

**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)

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: ECF CASE
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**MEMORANDUM OF LAW IN SUPPORT OF
SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF THE REMAINING SENIOR NOTES UNDERWRITER SETTLEMENT**

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Lead Plaintiffs, the Virginia Retirement System and Her Majesty the Queen in Right of Alberta (“Lead Plaintiffs”), and named plaintiff the Government of Guam Retirement Fund (“Guam” and, together with Lead Plaintiffs, the “Settling Plaintiffs”) on behalf of themselves and the Court-certified Remaining Senior Notes Underwriter Class (or “Class”), respectfully submit this memorandum of law in support of their motion for final approval of the proposed settlement resolving all of the Class’s claims in the Action against defendants Jefferies LLC, BMO Capital Markets Corp., Natixis Securities Americas LLC, Lebenthal & Co., LLC, and U.S. Bancorp Investments, Inc. (collectively, the “Remaining Senior Notes Underwriter Defendants”) for \$29,825,000 in cash (the “Settlement”).¹

PRELIMINARY STATEMENT

Settling Plaintiffs respectfully submit that the proposed \$29,825,000 Settlement is an excellent result for the Class and satisfies the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure. As detailed in the accompanying Joint Declaration² and as set forth herein, the Settlement represents a favorable recovery for Class Members given the size of the recovery and the risks inherent in the litigation against the Remaining Senior Notes

¹ Unless otherwise indicated, all capitalized terms shall 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.

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 (¶¶ 11-36); the negotiations leading to the Settlement (¶¶ 37-43); the risks and uncertainties of continued litigation (¶¶ 45-53); and the dissemination of notice of the Settlement to members of the Class (¶¶ 54-58).

Underwriter Defendants, who were five underwriters of MF Global Holdings Limited 6.25% Senior Notes due August 8, 2016 (“6.25% Senior Notes”). If approved, the Settlement, together with the four settlements previously approved by the Court, will bring the total recovery in the Action for investors in MF Global Securities to \$234.3 million, an outstanding result in light of MF Global’s bankruptcy and the other risks to recovery in this litigation. The claims asserted against the Remaining Senior Notes Underwriter Defendants are the only remaining claims in this Action in the Court and, thus, if the Settlement is approved, the Action will be completely resolved, subject to any appeals.³

In negotiating and agreeing to the Settlement, Settling Plaintiffs and Co-Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims asserted against the Remaining Senior Notes Underwriter Defendants. Co-Lead Counsel’s prosecution of the action has included (i) an extensive factual investigation that included a detailed review and analysis of voluminous information relating to the collapse of MF Global Holdings Limited (“MF Global” or the “Company”), including 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 liquidation proceeding under SIPA, and Congressional hearings, and interviews with numerous former employees of MF Global; (ii) researching the law pertinent to the claims and the potential defenses; (iii) extensive briefing in opposition to the Senior Notes Underwriter Defendants’ motion to dismiss the Amended Complaint, as well as five other separate

³ On February 19, 2016, MF Global, on behalf of itself and its affiliates, as Plan Administrator under the Second Amended and Restated Joint Plan of Liquidation, and Nader Tavakoli, as Trustee of the MF Global Litigation Trust, noticed an appeal from the judgment approving the Individual Defendant Settlement. ECF No. 1091. On May 27, 2016, the parties to the appeal submitted a Stipulation of Dismissal providing that the appeal is withdrawn under Second Circuit Local Rule 42.1 pursuant to the terms of a settlement agreement and will be dismissed if not reinstated within 35 days.

motions to dismiss filed by other defendants; (iv) conducting a targeted review and analysis of the over 47 million pages of documents produced to Lead Plaintiffs by Defendants and third parties; (v) 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; (vi) 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 of the 6.5% Senior Notes offering; (vii) retaining and consulting with experts regarding damages, underwriter due diligence standards, liquidity, and accounting; (viii) engaging in extensive expert discovery, including preparing and filing six expert reports, defending Plaintiffs' experts' three depositions, and taking the depositions of the Remaining Senior Notes Underwriter Defendants' three experts; and (viii) participating in extended arm's-length settlement negotiations with the assistance of the Honorable Layn R. Phillips, a former federal district court judge. ¶¶ 5, 11-43. As a result of these efforts, Co-Lead Counsel were fully informed regarding the strengths and weaknesses of the case against the Remaining Senior Notes Underwriter Defendants before agreeing to the Settlement.

