UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MF GLOBAL HOLDINGS LIMITED SECURITIES LITIGATION	:	Civil Action No. 1:11-CV-07866-VM
THIS DOCUMENT RELATES TO:	:	
All Securities Actions (*DeAngelis v. Corzine*)	:	ECF CASE

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Co-Lead Counsel for Lead Plaintiffs and the Remaining Senior Notes Underwriter Class

Dated: June 3, 2016

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Court-appointed Co-Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLBG") and Bleichmar Fonti & Auld LLP ("BFA"), respectfully submit this memorandum of law in support of their motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys' fees in the amount of 19% of the Settlement Fund and for reimbursement of $2,028,538.99 in unreimbursed litigation expenses that were reasonably and necessarily incurred in prosecuting and resolving the Action.[1]

PRELIMINARY STATEMENT

The proposed $29,825,000 Settlement with the Remaining Senior Notes Underwriter Defendants represents a very favorable result for the Class. The Settlement, if approved, will bring the aggregate recovery for investors in all MF Global Securities in this Action to $234.3 million, an excellent recovery in light of MF Global's bankruptcy and the risks of the litigation. This significant recovery was obtained through the skill and effective advocacy of Co-Lead Counsel, who litigated this Action on a fully contingent fee basis against highly skilled defense counsel for more than four years. In undertaking this litigation, Co-Lead Counsel faced substantial challenges in proving liability and damages, which posed the serious risk of no recovery, or a lesser recovery than the Settlement.

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Defendants Jefferies LLC, BMO Capital Markets Corp., Natixis Securities Americas LLC, Lebenthal & Co., LLC, and U.S. Bancorp Investments, Inc. dated as of March 9, 2016 (ECF No. 1092-1) (the "Stipulation") or in the Joint Declaration of Salvatore J. Graziano and Javier Bleichmar in Support of: (I) Settling Plaintiffs' Motion for Final Approval of the Remaining Senior Notes Underwriter Settlement; and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl."), submitted herewith. Citations to "¶" in this memorandum refer to paragraphs in the Joint Declaration.

As detailed in the accompanying Joint Declaration,[2] Co-Lead Counsel vigorously pursued this litigation from its outset by, among other things: (i) conducting an extensive factual investigation, including interviews with numerous former employees of MF Global, consultation with experts, and a detailed review and analysis of the voluminous amounts of public information relating to the collapse of MF Global, such as SEC filings, press releases and other public statements, media and news reports, analyst reports, documents from MF Global's Chapter 11 bankruptcy proceeding and MF Global Inc.'s SIPA liquidation proceeding, and materials and transcripts from Congressional hearings; (ii) researching the law relevant to the claims against each Defendant and the potential defenses available; (iii) drafting and filing a detailed complaint; (iv) preparing extensive briefing in opposition to the Senior Notes Underwriter Defendants' motion to dismiss and six other separate motions to dismiss filed by the Individual Defendants, other Underwriter Defendants and PwC; (v) conducting a targeted review and analysis of the over 47 million pages of documents produced by Defendants and third parties; (vi) drafting and filing a motion for class certification and an accompanying expert report on market efficiency and classwide damages, defending 11 depositions of Plaintiffs or Plaintiffs' investment managers related to class certification, and successfully obtaining class certification for the claims against the Remaining Senior Notes Underwriter Defendants; (vii) taking or actively participating in 40 depositions of fact witnesses, which included six depositions of current or former employees of Jefferies LLC, the lead underwriter for the 6.25% Senior Notes offering; (viii) retaining and consulting with experts regarding damages, underwriter due

[2] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation against Remaining Senior Notes Underwriter Defendants.

diligence standards, liquidity, and accounting; (ix) engaging in extensive expert discovery, including preparing and filing an opening and rebuttal expert from each of Plaintiffs' three experts, defending Plaintiffs' experts' depositions, and taking the depositions of the Remaining Senior Notes Underwriter Defendants' three experts; and (x) participating in extensive arm's-length settlement negotiations. ¶¶ 5, 11-43.

