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)

(captions continue on following page)

MEMORANDUM OF THE REPUBLIC OF ARGENTINA IN FURTHER SUPPORT OF CITIBANK N.A.'S MOTION TO VACATE THE JULY 28 ORDER AND IN OPPOSITION TO ANY INJUNCTIVE RELIEF

BLUE ANGEL CAPITAL I LLC,	:	
Plaintiff,	:	10 Civ. 4101 (TPG)
	:	10 Civ. 4782 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
OLIFANT FUND, LTD.,	:	
Plaintiff,	:	10 Civ. 9587 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
PABLO ALBERTO VARELA, et al.,	:	
Plaintiffs,	:	10 Civ. 5338 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Defendant the Republic of Argentina (the "Republic") submits this memorandum of law in further support of Citibank N.A.'s ("Citibank") Motion to Vacate the July 28 Order and in opposition to any injunctive relief.

PRELIMINARY STATEMENT

Pending before the Court is Citibank's motion by order to show cause to vacate the Court's July 28 Order, which granted plaintiffs' motion for partial reconsideration of the Court's previous Order of June 27, 2014 (the "June 27 Order"). The June 27 Order confirmed that the Court's amended injunctions of November 21, 2012 (the "Amended Injunctions") "do not as a matter of law prohibit payments by Citibank, N.A.'s Argentine branch on Peso- and U.S. Dollar denominated bonds—governed by Argentine law and payable in Argentina." By rescinding the June 27 Order as to payments on U.S. dollar-denominated bonds governed by Argentine law (the "Argentine Law Bonds"), the July 28 Order has caused Citibank to seek (and the Court to grant) permission to process payments on Argentine Law Bonds each time an interest payment is due.[1]

The Court has since made clear that the July 28 Order "was intended to be simply a temporary way to hold things in place," and that the Amended Injunctions, which explicitly targeted Republic New York-law bonds paid through the Bank of New York Mellon ("BNYM") as indenture trustee, apply "only to the 1994 bonds and the bonds that were issued in exchange for those bonds in 2005, 2010." Sept. 26, 2014 Hr'g Tr. at 48:8-9, 11-13 (Ex. E).[2] It is undisputed that the Argentine Law Bonds are not 1994 bonds, *i.e.*, bonds issued pursuant to the 1994 Fiscal Agency Agreement (the "FAA"), and were not issued in exchange for 1994 bonds.

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[1] Notwithstanding the July 28 Order, the Court has permitted Citibank to continue to make interest payments on the Argentine Law Bonds pending the resolution of the present motion. *See* Order, Nov. 10, 2014, Dkt. #714 (allowing Citibank to process the December 31, 2014 interest payment).

[2] All exhibits are attached to the Declaration of Kristin A. Bresnahan, dated February 17, 2015.

The question presented in these proceedings therefore is whether plaintiffs have met their burden on extending the Amended Injunctions to prohibit Citibank's payment of interest or principal to its customers holding beneficial interests in Argentine Law Bonds. Plaintiffs cannot meet this burden as a matter of law and equity.

The Amended Injunctions were issued to remedy what the Court held was a breach of the FAA's *pari passu* clause. Amended Injunctions ¶ 2 (Ex. K). Plaintiffs must therefore first establish that the *pari passu* clause applies to the Argentine Law Bonds. *See* Sept. 26, 2014 Hr'g Tr. at 21:6-11 (Ex. E) ("Now, the issue then is quite precise, and that is, do these bonds that we are talking about, the bonds issued in Argentina . . . . Are they external indebtedness calling into play the *pari passu* clause or are they not such external indebtedness."). However, the FAA expressly carves out from the definition of "External Indebtedness" – and therefore from the reach of the *pari passu* clause – bonds that, like the Argentine Law Bonds, are denominated in a foreign currency and otherwise fit the definition of Domestic Foreign Currency Indebtedness ("DFCI"). As set forth in the FAA, DFCI includes debt that falls in any of four categories: (1) seven specific categories of locally issued Republic debt, (2) any debt issued in exchange for such debt, (3) any debt offered exclusively within Argentina, and (4) debt issued in exchange for debt payable in Argentine Pesos. The Argentine Law Bonds fall under each of the latter three categories, and therefore cannot be made subject to the Amended Injunctions.

First, all of the Argentine Law Bonds – both those issued in connection with the Republic's restructuring and those issued in subsequent local issuances – are DFCI because they were offered exclusively in Argentina, and thus fall in the third category of DFCI. Among the numerous facts demonstrating that the Argentine Law Bonds were offered only in local transactions, in each instance the Global Certificate at issue was, and always has been, deposited

with, registered in the name of, and cleared and paid through Central de Registro y Liquidación de Instrumentos de Endeudamiento Público ("CRYL"), an Argentine depositary located in Buenos Aires, Argentina. Further, those Argentine Law Bonds issued in the Republic's restructurings were issued in exchange for securities that also constituted DFCI. It surely cannot be that when the Republic accepted and cancelled this Argentine law debt that did not constitute External Indebtedness and then issued Argentine Law Bonds with the same characteristics in exchange, the Republic somehow created External Indebtedness subject to the *pari passu* clause.

Second, the Argentine Law Bonds issued in connection with the Republic's restructurings are DFCI because they were issued in exchange for debt payable in Argentine Pesos. A necessary result of the Republic's historic economic collapse in 2001 was the Republic's decision to end the dollar-to-peso parity and to convert liabilities then denominated in U.S. dollars to local currency, including the requisite conversion to pesos of all debt denominated in a foreign currency and governed by Argentine law. As a result, all bonds eligible for exchange for Argentine Law Bonds in the Republic's subsequent restructurings were payable in pesos, and all Argentine Law Bonds issued in exchange for such securities accordingly fall into the fourth category of DFCI.

Third, nearly half of the series of securities eligible to be tendered in exchange for Argentine Law Bonds in the Republic's restructurings were expressly identified in the first category of DFCI in the FAA, so Argentine Law Bonds issued in exchange for such securities by definition fall in the second category of DFCI. The Argentine Law Bonds of each series are fungible, so those falling in the second category of DFCI are necessarily indistinguishable from the remaining amounts of that series.

That the Argentine Law Bonds are DFCI is dispositive as to why no injunctive relief against Citibank can be issued. In addition, plaintiffs are required to establish each of the elements necessary to obtain injunctive relief, and they have not done so. As the Court has correctly observed, before extending the Amended Injunctions to Citibank's payment on the Argentine Law Bonds, "there has to be a proper record supporting such an injunction, and the Court has to clearly issue that injunction." Sept. 26, 2014 Hr'g Tr. at 48:4-6 (Ex. E). Plaintiffs have failed to meet those elements, not least because the balance of equities and public interest do not weigh in favor of extending the Amended Injunctions. This is particularly true because plaintiffs have refused to answer whether they hold credit-default swaps on Argentine Law Bonds, thereby suggesting that plaintiffs are using these proceedings not to protect any purported *pari passu* rights, but to cash in on a market bet.

