

**3º foro**  
de mercados  
emergentes

AGO. 4 2010  
BOGOTÁ

**Panorama** de los  
**mercados** tras la  
**crisis e impacto**  
de las reformas financieras

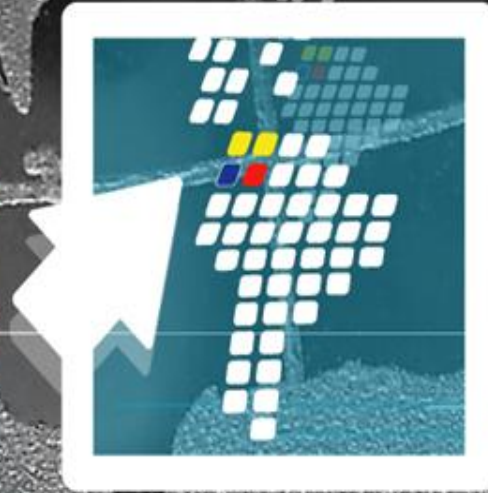
con la presencia del Dr. Ronald H. Filler

**SET** FX



SISTEMA ELECTRÓNICO DE TRANSACCIÓN  
DE MONEDA EXTRANJERA

Panorama de los  
**mercados** tras la  
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feat. **Dr. Ronald H. Filler**

NEW YORK  
LAW SCHOOL

SET FX  **3'foro**  
de mercados  
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# NUMBERS TO THINK ABOUT – WHAT DO THESE NUMBERS MEAN?

- 930,000
- US \$ 12 BILLION
- US \$ 1 TRILLION
- US \$ 213 TRILLION

# ROLE OF REGULATORY POLICY

- TWO MAIN PRINCIPLES OF MOST LAWS AND REGULATIONS INVOLVING FINANCIAL PRODUCTS AND FIRMS:
  - A. PROTECTING THE MARKETS (PROTECTING AGAINST FRAUD ON THE MARKETS), AND
  - B. PROVIDING CUSTOMER PROTECTIONS

# CUSTOMER ASSET PROTECTIONS

- MANY LAWS AND REGULATIONS ARE DESIGNED TO PROTECT CUSTOMER ASSETS IF THEIR BROKERAGE FIRM OR BANK FAILS
- THE LAWS AND REGULATIONS ARE DESIGNED TO PROVIDE A RING AROUND THE ASSETS AND NOT SUBJECT THEM TO THE CLAIMS OF CREDITORS OF THE FIRM

# CUSTOMER ASSET PROTECTIONS

- THESE PROTECTIONS APPLY TO CUSTOMER ASSETS FOR ALL GLOBAL MARKETS
- IN THE CASE OF LEHMAN BROTHERS, PROPER PROCEDURES WERE IN PLACE TO PROTECT CUSTOMER ASSETS AROUND THE GLOBE AT THE TIME OF ITS BANKRUPTCY IN SEPTEMBER 2008

- THE LESSON LEARNED FROM LEHMAN BROTHERS WAS THAT BANKRUPTCY LAWS IN THE VARIOUS COUNTRIES DIFFERED SIGNIFICANTLY AND TRUMPED THE LAWS AND REGULATIONS THAT WERE IN PLACE AND DESIGNED TO PROTECT THE CUSTOMERS OF LEHMAN
- IN THE U.S., THE SYSTEM WORKED FAIRLY WELL, AND CUSTOMER ASSETS WERE ADEQUATELY PROTECTED

# \$12 BILLION

- LEHMAN BROTHERS HAD ABOUT \$12 BILLION IN CUSTOMER ASSETS AT THE TIME OF ITS BANKRUPTCY
- WHILE A LARGE AMOUNT OF THESE ASSETS WERE DISTRIBUTED WITHIN A WEEK, A MAJOR PORTION IS STILL BEING HELD UP BY THE BANKRUPTCY COURTS

# INTERNATIONAL/GLOBAL REGULATIONS

- AS NOTED ABOVE, PROPER LAWS AND REGULATIONS EXIST AROUND THE WORLD BUT THEY DIFFER SIGNIFICANTLY BY COUNTRY
- IN MANY COUNTRIES, THE REGULATIONS ARE DESIGNED TO PROVIDE A TERRITORIAL PROTECTION, PROVIDING LIMITED ACCESS TO FOREIGNERS

# DEVELOPED COUNTRIES

- MOST DEVELOPED COUNTRIES HAVE AN OPEN-DOOR POLICY, ALLOWING FELLOW RESIDENTS AND FOREIGNERS TO TRADE ON THEIR EXCHANGES, PROVIDED THAT THEY ARE AGREE TO PLAY BY THE SAME RULES
- OTHER COUNTRIES RESTRICT ACCESS TO NON-RESIDENTS OR ONLY ALLOW FOR LIMITED TRADING

