfa, S.A., had announced the need to restructure its $2.2 billion foreign debt. Shortly thereafter, on February 17, 1982, the Central Bank, Banco de Mexico, allowed the value of the peso to float against the dollar resulting in a 45% devaluation before the Central Bank again intervened to stabilize the peso. The devaluation had immediate serious ramifications, especially for the private sector,

The peso, which had already fallen from 27 pesos to the dollar in February to 49 pesos to the dollar, plunged almost immediately to 70 pesos at the floating rate. Only one week later, as holders of U.S. dollar bank accounts in Mexico began withdrawing their accounts, the government announced that the approximately $12 billion in foreign currency accounts with Mexican banks could only be withdrawn in pesos. The foreign exchange markets were closed the following day. Since Mexican banks were required to maintain reserves with the Central Bank of 70% for foreign currency accounts, this action reflected the true gravity of the Central Bank's liquidity crisis.[5]

On August 17, the magnitude of the problem was revealed in a live television presentation during which Treasury Secretary Jesus Silva Herzog announced a $1 billion emergency loan from the U.S. Treasury, tied to a complex arrangement for future oil purchases from Mexico and plans for a $1.5 billion bridge loan from the Bank for International Settlements (BIS). He announced Mexico would need a total of $5 billion in new loans from international agencies and commercial banks before the end of the year, including an estimated $3.8 billion from the International Monetary Fund (IMF), and $1 billion from the commercial banks. It also would be necessary to reschedule large amounts of Mexico's $81 billion in foreign debt, about 75% of which was owed to foreign banks. The 1981 rescheduling of the $4.3 billion Polish debt paled in comparison.

When the foreign exchange markets opened the next day, the rate to buy dollars was 120 pesos to the dollar. On August 19 and 20, Secretary Herzog met in New York with repesentatives of Mexico's foreign bank creditors to request a 90-day moratorium on the repayment of public sector debt principal until November 23. Inter-

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as borrowers tried to cope with the virtually instantaneous doubling of their dollar denominated liabilities. Following the devaluation, several more companies also requested a restructuring of their foreign debt. Others, such as Mexicana Airlines, were purchased by the Mexican government. Pressure for government support or protection against devaluation for the private sector foreign debt mounted. Inflation was rampant, yet the Mexican government continued to deny there was any need for exchange controls or other such measures. Attention was focused on the July presidential election. On August 5, however, the government announced that except for certain essential imports and other priority transactions for which a preferential exchange rate would be maintained, the value of the peso would be allowed to float.

5. The foreign exchange markets remained closed for a week, and the black market rate soared to 150 pesos to the dollar. Private sector Mexican companies were battered further as the liability side of their balance sheets increased at rates which technically rendered insolvent even the best companies. With the exchange markets closed, only the few companies with dollars in hand could maintain foreign loan payments. The situation was already critical for the U.S. banks with private sector exposure, and it was clear there was serious trouble ahead for the public sector debt.

est on public sector debt would continue to be paid, although the rate was not announced until August 26: ¾ over prime and ⅞ over the London Interbank Offered Rate (LIBOR). At the same time, he announced the appointment of an Advisory Bank Group consisting of 14 foreign banks including the seven largest U.S. bank creditors as advisors to the Mexican government in its restructuring effort.[6]

For the next several months, until President Miguel de la Madrid assumed office on December 1, 1982, complete uncertainty best describes the atmosphere within which most of the U.S. banking community sought to assess and respond to the Mexican debt situation. The Mexican government had waited until after the July elections to make any frank disclosures of its liquidity condition, and it was not clear to what extent it had made a full disclosure in August. The lame duck administration of President Jose Lopez Portillo was reluctant to be the administration to formalize any arrangement with the IMF, a critical element for the restructuring effort.