BACKGROUND

A. The Amended Injunctions

In November 2012, the Court entered the Amended Injunctions to specifically enforce the *pari passu* clause contained in the Republic's debt documentation. *See* Amended Injunctions ¶¶ 1-2 (Ex. K). Plaintiffs obtained those Amended Injunctions in order to, in plaintiffs' own words, enforce their purported rights under the "equal treatment provision" of the *pari passu* clause. NML Summ. J. Br. at 1, 9, Oct. 20, 2010, Dkt. # 230. The Amended Injunctions specifically prevent the Republic from making any scheduled interest payments on Exchange Bonds payable to BNYM, the Indenture Trustee for those bonds, unless the Republic pays plaintiffs full principal and interest on their defaulted debt. Amended Injunctions ¶ 2 (Ex. K).

The proceedings that led to the Amended Injunctions never addressed the Argentine Law Bonds; they addressed *only* bonds on which payments of principal and interest are made to

BNYM. *See, e.g.*, NML Summ. J. Br. at 18-19 n.12 (specifically targeting payments on 2005 and 2010 bonds transferred to BNYM); NML Renewed Specific Performance Br. at 7, Jan. 6, 2012, Dkt. # 361 ("Under the 2005 Exchange Offers, Argentina provides funds to the Bank of New York or that Bank's 'trustee paying agent'"); *id.* at 7 n.2 (same; 2010 Exchange Bonds); Pls. Remand Br. at 10-11, Nov. 13, 2012, Dkt. # 390 ("Argentina transfers funds to [BNYM]" when paying on the Exchange Bonds subject to the injunction). Neither this Court in the decisions leading to the Amended Injunctions, nor the Second Circuit in its two opinions discussing them, addressed any issues dealing with any bonds not payable to a New York Trustee, and certainly not the Argentine Law Bonds, which are governed by Argentine law and paid exclusively in Argentina. *See* Amended Injunctions ¶ 2 (Ex. K) (naming as participants in Exchange Bonds' "payment process" "The Bank of New York Mellon," "The Bank of New York Depository," "The Bank of New York (Luxembourg S.A.)," and the "Bank of New York Mellon (London)").

In light of this well-established history, the Court correctly confirmed in the June 27 Order that the Amended Injunctions:

> do not as a matter of law prohibit payments by Citibank, N.A.'s Argentine branch on Peso- and U.S. Dollar-denominated bonds—governed by Argentine law and payable in Argentina—that were issued by the Republic of Argentina in 2005 and 2010 to customers for whom it acts as custodian in Argentina.

June 27 Order ¶ 1. Although on July 28, 2014, the Court granted plaintiffs' motion for partial reconsideration of the June 27 Order, at the same time permitting Citibank to process payments owed by it to its customers on July 30, 2014, the Court has since made clear that the July 28 Order "was intended to be simply a temporary way to hold things in place." Sept. 26, 2014 Hr'g Tr. at 48:8-9 (Ex. E). The Court subsequently explained that the Amended Injunctions "appl[y],

as I've said numerous times this afternoon, only to the 1994 bonds and the bonds that were issued in exchange for those bonds in 2005, 2010." *Id.* at 48:11-13; *accord* Sept. 10, 2014 Hr'g Tr. at 12:10-13 (Ex. F) ("[W]hat I was dealing with, and the proceedings this summer was bonds issued in Argentina expressly subject to Argentine law, something completely different from what was covered in the injunction."). All parties agree that the Argentine Law Bonds are not 1994 bonds and were not issued in exchange for 1994 bonds.

As the Court explained at the September 26, 2014 hearing, in order to extend the reach of the Amended Injunctions to the Argentine Law Bonds, plaintiffs must first establish that the Argentine Law Bonds are subject to the *pari passu* clause, which was the legal basis for the Amended Injunctions. *See* Sept. 26, 2014 Hr'g Tr. at 21:6-11 (Ex. E) ("Are [the Argentine Law Bonds] external indebtedness calling into play the pari passu clause or are they not such external indebtedness."). Plaintiffs must also meet each of the elements to obtain an injunction. Before extending the Amended Injunctions to the Argentine Law Bonds, "there has to be a proper record supporting such an injunction, and the Court has to clearly issue that injunction." *Id.* at 48:3-6.

B. The *Pari Passu* Clause and DFCI

Section 1(c) of the FAA contains the *pari passu* clause that forms the basis of the Amended Injunctions. That provision states:

> The Securities [issued under the FAA] will constitute (except as provided in Section 11 below) direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank *pari passu* and without any preference among themselves. The payment obligations of the Republic under the Securities shall at all times rank at least equally with all its other present and future unsecured and unsubordinated *External Indebtedness* (as defined in this Agreement).

See FAA at 2 (Ex. ZZ) (emphasis added). In order to be subject to the *pari passu* clause and the Amended Injunctions enforcing it, performing Republic debt must constitute "External Indebtedness" under the FAA.

Explicitly excluded from the definition of External Indebtedness – and therefore from the reach of the *pari passu* clause – is debt that is DFCI: "no [DFCI] . . . shall constitute External Indebtedness." *Id.* at 16. That Republic-issued debt may be denominated in U.S. dollars is accordingly not enough to bring the obligation within the scope of the *pari passu* clause. In order to be covered by the provision, the obligation must *not* constitute DFCI.[3] As shown below, all of the Argentine Law Bonds are in fact DFCI (and are therefore *not* External Indebtedness covered by the *pari passu* clause).

Under the FAA, DFCI is defined to include, *inter alia*, four categories of debt: (1) seven listed categories of Republic debt offered and issued in Argentina,[4] (2) any indebtedness issued in exchange for such debt, (3) any debt payable in a foreign currency "which is . . . offered exclusively within the Republic of Argentina," and (4) any debt payable in a foreign currency "which is . . . issued in payment, exchange, substitution, discharge or replacement of indebtedness payable in the lawful currency of the Republic." *See id.* at 17. The FAA thus recognizes several circumstances in which Republic debt, although denominated in dollars, is

[3] Plaintiffs concede that DFCI does not constitute External Indebtedness. *See, e.g.*, Pls. Reconsideration Br. at 2 n.1, July 10, 2014, Dkt. #583.

