

CLEARY GOTTLLIEB STEEN & HAMILTON LLP

ONE LIBERTY PLAZA  
NEW YORK, NY 10006-1470  
(212) 225-2000  
FACSIMILE (212) 225-3999  
WWW.CLEARYGOTTLIEB.COM

WASHINGTON, DC • PARIS • BRUSSELS • LONDON • MOSCOW  
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG  
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

Writer's Direct Dial +1 212 225 2508  
E-Mail cbocuzzi@cgsh.com

LAURENT ALPERT  
VICTOR I. LEWKOW  
ILSE H. SILVERMAN  
ROBERT L. TORTORIELLO  
LEE C. BUCHHEIT  
JAMES M. PEASLIFE  
THOMAS J. MOLONEY  
JONATHAN J. BLACKMAN  
MICHAEL L. RYAN  
ROBERT P. DAVIS  
YARON Z. REICH  
RICHARD S. LINCER  
STEVEN G. HOROWITZ  
JAMES A. DUNCAN  
STEVEN M. LOEB  
CRAIG B. BRGD  
MITCHELL A. LOWENTHAL  
EDWARD J. ROSEN  
LAWRENCE B. FRIEDMAN  
NICOLA S. GHADAR  
CHRISTOPHER E. AUSTIN  
SETH GROSSHANDLER  
WILLIAM A. SMOLI  
HOWARD S. ZELBO  
DAVID E. BRODSKY  
ARTHUR H. KOHN  
RICHARD J. COOPER  
JEFFREY S. LEWIS  
PAUL J. SHIM  
STEVEN I. WILNER  
ERIKA W. NIJENHUIS  
LINDSEY P. GRANFELD  
ANDRES DE LA CRUZ  
DAVID C. LOPEZ  
CARMEN A. COHALES  
JAMES L. BROMLEY  
MICHAEL A. GERSTENZANG  
LEWIS J. LIMAN  
LEV L. DASSIN

NFII Q. WHORISKEY  
JONGA U. JUANTORRENA  
MICHAEL D. WEINBERGER  
DAVID LEINWAND  
DIANA L. WOLLMAN  
JEFFREY A. ROSENTHAL  
ETHAN A. KLINGBERG  
MICHAEL J. VOLKOVITSCH  
MICHAEL D. DAYAN  
GARIMINI D. BOCCUZZI JR.  
JEFFREY D. KARPFF  
KIMBERLY BROWN BLACKLOW  
ROBERT J. HAYMOND  
LEONARD C. JACOBY  
SANDRA L. FLOW  
FRANCISCO L. CESTENO  
FRANCESCA L. ODELL  
WILLIAM L. MCRAE  
JASON FACTOR  
MARGARET S. PEPPONIS  
LISA M. SCHWETZER  
JUAN G. GIRÁLDEZ  
DIANE MCLAUGHLIN  
BREON S. PEACE  
MEREDITH F. KOTLER  
CHANTAL E. KORIDULA  
BENET J. ORFELY  
DAVID AMAN  
ADAM E. FLEISHER  
SEAN A. O'NEAL  
GLENN P. MCGORRY  
MATTHEW P. SALLERNO  
MICHAEL J. ALBANO  
VICTOR L. HOU  
ROGER A. COOPER  
AMY R. SHAPIRO  
JENNIFER KENNEDY PARK  
ELIZABETH LENAS  
LUKE A. BAREFOOT

PAMELA I. MARCOGI IPSE  
PAUL M. TIGHE  
JONATHAN S. KOLODNER  
DANIEL ILAN  
MEYER H. FEDIDA  
ADRIAN H. LEIPSIK  
ELIZABETH VICENS  
ADAM BRENNEMAN  
ARI MACKINNON  
JAMES E. LANGSTON  
RESIDENT PARTNERS  
  
SANDRA M. ROCKS  
S. DOUGLAS BORISKY  
JUDITH KASSEL  
DAVID E. WEBB  
PENELOPE L. CHRISTOPHOUD  
HOAZ S. MDRAG  
MARY F. ALCOCK  
DAVID H. HENNINGTON  
HEIDI H. ILGENFRITZ  
HUGH C. CONROY JR.  
KATHLEEN M. EMBERGER  
WALLACE I. LARSON JR.  
AVRAM E. LUFT  
ANDREW WEAVER  
HELENA K. GRANNIS  
GRANT M. BINDER  
JOHN V. HARRISON  
CAROLINE F. HAYDAY  
DAVID FLECHNER  
RESIDENT COUNSEL  
  
LOUISE M. PARENT  
OF COUNSEL

March 2, 2015

BY EMAIL AND ECF

Honorable Thomas P. Griesa  
United States District Court for  
the Southern District of New York  
500 Pearl Street  
New York, New York 10007

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

Dear Judge Griesa:

I write to respond to issues raised by plaintiffs in their letter to the Court of last Thursday, February 26, 2015 (“Pl. Ltr.”).