Although officially no moratorium had been placed on the repayment of private sector debt, and dollars theoretically were available for the repayment of interest on private sector debt at the preferential rate of 49 pesos to the dollar, there actually were no preferential rate dollars and few dollars to be purchased at any rate. Given the general lack of foreign exchange, even companies with dollars in hand were loathe to use them for interest payments, especially when preferential rate dollars were supposedly available for this purpose.

The unavailability of dollars for the private sector debt was not immediately apparent, however, but disguised for several months by confusion over the regulations and over precisely what was necessary to register the debt to qualify for the preferential rate. There also was confusion as to the scope of the official moratorium on the repayment of public sector debt principal. The massive government involvement of various forms in the private sector made it difficult to determine what constituted public sector debt.

A common response of the foreign banks to avoid the official moratorium was to argue that the official moratorium did not apply to a given borrower. As the unavailability of dollar exchange at any rate for both principal and interest on private sector debt became apparent, however, the response of the U.S. banks with substantial

6. The members of the Bank Advisory Group were Banamex, Bank of America, N.T. and S.A., Bank of Montreal, The Bank of Tokyo, Ltd., Bankers Trust Company, The Chase Manhattan Bank, N.A., Chemical Bank, Citibank, N.A., Deutsche Bank, A.G., Lloyds Bank International Limited, Manufacturers Hanover Trust Company of New York, Morgan Guaranty Trust Company of New York, Societe Generale and Swiss Bank Corporation.

private sector exposure shifted. Moreover, by late September and early October, interest on private sector debt rapidly was approaching being 90 days overdue, a major problem for U.S. banks under the Federal Financial Institutions Examination Council Call Report (FFIEC Call Report) instructions for nonaccrual of interest on nonperforming loans.

The situation further was complicated by President Portillo's decrees of September 1, 1982, nationalizing the Mexican banks and establishing rigid foreign exchange controls which essentially tied up the last few dollars on hand in the private sector by requiring all dollar revenues to be immediately converted to pesos. The new exchange controls created an even more complicated three-tiered fixed exchange rate system with new regulations following two weeks later to further confuse the situation. The head of Banco de Mexico, the Central Bank, resigned and was replaced immediately by Carlos Tello Macias, a known opponent to the types of belt-tightening loan conditions normally imposed by the IMF. The banks and foreign exchange markets were closed for a week until September 6. Thereafter negotiations with the IMF mired. One of the last acts of the Portillo administration was to request a further extension of the moratorium on the repayment of public sector debt principal for 120 days until March 23, 1983.

II. The Response to the Problem

By October 1982, differences in response and approach to the Mexican situation within the U.S. banking community began to emerge depending upon the relative amounts extended to the private sector. The large money center banks, particularly the seven U.S. banks which were members of the Advisory Bank Group, and which had large exposures to both the public and private sectors, had the responsibility for the direct negotiations with the Mexican government for the restructuring of the public sector debt. These banks were taxed to the limits of their resources trying to cope with both the official negotiations with the lame duck Portillo administration and the unofficial negotiations with the incoming de la Madrid administration in formalizing what was the largest restructuring effort in history, as well as with the problems affecting the private sector portions of their portfolios. Excluded from the direct negotiations for the restructuring of the public sector debt, the regional and smaller banks with small amounts extended to the private sector were concerned primarily with what appeared to be lack of progress in these negotiations, especially those between the Mexi-

can government and the IMF which were critical to the negotiations with the Advisory Bank Group. Likewise excluded from the direct negotiations, the regional banks, with large amounts extended to the private sector, focused their attention on the effects of the massive devaluation and exchange controls on their private sector borrowers. By October and November, the unpaid private sector interest became the primary focus of these banks' attention.

After many conferences with Mexican attorneys and initial disjointed approaches, the efforts of the banks with private sector exposure concentrated on the creation of trust accounts with Mexican banks. The Mexican borrower would pay the equivalent of the accrued interest in pesos into the trust as security for the obligation to pay the interest in dollars to the foreign bank, which was to be the beneficiary of the trust. Whether this approach would satisfy sufficiently the U.S. regulatory authorities and avoid having to place the loans on a nonaccrual basis was not entirely clear. Regardless, the approach was frustrated by the failure of the Central Bank to approve the trust, a prerequisite under Mexican law when creating any trust in which a foreigner holds the beneficial interest.

