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)*

REPLY MEMORANDUM OF LAW IN SUPPORT OF NON-PARTIES EURO BONDHOLDERS' EMERGENCY MOTION FOR CLARIFICATION

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

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PRELIMINARY STATEMENT

The Euro Bondholders' motion for clarification is one of *eight* such applications[1]—all seeking clarification regarding the extraterritorial application of this Court's Amended February 23 Orders (the "Injunctions") to foreign parties or bonds governed by foreign law.[2] The Injunctions have already caused significant legal complications, led to foreign litigation, delayed payments on bonds not subject to the Injunctions for nearly a mouth, and undoubtedly will spawn further litigation in this Court and abroad. This Court can eliminate the present global uncertainty regarding the Injunctions by simply clarifying that they do not apply to foreign law bonds, as it already has done in regard to the Argentine law bonds. As Your Honor has stated, the purpose of the Injunctions is to ensure "that payments are to be made on the Exchange Bonds only if appropriate payments are made concurrently or in advance to plaintiffs." Nov. 21, 2012 Order at 9. Including the foreign law bonds within the scope of the Injunctions is completely unnecessary to achieve that objective because the Injunctions would otherwise cover over *10 billion dollars* of U.S. dollar-denominated exchange bonds that are governed by New York law and paid in the U.S. by U.S. entities ("NY Law Bonds").

Clarifying that the Injunctions apply only to the NY Law Bonds would immediately resolve all but one of the present motions (and pending or contemplated foreign actions) but still keep sufficient pressure on Argentina to comply with this Court's orders or risk default. Indeed, in releasing the Argentine law bonds from the scope of the Injunctions, this Court implicitly

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1 *See* No. 08-cv-6978, Dkt. Nos. [543, 548, 553, 564, 570, 572, 577, 585].

2 The Euro Bondholders submit this single brief in response to plaintiffs' opposition [Dkt. 592] and BNYM's motion for clarification [Dkt. 578], to reduce the number of briefs before the Court. Although this brief slightly exceeds the Court's ten-page limit for reply briefs, it is a reply to two briefs, and, if requested by the Court, the Euro Bondholders can file two separate briefs, each within the ten-page limit, responding to the briefs identified above.

recognized that the Injunctions do not need to apply to all of Argentina's bonds to be effective, and plaintiffs have not articulated why that is not the case.

Plaintiffs argue that the Euro Bondholders' motion is inappropriate for four reasons: (1) the Second Circuit allegedly "considered and rejected" these arguments; (2) no changed circumstances warrant modifying or clarifying the Injunctions; (3) this request for clarification is "premature"; and (4) this Court has jurisdiction to hold Clearstream and Euroclear in contempt. NML Opp. at 3-5. All four arguments fail.

- Plaintiffs concede that the Second Circuit *did not reach* these arguments, finding them "premature" because this Court's Injunctions bound only Argentina, and Argentina had not yet violated the Injunctions. *See infra* at ___. That circumstance plainly has changed.

- This Court justified the scope of the Injunctions on the finding that the payment process on all Exchange Bonds "without question" takes places in the United States. It is undisputed, however, that the payments on the Euro Bonds do not enter the U.S. and are governed by English law.

- Clarification cannot be premature when numerous foreign banks and clearing systems are before this Court seeking clarification about what to do with funds they received and may receive.

- Binding Supreme Court and Second Circuit precedent, issued after the Injunctions establishes that this Court lacks jurisdiction over Clearstream and Euroclear, and Belgian and Luxembourgian law expressly render the Injunctions unenforceable and of no effect against either party.

ARGUMENT

I. THIS COURT SHOULD CLARIFY THAT THE INJUNCTIONS DO NOT APPLY TO THE FOREIGN LAW BONDS PAID ENTIRELY OUTSIDE THE UNITED STATES

A. Clarification is Not Premature

As a threshold matter, Plaintiffs contend that this Court should not clarify or modify the application of the Injunction to the foreign law bonds because (1) it would allegedly require this Court to *reverse* its own prior rulings or the rulings of the Second Circuit; (2) and because no

"changed circumstances" since the Court entered its Injunctions purportedly justify clarification or modification. Both arguments are flat wrong.

