No. 26-442

IN THE

Supreme Court of the United States

PETERSEN ENERGIA INVERSORA, S.A.U., *et al.*,

Petitioners,

v.

ARGENTINE REPUBLIC, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICI CURIAE* INVESTMENT PROFESSIONALS IN SUPPORT OF PETITIONERS

STEVEN M. SHEPARD
Counsel of Record
SUSMAN GODFREY LLP
395 Ninth Avenue, Floor 50
New York, NY 10001
(212) 729-2010
sshepard@susmangodfrey.com

Counsel for Amici

November 2, 2026

397954

COUNSEL PRESS
A Proceed Service
The Appellate Experts®
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF CITED AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT. 2

ARGUMENT. 5

I. The U.S. ADR Market Is Large, Growing, and Exceptionally Important. 5

A. What Are ADRs? 5

B. How Large Is the ADR Market? 8

C. Who Buys and Sells ADRs? 9

D. What U.S. Institutions Serve the ADR Market? 10

II. Assurances like Argentina's Promises In the ADR Prospectus—and Expectations of Meaningful Remedies in U.S. Courts—Are Crucial to U.S. Market Participants. 13

III. The Second Circuit's Decision Will Harm Investors and Undermine U.S. Markets 17

CONCLUSION 20

TABLE OF CITED AUTHORITIES

Page

Cases

DiRienzo v. Philip Services Corporation,
294 F.3d 21 (2d Cir. 2002) 15

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are experienced investment funds, investment bankers and investment professionals who are familiar with American Deposit Receipts ("ADRs") and other foreign-issued securities that are traded on the United States' markets. *Amici* believe that the Second Circuit's decision, if permitted to stand, would cause significant harm to investors and the United States' market for ADRs and other foreign-issued securities. *Amici*'s interest in this case is to support the United States' market for ADRs and other foreign-issued securities. *Amici* have no personal interest in this matter.

Amici are:

Peter Blanton. Mr. Blanton spent more than 30 years as a senior capital markets investment banker, including as a Managing Director at Salomon Brothers, Credit Suisse First Boston, Citigroup, Lehman Brothers and others. He led hundreds of equity offerings, on the U.S. public markets during his career, including for many foreign issuers including some based in Mexico and Israel. Mr. Blanton has been quoted in *The Wall Street Journal* and *The New York Times* for his capital markets expertise. He has lectured at Columbia Business School at Columbia University on Initial Public Offerings ("IPOs"). Mr. Blanton has a BA (Honors) in Economics from the

1. Undersigned counsel provided timely notice to counsel of record, by email on October 22, 2026, of *amici*'s intent to file this brief. No party or its counsel authored this brief or contributed money to fund the preparation and submission of this brief. No one besides *amici* and undersigned counsel contributed money to fund the preparation and submission of this brief.

University of Chicago and a MS in Management from MIT (Sloan School of Management).

Christopher B. Cowie. Mr. Cowie was a partner at Silchester International Investors. Silchester, an investment management company with more than $30 billion of assets under management, specializes in investing in listed international equities.

Neil Woodford CBE. Neil Woodford is a global investor with over 35 years of experience. He spent more than 25 years of his career at Invesco where he ran institutional and retail funds with total assets in excess of $30 billion. Mr. Woodford was awarded Commander of the Order of the British Empire in 2013 for services to the UK economy, and has a BA in economics from the University of Exeter and honorary degrees from the same University and the London Business School.

SUMMARY OF ARGUMENT

This case has exceptional importance for U.S. investors who purchase American Depositary Receipts ("ADRs")—the kind of security at issue in this case—and other foreign-issued securities on U.S. markets. The Second Circuit's decision, if permitted to stand, will harm investors in the short run and will in the long run harm the U.S. markets for these securities. This case presents the question of whether U.S. federal courts will hold a foreign sovereign to the promises it makes in a U.S. prospectus, issued and distributed in the United States, designed to induce U.S. investors to purchase an ADR. The Second Circuit's refusal to hold Argentina to its promise cries out for review and reversal by this Court.

