

NASD REGULATION AWARD  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Name of Claimant

CS First Boston Corp.

94-02088

Name of Respondent

Prabank Capital Ltd.

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**REPRESENTATION**

For claimant CS First Boston Corp. ("claimant") appeared Anthony J. DiSarro, Esq. of the law firm of Winston & Strawn located in New York, New York.

For respondent Prabank Capital Ltd. ("respondent") appeared Jonathan Kord Lagemann, Esq. of New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on June 2, 1994. Claimant's Submission Agreement was signed on August 16, 1994.

Statement of Answer was filed on October 14, 1994. Respondent's Submission Agreement was signed on November 3, 1994.

Reply to Counterclaim was filed on November 17, 1994.

**HEARING INFORMATION**

Hearing Sessions/Dates:	August 2, 1995	-	Two Sessions
	August 3, 1995	-	Two Sessions
	October 9, 1995	-	Two Sessions
	October 10, 1995	-	Two Sessions
	December 14, 1995	-	Two Sessions
	March 26, 1996	-	Two Sessions
	April 23, 1996	-	Two Sessions
	April 24, 1996	-	Two Sessions
	July 23, 1996	-	Two Sessions

August 5, 1996	-	Two Sessions
August 6, 1996	-	Two Sessions
November 25, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that, during 1992 and 1993, CS First Boston and numerous other investment and commercial banks engaged in when-and-if-issued ("WIFI") trading of Argentine Bonds. Claimant further alleged that, at the time the trades were entered into, it was uncertain whether the Argentine Bonds would be issued. Claimant contended that market practices for WIFI trading in Argentine Bonds were formally adopted by the Emerging Markets Traders Association ("EMTA"). Claimant asserted that, in July 1992, the EMTA prepared and distributed to WIFI market participants a standard form of confirmation to be used for WIFI trades in Argentine Bonds which contained a provision prescribing that, if the WIFI trade reflected in the confirmation did not settle by June 30, 1993, the trade would expire. Claimant further asserted that, in October 1992, it was confirmed by the EMTA that confirmations containing this provision should be interpreted to mean that those trades would expire if the bonds had not yet been issued by that date.

Claimant alleged that, in November 1992, as agent for its affiliate, it entered into three WIFI trades with respondent pursuant to which it agreed to purchase and respondent agreed to sell Argentine Bonds. Claimant further alleged that each of the confirmations for the three trades had an expiration clause identical to the one contained in the EMTA standard form of confirmation. - - -

Claimant maintained that, in December 1992, it became apparent to market participants that the Argentine Bonds would be issued into escrow so that an interest reconciliation process could be performed. Claimant further maintained that several market participants became concerned whether delays in the reconciliation process would cause the bonds to remain in escrow after June 30, 1993 and some participants even proposed that the expiration date in the confirmations be changed to December 31, 1993. Claimant alleged that, in December 1992 and in February 1993, it agreed to purchase a total of \$4,000,000.00 in principal amount of Argentine Bonds from respondent and that the confirmations for these trades contained a December 31, 1993 expiration date.

Claimant alleged that eventually the EMTA announce that it was unnecessary to amend the EMTA standard form confirmation to extend the expiration dates because parties to those confirmations should read the expiration clauses to mean that so long as the bonds were issued into escrow by June 30, 1993, the trades would not expire. Claimant alleged that, on April 24, 1993, it entered into an additional WIFI trade with respondent to purchase \$3,000,000.00 in principal amount of Argentine Bonds and that, in light of the EMTA's recent pronouncement regarding the interpretation of the expiration clause, the confirmation for this trade contained an expiration date of June 30, 1993.

Claimant maintained that, in April 1993, the Argentine Bonds were issued into escrow so that the interest reconciliation process could begin, but that it became apparent that the bonds would not be released from escrow until after June 30, 1993. Claimant further maintained that, in June 1993, it followed EMTA's recommendation and sent letters to all of its existing WIFI trade counterparties requesting that they acknowledge that the WIFI trades would settle as soon as practicable after the bonds were first released from escrow. Claimant alleged that respondent refused to execute that acknowledgement and, on June 17, 1993, respondent advised claimant that, unless it was able to deliver the bonds to claimant by June 30, 1993, all WIFI trades between them would expire. Claimant contended that, on July 6, 1993, it was formally notified by respondent that because the bonds had not been released from escrow by June 30, 1993 all agreements between claimant and respondent expired.

Claimant alleged that respondent's actions constituted a repudiation and breach of its contractual obligations to claimant. Claimant contended that the purpose and intent of the expiration clause in the confirmation agreements was to provide a means to terminate the trades in the event that the implementation of the Brady Plan in Argentina, and the resulting issuance of the bonds, never occurred or was substantially delayed. Claimant further contended that issuance of the bonds into escrow on April 7, 1993 eliminated the contingency for which the expiration clause was drafted.