With the assumption of office by President de la Madrid on December 1, 1982, order was returned to the process. Progress was made in the negotiations with the IMF after submission of the 1983 Mexican budget to the Congress by the new President his first week in office. On December 8, the general principles for the rescheduling of public sector debt falling due prior to December 31, 1984, were announced. Included were assurances that dollars would be made available for the repayment of the private sector debt and under new exchange controls to be forthcoming there would be some protection against devaluation. Also, a mechanism was proposed for the settlement of the approximately $900 million of unpaid interest on private sector debt which had accrued since August 1, 1982. As proposed, the borrower could pay the accrued interest in pesos at the preferential rate. The dollar equivalent of the interest so paid was to be credited to an interest-bearing dollar denominated account established with Banco de Mexico for the foreign bank creditor which Banco de Mexico agreed to remit to the foreign bank in monthly installments as dollars were available. If the account could not be fully remitted by September 30, 1983, the balance would be a debt of the Mexican government to be financed by the foreign bank as a term debt on conditions to be determined.

Within one week, the new exchange control decree was published. The new decree, to be effective December 20, was similar to

the original August 1982 decree in that it provided for both a controlled rate of exchange for certain limited purposes and for a free floating exchange rate for all other purposes. The decree expressly provided that the controlled rate of exchange would be available even for the limited specified purposes only to the extent foreign exchange actually was available in accordance with established priorities. Accordingly, even though both principal and interest on preexisting registered private sector debt to foreign banks qualified for the controlled rate, priority only was accorded to interest unless the borrower generated the foreign exchange from its own exports, in which case 20% of the export proceeds could be applied to the repayment of principal. A major improvement, however, was the high priority afforded private sector interest under the new decree. The preferential or controlled rate of exchange, moreover, was intended to be adjusted periodically to eventually coincide with the free floating exchange rate. The decree did, however, direct Banco de Mexico to establish a system intended to protect the private sector from devaluation for the payment of preexisting private sector debt principal, provided, the debt was long-term or rescheduled to be long-term. On December 20, there was an almost immediate further 50% devaluation of the peso at the free floating rate.

What drew the most immediate attention, however, was the inclusion in the December 8 announcement of the general restructuring principles of a request for a new credit facility to which foreign banks were expected to commit pro rata in accordance with their outstandings as of August 23, 1982. Instead of the $1 billion facility forecast by Secretary Herzog in August, the request was for a $5 billion facility. Moreover, the commitment to the facility was to be based on both public and private sector outstandings. For the U.S. national banks with high exposures in terms of percentages of capital and surplus, this request presented yet another problem — the single borrower lending limit under 12 U.S.C. § 84.

Following the announcement of the general restructuring principles and the new credit facility, differences between U.S. banks developed depending upon relative exposure and ratio of public to private sector debt. Some of the banks with very small exposures were reluctant to increase their exposure by a penny even if it meant writing off their existing portfolios. The banks with medium exposures were equivocal, and within this group many banks with significant private sector exposure were reluctant to commit more funds without more definitive assurances for the repayment of the private sector debt. Although the banks with very large exposures in terms of capital and surplus were most prone to commit in order to pre-

serve their existing portfolios, in many cases these banks had the same concerns about the private sector debt and also were faced with lending limit problems.

Both the IMF and the U.S. regulatory authorities made it clear that their respective approvals of the $3.9 billion IMF loan and of the mechanism for settlement of the accrued private sector interest would depend upon the foreign commercial banks' full commitment to the new money facility.