[4] Those include (a) Bonos del Tesoro issued under Decree No. 1527/91 and Decree No. 1730/91, (b) Bonos de Consolidación issued under Law No. 23,982 and Decree No. 2140/91, (c) Bonos de Consolidación de Deudas Previsionales issued under Law No. 23,982 and Decree No. 2140/91, (d) Bonos de la Tesorería a 10 Años de Plazo issued under Decree No. 211/92 and Decree No. 526/92, (e) Bonos de la Tesorería a 5 Años Plazo issued under Decree No. 211/92 and Decree No. 526/92, (f) Ferrobonos issued under Decree No. 52/92 and Decree No. 526/92, and (g) Bonos de Consolidación de Regalías Hidrocarburíferas a 16 Años de Plazo issued under Decree No. 2284/92 and Decree No. 54/93. *See* FAA at 17 (Ex. ZZ).

domestic indebtedness. Any Republic indebtedness meeting the definition of DFCI is not covered by the *pari passu* clause under the express terms of the FAA, and so cannot be subject to an injunction that specifically enforces that provision. *See* Opinion at 6, Nov. 21, 2012, Dkt. #424 (explaining that *pari passu* injunctions "must bear some reasonable relationship to the *Pari Passu* Clause in order to be a reasonable remedy").

C. The Republic's Locally Offered Debt

The Republic, like any sovereign, offers debt in its local markets. This debt is subject to Argentine law. The Global Certificate for each of these bonds is, and always has been, deposited with, registered in the name of, and cleared and paid through CRYL, an Argentine depositary located in Buenos Aires, Argentina. *See, e.g.*, Prospectus Supplement 2005 ("2005 ProSupp") at S-19 (Ex. AA); Prospectus Supplement 2010 ("2010 ProSupp") at S-5 (Ex. R). For purposes of these proceedings, the Republic's locally offered debt can be divided into two categories: 1) non-performing Argentine law debt issued prior to 2002; and 2) performing Argentine Law Bonds issued from 2005 to the present, the payment on which plaintiffs are now seeking to enjoin.

1. The Argentine Law Debt That Defaulted in 2001

In 2001, the Republic defaulted on its External Indebtedness, as well as on 57 series of debt locally offered and governed by Argentine law. These 57 series of Argentine-law governed bonds, as originally issued, were DFCI and offered exclusively in Argentina, because, among other reasons, they were directly placed through local financial institutions;[5] they were publicly placed through authorized participants and intermediaries (whether by public auction or

[5] *See, e.g.*, Joint Resolution 241/2001 and 82/2001, dated Aug. 22, 2001 (Ex. FF) (bonds issued and placed locally and directly to local banks, explicitly in response to lack of access to the international markets); Joint Resolution 220/2001 and 79/2001, dated Aug. 7, 2001 (Ex. GG) (same); Joint Resolution 189/2001 and 75/2001, dated July 20, 2001 (Ex. HH) (same); Joint Resolution 30/2001 and 8/2001, dated Apr. 11, 2001 (Ex. KK) (bonds placed in Argentina through local financial institutions in the local market).

otherwise);[6] they were issued in local exchange offers for outstanding eligible securities;[7] or they were issued to pay or cancel local liabilities, such as pension liabilities, liabilities to provinces, or to guarantee obligations with local financial institutions.[8]

Twenty-one (21) of these 57 series of eligible securities were also issued pursuant to laws or decrees enacted prior to the execution of the FAA in 1994 and are expressly identified in subparagraph (i)(a)-(g) of the definition of DFCI (and so excluded from the definition of External Indebtedness, and thus, the *pari passu* clause). FAA at 17 (Ex. ZZ); *see* Chart Listing DFCI Bonds under Subparagraph (i) (Ex. A).[9] These 57 locally-offered series of bonds were later eligible to participate in restructurings in 2005 and 2010, and a considerable amount of them were exchanged for the Argentine Law Bonds at issue here.

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[6] *See, e.g.*, Resolution 483/1998, dated Oct. 23, 1998 (Ex. TT) (bonds issued and placed locally by means of a public auction provided for by Presidential Decree 340/1996, dated Apr. 1, 1996 (Ex. XX)); Resolution 198/1997, dated Apr. 24, 1997 (Ex. WW) (same); Joint Resolution 1/2001 and 1/2001, dated Mar. 13, 2001 (Ex. LL) (same); Joint Resolution 4/2001 and 5/2001, dated Jan. 9, 2001 (Ex. NN) (same); Resolution 362/1999, dated July 7, 1999 (Ex. RR) (securities issued and placed in the local markets explicitly to address demand from local investors).

[7] *See, e.g.*, Resolution 143/2001, dated May 24, 2001 (Ex. II) (bonds issued in local tranche of an exchange offer); Resolution 69/2001, dated Feb. 1, 2001 (Ex. MM) (same); Resolution 20/2000, dated Feb. 9, 2000 (Ex. QQ) (same).

[8] *See, e.g.*, Decree 2284/1992, dated Dec. 9, 1992 (Ex. EEE) (bonds issued to the provinces in payment of oil and gas royalties); Decree 1116/2000, dated Nov. 29, 2000 (Ex. PP) (bonds issued to consolidate and pay obligations related to the pension system); Decree 2140/1991, dated Oct. 10, 1991 (Ex. III) (bonds issued to consolidate and pay obligations); Decree 726/1997, dated Aug. 7, 1997 (Ex. VV) (bonds issued in payment of obligations of the Republic to compensate victims of forced disappearances).

[9] The Chart Listing DFCI Bonds under Subparagraph (i) included at Ex. A details the Laws, Decrees and Resolutions that authorize the issuances of these 21 series. They are: Argentine Presidential Decree 2284/1992, dated Dec. 2, 1992 (Ex. EEE); Argentine Presidential Decree 54/1993, dated Jan. 21, 1993 (Ex. DDD); Law 23,982, dated Aug 22, 1991 (Ex. JJJ); Argentine Presidential Decree 2140/1991, dated Oct. 10, 1991 (Ex. III); Argentine Presidential Decree 684/1993, dated Apr. 13, 1993 (Ex. CCC); Resolution 261/1992, dated Feb. 1992 (Ex. GGG); Argentine Presidential Decree 52/1992, dated Jan. 6, 1992 (Ex. HHH); Argentine Presidential Decree 526/1992, dated Mar. 27, 1992 (Ex. FFF); Argentine Presidential Decree 726/1997, dated Aug. 7, 1997 (Ex. VV); Resolution 389/1997, dated Sept. 9, 1997 (Ex. UU); Argentine Presidential Decree 1318/1998, dated Nov. 13, 1998 (Ex. SS); Law 25,401, dated Dec. 29, 2000 (Ex. OO); Resolution 111/2001, dated May 14, 2001 (Ex. JJ).

