

Exhibit RWS-008

Witness Statement of Sr. Carlos Quiroz,
January 30, 2012

UNDER THE RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES

Renée Rose Levy de Levi,
Claimant

v.

The Republic of Perú,
Respondent

ICSID Case No. ARB/10/17

Witness Statement for Carlos Quiroz Montalvo
Superintendencia de Banca y Seguros

I. Introduction

1. My name is Carlos Quiroz Montalvo, and I am currently the Chief of Supervision and Projects for SBS' Deputy Superintendency of Banking and Microfinance (Visit Lead) I am a Certified Public Accountant since 1998 and I graduated from Universidad Nacional Federico Villareal, Peru (with an specialization in Auditing).

2. Amongst the most important specialization studies that I have undertaken -both in Peru and abroad, I can highlight those related to credit, finance, derivative products, risk management in financial institutions, banking regulation and supervision, auditing, money laundering, etc.

3. Likewise, I have participated as an active member of an international cooperation project aimed at reviewing the new inspection procedures for the Financial Intermediation Institutions Superintendency of Uruguay per the request of the Association of Banking Supervisors of the Americas (ASBA).

4. I have been acting as the head of inspection visit teams for more than 25 years. I have carried out inspection visits to most of the companies in the country's financial system, as well as cross-border visits to subsidiaries and branches of Peruvian banks in Colombia, Bolivia and Panama.

5. Finally, I have also acted as intervenor in four additional institutions of Peru's financial system (before BNM's intervention), with favorable results in the performed activities.

6. I was the head of the SBS inspection team that inspected BNM from August to October 2000.

7. I also was one of the first SBS intervenors appointed to manage BNM during its intervention in December 2000, along with Manuela Carrillo. I served as an intervenor for two months. When I left, I was replaced by Luis Carrillo.

8. Then, in 2002, I was chosen by SBS to lead an investigation into the responsibility of BNM's managers and directors for BNM's failure. I conducted the investigation between February 2002 and July 2002, and produced reports for SBS on the role of BNM's managers and directors in contributing to the failure of BNM and their responsibility for BNM's violations of Peruvian banking law.

II. Inspection Visit of BNM in 2000

9. I was head of the inspection team that conducted BNM's annual inspection visit from August 2000 to October 2000. During the inspection, the team examined a sample of BNM's loans and other financial operations. Within this sample, the inspection team found several areas in which BNM's financial information was inaccurate. As the inspection team

discovered, the distortions in BNM's financial records hid the true extent of the delinquencies in BNM's loan portfolio, the riskiness of its assets, and the true amount of capital it had. The team concluded that BNM had not been presenting its real financial situation to SBS.

10. Specifically, the inspection team discovered the following issues: (i) BNM did not accurately classify the risk of its loans and borrowers; (ii) BNM did not report restructured and refinanced loans as risky loans, as is required by SBS regulations; (iii) BNM improperly recorded as income the accrued interest on overdue loans; and (iv) BNM had an overconcentration of deposits. I will explain what the inspection team found, the effect of BNM's questionable accounting practices on the appearance of its financial records, and what actions we recommended that BNM's management take to correct the problems. As I will discuss in more detail below, BNM's management did not dispute our findings. In fact, in several cases, they explicitly accepted them and agreed to take actions to remedy the problems. However, our main recommendation was for BNM to take action to improve BNM's solvency with an infusion of new capital. However, even though BNM's management was aware of BNM's financial problems, they chose not act on SBS's main recommendation and did not capitalize the bank.

A. Misclassification of the Risk of BNM's Loans

11. One of the most important areas examined by the SBS during the inspection was whether BNM had been properly classifying the risk of its borrowers and the risk of the loans that it extends to those borrowers. This is an essential part of SBS's prudential supervision because the safety and soundness of a bank depends on how well it manages its exposure to risk. Therefore, it is very important to verify that the bank – which is responsible for classifying the

risk of each borrower and loan – is properly applying SBS regulations on loan risk classification. SBS Resolution No. 572-97 regulates in detail how a bank should classify its credit risk.¹

12. According to SBS regulations, a bank is also required to record an expense against its income in order to take into account the risk of loss for any asset it holds, such as a loan or lease. This expense item is called a “provision.” Loan loss provisions, therefore, reflect the bank’s possible loss if the borrower defaults on its loan. Because provisions reduce the bank’s income before any borrowers have defaulted, the bank is able to plan ahead and make sure that it will have enough capital in the event that borrowers do default on their loans. Loans are just one example – the concept of provisioning applies to any contingent asset and the risk that the bank may not be able to recover the value of the asset.

13. For loans, SBS regulations set five levels of risk. The category for loans with the lowest risk is “normal.” In order of increasing risk, the other four loan classifications are: loans with potential problems, deficient loans, doubtful loans, and lost loans.² The amount of loan loss provisions that a bank must allocate depends on the risk classification of loan, with greater loan loss provisions required for riskier loans. During an inspection visit, SBS examines a bank’s loan documentation to see if the bank has properly classified the risk of the loan and has recorded the appropriate amount in loan loss provisions.

14. During BNM’s August 2000 inspection visit, the SBS inspection team examined a sample of BNM’s loans equal to 58% of BNM’s total loan portfolio, using the financial

¹ Resolution No. 572-99, August 20, 1997 (“SBS Resolution No. 572-99”), Ch. IV Art. 2.2 [Exhibit R-023].

² SBS Resolution No. 572-99, Ch. II, Art. 1 [Exhibit R-023].

statements dated 30 June 2000.³ Within that sample, the inspection team found that BNM had misclassified more than half of the loans in the sample.⁴ BNM had consistently understated the risk of its borrowers and their loans, and therefore BNM overstated the health of the loan portfolio that SBS examined. For example, for BNM's commercial loans, BNM's financial records classified 75% of the loans in the sample SBS examined as "normal" and therefore as having the lowest risk of default. However, after examining the documents underlying the loans, the SBS inspection team found instead that only 43% of the loans in the sample were properly classified as "normal." The other 57% were in one of the higher risk classifications. In a third of the misclassifications, BNM's classification understated the risk of its loans by at least two levels.⁵ The chart below shows the discrepancies that the SBS inspection team found:⁶

³ SBS Inspection Visit of BNM, Informe No. DESF "A"-168-VI/2000, November 22, 2000 ("SBS Inspection Visit Report of 2000"), p. 1 [Exhibit R-065].