Investors are attracted to the U.S. capital markets not only by their depth and maturity but also because of the reliability of the U.S. court system. The Second Circuit's decision undermines that reliability by sending the message to investors holding ADRs that they cannot rely on U.S. courts to render justice if a foreign sovereign breaches its contractual promises. That message is directly contrary to Congress's intention, expressed in the Foreign Sovereign Immunities Act (FSIA), that U.S. federal courts shall have jurisdiction over a foreign sovereign that engages in commercial conduct with direct effects in the United States. The Second Circuit's holding—that the investors in this case were required to pursue relief from Argentina's own courts, pursuant to an Argentine law that was *never mentioned* in the ADR prospectus—is contrary to Congress's intent in the FSIA and will deter investors from purchasing ADRs going forward. In many circumstances, investors will perceive a foreign-court remedy as akin to no remedy at all. Investors will either buy fewer ADRs or else by demanding higher returns (i.e., lower prices) to compensate them for this increased risk. In short, investors' overall demand for ADRs and other foreign-issued securities would fall—especially the demand for securities from issuers based in emerging markets whose judicial systems are less well-known to investors and who are perceived to be at greater risk of expropriation by their sovereigns.

If investors' demand for ADRs were to fall, then that would increase the cost to foreign issuers of raising capital in the United States market. Those higher costs, in turn, would cause issuers to look elsewhere to obtain capital. If investors cannot rely on U.S. markets to avoid the uncertainty of foreign issuers' judicial systems, then

investors might look to invest in securities on other exchanges, where more mature and reliable judicial systems are in place. Issuers and investors do have other alternatives. The U.S. exchanges that list ADRs and other foreign-issued securities face robust and increasing competition from other, overseas exchanges where foreign issuers can raise equity capital and investors from all jurisdictions can invest.

Fewer foreign issuers, fewer new ADR offerings, and fewer investors would harm the American institutions—depositary banks, underwriters, stock exchanges, and law firms—that service the U.S. market for ADRs and other foreign-issued securities. Many of those institutions (including the ones involved in YPF's ADRs) are based in New York.

Amici therefore respectfully submit this brief to urge this Court to grant the petition for certiorari and reverse the Second Circuit's decision.

This brief proceeds in three parts. It begins by describing the size and importance of the particular market in which Argentina made the promises it breached—the U.S. ADR market—and gives a general account of the roles of the key participants in that market, with particular examples drawn from the record of this case.

This brief then uses this framing to explain the way in which Argentina's promises were presented to investors, why investors reasonably expected that U.S. courts would enforce those promises, and how the expectations of a U.S. forum underpin the ADR market specifically and foreign offerings on U.S. markets more generally.

Third, this brief explains how the Second Circuit's decision, if permitted to stand, would harm investors, the U.S. ADR market, and the market's participants in the long run.

ARGUMENT

I. The U.S. ADR Market Is Large, Growing, and Exceptionally Important.

A. What Are ADRs?

The YPF shares at issue here were sold to U.S. investors as American Depositary Receipts ("ADRs"). App. 6. ADRs are used by foreign issuers (companies with equity that trades in other countries) to establish a trading presence for their shares on U.S. stock exchanges and also in some cases (as with Argentina and YPF here) to raise capital through an initial public offering to U.S. investors. ADRs are "the most common vehicle for foreign issuers to list and offer securities to the public equity market in the US."[2] A "sponsored" ADR program is one that—like

---

2. Expert Report of Nancy Lissemore ¶ 11 (Sep. 2021), ECF 364-33, at 6 (hereafter "Lissemore Opening Report"). From 2005 to 2020, Ms. Lissemore served as Global Head of the ADR Business for Citibank, N.A. ("Citi"), one of the four U.S. depositary banks. *Id.* ¶ 3, ECF 364-33, at 4-5. Ms. Lissemore's "management responsibilities spanned 10 countries and included approximately 60 staff," and Citi's "portfolio of ADR clients spanned 60 countries." *Id.*

The ECF citations in this brief are to district court's docket. The page numbers refer to the blue numbers stamped on the top right of the cited page by the district court's docket system.

YPF's ADRs, here—was created with the official support of the foreign issuer.

