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March 6, 2015

Re: *NML Capital, Ltd. v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG), and related cases

Hon. Thomas P. Griesa
United States District Judge
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Griesa:

After reviewing the transcript of the March 3, 2015 hearing before the Court, we write on behalf of Citibank to (1) address further the Court's questions regarding the role of Citibank's Argentine branch ("Citibank Argentina") in connection with payments on Argentine Law Bonds; (2) clarify the record on the nature of the Argentine Law Bonds because a critical misperception appeared to animate the colloquy between the Court and the attorneys at the hearing; and (3) correct mistakes in the transcript of the hearing.

Citibank Is Not a Participant in the Republic's Payment Obligation

At the hearing, Plaintiffs argued that Citibank Argentina is a "Participant" under paragraph 2(f) of the Injunction because Citibank Argentina acts in effect as a "depositary" for a clearing system with respect to the Argentine Law Bonds. Plaintiffs are wrong. Citibank does not so act. A "depositary" for a clearing system, as Plaintiffs themselves have previously represented to the Court, is an entity with a very specific, defined and formal role—to hold the global certificate for a bond issuance that represents 100% of the interests in the bonds. There is no dispute that Citibank Argentina does not hold the global certificates for the Argentine Law Bonds.

Indeed, it is undisputed that the depositary holding all the global certificates for the Argentine Law Bonds is CRYL and the clearing system is *Caja de Valores S.A.* ("*Caja*"). Significantly, documentary evidence on these points was put in the record *by Plaintiffs*. The prospectus supplements identify CRYL (not Citibank Argentina) as the depositary and *Caja* (not Euroclear and Clearstream) as the clearing system for the Argentine Law Bonds. The Court has previously recognized that in this payment process, *Caja* acts as "the counterpart of the [DTC] in the United States," and the Republic's payment obligations are complete once payment reaches CRYL. *See EM Ltd. v. Republic of Argentina*, 865 F. Supp. 2d 415, 419-20, 423-24 (S.D.N.Y. 2012) (describing identical payment process through CRYL and *Caja* and holding that "[t]he Republic lost control over the funds when it made payment to CRYL" and that "the Republic had no further interest in the funds designated to pay the [bonds] once it transferred those funds to CRYL").

An entity downstream from the relevant clearing system, including a custodian like Citibank Argentina, or a beneficial holder of the bonds, does not have an indispensable role in the payment of the bonds, as does a clearing system which makes payment on 100% of a particular issue of bonds. An entity downstream from the relevant clearing system cannot therefore be regarded as a "Participant" in the payment process within the meaning of the Injunction.

Citibank Argentina has acted as a custodian for a large number of individual and corporate customers for a long period of time—certainly long before the 2005 and 2010 exchanges and the NML litigation seeking enforcement of the *Pari Passu* Clause in the FAA. Citibank Argentina holds for these customers a large number of securities other than the Argentine Law Bonds, including securities issued by Argentine corporate issuers. Euroclear and Clearstream are just two of over 650 Citibank Argentina customers currently holding Argentine Law Bonds, the overwhelming majority of whom are individuals resident in Argentina. All of these customers have the right to choose their own Argentine custodian, whether it be Citibank Argentina or some other Argentine custodian. Even customers of Euroclear and Clearstream could bypass them by opening a custody account with an Argentine bank. But none of the customers can choose a different *clearing system* for the Argentine Law Bonds. *Caja* is the designated clearing system for the Argentine Law Bonds no matter which bank acts as custodian for such customers.