⁴ SBS Inspection Visit Report of 2000, p. 10 [Exhibit R-065].

⁵ SBS Inspection Visit Report of 2000, p. 11 [Exhibit R-065].

⁶ SBS Inspection Visit Report of 2000, p. 10 [Exhibit R-065].

Commercial Loan Classification	According to SBS			According to BNM		
	(in thousands of soles)	Amount	%	Borrowers	Amount	%
Loan Portfolio	2,221,412			2,221,412		
Evaluated Sample	1,288,386	100	295	1,288,386	100	295
Normal	559,892	43	109	971,771	75	187
Critical Loans (risky loans)	728,494	57	186	316,615	25	108
• Loans with potential problems	401,986	31	69	211,075	16	55
• Deficient	222,600	17	60	85,400	7	38
• Doubtful	86,521	7	44	13,084	1	11
• Lost	17,406	1	13	7,057	1	4

15. Because BNM had not properly classified the risk of over half of the loans that SBS examined, BNM also did not have the necessary amount of loan loss provisions for those loans. The SBS inspection team initially found that BNM had a deficit of loan loss provisions equal to S/. 65.7 million (US \$18.8 million).⁷ After conversations with BNM's management, the SBS inspection team was informed that BNM would partially increase its loan loss provisions in September 30, 2000.⁸ Even with that increase, however, at the time that the inspection visit report was issued on November 22, 2000, BNM still had a deficit of loan loss provisions for its commercial loans equal to S/. 52.9 million (US \$15.2 million).⁹

⁷ SBS Inspection Visit Report of 2000, p. 11 [Exhibit R-065].

⁸ SBS Inspection Visit Report of 2000, p. 11 [Exhibit R-065].

⁹ SBS Inspection Visit Report of 2000, p. 11 [Exhibit R-065].

16. SBS found the same problems in BNM's classification of loan risk in BNM's consumer loan portfolio. As a result, BNM had an additional deficit of loan loss provisions of S/. 454,000.¹⁰

17. The SBS inspection team also examined the portfolio of consumer loans that BNM had transferred off its balance sheet temporarily in exchange for Treasury bonds, under the loan portfolio exchange program created by Supreme Decree 099-99-EF.¹¹ The inspection team again found discrepancies in the way those loans had been recorded: BNM had misclassified the loans in that portfolio as well, and had an additional loan loss provision deficit of S/. 13 million.¹²

18. In total, BNM had a deficit of loan loss provisions – for only the sample of loans examined by SBS – of S/. 79.182 million at the time of SBS's report (the sum of S/. 65.690 million for commercial loans, S/. 454,000 for consumer loans, and S/. 13.038 million for the loan portfolio exchange program loans).¹³

19. SBS also found that BNM had not accurately stated its delinquency rate. The delinquency rate is the percent of BNM's total loan portfolio that was in arrears or that was being collected under a judicial order. BNM had stated that only 5.8% of its loan portfolio was delinquent. But, the SBS inspection team found that BNM was hiding its overdue loans by

¹⁰ SBS Inspection Visit Report of 2000, p. 14 [Exhibit R-065].

¹¹ Supreme Decree 099-99-EF, 18 June 1999. Under the loan portfolio exchange program, banks could exchange risky loans for Treasury bonds as part of a temporary swap that allowed the banks to delay increasing their loan loss provisions for up to five years. [Exhibit R-30].

¹² SBS Inspection Visit Report of 2000, p. 14 [Exhibit R-065].

¹³ SBS Inspection Visit Report, p. 5, 11 (after the bank partially increased the provisions, it still had S/. 52.9 million as the deficit of loan loss provisions for commercial loans) [Exhibit R-065].

refinancing and restructuring them, or converting most of them into leaseback operations, and thus failing to classify them as overdue. I will explain each of these tactics in more detail below. Taking into account these hidden overdue loans, BNM's delinquency rate increased to 9.3%.¹⁴

20. There were two main impacts of BNM's misclassification of risk on BNM's financial records. First, BNM was overstating the health of its loan portfolio and hiding the true degree of risk to which it was exposed. Second, BNM did not have sufficient loan loss provisions, and thus, BNM had not recorded the appropriate expenses on its income statement. As a result, BNM was understating the expense of holding such risky assets and therefore overstating its income.

21. The SBS inspection team provided memos to BNM's management setting out explicitly and in detail what the team had found. In the memos, the SBS inspection team asked BNM's management to adopt corrective measures to rectify the recording of such loans and to increase its loan loss provisions by the amount that SBS has determined based on the sample of BNM's loan portfolio that was examined.¹⁵ Risk Manager, Edgardo Alvarez Chávez, replied to the inspection team memos confirming acknowledgment of SBS' findings and that they would begin to implement measures to increase the loan loss provisions according to SBS' findings¹⁶.

¹⁴ SBS Inspection Visit Report of 2000, p. 1 [Exhibit R-065].

¹⁵ See Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Overdue Loans, Memorandum No. 27-2000-VIO/NM, September 28, 2000 [Exhibit R-161]; Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Refinanced Loans, Memorandum No. 32-2000 VIO/NM, October 12, 2000 [Exhibit R-164]; Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Overdue, Refinanced, and Restructured Loans, Memorandum No. 37-200-VIO/NM, October 30, 2000 [Exhibit R-165].

¹⁶ See Memorandum from BNM to SBS regarding Memorandum No. 32-2000-VIO/NM on Refinanced Operations (undated) [Exhibit R-166]

At no point did BNM's management challenge the findings of the inspection visit team or disagree with the team's recommendations for more loan loss provisions.