# PRE-FINANCIAL CRISIS

- WHILE SOME ECONOMIC TRENDS WERE CHANGING, MOST EXCHANGE-TRADED VOLUMES WERE SIGNIFICANTLY HIGHER IN 2007 THAN OVER PRIOR YEARS, ESPECIALLY FOR FUTURES AND DERIVATIVES
- THE OTC SWAP VOLUMES HAD INCREASED DRAMATICALLY IN SIZE SINCE 2000

# SIZE OF OTC DERIVATIVES GLOBALLY

- APPROXIMATELY \$213 TRILLION IN THE U.S.
- APPROXIMATELY \$500 TRILLION GLOBALLY
- QUESTION: WHAT IMPACT WILL ALL THE NEW LAWS AND REGULATION HAVE ON THE OTC INDUSTRY ?

## 2007 – 2008 CHANGES

- SLOWDOWNS IN REAL ESTATE HAD ALREADY STARTED, WITH SIGNIFICANT FORECLOSURES
- MARCH 2008 -- BEAR STEARNS IS SOLD TO JP MORGAN AT \$10/SHARE; ORIGINALLY, JPM ONLY OFFERED \$2/SHARE

## 2007-2008 CHANGES

- LEHMAN BROTHERS FILES FOR BANKRUPTCY ON SEPTEMBER 15, 2008
- INCLUDES ITS PARENT COMPANY, LEHMAN BROTHERS HOLDINGS, AND MANY OF ITS NON-US AFFILIATES
- LEHMAN BROTHERS INC, DOES NOT FILE THAT DAY

# LEHMAN BROTHERS

- THE WEEK OF SEPTEMBER 15-19, 2008  
IN MY LIFE
- ROLES PLAYED BY U.S. REGULATORS  
AND U.S. AND NON-U.S. EXCHANGES
- OTC SWAPS -- OVER 900,000 SWAPS  
ON LEHMAN'S BOOKS DEFAULTED

# GLOBAL FUTURES MARKETS

- ALMOST ALL GLOBAL CUSTOMER OPEN POSITIONS WERE TRANSFERRED OR SOLD BY CLOSE OF BUSINESS ON SEPTEMBER 19, 2008
- CASH AND COLLATERAL -- A DIFFERENT STORY TAKES PLACE. STILL WAITING EVEN TODAY FOR THIS STORY TO BE TOLD.

# POST SEPTEMBER 19, 2008

- IN THE U.S., SYSTEM WORKED FAIRLY WELL, BUT NOT AS PRECISELY AS ONE WOULD HAVE IMAGINED BEFORE SEPTEMBER
- NOT TRUE OUTSIDE THE U.S.
- IN FUTURES, OVER \$12 BILLION IN CUSTOMER ASSETS WERE AT STAKE

# GLOBAL BANKRUPTCY LAWS

- IN THE UK, JAPAN, AND IN OTHER COUNTRIES, WHOSE BANKRUPTCY LAWS ARE NOT DESIGNED TO PROTECT THE CUSTOMERS (E.G., DO NOT HAVE THE RING FENCE APPROACH), THE ASSETS REMAINED FROZEN FOR A SIGNIFICANT PERIOD OF TIME

# REGULATORY CHANGES NOW NEEDED?

- VERY LITTLE CHANGES ARE BEING ADDRESSED FOR EXCHANGE-TRADED PRODUCTS
- MOST OF THE ATTENTION FOR REGULATORY REFORM IS FOCUSING ON SWAPS

# REGULATORY CHANGES NOW NEEDED?

- MORE PRUDENT AND EFFECTIVE REGULATION
- GREATER EMPHASIS ON RISK MANAGEMENT AND INTERNAL CONTROLS
- NEED FOR GREATER CAPITAL
- NEED FOR GREATER TRANSPARENCY

# REGULATORY POLICY CONSIDERATIONS FOR COLOMBIAN MARKET

- PROVIDE THE GREATEST CUSTOMER ASSET PROTECTIONS TO THE EXTENT POSSIBLE
- CONSIDER CREATING LAWS AND/OR REGULATIONS THAT ENHANCE THE INTEGRITY OF YOUR MARKETS
- WORK CLOSELY WITH INTERNATIONAL REGULATORS

# REGULATORY POLICY CONSIDERATIONS (CONT.)

- IMPOSE TOUGHER AUDIT AND EXAMINATION REQUIREMENTS (SELF-IMPOSED AND GOVERNMENT-IMPOSED)
- ESTABLISHMENT OF TRADING LIMITS -- OR REQUIRING GREATER CAPITAL
- STRENGTHEN BANKRUPTCY LAWS TO PROTECT CUSTOMERS