The Settlement is also very favorable in light of the risks of continued litigation. While Settling Plaintiffs believe that the claims asserted against the Remaining Senior Notes Underwriter Defendants are meritorious, they recognize that the Action presented a number of substantial risks to establishing both liability and damages, including (i) the risks associated with proving that there were material misstatements and omissions in the 6.25% Senior Notes offering documents; (ii) risks that the Remaining Senior Notes Underwriter Defendants would be able to establish due diligence or related defenses; and (iii) risks related to establishing and calculating the amount of

class-wide damages, as well as the risks attendant to how a jury will find in a case where much testimony will come in through competing experts. ¶¶ 45-53.

The Remaining Senior Notes Underwriter Defendants deny all liability and they have mounted vigorous defenses to the claims against them (and would be expected to continue to do so in the absence of the Settlement). In their motion to dismiss, the Remaining Senior Notes Underwriter Defendants raised numerous arguments as to why the offerings materials do not contain actionable misrepresentations or omissions, including pointing to statements in the offering materials that they contend disclosed the facts that Settling Plaintiffs alleged were misrepresented or omitted. ¶ 14. Additionally, the Remaining Senior Notes Underwriter Defendants contended that at least one set of allegations, relating to MF Global's deferred tax asset ("DTA"), were based on statements of opinion that were believed when made and that these statements were representations in the financial statements that had been certified by MF Global's auditor, PwC, and that they were entitled to rely on such statements because they were in "expertised" portions of the offering materials. *Id.* While these arguments were not successful on their motion to dismiss, many of these arguments could be reiterated on either a motion for summary judgment or before the jury. ¶ 46. In addition, the claims in the Action involve complex financial transactions and accounting principles and both plaintiffs and defendants would have presented substantial expert testimony before the jury. The inevitable "battle of the experts" at trial creates further litigation risk because there can be no assurance as to which party's expert a jury will find more persuasive. ¶ 49.

The Remaining Senior Notes Underwriter Defendants would have contended that the losses suffered by purchasers of 6.25% Senior Notes as a result of the collapse of MF Global in October 2011 were not caused by any of the alleged misstatements in the offering materials. ¶ 48. Finally,

given the substantial amounts previously recovered in the Earlier Settlements, the judgment reduction provisions included in the previously obtained judgments (as required by the PSLRA) also posed a real risk that any judgment obtained against the Remaining Senior Notes Underwriter Defendants would be substantially lowered or eliminated entirely. ¶ 50.

In the absence of the Settlement, plaintiffs faced the prospect of protracted litigation against the Remaining Senior Notes Underwriter Defendants through an anticipated motion for summary judgment, a trial, post-trial motion practice, and likely ensuing appeals. Thus, if the litigation continued, members of the Class would face additional expenses as a result of the continuing litigation and it could be years before any recovery could be achieved – with the risk that there might be no recovery at all. The Settlement avoids these risks while providing a substantial, certain and immediate benefit to the Class. In light of these considerations, Settling Plaintiffs and Co-Lead Counsel believe that the Settlement is fair, reasonable and adequate and warrant final approval by the Court.

ARGUMENT

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval, and should be approved if the Court finds it “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *see In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 154 (S.D.N.Y. 2013); *In re Am. Int’l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459, 464 (S.D.N.Y. 2013).

Public policy favors the settlement of disputed claims among private litigants, particularly in class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) (“We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by

public policy.”) (citations and internal quotation marks omitted); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 188 (S.D.N.Y. 2012) (“we emphasize that [] there is a ‘strong judicial policy in favor of settlements, particularly in the class action context’”) (citation omitted).

In ruling on final approval of a class settlement, the court should examine both the negotiating process leading to the settlement, and the settlement’s substantive terms. *See Wal-Mart*, 396 F.3d at 116; *In re Citigroup Inc. Sec. Litig.*, No. 09 MD 2070 (SHS), 2014 WL 2112136, at *2-*3 (S.D.N.Y. May 20, 2014); *IMAX*, 283 F.R.D. at 188; *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011).

