UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, -against- THE REPUBLIC OF ARGENTINA, Defendant.	08 Civ. 6978 (TPG) 09 Civ. 1707 (TPG) 09 Civ. 1708 (TPG)
AURELIUS CAPITAL MASTER, LTD. and ACP MASTER, LTD., Plaintiffs, -against- THE REPUBLIC OF ARGENTINA, Defendant.	09 Civ. 8757 (TPG) 09 Civ. 10620 (TPG)
AURELIUS OPPORTUNITIES FUND II, LLC and AURELIUS CAPITAL MASTER, LTD., Plaintiffs, -against- THE REPUBLIC OF ARGENTINA, Defendant.	10 Civ. 1602 (TPG) 10 Civ. 3507 (TPG) 10 Civ. 3970 (TPG) 10 Civ. 8339 (TPG)
BLUE ANGEL CAPITAL I LLC, Plaintiff, -against- THE REPUBLIC OF ARGENTINA, Defendant.	10 Civ. 4101 (TPG) 10 Civ. 4782 (TPG)

(captions continue on following page)

REPLY MEMORANDUM OF LAW OF EUROCLEAR BANK SA/NV IN SUPPORT OF THE EURO BONDHOLDERS' EMERGENCY MOTION FOR CLARIFICATION

----------X

OLIFANT FUND, LTD.,

Plaintiff,

10 Civ. 9587 (TPG)

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

----------X

PABLO ALBERTO VARELA, et al.,

10 Civ. 5338 (TPG)

Plaintiff,

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

----------X

Euroclear Bank SA/NV ("Euroclear Bank") respectfully submits this reply memorandum of law in further support of the Euro Bondholders' Motion for Clarification.

The plaintiffs' opposition to the Euro Bondholders' motion egregiously misstates and/or ignores the law and the facts applicable to determining the issue of whether this Court has jurisdiction over Euroclear Bank.

Euroclear Bank does, however, agree with the plaintiffs that it may be unnecessary at this time for the Court to address that issue. If indeed the Euros at issue are not going to be paid over to Euroclear Bank (whether because BNY Mellon is going to retain them or because BNY Mellon is going to return them to the Republic of Argentina or for some other reason), then the question of whether Euroclear Bank can make payments onward, including the

question of whether this Court has jurisdiction to prohibit Euroclear Bank from making such payments, does not arise.

If the jurisdictional question is considered, however, the Court should be aware that the plaintiffs' arguments are totally erroneous and misleading and an invitation to serious error. Euroclear Bank has not forfeited its right to contest jurisdiction – it raised that issue when it first made a submission in this case (to the Court of Appeals), when it filed an amicus brief in the Supreme Court, and now when it seeks clarification in this Court.

With regard to general jurisdiction, plaintiffs inexcusably ignore the recent controlling Supreme Court decision in Daimler AG v. Bauman, 134 S. Ct. 746 (2014), which indisputably precludes a finding of general jurisdiction on the facts presented here. Instead, plaintiffs cite a pre-Daimler decision and urge this Court to follow it, an enticement to error if ever there was one.

With regard to specific jurisdiction, plaintiffs ignore the fact that Euroclear Bank is a non-U.S. (Belgian) entity and that all of its activities in connection with the payment process for the Euro Bonds are conducted outside of the U.S. Plaintiffs cite a case which appears to uphold nationwide jurisdiction over those who aid and abet violations of federal court injunctions, and they invite this Court to apply it on a worldwide basis.

Here is plaintiffs' most flagrant error. The case upon which they rely has been distinguished from international cases, and the principles to be applied in international cases have been explained in Reebok International Ltd. v. McLaughlin, 49 F.3d 1387 (9th Cir.), cert. denied, 516 U.S. 908 (1995). Those principles preclude the exercise of jurisdiction on the facts presented here.

Yet plaintiffs do not mention the Reebok decision and do not acknowledge the complications raised by the international aspect of the situation. Instead, they ask the Court to exercise worldwide jurisdiction on an unprecedented – and insupportable – scale.