First, plaintiffs err by suggesting that clarifying the Injunctions as to the foreign law bonds would require this Court to reverse its own holdings or the holdings of the Second Circuit. When this Court entered the Injunctions, it expressly did so on the understanding that wherever Argentina's initial payment is made, "[t]he rest of the [payment] process, without question takes place in the United States." Nov. 21 Op. 10 n. 2. All parties now accept this premise to be erroneous—the Euro Bonds are paid entirely outside the U.S. This Court never purported to address whether it should exercise its equitable power to enjoin parties governed by English or Japanese law from making payments outside the United States that they are required to make under foreign law.

Likewise, as plaintiffs themselves ultimately admit, the Second Circuit *did not* reject Euro Bondholders' arguments about the jurisdictional, comity, and foreign law problems of enjoining participants in the payment system on the foreign law bonds. *See* Opp. 8. Rather, the Second Circuit classified those arguments as "premature" because the Injunctions enjoined "no one except Argentina," and Argentina had not yet violated the Injunctions. *See NML Capital, Ltd. v. Republic of Arg.*, 727 F.3d 230, 243-44 (2d Cir. 2013). But the Second Circuit expressly recognized that "when questions arise as to who is bound by an injunction though operation of Rule 65, district courts will not 'withhold a clarification in the light of a concrete situation.'" *Id.* at 243 (quoting *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 15 (1945)). Now that Argentina has paid, those questions are arising *en masse*, resulting in the eight motions presently before this Court. This is exactly the kind of concrete situation in which the Second Circuit itself suggested that clarification would be appropriate.

Indeed, on the only occasion on which this Court has addressed a formal motion for clarification with respect to foreign law bonds—the motion recently brought by Citibank—this Court *granted* the motion, rejecting plaintiffs' argument that the Argentine law bonds paid in Argentina should be treated identically to New York law exchange bonds for which the payment process takes place in the United States. As the eight pending applications filed in the last three weeks illustrate, numerous entities around the world are facing confusion and uncertainty ***right now*** about what to do with hundreds of millions of dollars, euros, and yen, causing significant expense and delay in the resolution of payments that are supposed to be instantaneous. Resolving these questions now is not premature: rather, it is necessary to avoid inundating this Court with countless time-sensitive applications requiring the resolution of issues of foreign law, jurisdiction, and comity for the foreseeable future. The two pending motions from Euroclear provide a concrete example of this issue. For the same reasons that this Court clarified that the participants in the payment process for Argentine law bonds are not within the scope of the Injunctions, this Court should clarify that the participants in the payment process for the English law bonds are not within the scope of the Injunctions.

Second, Plaintiffs are mistaken that there are no changed circumstances since this Court entered its Injunctions in November 2012. As explained above, this Court expressly justified the scope of its Injunctions against parties such as Euroclear, Clearstream, and BNY (London) on the ground that wherever Argentina's initial payment is made, "[t]he rest of the [payment] process, without question takes place in the United States." Nov. 21 Op. 10 n. 2. It is now undisputed that that assumption is incorrect with respect to the English law bonds. BNY has since clarified that the payment process on the English law bonds never touches the United States, but instead flows exclusively through Argentina, Germany, Belgium, Luxembourg, and England. *See* BNY

Response to Euro Bondholders. Even the Second Circuit agreed that if the payment process for the English law bonds "takes place entirely outside the United States," then "the district court misstated that, with the possible exception of Argentina's initial transfer of funds to BNY, the Exchange Bond payment 'process, without question takes place in the United States.'" 727 F.3d at 244. Now that Argentina has paid, this Court is facing for the first time the question of whether it is appropriate for its Injunctions to bind parties involved in a payment process that does not enter the United States, many of whom are beyond this Court's jurisdiction, and who indisputably are obligated to make payment to the bondholders under foreign law.

The utter worldwide confusion and uncertainty exemplified by the eight motions before this Court is a sharp illustration of the changed circumstances facing this Court. If this Court determines that the Injunctions apply equally to the participants in the payment process for the English, Japanese, and Argentine law bonds, it necessarily will be forced to decide countless, discrete questions of foreign law, as well as whether particular foreign entities are subject to this court's jurisdiction and should be bound in light of their conflicting foreign legal obligations. This Court can and should preempt that unnecessary process now. Releasing the foreign law bonds from the Injunctions will have no effect on Argentina, who would still face the risk of default on over $10 billion of dollar-denominated bonds.