A. The Settlement Was Reached After Arm’s-Length Negotiations Conducted With the Assistance of an Experienced Mediator, and Is Procedurally Fair

The Settlement was reached after extended, arm’s-length settlement negotiations between well-informed and experienced counsel conducted with the assistance of an experienced mediator.

Starting in February 2013, Lead Plaintiffs and Defendants in the Action (including the Underwriter Defendants) participated in a global mediation of claims in the MDL before Judge Daniel Weinstein which extended over seven months and included three in-person sessions before Judge Weinstein, as well as multiple other in-person meetings with counsel for Defendants, and multiple telephonic conferences among the parties and with Judge Weinstein. ¶¶ 39-40. One of the mediation sessions before Judge Weinstein, on April 26, 2013, specifically addressed Lead Plaintiffs’ claims against the Underwriter Defendants, and included the submission of mediation statements and presentations addressing both liability and damages. ¶ 40.

While these initial mediation efforts were unsuccessful in resolving the Action, the parties continued to periodically engage in settlement negotiations as the litigation proceeded. In April 2014, following the Court’s denial of Defendants’ motions to dismiss and further arm’s-length settlement negotiations, Lead Plaintiffs reached an agreement to settle with certain of the

Underwriter Defendants for \$74 million (the “Underwriter Settlement”). ¶ 42. This group of Underwriter Defendants was comprised of Underwriter Defendants who had underwritten offerings of MF Global Securities other than the 6.5% Senior Notes, but included the resolution of all claims against Merrill Lynch, Pierce, Fenner & Smith Incorporated and Sandler O’Neill & Partners, L.P., which had also underwritten portions of the 6.5% Senior Notes offering. *Id.* After reaching the Underwriter Settlement, Plaintiffs discussed the possibility of settlement with the remaining non-settling Underwriter Defendants (the Remaining Senior Notes Underwriter Defendants and Commerz Markets LLC (“Commerz")), but could reach an agreement to settle at that time only with Commerz, another underwriter of the 6.5% Senior Notes offering, which agreed to settle the claims against it in exchange for payment of \$932,828 in cash. *Id.* Settling Plaintiffs and the Remaining Senior Notes Underwriter Defendants continued to periodically engage in settlement negotiations as the litigation and discovery proceeded. *Id.*

Following extensive document and deposition discovery, the achievement of settlements with all of the other defendants in the Action (including the Individual Defendants and PwC), the certification of the Class by the Court in October 2015, and the conclusion of expert discovery, Settling Plaintiffs and the Remaining Senior Notes Underwriter Defendants resumed settlement negotiations in late 2015, which were mediated by the Honorable Layn R. Phillips, a former federal district court judge in the United States District Court for the Western District of Oklahoma. ¶ 43. On January 25, 2016, following lengthy arm’s-length-negotiations and with the assistance of Judge Phillips, the Settling Parties reached an agreement in principle to settle the Action as against the Remaining Senior Notes Underwriter Defendants for \$29,825,000 in cash. *Id.*

The extensive and arm’s-length nature of the settlement negotiations and the involvement of an experienced mediator like Judge Phillips support the conclusion that the Settlement is fair

and was achieved free of collusion. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a mediator's involvement in settlement negotiations "helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Bear Stearns Cos., Inc. Sec. Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding a settlement fair where the parties engaged in "arm's length negotiations," including mediation before "retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases"); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (the settlement was entitled to a presumption of fairness where it was the product of "arms-length negotiation" facilitated by Judge Phillips, "a respected mediator").