As demonstrated in the February 17 briefs of the Republic and Citibank, the \$8.4 billion in outstanding Argentine Law Bonds<sup>1</sup> are DFCI, not External Indebtedness, and therefore are not covered by the FAA’s *pari passu* clause by its express terms. That is so because, consistent with the definition of DFCI, all of the Argentine Law Bonds were “offered exclusively” in Argentina. FAA at 17 (Ex. ZZ); Republic Br. at 17-22; Citibank Br. at 14-16. Moreover, as to the \$2.3 billion in Argentine Law Bonds issued in 2005 and 2010 in exchange for defaulted local Argentine debt (which were also “offered exclusively” in Argentina), those bonds constitute DFCI for the additional reasons that they were issued in exchange for (i) debt

<sup>1</sup> Unless otherwise indicated, defined terms have the meanings assigned in the Republic’s Memorandum in Further Support of Citibank’s Motion to Vacate the July 28 Order and in Opposition to Any Injunctive Relief, dated February 17, 2015 (the “Republic Br.”). Unless otherwise indicated, all exhibits are attached to the Declaration of Kristin A. Bresnahan, dated February 17, 2015.

specifically identified in the FAA as constituting DFCI, and (ii) debt payable in Argentine pesos. FAA at 17 (Ex. ZZ); Republic Br. at 7, 22-23; Citibank Br. at 12-14.

In their February 26 letter, plaintiffs challenge the latter contention – *i.e.*, that the Argentine Law Bonds are DFCI to the extent they were issued in exchange for Argentine debt payable in pesos. Pl. Ltr. at 2. Plaintiffs are wrong.

*First*, plaintiffs are wrong to argue that it is somehow too late to present to the Court the fact that the Argentine Law Bonds were issued in exchange for defaulted indebtedness that in 2002 had been legally made payable in the currency of the Republic – *i.e.* pesified – and therefore that the Argentine Law Bonds satisfied another subparagraph of the definition of DFCI. *See* Pl. Ltr. at 2. Plaintiffs’ position makes no sense. The Court continued the September 26 hearing, ordering discovery and further briefing, based on *plaintiffs’ request* that the Court “allow the parties an opportunity to develop the record.” Sept. 26, 2014 Hr’g Tr. at 41:2 (Ex. E). In particular, plaintiffs told the Court that they wanted to “find out about the nature of [the Argentine Law Bonds] when they were issued, how they were payable, and all of those facts which are necessary to make the distinction [as to which bonds are DFCI].” *Id.* at 22:6-10. The extensive discovery that ensued – including the production of thousands of pages of documents and dozens of Argentine laws, decrees, and resolutions – demonstrated that the defaulted Argentine law bonds were in 2002 made payable in pesos, and Argentine Law Bonds issued in exchange for the defaulted obligations are therefore DFCI. *See* Republic Br. at 10-11, 22. There is no basis for plaintiffs’ assertion that Citibank and the Republic should now be foreclosed from presenting these facts to the Court in the briefing that the Court expressly contemplated would follow discovery.

*Second*, plaintiffs are incorrect that the Republic’s defaulted Argentine law debt was not “payable in pesos” because the Republic declared a moratorium on its debt in 2001. *See* Pl. Ltr. at 2. The FAA excludes from the *pari passu* clause all debt offered in exchange for debt *payable* in pesos – not *paid* in pesos – and the 2002 pesification made existing Argentine law bonds “payable” in pesos. Republic Br. at 22; Citibank Br. at 13-14. Plaintiffs cannot seriously question that defaulted Argentine law debt remained payable after the Republic’s default,<sup>2</sup> and that by virtue of Argentine law – as confirmed by the Argentine Supreme Court – it was payable in pesos.<sup>3</sup> The Argentine Law Bonds denominated in dollars that were subsequently issued in exchange for this defaulted debt therefore fall squarely within the example of foreign currency indebtedness issued in exchange for indebtedness “*payable in the lawful currency of the Republic.*” FAA at 17 (Ex. ZZ) (emphasis added). Plaintiffs’ argument that the pesification should be disregarded because owners of debt payable in pesos could receive dollar-denominated Argentine Law Bonds ignores the plain language of the FAA that defines as DFCI “indebtedness payable . . . in a currency other than the lawful currency of the Republic of Argentina which is

---

<sup>2</sup> Just as plaintiffs’ New York law-governed debt remained “payable” (in dollars) after default.