B. The Injunctions Prohibit Parties From Making Payments That They Are Required To Make Under Foreign Law

The Euro Bonds are governed by the laws of England and Wales. *See* Indenture § 12.7 ("This Security shall be governed by and construed in accordance with the laws of England and Wales without regard to principles of conflicts of laws, except with respect to authorization and execution by the Republic, which shall be governed by the laws of the Republic. As the other motions before this Court make clear, other exchange bonds are governed by Japanese and

Argentine law. *See generally* Citibank Mot. for Clarification; JPM Letter. There is no dispute that in the ordinary course, the Indenture requires BNYM to pass through payments made by Argentina to the beneficial holders of the Euro Bonds. Those payments indisputably occurs entirely outside the United States and are governed exclusively by English law.

BNYM presently holds over €225 million in trust for the beneficial holders of the Euro Bonds, including the Euro Bondholders. BNYM's motion admits that Argentina's payment is being held "in trust (for itself *and the Exchange Holders*)." BNYM Mem. at 2. Argentina likewise has argued publicly that the money now belongs to the bondholders.

As BNYM's motion for clarification makes clear, this Court's order places BNYM—and other financial participants in the payment process—in an impossible situation. As BNYM explains, "nearly every economic stakeholder in this litigation has either sued or threatened to sue the Trustee." BNYM Mem. 5. This is not surprising. BNYM holds over €225 million in trust for the beneficial holders of the Euro Bonds. This Court has purported to prohibit BNYM from acting outside the United States to fulfill its obligations under English law. BNYM either must comply with its responsibilities under English law, and defend itself against a potential contempt action in this Court,[3] or it must comply with this Court's order, and defend itself in courts overseas against actions by bondholders to obtain their property. Plaintiffs, meanwhile, are inviting this Court to order BNYM to breach the Indenture by returning the bondholders' property to Argentina or deposit the funds with this Court. In short, BNYM is exposed to conflicting obligations under this Court's orders and foreign law, which will lead to litigation

[3] To be clear, the Euro Bondholders agrees with BNYM that BNYM could not reasonably be found in contempt under Rule 65 for fulfilling its contractual duty to make payment to the exchange bondholders. Argentina already has violated the injunction. BNYM cannot reasonably be understood to aid and abet Argentina's violation by fulfilling its independent, indisputably lawful contractual obligation under English law to pay through funds to their rightful holders.

around the world unless the Injunction are clarified. The same is true for the other participants in the payment process.

Plaintiffs argue that parties would be excused for failing to perform their contractual duties under foreign law on the ground that "obligation is discharged when 'the performance of a duty is made impracticable by having to comply with a domestic or foreign governmental regulation or order.' Restatement (Second) of Contracts § 264 (1981)." But Plaintiffs' reliance on *American* law is misplaced. The contracts are governed by *English* law. And under English law, "[p]erformance of a contract is excused" only "if (i) it has become illegal by the proper law of the contract or (ii) it necessarily involves doing an act which is unlawful *by the law of the place where the act has to be done*." *Libyan Arab Foreign Bank v Bankers Trust Co.*, Queen's Bench [1989] 1 QB 728 (emphasis added). For that reason, an American bank would be obligated to perform acts which—even if unlawful in the United States—are lawful in their place of performance. *See id. See also Toprak Mahsulleri Ofisi v Finagrain Cie Commerciale Agricole et Financire SA [1979]* 2 Lloyd's Rep 98 (rejecting defense of non-performance by Turkish buyers because "[i]n this particular case the place of performance was not Turkey. Illegality by the law of Turkey is no answer whatever to this claim."). Here, each participant in the Euro Bond payment process performs outside the United States—where payment is indisputably lawful. Plaintiffs' failure to account for the significance of English law only highlights the substantial questions of foreign law that this Court will be forced to consider or resolve in the event that the Injunction are left in place.

