IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE ANGEL CAPITAL I LLC, AURELIUS OPPORTUNITIES FUND II, LLC, PABLO ALBERTO VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AZQUERRETA, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, OLIFANT FUND, LTD., *Plaintiffs-Appellees,* v. THE REPUBLIC OF ARGENTINA, *Defendant-Appellant.*	Nos. 12-105 (L), 12-109-cv (CON), 12-111-cv (CON), 12-157-cv (CON), 12-158-cv (CON), 12-163-cv (CON), 12-164-cv (CON), 12-170-cv (CON), 12-176-cv (CON), 12-185-cv (CON), 12-189-cv (CON), 12-214-cv (CON), 12-909-cv (CON), 12-914-cv (CON), 12-916-cv (CON), 12-919-cv (CON), 12-920-cv (CON), 12-923-cv (CON), 12-924-cv (CON), 12-926-cv (CON), 12-939-cv (CON), 12-943-cv (CON), 12-951-cv (CON), 12-968-cv (CON), 12-971-cv (CON) **ORAL ARGUMENT REQUESTED**

EMERGENCY MOTION OF FINTECH ADVISORY INC.
FOR STAY PENDING APPEAL

WOLLMUTH MAHER & DEUTSCH LLP
William F. Dahill
500 Fifth Avenue
New York, New York 10110
Tel: (212) 382-3300

TABLE OF CONTENTS

PAGE

PRELIMINARY STATEMENT 1

BACKGROUND 3

ARGUMENT 4

I. This Court Should Grant A Stay Pending Appeal to Evaluate the Order 4

II. Fintech Has a Likelihood of Success on Appeal 5

A. The Remedy Crafted by the Order Wrongfully Infringes Upon the Rights of the Exchange Bondholders 5

B. The Orders Violate Fintech's Constitutional Rights 6

C. Fintech Has Not Had A Meaningful Opportunity To Be Heard 7

III. The Notion that the Exchange Bondholders Will Not Be Paid As Part of An Effort to Compensate the Original Bondholders Is An "Injustice" 8

CONCLUSION 10

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.,
815 F. Supp. 2d 148 (D.D.C. 2011).....7

Cienega Gardens v. United States,
331 F.3d 1319 (Fed. Cir. 2003).....7

Fengler v. Numismatic Am., Inc.,
832 F.2d 745 (2d Cir. 1987).....7

Lynch v. United States,
292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934).....7

Nken v. Holder,
556 U.S. 418 (2009).....5

Stop the Beach Renourishment, Inc. v. Florida Dept. of Envtl. Protection,
130 S. Ct. 2592 (2010).....6

STATUTES **PAGE(S)**

Fed. R. App. P. 8.....1, 4

Pursuant to Rule 8 of the Federal Rules of Appellate Procedure ("Fed. R. App. P.") Fintech Advisory Inc. ("Fintech") submits this Emergency Motion for Stay Pending Appeal[1], the Declaration of William F. Dahill, dated November 27, 2012 and exhibits thereto ("Dahill Decl."), to seek a stay pending appeal of the orders of Judge Thomas P. Griesa dated November 21, 2012 prohibiting the Republic of Argentina ("Republic") to make interest payments on December 15, 2012 to the Exchange Bondholders absent simultaneous payment to the Original Bondholders (the "Orders").[2]

PRELIMINARY STATEMENT

On October 26, 2012, this Court issued a decision (the "October 26 Decision") which remanded to the District Court two important questions concerning Plaintiffs' request for permanent injunctive relief, including consideration as to the impact of the injunction on third parties, of which Fintech, a significant holder of Exchange Bonds, is one. This Court also stated that after such further ruling by the District Court, the matter would automatically return to this Court to review these further rulings on these important issues. At the time of this

[1] Fintech recognizes that other exchange bondholders (the "Exchange Bondholder Group") made an Emergency Stay Motion on November 26, 2012 (the "EGB Brief"). Fintech largely agrees with the arguments in support of a stay therein, and will endeavor to avoid repeating those same arguments.

[2] All capitalized terms not defined herein shall have the meanings set forth in the Declaration of Andres Lederman, dated November 16, 2012, attached as Ex. I to the Dahill Decl. The Orders consist of the Amended February 23, 2012 Order and Opinion, and the Stay Order and Opinion, and are annexed as Exs. B-E to the Dahill Decl.