22. BNM's response to the above memos highlight that BNM's management was (a) aware of the issues addressed as of the beginning of October 2000; (b) did not dispute SBS's findings; and (c) affirmed that they would take action to correct the problems that SBS had found.

B. Refinanced and Restructured Loans Improperly Classified as Current Loans

23. The SBS inspection team also found a large number of loans that were overdue, restructured, or refinanced that BNM continued to record as part of its "current portfolio" ("cartera vigente"). These mis-recorded loans were worth S/. 141.7 million (US \$40.6 million).¹⁷ BNM's failure to record these loans properly was in violation of SBS's accounting rules, which require a bank to record overdue loans, as well as restructured and refinanced loans in the appropriate accounts as laid out in SBS Accounting Manual. How a bank records such loans on its books has important consequences for the bank's financial statements. For loans in the "current portfolio," a bank may record interest that it has earned but not yet collected (also called "accrued interest") as income. For loans in the "overdue portfolio," however, a bank may only record interest as income when it has actually been collected¹⁸. I will discuss in the next

¹⁷ SBS Inspection Visit Report of 2000, p. 3 [Exhibit R-065].

¹⁸ SBS Accounting Manual, October 23, 1992, Item 14, pp. 94-95 [Exhibit R-133]; *enacted by* SBS Resolution Enacting Accounting Manual, Resolución SBS No. 1256-92, October 23, 1992. [Exhibit R-134]; Resolution SBS N° 572-97, Cap. IV Art. 7 [Exhibit R-023].

section that, because BNM failed to properly record these loans, BNM improperly recorded accrued interest and therefore overstated its interest income from these loans.¹⁹

24. BNM also hid overdue loans by restructuring and refinancing them. BNM modified the time frame for the borrower to repay the loan and retroactively created grace periods to hide the delinquency of the loan. But, BNM failed to record these modified loans as having been restructured or refinanced as the law requires. Thus, BNM did not increase the risk classification or change the accounting entry for the loan, as it was required to do, in order to reflect the riskiness of restructured and refinanced loans. SBS regulations are clear that restructured and refinanced loans cannot be recorded as new “normal” loans.²⁰ This is because a bank usually restructures and/or refinances a loan only when a borrower has had difficulty repaying the loan under the original terms.

25. The SBS inspection team noted that BNM’s failure to comply with SBS regulations for recording refinanced and restructured loans was a repeated violation that had been observed in the previous three SBS inspection visits to BNM.²¹ Given that SBS had brought this issue to BNM’s attention several times, BNM’s management must have been aware that it was violating SBS regulations by not properly recording refinanced and restructured loans. In fact, in 1999, SBS fined BNM for continuing to disregard SBS regulations on refinanced and restructured loans.

¹⁹ SBS Inspection Visit Report of 2000, p. 11 [Exhibit R-065].

²⁰ SBS Resolution No. 572-99, Ch. IV Art. 2.2 [Exhibit R-023].

²¹ Letter from SBS to BNM re. Inspection Visit Report for 2000, Oficio No. 12187-2000, November 27, 2000, p. 2, Sec. 3 [Exhibit R-067].

26. The SBS inspection team discovered the higher number of overdue, restructured, and refinanced loans only by closely examining BNM's loan documentation. For example, the inspection team found that even though BNM recorded certain overdue loans as paid by the borrower in cash, a closer look at the documentation revealed that, in fact, the loan had not been paid off by the borrower. Rather, the overdue loan was cancelled by a leaseback operation or replaced by a restructured or refinanced loan.

27. When the bank engaged in a leaseback operation, it purchased an asset from the borrower and leased the asset back to the same borrower. In this way, BNM would use the purchase price that it paid for the asset to cancel the seller/borrower's original, overdue loan. This was how BNM was able to record the overdue loan as closed and paid, to then record a new, "normal" leasing operation in its place.²² BNM's documentation in its information systems for its leaseback operations did not allow to thoroughly examining all of these transactions.

28. In general, BNM's leasing operations were a very large percentage of the bank's entire direct portfolio²³: 36.6%. Out of that large volume of leasing operations, 48% of the leases were leasebacks²⁴. This was a very high proportion of leasing operations for a bank, and, as SBS found within the sample examined during the inspection visit, those leases and leasebacks were mostly used to hide overdue loans. With the proper accounting of these operations, BNM's volume of delinquent loans increased 61% compared to what BNM had

²² SBS Inspection Visit Report of 2000, p. 3, para A.7., p.8, para. I.1. and p.13, para I.5 [Exhibit R-065].

²³ A bank's "direct portfolio" is its portfolio of loans and leases, excluding any indirect loans or loans acquired from an originator.

²⁴ SBS Inspection Visit Report of 2000 at , p.8, para I.1 [Exhibit R-065]

previously reported to SBS, refinanced loans increased 92%, and restructured loans increased 162%.²⁵

29. Between 28 September 2000 and 30 October 2000, SBS inspection team sent three communications to BNM's management informing them about SBS' findings about overdue, restructured and refinanced loans. The inspection team requested BNM's management to review the list of loans improperly recorded that they were able to compile, and to report back to SBS about the corrective measures that they were going to adopt in order to solve this problem²⁶.

30. On 2 October 2000, BNM's management informed SBS that it had reviewed their findings about overdue, restructured and refinanced loans and provided more information in regards to said loans.²⁷ Later in October, BNM's management replied the memo about the refinanced loans, taking note and accepting SBS' findings and promising to carry out the necessary adjustments in their accounting in order to record them properly.²⁸

²⁵ SBS Inspection Visit Report of 2000 at p. 13, Annex 5 [Exhibit R-065].