Moreover, Settling Plaintiffs had pursued the claims against the Remaining Senior Notes Underwriter Defendants in this Action for more than four years prior to reaching the agreement to settle. Co-Lead Counsel's litigation efforts included a thorough investigation, motion practice, and the completion of extensive fact and expert discovery, which included the review of millions of pages of documents and taking, defending or participating in a total of 57 depositions, including six depositions of current and former employees of Jefferies LLC and six experts. Accordingly, Co-Lead Counsel were fully informed of the strengths and weaknesses of Settling Plaintiffs' claims. This, in combination with Co-Lead Counsel's experience prosecuting complex securities class action cases, further strengthens the presumption that the Settlement is fair and reasonable. *See Wal-Mart*, 396 F.3d at 116 ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery."); *D'Amato*, 236 F.3d at 85 (a presumption of fairness applies where "the settlement resulted from 'arm's-length negotiations and . . . plaintiffs' counsel have

possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests.”).

The conclusion of Settling Plaintiffs and Co-Lead Counsel that the Settlement is fair and reasonable and in the best interests of the Class further supports its approval. Settling Plaintiffs are sophisticated institutional investors that took an active role in supervising this litigation, as envisioned by the PSLRA. A settlement reached “under the supervision and with the endorsement of a sophisticated institutional investor . . . is ‘entitled to an even greater presumption of reasonableness.’” *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007). In addition, the judgment of Co-Lead Counsel, which are highly experienced in securities class action litigation, that the Settlement is in the best interests of the Class is entitled to “great weight.” *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM) (MHD), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014); *accord IMAX*, 283 F.R.D. at 189 (“[G]reat weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”).

B. Application of the *Grinnell* Factors Supports Approval of the Settlement as Substantively Fair, Reasonable and Adequate

The Settlement is also substantively fair, reasonable, and adequate. The standards governing approval of class action settlements are well established in this Circuit. In *City of Detroit v. Grinnell Corp.*, the Second Circuit held that the following factors should be considered in evaluating a class action settlement:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and]
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974) (citations omitted), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), *see also Wal-Mart*, 396 F.3d at 117; *In re Advanced Battery Techs. Inc. Sec. Litig.*, 298 F.R.D. 171, 175 (S.D.N.Y. 2014); *Citigroup Bond*, 296 F.R.D. at 155; *Bear Stearns*, 909 F. Supp. 2d at 265-66.

“In finding that a settlement is fair, not every factor must weigh in favor of settlement, ‘rather the court should consider the totality of these factors in light of the particular circumstances.’” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004) (quoting *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003)); *see Advanced Battery Techs.*, 298 F.R.D. at 175 (same). Additionally, in deciding whether to approve a settlement, a court “should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another.” *White v. First Am. Registry, Inc.*, No. 04 Civ. 1611 (LAK), 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007).

Here, the Settlement satisfies the criteria for approval set forth in *Grinnell*.

1. The Complexity, Expense and Likely Duration of the Litigation Support Approval of the Settlement

“[I]n evaluating the settlement of a securities class action, federal courts, including this Court, ‘have long recognized that such litigation is notably difficult and notoriously uncertain.’” *In re FLAG Telecom Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (citation omitted). Indeed, courts recognize that “[s]ecurities class actions are generally complex and expensive to prosecute.” *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007). Accordingly, “[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the

outcome, and the typical length of the litigation.” *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006).

This case was no exception. As set forth in the Joint Declaration, this Action has been vigorously litigated by the parties for more than four years. At the time the Settlement were reached, Co-Lead Counsel had, among other things, conducted an exhaustive investigation, litigated the motions to dismiss, obtained class certification, and completed extensive factual and expert discovery, including reviewing millions of pages of documents obtained from Defendants and third parties and taking, defending or participating in 57 depositions, including the depositions of six experts. ¶¶ 5, 11-36.

Continued litigation would have required additional, substantial expenditures of time and money, would have involved many complex issues of law and fact, and there would still exist a significant risk that the Class would obtain a result less beneficial than the one provided by the Settlement. For example, in the absence of the Settlement, the Class would have expended sizeable amounts of time and money engaging in further motion practice, including responding to an anticipated motion for summary judgment; litigating *Daubert* motions and other pre-trial motions; and proving the claims against the Remaining Senior Notes Underwriter Defendants at trial. Even if Settling Plaintiffs recovered a larger judgment after a trial – which was far from certain given the risks discussed below – the additional delay through post-trial motions and the appellate process could deny the Class any recovery for years, further reducing its value. Moreover, because the Action has been settled as to all other defendants, all additional costs incurred would come solely out of any recovery that could be obtained from the Remaining Senior Notes Underwriter Defendants.