During this same period (*i.e.*, 1994-2001), the Republic issued bonds under the FAA. The characteristics of these bonds, which are External Indebtedness, are fundamentally different from the locally offered and issued Argentine law debt. *See* FAA at 3, 15-16, 29-30 (Ex. ZZ).

Another important distinction between this Argentine law debt and the Republic's External Indebtedness is that the Argentine law debt, like all debt governed by Argentine law, was and is subject to the Argentine legislative and judicial processes. Long before the Republic's restructurings, the Argentine economy suffered massive capital flight, including of U.S. dollars, as a result of the Republic's economic collapse in 2001. To arrest the worst effects of the collapse, including the potential for widespread insolvency of Argentine individuals, corporations, and financial institutions, the Republic ended the dollar-to-peso parity and permitted devaluation of the Argentine peso. *See, e.g.*, Ross P. Buckley, *Why are Developing Nations So Slow to Play the Default Card in Renegotiating their Sovereign Indebtedness?*, 6 Chi. J. Int'l L. 345, 351 (2005) ("The principal cause" of the Argentine recession "was the one-to-one peg of the peso to the U.S. Dollar that, in time, had led to the peso becoming severely overvalued and to Argentina's exports becoming increasingly uncompetitive."); Paul Krugman, *Crying with Argentina*, N.Y. Times, Jan. 1, 2002 ("The best hope for an Argentine turnaround was an orderly devaluation, in which the government reduced the dollar value of the peso and at the same time converted many dollar debts into pesos.").

As part of this process, in 2002 the Republic converted to pesos all dollar-denominated debt governed by Argentine law, including debt held by Argentine banks and Argentine citizens, as well as the 57 securities that were eventually eligible for exchange in 2005 and 2010. *See, e.g.*, Argentine Presidential Decree No. 471/2002, dated Aug. 3, 2002 (Ex. EE); Resolution 50/2002, dated May 30, 2002 (Ex. CC); Resolution 55/2002, dated Apr. 15, 2002 (Ex. DD); *see*

also Republic of Argentina, Annual Report (Form 18-K) at 133 (Oct. 27, 2009) (Ex. U). This currency conversion – often referred to as "pesification" – was held constitutional by the Argentine Supreme Court in April 2005.[10] In so holding, the Supreme Court emphasized the financial crisis in response to which the decrees and resolutions were enacted, as well as their nondiscriminatory application to all holders of Argentine law debt. *See* Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], Apr. 5, 2005, "Galli, Hugo Gabriel y otro c. Poder Ejecutivo Nacional s/ amparo" (Arg.) (Ex. Y).

2. The Argentine Law Debt Issued After the 2001 Default

The Argentine Law Bonds at issue in these proceedings are comprised of four series of bonds with the ISINs ARARGE03E113 (the "113 Bonds"), ARARGE03E097 (the "097 Bonds"), ARARGE03G688 (the "688 Bonds"), and ARARGE03G704 (the "704 Bonds"). These bond series have an outstanding principal amount of approximately $8.4 billion, *see* Chart Listing Outstanding Amounts of Each ISIN (Ex. B), and were issued as follows:

The Republic issued Argentine Law Bonds in 2005 (the 113 Bonds and 097 Bonds) and 2010 (the 688 Bonds and 704 Bonds) in an aggregate amount of approximately $2 billion solely in exchange for non-performing Argentine Law Bonds. *See* Republic Press Release, Argentina Announces Results of Successful Exchange Offer (Mar. 18, 2005) (Ex. Z); Republic Press Release, Argentina Announces Results of Exchange Offer (July 1, 2010) (Ex. Q). As a result of capitalized interest, these issuances have a current outstanding principal amount of about $2.3 billion. The mechanics by which a bondholder could tender beneficial interests in exchange for Argentine Law Bonds establish that these transactions occurred in Argentina:

[10] That the terms of the Argentine Law Bonds may be affected by Argentine legislation and rulings by the Argentine judicial branch highlights the key distinction between the Argentine Law Bonds and the foreign law governed bonds.

First, beneficial owners who wished to tender their interests sent letters of transmittal through their agents to the Republic's exchange agent. 2005 ProSupp at S-49 (Ex. AA); 2010 ProSupp at S-76 (Ex. R). The Republic always retained the right to accept or reject any tender. 2005 ProSupp at S-47 (Ex. AA); 2010 ProSupp at S-74 (Ex. R). *Second*, if the Republic accepted a tender, the relevant non-performing Argentine-law bonds, which were *all* deposited at CRYL, were cancelled at CRYL in Argentina. *Third*, the newly issued Argentine-law bonds were deposited at CRYL, and interests in the bonds were distributed to the agents of beneficial owners at Caja de Valores S.A., 2005 ProSupp at S-19 (Ex. AA); 2010 ProSupp at S-39-40 (Ex. R), "a privately owned Argentine securities depository located solely in Argentina, with no branches, no offices, and no employees in New York." *Aurelius Capital Partners LP v. Argentina*, No. 07 Civ. 2715 (TPG), 2010 WL 2925072, at *1 (S.D.N.Y. July 23, 2010).

The Republic also offered the 113 Bonds locally in several "reopenings" beginning in 2007 pursuant to local issuance resolutions ("Local Issuance Resolutions").[11] A reopening is the issuance of additional amounts of a previously-issued security. Reopening is a common market practice that benefits beneficial owners because the newly-issued securities are fungible with the original securities, which makes the issue size larger and the securities of that series more liquid.

Under the procedures set forth by the Treasury and Finance Secretaries in the Annex to Joint Resolution 205/2007 and 34/2007 (the "Authorizing Resolution"), the Republic issued $4.33 billion in additional 113 Bonds in these reopenings through one of two mechanisms: a

[11] *See* Argentine Presidential Decree No. 1735, dated Dec. 9, 2004 (original issuance) (Ex. BB); Joint Resolution 205/2007 and 34/2007, dated June 5, 2007 (Ex. W); Joint Resolution 449/2007 and 94/2007, dated Nov. 26, 2007 (Ex. V); Joint Resolution 62/2010 and 21/2010, dated Mar. 15, 2010 (Ex. T); Joint Resolution 77/2010 and 29/2010, dated Mar. 31, 2010 (Ex. S); Joint Resolution 198/2010 and 57/2010, dated July 26, 2010 (Ex. P); Joint Resolution 175/2011 and 45/2011, dated May 30, 2011 (Ex. O); Joint Resolution 242/2011 and 68/2011, dated July 18, 2011 (Ex. N); and Joint Resolution 364/2011 and 98/2011, dated Sept. 28, 2011 (Ex. L).

local public auction or a direct placement. *See* Authorizing Resolution, dated June 5, 2007 (Ex. W). As with the other Argentine Law Bonds, these transactions occurred in Argentina.