Court's October 26 Decision, the underlying District Court February 23, 2012 injunction (the "Injunction"), which was the subject of the October 26 Decision, was stayed pursuant to the District Court's March 5, 2012 ruling.

To address the important questions on remand, however, the District Court set a whirlwind schedule whereby Plaintiffs submitted their proposed orders on November 13, 2012 (which they did around 9 p.m. that evening), with the District Court requiring the filing of responsive papers, including by non-parties such as Fintech, within three days, by November 16, 2012.[3] Then, after Plaintiffs filed reply papers on November 19, the District Court, without hearing oral argument, issued its Orders on the evening of November 21. Respectfully, it is not apparent from the Orders that the District Court took into account the interests of third parties, such as Fintech, and thus, Fintech has filed a request to intervene as an interested non-party to appeal the Orders, which has been submitted simultaneously herewith. More important for the purposes of this application, however, the District Court also ordered that the stay of the Injunction that had been in effect pursuant to the Court's March 5 Order be lifted as of the December 15, 2012 payment due from the Republic to the Exchange Bondholders. See Dahill Decl. Exs. D, E. Without the relief sought by this application, the stay will be lifted before this Court has had the opportunity to review that which it directed the

[3] Fintech's November 16, 2012 submission to the District Court is attached as Exs. H and I to the Dahill Decl.

District Court to do, and before interested non-parties like Fintech have had a meaningful opportunity to be heard.

There is no logical basis for the stay to be lifted at this point, and no harm will be incurred by Plaintiffs while a stay continues to be in effect while this Court completes its review of the unprecedented Injunction. On the other hand, Fintech, which has a meritorious position on appeal as a result of its contractual and property rights with which the Orders interfere, and which has not been heard with respect to the unprecedented Orders and their impact on it, will suffer harm if the stay does not continue. Indeed, the uncertainty in the market caused by the still un-reviewed Orders as to the payments to be made, or not made as the case may be, has already negatively impacted the value of the Exchange Bonds (see EGB Brief at 16) and leaves Fintech the expensive proposition of possibly needing to commence litigation against the Republic, and/or the Trustee, Bank of New York. None of this is necessary and a stay pending appeal will permit orderly determination of significant issues, including as to non-parties such as Fintech, without any harm to Plaintiffs.

BACKGROUND

The relevant factual background is set forth in Fintech's Emergency Motion for Leave to Intervene as an Interested Non-Party, dated November 27, 2012 and the Dahill Decl., submitted simultaneously herewith.

ARGUMENT

I. This Court Should Grant A Stay Pending Appeal to Evaluate the Order

In rendering the October 26 Decision, this Court explicitly stated that the Orders "should automatically return to this Court and to [the] panel for further consideration of the merits of the remedy." See Dahill Decl. Ex. A at 29. Moreover, this Court expressed "concern" over how the Orders "will apply to third parties generally." Id. at 28. Judge Griesa, during the November 9 hearing, similarly recognized that this Court still needed to "issue[] its mandate." See Dahill Decl. Ex. G. Given the serious impact that the Orders have on third parties, there is no compelling and/or logical justification for a stay on the underlying injunction as implemented by the Orders to not remain in effect and/or be newly implemented. The unprecedented nature of the Orders aptly deserves review by this Court, as it originally intended in the October 26 Decision. Granting a stay to evaluate the scope of the Orders allows exactly that, as well as an opportunity for interested non-parties such as Fintech to be heard without the harm caused to Fintech by the effect of the Orders.

In determining whether to grant a stay pursuant to Fed. R. App. P. 8(a)(2), the Court considers: (1) the likelihood of success on the merits; (2) irreparable injury to the applicant absent a stay; (3) whether the issuance of a stay will substantially injure other parties interested in the proceedings; and (4) whether the

public interest will be served. See Nken v. Holder, 556 U.S. 418, 434 (2009). The reasons set forth on each of the elements in the EGB Brief are meritorious and not only reflect the realities of the market but also the effects of the Order on innocent non-parties like Fintech and the public at large, as well as the lack of harm to Plaintiff. Fintech further addresses some of these points below.