In contrast to this costly, lengthy and uncertain litigation against the Remaining Senior Notes Underwriter Defendants, the Settlement provides an immediate, significant and certain recovery of \$29,825,000 for members of the Class. Accordingly, this factor supports approval of the Settlement.

2. The Reaction of the Class to the Settlement

The reaction of the class to a proposed settlement is a significant factor to be weighed in considering its fairness and adequacy. *See, e.g., Bear Stearns*, 909 F. Supp. 2d at 266-67; *FLAG Telecom*, 2010 WL 4537550, at *16; *Veeco*, 2007 WL 4115809, at *7.

Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, Garden City Group, LLC (“GCG”), began mailing copies of the Notice on April 8, 2016. *See* Declaration of Jose C. Fraga Regarding (A) Mailing of the Remaining Senior Notes Underwriter Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, Exhibit 1 to the Joint Declaration (“Fraga Decl.”), attached to Joint Decl. as Exhibit 1, at ¶¶ 3-4. Through June 2, 2016, GCG had mailed a total of 4,844 copies of the Notice to potential Class Members and nominees. *See id.* ¶ 6. In addition, the Summary Notice was published in the national edition of *The Wall Street Journal* and in *Investor’s Business Daily* and transmitted over the *PR Newswire* on April 21, 2016. *See id.* ¶ 7. The Notice contains a description of the Action and the Settlement and information about the rights of the members of the Class to object to the Settlement or exclude themselves from the Class. The deadline for submitting objections and requesting exclusion is June 17, 2016. While the deadline set by the Court for members of the Class to object to the Settlement or exclude themselves from the Class has not yet passed, to date, no objections to the Settlement and no requests for exclusion from the Class have been received. *Id.* ¶ 10; Joint Decl. ¶ 59. As provided in the Preliminary Approval Order, Settling

Plaintiffs will file reply papers no later than July 8, 2016 addressing any requests for exclusion or objections that may be received.

3. The Stage of the Proceedings and the Amount of Information Available to Counsel Support Approval of the Settlement

This factor examines whether the settling plaintiffs and their counsel had a sufficient amount of information available regarding the claims and defenses in the litigation to ensure that they were able to properly evaluate the case and assess the adequacy of the settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982); *Bear Stearns*, 909 F. Supp. 2d at 267 (“In considering this factor, the question is whether the parties had adequate information about their claims, such that their counsel can intelligently evaluate the merits of plaintiff’s claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs’ causes of action for purposes of settlement.”) (internal quotation marks omitted); *Global Crossing*, 225 F.R.D. at 458 (this requirement “is intended to assure the Court ‘that counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them’”).

There is no question that this litigation had reached the point where Co-Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims and defenses and could make intelligent, informed appraisals regarding the chances of success. As noted above and in the Joint Declaration, this case was settled after more than four years of litigation, including the completion of extensive fact and expert discovery. Co-Lead Counsel spent significant time and resources analyzing and litigating the complex legal and factual issues in this Action and were well-informed with respect to the core issues as a result of, among other things, their: (i) extensive investigations prior to and during the process of preparing the amended complaints; (ii) interviews with numerous former MF Global employees; (iii) retention and consultation with experts concerning market efficiency, damages, accounting, liquidity, and due-diligence standards;

(iv) review and analysis of many millions of pages produced by Defendants the third parties; (v) extensive motion to dismiss briefing, which thoroughly explored the Defendants' legal defenses; (vii) taking, defending or participating in 57 depositions, which include depositions of key former officers MF Global, including a three-day deposition of MF Global's former CEO Jon Corzine and a deposition of John R. MacDonald, MF Global's former CFO, as well as six depositions with current and former employees of Jefferies and six depositions of Plaintiffs' or Defendants' experts; and (viii) participation in extended settlement negotiations process. ¶¶ 5, 11-43.