Pursuant to the Authorizing Resolution, public auctions begin with a proposal for an issuance submitted by Argentina's National Office of Public Credit ("ONCP"). *Id.* at Annex ¶ 1.1. Upon receiving approval for the proposal, the ONCP publishes, at least one day before the auction, a press release inviting potential purchasers to submit bids. *Id.* at Annex ¶ 1.2-3. Bidders may participate only through the Mercado Abierto Electrónico ("MAE"), an electronic securities and currency trading market located in Argentina, and are required to be registered members of one of two Argentine securities markets – Bolsa or MAE – and to have CRYL accounts at Banco Central de la República Argentina ("BCRA"). *Id.* at Annex ¶¶ 1.4, 1.6. Other investors can participate only by using a registered member as their agent. *Id.* at Annex ¶ 1.6.c. After the auction, ONCP communicates the results through MAE, and an office within ONCP drafts a corresponding Global Certificate representing the new securities and delivers the Global Certificate to CRYL, which it holds throughout the life of the bonds. *Id.* at Annex ¶¶ 1.11, 1.13.1. Later the same day, BCRA credits the purchase amounts to the National Treasury and credits the beneficial interests in the bonds to the Registered Accounts of Authorized Intermediaries. *Id.* at Annex ¶ 1.13.2.

Direct placement issuances, like auction issuances, also take place in Argentina. *Id.* at Annex ¶ 2. In a procedure similar to the auctions, ONCP proposes a placement and, upon receiving approval, debits the BCRA account of the participant financial entity for deposit with the National Treasury and drafts the corresponding Global Certificate to be sent to CRYL. *Id.* As with auctions, CRYL holds the Global Certificate throughout the life of the bonds.

The most recent reopening of the 113 Bonds occurred in May 2014, when the Republic issued to Spanish oil company Repsol, S.A. ("Repsol") such bonds in an outstanding principal amount of $1.75 billion as partial consideration for the resolution of claims asserted by Repsol against the Republic. *See* Resolution 26/2014, dated Apr. 30, 2014 (Ex. I). The Repsol bonds were offered pursuant to the direct placement provisions of the Authorizing Resolution. *Id.* The parties' negotiations took place in Argentina, and the agreement was signed and closed in Argentina. *See* Repsol Settlement Agreement at 5, 20, 36, 107 (Ex. J). Counting the Repsol bonds, the Republic issued an outstanding principal amount of approximately $6.1 billion worth of bonds pursuant to reopenings and outside the context of any restructuring.[12]

In addition to these local offering mechanisms, the Argentine Law Bonds possess unique characteristics that further confirm their domestic nature. Unlike the Exchange Bonds payable to BNYM and subject to the Amended Injunctions, the Argentine Law Bonds:

- Were not submitted to the jurisdiction of foreign courts, including U.S. courts. *See* 2005 ProSupp at S-72 (Ex. AA); 2010 ProSupp at S-114 (Ex. R);

- Include the prefix "ARARGE" in their ISIN, indicating their local Argentine issuance. 2005 ProSupp at S-105-06 (Ex. AA); 2010 ProSupp at S-44, S-47, S-52 (Ex. R). The prefix "ARARGE" is assigned to debt securities issued by the Republic and deposited at CRYL. The first two letters ("AR") are the country code assigned pursuant to ISO 6166. *See* http://www.anna-web.org/index.php/home/isinsaiso6166. "ARGE" is the code that Caja de Valores, acting as National Numbering Agency for Argentina, assigns to the Republic's local debt issuances. *See* http://www.anna-web.org/pdf_profil/AR_Members_Profile_0714.pdf and http://www.anna-web.org/index.php/numbering-agencies;

[12] Included in this sum is an outstanding principal amount of approximately $13 million issued in 2011 pursuant to an additional reopening of the 113 Bonds. *See* Resolution 439/2011, dated July 25, 2011 (Ex. M). Resolution 439/2011 authorized the exchange of certain local tax credit certificates for 113 Bonds. The eligible tax credit certificates had been locally issued in exchange for cash or Republic debt in order to cancel certain Argentine tax liabilities. *See id.* This reopening, like the other reopenings of the 113 Bonds discussed above, took place – and the Argentine Law Bonds were offered – exclusively in Argentina. In addition to the inherently local nature of the eligible certificates, all of the relevant transactions took place at Caja de Valores. *See id.*

- Do not contain *pari passu* clauses, negative pledge covenants, events of default, acceleration provisions, or provisions for amendments or otherwise for bondholder meetings. *See* 2005 ProSupp at S-21, S-33, S-70-71 (Ex. AA); 2010 ProSupp at S-42, S-61, S-103, S-113 (Ex. R); and

- Do not contain provisions for tax gross-ups. *See* 2005 ProSupp at S-21, S-33, S-70-71 (Ex. AA); 2010 ProSupp at S-42, S-61, S-113 (Ex. R). Because a sovereign could theoretically use its legislative powers to tax payments due to foreign holders, sovereign debt documentation invariably provides for a tax gross-up of non-local debt. That is, if taxes are imposed, additional payments will be made to make the bondholders whole. *See* Stephen Choi, et al., *The Evolution of Contractual Terms in Sovereign Bonds*, J. of Legal Analysis 131, 149 (2012). Such gross-ups were included in both the New York and English law-governed bonds. *See* Trust Indenture at 17 (Ex. X).

These significant differences between the Republic's external and domestic indebtedness are widely recognized in the financial markets, and indeed by plaintiffs, who have, until now, never sought to enjoin payments on the Argentine Law Bonds.