The Settlement achieved is a particularly favorable result when considered in light of the significant risks of proving the Defendants' liability and damages. Among other things, Settling Plaintiffs faced substantial challenges in proving that the statements in the 6.25% Senior Notes offering materials about MF Global's deferred tax assets ("DTA"), repurchase-to-maturity ("RTM") transactions and internal controls were materially false or misleading. ¶¶ 45-46. The Remaining Senior Notes Underwriter Defendants contended that many of the alleged misstatements or were not false or misleading in light of other statements in the offering materials that allegedly disclosed the applicable risks. ¶ 46. Defendants also maintained that certain of the allegedly false statements were opinions and, thus, could not be found to be false or misleading unless they were shown to be disbelieved when made, or they were entitle to rely on the accuracy of statements that were made by MF Global's auditor, PwC. *Id*. The Remaining Senior Notes Underwriter Defendants would also have contended that the losses suffered by purchasers of 6.25% Senior Notes were not caused by any of alleged misstatements in the offering materials. ¶ 48. Finally, given the substantial amounts previously recovered in the Earlier Settlements, the PSLRA judgment-reduction rule posed a real risk that any judgment obtained against the Remaining Senior Notes Underwriter Defendants would be substantially lowered or eliminated entirely. ¶ 50. Given these risks, Co-Lead Counsel respectfully submit that the Settlement is a testament to their hard work and the quality of their representation.

In light of the recovery obtained, the time and effort devoted to the Action by Settling Plaintiffs' Counsel, the skill and expertise required, and the risks that counsel undertook, Co-Lead Counsel believe that the requested fee award and the reimbursement of incurred expenses are fair and reasonable.[3] As discussed below, the 19% fee requested is the same percentage requested and awarded with respect to the Earlier Settlements and is well within the range of percentage fees that courts in this Circuit have awarded in securities class actions with comparable recoveries. The requested fee represents a multiplier of 1.0 on Settling Plaintiffs' Counsel's lodestar for the period from May 9, 2015 to May 31, 2016. If the attorneys' fees previously awarded in the connection with the Earlier Settlements and the fees requested here are considered in the aggregate and compared to the total lodestar for counsel in the Action, the fees represent a multiplier of 0.83 to the total lodestar. While both multipliers are well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one, Co-Lead Counsel believe that the overall lodestar multiplier is the more meaningful measure here because, prior to the Earlier Settlements, all work in pursuing the claims against the Remaining Senior Notes Underwriter Defendants overlapped with work in pursuing claims against the other defendants.

Settling Plaintiffs, which are sophisticated institutional investors that have closely supervised and monitored the prosecution of the Action, have approved the fees requested. In addition, the expenses for which Settling Plaintiffs' Counsel seek reimbursement were reasonable and necessary for the successful prosecution of the Action.

[3] "Settling Plaintiffs' Counsel" are: Co-Lead Counsel BLBG and BFA and Cole Schotz P.C., counsel specializing in bankruptcy litigation that was retained to monitor MF Global's bankruptcy proceedings and assist Co-Lead Counsel in protecting the interests of class members in light of MF Global's complex bankruptcy.

In addition, pursuant to the Preliminary Approval Order, 4,844 copies of the Notice have been mailed to potential Class Members and nominees through June 2, 2016, and the Summary Notice was published in the *Wall Street Journal* and *Investor's Business Daily* and transmitted over the *PR Newswire*. *See* Declaration of Jose C. Fraga Regarding (A) Mailing of the Remaining Senior Notes Underwriter Notice; (B) Publication of the Summary Remaining Senior Notes Underwriter Notice; and (C) Report on Requests for Exclusion Received to Date ("Fraga Decl."), attached to Joint Decl. as Exhibit 1, at ¶¶ 6-7. The Notice advised Class Members that Co-Lead Counsel would apply for an award of attorneys' fees in the amount of 19% of the Settlement Fund and reimbursement of litigation expenses in an amount not to exceed $2,500,000. *See* Fraga Decl., Ex. A at ¶¶ 5, 41. The fees and expenses sought by Co-Lead Counsel do not exceed the amounts set forth in the notice. While the deadline set by the Court for Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 73, 83.[4]

ARGUMENT

I. COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to

[4] The deadline for the submission of objections is June 17, 2016. Should any objections be received, Co-Lead Counsel will address them in reply papers, which will be filed with the Court on or before July 8, 2016.

represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future misconduct of a similar nature." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same).

Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'"). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Co-Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained. The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50 (holding that either the percentage of fund method or lodestar method may be used to determine appropriate attorneys' fees); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise

when the lodestar method is used in common fund cases"). More recently, the Second Circuit has reiterated its approval of the percentage method, stating that it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation," and has noted that the "trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010).

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and typically in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

The 19% fee requested by Co-Lead Counsel and approved by Settling Plaintiffs, which is the same percentage that was sought and awarded by the Court with respect to earlier achieved settlements, is well within the range of percentage fees that have been awarded in comparable securities class actions in the Second Circuit and across the nation. The 19% fee requested is a reasonable percentage of the $29.8 million settlement with the Remaining Senior Notes

Underwriter Defendants and, indeed, is on the low end of the range of percentage fees awarded on comparable settlements. *See, e.g.*, *In re Tower Grp. Int'l Ltd. Sec. Litig.,* 13 Civ. 5852 (AT), slip op. at 2 (S.D.N.Y. Nov. 23, 2015), ECF No. 178 (awarding 25% of $20.5 million settlement) (Joint Decl. Ex. 5); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. 12-2389, slip op. at 33 (S.D.N.Y. Nov. 9, 2015), ECF No. 372 (awarding 33% of $26.5 million settlement) (Joint Decl. Ex. 6); *Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 1:08-cv-03612-RJS, slip op. at 1 (S.D.N.Y. Apr. 5, 2013), ECF No. 127 (awarding 30% of $29 million settlement) (Joint Decl. Ex. 7); *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.,* 954 F. Supp. 2d 276, 281 (S.D.N.Y. 2013) (awarding 25% of $19.5 million settlement); *In re Sadia S.A. Sec. Litig.,* No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement); *In re L.G. Philips LCD Co. Sec. Litig.*, No. 1:07-cv-00909-RJS, slip op. at 1 (S.D.N.Y. Mar. 17, 2011), ECF No. 82 (awarding 30% of $18 million settlement) (Joint Decl. Ex. 8); *Police & Fire Ret. Sys. v. SafeNet, Inc.*, No. 06-cv-5797 (PAC), slip op. at 2 (S.D.N.Y. Dec. 20, 2010), ECF No. 140 (awarding 28.5% of $25 million settlement) (Joint Decl. Ex. 9); *In re Am. Home Mortg. Sec. Litig.*, No. 07-MD-1898 (TCP), slip op. at 2 (E.D.N.Y. Jan. 14, 2010), ECF No. 99 (awarding 20% of $37.25 million settlement) (Joint Decl. Ex. 10); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (awarding 25% of $21 million settlement).

The 19% fee is also reasonable with respect to the aggregate total recovery (including the current settlement) of $234.3 million. *See, e.g.*, *Comverse*, 2010 WL 2653354, at *6 (awarding 25% of $225 million settlement); *In re Freddie Mac Sec. Litig*., No. 03-CV-4261 (JES), 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 27, 2006) (awarding 20% of $410 million settlement); *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222 (CLB), 2003 U.S. Dist.

LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28% of $300 million settlement); *In re Merck & Co., Inc. Vytorin/Zetia Sec. Litig.,* No. 08-2177 (DMC)(JAD), 2013 WL 5505744, at *3, *46 (D.N.J. Oct. 1, 2013) (awarding 28% of $215 million settlement); *Silverman v. Motorola, Inc.,* No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement), *aff'd*, 739 F.3d 956, 958-59 (7th Cir. 2013); *In re Washington Mut., Inc. Sec. Litig.*, No. 2:08-md-1919 MJP, 2011 WL 8190466, at *1 (W.D. Wash. Nov. 4, 2011) (awarding 21% of $208.5 million total settlement); *In re CMS Energy Sec. Litig.*, Case No. 02-CV-72004 (GCS), 2007 U.S. Dist. LEXIS 96786, at *14-*15 (E.D. Mich. Sept. 6, 2007) (awarding 22.5% of $200 million settlement); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), slip op. at 1-2 (D. Del. Feb. 5, 2004) (awarding 22.5% of $300 million settlement, net of expenses) (Joint Decl. Ex. 11); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 130-35 (D.N.J. 2002) (awarding 21.6% of $194 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 734-36 (E.D. Pa. 2001) (awarding 25% of $193 million settlement). In sum, the 19% fee requested here is well within the range of fees awarded on a percentage basis in comparable actions.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50.

