

## Securities Class Action Filed Against the Republic of Ecuador

Stanford – August 3, 2020

The On July 29, 2020, Contrarian Emerging Markets, L.P., GMO Emerging Country Debt Fund, GMO Emerging Country Debt Investment Fund plc, and GMO Emerging Country Debt (UCITS) Fund (collectively, “plaintiffs”) filed a [class action lawsuit](#) in the Southern District of New York against the Republic of Ecuador (“Republic”) for violations of the federal securities laws arising from a tender offer for \$17.4 billion of the Republic’s outstanding bonds. This lawsuit is noteworthy because it appears to be the first securities fraud class action filed directly against a sovereign nation, according to information contained in the Clearinghouse database.

The complaint alleges that the Republic made materially false and misleading statements in a press release and in the offer’s underlying transaction documents. The complaint further alleges that the false statements are designed to deceive and mislead bondholders about the coercive nature of the tender and exchange offer, which allegedly deprives bondholders of key protections and subjects bondholders to harshly inequitable treatment should they decline to consent. Plaintiffs seek to enjoin the tender offer (which was originally set to expire on Friday, July 31 but which [has been extended](#) to Monday, August 3), claiming that plaintiffs will be irreparably harmed if the tender offer is permitted to go forward. Plaintiffs further content that a suit for money damages will be inadequate because the Republic is admittedly insolvent and has indicated in clear terms that it intends to oppose efforts to collect on its defaulted debt.

In a [press release](#) filed the same day as the complaint, the Republic claims that it “will vigorously oppose this attempt to derail this necessary transformative transaction. If allowed to proceed, such a legal action would threaten to harm the Republic and its citizens, and would create a dangerous and damaging precedent for other emerging markets sovereigns.”

In 1975, Congress amended the Securities Exchange Act of 1934 to make government entities subject to its antifraud provisions. Since that time, plaintiffs have filed class action lawsuits against municipalities including the [City of Miami](#) and the [City of Monticello](#) for violations of federal securities laws. In 2016, Columbia Law School Professor John C. Coffee opined that a sovereign nation, the Republic of Peru, had violated U.S. securities law by omitting material information and making material misstatements in prospectuses filed with the SEC in connection with the sale of approximately \$3 billion of debt. However, a class action lawsuit was never filed against Peru. A press release discussing Peru’s debt sale and Professor Coffee’s analysis can be found [here](#).

The case against the Republic of Ecuador appears to be the first federal securities class action filed against a sovereign nation since at least 1996, when the Clearinghouse began tracking such cases. Whether bondholders will file similar actions against other nations remains to be seen.

**Kristen Savelle and Leo Cho**

Securities Class Action Clearinghouse (SCAC)

---

If you have questions about this report, please contact [scac@law.stanford.edu](mailto:scac@law.stanford.edu)

---