ARGUMENT

THE PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION AGAINST PAYMENT OF THE ARGENTINE LAW BONDS

I. Plaintiffs Have Never Established Any Basis to Enjoin Payment on the Argentine Law Bonds

Because litigation concerning the Amended Injunctions has always focused exclusively on the New York-law governed Exchange Bonds for which BNYM serves as Trustee – and plaintiffs have never presented any evidence that the Argentine Law Bonds constitute External Indebtedness – the Court has not previously considered the issue of whether the Argentine Law Bonds are DFCI. Plaintiffs have themselves made it clear that they believe a more robust record must be put before the Court on these issues before they can be decided. *See* Sept. 26, 2014 Hr'g Tr. at 22:3-19, 41:1-8, 45:8-17 (Ex. E) (emphasizing that "the record is not complete" and the need to "conduct discovery with respect to the difference between these [Argentine Law] bonds and the other bonds"). Plaintiffs accordingly bear the burden of establishing that the Amended

Injunctions may be extended to the Argentine Law Bonds as a matter of both law and equity. *See Weight Watchers Int'l, Inc. v. Luigino's, Inc.*, 423 F.3d 137, 143 (2d Cir. 2005) (party seeking to extend injunction "must establish its entitlement to relief.").[13]

In arguing that the Amended Injunctions may be extended to the Argentine Law Bonds, plaintiffs have previously taken the position that it is irrelevant whether the bonds constitute External Indebtedness. Pls.' Opp. to Citibank's Mot. for Clarification at 7, *Aurelius Capital Master, Ltd. v. Argentina*, No. 09 Civ. 8757 (TPG) (S.D.N.Y. July 2, 2014) Dkt. #396. However, the Amended Injunctions were issued as a remedy for the alleged violation of the *pari passu* clause, which applies to External Indebtedness only. Therefore, as injunctions may not bar lawful activity, the Amended Injunctions cannot reach more broadly than the *pari passu* clause itself and prohibit activity not even arguably covered by the provision. *See Forschner Grp., Inc. v. Arrow Trading Co., Inc.*, 124 F.3d 402, 406 (2d Cir. 1997) ("the essence of equity jurisdiction has been the power to grant relief no broader than necessary to cure the effects of the harm caused by the violation") (internal citations and quotation marks omitted); *Brooks v. Giuliani*, 84

[13] In any event, the Court retains the ability to exercise its plenary power to amend interlocutory orders prior to the entry of final judgment. *See* Fed. R. Civ. P. 54(b); *Grace v. Rosenstock*, 228 F.3d 40, 51 (2d Cir. 2000) ("All interlocutory orders remain subject to modification or adjustment prior to the entry of a final judgment adjudicating the claims to which they pertain."). Plaintiffs previously conceded that both the Court's July 28 Order and the Amended Injunctions are interlocutory orders. *See* Response Br. of Plaintiff-Appellees NML Capital, Ltd. and Olifant Fund, Ltd. at 1, *Aurelius Capital Master, Ltd. v. Argentina*, No. 14-2689 (2d Cir. Aug. 29, 2014) Dkt #130; Corrected Br. of NML Capital, Ltd., et al. at 6, *NML Capital, Ltd. v. Argentina*, 12-105-cv(L) (2d Cir. Apr. 20, 2012) Dkt. #308 (stating that Injunctions are not final decisions because plaintiffs' "claims for principal and interest on the FAA bonds remain outstanding"). Moreover, the Court of Appeals dismissed for lack of appellate jurisdiction Citibank's and the Republic's appeal from the July 28 Order precisely *because* it was not final. *See* Order, *Aurelius Capital Master, Ltd. v. Argentina*, No. 14-2689 (2d Cir. Sept. 19, 2014) Dkt. #170. Accordingly, there can be no dispute that the Court can revisit its July 28 Order and confirm that plaintiffs have not met their burden on expanding the Amended Injunctions. *See United States v. LoRusso*, 695 F.2d 45, 53 (2d Cir. 1982) ("[T]he power to grant relief from erroneous interlocutory orders, exercised in justice and good conscience, has long been recognized as within the plenary power of courts until the entry of final judgment and is not inconsistent with any of the Rules.").

F.3d 1454, 1467 (2d Cir. 1996) (injunctions may "'not impose unnecessary burdens on lawful activity'") (internal citations omitted).

II. Argentine Law Bonds Are DFCI Under the FAA and Therefore Are Not External Indebtedness Subject to the *Pari Passu* Clause

There is no factual or legal basis for extending the Amended Injunctions to the Argentine Law Bonds, because as DFCI, they are excluded from the universe of "External Indebtedness" subject to the *pari passu* clause, which the Amended Injunctions enforce. *See, e.g.*, Amended Injunctions ¶ 2 (Ex. K) ("The Republic accordingly is permanently ORDERED to specifically perform its obligations to NML under [the *pari passu* clause]").

A. Debt Offered in Local Reopenings Constitutes DFCI

Completely outside of the context of the Republic's 2005 and 2010 restructurings of its non-performing debt, the Republic issued 113 Bonds in a current outstanding amount of $6.1 billion through securities reopenings effected by either public auction or direct placement. These bonds were plainly never subject to the Amended Injunctions because they are not "Exchange Bonds" as defined in the injunctions. *See* Amended Injunctions ¶ 2(a) (Ex. K). Simply put, the bonds issued pursuant to local issuances were not issued pursuant to any exchange offer, let alone the 2005 and 2010 exchange offers referenced in the Amended Injunctions. Like the other Argentine Law Bonds, these bonds were offered in unrelated local issuances exclusively in Argentina. *See generally* Authorizing Resolution (Ex. W); Local Issuance Resolutions (Exs. L, N, O, P, S, T, V, W, BB).

In any event, none of the Argentine Law Bonds can be subject to the *pari passu* clause because all of the bonds constitute indebtedness offered exclusively in Argentina. *See* FAA at 17 (Ex. ZZ). Contracts governed by New York law, like the FAA, are to be construed in accordance with their plain meaning. *See LaSalle Bank Nat. Ass'n v. Nomura Asset Capital*

Corp., 424 F.3d 195, 206 (2d Cir. 2005) ("In interpreting a contract under New York law, words and phrases . . . should be given their plain meaning"). In plain English, indebtedness is "offered" where it is located, *i.e.*, the location where the instrument representing the indebtedness is held and can be acquired. *See, e.g.*, *Offer*, Merriam-Webster Online Dictionary (2015), http://www.merriam-webster.com/dictionary/offer (defining offer as "to make (something) available: to provide or supply (something)"). Each of the resolutions authorizing the reopening of the 113 Bonds references the Authorizing Resolution, thereby incorporating the inherently local issuance procedures provided for in the Authorizing Resolution. *See* Local Issuance Resolutions (Exs. L, N, O, P, S, T, V, W, BB). Critically, each provides that the 113 Global Certificate will be deposited with, registered in the name of, and cleared and paid through CRYL in Argentina. Further, the Local Issuance Resolutions emphasize that the Authorizing Resolution sets forth "the procedural rules for the placement and settlement of the public debt securities to be undertaken in the *local market*." *See* Local Issuance Resolutions (Exs. L, N, O, P, S, T, V, W, BB) (emphasis added).