C. This Court Lacks Jurisdiction Over Many Participants in Payment Process

After the Supreme Court's recent decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), it is clear that this Court lacks general jurisdiction over the foreign participants in the English, Japanese, and Argentine law bond payment processes. Plaintiffs do not argue

otherwise. *See* Opp. at 17. Instead they argue that the Court either possesses specific jurisdiction over the relevant foreign entities or that such jurisdictional questions are premature. As explained below, Plaintiffs' jurisdictional arguments are wrong. But more importantly, Plaintiffs' extended response illustrates that this Court has never even considered whether it has jurisdiction to enjoin numerous foreign entities from fulfilling lawful obligations under foreign laws to pass through foreign currency outside the United States.

First, such questions certainly are not premature, because Clearstream and Euroclear presently hold money under other foreign law bonds, and are currently before this Court seeking clarity respecting their obligations under the Injunctions. Second, Plaintiffs' reliance on *Eli Lilly & Co. v. Gottstein*, 617 F.3d 186 (2d Cir. 2010) is misplaced. The Second Circuit previously resolved this question in *Canterbury Belts, Ltd. v. Lane Walker Rudkin, Ltd.*, 869 F.2d 34, 40 (2d Cir. 1989), where it made clear that "[a] district court cannot exercise personal jurisdiction over a nonparty to a litigation, on the basis that the nonparty is acting 'in active concert or participation', within the meaning of Fed. R. Civ. P. 65(d), with a party who is subject to an injunction, unless personal jurisdiction is established over the nonparty." And courts of appeals "follow the earlier of conflicting panel opinions." *McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004) (citing cases). In any event, *Eli Lilly* followed from precedent in another circuit relying on the premise that "[t]he mandate of an injunction issued by a federal district court runs *nationwide*." *Waffenschmidt v. Mackay*, 763 F.2d 711, 716 (5th Cir. 1985). That premise does not apply here, where a court is purporting to apply its injunctions extraterritorially.

For that reason, other courts have firmly rejected attempts by district courts to assert personal jurisdiction over foreign non-parties on the purported basis that they are aiding and abetting the violation of an injunction imposed on a party within the jurisdiction of the Court.

See, e.g., *Reebok Int'l v. McLaughlin*, 49 F.3d 1387, 1392 (9th Cir. 1995) (finding *Waffenschmidt* inapplicable and concluding that the district court lacked personal jurisdiction over a Luxembourg bank accused of aiding and abetting the violation of an injunction). As the Ninth Circuit explained in that case, "there are limits to the district court's reach, and those limits became palpable when the court sought to extend its arm into the territory of another nation and to impose discordant duties upon the subjects of that nation whose actions were solely within its own borders."

D. This Court's Injunction Expressly Conflicts With Various Laws In Other Countries Like Belgium And Luxembourg That Govern Parties Subject To The Injunction

This Court's Injunctions cannot be reconciled with the laws of numerous foreign countries that govern parties purportedly subject to the Injunctions. Indeed, Euroclear has joined in this motion to point out that the Injunctions are in direct conflict with Belgian law. Plaintiffs do not even attempt to dispute that Luxembourgian and Belgian statutory law expressly provide that the Injunctions are unenforceable against Euroclear and Clearstream. Plaintiffs argue that neither Euroclear, nor Clearstream, is *compelled* by their forum law to pass through a payment. But that misses the point. Plaintiffs do not contest that Belgium and Luxembourg expressly enacted laws intended to ensure that foreign injunctions of just this kind cannot prohibit Euroclear and Clearstream from fulfilling their responsibilities to pass through money. This Court's Injunctions are therefore incompatible with the law and public policy of Belgium and Luxembourg, and would be unenforceable there. "A court should not issue an unenforceable injunction." *Hilao v. Estate of Marcos*, 94 F.3d 539, 545 (9th Cir. 1996). Moreover, comity and respect for foreign law dictates that this Court should not prohibit foreign parties from taking actions on their own home soil after local laws have been enacted for the express purpose of enabling the parties to take the actions in question. This is only one of many issues that this

Court would be forced to evaluate if the Injunctions are not clarified or modified to exclude the participants in the foreign law payment processes.