²⁶ See Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Overdue Loans, Memorandum No. 27-2000-VIO/NM, September 28, 2000 [Exhibit R-161]; Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Refinanced Loans, Memorandum No. 32-2000 VIO/NM, October 12, 2000 [Exhibit R-164]; Memorandum from SBS to BNM's General Manager regarding Inspection Visit Findings: Overdue, Refinanced, and Restructured Loans, Memorandum No. 37-200-VIO/NM, October 30, 2000 [Exhibit R-165]

²⁷ See Memorandum from BNM to SBS regarding Memorandum No. 27-2000-VIO/NM on Overdue Loans, October 2, 2000 [Exhibit R-163]

²⁸ See Memorandum from BNM to SBS regarding Memorandum No. 32-2000-VIO/NM on Refinanced Operations (undated) [Exhibit R-166]

C. Interest Income Improperly Recorded

31. As I have already mentioned, the SBS inspection team found that BNM consistently failed to record overdue loans in the manner required under SBS's prudential regulations. BNM also failed to apply SBS's accounting regulations. When a loan is overdue, it must be recorded in the bank's books as part of the "overdue" portfolio – and it may not be kept in the "current portfolio." This is because different accounting rules apply to the interest earned on overdue loans as compared to current loans. I already explained that interest from overdue loans must only be recorded as income when it is collected, not when the interest is earned or accrued. If bank does not properly record overdue, restructured, and refinanced loans, and instead keeps them in the "current portfolio," the bank is then improperly recording interest income that it has not actually collected. As a result, the bank has overstated its income.

32. The same principle applies to current accounts that have overdue amounts (also called "overdrafts"). In BNM's case, the SBS inspection team found that BNM had overdrafts equal to S/. -943 million and US \$-1 million in current accounts immobilized for 60 days or longer – and yet, these current accounts were still recorded as part of BNM's current portfolio.²⁹ According to SBS regulations on overdrafts³⁰, when a current account has an overdraft for longer than 60 days, a bank must record the current account as part of the overdue portfolio and must then increase its loss provisions to cover the risk of not being able to recover the overdraft amount. Like overdue loans, a bank is no longer permitted to record interest earned on the overdraft amount until the bank is able to collect that interest.

²⁹ SBS Inspection Visit Report of 2000, p. 3, para A.10 [Exhibit R-065].

³⁰ SBS Resolution No. 572-99, Ch. IV Art. 7 [Exhibit R-023]

33. Because BNM had not properly accounted for its overdue loans or current accounts with overdrafts, BNM did not comply with SBS's accounting regulations. BNM, likewise, continued to record interest income as it was earned, rather than when it was collected, on these overdue assets. The overstated interest income had a significant effect on BNM's income statement. The SBS inspection team found that BNM had overstated its income from the first half of 2000 by S/. 3.877 million, based on the sample SBS examined. That overstatement (S/. 3.877 million) was equal to 50% of BNM's net income.³¹

D. Overconcentration of Deposits

34. Just as SBS had warned BNM during its 1999 inspection visit, the SBS inspection team again warned BNM in the 2000 visit that BNM had a dangerous overconcentration of deposits held by state-owned companies (public deposits). Instead, BNM should have been diversifying its sources of deposits. By October 2000, 21.7% of BNM's total deposits came from 30 state-owned companies – a dangerously high percentage.³²

35. Public deposits are usually placed in short-term instruments, so they are considered a volatile and less reliable source of liquidity. Thus, it is very risky for a bank to base its liquidity expectations on these deposits. Therefore, a bank that holds state-owned company deposits must have a contingency plan in place if, at the time the deposit instrument expires, the state-owned company decides not to deposit its funds in any private bank, or awards the deposit to a different bank through the public auction process. In BNM's case, the bank had such an

³¹ SBS Inspection Visit Report of 2000, p. 13, para. I.5 [Exhibit R-065].

³² SBS Inspection Visit Report of 2000, p. 18 [Exhibit R-065].

overconcentration of public deposits that it would have had difficulty meeting its obligations with the cash it had available if the public deposits with BNM were not renewed.

36. In summary, during the 2000 inspection visit, SBS found the following additional losses that BNM had not previously recorded:³³

Banco Nuevo Mundo's Additional Losses		
Results of the Inspection Visit	Initial Finding	Final Finding
In thousands of soles	S/.	S/.
Deficit of Loan Loss Provisions from the Commercial Loan Portfolio	65,690	52,975*
Deficit of Loan Loss Provisions from the Consumer Loan Portfolio	454	454
Additional Deficit of Loan Loss Provisions for Loans Transferred under the Loan Portfolio Exchange Program (D.S. 099-99-EF)	13,038	13,038
Total Provisions Deficit (79,182	66,467
Unrecorded Losses from Improperly Recorded Income	3,877	3,877
Total Unrecorded Losses (f) = (d) + (e) sic	83,059	70,344
*Takes into account the increase of loan loss provisions on September 30, 2000		

E. BNM's Management Was Aware of the Inspection Results

37. As I mentioned previously, as the SBS inspection team was finding the objections and inconsistencies, they were communicated to BNM's management. These memos were sent between October 12, 2000 and October 30, 2000. Therefore, BNM's management was aware of SBS's findings by no later than October 2000, weeks before the final inspection visit report was

³³ SBS Inspection Visit Report of 2000, p. 2, 3 and 5 [Exhibit R-065].

issued. In fact, it is very likely that the managers were aware of our concerns much earlier, based on the files that we reviewed and the questions that we had been asking to BNM's staff.

38. It is part of the normal process in an inspection visit to share the inspection visit findings with the bank's management before submitting a Final Inspection Report. SBS examiners communicate with the bank's management to make sure they are aware of SBS's findings and to give them an opportunity to reply to SBS's findings. BNM's managers could have also used the opportunity to correct any of SBS's findings if the managers believed that SBS was mistaken. SBS only issues a Final Report after a bank's management has been given an opportunity to respond.

39. Therefore, Claimant is incorrect that [BNM] was not aware of SBS's findings until the inspection report was delivered to BNM on November 27, 2000. Also, BNM's management did not object to any of SBS's findings. In some cases, BNM's management explicitly accepted our findings and informed us that they would make the necessary adjustments to BNM's books. In other cases, BNM's management did not reply. If BNM's management disagreed with any of SBS's findings, they certainly did not take the opportunity to provide their observations, objections or point out any reason why SBS's findings could have been incorrect.