Creating a "sponsored" ADR program requires the foreign issuer to first deposit some of its local (non-U.S.) shares with a custodian—typically a bank in the issuer's home country. These foreign shares remain with that custodian. The foreign issuer then issues American Depositary Shares ("ADSs") in the United States. Each ADS typically represents an interest in one non-U.S. share held by the custodian. In this case, YPF issued 85 million ADSs, each of which represented an ownership interest in one Argentinian Class D share.[3]

In order to issue ADSs in the United States, the foreign issuer must comply with U.S. securities laws. If the issuer intends to raise capital in the United States—as YPF and Argentina did here—then the issuer must file a registration statement with the Securities and Exchange Commission ("SEC") and must thereafter file annual reports with the SEC on Form F-20.[4] In this case, YPF filed its Registration Statement with the SEC on June 24, 1993.[5] The foreign issuer may also wish for its ADSs

3. Prospectus, ECF 364-3, at 9; *see also* Lissemore Opening Report, *supra* note 2, ¶ 9 (ECF 364-33, at 6).

4. SEC, *Investor Bulletin: American Depositary Receipts* (2012) (hereafter "SEC, *Investor Bulletin*"), at 2. This document is available online here: www.sec.gov/files/adr-bulletin.pdf. It is also in the record as Exhibit C to the Lissemore Opening Report. ECF 364-33, at 20.

5. This Registration Statement is in the record as Exhibit 3 to the Hicks Declaration. Because it is so long, it is split into two parts and filed at ECF 364-3 and ECF 364-4. The Registration Statement contains the Prospectus, which begins at page 4 of ECF 364-3.

to trade on a U.S. exchange. If so, then it must also apply for and obtain a listing from that exchange. Here, YPF's "ADSs" were "approved for listing on the New York Stock Exchange."[6]

After the foreign issuer issues ADSs, it then deposits those ADSs in a U.S. depositary bank, where they remain. The depositary bank, in turn, issues the American Depositary Receipts ("ADRs"). Much like a stock certificate is evidence of ownership of an underlying share of a U.S. domestic company, an ADR is evidence of ownership of an ADS held by the depositary bank.[7] (In practice, market participants often use the terms ADS and ADR interchangeably.[8]) Here, YPF hired Bank of New York—Mellon ("BONY") to run its ADR program by serving as the "Depositary" of its ADSs and by issuing the ADRs, among other important services.[9]

Once issued, ADRs are "treated as US domestic securities by market participants."[10] ADRs "trade in

6. Prospectus, ECF 364-3, at 9.

7. SEC, *Investor Bulletin, supra* note 4, at 1 (ECF 364-33, at 20).

8. *Id.*

9. Prospectus, ECF 364-3, at 93 ("ADRs evidencing ADSs [American Depositary Shares] will be issuable by the Depositary pursuant to the Deposit Agreement.").

10. Lissemore Opening Report, *supra* note 2, ¶ 10 (ECF 364-33 at 6); *see also id.* ¶ 13 (ECF 364-33 at 7) ("By investing in ADRs, shareholders hold their securities in the US without needing to open security and cash accounts in the foreign country; will receive dividends and other cash entitlements in USD; and will receive these entitlements by check or through their broker.").

U.S. dollars and clear through U.S. settlement systems, allowing ADR holders to avoid having to transact in a foreign currency."[11]

B. How Large Is the ADR Market?

The ADR market has grown considerably in the ninety-seven years since a U.S. bank created the first one, in 1927, to enable U.S. investors to invest in shares of a British department store.[12]

In 1993—the year that Argentina brought YPF's ADRs to market—the total market capitalization of ADRs was approximately $200 billion.[13] In 2022, the market capitalization was $5.4 trillion.[14] There were 287 billion ADRs in circulation in 2022.[15] Those ADRs had been issued in 1,343 "sponsored" programs and 1,460 "unsponsored" programs.[16]

---

11. SEC, *Investor Bulletin*, *supra* note 4, at 1 (ECF 364-33, at 20).

12. *Id.* at 1.

13. Juan P. Gutierrez, *Essays on American Depositary Receipts: New Fears, Investor Attention and Financial Bubbles* 6 fig. 1.1 (2018) (citing data obtained from Citi), https://scholarworks.utrgv.edu/cgi/viewcontent.cgi?article=1282&context=etd.

14. Securities Industry and Financial Markets Association ("SIFMA"), *2023 Capital Markets Factbook* 25, https://perma.cc/9HV2-PFSA (hereafter, "2023 SIFMA Capital Markets Factbook").

