

**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 LEAVE TO INTERVENE AS AN INTERESTED NON-PARTY**

WOLLMUTH MAHER & DEUTSCH LLP

William F. Dahill
500 Fifth Avenue
New York, New York 10110
Tel: (212) 382-3300

CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, Fintech Advisory Inc. states that it is a corporation organized under the laws of Delaware with its principal place of business in New York. There is neither a parent company to Fintech Advisory Inc., nor a publicly held corporation that owns 10% of its stock.

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure (“Fed. R. App. P.”) and Local Rule 27.1, Fintech Advisory Inc. (“Fintech”) submits this Emergency Motion for Leave to Intervene as an Interested Non-Party together with the Declaration of William F. Dahill and exhibits thereto, dated November 27, 2012 (“Dahill Decl.”), in support of (i) its Emergency Motion for Stay Pending Appeal, dated November 27, 2012 (the “Stay Motion”), and (ii) an appeal of the orders of Judge Thomas P. Griesa dated November 21, 2012 (the “Orders,” which consist of the Amended February 23, 2012 Order and Opinion, and the Stay Order and Opinion, annexed as Exs. B-E to the Dahill Decl.).¹

BACKGROUND

Fintech is an investment management firm organized under the laws of Delaware with its principal place of business in New York. Lederman Decl. ¶ 2. Fintech is an interested non-party to this action which seeks to be heard in this Court because it currently holds a significant amount of Exchange Bonds² which are directly impacted by the Orders, which are the subject of an appeal.

When the Republic issued debt securities in 1994, Fintech was among the Republic’s original bondholders. *Id.* ¶ 3. Fintech eventually purchased

¹ All capitalized terms herein shall have the meanings set forth in the Declaration of Andres Lederman, attached as Ex. I to the Dahill Decl. (“Lederman Decl.”).

² Fintech held \$834 million face value of the Original Bonds which became \$247 million face value of Exchange Bonds, the majority of which Fintech continues to hold today. *See* Lederman Decl. ¶ 15.

approximately \$834 million face value of bonds issued pursuant to a Fiscal Agency Agreement, in which the coupon rates ranged from 3.0% to 15.5% and the dates of maturity ranged from April 2002 to September 2031 (the “Original Bonds,” and purchasers thereof, the “Original Bondholders”). Id. The Republic defaulted on the Original Bonds on December 24, 2001.

In 2005 and again in 2010, the Republic underwent voluntary debt restructuring and offered the Original Bondholders the option to exchange their defaulted bonds for new, unsecured, subordinated bonds at a substantially reduced exchange rate (separately, the “2005 Exchange Bonds” or the “2010 Exchange Bonds,” collectively, the “Exchange Bonds,” and the holders thereof, the “Exchange Bondholders”). Fintech was one of the largest participants in the 2005 exchange, and decided to participate because it realized that the only way the Republic would recover from a distressed economic situation was by a reduction in aggregate liabilities that would allow the economy to grow and restore a minimum level of creditworthiness to the Republic. Id. ¶¶ 5, 6.

The principal value of the Original Bonds Fintech elected to exchange in 2005 totaled roughly \$638 million. Id. ¶ 7. When Fintech participated in the 2005 exchange, the new bonds it received were valued at 28% of the face value of its Original Bonds, resulting in a 72% reduction in principal. Id. ¶ 9. Additionally, the Republic owed Fintech no less than \$108 million in past due interest payments

on the defaulted Original Bonds, for which Fintech received no additional consideration. Id. Accordingly, although Fintech finally began receiving regular interest payments in 2005 pursuant to the new contractual arrangements entered into with the Republic through the 2005 Exchange Bonds, these distributions were considerably less than had been owed to Fintech under the Original Bonds due to the deeply discounted nature of the 2005 Exchange Bonds.

In 2010, the Republic offered the Original Bondholders another opportunity to exchange their non-performing Original Bonds. Lederman Decl. ¶ 10. Fintech again opted to participate in the Republic's voluntary debt restructuring, and offered the balance of its Original Bonds to the Republic. Id. The principal amount on the Original Bonds Fintech elected to exchange in 2010 was \$196 million, the balance of the Original Bonds held by Fintech. Id. ¶ 11. It received new bonds equal to 33.7% of the total face value of the Original Bonds, resulting in a 66.3% reduction in principal of the 2010 Exchange Bonds. Id. ¶ 13. In addition, the Republic owed Fintech no less than \$110 million in past-due interest on the Original Bonds exchanged in 2010, for which there was no separate consideration. Id. As such, the aggregate haircut on the 2010 Exchange Bonds totaled 83% of the value of the total amount that had been owed to Fintech under the Original Bonds. Id. ¶ 14.

In sum, Fintech's Original Bonds were worth approximately \$834 million face value with past-due interest payments of no less than \$218 million due in 2005 and 2010. *Id.* ¶¶ 7, 9, 11, 13. In good faith and for the benefit of the Argentine economy, which at the time was in a state of financial distress, Fintech accepted a reduction of roughly two-thirds of the face value of the Original Bonds in exchange for payment from the Republic pursuant to the terms of the Exchange Bonds, and Fintech currently holds \$247 million of Exchange Bonds. *Id.* ¶ 15. By 2010, Fintech was among the 91% of the Original Bondholders that became Exchange Bondholders and took a significant loss on their original investment. *Id.* ¶ 16.

ARGUMENT

It is well-settled that non-parties have standing to appeal a district court's orders where their interests are "directly affected." See Aurelius Capital Partners, LP v. Republic of Argentina, 584 F.3d 120 (2d Cir. 2009) (holding that non-parties have standing to appeal where interests are "directly affected" by district court's orders); Official Comm. of Unsecured Creditors of Worldcom, Inc. v. S.E.C., 467 F.3d 73, 77 (2d Cir. 2006) (holding non-party had standing to appeal); Karaha Bodas Co. L.L.C. v. Pertamina, 313 F.3d 70, 82 (2d Cir. 2002) (same).

As set forth more fully in the Stay Motion, Fintech, the holder of \$247 million of Exchange Bonds, is directly affected by the outcome of the appeal. The

Orders in question have the unprecedented impact of preventing the Republic's "agents and participants" from disbursing the monies rightfully owed to the Exchange Bondholders, including Fintech, pursuant to the contracts they entered into as a result of voluntarily participating in the Republic's debt restructurings unless the Republic also pays the Original Bondholders under separate and distinct contracts. As a result, Fintech's right to receive monies from the Republic is placed in serious jeopardy through no fault of Fintech. Moreover, while the Court below crafted this "remedy" utilizing the Exchange Bondholders as a mechanism to seek to compel the Republic to act as to unrelated parties, the Exchange Bondholders have not had the required opportunity to be heard in a meaningful way with respect to their clear contractual and property rights, which are being taken from them.

Accordingly, Fintech respectfully requests that the Court grant it leave to intervene and participate in this appeal as an interested non-party and to grant its Stay Motion. In the event this Court denies its motion to intervene as an interested non-party and seek a stay, Fintech, in the alternative, respectfully requests leave to participate in the appeal and file its Stay Motion as an amicus curiae.

CONCLUSION

For the foregoing reasons, Fintech respectfully requests that this Court grant its Emergency Motion for Leave to Intervene as an Interested Non-Party to appeal the Orders and seek a stay, or, in the alternative, grant Fintech leave to join the appeal and file its Stay Motion as an amicus curiae.

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.