No. 25A777

IN THE SUPREME COURT OF THE UNITED STATES

FAIRFIELD SENTRY LTD. (IN LIQUIDATION); FAIRFIELD SIGMA LTD. (IN LIQUIDATION); FAIRFIELD LAMBDA LTD. (IN LIQUIDATION); KENNETH M. KRYS; and GREIG MITCHELL,

Applicants,

v.

CITIBANK NA LONDON, *et al.*,

Respondents.

APPLICATION TO THE HONORABLE SONIA SOTOMAYOR FOR A FURTHER 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), Applicants Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation), and Fairfield Lambda Limited (in Liquidation) (together, the "Funds"), and Applicants Kenneth M. Krys and Greig Mitchell, in their capacities as liquidators and foreign representatives of the Funds, hereby move for a second extension of time of 28 days, to and including March 13, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be February 13, 2026.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Second Circuit rendered its decision on August 5, 2025 (First Applic. For Extension, Exhibit A), and denied a

timely petition for rehearing on October 16, 2025 (First Applic. For Extension, Exhibit B). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On December 31, 2025, undersigned counsel for Applicants, Paul D. Clement, applied for an extension of time of 30 days, to and including February 13, 2026, for the filing of a petition for a writ of certiorari.

3. On January 5, 2026, Justice Sotomayor granted that application.

4. In support of the first application for an extension, counsel explained that Applicants Krys and Mitchell and their predecessors (together, the "Liquidators") have spent the last 16 years working to recover assets for innocent investors in foreign-based funds who were left holding the bag after the collapse of the infamous Ponzi scheme orchestrated by Bernie Madoff.

5. Years before the Madoff scheme came to light in 2008, the Funds were formed under the law of the British Virgin Islands ("BVI") to pool investor money and feed it into larger investment vehicles. The Funds entrusted the bulk of investors' money to Bernard L. Madoff Investment Securities, which was supposedly a reputable firm with a demonstrated history of above-market returns. When the Madoff scheme collapsed, most investors discovered overnight that Madoff was not managing their retirement funds and other savings but recycling them as part of the Ponzi scheme. But some, typically large-scale and sophisticated investors, managed to cash out before the scheme imploded—and instead of losing their investments, they received outsized returns paid for by their fellow investors' savings.

6. Because a large amount of the inflated returns—around $6 billion—went to investors who had consented to suit in New York, *see* Exhibit A at 5, 8, 12-20, Applicants filed claims in federal bankruptcy court in New York, invoking Chapter 15 of the Bankruptcy Code and seeking relief under various BVI statutory and common-law causes of action.

7. Chapter 15 is designed just for such claims. Its stated purposes include providing assistance to foreign representatives of debtors, protecting and maximizing the value of the debtors' assets, and promoting comity and respect for foreign law in U.S. courts. 11 U.S.C. §§1501(a), 1507; *see, e.g.*, *In re Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96, 113 (Bankr. S.D.N.Y. 2012). Unlike Chapters 7 and 11 of the Bankruptcy Code, which authorize domestic trustees to "avoid[]" only domestic transactions under U.S. law, *see In re Atlas Shipping A/S*, 404 B.R. 726, 744 n.16 (Bankr. S.D.N.Y. 2009), Chapter 15 authorizes foreign representatives to bring avoidance claims in the United States that arise under foreign law and/or involve foreign transactions, *In re Condor Ins. Ltd.*, 601 F.3d 319, 329 (5th Cir. 2010).

8. The bankruptcy court nevertheless dismissed all the Liquidators' claims except for constructive trust claims against the few Defendants that allegedly knew of Madoff's fraud when they redeemed their shares. *See* Exhibit A at 10-12. The district court affirmed, albeit on somewhat different grounds. *See* Exhibit A at 12.

9. The parties cross-appealed, and the Second Circuit ruled for Defendants, reversing the ruling that the Liquidators' constructive trust claims could proceed and affirming the dismissal of all other claims. *See* Exhibit A at 4. As

relevant here, the court held that the Bankruptcy Code's "safe harbor" for securities settlement payments, 11 U.S.C. §546(e), applies extraterritorially. *See* Exhibit A at 23-33. The court proceeded to conclude that the safe harbor not only restricts statutory avoidance powers but also bars foreign common-law claims (when brought in U.S. courts pursuant to Chapter 15). *See* Exhibit A at 42-49.

