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End of the Lockout

A $16.5 billion debt offering marked Argentina's triumphant return to global capital markets after 15 years of exile.

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HONOREES:
Bruchou, Fernández Madero & Lombardi; **Cleary Gottlieb Steen & Hamilton**; Errecondo González Funes; Shearman & Sterling; Argentina's Ministry of Finance

ARGENTINA'S RECORD-BREAKING $16.5 BILLION sovereign bond issue transcended business and finance: It was a matter of historic national significance.

The deal—the largest ever emerging markets debt offering, comfortably eclipsing the $11 billion raised by Petróleo Brasileiro S.A. in 2013—lifted a cloud that had been hanging over the country ever since its $80 billion debt default in 2001.

Its proceeds allowed Argentina to finally end more than a decade of fierce litigation with holdout creditors that had seen the country essentially locked out of international capital markets—the offering was its first international bond issue for over 15 years—and led to another sovereign default in 2014.

"We knew we were involved in a historic undertaking that was going to make a huge difference to the whole country," says Antonia Stolper, head of the Americas capital markets and Latin America practices at Shearman & Sterling, which advised the underwriters on the offering. "It felt like the fate of Argentina was resting on our shoulders."

Argentina had already reached agreements with holders of more than 90 percent of the defaulted bonds during previous restructuring efforts in 2005 and 2010.

But a stubborn group of creditors, led by a group of U.S. hedge funds including NML Capital, Ltd. Elliott Management Corporation and Aurelius Capital Management, rejected the offers to exchange the bonds at 30 cents on the dollar and sued Argentina in multiple jurisdictions for full repayment.

Crucially, Argentina's bond document contained a *pari passu* clause, meaning all creditors would have equal priority in the event of a default. A standard feature of government borrowing, the holdouts controversially but successfully argued in U.S. courts in 2012 that the clause meant Argentina could not pay holders of the newly issued bonds without also paying the objectors in full. U.S. District Court Judge Thomas Griesa even hit Argentina with an injunction that prevented the country from servicing its restructured debt until the holdouts were paid.

Argentina's then-president, Cristina Fernández de Kirchner, had shown little appetite to negotiate with the hedge funds that she had labelled "financial terrorists" and instead stopped payment of the country's performing debt, leading to a fresh default. But the election of new president Mauricio Macri in 2015 saw a radical change in tack. Macri ran on a ticket of free market policies and made it a key priority to settle the holdout issue once and for all.

There was a problem, however. Macri soon declared a state of "administrative emergency" after it emerged that the previous administration had been deliberately publishing incorrect inflation data. The country's historic economic statistics, which in a sovereign bond issue forms the basis of disclosure to investors, were unreliable to the point of being useless. The bond offering

memorandum warned investors that "the credibility of several Argentine economic indices has been called into question, which has led to a lack of confidence in the Argentine economy and could affect your evaluation of this offering."

But Cleary Gottlieb Steen & Hamilton partner Andrés de la Cruz, who led the firm's team advising Argentina on the bond issue, says that the lack of credible statistics did little to suppress investor appetite. "Argentina went to the market acknowledging that the historical statistics it was presenting were not accurate, but it honestly didn't have much impact," he says. "The market was investing in Argentina's future, not in its past."

Indeed, the offering was an overwhelming success, with Argentina receiving almost $70 billion in orders, meaning it was more than four times oversubscribed. Demand was so strong, in fact, that the country was able to increase the offering from a planned $12.5 billion, giving it additional funds to bolster public finances.

The night before the close, lawyers met in Cleary's offices to make the final preparations for paying the holdouts and pore over the 45 separate bond forms. Work continued well into the early hours, leaving virtually no time for sleep before they had to head back for the close the following morning. Shortly after 6 a.m., groups of exhausted lawyers, bankers and government officials gathered around a boardroom table, with dozens more dialing in from around the world. While everyone was anxiously awaiting the judge's order that would lift the injunction and allow the transaction to proceed, Madonna's "Don't Cry For Me Argentina" suddenly started playing across the conference call.

"We were all waiting with baited breath and that song just came on out of nowhere," Stolper recalls. "Everyone went silent for a moment, then burst out in hysterics. It was a nice way to cut the tension. We still don't know who did it."

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