15. *Id.*

16. *Id.* An "unsponsored" ADR program is created by someone other than the foreign issuer—typically, a U.S. broker-

ADRs continue to be used by foreign issuers to raise capital. In 2021, $35.4 billion of capital was raised by selling depositary receipts.[17] In 2022, $8.3 billion was raised in this way.[18]

C. Who Buys and Sells ADRs?

ADRs are bought and sold by all kinds of investors. BONY correctly describes depositary receipts as a "well-understood mechanism" used not only by "institutional investors" (e.g., mutual funds, pension plans, and endowment funds) but also "wealth management and individual retail investors."[19] Investors may buy and sell ADRs through their stockbrokers, just as they would any other U.S.-listed security. Many ADRs are listed on app-based trading platforms favored by retail investors. For

---

dealer that owns the non-U.S. shares. Unsponsored ADRs are not listed on any U.S. exchange; they are instead traded "over the counter." SEC, Investor Bulletin, *supra* note 4, at 1 (ECF 364-33, at 20). If the ADR program is "unsponsored," then the foreign issuer is not required to file information with the SEC. *Id.* at 2. An "unsponsored" ADR program cannot be used to raise new capital for the foreign issuer. *Id.*

17. Citi Depositary Receipt Services, *Year End 2021 Report* 2 (Feb. 2022), https://perma.cc/G86Q-KGPH. This figure includes both ADRs and "Global Depositary Receipts" (GDRs) which are an offshore rival of ADRs that are discussed below in this brief.

18. Citi Depositary Receipt Services, *Year End 2022 Report* 2 (May 2023) (hereafter "Citi, *2022 Year End Report*"), https://perma.cc/GJ49-6V6T. Again, these figures include Global Depositary Receipts.

19. BONY, *Demand for Depositary Receipts—A Mid-Year Analysis* 3 (2021), https://perma.cc/FX2X-7GGA.

example, the Robinhood app explains that "ADRs make it easy for investors to trade in foreign companies on US trading venues."[20]

In 2022, mutual funds held "75% of the total [$5.4 trillion] value" of all depositary receipts.[21] Other institutional investors held about 13% of that total value ($736 billion).[22]

D. What U.S. Institutions Serve the ADR Market?

The U.S. market for ADRs is supported and serviced by many institutions based in the United States.

There are currently just four depositary banks that issue ADRs: In addition to BONY—the depositary bank used by Argentina and YPF—the other three are JPMorgan Chase, Citi, and Deutsche Bank.[23] BONY, JP Morgan, and Citi each have their global headquarters in New York City, and Deutsche Bank has its "USA Regional Head Office" in New YOrk.[24] In 2022, Citi acted as the

20. Robinhood, *American Depository Receipts*, https://robinhood.com/gb/en/support/articles/american-depositary-receipts/.

21. Citi, *2022 Year End Report*, *supra* note 18, at 2. These figures include Global Depositary Receipts.

22. *Id.*

23. Lissemore Opening Report, *supra* note 2, ¶ 3 (ECF 364-33, at 5).

24. BONY, Press Release, BNY Mellon Relocates Corporate Headquarters (July 25, 2018), https://perma.cc/W26G-UGND; Citi, About Us (last accessed Mar. 26, 2024), https://www.citigroup.com/global/about-us/global-presence/united-states; JP Morgan

depositary bank for nearly $6 billion of new issues of depositary receipts—which was 72% of the total capital raised worldwide that year from the issuance of depositary receipts.[25]

If the foreign issuer intends to raise new capital from the sale of ADRs, then it will also need to contract with investment banks. In a typical ADR offering, the investment banks advise the issuer on capital structure, establish a syndicate of participating banks, conduct due diligence, advertise the ADRs to investors, and line up broker-dealers and other "market makers."[26] Most of the investment banks that underwrite ADRs are based in the United States. Here, YPF and Argentina chose seven "U.S. Underwriters"—investment banks who, in 1993, bought the ADSs and then "offered" them to the market.[27]

Sponsored ADRs are almost always listed on a U.S. stock exchange. That is the most effective way for the

---

Chase & Co., Press Release, JPMorgan Chase Unveils Plans for New Global Headquarters Building in New York City (Apr. 14, 2022), https://perma.cc/4X92-GPVQ; Deutsche Bank, Addresses and contact (last accessed Mar. 26, 2024), https://perma.cc/87DQ-9BMC.