THIS COURT DOES NOT HAVE JURISDICTION OVER EUROCLEAR BANK WITH RESPECT TO THE PAYMENT PROCESS FOR THE EUROBONDS

In its letter dated January 3, 2013 to the Court of Appeals (copy annexed to the Declaration of Christopher J. Clark (Doc. No. 544) as Exhibit B), Euroclear Bank argued that "the District Court has extended its reach well beyond its jurisdiction." (Letter at page 3). In a footnote, Euroclear Bank cited to the Restatement (Third) of Foreign Relations Law of the United States, and the limitations on extraterritorial "jurisdiction" set forth therein. The letter was Euroclear Bank's first submission to any court in connection with this case, and it clearly set forth Euroclear Bank's objection to the exercise of jurisdiction.

Shockingly, however, plaintiffs assert that: "In the Second Circuit, Euroclear filed a letter raising a variety of defenses – none based on personal jurisdiction." Plaintiffs' Opposition at p. 22. Plaintiffs even cite to the letter ("Clark Decl. Ex. B.") Id. Apparently plaintiffs have not read the letter or, at least, hope that the Court will not read it, but will accept the plaintiffs' characterization of it at face value.

With regard to general jurisdiction, plaintiffs do not discuss, cite, or even acknowledge the Daimler decision. Plaintiffs Opposition at p. 23. Instead they cite a 2013

District Court decision for the proposition that general jurisdiction "likely would exist" over Euroclear Bank. Id.

They also cite one fact – that Euroclear Bank maintains a representative office in New York. Id. Plaintiffs totally omit, however, to analyze that fact – and the other pertinent facts - in light of Daimler. When that is done, it is evident that this Court does not have general jurisdiction over Euroclear Bank. Apparently plaintiffs hope that the Court will not read the Daimler decision either, but will accept plaintiffs' characterization of the law of general jurisdiction at face value.

Resolution of the general jurisdiction question requires consideration of the facts that Euroclear Bank (a) is a non-U.S. entity and (b) conducts no banking operations in the U.S. See Declaration of Fabien Debarre in Support of Euro Bondholders' Motion for Clarification dated July 9, 2014 ("Debarre Declaration"), ¶8. Thus, Euroclear Bank is not incorporated in New York and New York is not its principal place of business. Under Daimler, those factors are dispositive on the question of general jurisdiction.

In Daimler, the Supreme Court highlighted the importance of careful attention to due process constraints on the exercise of jurisdiction and held that unduly exorbitant exercises of personal jurisdiction "are barred by due process constraints on the assertion of adjudicatory authority." Daimler, supra, 134 S. Ct. at 751.

The exercise of general jurisdiction over Euroclear Bank would be exorbitant. As in Daimler, so here there is no basis for an assertion of general jurisdiction. Euroclear Bank is not a U.S. national and cannot be said to be "at home" in the U.S. See Daimler, supra, 134 S. Ct. at 758, n.11. See also Sonera Holding B.V. v. Cukurova Holding, 750 F.3d 221, 226 (2d Cir.),

cert. denied, 2014 WL 2126639 (2014) (applying Daimler, finding that defendant's contacts fell short "of those required to render it at home in New York," and reversing the District Court's assertion of general jurisdiction).

Euroclear Bank does maintain a small foreign representative office in New York for client relationship and support purposes pursuant to Article V-B of the New York Banking Law, but that does not make New York Euroclear Bank's principal place of business and, under Daimler, it is insufficient to support the exercise of general jurisdiction over Euroclear Bank, *i.e.*, jurisdiction over any and all claims against Euroclear Bank without regard to whether they arise from its operation in New York. See Daimler, supra, 134 S. Ct. at 751, 760-61 (a court may assert general jurisdiction over a foreign corporation only when the corporation's affiliations with the forum render it essentially at home in the forum; engaging in a substantial, continuous, and systematic course of business in a forum does not render corporation at home in that forum; subject to the possibility of rare exceptions, a corporation is at home only in forum where it is incorporated and in forum where it has its principal place of business).