The combined pressure of the Advisory Bank Group, the IMF and the U.S. regulating authorities was sufficient to convince the majority of the banks to commit. On December 23, 1982, $4.3 billion of the total facility had been committed and the IMF loan was approved and signed. Disbursement of the IMF loan, however, still was conditioned upon the foreign banks' full commitment to the new credit facility. On January 18, 1983, the U.S. Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation issued a joint statement approving the deposit arrangement for the accrued unpaid private sector interest for purposes of the year end 1982 FFIEC Call Report. Again, the approval expressly was subject to the conclusion of the restructuring as then planned, i.e. full commitment to the new credit facility. Obtaining the balance of the total $5 billion in commitments, however, took a couple of months. Some banks with very small exposures never did commit, other banks were refusing to commit until, or conditioned their commitment on, announcement of a satisfactory plan for the repayment of the private sector debt, and yet other banks with lending limit problems could commit only up to their lending limit.

Throughout January and February, attention was focused on obtaining the balance of the $5 billion commitments and formalizing the terms and conditions of the new credit facility. The Advisory Bank Group, which was negotiating the terms and conditions of the new credit facility, had hoped to complete the new credit facility by the middle of January. The facility, however, was not executed until March 3, 1983. As a result, the members of the Advisory Bank Group needed to make an interim loan of approximately $450 million on February 25, 1983. Another consequence was that the rescheduling agreements for the existing public sector debt could not be completed before the expiration on March 23, 1983, of the 120-day extension of the moratorium on the repayment of the public sector debt.

In many respects the new credit facility was the heart of the

restructuring effort as the banks recognized that it provided their primary leverage in the negotiations to shape the terms and conditions of the overall restructuring. From the perspective of the regional and smaller banks who were not directly participating in the negotiations with the Mexican government, it was the only opportunity for any significant influence. Once the new credit facility was signed, the basic framework was established for the rescheduling over eight years of the $20 billion in public sector debt which fell due between August 23, 1982 and December 31, 1984.

Since the problems in finalizing the new credit facility until March 3 precluded the execution of the rescheduling agreements for the existing public debt, yet another extension of the moratorium was requested to August 15. The ensuing rescheduling of the $6 billion owed by Petroleos Mexicanos (PEMEX), which was the largest public sector borrower, presented yet further problems, testing in one case a regional bank's ability as the holder of a participation to prevent the extension of maturity of not only the participated portion but the nonparticipated portion as well. Another lending limit consideration was raised by the extension of the $4 billion bankers' acceptance line to PEMEX within the parameters of eligibility of bankers' acceptances. It was not until August 26, 1983, a little more than a year to the day after the establishment of the public sector debt moratorium, that the first rescheduling agreements were signed. These agreements with the three largest public sector debtors, the United Mexican States itself, PEMEX and Nacional Financera (Nafinca), covered $11 billion of the $20 billion to be rescheduled. They also set the precedent for the rescheduling agreements with the other public sector borrowers which were signed September 29 and October 26, 1983.

The new credit facility, likewise, was the primary leverage for forcing the Mexican government to address the problem of the repayment of private sector debt. Although the December 20, 1982 regulations had directed the Central Bank to establish a mechanism to afford the private sector some protection against further foreign exchange loss, no definitive proposal had been announced before the signing of the new money facility on March 3. Nonetheless, because of the pressure mounted by the banks for solution of the private sector debt problem, the new credit facility included as conditions for disbursement that the deposit arrangement with Banco de Mexico for the payment of the past due and accrued private sector interest through January 31, 1983 be implemented reasonably to the satisfaction of the banks, that foreign exchange generally be available at prevailing rates to private sector borrowers

for payment of interest accruing after January 31, 1983, and, for all but the first disbursement, the implementation of the Mexican government's commitment to take measures to assist the private sector to repay its foreign debt, including specifically the implementation of a program for the purchase of foreign currency for forward delivery at a preestablished exchange rate for the payment of "restructured" foreign debt.