40. With all certainty, BNM's management must have known what they were doing. They would have been aware that they were engaging in improper accounting practices in order to present a better picture of BNM's financial health. All of the tactics I have described have the effect of hiding the true riskiness of BNM's loans and the deterioration of BNM's assets, and have the effect of presenting a stronger income statement than was actually the case. Therefore,

it was apparent to the SBS inspection team that BNM's management had knowingly presented inaccurate financial information to SBS and the public throughout 2000.

41. Based on SBS's findings, SBS recommended that BNM make several adjustments to its financial records to reflect overdue loans and the riskiness of its loan portfolio. It also needed to stop recognizing interest accrued on risky loans as income. The combined impact of these adjustments was significant. As a result of the adjustments from the sample SBS examined, BNM's regulatory capital was actually 25.7% less than was reflected on its financial statements.³⁴ Our findings concerned me because the problems uncovered came from looking at only a sample of BNM's loans and leases. Therefore, it was very likely that BNM's financial situation was even worse than SBS's preliminary findings indicated.

42. BNM's management would have known that its financial situation was deteriorating. That deterioration was probably the motivation for BNM's illegal accounting practices. However, BNM's questionable accounting practices could only hide BNM's problems – they could not actually fix them. The only thing that would have resolved BNM's problems would have been to inject new capital in the bank, which was SBS's main recommendation following the inspection visit.³⁵ However, BNM did not do that.

III. BNM's Intervention

43. When BNM was intervened on December 5, 2000, I was appointed to be one of the two SBS intervenors placed in charge of BNM during the intervention.³⁶ I served as

³⁴ SBS Inspection Visit Report of 2000 at pp. 7, 21 [Exhibit R-065]. .

³⁵ Letter from SBS to BNM re. Inspection Visit Report, Oficio No. 12187-2000, November 27, 2000, p. 4 [Exhibit R-067]

³⁶ SBS Resolution No. 885-2000 declaring BNM's Intervention, December 5, 2000 [Exhibit R-073].

intervener for three months. On March 2, 2001, I was replaced by Luis Carrillo. During my time as intervener, I focused on the following objectives:

- Prepare the list of depositors whose deposits were covered by the Deposit Insurance Fund;
- Make a general inventory of all of BNM's assets;
- Put into place policies for recovering payments for overdue loans; and
- Cut BNM's operating costs as much as possible.

44. The first objective was extremely time sensitive and therefore it was my initial focus as intervener. It is important to prepare the list of depositors whose deposits are covered by the Deposit Insurance Fund because SBS wants to make sure that those depositors receive their insured deposits as quickly as possible. This minimizes the disruption to depositors of a bank that has been intervened and prevents panic in the rest of the financial system. In order to prepare this list, I had to review all deposit accounts and check to see which were eligible for insurance coverage. Some accounts were not immediately eligible, for example, because the depositors still had loans that needed to be repaid before they could receive their insured deposits.

45. The second objective: creating an inventory of BNM's physical property assets was important for SBS's efforts to transfer the bank's assets and liabilities to another bank, or if that did not succeed, for liquidating the bank. For this task, I selected SBS employees to serve as coordinators of the various departments at BNM. They oversaw the work of BNM's employees. Together, the SBS coordinators and BNM employees conducted the inventory.

46. The third task consisted in trying to recover payments on overdue loans, which was a more difficult and labor-intensive task. When a bank is intervened, there is often some

confusion among borrowers about whether they are obliged to continue repaying loans to the intervened bank. Therefore, the Intervenor must notify the borrowers that they must continue to repay their loans and that they could be subject to judicial enforcement if they fail to make timely payments. I put SBS coordinators and BNM employees in charge of the efforts to recover overdue loans. We wrote letters, made phone calls, and published announcements in the press to remind borrowers that they were still responsible for repaying their loans. The SBS coordinators also established a committee to review and approve proposals by borrowers to refinance or restructure their loans, if the borrowers were unable to pay under the original terms of the loan. All of these efforts were important for recovering the value of BNM's overdue loans.

47. Lastly, I was responsible for trying to lower BNM's operating expenses. Because Peruvian law does not grant SBS intervenors the authority to fire an intervened bank's employees, there were limits to what we could do to lower expenses. However, we put the employees to productive use and we sent on vacation those employees who had accrued vacation time. We were also able to close certain branches of the bank, which helped reduce some of BNM's operating costs.

IV. Investigation into Wrongdoing of BNM's Managers and Directors for BNM's Intervention

48. My final involvement with BNM was as a special investigator for SBS after the intervention was over. After every intervention, SBS conducts an investigation to find out if the bank's managers and/or directors were responsible for the events that led to the intervention or for any violations of Peru's General Law on the Financial System and other applicable regulations.

49. Because of my familiarity with BNM from the inspection visit in August 2000, SBS appointed me to lead the investigation of BNM. I conducted the investigation from February 2002 to July 2002. I focused my investigation on a number of issues related to BNM's improper dealings with related companies and on BNM's improper accounting practices as discovered during the SBS inspection visit.

A. BNM's Treatment of Related Companies

50. I investigated several issues related to the favorable treatment that BNM gave to companies that were also owned by BNM's shareholders, and the harm that such treatment caused to BNM's depositors and creditors. I found that BNM gave special treatment to these related companies by (i) accepting overvalued collateral for loans; (ii) allowing charges to current accounts, even though those accounts had insufficient balances; (iii) continually restructuring and refinancing loans held by related companies instead of trying to collect on the overdue loan; (iv) releasing liens on related companies' collateral when BNM was days away from being intervened; and (v) inducing borrowers to purchase shares in an investment fund owned by BNM's shareholders in order to transfer capital from BNM to the investment fund, and ultimately to use such fund to finance Gremco, another related company. Each one of these issues materially damaged BNM's financial situation and harmed BNM's depositors and creditors.