In the case of the 113 Bonds issued to Repsol, the settlement documentation specifically confirms that the 113 Bonds were made available only *in Argentina*. The 113 Bonds issued to Repsol were offered in Argentina; are sitused and payable in Argentina; and are governed by Argentine law.[14] Notably, these Argentine Law Bonds issued to Repsol share all of the same characteristics – widely recognized in the financial markets as distinguishing between external and domestic indebtedness – as the Argentine Law Bonds issued in the local exchanges. *See supra* at 14-15. For all of these reasons, these bonds fall squarely in the FAA's definition of DFCI.

[14] All four series of bonds issued to Repsol pursuant to the settlement agreement share these characteristics. *See* Repsol Settlement Agreement at Annex IV, Appendix I (Ex. J).

B. Argentine Law Bonds Issued in Exchange for Non-Performing Argentine Law Debt Are DFCI

The Republic also issued Argentine Law Bonds in exchange for non-performing Argentine law debt in the current outstanding amount of approximately $2 billion. Such bonds constitute DFCI under three separate subsections of the definition of DFCI provided in the FAA.

1. *Indebtedness offered exclusively in Argentina*. Subparagraph (iii)(a) of the DFCI definition includes all "indebtedness . . . offered exclusively within the Republic of Argentina." FAA at 17 (Ex. ZZ). Like the Argentine Law Bonds issued in the local reopenings, the Argentine Law Bonds that the Republic issued in exchange for other Argentine law governed debt meets this definition.

As set forth above, indebtedness is offered where it is located and can be acquired. *See supra* at 17-18. Here, it is undisputed that the Global Certificates representing each series of the Argentine Law Bonds, including for those amounts issued in the Republic's restructurings, have at all times been deposited with, registered in the name of, and cleared and paid through CRYL in Argentina. *See, e.g.*, 2005 ProSupp at S-19 (Ex. AA); 2010 ProSupp at S-5 (Ex. R). Further, and as set forth in detail above, the mechanics of the transaction in which a bondholder could tender beneficial interests in exchange for Argentine Law Bonds establish that such indebtedness could only be acquired, and thus was offered solely, within the Republic. *See supra* at 11-12. Finally, numerous additional characteristics of the Argentine Law Bonds, including their ARARGE prefix and their lack of any consent to foreign jurisdiction, a *pari passu* clause, or a tax gross-up provision, all establish their domestic Argentine nature.

By contrast, in the 2005 exchange, newly issued securities denominated or paid in U.S. dollars and governed by New York law – *i.e.*, External Indebtedness covered by the Amended Injunctions – were represented as interests in a global note "registered in the name of a nominee

for DTC [in New York] and which [were] deposited on or before the Settlement Date with a custodian for DTC [in New York]." 2005 ProSupp at S-72 (Ex. AA). In the 2010 exchange, newly issued securities denominated in U.S. dollars or euros and governed by New York or English law were represented by interests in global notes "registered in the name of a nominee of a common depositary of Euroclear and Clearstream, Luxembourg." 2010 ProSupp at S-89 (Ex. R). These foreign-law governed bonds consent to New York or other non-Argentine jurisdictions, contain *pari passu* clauses and tax gross-up provisions, and contain foreign prefixes, such as US for the United States or XE for international, all of which establish their non-domestic character.

Because plaintiffs cannot dispute these basic facts, they have previously argued that whether the Argentine Law Bonds are DFCI turns not on *where* the indebtedness was offered, but "*to whom* it was offered." NML Br. at 17, 18, Sept. 26, 2014, Dkt. #680; *see also id.* at 17-18 (identifying "the critical issue" as "*to whom* [the Argentine law bonds] *were offered*") (emphasis in original). But under the plain language of the FAA, the issue before the Court is *where* the indebtedness was offered, and *not* to whom the offer was made. *See* FAA at 17 (Ex. ZZ) (defining DFCI as "indebtedness . . . offered exclusively within the Republic of Argentina"). Nothing in the FAA supports plaintiffs' reference to the identity of beneficial owners.

Notably, at the time the FAA was executed in 1994, several other sovereign borrowers chose a definition of External Indebtedness that explicitly hinged on the nationality of the bondholders holding the debt. *See, e.g.*, Republic of Italy Offering Circular at 3, dated Nov. 16, 1994 (Ex. YY) ("'External Indebtedness' means any indebtedness of . . . the Republic that is denominated in a currency other than lire or payable at the option of the payee in a currency other than lire, *and owed to, or as the case may be, for the benefit of a person who is not a*

resident of the Republic.") (emphasis added); Republic of Panama Offering Memorandum at 92, dated Jan. 31, 1994 (Ex. BBB) ("'External Indebtedness' means all indebtedness . . . *payable to a person or entity domiciled outside the territory of the Republic*.") (emphasis added); Republic of Trinidad and Tobago Offering Circular at 50, dated Sept. 27, 1994 (Ex. AAA) ("'External Indebtedness' means Indebtedness which is payable (or may be paid) (A) in a currency or by reference to a currency other than the currency of the Republic of Trinidad and Tobago and (B) *to a person resident or having its principal place of business outside the Republic of Trinidad and Tobago*.") (emphasis added). The FAA, by contrast, includes no reference to who holds the indebtedness. *See* FAA at 17 (Ex. ZZ) (defining DFCI as "indebtedness . . . offered exclusively within the Republic of Argentina"). The lead plaintiffs are ultra-sophisticated speculators in sovereign debt who understand the distinction.

Plaintiffs were also wrong to suggest to the Court that the Argentine Law Bonds were offered wherever the beneficial owners happened to be. *See* NML Br. at 16-17, Sep. 26, 2014, Dkt. # 680. In making this argument, plaintiffs highlighted statements made by the Republic noting the existence or exchange of Argentine Law Bonds in its regulatory filings, including its Prospectuses filed with the SEC. However, these statements have no bearing on *where* the Argentine Law Bonds were offered as defined in the FAA.

An alternative definition of offer commonly used in the formation of contracts is "the manifestation of willingness to enter into a bargain," and such an "offer" is only made when it gives the recipient "the apparent power to conclude a contract *without further action by the other party*." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 369 F.3d 91, 95 (2d Cir. 2004) (emphasis in original) (quoting Restatement (Second) of Contracts § 24 (1981)); *see also* 22 N.Y. Jur. 2d Contracts § 34 (same). Here, it is undisputed that the Republic

retained the right to accept or reject tenders submitted by beneficial owners, 2005 ProSupp at S-47 (Ex. AA); 2010 ProSupp at S-74 (Ex. R), and that the only actions that gave one party the power to conclude the exchange "without further action by the other" occurred in Argentina. *See Aurelius*, 2010 WL 2925072, at *4 (holding that Argentina was the situs of bonds held by Caja de Valores). Accordingly, the Argentine Law Bonds issued in connection with the 2005 and 2010 exchanges are DFCI for the additional reason that they were offered exclusively in Argentina.