Accordingly, even though the specific program to assist repayment of the private sector debt had not been announced by the signing of the new credit facility on March 3, 1983, the basic format of the program as a contract for forward delivery of foreign exchange for the repayment of long term or rescheduled private sector debt principal had been established.

The actual announcement of the program was made by Banco de Mexico on April 6, 1983. As announced, the program provided for the establishment of a trust fund or Fideicomiso para la Cobertura de Reisgos Cambiarios (FICORCA). While voluntary, and providing several options, the complex FICORCA program was designed to encourage the rescheduling of the private sector foreign debt on terms parallel to the rescheduling of the public sector debt by providing the most favorable fixed forward exchange rate for debt rescheduled over eight years with four years' grace.

Therefore, with the signing of the new credit facility on March 3, 1983, followed shortly by the establishment of the FICORCA program in April and the signing of the public sector rescheduling agreements in August, September and October, the primary elements of the initial short-term restructuring of the foreign bank debt were in place.

Notwithstanding the subsequent $3.8 billion new credit facility in 1984 and the presently pending proposal for a long-term restructuring, the initial restructuring was successful. It stabilized and moved the situation out of the crisis conditions existing in 1982. Although most banks would have been loathe at that time to have recognized it as such, the initial restructuring served much the same purpose as the automatic stay in a Chapter 11 reorganization. It allowed the borrower time to adjust its economic policies, stabilize its economy and reduce its dependence on foreign credit. Likewise, the foreign banks have had time to write down and realign their portfolios, build loan loss reserves and increase their capitalization. Accordingly, both the borrower and its creditors now are much better prepared, not only financially but psychologically, to address the long-term restructuring proposal.

III. Relative Roles in the Negotiations Leading to the Restructuring

There is little point debating the relative roles played by the money center banks versus the regional banks in the negotiations with the Mexican government, the U.S. governmental regulating authorities and the international financial community. With the announcement by the Mexican government of the formation of the 14-member Advisory Bank Group in August 1982, it was understood that the role of the regional banks would be largely one of reaction to the restructuring principles proposed by the Mexican government after negotiation with the Advisory Bank Group rather than an active role in the initial formulation of the restructuring principles.

Mexico's foreign exchange position in the summer of 1982 was far too grave to permit an attempted solution by a committee of the whole foreign banking community. Moreover, the regional banks, despite their relative exposure in terms of capital and surplus, simply did not have the experience or the resources necessary to devote to the restructuring effort on the scale required. Further, many of the regional banks with high Mexican exposures already had experienced some of the problems and frustrations of large group restructuring efforts in connection with Grupo Industrial Alfa, S.A. which had announced the need to restructure its debt more than six months previously in December of 1981.

Nonetheless, from the perspective of a regional bank, especially one with high exposure in terms of capital surplus, the greatest frustration with a small group of large money center banks being responsible for direct negotiations with the borrower was difficulty in obtaining information, especially in the very fast moving situation which was occurring in Mexico.

This is not to say that the Advisory Group Banks were withholding information, but their resources were being taxed to their limits. Recognizing they could not both address the basic problem and act as a general clearing house for all of the banks' inquiries, the Advisory Bank Group made an effort to establish a network of Area Contact banks. Each of the 14 members of the Advisory Bank Group was assigned as the Advisory Group contact for all banks within a specific geographic area of the world, generally coinciding with the location of the respective member. Each of the seven U.S. bank members thus was assigned a specific multi-state area of the United States which was further divided generally along state lines. A bank was designated within each such smaller area as the Area Contact Bank for all other banks within that area. As so estab-

lished, the network provided each U.S. bank with two contacts, an Advisory Bank Group Contact and an Area Contact Bank which was not a member of the Advisory Bank Group.

Little more, probably, could have been done to facilitate the dissemination of information. Unfortunately, the situation in Mexico in 1982 was so complex and large in scope, and events were occurring so rapidly, particularly during the last months of President Lopez Portillo's administration, that it is doubtful the members of the Advisory Bank Group were even able to keep abreast of all developments. Certainly, the network was not capable of disseminating the information sought by all of the U.S. banks which were involved.