1. Overvalued Collateral

51. SBS suspected that BNM had allowed related companies to use substantially overvalued collateral to back their loans. Therefore, I investigated the land that served as the collateral for BNM loans to Gremco, a construction company that was owned by the principal

shareholders of BNM.³⁷ Gremco's obligations with BNM were backed by overvalued guarantees, primarily mortgages on land owned by Gremco, that totaled US \$77.8 million.³⁸

52. However, after SBS intervened BNM, SBS suspected that the land provided by Gremco as guarantee had been overvalued. Therefore, SBS hired a valuation firm to conduct a new valuation in January 2001. The result of this valuation showed the land has been grossly overvalued by Gremco and BNM. The value of the land was also extremely out of proportion with the amount that Gremco had actually paid for the land. The chart below shows the extent of the overvaluation of the land:³⁹

³⁷ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 1 [Exhibit R-191].

³⁸ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 1 [Exhibit R-191].

³⁹ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 2 [Exhibit R-191].

(Values in thousands USD) Land	Book Value of the Lien	Price Paid by Gremco	Gremco/BNM's Valuation		SBS's Valuation	
			Market Value	Realizable Value*	Market Value	Realizable Value
Lot No. 2 located in Chorrillos	9,023	3,000	16,422	13,137	2,568	1,797
Land located between La Herradura and La Chira beaches	14,942	1,500	21,798	17,438	5,447	3,813
Lot No. 3 located in los Cerros Morro Solar, Chorrillos	33,434	1,000	33,434	26,747	4,616	3,231
Parcel A located between Huaycán, Chaclacayo, and California hills	20,408	539 ⁴⁰	19,118	15,000	5,599	3,404
Total	77,807	6,039	90,772	72,322	18,230	12,245

*Realizable Value is the asset's value after taking into account estimated time and cost of selling the asset.

53. SBS's valuers also conducted new valuations on assets involved in other Gremco operations, such as a lease on chairs, suite boxes and press boxes located in the Stadium built by Gremco.⁴¹ After comparing the new valuation with the invoices on BNM's books, we found that the stadium seats, suite and press boxes were overvalued by US \$3 million approximately.⁴²

⁴⁰ The price paid by Gremco for "Parcel A" was S/. 1.575 million. The US dollar equivalent is US\$ 539 millions - S/. 1.575 million times the exchange rate (average rate for 1998) of 2.92, using the Rate of Exchange published by SBS [Exhibit R-095].

⁴¹ SBS Report on Loan Debts of the Levy Group (previously, Gremco), Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 7 [Exhibit R-195].

⁴² SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 7 [Exhibit R-195].

54. As a result of these overvaluations, Gremco was able to get more financing from BNM than was justified by the value of its assets, and BNM assumed a greater risk if Gremco was unable to pay.⁴³ As I will next discuss, the related companies frequently did not repay their loans or leases on time, but BNM hid the delinquency of these operations through various accounting and operational tricks. While these tricks may have hidden the problem and helped the related companies, the tricks harmed BNM's financial and economic situation.

2. Current Account Overdrafts Used to Repay Loans

55. I also found evidence that BNM permitted Gremco to repay its loans by charging loan payments to Gremco's current accounts that had insufficient balances, thereby generating large overdrafts in those accounts. For one current account held by Gremco, BNM engaged in a multi-step process to hide the delinquency of Gremco's loan without actually requiring that Gremco make any payments. After generating an overdraft in one of Gremco's current accounts to repay a loan, BNM issued Gremco an advance to cancel the overdraft, with a charge to another current account held by Gremco. BNM then converted the overdue loan into a leaseback by purchasing the asset that served as the guarantee for the loan and leased it back to Gremco. No money ever changed hands, however, because the purchase price of the asset went directly to repaying Gremco's current account advance.⁴⁴

56. This convoluted operation was used frequently by BNM to hide overdue loans. In my report, I examined three other leases held by Gremco that involved payment by overdrafts

⁴³ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 7 [Exhibit R-195].

⁴⁴ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 3 [Exhibit R-195].

in Gremco's current accounts.⁴⁵ In two cases, BNM also granted a year-long grace period to Gremco without charging any interest.⁴⁶ Meanwhile, Gremco did not actually repay its loans or pay its leases. As of 2002, 94% of Gremco's obligations to BNM were subject to collection by judicial order because Gremco did not comply with the payments required.⁴⁷

57. BNM used the same tactics with other related companies. For example, Hotelera Los Delfines S.A. (another company owned by the principal shareholders of BNM) had a leaseback for the panels that had been used to build a dolphin aquarium and an ice-making machine at its hotel for US \$999,689. Payments from this leaseback were mainly applied towards the repayment of an overdraft by this customer amounting to US \$774,712. The repayment period was also extended by a year, and the bank's executive committee approved a year-long period in which the hotel paid nothing, not even interest.⁴⁸

58. For another leaseback to Hotelera Los Delfines, I found that because of the favorable terms that BNM offered the company – payment by generating current account overdrafts, advances to cover the overdrafts, periods during which no payment was required, etc. – Hotelera Los Delfines did not actually make a single payment toward the US \$2.85 million leaseback. Therefore, the bank essentially lost the principal and interest it was owed.⁴⁹ This

⁴⁵ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, pp. 4-6, para. 5, 6 and 7 [Exhibit R-195].

⁴⁶ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 6, para. 8 and 9 [Exhibit R-195].

⁴⁷ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 2 [Exhibit R-195]

⁴⁸ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 10 [Exhibit R-195].

⁴⁹ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, p. 11 [Exhibit R-195].

operation's payment was used to decrease an overdraft of US\$ 2.4 million in Cía. Hotelera Los Delfines' accounts.

59. I also determined that, based on the information that existed at the time, BNM's directors and management knew or reasonably should have known that they were giving favorable treatment to related companies at the expense of the bank's financial health.⁵⁰ Thus, they were responsible for knowingly accepting overvalued collateral, granting unsecured lines of credit through overdrafts, and continually excusing related companies from paying their obligations to the bank by restructuring the loans to the bank's detriment. Therefore, they had a high level of responsibility for the bank's financial deterioration.