25. Citi, *2022 Year End Report*, *supra* note 18, at 2.

26. Citi, *American Depositary Receipts (ADRs): A Primer*, at 2 (Mar. 2024) (hereafter "Citi, *ADR Primer*"), https://perma.cc/Z5TK-TRUC.

27. These investment banks are listed on the first page of the Prospectus that was issued to investors. ECF 364-3, at 4. They were: CS First Boston Group; Merrill Lynch & Co.; The First Boston Corporation; Goldman, Sachs & Co.; Salomon Brothers Inc.; Bear, Stearns & Co. Inc.; and J.P. Morgan Securities Inc.

foreign issuer and its underwriters to raise capital here. These are also the most liquid markets (meaning that there is frequent trading activity and a large pool of investors and thus the ADRs are easy to buy or sell, in large amounts, with low transaction costs). Liquidity is prized by investors and therefore sought out by foreign issuers.[28] In 2022, nine of the ten most liquid (i.e., most frequently traded) ADRs were listed on NASDAQ and the NYSE.[29] As noted, Argentina and YPF chose to list the YPF ADRs on NYSE, where they continue to trade under the ticker symbol "YPF."[30]

II. Assurances like Argentina's Promises In the ADR Prospectus—and Expectations of Meaningful Remedies in U.S. Courts—Are Crucial to U.S. Market Participants.

The Second Circuit's decision, if allowed to stand, will negatively affect the U.S. market for ADRs and for other foreign-issued securities. The negative effects will

---

28. Citi, *The Role of the Depositary Bank* 4-5 (hereafter "Citi, *The Role of the Depositary Bank*"), https://perma.cc/ZG4C-X76Z. Citi reports that liquidity is "considered the best measure for the long-term success of a DR program" because "[w]ithout the ability to move into and out of positions of sufficient size, institutions are often reluctant to add the security to their managed portfolios. Likewise, brokers prefer to deal in liquid securities, and both sell-side and buy-side analysists prefer to cover liquid securities . . . ." *Id.* at 4.

29. Citi, *2022 Year End Report*, *supra* note 18, at 4.

30. Prospectus, ECF 364-3, at 9 ("Proposed NYSE Symbol . . . 'YPF.'). NYSE's report on trading activity in YPF ADRs can be found here: https://www.nyse.com/quote/XNYS:YPF/QUOTE.

not be limited solely to those ADRs or securities that are issued by sovereign entities (e.g., wholly state-owned enterprises). *Every* private foreign issuer is subject to the risk of expropriation by its sovereign.

One important reason why U.S. investors are attracted to ADRs is that ADRs "benefit[] from the general protection and transparency facilitated by U.S. securities regulation."[31] U.S. investors seeking to make investments in foreign issuers are well aware of, and not infrequently concerned by, the risks inherent in developing markets—including the risk of sovereign expropriation. Foreign issuers raising capital in U.S. markets are able to use the U.S. securities regulations as a buttress to backstop promises made (by themselves and by their sovereign shareholders) to assuage U.S. investors' concerns on these matters.[32]

As the Second Circuit found, the success of YPF's ADRs depended upon the assurances in YPF's U.S. prospectus—in particular, the unambiguous promises by which Argentina tied "its own hands." App. 38. Specifically,

---

31. Citi, *American Depositary Receipts (ADRs): A Primer*, https://depositaryreceipts.citi.com/adr/common/file.aspx?idf=1248.

32. *See, e.g.*, Eletrobras (Form 6-K), at Annex 8.b (Jan. 2018) (legal opinion assuring U.S. investors that "the Federal Government [of Brazil] cannot force Eletrobras to assume debts without due compensation" because to do so would involve a "serious violation of the duties of loyalty and good faith with regard to the company and the minority shareholders"); Ecopetrol S.A., Annual Report (Form 20-F), at 141 (Apr. 28, 2015) (describing commitments by "Ecopetrol's majority shareholder (the Nation [of Brazil], represented by the Ministry of Finance) … to protect the interests of the minority shareholders" on certain issues).