II. Fintech Has a Likelihood of Success on Appeal

A. The Remedy Crafted by the Order Wrongfully Infringes Upon the Rights of the Exchange Bondholders

Fintech has a high likelihood of success on appeal due to the unprecedented impact of the Orders upon it. Fintech currently holds the majority of the $247 million of Exchange Bonds it received in exchange for its $834 million of Original Bonds. See Lederman Decl. ¶ 15. Fintech was among the Original Bondholders holding over 91% of the Republic's defaulted debt that chose to exchange its non-performing bonds in 2005 and 2010 at the cost of a significant haircut. Id. ¶ 16. The Orders in effect nullify the monetary concessions Fintech made to the Republic and attempt to use debt the Republic owes to the Exchange Bondholders under separate and distinct contracts as a mechanism to force the Republic to pay monies to the Original Bondholders. The Exchange Bondholders, however, have no input as to what the Republic does as to the Original Bondholders. Indeed, numerous press releases and news articles already have indicated that the Republic will default on payments due to the Exchange Bondholders. See Declaration of

Sean O'Shea in support of EGB's Brief ("O'Shea Decl.") Ex. 15; Dahill Decl. Ex. F. Accordingly, the Orders penalize non-parties such as Fintech that already have made significant concessions and put their abilities to receive payments indisputably due to them at the whim of the Republic and whether it makes a payment under an unrelated contract. This result is plainly inequitable[4] to Fintech and provides a basis for future creditors in struggling economies such as Greece and Spain to reject voluntary debt restructurings. The unprecedented nature of the District Court's Orders in effect destabilizes restructurings that already have taken place in other countries.

B. The Orders Violate Fintech's Constitutional Rights

The unprecedented nature of the Orders presents several violations of the constitutional rights of the Exchange Bondholders. As set forth in the EGB Brief, the use of the Exchange Bondholders' property for the benefit of the Original Bondholders violates the Due Process Clause. Indeed, four justices of the Supreme Court would recognize a compensable taking whenever "a court declares that what was once an established right of private property no longer exists." Stop the Beach Renourishment, Inc. v. Florida Dept. of Envtl. Protection, 130 S. Ct. 2592, 2602 (2010). Valid contracts are property in which Fintech has a protectable interest.

[4] With respect to the "equities," it has been reported that Plaintiffs are hedging their bets that the Republic will fail to pay the Exchange Bondholders through the purchase of credit default swaps. See Declaration of Sean O'Shea in support of EGB Brief, Ex. 17 ¶ 18. Given the equitable nature of the remedy Plaintiffs seek, discovery on this issue is relevant to a final ruling.

Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv., 815 F. Supp. 2d 148, 173-76 (D.D.C. 2011) (citing Cienega Gardens v. United States, 331 F.3d 1319, 1330 (Fed. Cir. 2003) (quoting Lynch v. United States, 292 U.S. 571, 579, 54 S. Ct. 840, 78 L. Ed. 1434 (1934) ("The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a state or the United States.")). Accordingly, the Orders violate Fintech's constitutional rights.

C. Fintech Has Not Had A Meaningful Opportunity To Be Heard

Although this Court acknowledged the importance of third parties and the effect the Orders would have on them, see Dahill Ex. A at 28, the District Court only permitted the Exchange Bondholders three days to address and respond to Plaintiffs' papers, which were filed in the late evening on the date scheduled by the Court. Non-parties that are subject to injunctions are generally entitled to evidentiary hearings. See Fengler v. Numismatic Am., Inc., 832 F.2d 745, 747-48 (2d Cir. 1987). As shown above, Fintech has substantially protectable rights which are subject to being lost due to the District Court's Orders in a dispute between parties to a wholly separate contract. Fintech therefore must be heard before such a taking could take place.

III. The Notion that the Exchange Bondholders Will Not Be Paid As Part of An Effort to Compensate the Original Bondholders Is An "Injustice"

In the Orders, the closest the District Court came to addressing the non-party Exchange Bondholders was in an apparent assertion that the Exchange Bondholders knowingly bore the risk of the unprecedented taking from them pursuant to the Orders. The District Court baldly asserts that the Exchange Bondholders "knew full well that other owners of FAA Bonds were seeking to obtain full payment of the amounts due on such bonds through persisting in the litigation" and that "they made the choice not to pursue the route which plaintiffs have pursued." See Dahill Decl. Ex. B at 8. To the contrary, when agreeing to important economic concessions which benefitted the Argentinian economy, the Exchange Bondholders in no way "knew" that their right to be paid these new, reduced obligations would be tied to the payment of others who refused to make a concession. Indeed, the District Court apparently forgot that its initial reaction to Plaintiffs' position was opposed to "interfer[ing] with the rights of the exchange offers by putting conditions on them or impediments on them." See O'Shea Decl. Ex. 9. In fact, the District Court even questioned its own ability to enforce such an Order. See id. ("Is there any legal authority for me to use the pari passu clause to interfere with the payment to the exchangers?"). Moreover, the exchange offers presented by the Republic were specifically drafted to entice the Original Bondholders to participate in the exchange and warned the Original Bondholders