10. Applicants filed a timely motion for rehearing en banc, which was denied on October 16, 2025. Exhibit B.

11. Applicants intend to file a petition for certiorari demonstrating that the panel erred in holding that §546(e)'s safe harbor applies extraterritorially. This Court has repeatedly held that federal statutes cover only domestic conduct unless "'Congress has affirmatively and unmistakably instructed that' the provision at issue should 'apply to foreign conduct.'" *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 417-18 (2023) (quoting *RJR Nabisco v. European Cmty.*, 579 U.S. 325, 335 (2016)). That basic principle should have controlled here, as the Bankruptcy Code contains no indication—let alone an affirmative and unmistakable one—that the "safe harbor," which prevents domestic trustees from undoing certain domestic transactions under domestic law, applies when a *foreign* representative recognized under Chapter 15 targets *foreign* transfers, asserting *foreign*-law claims against defendants properly sued in U.S. courts.

12. The panel further erred in holding that the "safe harbor" bars foreign common-law claims, such as the Liquidators' constructive-trust claims against investors that allegedly knew they were receiving fraudulently inflated returns. As

this Court has explained, the Bankruptcy Code "creates both a system for avoiding transfers and a safe harbor from avoidance—logically these are two sides of the same coin." *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 583 U.S. 366, 381 (2018). Accordingly, the safe harbor applies only insofar as a trustee seeks to avoid transactions "under one of the substantive avoidance provisions" to which §546(e) explicitly refers. *Id.* at 378. Even assuming *arguendo* that this restriction on domestic avoidance powers could extend to analogous foreign avoidance powers, it makes no sense to apply the safe harbor to foreign common-law claims that do not depend on any avoidance (or other bankruptcy-specific) power. Indeed, the panel's approach defeats Congress' intent by turning Chapter 15 upside down: Far from promoting comity by *facilitating* foreign liquidators' efforts to recoup funds for innocent investors, the decision below *bars* them from recouping funds they would be able to recover in foreign courts—rendering them worse off not only than domestic trustees, but than they would be without Chapter 15.

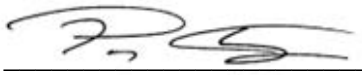
13. While counsel has been working diligently in preparing this petition, Mr. Clement requires additional time in light of his substantial professional obligations between now and February 13, 2026. Those obligations include, *inter alia*, oral argument in *In re Ryan*, No. 25-11253 (5th Cir.), to be held on February 5, 2026; a reply brief in *Chamber of Commerce of the United States v. Department of Homeland Security*, No. 25-5473 (D.C. Cir.), due on February 6, 2026; a petition for writ of certiorari arising from *Finesse Wireless LLC v. AT&T Mobility LLC*, No. 24-1039 (Fed. Cir.), due on February 6, 2026; a merits response brief in *Watson v. Republican*

National Committee, No. 24-1260 (U.S.), due on February 9, 2026; an answering brief in *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, No. 25-3347 (3d Cir.), due on February 9, 2026; a reply in support of the petition for certiorari in *CashCall, Inc. v. Consumer Financial Protection Bureau*, No. 25-343 (U.S.), due on February 11, 2026; a merits reply brief in *Montgomery v. Caribe Transport II, LLC*, No. 24-1238 (U.S.), due on February 13, 2026; and an answering brief in *Petersen Energia Inversora, S.A.U. v. Argentine Republic*, No. 25-2629 (2d Cir.), due on February 13, 2026.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including March 13, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

Date: January 28, 2026

Respectfully submitted,



Paul D. Clement
Counsel of Record
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29(6), Applicants state as follows:

Fairfield Sentry Limited (In Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Fairfield Sigma Limited (In Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Fairfield Lambda Limited (in Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Kenneth M. Krys and Greig Mitchell are individuals.