Neither Citibank Argentina nor these customers are subject to the Injunction. Indeed, Plaintiffs themselves specifically requested that financial institutions receiving payments from the relevant clearing systems on behalf of such customers be excluded from the Injunction in order to avoid running afoul of the limitations imposed by Rule 65. This Court and the Second Circuit expressly agreed with this limitation. *See NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 239 (2d Cir. 2013) ("The amended injunctions explicitly exempt . . . financial institutions receiving funds from the DTC [the relevant clearing system for the 2005 New York law bonds].") Nor can the beneficial owners of any of the bonds at issue be regarded as subject to the Injunction despite Plaintiffs' suggestion that they are.[1]

Plaintiffs confused matters at the hearing by misleadingly suggesting that Citibank Argentina is somehow transformed into a "depositary" for the Argentine Law Bonds because ***two*** of its customers—out of the hundreds of customers for which it acts as a custodian with respect to the Argentine Law Bonds—are named in the Injunction. The logical flaw in Plaintiffs' argument is plain. Euroclear and Clearstream are named in the Injunction because they function as the clearing systems ***for entirely different bonds***, specifically the English law bonds and the 2010 New York law bonds—not the Argentine Law Bonds. Plaintiffs' effort to conflate the two should be seen for what it is.

A clearing system for a specific bond issue acts for the entity in which the global certificate for the bonds is deposited. As Plaintiffs' evidence demonstrates, the global certificates for the Argentine Law Bonds are deposited at CRYL, and *Caja* provides the clearing function for those bonds. Euroclear and Clearstream act as clearing systems only for the 2010 New York law bonds and the English law bonds, which are deposited with their common depositary in London. Plaintiffs are well aware that, ***with respect to the Argentine Law Bonds***, Euroclear and Clearstream are not the clearing systems—*Caja* is.

[1] Contrary to colloquy between the Court and Plaintiffs' counsel, beneficial holders of bonds received in the 2005 and 2010 exchanges are not subject to the Injunction, as the Injunction and the Second Circuit made clear. *See* Amended Feb. 23, 2012 Order (Dkt. No. 425) at 5-6; *NML Capital*, 727 F.3d at 240 (holding that exchange bondholders "are not bound by the amended injunctions"); *see also* Oral Arg. Tr. at 50:23–24, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105-cv(L) (2d Cir. Feb. 27, 2013) (Dkt. No. 950) ("[Plaintiffs' Counsel:] No one is asking [for] an injunction preventing [the exchange bondholders] from accepting money."); *id.* at 92:20–22 ("Judge Raggi: Again, I don't think there's any question about once the money lands in [the exchange bondholders'] hands, that not being contempt.").

In our reply letter, submitted March 2, 2015, the day before the hearing, we provided additional detail regarding these issues at pages 3 to 5. We would also invite Your Honor's attention to Court's Exhibit B, and we attach a copy of the document that was so marked as Appendix A for convenient reference.

The Argentine Law Bonds Were Not Issued in Exchange for Defaulted FAA Bonds and Do Not Constitute External Indebtedness

As important, the Argentine Law Bonds are not subject to the Injunction because, as this Court has previously acknowledged on numerous occasions, "[i]t was my view and still is my view that the Argentine law bonds issued in Argentina, payable in Argentina, subject to Argentine law, are different from the bonds subject to the February 23 order."[2]

The Injunction is anchored in the *Pari Passu* Clause of the FAA. By the express terms of the FAA, the *Pari Passu* Clause is applicable only to External Indebtedness. None of the Argentine Law Bonds are External Indebtedness, and none were exchanged for FAA bonds. At the hearing in September, the Court framed the issue to be addressed in the hearing adjourned until March 3 as follows:

> Now, the issue then is quite precise, and that is, . . . [a]re they external indebtedness calling into play the pari passu clause, or are they not such external indebtedness.[3]

In support of Citibank's position that they are not External Indebtedness, hence not subject to the *Pari Passu* Clause, two declarations addressing directly relevant issues of Argentine law were submitted to the Court. These declarations demonstrated that all of the U.S. dollar defaulted bonds subject to Argentine law that were eligible to be exchanged in 2005 and 2010 were redenominated into pesos in 2002 pursuant to the Government-ordered *Pesificación*. All of the Argentine Law Bonds issued in the exchanges were therefore "issued in . . . exchange" for "indebtedness payable in the lawful currency of the Republic of Argentin[a]." Accordingly, all of the Argentine Law Bonds issued in the exchanges are excluded from the definition of External Indebtedness pursuant to clause (iii)(b) of the definition of Domestic Foreign Currency Indebtedness in the FAA. This evidence is completely unrebutted in the record.