<sup>3</sup> Foreign currency-denominated debt governed by Argentine law and exempt from the Republic’s moratorium was likewise paid in pesos after pesification, thereby refuting any argument that the law did not alter the currency in which Argentine law debt was paid *or* payable. *See* Supplemental Declaration of Juan Duggan ¶¶ 5-10, dated Mar. 1, 2015 (Ex. A to the Letter from K. Wagner to J. Griesa, dated Mar. 2, 2015, Dkt. #751).

. . . (b) issued in payment, exchange, substitution, discharge or replacement of indebtedness payable in the lawful currency of the Republic of Argentina . . . .” *Id.*

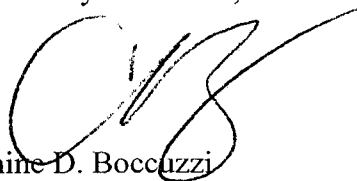
Plaintiffs are also wrong that recognizing the Republic’s pesification of Argentine law governed debt would somehow violate plaintiffs’ rights under the FAA. Pl. Ltr. at 2-3. Nothing in the FAA or the *pari passu* clause prevented the Republic from changing the payment currency of debt governed by Argentine law. Indeed, as Argentine-law governed instruments, this indebtedness was and remains subject to Argentine legislative and judicial processes. No action by the Argentine government with respect to the pesification of this debt has been, or could ever be, claimed to be a breach of any obligation under the FAA. *See* Citibank Br. at 5-6 n.19 (“[g]overnments might use their legislative power to modify the terms of bonds issued under domestic law, thus legalising actions that might otherwise constitute a breach of contract for bonds issued under a foreign law”). Even prior to the Republic’s default in 2001, this locally issued, locally offered debt was plainly DFCI and therefore not External Indebtedness. *See* Republic Br. at 8-9. Once the debt was pesified, and therefore payable in Argentine pesos, it also failed to meet the definition of External Indebtedness (which requires that the debt be payable in a non-Republic currency) for that reason as well, as plaintiffs have already conceded. *See* Pl. Br. at 7, July 11, 2014, Dkt. #586 (conceding that indebtedness payable in pesos is not External Indebtedness). It would be wholly contrary to the FAA’s definition of DFCI to argue, as plaintiffs do here, that debt issued in exchange for these non-External Indebtedness obligations must somehow be classified now as External Indebtedness.

In any event, all of the Argentine Law Bonds constitute DFCI because they were “offered exclusively in Argentina.” Republic Br. at 17-22; Citibank Br. at 14-16. Plaintiffs claim that the Argentine Law Bonds were offered outside of Argentina because some beneficial owners of the debt reside outside of Argentina, *see* Pl. Br. at 15-16, 20-21, 23-25, but the FAA’s definition of DFCI does not hinge on whether owners are Argentine or non-Argentine. Unlike other sovereign borrowers that issued debt in 1994 and chose a definition of External Indebtedness that explicitly hinged on the bondholders’ nationality, *see* Republic Br. at 20-21, the FAA contains a narrower definition of External Indebtedness that focuses instead on *where the indebtedness was offered*. *See* FAA at 17 (Ex. ZZ) (defining DFCI as, *inter alia*, “indebtedness . . . offered exclusively within the Republic of Argentina”); Republic Br. at 20-22.

As the Court correctly found the first time it was presented with plaintiffs’ arguments that the Argentine Law Bonds were covered by the Amended Injunctions, these bonds are in fact different and have always been treated as such. *See* June 27, 2014 Hr’g Tr. at 26:23-24 (Ex. 6 to the Declaration of Charles E. Enloe, dated February 17, 2015). The Court has since repeatedly reiterated that correct view. And indeed the differences between the New York law governed “Exchange Bonds” issued to owners of defaulted FAA debt and the Argentine Law Bonds offered locally and in exchange for other local debt further confirm that conclusion.

That these obligations satisfy not just one, but several of the definitions of DFCI in the FAA, definitively refutes plaintiffs' contention that the *pari passu* clause may be extended to enjoin payment on the Argentine Law Bonds. *See* Republic Br. at 15, 10-11; Citibank Br. at 5-6 n.19.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CDB', with a long horizontal flourish extending to the right.

Carmine D. Boccuzzi

cc: Counsel of Record (by ECF)