Here, Settling Plaintiffs' Counsel spent a total of 10,855.25 hours of attorney and other professional support time prosecuting the Action for the benefit of the Class from May 9, 2015

through May 31, 2016. ¶ 64.[5] Settling Plaintiffs' Counsel's lodestar for this time, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, is $5,711,874.[6] *See id*. The hourly rates for Settling Plaintiffs' Counsel's attorneys and staff are the same as the regular rates charged for their services in non-contingent matters or which have been accepted in other securities or shareholder litigation, and those rates are reasonable for this type of sophisticated securities litigation in New York City.[7] The requested 19% fee, which amounts to $5,666,750 (before interest), therefore represents a multiplier of just under 1.0 on Settling Plaintiffs' Counsel's lodestar for this time period. If the attorneys' fees previously awarded in the connection with the Earlier Settlements and the fees requested here are considered in the aggregate and compared to the total lodestar of all Plaintiffs' Counsels for both applications, the aggregate fee would represent a multiplier of 0.83 to the total lodestar (*i.e.*, the fee is less than counsel's lodestar, approximately 83% of that amount). As mentioned above,

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[5] In their previous application for attorneys' fees (ECF No. 1000-1002), Co-Lead Counsel included in their lodestar certain time from May 9, 2015 through September 30, 2015, if that time was spent specifically in connection with obtaining preliminary and final approval of the PwC and Individual Defendant Settlements. That time has been excluded from the lodestar submitted in connection with this application.

[6] The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflationary losses, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. at 284; *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014); *Veeco*, 2007 WL 4115808 at *9.

[7] *See, e.g., In re Platinum & Palladium Commodities Litig.,* No. 10-CV-3617, 2015 WL 4560206, at *4 (S.D.N.Y. July 7, 2015) (approving hourly rates for attorneys and staff ranging from $250 to $950 as reasonable in light of "the attorneys' legal experience, and the nature and caliber of the work performed"); *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (approving billing rates in 2014 securities class action ranging from "$640 to $875 for partners, $550 to $725 for of counsels, and $335 to $665 for other attorneys"); *aff'd*, 607 F. App'x 73 (2d Cir. 2015); *Comverse*, 2010 WL 2653354, at *4 (finding in 2010, that hourly rates of up to $880 were "not extraordinary for top New York law firms").

Co-Lead Counsel believe the multiplier based on counsel's aggregate fee request and lodestar is more meaningful because it reflects the total amount of work done by counsel and because, prior to the Earlier Settlements, counsel's efforts in pursuing claims against the Remaining Senior Notes Underwriters overlapped entirely with (and were not segregated from) time spent pursuing claims against the other defendants

In any event, either requested multiplier is well within the range of multipliers commonly awarded in securities class actions and other comparable litigation. In cases of this nature, fees representing multiples above the lodestar are regularly awarded to reflect contingency fee risk and other relevant factors. *See FLAG Telecom,* 2010 WL 4537550, at *26 ("a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors"); *Comverse*, 2010 WL 2653354, at *5 ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar."). Indeed, in complex contingent litigation, lodestar multipliers between 1 and 4 are commonly awarded. *See, e.g., Anwar v. Fairfield Greenwich Ltd.*, No. 09-CV-118 VM, 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("A multiplier of 2.42 is well within the range of lodestar multipliers approved by courts in the Second Circuit"); *Comverse*, 2010 WL 2653354, at *5 (awarding 25% of $225 million settlement representing a 2.78 multiplier and noting that "[t]his multiplier is well within the range awarded in comparable settlements").[8]

[8] *See also Bd. of Trs. of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686(SAS), 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding 25% fee of $150 settlement representing a 2.86 multiplier); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011), ECF No. 117 (awarding fee representing a 4.7 multiplier) (Joint Decl. Ex. 12); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369

Courts have further recognized that where, as here, the requested attorneys' fees are at or below class counsel's lodestar despite the existence of substantial litigation risks, that fact provides strong support for the reasonableness of the requested fee. *See Marsh ERISA*, 265 F.R.D. at 146 (that counsel only sought 87.6% of their lodestar "strongly suggests that the requested fee is reasonable"); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 515 (S.D.N.Y. 2009) (finding that there was "no real danger of overcompensation" given that the requested fee represented a discount to counsel's lodestar).