By forming the Advisory Bank Group, the Mexican government intended to limit its contacts with foreign banks as much as possible to the members of the Advisory Bank Group. Therefore, even the regional banks with offices in Mexico were not in a significantly better position to obtain accurate information directly from the government. If anything, particularly during the initial months following the August 23, 1982 moratorium request, the banks without local offices had the advantage of being spared the flood of inaccurate information circulating in Mexico City.

The information gap, however, provided the members of the Advisory Bank Group with an additional power base at least as formidable as the size of their loan portfolios from which to direct the shape of the restructuring of the debt owed to the foreign banks.

It is doubtful many of the other U.S. banks recognized in August of 1982 how much their ability to respond to the initial restructuring negotiated by the Advisory Bank Group would be affected by the unusually large information gap created by the emergency and complexity of the situation. As it happened, the other U.S. banks had little time and information on which to respond except in very broad terms.

In retrospect, because of the circumstances that created the information gap, it was probably not inappropriate that the gap had the effects that it did. Not only did it force the regional banks to respond in broad terms about basic principles and concerns, but it eliminated the possibility of 530 foreign banks each commenting on the drafting style and punctuation of the new credit agreement.

Nonetheless, from the perspective of a regional bank, "cram down" is not an unduly harsh description of what in fact occurred. By way of illustration, the banks were sent a telex on December 8, 1982 which was over twenty feet long announcing the general prin-

ciples for the entire restructuring. Included was a request that each bank commit seven percent of its total August 23, 1982 outstandings, both public and private sector, to the $5 billion new credit facility which the telex only outlined in the most basic terms. The commitment was requested to be made within one week.

Although it was known that a new money facility would be included in the restructuring package, neither the basis for computation of a bank's share in the facility (reflecting both private and public sector interests), nor the $5 billion size of the facility was generally anticipated.

Moreover, when the draft of the actual agreement for the facility was forwarded to the banks it was a three-fourths of an inch thick "final" draft dated February 18, 1983. The closing was expected the week of February 28. Comments were not solicited even though the new credit facility as previously stated was in many respects the heart of the restructuring effort. The Advisory Bank Group perhaps best summarized the respective roles of the banks in its telex of February 18 advising that the final draft was being delivered as follows:

> The draft results from the extensive negotiations between the Borrower and the Advisory Group. In the course of those negotiations the Advisory Group has considered the many comments received from you (the foreign banks) in your commitment telexes, and every effort has been made to prepare a document responsive to the concerns of the Banks.

Perhaps some would argue that the regional banks have had no influence on the restucturing. Yet, for at least the intense two-month period following the December 8, 1982 telex, by conditional commitments, or refusals to commit without adequate assurances with respect to the repayment of private sector debt, particularly by the Mexican government, the regional banks focused greater attention on private sector debt.

The influence, if any, of the regional and smaller banks in shaping the long-term restructuring remains to be seen, but the climate in which the recently announced long-term restructuring principles have been negotiated is significantly different from that in 1982. The crisis has abated and all parties have learned from the two-year experience. While fears have been significantly reduced, so too have expectations. The Advisory Bank Group's negotiations have been more open. There has been more time to provide the banks with interim reports, and ac-

cordingly the regional and smaller banks have had opportunity to provide input on the issues prior to announcement of the principles. The information gap also has been largely reduced by the detailed economic reports provided by the Mexican government to the international financial community. The role of the commercial banks in general (and hence even of the Advisory Bank Group itself), however, has been reduced by the intervening involvement of the supervising agencies, official lending agencies and multilateral financial organizations. As bilateral financings have increased, the relative participation of foreign banks in the total debt structure has decreased. Similarly, as no new credit facility is included in the pending proposal, the leverage of the commercial banks in general is less.