II. BNYM SHOULD BE PERMITTED TO TRANSFER THE EURO BOND PAYMENT TO THE EURO BONDHOLDERS IN ACCORDANCE WITH THE INDENTURE

A. The June 26 Payments are the Property of an English Trust

On June 26, 2014, Argentina transferred funds indisputably due to the Euro Bondholders to an account held by BNYM, their Indenture Trustee (the "June 26 Payments").[4] Plaintiffs do not dispute that (i) a payment on the Euro Bonds was due by June 30, 2014; (ii) a portion of the June 26 Payments constitutes the Euro Bondholders' property, or (iii) payments made on the Euro Bonds are governed by the laws of England and Wales. Nevertheless, plaintiffs request—without authority—that this Court order BNYM either to return the June 26 Payments to Argentina or interplead them in this Court. *See* Plaintiffs' Opp. to BNYM's Motion for Clarification at 2, No. 09-cv-8757 [Dkt. 431]. Plaintiffs' request must be rejected.

According to Section 3.1 of the Indenture, "[a]ll monies . . . paid to the Trustee under the Debt Securities and this Indenture shall be held by it in trust for itself and the Holders of Debt Securities in accordance with their respective interests to be applied by the Trustee to payments due under the Debt Securities and this Indenture." On June 26, therefore, the Euro Bond payments made by Argentina became the Euro Bondholders' property held in trust by BNYM. Plaintiffs do not dispute that the Euro Bondholders are entitled to receive these funds. Indeed, at the February 27, 2013 argument in the Second Circuit, counsel for plaintiffs conceded that "[n]o one is asking for an injunction preventing [the bondholders] from accepting money." February

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[4] The Euro Bondholders did not ask Argentina to make the June 26 Payments and do not in any way seek to endorse or excuse violations of this Court's orders. However, now that funds are held by BNYM, they are governed by an English Trust Indenture that states they are the property of the Euro Bondholders.

27, 2013 Transcript at 22 (emphasis added). There is no basis, therefore, to prevent BNYM from transferring the funds to their rightful owners, the Euro Bondholders.

In their motion for clarification, the Euro Bondholders argued that, because the Euro Bonds are governed by the laws of England and Wales, this Court does not have the power to order the return of the June 26 Payments without first deciding issues of English law. Mem. at 5-6 [Dkt. 587]. Notably, plaintiffs do not dispute that foreign law applies to the Euro Bonds, and they have not cited any law—from the US or the UK—indicating that this Court has the power to order the transfer of an innocent third party's property because of an enjoined party's alleged violation of an injunction. This Court should refrain from ordering BNYM to return the June 26 Payments to Argentina or interplead them in New York until an English court can adjudicate whether there is any basis for taking the Euro Bondholders' property away from them. Without such a finding, the transfer of the June 26 Payments away from the Euro Bondholders will constitute an unconstitutional taking of their property and a violation of their due process rights.

Plaintiffs' request for an order directing BNYM to "commence an interpleader action and deposit the [June 26 Payments] with the Court" is baseless. *See* Plaintiffs' Opp. to BNYM's Motion for Clarification at 12, No. 09-cv-8757 [Dkt. 431]; Proposed Order, attached as Exhibit A to the July 18, 2014 Declaration of Charles Enloe, No. 09-cv-8757 [Dkt. 432]. To bring an interpleader action, there must be *"[t]wo or more adverse claimants*, of diverse citizenship . . . claiming . . . to be entitled to such money or property." 28 U.S.C. § 1335 (emphasis added); *see Catizone v. Memry Corp.*, 897 F.Supp. 732, 740 (S.D.N.Y. 1995) (denying interpleader action where there were not two or more adverse claimants to the property). Here, there is only ***one***

claimant to the 26 June Payments—the Exchange Bondholders.[5] Plaintiffs do not—because they cannot—claim to have ***any*** interest in the payments that Argentina makes on the Exchange Bonds. Indeed, plaintiffs' very request for an interpleader action underscores that ***no party other than the Exchange Bondholders has asserted, or could assert, a claim to the June 26 Payments***. If the funds were interpleaded, the Exchange Bondholders would be the only party that could assert a rightful claim over them.

B. This Court Cannot Absolve BNYM From Liability If It Orders BNYM to Return the June 26 Payments to Argentina or Interplead Them In this Court

Unless this Court orders BNYM to transfer the June 26 Payments to the Euro Bondholders, it cannot absolve BNYM of liability, particularly for claims that have not yet been asserted against BNYM and arise under foreign law. The only way for this Court to fully protect BNYM is to order it to transfer the June 26 Payments to the Euro Bondholders—their rightful owners—and to permit BNYM to transfer all future payments that Argentina makes on the Euro Bonds.