In sum, Co-Lead Counsel's requested fee award is well within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage or in relation to counsel's lodestar. Moreover, as discussed below, each of the factors established for the review of attorneys' fee awards by the Second Circuit in *Goldberger* also strongly supports a finding that the requested fee is reasonable.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE SECOND CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50 (internal quotation marks omitted). Consideration of these factors, together with the analyses above, demonstrates that the fee requested by Co-Lead Counsel is reasonable.

(S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country").

A. The Time and Labor Expended Support the Requested Fee

The substantial time and effort expended by Settling Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement strongly support the requested fee. The Joint Declaration details the efforts of counsel in prosecuting Settling Plaintiffs' claims against the Remaining Senior Notes Underwriter Defendants over the course of the litigation. Among other things, Co-Lead Counsel and other Settling Plaintiffs' Counsel:

- conducted an extensive factual investigation, including interviews with numerous former employees of MF Global, consultation with experts, and a detailed review and analysis of the voluminous amounts of public information relating to the collapse of MF Global, such as SEC filings, press releases and other public statements, media and news reports, analyst reports, documents from MF Global's Chapter 11 bankruptcy proceeding and MF Global Inc.'s SIPA liquidation proceeding, and materials and transcripts from Congressional hearings (¶¶ 5, 19-20);

- researched the law relevant to the claims and the potential defenses and drafted a detailed Amended Complaint (¶¶ 5, 21);

- successfully opposed the Senior Notes Underwriter Defendants' motions to dismiss the Amended Complaint (as well as five additional motions filed by the Individual Defendants and other Underwriter Defendants) through extensive briefing (¶¶ 5, 14-17);

- engaged in extensive document discovery resulting in the production of over 47 million pages of documents to Lead Plaintiffs by Defendants and third parties, including James W. Giddens, the SIPA Trustee, and Nader Tavakoli, the MF Global Litigation Trustee, and conducted a targeted review and analysis of these documents (¶¶ 5, 24-29);

- engaged in class certification discovery, including preparing for and defending 11 depositions of Plaintiffs or Plaintiffs' investment managers and responding to requests for production of documents and interrogatories directed at Plaintiffs (¶¶ 5, 30-31);

- drafted and filed a motion for class certification and an accompanying expert report on market efficiency and classwide damages and successfully obtained class certification of the claims against the Remaining Senior Notes Underwriter Defendants (¶¶ 5, 31-32);

- took or actively participated in 40 depositions of fact witnesses, including six depositions of current or former employees of Jefferies LLC, and numerous

former senior MF Global officers, including Individual Defendant Jon Corzine (MF Global's former CEO), who was deposed over three days and Individual Defendant John R. MacDonald (MF Global's former CFO) (¶¶ 5, 34);

- consulted extensively with experts regarding due diligence, liquidity, accounting, damages and market efficiency (¶¶ 5, 35);

- engaged in extensive expert discovery, including preparing and filing six expert reports (an opening and rebuttal report from each of Plaintiffs' three experts), defending the depositions of the three Plaintiffs' experts, and taking the depositions of the Remaining Senior Notes Underwriter Defendants' three experts (¶¶ 5, 36); and

- participated in extensive arm's-length settlement negotiations with the Remaining Senior Notes Underwriter Defendants (¶¶ 5, 38-43).

As noted above, Settling Plaintiffs' Counsel expended more than 10,800 hours in continuing to prosecute this Action from May 9, 2015 through May 31, 2016 that was not included in the previous fee application with a total lodestar value of $5,711,874.00. ¶ 64. Throughout the litigation, Co-Lead Counsel staffed the matter as efficiently as possible and avoided any unnecessary duplication of effort. *Id*. The time and effort devoted to this case by counsel was critical to obtaining the favorable Settlement, and confirms that the fee request here is reasonable.