IV. Relative Exposure as the Crux of a Bank's Response

Notwithstanding the fact that the U.S. bank members of the Advisory Bank Group have represented all U.S. banks in the restructuring negotiations, and have taken the lead both with the U.S. regulatory authorities and with the Mexican government in structuring solutions to the many problems encountered during the restructuring effort, the regional banks have not been immune from either the effects of the liquidity crises which necessitated the restructuring or the terms of the restructuring as proposed and ultimately implemented. Not all U.S. banks have been presented with the same problems, and each bank has had to deal with the particularities of its own loan portfolio in reacting either to the problem presented or to its proposed solution.

As premised at the beginning of this article, similarity or difference in response has been more a function of relative exposure in terms of percentage of capital and surplus than of relative gross dollar exposure. This premise includes consideration of relative private sector exposure insofar as comparability of a bank's total exposure of capital and surplus to the exposures of the U.S. members of the Advisory Bank Group presupposes substantial private sector exposure.

The problems presented by the national bank lending limit, 12 U.S.C. § 84, illustrate the point. Although state bank lending limits generally were higher than the national bank limit, most foreign creditor banks had yet a higher limit or were not subject to any lending limit. Accordingly, the lending limit has been of far greater concern to the U.S. banks than to the other foreign banks. For the U.S. banking community the lending limit was a factor in determining the structuring of the whole initial restructuring package. For

example, the mechanism for the settlement of the over $750 million in accrued private sector interest in part was structured as a deposit because then the obligation of the Central Bank to remit the deposit balance to the foreign bank was outside the coverage of the lending limit. Accordingly, as confirmed by the Office of the Comptroller of the Currency on December 15, 1982, it was not necessary to aggregate the deposit of accrued private sector interest with the loans to the Mexican government. Similarly the FICORCA program was structured as a forward delivery of foreign exchange undertaking by the Central Bank. The rescheduling of existing debt owed by public sector borrowers in accordance with the general restructuring principles did not involve any extension of new credit and hence did not present any lending limit problems.

The 1983 new credit facility, which did present lending limit questions for a number of the U.S. banks, was structured so that only 34% of a bank's commitment could be drawn before April 15, 1983, when the increase of the lending limit from 10 to 15% of capital and surplus under the Garn-St. Germain Depository Institutions Act of 1982 became effective. The lending limit applies when a loan is made and not when a commitment is made.[7]

While the total exposures of many U.S. banks were small enough that the lending limit never presented a problem, for others the lending limit problem was serious enough to require that the commitment to the new credit facility be made at least in part by the bank's holding company or to require loan swapping with other banks. The lending limit issue most commonly encountered by the national banks was the question of aggregation and reexamination of the various public sector borrowers for continued compliance with the means and purpose test under 12 C.F.R. 32.5(d) which was superseded on April 12, 1983 12 C.F.R. 7.1330.[8]

Since the initial restructuring included a request for the $5 billion new credit facility, the question presented was to what extent did the events occurring since August 1982, including the nationalization of the banks of September 2, 1982, require a reexamination of public sector borrowers for continued compliance with the means

7. Although under 12 U.S.C. § 84, as amended by the Garn-St. Germain Depository Institutions Act of 1982, the Comptroller of the Currency is authorized to determine when a contractual commitment to advance funds is to be included within the lending limit, the Comptroller has not used this authority to expand significantly the historical position of the office beyond standby letters of credit. 12 C.F.R. 32.2(d)(1984).

8. The new 1983 regulation is more lenient than the original 1979 Comptroller Interpretive Ruling 7.1330. As revised, loans are to be aggregated "only if" the borrower fails to meet the means and purpose test.

and purpose test. Failure of continued compliance by such an entity required aggregation of all outstanding loans to that entity with all outstanding loans to the government itself to determine whether the new money could be advanced to the government within the lending limit. On December 15, 1982 the U.S. Office of the Comptroller of the Currency issued a letter advising that if a bank was aware of a borrower's change in circumstances which gave the bank reason to believe the borrower may no longer pass the means and purpose tests, the U.S. national bank had to reexamine the borrower for compliance with the tests before advancing any new money. The letter clarified, however, that the most significant events which had occurred — the request for rescheduling, the imposition of exchange controls and the government's guarantee of the rescheduled public sector debt — did not by themselves constitute such a change of circumstances to require reexamination.

