

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

BASF METALS LIMITED AND ICBC STANDARD BANK PLC,
Applicants,

v.

KPPF INVESTMENT, INC., WHITE OAK FUND LP, INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED, AND LARRY HOLLIN,

Respondents.

**APPLICATION TO THE HON. SONIA SOTOMAYOR FOR AN EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Pursuant to Supreme Court Rule 13(5), BASF Metals Limited (“BASF Metals”) and ICBC Standard Bank Plc (“ICBCS”; collectively, “Applicants”) hereby move for an extension of time of 60 days, to and including Monday, September 11, 2023, for the filing of a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit dated February 27, 2023 (Exhibit 1). A petition for rehearing was denied on April 12, 2023 (Exhibit 2). Unless an extension is granted, the deadline for filing the petition for certiorari is July 11, 2023. In accordance with Rule 13(5), this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari. The jurisdiction of this Court is based on 28 U.S.C. §1254(1).

1. This case arises out of allegations of a conspiracy in the physical and derivatives markets for platinum and palladium. Respondents sued numerous defendants, including Applicants, in the Southern District of New York for allegedly manipulating the prices of platinum and palladium, in violation of, *inter alia*, the antitrust laws and the Commodity Exchange Act.

2. BASF Metals is organized under the laws of the United Kingdom with its principal place of business in London, England. ICBCS is organized under the laws of England and Wales with its principal place of business in London, England. No one alleges that Applicants are subject to general personal jurisdiction in New York, nor have they “deliberately ‘reached out beyond’ [their] home—by, for example, ‘exploiting a market’ in the forum State or entering a contractual relationship centered there.” *Ford Motor Co. v. Mont Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021) (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). The district court therefore initially concluded that Applicants are not subject to personal jurisdiction in the United States. *See In re Platinum & Palladium Antitrust Litig. (Platinum I)*, No. 14-CV-9391, 2017 WL 1169626, at *2 (S.D.N.Y. Mar. 28, 2017). The district court, however, granted Respondents leave to amend their complaint.

3. After the district court’s decision, the Second Circuit decided *Charles Schwab Corp. v. Bank of America Corp. (Schwab I)*, 883 F.3d 68 (2d Cir. 2018), which adopted what is known as “conspiracy jurisdiction.” Under this theory, personal jurisdiction exists if the plaintiff can “allege that (1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator’s overt acts in

furtherance of the conspiracy had sufficient contacts with a state to subject that co-conspirator to jurisdiction in that state.” *Id.* at 87. In *Schwab I*, the Second Circuit acknowledged that “the Supreme Court has [not] delineated when one conspirator’s minimum contacts allow for personal jurisdiction over a co-conspirator.” *Id.* at 86. Subsequently, the Second Circuit reaffirmed its adoption of conspiracy jurisdiction as a valid basis of personal jurisdiction and held that such jurisdiction exists even where there is no agency “relationship of control, direction, or supervision” between the absent foreign defendant and the alleged co-conspirator. *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC (Schwab II)*, 22 F.4th 103, 124-25 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 2852 (2022).

4. In the wake of the Second Circuit’s embrace of conspiracy jurisdiction, the district court here reversed course and concluded that Applicants are subject to specific jurisdiction in the United States based on the forum contacts of Applicants’ alleged co-conspirators. *See In re Platinum & Palladium Antitrust Litig. (Platinum II)*, 449 F. Supp. 3d 290, 302 (S.D.N.Y. 2020). In reaching that conclusion, the district court observed that the Second Circuit’s “standard for conspiracy jurisdiction is extraordinarily broad” and that “a court can exercise personal jurisdiction over a defendant based on the actions of a co-conspirator who is entirely unknown to that defendant.” *Id.* at 326. The district court also acknowledged that the Second Circuit’s “standard may be in tension with the Supreme Court’s holding in *Walden v. Fiore* that ‘the relationship [between the defendant and the litigation] must arise out of the contacts that the “defendant *himself*” creates with the forum State.’” *Id.* (alteration

in original) (quoting *Walden*, 571 U.S. at 284). Nonetheless, bound by circuit precedent, the district court rejected Applicants’ objections to personal jurisdiction. *Id.* at 327.