2. *Indebtedness issued in exchange for indebtedness payable in pesos.* Pursuant to subparagraph (iii)(b) of the definition of DFCI, all indebtedness "issued in payment, exchange, substitution, discharge, or replacement of indebtedness payable in the lawful currency of the Republic" constitutes DFCI. FAA at 17 (Ex. ZZ). The relevant Argentine Law Bonds meet this definition because each of the non-performing securities that could be tendered in exchange for such bonds were payable in pesos pursuant to Presidential Decree No. 471/2002 (Ex. EE), and Resolutions 50/2002 and 55/2002 (Exs. CC, DD). In other words, as set forth in DFCI subparagraph (iii)(b), the Argentine Law Bonds were issued in exchange for "indebtedness payable in the lawful currency of the Republic of Argentina" – *i.e.* the peso – because all debt governed by Argentine law, including that eligible to participate in the Republic's restructurings, were payable in pesos as of 2002. Presidential Decree No. 471/2002, dated Mar. 8, 2002 (Ex. EE); Resolution 50/2002, dated May 30, 2002 (Ex. CC); Resolution 55/2002, dated Apr. 15, 2002 (Ex. DD). The Argentine Law Bonds issued in exchange for pesified bonds accordingly fall under DFCI subparagraph (iii)(b).

3. *Indebtedness issued in exchange for debt identified in the definition of DFCI.* Subparagraph (i)(a)-(g) of the definition of DFCI expressly lists seven categories of bonds as

constituting DFCI. Subparagraph (ii) of the definition of DFCI includes "any indebtedness issued in exchange, or as replacement, for the indebtedness referred to in [subparagraph] (i)." FAA at 17 (Ex. ZZ). Of the 57 eligible securities that could be tendered in exchange for Argentine Law Bonds, 21 of those securities qualify as (a)-(g), see Chart Listing DFCI Bonds under Subparagraph (i) (Ex. A), which amounts to approximately 18% of the eligible securities tendered, see Chart Listing Eligible Amounts Tendered (Ex. C). All Argentine Law Bonds issued in exchange for those 21 securities fall under DFCI subparagraph (ii).

III. Extending the Injunctions to the Argentine Law Bonds Would Be Inequitable

Before obtaining an injunction, plaintiffs must demonstrate that, *inter alia*, "'the balance of equities tips in [their] favor, and that an injunction is in the public interest.'" *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Extending the Amended Injunctions to prohibit payment on any of the Argentine Law Bonds would necessarily bar payment on bonds that are not and never have been subject to the *pari passu* clause, and cannot be lawfully bound by an injunction issued as a remedy for its breach. Such a result cannot stand under the principles of equity. *See Forschner Grp.*, 124 F.3d at 406 ("[T]he essence of equity jurisdiction has been the power to grant relief no broader than necessary to cure the effects of the harm caused by the violation"); *Jordan v. Metro. Life Ins. Co.*, 280 F. Supp. 2d 104, 112 (S.D.N.Y. 2003) (denying injunctive relief where "[i]t is impossible for the Court to tailor an injunction that would prevent [the purported harm] while preserving" the defendant's ability to engage in lawful actions); *Litwin v. OceanFreight, Inc.*, 865 F. Supp. 2d 385, 401-02 (S.D.N.Y. 2011) ("balance of equities . . . favors denial of

plaintiff's motion [for injunctive relief]" where "[o]n balance, the Court would 'do more harm by enjoining the transaction than by letting it proceed'") (citation omitted).

In this case, the equities do not tip in plaintiffs' favor, and the extension of the Amended Injunctions are not in the public interest, because such an extension would prevent innocent third-party Argentine-law bondholders from receiving payments to which they are indisputably entitled. Prohibiting payments to these bondholders while plaintiffs try to resolve their claims with the Republic is unjustified and inequitable. The Amended Injunctions have already resulted in a situation where receipt of payments by some exchange bondholders, whose legal right to such payments has never been questioned, has now been blocked by court order. *See* Order at 2, Aug. 6, 2014, Dkt. #633. The equities clearly do not weigh in favor of extending those injunctions to bar payment on other performing debt, like Citibank's payment on the Argentine Law Bonds, where such an extension would only encumber more property without even an arguable legal basis and cause more harm with no foreseeable benefit.

The reality is that the Republic cannot make full and immediate payment to every person or entity that holds Republic debt. The reach of the Amended Injunctions already potentially implicates tens of billions of dollars of holdout debt. *See, e.g.*, Aug. 1 Hr'g Tr. at 13:20-23 (Ex. G); July 22 Hr'g Tr. at 53:15-17 (Ex. H). The Republic's total foreign exchange reserves are less than $32 billion. *Monetary Market: From January 26 to January 30 of 2015*, Banco Central de la República Argentina (Feb. 6, 2015) (Ex. D).[15] No country, including the Republic, would put its economy at risk by such a large reduction of its reserves, particularly because its reserves must be used for critical macroeconomic purposes such as supporting the Republic's currency and providing foreign exchange for all its citizens' imports of goods and services.

[15] *Available at* http://www.bcra.gov.ar/pdfs/polmon/infomondiae.pdf (last visited Feb. 6, 2015).

Nor does the balance of equities tip in favor of plaintiffs, where they appear to hold credit-default swaps ("CDS") in connection with the Argentine Law Bonds (*i.e.*, they have entered into transactions entitling them to be paid in the event there is a default on Argentine Law Bonds).[16] In other words, plaintiffs are not in "need" of an injunction to vindicate any purported right to "equal treatment" vis-à-vis the Argentine Law Bonds, but are simply seeking to use the Court to assist them in making even more money and to do so at the expense of third parties, including the beneficial owners of Argentine Law Bonds and Citibank.

CONCLUSION

For the foregoing reasons, the Court should grant Citibank's Motion and deny any injunctive relief.

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Respectfully submitted,

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[16] During discovery, the Republic asked plaintiffs to state whether they own any CDS on the Argentine Law Bonds and to produce any documents related to such holdings. In an email dated February 3, 2015, plaintiffs' counsel stated that such requests were irrelevant and that he would not respond further. *See* E-mail from C. Enloe to D. Northrop, dated Feb. 3, 2015 (Ex. KKK); E-mail from K. Bresnahan to C. Enloe, dated Feb. 12, 2015 (Ex. LLL). The appropriate adverse inference is, therefore, that plaintiffs do indeed own CDS on the Argentine Law Bonds. *See Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 106-07 (2d Cir. 2002) (district court has broad discretion to draw adverse inference where party breaches discovery obligation).