B. The Risks of the Litigation Support the Requested Fee

The risk of the litigation is one of the most important *Goldberger* factors. *See Goldberger*, 209 F.3d at 54; *Comverse*, 2010 WL 2653354, at *5. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at *5; *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

While Co-Lead Counsel believe that the claims that Settling Plaintiffs asserted against the Remaining Senior Notes Underwriter Defendants are meritorious, Co-Lead Counsel recognize that there were a number of significant risks presented by the litigation against these defendants from the outset of the case and that Settling Plaintiffs' ability to succeed at trial and obtain a substantial judgment was never certain. On the contrary, there were substantial challenges in proving liability and damages against the Remaining Senior Notes Underwriter Defendants, including: (i) risks associated with proving that there were material misstatements and omissions in the 6.25% Senior Notes offering documents; (ii) risks that these defendants would be able to establish due diligence or related defenses; and (iii) risks related to establishing and calculating the amount of classwide damages.

With respect to liability, the Remaining Senior Notes Underwriter Defendants contended that the offering materials contained multiple statements that a jury could have found to have been "disclosure" of the facts that Lead Plaintiffs alleged were misrepresented or omitted. These defendants also contended that at least one set of alleged misstatements, those relating to DTA, were statements of opinion that were believed when made and that these statements were predicated on representations in the financial statements that had been certified by PwC, and that they were entitled to rely on that expertised portion of the offering materials.

The Settling Plaintiffs also faced risks in overcoming the Remaining Senior Notes Underwriter Defendants' due diligence and negative causation defenses. If the Remaining Senior Notes Underwriter Defendants were able to convince a jury that they performed adequate due diligence in connection with the 6.25% Senior Notes offerings they would not be liable even if the jury concluded that the offering materials contained misstatements. The Remaining Senior Notes Underwriter Defendants would also argue that the declines in prices of 6.25% Senior Notes in October and November 2011 were not caused the disclosure of the alleged misstatements in the offering materials or the materialization of any allegedly concealed risks, but by the materialization of previously disclosed business risks, which led to the sudden demise of MF Global.

In the face of these uncertainties regarding the outcome of the case, Co-Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years and would require the devotion of a substantial amount of time and a significant expenditure of litigation expenses with no guarantee of compensation. ¶¶ 70-72. Counsel's assumption of this contingency fee risk supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *Marsh ERISA*, 265 F.R.D. at 148 ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

C. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the requested fee. Courts have long recognized that securities class action litigation is "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27. This case was no exception. Indeed, the

complexity of the case was greater than normal in light of MF Global's dual bankruptcy proceedings and the other related litigation against MF Global's former officers that was coordinated for discovery. Moreover, as discussed in the Joint Declaration, the litigation raised a number of complex questions concerning liability and damages that would have required extensive efforts by Plaintiffs' Counsel and consultation with experts on accounting, liquidity and damages to bring to a resolution. To build the case, Plaintiffs' Counsel had to conduct a thorough factual investigation and engage in extensive fact and expert discovery. To obtain a verdict against the Remaining Senior Notes Underwriter Defendants would have required additional motion practice (including responding to defendants' motion for summary judgment); a trial; post-trial motion practice; and mostly likely appeals. Accordingly, the magnitude and complexity of the Action supports the conclusion that the requested fee is fair and reasonable.

D. The Quality of Settling Plaintiffs' Counsel's Representation Supports the Requested Fee

The quality of the representation is another important factor that supports the reasonableness of the requested fee. Co-Lead Counsel submit that the quality of Settling Plaintiffs' Counsel's representation is best evidenced by the quality of the results achieved. *See, e.g.*, *Veeco*, 2007 WL 4115808, at *7; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Here, as discussed in the Joint Declaration and accompanying Settlement Brief, the Settlement is a very favorable result for the Class in light of the expense, risks and delays of continued litigation. ¶¶ 6-7, 45-53. Co-Lead Counsel submit that the quality of their efforts in the litigation to date and their substantial experience in securities class actions and commitment to this litigation, provided them with the leverage necessary to negotiate the favorable Settlement in the face of strong opposition by defense counsel.

