

# EXHIBIT F

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November 16, 2012

BY HAND

Honorable Thomas P. Griesa  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: NML Capital, Ltd. v. Republic of Argentina and other actions;  
08 Civ. 6978 (TPG) and other actions

Dear Judge Griesa:

We represent The Depository Trust Company (“DTC”) and its nominee name, Cede & Co. and write to express concerns regarding the proposed injunction as requested by plaintiff NML Capital, Ltd.<sup>1</sup>

DTC is a limited purpose trust company organized under the Banking Law of the State of New York and is a member of the Federal Reserve System. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation, whose shareholders are made up of certain of the approximately 525 banks and brokerage houses that constitute what are known as “Participants” of DTC. DTC is a securities depository and a clearing agency registered with the Securities and Exchange Commission (“SEC”) for the settlement of trades in corporate and municipal securities on behalf of the financial institutions that constitute its “Participants.” See 15 U.S.C. §78q-1. Cede & Co., a New

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<sup>1</sup> This letter is respectfully submitted concurrently for all of the actions in this Court in which the corresponding request for entry of injunctive relief was made. These are designated by the following civil case numbers: 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG), 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG), 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG), 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG), 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG), 10 Civ. 5338 (TPG), 10 Civ. 9587 (TPG).

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York partnership, has no independent operations and serves solely as the nominee name of DTC.

DTC is the nation's principal securities depository. The bulk of publicly traded securities issued in the U.S. are on deposit at DTC. In 2009, DTC settled transactions worth more than \$299 trillion, and processed 299.5 million book-entry deliveries. DTC retains custody of more than 3.5 million of securities issues worth almost \$34 trillion, including securities issued in the US and more than 120 foreign countries and territories.

In addition to facilitating book-entry transfers for its Participants, DTC also provides numerous other services. One service DTC offers its Participants is to allocate cash payments received in respect of DTC-eligible securities among the Participants who have deposited those securities with DTC. This is referred to as the "P & I Cash Processing" service of DTC. Under this service, cash transfers received by DTC on any given day (prior to a certain time) in respect of a certain security, identified by CUSIP number,<sup>2</sup> are allocated among the various Participants who have deposited such securities with DTC according to their respective holdings. These Participants receive these P & I payments as part of their overall DTC net settlement at the end of the day. (In the normal course, all transactions among Participants are combined by DTC into one net credit or debit for each Participant and settled at the end of the day through the Federal Reserve System.) In 2011, DTC allocated approximately 4.1 million entitlements totaling over \$2.5 trillion. Once net settlement is done with DTC, it is the Participants' responsibility to account for these payments with their customers, the ultimate beneficial owners of the securities at issue.

The cash transfers sent to DTC as part of this process are sent by "paying agents," not the issuers. DTC takes their instructions and the P & I allocation process is essentially a ministerial act. Allocations of cash entitlements are made by DTC on the same basis as transfers of securities, i.e., only at the Participant level. Allocations made by DTC are only to the Participants who have deposited the respective securities with DTC. It is up to the various Participants to then transfer funds to the proper beneficial owners, as appropriate, who are their customers.

The Republic of Argentina is not a Participant. Argentina has no account at DTC. Argentina can issue no instructions to DTC; nor could DTC take any such instructions if it did. DTC does not take funds directly from Argentina nor transfer funds to Argentina.

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<sup>2</sup> All securities at DTC are identified by CUSIP number, and DTC cannot identify securities that are not identified to it by CUSIP number.

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Any instructions issued to DTC in respect of any of the bonds referenced in the proposed injunction would come, if at all, from a duly authorized paying agent who was a part of the DTC system.

From the perspective of DTC and Cede & Co., the proposed injunction presents several practical problems. First, whether the ratable payments formula has been met is completely outside of DTC's ability to judge. DTC does not receive an omnibus payment on the "Exchange Bonds" or the "NML Bonds." DTC will receive a transfer of funds identified with a single, particular CUSIP number. This process would be repeated for each individual bond, identified to DTC in each case only by its CUSIP number. Compliance with these instructions is a largely ministerial, automated task. DTC does not have the ability to compare any particular transfer in respect of any particular CUSIP to any one or more other transfers to determine if other bonds are being paid as required, let alone that the ratable payments formula has been applied correctly. Nor does DTC even have the administrative machinery available to it to do such a thing if it did have the knowledge. In processing the very large number of instructions it receives every day, DTC relies, as it must, on the instructions of the paying agents transferring funds into the DTC system.

As noted above, the Republic of Argentina is not a Participant of DTC and DTC does not deal directly with the Republic of Argentina. The financial institutions with which DTC deals may or may not be agents of the Republic of Argentina, but that does not make DTC equally an agent of the Republic. If it were enough, DTC would be an agent of every one of the thousands of sovereign or corporate issuers of debt that has its securities on deposit in the DTC system – and this is plainly not the case.

In seeking to protect themselves against the perceived desire of the Republic to avoid its obligations as ordered by this Court, plaintiffs have simply cast too wide a net in the proposed injunction. It is a step too far for this Court to designate DTC and Cede & Co. specifically as agents of or acting in concert with the Republic of Argentina. DTC is not privy to the counsels or plans of the Republic of Argentina. It merely takes paying instructions. Many of the bonds at issue in this case – the Exchange Bonds or the earlier ones – were set up to be held at DTC and paid through the DTC system. But this does not put DTC or Cede & Co. into the Republic's orbit.

Indeed, if the picture plaintiffs paint of the Republic is true, it is not beyond imagining that a false certification could be issued. Under the injunction regime proposed by plaintiffs, that would be sufficient. But it would offer no protection to plaintiffs and thus having DTC named in the injunction adds nothing. DTC is not in a

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position to determine if a certification is true or false; it must simply follow the instructions of its paying agent. To be clear, DTC does not believe any of the paying agents involved would willfully violate an Order of this Court. DTC is simply noting that it is in no position to police violations of such an Order if it is violated. Thus, the inclusion of DTC and Cede & Co. (which have never been alleged to have done anything wrong) in the injunction as drafted does not create any additional protection against violations of the order.

DTC recognizes that the proposed injunction requires that Argentina certify to the Court that it has satisfied its obligation to make a "Ratable Payment" concurrently with or in advance of making a payment on the Exchange Bonds, and that this certification is presumably to be delivered to DTC. However, this requirement does nothing to further protect plaintiffs. In fact, from DTC's perspective, it potentially will operate to frustrate legitimate payments. Sending a copy of such a certification to DTC will take time and there is no assurance it will be seen by anyone prior to Argentina's paying agent making a transfer to DTC in respect of the Exchange Bonds. The systems, largely automated, that handle the allocation of payments in DTC's P & I function are not set up to review and approve "certifications" on collateral issues. Therefore, transfers from the paying agent, even if legitimate, may sit untouched and undistributed at DTC as a precaution against violating the injunction. Application of the order to the paying agent is sufficient. DTC should be able to rely on the instruction of the paying agent as sufficient representation that the payment should be allocated and made.

The injunction to be entered by this Court should not indicate that DTC or Cede & Co. are agents of or acting in concert with the Republic of Argentina and the specific references to them should be removed from the injunction as proposed.

We are available, of course, to address any questions the Court may have, or to make a more fulsome, formal submission if the Court prefers.

Respectfully submitted,



Eric P. Heichel

cc: All Counsel of Record in the actions  
listed in footnote 1 of this letter (by e-mail)