Each of BNYM's proposed orders contains a provision that states, "BNY Mellon shall incur no liability under the Indenture governing the Exchange Bonds or otherwise to any person or entity for complying with this Order and the Amended February 23 Orders." *See* Exs. M & N attached to the July 10, 2014 Declaration of Evan K. Farber [Dkt. 579]. BNYM, however, does not cite to any authority that indicates this Court has the power to presumptively exonerate BNYM from liability for claims that have not yet been asserted against it. Indeed, to issue such an order would deprive the Euro Bondholders and others, of a valuable legal right without due process, and constitute an improper advisory opinion. *See In re Vel Rey Properties*, 174 B.R.

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[5] To the extent that BNYM claims an interest in the June 26 Payments to cover its fees and expenses under the Indenture, that claim is *de minimus* and the Euro Bondholders are not adverse to BNYM in respect to those funds.

859, 867 (Bankr. D.D.C. 1994) ("the trustee wants blanket assurance that he will not be held liable. The court can give no advisory opinion regarding whether he will be liable or enjoy immunity.") This is particularly true in regard to potential claims arising under the Euro Bonds, which are governed by the law of England and Wales. Moreover, it is unlikely that a foreign court—the proper forum for claims arising under the Euro Bonds—would recognize such a finding in a future action brought against BNYM. Unless this Court orders BNYM to transfer the June 26 Payments to the Euro Bondholders and other beneficial holders, BNYM will be exposed to liability in foreign courts for claims arising under the Euro Bonds.[6]

III. TO PROMOTE SETTLEMENT, THIS COURT SHOULD TAKE WHATEVER STEPS ARE NECESSARY TO ASSIST WITH A POTENTIAL WAIVER OF THE RUFO CLAUSE

The Euro Bondholders strongly support a negotiated resolution of this case. Although it is unclear whether the Rights Upon Future Offers ("RUFO") clause would apply to such a resolution, Argentina has raised its potential application as an impediment to settlement. Indeed, Argentina's Economy Minister has stated that a settlement with plaintiffs could result in "claims of approximately *$120 billion more* under the RUFO clause." *See* Translation of June 26, 2014 Press Conference, attached as Exhibit B to the June 27, 2014 Declaration of Robert Cohen [Dkt. 542] (emphasis added).

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[6] Plaintiffs suggest—in a footnote without any argument or authority—that "the Court should consider whether it might be appropriate to enjoin the Euro Bondholders from continuing their collateral attacks on the Amended February 23 Orders in other fora." Plaintiffs' Opposition to BNYM's Motion for Clarification at 12 n.5 [No. 09-cv-8757, Dkt. 431]. An anti-suit injunction, however, "may be imposed only if: (A) the parties are the same in both matters, and (B) resolution of the case before the enjoining court is dispositive of the action to be enjoined." *Paramedics Electromedicina Com., Ltda v. GE Med. Sys. Information Tech., Inc*., 369 F.3d 645, 652 (2d Cir. 2004) (citing *China Trade and Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35 (2d Cir. 1987). Here, neither BNYM nor the Euro Bondholders are parties to this litigation and any claims arising under the Indenture would be properly brought in an English court.

If the RUFO clause is a bona fide impediment to a negotiated settlement of this matter, the Euro Bondholders would be willing to waive the RUFO clause under appropriate circumstances. In furtherance of a consent solicitation seeking a waiver of the RUFO clause, the Euro Bondholders had proposed that this Court clarify that the injunction permits entities such as Euroclear and Clearstream to share bondholder information with Argentina, the only party that can initiate a consent solicitation. Plaintiffs claim that, at least in the U.S., a solicitation could be performed directly by depositories and clearing systems and there is no need for bondholder information to be shared with Argentina. Opp. at 14. It is unclear whether such a process could be performed by the foreign entities involved in the payment process for the Euro Bonds. The Euro Bondholders believe the parties should work together promptly to overcome this administrative issue, and would be happy to provide assistance to that process if it was thought beneficial.

Dated: July 21, 2014

New York, New York

Respectfully submitted,

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