YPF's prospectus promised that, if Argentina were to acquire a controlling block of shares, then Argentina would make a tender offer, at a price set by a certain formula, for all other shares, including the Class D shares represented by the ADRs:

- "Special rules apply to acquisitions of shares by the Argentine Government …."[33]

- "Under [YPF's] By-laws, in order to acquire a majority of [YPF's] capital stock or a majority of the Class D Shares, the Argentine Government first would be required to make a cash tender offer to all holders of Class D Shares on specified terms and conditions." [34]

- "Any Control Acquisition carried out by the Argentine Government other than in accordance with the procedure described . . . will result in the suspension of the voting, dividend and other distribution rights of the shares so acquired."[35]

The YPF By-Laws, containing these contractual promises by the Argentine Government, were included in full as an exhibit to the U.S. prospectus that was distributed to U.S. investors.[36] The By-Laws contained *no*

33. Prospectus, ECF 364-3, at 10.

34. *Id.* at 11.

35. *Id.* at 82.

36. Prospectus, ECF 364-4, at 107-34.

forum-selection clause requiring disputes to be heard in Argentine courts.[37] Nor did the By-Laws or the prospectus contain any hint that a *different* Argentine law—the General Expropriation Law—would preclude any claim by an investor for breach of Argentina's promises contained in the By-Laws.

Consistent with bedrock principles of FSIA jurisdiction and longstanding Second Circuit precedent on *forum non conveniens*, investors who read this prospectus would reasonably understand that a contractual dispute with Argentina, arising from Argentina's breach of the By-Laws, would be heard by a New York court and would not be relegated to an Argentine forum. *DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21, 28 (2d Cir. 2002) (Southern District of New York was a convenient forum for lawsuit against Canadian issuer of securities, in part because of New York's heightened interest in adjudicating a lawsuit where it "was [Defendant] who came to [Plaintiffs] by registering its stock on American exchanges").

---

37. The Prospectus did contain a clause stating that "any action relating to enforcement of the By-laws or a shareholder's rights thereunder is required to be brought in an Argentine court." ECF 364-3, at 91. But this restriction nowhere appears in the By-Laws, which are themselves the relevant contract. The district court correctly found that "the [Argentine] Republic's jurisdiction over the present action is not 'exclusive' at all because '[s]overeigns are not immune from [suits like present one] under the FSIA.'" *Petersen Energia Inversora S.A.U. v. Argentine Republic*, No. 15 CIV. 2739 (LAP), 2020 WL 3034824, at *12 (S.D.N.Y. June 5, 2020) (quoting *Petersen Energia Inversora S.A.U. v. Argentine Republic & YPF S.A.*, 895 F.3d 194, 211 (2d Cir. 2018)).

The availability of a U.S. forum to enforce promises made in a prospectus for an ADR listing on a U.S. stock exchange is crucial to U.S. investors contemplating a purchase of those ADRs. The availability of a U.S. forum is especially important to investors who expect to hold a small amount of the ADRs. For such an investor, the cost of litigating any dispute will often exceed the value of the investor's holdings—thus making it economically impractical for the investor to litigate any dispute on its own—never mind litigating that dispute in a foreign forum. If U.S. courts are available, then these smaller investors can obtain compensation as members of a class action. Most foreign court systems, by contrast, have no class-action procedure at all.[38] Of those few that do allow class actions, "many . . . have enacted more restrictive class procedures than the United States."[39] If an investor with small ADR holdings lacks access to the U.S. court system, then that investor will probably have no practical way to litigate a dispute with the ADR issuer.

III. The Second Circuit's Decision Will Harm Investors and Undermine U.S. Markets.

One major "selling point" of the United States' ADR market is the widespread perception among investors that U.S. courts are fair, competent, neutral decisionmakers that will faithfully apply the relevant law to the facts of

---

38. Jones Day, White Paper, *Class Actions Worldview: Part I – United States and the European Union* (Aug. 2023) ("Although class actions have been common in the United States for decades, they have not been as widely used in the rest of the world."), https://perma.cc/ZP96-DV3N.