# FINANCIAL CRISIS OF 2007 TO PRESENT

- **BEAR STEARNS, LEHMAN BROTHERS, AIG**
- **WHAT CAUSED THE FINANCIAL CRISIS?**
- **WHAT OTHER IMPORTANT REGULATORY CHANGES WILL OCCUR?**

# Derivatives

- Two types—listed and over-the-counter
- Listed derivatives have been subject to extensive laws and regulations for decades
- OTC derivatives were exempt from any such regulation by the Commodity Futures Modernization Act of 2000

# OTC Derivatives

- Bilateral negotiable instruments between two counterparties
- Each counterparty bears the risks of a default by the other counterparty
- Involve different types—equities, interest rates, FX, commodity and CDs swaps

- Credit default swaps—main focus of need for regulatory reforms but the new legislation involves all types of swaps and other OTC instruments
- Over \$500 trillion in notional value globally

## **NEW U.S. LAWS WILL GOVERN:**

- Clearing and trading
- Will divide jurisdiction between the SEC and the CFTC
- Are designed to minimize future exposure and risks via this clearing process
- Will require the need for a standardized contract

- Regulations are projected for late 2010 to mid-2011
- Need for harmonization of regulations between the SEC and the CFTC
- Concern over regulatory arbitrage between the U.S., Europe, Asia and the Global Emerging Markets

# REGULATORY ARBITRAGE

- VERY IMPORTANT ISSUE FACING THE GLOBAL FINANCIAL SERVICES INDUSTRY
- SHOULD THERE BE COMPARABILITY OF REGULATIONS OR MAJOR DIFFERENCES
- WHAT BUSINESS/ECONOMIC ISSUES MAY RESULT

# ROLE OF THE CLEARING HOUSE

- PROVIDES IMPORTANT FINANCIAL INTEGRITY TO THE SYSTEM
- CLEARING HOUSE ACTS AS THE GUARANTOR TO EVERY TRADE - AS THE BUYER TO EVERY SELLER AND AS THE SELLER TO EVERY BUYER
- CLEARING MEMBER FIRMS REQUIRE SIGNIFICANT CAPITALIZATION

# CLEARING HOUSE PROTECTIONS

- ROLE OF THE GUARANTY FUND
- AUTHORITY TO ASSESS CLEARING MEMBER FIRMS IF THE GUARANTY FUND IS USED TO FINANCE A DEFAULT
- ASSESSMENT CAN BE A MULTIPLE OF CURRENT FUNDING DEPOSIT (E.G., 200%) OR A MAXIMUM AMOUNT (E.G., \$15,000,000)

# CLEARING HOUSE FUNCTIONS

- CLEARING HOUSE ALSO PROVIDES IMPORTANT RISK PARAMETERS THROUGH:
  - A. SETTING OF MARGINS
  - B. USE OF POSITION LIMITS
  - C. REQUIRING GREATER CAPITAL REQUIREMENTS
  - D. REQUIRING GREATER GUARANTY FUND DEPOSITS

# HIGH FREQUENCY TRADING ISSUES

- ADVANCED COMPUTERIZED TRADING RAISES SIGNIFICANT REGULATORY ISSUES
- NEED TO BALANCE EFFECTIVE TRADING OPPORTUNITIES VERSUS PROTECTION OF THE MARKETS

# MAY 6, 2010 TRADING ISSUES

- NO SPECIFIC REASON GIVEN
- FAT FINGER TRADES
- ERROR TRADE POLICIES
- TRANSPARENCY
- REPORTS FILED WITH GOVERNMENT AGENCIES

# LL.M. in Financial Services Law

- Commenced with the fall 2009 semester
- Offers over 40 courses involving all aspects of the global financial services industry
- Four areas of concentration (Asset Management, Banking, Capital Markets, and International Regulation)



-	1.16%	↓	0.186
+	0.16%	↑	11.600
+	0.10%	↑	N/A
-	1.53%	↓	10.201
+	1.15%	↑	13.203
-	0.87%	↓	N/A
-	0.11%	↓	20.160
+	0.11%	↑	N/A
+	1.12%	↑	N/A
+	3.23%	↑	1.662
-	2.14%	↓	10.201
+	2.18%	↑	0.873
+	1.16%	↑	1.123
-	1.66%	↓	N/A
+	0.12%	↑	N/A
-	1.02%	↓	20.232
-	0.186	↓	800
-	1.100	↓	1.100

-	1.16%	↓	0.186
+	0.16%	↑	11.600
+	0.10%	↑	N/A
-	1.53%	↓	10.201
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- Most of the LL.M. courses are taught by some of the leading legal experts in their respective fields
  -
- Provides an excellent educational background on the current and future laws and regulations facing financial institutions
- Provides important practice skills



**¡gracias!**

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