The Argentine law declarations also showed how the 28% of the Argentine Law Bonds issued in connection with the exchanges, as well as the 72% issued outside the exchanges, were "offered exclusively" in Argentina. While Plaintiffs dispute this conclusion with respect to the 28% issued in the exchanges, they basically concede that the 72% of the bonds issued outside the exchanges fall under clause (iii)(a) of the definition of Domestic Foreign Currency Indebtedness, and therefore do not constitute External Indebtedness.

Bonds that are not External Indebtedness and were not exchanged for External Indebtedness cannot become subject to the *Pari Passu* Clause simply because they were issued in the 2005 and 2010 exchanges. Critically, there is *no dispute* that *none* of the Argentine Law Bonds issued in those exchanges were exchanged for FAA bonds like those held by Plaintiffs, or for any other External Indebtedness. This Court has previously recognized the distinction between bonds

[2] Sept. 19, 2014 Conference Tr. (Dkt. No. 690) at 7:16–19.

[3] Sept. 26, 2014 Hr'g Tr. (DKt. No. 694) at 21:6–11. The hearing in September was continued until March 3 in order to allow the parties and non-party Citibank the opportunity to collect and submit evidence and arguments regarding whether the Argentine Law Bonds were or were not External Indebtedness. That whole endeavor would have been meaningless if the Injunction already covered the Argentine Law Bonds. It did not, and the central question before the Court on March 3 was, as indicated above, whether the Argentine Law Bonds constitute External Indebtedness and therefore should be subject to an injunction such as the one in place with respect to the New York law bonds.

exchanged for FAA bonds and the Argentine Law Bonds issued in the exchanges, and has admonished Plaintiffs not to conflate the two because the real issue is whether the Argentine Law Bonds are External Indebtedness:

> [I]t is not really helpful to me and it is not helpful to the case to make all these issues depend on the issue of a particular term in a July 28 order. You focused very heavily on the phrase exchange bonds. . . . I have to tell you that as the judge in the case, I am not willing to let the whole case depend on the use of that term twice in the July 28 order. The issues are bigger, deeper than that. So if you want to rely on that, please don't.[4]

We have provided your Honor all of the reasons why the Argentine Law Bonds are not External Indebtedness. The evidence in the record leading to that conclusion is overwhelming and unrebutted and includes two expert declarations demonstrating that all Argentine Law Bonds issued in the exchanges were exchanged, not for FAA bonds, but for bonds *payable* in pesos. That means they are not External Indebtedness as defined in the FAA—regardless of whether they were issued in exchanges. Our submissions on these points, including the reply letter submitted to the Court on March 2, 2015, provide additional details that will assist the Court in sorting through these issues.

The Next Interest Payment Date

One final and related point of clarification is important from a timing perspective. Contrary to the Court's suggestion that Citibank's motion is academic, because the Republic is not making regular quarterly interest payments on the Argentine Law Bonds, the Republic *is regularly paying quarterly interest on the Argentine Law Bond*s and has indicated that it will *continue to do so with or without Plaintiffs' consent*. ***The next payment will be made by the Republic on March 31, 2015, in just a few weeks.*** After that payment is cleared by *Caja*, upstream of Citibank Argentina, Citibank Argentina as custodian will receive the small portion of the Republic's payment—only $3.7 million—due to its custody customers. Notwithstanding its small size, if Citibank Argentina does not remit to its customers the funds it receives, as will all other custodians, it will be in violation of Argentine banking law. The Republic could revoke Citibank Argentina's license and even impose criminal liability on its employees. Thus, the Court's determination of this issue is gravely important.