Courts have also recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of the counsel's performance. *See, e.g., In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work"), *aff'd*, 272 F. App'x 9 (2d Cir. 2008); *Anwar*, 2012 WL 1981505 at *2 (same). Here, Defendants were represented by Sherman & Sterling, one of the country's most capable and renowned law firms, which vigorously represented their clients throughout this Action. ¶ 69. Notwithstanding this formidable opposition, Co-Lead Counsel's thorough investigation and extensive discovery efforts, successful opposition of Defendants' motion to dismiss, and demonstrated willingness to prosecute the Action to trial if necessary, enabled them to achieve the favorable Settlement.

E. The Requested Fee in Relation to the Settlement

Courts have interpreted this factor as requiring a review of the fee requested in terms of the percentage it represents of the recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed in detail in Part III.A *supra*, the requested 19% fee is well within the range of percentage fees that courts in the Second Circuit and elsewhere have awarded in cases with comparable total recoveries. The requested fee is, therefore, reasonable in relation to the Settlement.

F. Public Policy Considerations Support the Requested Fee

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public

policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). Accordingly, public policy favors granting Co-Lead Counsel's fee and expense application.

G. The Approval of Settling Plaintiffs and the Reaction of the Class to Date Support the Requested Fee

Settling Plaintiffs, which closely supervised and monitored the prosecution of the Action, have approved and endorsed the requested fee. Settling Plaintiffs' endorsement of the requested fee supports its approval. *See In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *16 (S.D.N.Y. Dec. 23, 2009) ("public policy considerations support fee awards where, as here, large public pension funds, serving as lead plaintiffs, conscientiously supervised the work of lead counsel, and gave their endorsement to lead counsel's fee request"); *Veeco*, 2007 WL 4115808, at *8 ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request").

The reaction of the class to date also supports the requested fee. Through June 2, 2016, the Claims Administrator has disseminated the Notice to 4,844 potential Class Members and nominees informing them, among other things, that Co-Lead Counsel intended to apply to the Court for an award of attorneys' fees in the amount of 19% of the Settlement Fund and up to $2,500,000 in expenses. While the time to object to the Fee and Expense Application does not

expire until June 17, 2016, to date, not a single objection has been received. ¶¶ 73, 83. Should any objections be received, Co-Lead Counsel will address them in their reply papers.

V. SETTLING PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Co-Lead Counsel's fee application includes a request for reimbursement of Settling Plaintiffs' Counsel's litigation expenses, which were reasonably incurred and necessary to the prosecution of the Action. ¶¶ 75-85. These expenses are properly recovered by counsel. *See In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'"); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class"). As set forth in detail in the Joint Declaration, Settling Plaintiffs' Counsel incurred $2,028,538.99 in litigation expenses in the prosecution of the Action for which reimbursement had not previously been sought. ¶ 75. Reimbursement of these expenses is fair and reasonable.

The expenses for which Settling Plaintiffs' Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert fees, on-line research, court reporting and transcripts, photocopying, and postage expenses. The largest expense is for the continued retention of experts and consultants, in the amount of $895,584.20, or 44% of the new litigation expenses incurred. ¶ 78. Additional expenses also included the costs of maintaining the on-line database for the review of the over 47 million pages of documents produced, in the amount of $769,175.64, or 38% of these expenses. ¶ 79. Settling Plaintiffs' Counsel also paid $25,622.12

for Plaintiffs' portion of the mediation fees charged by Judge Phillips. ¶ 80. A complete breakdown by category of the expenses incurred by Settling Plaintiffs' Counsel is set forth in Exhibit 3 to the Joint Declaration. These expense items are billed separately by Settling Plaintiffs' Counsel, and such charges are not duplicated in the firms' hourly billing rates.

The Notice informed potential Class Members that Co-Lead Counsel would apply for reimbursement of litigation expenses in an amount not to exceed $2,500,000. ¶ 83. The total amount of expenses requested is $2,028,538.99, an amount well below the amount listed in the notice. To date, there has been no objection to the request for expenses.

CONCLUSION

For the foregoing reasons, Co-Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 19% of the Settlement Fund, or $5,666,750, plus interest at the same rate as earned by the Settlement Fund; and $2,028,538.99 in reimbursement of the Settling Plaintiffs' Counsel's reasonable litigation expenses.

Dated: June 3, 2016
New York, New York

Respectfully submitted,

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