3. Releasing Collateral Before BNM's Intervention

60. In addition to using the various tactics described above to allow Gremco (among other related companies) to not repay its obligations to the bank, BNM also released its liens on collateral that backed Gremco's loans and leases in the weeks leading up to BNM's intervention. In September 2000, BNM's top officials partially cancelled the liens BNM had on Gremco's land. The part of land released from the lien was valued by the bank at US \$20.4 million.⁵¹ Even though Gremco's total guarantees were now reduced by US \$20.4 million, BNM did not actually modify the value of Gremco's guarantees on its books.⁵² Therefore, BNM essentially gave Gremco credit for collateral worth US \$20.4 million that no longer existed.

⁵⁰ SBS Report on Loan Debts of the Levy Group, Report No. 05-2002-VE/DESF "A", July 12, 2002, pp. 9, 13-14, 16 [Exhibit R-195].

⁵¹ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 2, para. 7 [Exhibit R-191].

⁵² SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 2, para. 7 [Exhibit R-191].

61. Then, on December 1, 2000, just four days before BNM's intervention, BNM's shareholders voted unanimously to release the liens on the other parcels of Gremco land, as well as on suite boxes at the Stadium encumbered to BNM.⁵³ These actions drastically reduced BNM's collateral that secured the tens of millions in loans and leases that Gremco had.

62. The shareholders also voted to extend remaining liens on Gremco property to cover the obligations of two other related companies, Hotelera Los Delfines and De Fábrica S.A.⁵⁴ However, this extension was never officially registered before the Public Registry. Following BNM's intervention, Gremco then withdrew its consent to extend its collateral to cover the obligations of the other companies, which further damaged BNM's capital position and damaged the ability of SBS to collect overdue debts from the two other companies.⁵⁵

63. I found that the decisions made by BNM's managers and shareholders to release liens on Gremco's land were made with the intention of shielding Gremco's assets, just days before BNM's intervention. This decision hurt BNM's capital, and in turn, hurt BNM's depositors and creditors following the intervention. When an obligation is subject to judicially-ordered collection, the primary recourse available to the bank (or, in this case, BNM's liquidators) is to sell all the assets that guaranteed the obligation. So, in Gremco's case, the remaining guarantees only covered 30% of Gremco's total debts to BNM, which meant that it was not going to be possible to recover the full value of these obligations, even through a

⁵³ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, pp. 2-3, para. 8-14 [Exhibit R-191].

⁵⁴ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 3-4, para. 12 [Exhibit R-191].

⁵⁵ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 4, para. 12 [Exhibit R-191].

judicially-ordered collection process,. Therefore, BNM's managers and shareholders were responsible for intentionally transferring assets from BNM to Gremco in the face of an imminent intervention.⁵⁶

4. Forcing BNM Borrowers to Purchase Shares in a Related Investment Fund

64. Another way that BNM used its resources to benefit related companies was to induce borrowers to purchase shares of an investment fund that was related to BNM as a condition for receiving a loan from BNM. BNM itself owned a significant interest in the investment fund, Fondo de Inversión Multirenta Inmobiliaria ("the Fund"), which belonged to the financial conglomerate owned by the Levy family. BNM purchased shares and bonds in the Fund, and then the Fund financed Gremco's purchases of property and assets. Thus, through the Fund, BNM effectively circumvented SBS's rules which limited the direct and indirect loans that a bank may give to a related party and provided even more financing to Gremco (in addition to the problems with Gremco previously discussed).⁵⁷ Actually, weeks before the intervention, when the Bank was becoming illiquid, BNM purchased another US\$ 2.8 million worth in Fund's shares.⁵⁸

65. The scheme worked as follows: A client would request a loan from BNM. BNM would approve the loan, provided that the client accepted an additional loan from BNM that would be used to purchase shares in the Fund. The client's shares in the Fund would then be used

⁵⁶ SBS Report on Lifting of Liens on Land Owned by Gremco, Report No. 01-2002-DESF "A", April 16, 2002, p. 5 [Exhibit R-191].

⁵⁷ SBS Report on Participation Shares in *Fondo de Inversión Multirenta Inmobiliaria*, Report No. 02-2002-VE/DESF "A", May 9, 2002, p. 3, para 11 [Exhibit R-192].

⁵⁸ SBS Report on Participation Shares in *Fondo de Inversión Multirenta Inmobiliaria*, Report No. 02-2002-VE/DESF "A", May 9, 2002, p. 3, para. 10 [Exhibit R-192].

as collateral for the original loan.⁵⁹ The client's purchase of shares in the Fund was subject to a repurchase agreement whereby the bank would repurchase the shares at a fixed interest rate.⁶⁰

66. There were several implications of this scheme. First, BNM was able to indirectly increase the capital of the Fund by inducing its clients to temporarily invest in the Fund. Second, BNM was able to record larger assets on its books by making clients take out additional loans to purchase the shares of the Fund. Third, BNM was able to record the original loans as being secured with collateral – even though the collateral was, in fact, participation shares in the Fund that had been purchased using BNM's own money (i.e., the additional loan). Fourth, because BNM's repurchase agreements had a fixed interest rate, BNM assumed the risk that the Fund's shares would depreciate in value. This was yet another way of using BNM's resources to benefit a related company. Most importantly, it was clear to me that BNM's intention in this scheme was to secure sufficient capital for the Fund to finance the purchases and operations of Gremco.

67. Thus, BNM's involvement with the Fund was an indirect mechanism to channel BNM's resources to Gremco in order to evade SBS's regulations. As of November 30, 2000, the percent of BNM's capital that went toward financing Gremco was approximately 37%. However, the percentage was likely far higher, taking into account the adjustments to BNM's total capital found during the SBS inspection visit, and later, by the external auditors.⁶¹

⁵⁹ SBS Report on Participation Shares in *Fondo de Inversión Multirenta Inmobiliaria*, Report No. 02-2002-VE/DESF "A", May 9, 2002, p. 5, para. 17-19 [Exhibit R-192].