The lending limit concerns were reduced significantly by the increase of the lending limit under the Garn-St. Germain Depository Institutions Act of 1982 and the efforts of the Advisory Bank Group members in obtaining the U.S. regulatory approvals. Without such U.S. governmental action, many U.S. national banks, including some members of the Advisory Bank Group, would have been precluded by the lending limit from fully commiting to the new credit facility. Even with such action, however, inclusion of private sector exposure within the base for computation of the banks' expected pro rata commitment to the new credit facility aggravated the lending limit problem. From the perspective of counsel to one regional bank, not speaking for any others, the lending limit with all of the attendant aggregation issues under the means and purpose tests presented the paramount concern with the 1983 new credit facility.

There have been many more legal and business issues encountered by the U.S. banks during the course of the restructuring than could possibly be addressed in this article. With respect to each of these issues banks have differed in their approach and response. Nonetheless, it is this writer's perspective that in overview the circumstances of the unexpected gravity of Mexico's liquidity crisis determined the process and form of the restructuring to a much more significant degree than interbank differences. Aside from whatever differences there may have been between the members of the Advisory Bank Group, the perspective of a regional bank is that for the most part the differences within the U.S. banking community, as illustrated by the lending limit example, have been more internal concerns with the effects of the crisis and/or of a proposed solution

on the particularities of the bank's own portfolio than external expressions of interbank conflict. The primary exception has been the pressure for attention to the private sector debt problems.

It will be interesting to compare the reaction and response of the U.S. banking community to the presently pending multi-year, long-term restructuring proposal with the reaction and response to the 1982 and 1983 initial restructuring proposal. The new proposal is a bold digression from the historical pattern. Interest margins are to be reduced rather than increased (especially during the first several years); the U.S. prime rate has been eliminated as a reference rate and no mention is made of a restructuring fee. Similar in approach to some of the new types of home mortgages which have appeared domestically for much the same reason (high interest rates), the proposal is weighted heavily toward the end of the up-to-14-year term, both as to principal amortization and interest rates, which initially are low but increase over time. Nonetheless, for the reasons discussed above — the lessons learned from the experience of the last two years, the more open negotiations, the availability of detailed, reliable economic information, the increased involvement in the restructuring by official lending agencies, multilateral financial organizations and supervisory agencies, and the precedential value of the restructuring principles already in place — the proposal should be accepted with comparatively little interbank controversy.[9]

In conclusion the experience has been one that few would want to repeat, although events in Brazil, Argentina and the Philippines imply that destiny may prove otherwise. As said at the beginning, no single bank's experience was representative of the large and diverse group of U.S. banks involved; one perspective is but one perspective, yet being from a different viewpoint, hopefully it adds dimension to a better understanding of the whole restructuring effort.

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9. An issue not likely to receive much notoriety, but which is likely to be raised by those money center and large regional banks who are not members of the Advisory Bank Group, but who are presently acting as agent for syndicated public sector loans, is the selection of the servicing banks. Similar to the 1983 restructurings, it is proposed that all of the bank debt owed by a given public sector borrower is to be restructured under a single agreement for that borrower. Hence, as in 1983, the servicing bank under the restructuring agreement for a given borrower will displace the agent banks for the syndicated loans to that borrower. Given today's significance of fee income, it did not escape notice that in the 1983 restructurings the members of the Advisory Bank Group were selected as the respective servicing banks and hence received the servicing bank fees. A similar selection of servicing banks for the proposed agreements is likely to be seriously challenged.