Corrections of the Transcript

Attached as Appendix B is an errata sheet we have prepared with respect to the transcript of the March 3, 2015 hearing. The errata sheet corrects certain typographical and other obvious errors. We will send the errata sheet to the court reporter as well.

Very respectfully yours,

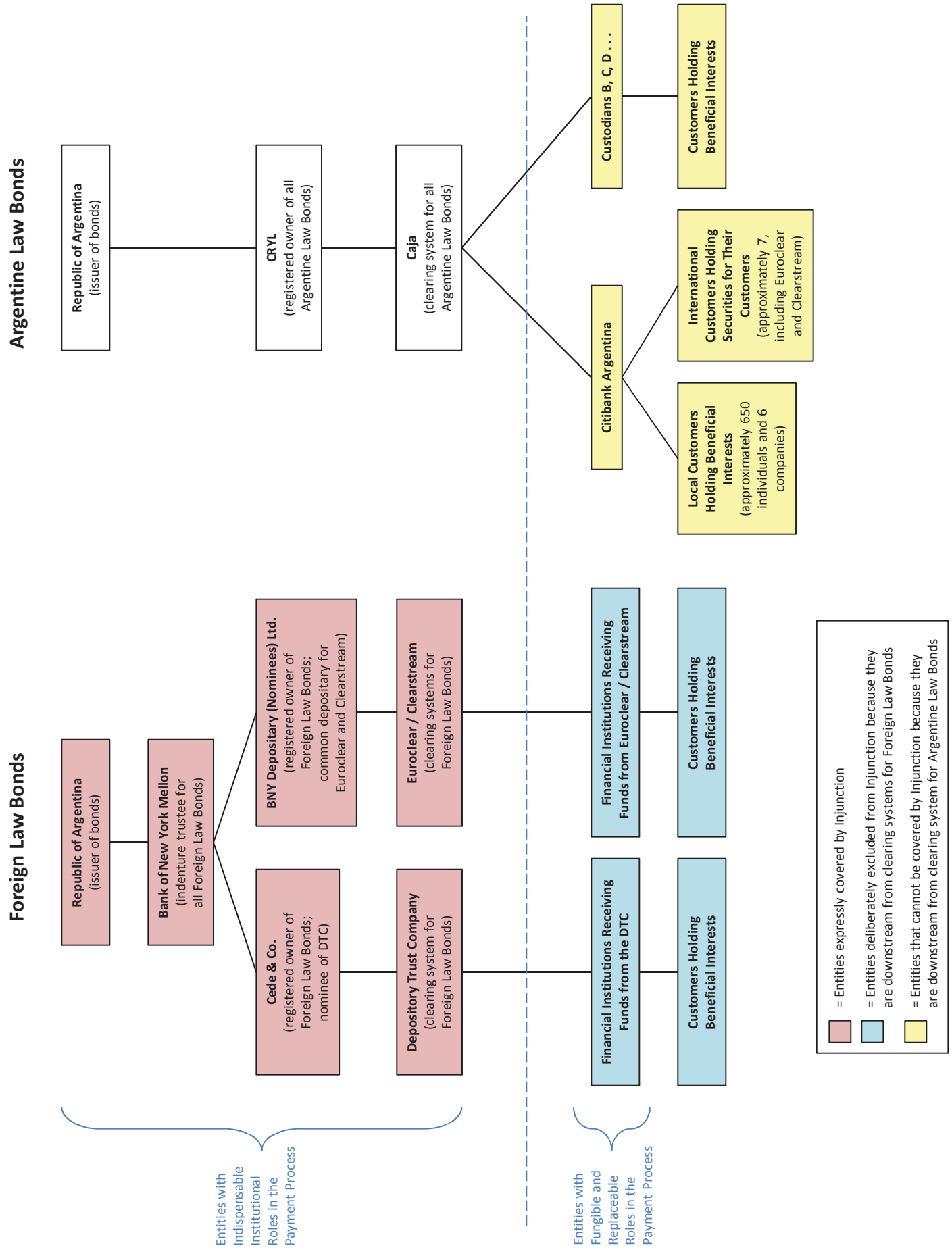
/s/ Karen E. Wagner
Karen E. Wagner

Enclosures
By ECF
cc: All counsel of record (via ECF)

[4] Sept. 26, 2014 Hr'g Tr. (Dkt. No. 694) at 32:1–10.