that "Argentina intends to oppose such attempts to collect on its [Original Bonds]." See Dahill Decl. Ex. A at 7. Fintech and the Exchange Bondholders cannot now be penalized for electing to sacrifice their monetary and contractual rights years ago so that the Original Bondholders can attempt to recover overdue payments allegedly owed by the Republic under separate contracts. Thus, the District Court's notion that the Orders are a "just result" because the Exchange Bondholders watched "year after year" while the Original Bondholders "pursued methods of recovery" is not accurate; rather, an "injustice" lies within the confines of the Orders, which, if implemented as currently drafted, reverse any logical expectation of Fintech, and indeed, the financial market at large. See Dahill Decl. Ex. B at 8-9.

CONCLUSION

For the foregoing reasons, this Court should stay the District Court's Orders pending final disposition of this appeal.

Dated: New York, New York
November 27, 2012

Respectfully submitted,

WOLLMUTH MAHER & DEUTSCH LLP

By: /s/ William F. Dahill
William F. Dahill

500 Fifth Avenue
New York, New York 10110
(212) 382-3300
wdahill@wmd-law.com

Attorneys for Fintech Advisory Inc.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE ANGEL CAPITAL I LLC, AURELIUS OPPORTUNITIES FUND II, LLC, PABLO ALBERTO VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AZQUERRETA, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, OLIFANT FUND, LTD., *Plaintiffs-Appellees,* v. THE REPUBLIC OF ARGENTINA, *Defendant-Appellant.*	Nos. 12-105 (L), 12-109-cv (CON), 12-111-cv (CON), 12-157-cv (CON), 12-158-cv (CON), 12-163-cv (CON), 12-164-cv (CON), 12-170-cv (CON), 12-176-cv (CON), 12-185-cv (CON), 12-189-cv (CON), 12-214-cv (CON), 12-909-cv (CON), 12-914-cv (CON), 12-916-cv (CON), 12-919-cv (CON), 12-920-cv (CON), 12-923-cv (CON), 12-924-cv (CON), 12-926-cv (CON), 12-939-cv (CON), 12-943-cv (CON), 12-951-cv (CON), 12-968-cv (CON), 12-971-cv (CON)

DECLARATION OF WILLIAM F. DAHILL IN SUPPORT OF EMERGENCY STAY MOTION OF FINTECH ADVISORY INC.

Pursuant to 28 U.S.C. § 1746, William F. Dahill declares as follows:

1. I am an attorney permitted to practice before this Court and a partner at Wollmuth Maher & Deutsch LLP, counsel for interested non-party Fintech Advisory Inc. ("Fintech"). I submit this Declaration in support of Fintech's Emergency Motion for Stay Pending Appeal, dated November 27, 2012 ("Motion for Stay").

2. As set forth in the Motion for Stay, this Court should stay the proceedings in the District Court pending appeal of the orders entered by Judge Thomas P. Griesa on November 21, 2012 prohibiting the Republic to make interest payments to the exchange bondholders absent simultaneous payment to the original bondholders.

3. Attached are true and correct copies of the following:

4. Exhibit A – October 26, 2012 Decision by the Second Circuit.

5. Exhibit B – Opinion regarding the Amended February 23, 2012 Order, dated November 21, 2012.

6. Exhibit C – Amended February 23, 2012 Order, dated November 21, 2012.

7. Exhibit D – Opinion regarding the Order Concerning the March 5, 2012 Order, dated November 21, 2012.

8. Exhibit E – Order Concerning the March 5, 2012 Order, dated November 21, 2012.

9. Exhibit F – November 22, 2012 Citi Research Article entitled Emerging Markets Strategy.

10. Exhibit G – Transcript of November 9, 2012 Hearing before Judge Thomas P. Griesa.

11. Exhibit H – Opposition Brief of Fintech Advisory Inc., dated November 16, 2012.

12. Exhibit I – Declaration of Andres Lederman in Support of the Opposition Brief of Fintech Advisory Inc., dated November 16, 2012.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 27, 2012 in New York, New York.

/s/ William F. Dahill
William F. Dahill