Respondent maintained that none of claimant's confirmations or other agreements with respondent referred to the EMTA and or recited that the trades would be governed by the EMTA. Respondent further maintained that if claimant's confirmations made such recitals, it would never have agreed to the trades because it was not an EMTA member and it did not know what the EMTA's rules, regulations or pronouncements were.

Respondent contended that, if claimant had informed it about EMTA's market practice which would extend the June 30, 1993 expiration date indefinitely, provided the bonds had been placed in escrow prior to that date, it may or may not have canceled the trades and claimant would not have any losses to complain about. Respondent further contended that, at the time of the April 15, 1993 trade, claimant was in possession of material information which it did not share. Respondent maintained that the EMTA's market practice was material because when-and-if-issued trading is done on a cashless basis in which prices historically tend to fall as the settlement date nears because many traders do not have funds to pay for all of their trades. However, according to respondent, because claimant knew that the expiration and settlement dates had been extended by and between EMTA members, claimant had information that prices would likely rise.

Respondent alleged that in or about early June, 1993, it noticed that it did not have confirmations for December and February bond trades and following respondent's inquiry claimant sent confirmations on June 9, 1993. Respondent further maintained that the confirmation was deceptive because it was dated December 9, 1992 yet it referenced an EMTA memorandum dated April 15, 1993 and it also referenced an expiration date of December 31, 1993. Respondent asserted that it did not accept the confirmation sent by claimant and it sent its own confirmations for the December and February trades which contained the same terms as the confirmations for the other trades with claimant and it asked claimant to indicate its

approval by initial. Respondent further asserted that claimant did not approve the confirmations and since there was no agreement on material aspects of the transactions, the trades were not confirmed and never occurred.

Respondent asserted a counterclaim against claimant and requested that claimant be sanctioned for bringing a frivolous case and that it be reimbursed its costs in defending this proceeding.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$2.8 million plus interest, reasonable attorneys' fees and the costs of this arbitration. Claimant also requested that respondent's counterclaim be dismissed prior to the hearing and that it be awarded its costs and expenses, including reasonable attorneys' fees, incurred in preparing the Reply to the Counterclaim.

Respondent requested that claimant's claim be dismissed in its entirety, that claimant be sanctioned for bringing a frivolous case, that it be reimbursed its executive and other costs in defending this frivolous proceeding and that the costs of this proceeding be assessed claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing on August 2, 1995, claimant request that it be permitted to withdrew all claims against respondent, except the claims with respect to the February 24, 1993 trade. Pursuant to Rule 10305 (formerly Section 16) of the Code, the panel dismissed without prejudice all claims against respondent with the exception of the claims relating to the February 24, 1993 trade with leave for claimant to reassert the claims during the course of the hearings in this matter. The panel further determined that, if claimant did not reassert these claims, then these claims would be dismissed with prejudice in the final award.

The parties have agreed that the award in this matter may be executed in counterpart copies or that a handwritten, signed award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against respondent, including the claims previously dismissed by the panel without prejudice, be and hereby are dismissed with prejudice.
2. All counterclaims against claimant be and hereby are dismissed in their entirety.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other claims are denied.

### **FORUM FEES**

Pursuant to Rule 10205 (formerly Section 44(c)) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee paid by claimant and the \$250.00 filing fee paid by respondent and have assessed the following forum fees:

$$24 \text{ hearing sessions} \times \$1,000.00 = \$24,000.00$$

Forum fees are assessed against:

1. Claimant be and hereby is liable for the sum of \$12,000.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD which shall be applied toward the total amount assessed. Therefore, claimant is liable and shall pay \$11,000.00 to the NASD.
2. Respondent be and hereby is liable for the sum of \$12,000.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited \$600.00 with the NASD which shall be applied toward the total amount assessed. Therefore, respondent is liable and shall pay \$11,400.00 to the NASD.

Fees are payable to the NASD Regulation, Inc.

**Arbitrators' Signatures**



**Louis H. Miron, Esq.  
Chairperson-Industry Arbitrator**

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**Leon Goldsholl  
Industry Arbitrator**

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**James J. Noone  
Industry Arbitrator**

**Date of decision: February 24, 1997**

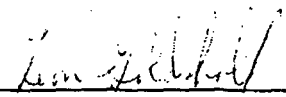
**I, Louis H. Miron, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.**



**Louis H. Miron, Esq.**

Arbitrators' Signatures

\_\_\_\_\_  
Louis H. Miron, Esq.  
Chairperson-Industry Arbitrator

  
\_\_\_\_\_  
Leon Goldsholl  
Industry Arbitrator

\_\_\_\_\_  
James J. Noone  
Industry Arbitrator

Date of decision: February 24, 1997


I, **Leon Goldsholl**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Leon Goldsholl

**Arbitrators' Signatures**


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**Louis H. Miron, Esq.**  
**Chairperson-Industry Arbitrator**

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**Leon Goldsholl**  
**Industry Arbitrator**

  
\_\_\_\_\_  
**James J. Noone**  
**Industry Arbitrator**

Date of decision: February 24, 1997

I, James J. Noone, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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**James J. Noone**