Appendix A

Document Marked as Court's Exhibit B


Foreign Law Bonds
Republic of Argentina (issuer of bonds)
Bank of New York Mellon (indenture trustee for all Foreign Law Bonds)
Cede & Co. (registered owner of Foreign Law Bonds; nominee of DTC)
Depository Trust Company (clearing system for Foreign Law Bonds)
BNY Depositary (Nominees) Ltd. (registered owner of Foreign Law Bonds; common depositary for Euroclear and Clearstream)
Euroclear / Clearstream (clearing systems for Foreign Law Bonds)
Financial Institutions Receiving Funds from the DTC
Financial Institutions Receiving Funds from Euroclear / Clearstream
Customers Holding Beneficial Interests
Customers Holding Beneficial Interests
Entities with Indispensable Institutional Roles in the Payment Process
Entities with Fungible and Replaceable Roles in the Payment Process
Argentine Law Bonds
Republic of Argentina (issuer of bonds)
CRYL (registered owner of all Argentine Law Bonds)
Caja (clearing system for all Argentine Law Bonds)
Custodians B, C, D . . .
Citibank Argentina
Customers Holding Beneficial Interests
International Customers Holding Securities for Their Customers (approximately 7, including Euroclear and Clearstream)
Local Customers Holding Beneficial Interests (approximately 650 individuals and 6 companies)
= Entities expressly covered by Injunction
= Entities deliberately excluded from Injunction because they are downstream from clearing systems for Foreign Law Bonds
= Entities that cannot be covered by Injunction because they are downstream from clearing system for Argentine Law Bonds

Appendix B

ERRATA SHEET

CASE NAME: *NML Capital, Ltd. v. Republic of Argentina*, and related cases

DOCKET NUMBERS: No. 08-CV-6978 (TPG)
No. 09-CV-1707 (TPG)
No. 09-CV-1708 (TPG)
No. 09-CV-8757 (TPG)
No. 09-CV-10620(TPG)
No. 10-CV-1602 (TPG)
No. 10-CV-3507 (TPG)
No. 10-CV-3970 (TPG)
No. 10-CV-8339 (TPG)
No. 10-CV-4101 (TPG)
No. 10-CV-4782 (TPG)
No. 10-CV-9587 (TPG)
No. 10-CV-5338 (TPG)

HEARING DATE: March 3, 2015

Page:Line	Change	Reason
6:23–24	**Replace** "they were interested elsewhere" **with** "there were interests elsewhere"	Transcription error
7:12	**Strike** "are"	Typo
10:25, 65:23	**Replace** "pesofied" **with** "pesified"	Spelling
15:2	**Replace** "pesofication" **with** "Pesificación"	Spelling
16:14–15	**Replace** "We fall within the category of those entities that were expressly included" **with** "We fall within the category of those entities that were expressly excluded"	Transcription error
21:2	**Replace** "plaintiff" **with** "plaintiffs"	Typo
23:3–4	**Replace** "it just seems fundamentally unfair and inevitable" **with** "it just seems fundamentally unfair and inequitable"	Transcription error
31:1–2	**Replace** "bonds these numbers" **with** "bonds with these numbers"	Transcription error
32:24	**Replace** "plaintiff's" **with** "plaintiffs'"	Typo
48:18	**Replace** "because" **with** "and"	Transcription error
50:6	**Replace** "wall" **with** "call"	Typo
50:16–17	**Replace** "which we think is right" **with** "which we think is wrong"	Transcription error
53:23	**Replace** "joins" **with** "enjoins"	Typo
64:5	**Replace** "were" **with** "where"	Typo
67:2	**Replace** "sparse" **with** "parse"	Typo