⁶⁰ SBS Report on Participation Shares in *Fondo de Inversión Multirenta Inmobiliaria*, Report No. 02-2002-VE/DESF "A", May 9, 2002, pp. 1-2 [Exhibit R-192].

⁶¹ SBS Report on Participation Shares in *Fondo de Inversión Multirenta Inmobiliaria*, Report No. 02-2002-VE/DESF "A", May 9, 2002, p. 6, para. 21-22 [Exhibit R-192].

B. BNM's Accounting Violations

68. In addition to examining BNM's illegal dealings with related companies, I also investigated the responsibility of BNM's managers and directors for violations of SBS prudential and accounting regulations committed by BNM, as SBS found during the August 2000 inspection visit. As I described above, the SBS inspection team found in the August 2000 inspection that BNM misclassified the risk of loans, and therefore did not have sufficient loan loss provisions. As a result, BNM's capital was overstated and the riskiness of its loan portfolio was hidden from SBS.

69. In my investigation, I determined that the responsibility fell on several individuals. For example, Pablo Hugo Seminario Olortique, BNM's Head of Loan Review, was in charge of evaluating and classifying BNM's loan portfolio in accordance with SBS's regulations. Therefore, I determined that he was responsible for failing to apply SBS's regulations on loan risk classification.⁶² These misclassifications created significant discrepancies in BNM's financial records that led to a deficit of loan loss provisions and an overstatement of BNM's capital. Mr. Seminario's actions thus distorted the information about BNM's loan portfolio and masked BNM's true and deteriorating financial situation.

70. I also determined that BNM's Internal Auditor failed to fulfill her responsibility to review and verify BNM's policies for evaluating and classifying loan risk.⁶³ Responsibility also fell on both BNM's directors and general manager for failing to establish the necessary

⁶² SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 3-4 [Exhibit R-194].

⁶³ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 4-5 [Exhibit R-194].

independence between the personnel who authorized new loans and those who evaluated the risk of those loans.⁶⁴

71. With respect to the refinanced and restructured loans that BNM had not properly recorded, I found that the responsible officers of the bank had hidden BNM's deteriorating loan portfolio and the incapacity of many of its borrowers to repay their loans.⁶⁵ I recommended sanctions for the Board of Directors and the General Manager for these violations. By failing to correct BNM's well-known problem of not properly recording restructured and refinanced loans, the Board of Directors and General Manager breached their responsibility to provide SBS with an accurate picture of BNM's loan portfolio and its true financial health.⁶⁶

72. Lastly, I examined the responsibility of BNM's officials for registering overdue loans as part of BNM's "current portfolio" and inappropriately recording accrued interest income before it was collected.⁶⁷ Like the issues described above, this violation also hid the amount of overdue loans in BNM's loan portfolio and hid BNM's true financial situation. I found that the Head of Systems, the Business Manager, the Operations Manager, and the Internal Auditor were all directly responsible for failing to put into place effective systems for recording BNM's overdue loans, for failing to catch the discrepancies as overdue loans remained in the "current portfolio," and for continuing to record interest income from those loans even though they

⁶⁴ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 6-7 [Exhibit R-194].

⁶⁵ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 7 [Exhibit R-194].

⁶⁶ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 9 [Exhibit R-194].

⁶⁷ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 9 [Exhibit R-194].

should have known that the loans were, in fact, overdue.⁶⁸ I also found that the Board of Directors and General Manager were responsible for not presenting accurate accounting information to SBS.⁶⁹

C. Conclusion of SBS Investigations

73. From my investigations, I concluded that BNM's directors, management, and shareholders were responsible for intentionally engaging in practices that transferred BNM's resources to companies owned by BNM's principal shareholders, to the financial detriment of the bank. Because many of these practices happened more frequently as BNM's financial crisis grew and the bank got closer to intervention, it became clear for SBS that BNM's directors, management, and shareholders intended to siphon off BNM's assets and capital before the bank collapsed.

74. I also concluded that BNM's directors and managers were responsible for the violations of SBS's prudential and accounting regulations that SBS found during the 2000 inspection visit to BNM. In some cases, the violations were intentionally committed to hide from SBS the true financial condition of the bank. In other cases, the violations were permitted to occur through the negligence of the directors and managers, who tacitly allowed significant discrepancies in BNM's books. These acts all had the effect of contributing to BNM's solvency problems, weakening the bank's ability to deal with its liquidity problems, and preventing SBS from knowing the extent of BNM's financial deterioration sooner.

⁶⁸ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 11-12 [Exhibit R-194].

⁶⁹ SBS Report on Relevant Observations from the Inspection Visit Report, Report No. 03-2002-VE/DESF "A", June 28, 2002, p. 14 [Exhibit R-194].

75. All my findings, as I have described them in the preceding paragraphs, were duly submitted to my supervisor at SBS.

V. Conclusion

76. In conclusion, BNM's financial situation before the intervention was far worse than BNM had presented to SBS or to the public. The SBS inspection team found serious issues with BNM's books and questionable accounting practices, which served to hide from SBS the true extent of BNM's financial problems. SBS made various recommendations to BNM, primarily that BNM needed an infusion of capital to improve its solvency position. However, while BNM's management agreed with SBS's assessment in many respects, they did not take action to recapitalize the bank.

77. The questionable practices that SBS found during the inspection visit were later confirmed during SBS's investigation after the intervention was over. In fact, the investigations uncovered even more troubling actions taken by BNM's directors and management to intentionally channel BNM's resources into related companies at the expense of BNM's depositors and creditors. I concluded, therefore, that BNM's directors, management, and shareholders were fully responsible for the Bank's problems and ultimate failure.

The accounts laid out in this statement are true to the best of my knowledge

[Signature]

Carlos Quiroz Montalvo

Date: 30 January 2012