

Mexico City, November 10, 2000

**NETTING OF OTC FINANCIAL CONTRACTS
IN LATIN AMERICA**

BRAZIL - LEGISLATIVE ISSUES

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GAMBLING LAWS IN BRAZIL

Article 1479 of the Brazilian Civil Code:

“Contracts concerning operations of stock exchanges, merchandise or securities, in which the settlement is stipulated exclusively for the difference between the agreed price and the quotation price at the time the settlement is made, are compared to gambling, and are subject, as such, to the provisions of the preceding articles.”

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GAMBLING LAWS IN BRAZIL

- **Brazilian Civil Code was enacted in 1916 when the market was not sophisticated.**
- **Stock and Futures exchanges operate without problems.**
- **Derivative transactions carried out in compliance with Central Bank and the Brazilian Securities Commission should not be viewed as gambling.**
- **Absence of negative legal decisions.**
- **Bill of Law in Congress to create a new Civil Code does not address the issue and currently maintain the same type of provisions.**

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BANKRUPTCY LAW

- Article 43 of the Decree-Law No. 7661 of June 21, 1945 (the “Brazilian Bankruptcy Law”) establishes that bilateral agreements are not terminated by the declaration of bankruptcy, and may be fulfilled in the event the *Síndico* (trustee of the bankrupt estate) should deem this to be in the interest of the estate.
- Solution: amendment to the Bankruptcy Law.
- Bill of Law in Congress does not solve the problems.

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PROVISIONAL MEASURE No. 2040/00

- **Provisional Measure 2040/00 provides for safeguards ensuring the validity of close-out netting clauses in transactions carried out in a specific clearing system.**

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CONCLUSION

- **Gambling Laws have not and are not affecting derivatives transactions in Brazil. Of course, an amendment to such provisions would be wellcome.**
- **The *Síndico* ability to “cherry pick” should not be unlimited and this should be eliminated in a future bankruptcy law.**
- **Provisional Measure 2040/00 is indeed an advance towards clear regulations.**
- **New laws would of course eliminate doubts and uncertainties still existing.**