With regard to specific jurisdiction, plaintiffs fail to cite Reebok International Ltd. v. McLaughlin, supra, where the Ninth Circuit reversed a district court's finding of personal jurisdiction over a Luxembourg bank in the context of a Rule 65 (d) (2) contempt proceeding against the bank, which was a non-party.

The District Court had held that the "essential contact" giving rise to personal jurisdiction over the Luxembourg bank was its conduct "assisting" a violation of the injunction. 49 F.3d at 1391.

The Ninth Circuit discussed the case upon which plaintiffs reply - Waffenschmidt v. MacKay, 763 F.2d 711 (5th Cir. 1985), cert. denied, 474 U.S. 1056 (1986) (Plaintiffs' Opposition at p. 23). Waffenschmidt supports an assertion of specific jurisdiction with respect to a non-party who acts to assist a violation within the United States, but, as the court observed in Reebok, "the strength of the analysis begins to crumble when a district court seeks to reach out across the Atlantic in an attempt to impose conflicting duties on another country's nationals within its own borders. It is a general principle that one state cannot require a person 'to do an act in another state that is prohibited by the law of that state or by the law of the state, of which he is a national,' nor can the person be required to refrain from an act that is required." 49 F.3d at 1392 (citations omitted).

The Ninth Circuit held that, whether or not the Luxembourg bank had assisted in a violation of the injunction, there had to be some activities on the part of the bank in Luxembourg which related to the forum before jurisdiction could be exercised over the Luxembourg bank. The court noted that the bank had followed the law of Luxembourg and did so within Luxembourg. 49 F.3d at 1394.

The essential question for the Ninth Circuit was whether it could be said that the bank in Luxembourg had purposefully directed its activities toward the United States. Id. The court held that: "It is pellucid that [the bank in Luxembourg] has simply behaved as any rational law-abiding person would. It has obeyed the only law applicable to it – the law of its sovereign. If that can be said to have had an effect in the United States, it still cannot be said that the action was purposefully directed toward the United States. At least that cannot be said without wrenching language out of its normal channel and distorting meaning beyond measure." Id.

The court then evaluated the factors relating to specific jurisdiction and held that they were not present. The court stated that the Luxembourg bank had not injected itself "into the affairs of the United States", that the burden on the Luxembourg bank would be very great under the circumstances, and that the conflict with the sovereignty of Luxembourg could hardly be more sharp. Id.

The analysis of the Ninth Circuit is applicable to the present case and precludes the exercise of specific jurisdiction.

Euroclear Bank does not enter into the State of New York or conduct activities within the State of New York in the process of crediting Euros to Euroclear Bank's customers' accounts. Euroclear Bank's activities are conducted within Belgium where entries are made on the books and records of Euroclear Bank reflecting the crediting to its customers of the Euros to which they are entitled. Debarre Declaration, ¶26. Under the circumstances, Euroclear Bank can state that it is not conducting any activities within the forum such that it should not be subject to specific jurisdiction.

Moreover, the Belgian law which governs Euroclear Bank's activities conflicts with the requirements of this Court's Orders (Debarre Declaration, ¶¶15-20).

Plaintiffs, however, invite this Court to venture into new and dangerous territory and to hold that it has worldwide jurisdiction over anyone and everyone – without regard to location, nationality, the applicability and provisions of foreign law, or contacts with the forum (or the absence thereof) - who aids and abets a violation of its Order. The plaintiffs' invitation must be rejected.

CONCLUSION

The Euro Bondholders' motion for clarification should be granted.

Dated: July 21, 2014
New York, New York

Respectfully submitted,

GREENFIELD STEIN & SENIOR, LLP

By: Paul T. Shoemaker
Paul T. Shoemaker
Attorneys for Interested Non-Party
Euroclear Bank SA/NV
600 Third Avenue
New York, New York 10016
(212) 818-9600