5. The Second Circuit affirmed. *See* Ex. 1. Although agreeing that there “may be grounds” for Applicants’ protests that “‘conspiracy jurisdiction’ violates the Due Process Clause and Supreme Court precedent interpreting it,” especially given that *Schwab II* squarely forecloses “the argument that [a court’s] exercise of conspiracy jurisdiction should be limited by agency principles,” the Second Circuit concluded that Applicants are subject to jurisdiction. *Id.* at 42. As the Second Circuit explained, although there is longstanding “debate” among appellate courts regarding the constitutionality of conspiracy jurisdiction, “our court has already taken a position—and we are bound to follow our previous decision.” *Id.* at 44; *see also id.* at 44 n.10 (collecting cases from courts that reject or question conspiracy jurisdiction).

6. The Second Circuit’s conclusion cannot be reconciled with decisions from this Court or from other federal courts of appeals and state courts of last resort. Indeed, this Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between ... third parties ... and the forum State.” *Walden*, 571 U.S. at 284. Instead, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 n.13 (1984) (citing *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)). Thus, the plaintiff’s claims “must arise out of contacts that the ‘defendant *himself* creates with the forum State.” *Walden*, 571 U.S. at 284 (quoting *Burger King Corp.*

v. Rudzewicz, 471 U.S. 462, 475 (1985)). Numerous courts therefore reject conspiracy jurisdiction, *see, e.g., Davis v. A & J Elecs.*, 792 F.2d 74, 75-76 (7th Cir. 1986); *Ashby v. State*, 779 N.W.2d 343 (Neb. 2010); *Delta Brands Inc. v. Danieli Corp.*, 99 F. App'x 1 (5th Cir. 2004); *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769 (Tex. 1995), or at least have openly questioned it, *see, e.g., Chirila v. Conforte*, 47 F. App'x 838 (9th Cir. 2002); *Schwartz v. Frankenhoff*, 733 A.2d 74 (Vt. 1999). Certiorari is warranted to restore uniformity to this important area of the law.

7. Applicants' counsel, Michael F. Williams (BASF Metals) and Robert G. Houck (ICBCS) are endeavoring to prepare a single certiorari petition, *see* Supreme Court Rule 12(4), and so they need additional time to coordinate in order to prepare a petition that fully addresses the significant issues raised by the decision below in a manner that will be most helpful to the Court. Furthermore, Mr. Williams has substantial obligations in other matters, including serving as lead counsel to petitioners in *Chicago Bridge & Iron Company N.V. et al. v. Refinería de Cartagena S.A.S.*, No. 1:23-cv-4825-GHW (S.D.N.Y.), serving as lead counsel to plaintiffs in a pending evidentiary hearing in *Evolution AB (publ), et al. v. Ralph J. Marra, Jr., et al.*, No. ATL-L-616-22 (N.J. Super. Ct. Law Div.), serving as lead counsel to plaintiffs in *Ahmed et al. v. U.S. Department of Homeland Security*, No. 4:23-cv-01892-JST (N.D. Cal.), currently set for hearing on a request for a preliminary injunction on July 27, 2023, and serving as lead litigation counsel to the debtor in *In re HONX, Inc.*, No. 22-90035 (Bankr. S.D. Tex.). Mr. Houck also has substantial obligations in other matters, including a summary judgment brief and cross-motion for a stay and a reply

brief in *Hamilton Reserve Bank Ltd. v. The Democratic Socialist Republic of Sri Lanka*, 22-cv-05199-DLC (S.D.N.Y.) (due July 17, 2023 and August 31, 2023, respectively); an opposition brief in *McGreevy et al v. Digital Currency Group, Inc. et al.*, 23-cv-00082-SRU (D. Conn.) (due August 11, 2023); a motion to dismiss and reply brief in *In re Platinum and Palladium Antitrust Litigation*, 14-cv-9391 (S.D.N.Y.) (due July 21, 2023 and September 15, 2023, respectively); a presentation in an ongoing CFTC investigation (scheduled for July 11, 2023); and an ongoing SEC investigation.

For the foregoing reasons, Applicants request that an extension of time to and including Monday, September 11, 2023, be granted within which Applicants may file a petition for a writ of certiorari.

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Respectfully submitted,



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