



**BANCO CENTRAL DE CHILE  
FISCALÍA**

January 28, 2010.

Ms. Katherine Darras

International Swap Derivatives Association, Inc.  
Latin America Committee  
360 Madison Avenue, 16th Floor, New York,  
NY 10017, U.S.A.

Dear Ms. Darras,

It was a pleasure meeting you here in Santiago last year.

I am writing to you regarding your letter dated November 6th, 2009 as to the scope of the application of Resolutions 1427 and 1457 adopted by the Board of the Central Bank of Chile ("CBC") on August 7th, 2008 and January 22nd, 2009 respectively (the "Resolutions"). In this letter you express concerns raised by the member of ISDA as to the terms and conditions of these Resolutions. Specifically, these concerns relate to the suspension, during the occurrence of specific "pre-bankruptcy events", of the execution and enforceability of close out netting provisions contemplated by the ISDA Master Agreements for derivatives operations, when one of the parties to such Agreement is a *Chilean banking entity or an institutional investor*.

As you may recall, at the meeting held in Santiago with the Legal Department of the CBC, we specifically explained to you the arguments underlying the Resolutions. Furthermore, we provided you a copy and a translation of the Minutes of the Ordinary Board Session Nr. 1457, held on January 22, 2009. This document contains a comprehensive analysis of the issue, and of the policy rationale behind the Resolutions, which is to facilitate the development of derivatives transactions in accordance with a legal framework that protects the stability of the payment system and **ensures legal certainty** to both local and foreign parties to a Master Agreement for derivatives transactions recognized by the CBC.

In summary, pursuant to the Resolutions, the parties to such a Master Agreement shall be subject to a legal and regulatory framework that allows them to compensate their connected obligations "*obligaciones conexas*," in case of default events, with the sole exception of those specific situations mentioned in the Minutes. Recall, that before the Chilean Capital Reform of 2007 and enactment of the Resolutions, close out netting was totally prohibited for banking entities in forced liquidation. Moreover, I would like to stress that the Resolutions make it clear that compensation will always take place in the event of forced or mandatory liquidation of a banking enterprise or bankruptcy of other entities. Therefore the above-referred exceptions only imply a suspension of compensation until the corresponding situation is regularized or bankruptcy or forced liquidation declared. Besides, the Resolutions safeguard the right of the parties to demand the early termination of the transactions concerned in accordance with the principle of contractual freedom, which is by no means affected by these regulations. Consequently, such circumstances do not impede the execution of termination events occurred prior to the specified suspension events before mentioned.



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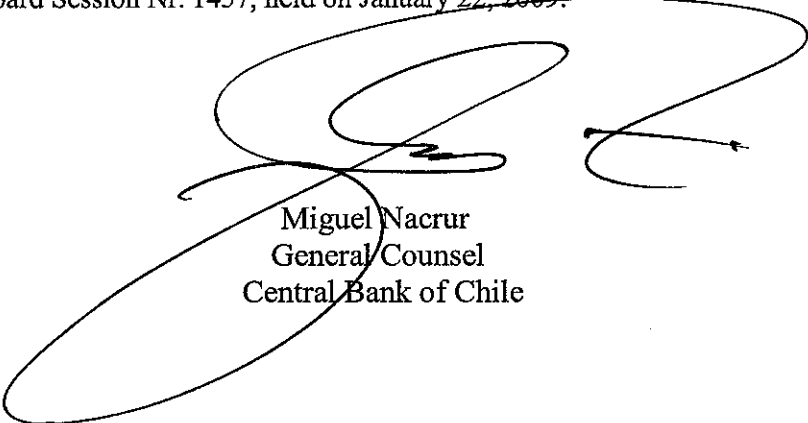
The Minutes also detail explicitly how, for the adoption of the above cited Resolutions, the various suggestions made by Chilean financial supervisory agencies as well as by the Association of Chilean Banks and Financial Institutions (ABIF), and other specialized lawyers on these issues, were received and analyzed. Furthermore, said document refers to the CBC recognition of the Master Agreements for the local derivatives market drafted and approved by the ABIF, which includes the same general terms and conditions mentioned above, for the purpose of the netting of connected obligations in the event of forced liquidation.

I would like to note that the terms and conditions set out by the Resolutions do not differ substantially from the general measures adopted in other jurisdictions in order to deal with the aforementioned objectives, regarding the enforcement of contractual close out netting provisions applicable in connection with cases of bankruptcy, forced liquidation or other regularization measures applicable to banking entities or other qualified financial intermediaries. For example, in the U.S.A. this is the case of the statutory powers of some agencies such as the FDIC and the doctrines applied by Federal or State Courts to safeguard the financial system (e.g., authority of Conservators and Receivers to transfer and even repudiate contracts; the "ring fencing" approach applicable to New York State branches of non-U.S. banks, among others).

Consequently, we would appreciate that you consider the arguments referred to above –and explained in detail in the Minutes- which in our opinion remove any doubt as to the legal certainty of the scope of application of the Resolutions. This conclusion on legal certainty is independent of your assessment of whether credit exposure is likely to be measured on a net or gross basis by the foreign counterparties to the Master Agreements recognized by the CBC, as it is noted in your letter. Therefore, even if the binary criterion you mention is applied to assess the Chilean legal framework on netting, it should be recognized that the new legislation and the Resolutions have granted ample legal certainty to the netting provisions included in Master Agreements for derivatives operations in case of bankruptcy or forced liquidation, in a context where the Banking Legislation previously in force excluded the enforcement of such netting provisions.

Finally, and considering that your letter was publicly disclosed at the ISDA's website, we would appreciate if you could give the same treatment to both this communication and the English version of the Minutes of the Ordinary Board Session Nr. 1457, held on January 22, 2009.

Sincerely,



Miguel Nacur  
General Counsel  
Central Bank of Chile

c.c.: Mr. José De Gregorio, CBC Governor  
Mr. Kevin Cowan, CBC Financial Policy Division Manager.  
Mr. Beltrán de Ramón A. CBC Director of Financial Operations  
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