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## Don't Cry for Me Argentine Bondholders: Second Circuit Requests a Payment Proposal

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### **The Second Circuit has ordered Argentina to submit a payment proposal, following oral argument in the NML v. Argentina appeal.**

As we reported in our February 28 note, the three-judge panel of the Second Circuit expressed interest in whether an alternative Ratable Payment formula might be appropriate – one that would provide for equitable payments to the plaintiffs over time but would not amount to a 100% one time payment. At the oral argument, payment proposals made by counsel for both Argentina and the Exchange Bondholders were vague. Following up on those proposals, the panel today ordered Argentina's counsel to state "in writing" "the precise terms" of any "alternative payment formula and schedule to which it is prepared to commit." Today's order provides in full as follows:

*At oral argument on Wednesday, February 27, 2013, counsel for the Republic of Argentina appeared to propose that, in lieu of the ratable payment formula ordered by the district court in its injunction and accompanying opinion of November 21, 2012, Argentina was prepared to abide by a different formula for repaying debt owed on both the original and exchange bonds at issue in this litigation. Because neither the parameters of Argentina's proposal nor its commitment to abide by it is clear from the record, it is hereby ordered that, on or before March 29, 2013, Argentina submit in writing to the court the precise terms of any alternative payment formula and schedule to which it is prepared to commit.*

*The court directs that, among the terms specified, Argentina indicate: (1) how and when it proposes to make current those debt obligations on the original bonds that have gone unpaid over the last 11 years; (2) the rate at which it proposes to repay debt obligations on the original bonds going forward; and (3) what assurances, if any, it can provide that the official government action necessary to implement its proposal will be taken, and the timetable for such action.*

*Should a response be sought from any other party to Argentina's submission, a further order will issue from the court.*

Today's order has at least three implications:

*First*, the next interest payments (described during oral argument as due on March 31 – a Sunday – but which we now understand would be paid in the week of April 1) would appear to be safe from an Argentine default. The November 28, 2012 stay remains in place. Because the panel gave Argentina until March 29 within which to submit its payment proposal, no injunction would likely apply before the April payments are made.

*Second*, the panel's order appears to presuppose payment of the original bonds held by plaintiffs in full. According to the order, the first element of Argentina's payment proposal must indicate "how and when" Argentina will "*make current*" its "*debt obligations on the original bonds*." The panel's order is not addressed to an extension to the plaintiffs of the exchange offer that was accepted by the Exchange Bondholders. Instead, the panel directed Argentina to submit a payment plan intended to satisfy Argentina's obligations on the original bonds, presumably according to their original terms.

*Third*, in light of the statements by Argentina's counsel at oral argument that the Republic will not pay plaintiffs, and absent a change of policy by the Republic (which seems unlikely given post-argument statements by the President that she would offer plaintiffs no better terms than the Republic offered the Exchange Bondholders), Argentina would appear to be unable to offer a payment proposal that "*make[s] current those debt obligations on the original bonds that have gone unpaid over the last 11 years*." The effect of today's order and Argentina's response will have been to commit Argentina in a public filing (not comments in the heat of oral argument) to the position that it will not pay plaintiffs.

\* \* \*

On a separate note, the Court's audio recording of the February 27 hearing in the Second Circuit has been posted to our Argentine Sovereign Debt webpage, at <http://www.shearman.com/argentine-sovereign-debt/>.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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