39. *Id.*

each case and will not favor the interests of the sovereign. This perception is reinforced by Congress's decision to make foreign sovereigns subject to U.S. jurisdiction for claims arising out of a sovereign's breach of a commercial promise.

By allowing Argentina to avoid a U.S. forum by invoking an Argentine domestic law that channeled petitioners' breach-of-contract claims to an Argentine court, the Second Circuit's decision will undermine U.S. investors' confidence in the availability of U.S. courts to hear and decide future disputes with foreign sovereigns arising out of the promises made in prospectus for ADRs and other foreign-issued securities.

The Second Circuit's decision will harm investors in the near term by making such promises effectively impossible to enforce. The decision will also affect investor behavior in the longer term. The risk of having to litigate a dispute in an unfamiliar foreign country will decrease investors' overall demand for ADRs and other foreign-issued securities traded on U.S. exchanges. Some investors will stop buying ADRs and foreign-issued securities altogether. Others will continue to buy but will demand increased returns (i.e., lower prices) in exchange for the additional risk.

Investors will also be more drawn to competing marketplaces—the United Kingdom, for example—whose courts are perceived as both reliable and as willing to hear investors' disputes with foreign issuers and foreign sovereigns. Prices of ADRs and other foreign securities traded on U.S. markets will decline as investors re-deploy

their capital in other markets whose judicial systems are perceived as more reliable.

Investors and foreign issuers alike have several other options, besides U.S. markets, for deploying and raising capital. For example: A "Global Depositary Receipt" (GDR) is similar to an ADR but is issued by a non-U.S. depositary bank—typically in Europe—and is then typically listed on a non-U.S. exchange.[40] The "predominant listing venues" for GDRs "are the London and Luxembourg Stock Exchanges."[41] Another option: Foreign issuers may raise capital by issuing "Local Depositary Receipts" (LDRs).[42] An LDR is similar in concept to an ADR but is issued in a non-U.S. jurisdiction and trades on that jurisdiction's stock exchange. Examples include Hong Kong Depositary Receipts, Japanese Depositary Receipts, and Brazilian Depositary Receipts.[43]

The Second Circuit's decision, if allowed to stand, will cause investors to prefer GDRs or LDRs, listed on non-U.S. exchanges, over ADRs. Investors will prefer this if they perceive other countries' judicial systems as more likely to protect investors' contractual rights against the issuer of the GDR or LDR or against the foreign sovereign making promises in the GDR's or LDR's prospectus. Foreign issuers will respond to that demand from

---

40. Citi, *Global Depositary Receipts (GDRs): A Primer* 1, https://perma.cc/7J35-LH3F.

41. *Id.*

42. Citi, *The Role of the Depositary Bank*, *supra* note 28, at 1.

43. *Id.*

investors by choosing not to use the U.S. ADR market but instead issuing GDRs or LDRs on non-U.S. exchanges.

Competition between markets is already fierce. The Baker McKenzie law firm correctly states that "intensified competition between stock exchanges to win cross-border listings has created opportunity and increased optionality for companies looking beyond their own borders to raise capital."[44] That firm's *Cross-Border Listings Guide* describes the dozens of different exchanges available around the world on which a foreign issuer may choose to cross list its shares and thereby obtain equity capital.[45]

If the Second Circuit's decision stands, capital is more likely to flow out of U.S. exchanges and into foreign exchanges. The natural result of decreased investor demand for ADRs and other foreign-issued securities would be less capital available (or at the very least, more expensive capital) for new ADRs and other securities issued by foreign companies in U.S. markets. The harmful effects would be especially strong for companies that are based in emerging markets whose judicial systems are less familiar to investors. The harm inflicted on investors and U.S. markets by the Second Circuit's decision urgently supports review.

---

44. Baker McKenzie, *Cross-Border Listings Guide* (10th ed.), https://perma.cc/HMK9-LALN.

45. *Id.*

CONCLUSION

The Second Circuit's decision is exceptionally important to the U.S. market for ADRs and other foreign-issued securities. This Court should grant certiorari and reverse.

Dated: November 2, 2026

Respectfully submitted,

Steven M. Shepard
Counsel of Record
Susman Godfrey LLP
395 Ninth Avenue, Floor 50
New York, NY 10001
(212) 729-2010
sshepard@susmangodfrey.com

Counsel for Amici