In light of the advanced stage of this litigation, and the extensive amount of information obtained and analyzed by Co-Lead Counsel, Settling Plaintiffs and Co-Lead Counsel possessed sufficient information to understand the strengths and weaknesses of the case and, as such, were well-positioned to negotiate the terms of the Settlement. Thus, this factor strongly supports final approval of the Settlement. *See Bear Stearns*, 909 F. Supp. 2d at 267 (parties had requisite knowledge to “gauge the strengths and weaknesses of their claims and the adequacy of settlement” where they “conducted extensive investigations, obtained and reviewed millions of pages of documents, and briefed and litigated a number of significant legal issues”).

4. The Risks of Establishing Liability and Damages Support Approval of the Settlement

In assessing the fairness, reasonableness and adequacy of a settlement, courts should consider the “risks of establishing liability [and] the risks of establishing damages.” *Grinnell*, 495 F.2d at 463 (citations omitted). While Plaintiffs had prevailed at the motion to dismiss stage, Settling Plaintiffs and the Class faced substantial risks in proving both liability and damages against the Remaining Senior Notes Underwriter Defendants at trial, including (i) risks associated with proving that there were material misstatements and omissions in the offering documents at

issue; (ii) risks that the Remaining Senior Notes Underwriter Defendants would be able to establish due diligence or related defenses; and (iii) risks related to establishing and calculating the amount of class-wide damages. ¶ 45.

The Remaining Senior Notes Underwriter Defendants had mounted a vigorous defense to the claims against them. For example, in their answers to the Amended Complaint the Senior Notes Underwriter Defendants denied all liability and asserted 33 separate defenses. ¶¶ 18, 46. In the Senior Notes Underwriter Defendants' motion to dismiss, they focused on multiple statements in the offering materials that a jury could find to have been "disclosure" of the facts that Lead Plaintiffs alleged were misrepresented or omitted. ¶¶ 14, 46. Additionally, Remaining Senior Notes Underwriter Defendants contended that at least one set of allegations, those relating to DTA, were based on 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 MF Global's auditor, PwC. The Remaining Senior Notes Underwriter Defendants asserted that under the law and the facts present here (including their claim that there were no "red flags" to alert them that reliance was not reasonable), they were entitled to rely on that expertised portion of the offering materials. *Id.* While these arguments were not successful on their motion to dismiss, many of these arguments could be reiterated on either a motion for summary judgment or before the jury.

Settling Plaintiffs also faced the risk that the Remaining Senior Notes Underwriter Defendants could successfully convince a jury that they performed adequate due diligence in connection with the 6.25% Senior Notes offerings and thus could not be liable even if there were any misstatements. ¶ 47. Settling Plaintiffs also faced the risk that the Remaining Senior Notes Underwriter Defendants would be successful in establishing that the alleged misstatements did not cause the losses suffered by investors in 6.25% Senior Notes. ¶ 48. Specifically, these Defendants

contended that the declines in prices of 6.25% Senior Notes in October and November 2011 were not caused the disclosure of any alleged misstatements in the offering materials or the materialization of any allegedly concealed risk, but rather from the materialization of previously disclosed business risks, which led rapidly to credit rating downgrades, erosion of customer confidence and a “run on the bank” leading to the collapse of MF Global. *Id.* If the Remaining Senior Notes Underwriter Defendants were able to convince a jury or the Court that investors’ losses were caused by factors other than the alleged misstatements in the offering materials, the Class could receive nothing or a far less than the amount of the Settlement.

Finally, the Remaining Senior Notes Underwriter Defendants would have been able to argue that their damages exposure was substantially reduced or even eliminated by the amounts that Plaintiffs had already recovered in settlements with other defendants, because the final judgments for those settlements provided, consistent with the Private Securities Litigation Reform Act (“PSLRA”), that any judgment against a non-settling defendant must be reduced by the greater of (i) the total amount recovered from any previously settling defendant; or (ii) the settling defendant’s percentage of responsibility for any common damages. *See* 15 U.S.C. § 78u-4(f)(7)(B). As a result of the required judgment-reduction provisions, there was a real risk that any judgment obtained against the Remaining Senior Notes Underwriter Defendants would be substantially lowered or possibly eliminated entirely. ¶ 50. Accordingly, Plaintiffs faced the risk that even after a lengthy and costly trial at which they successfully established the Remaining Senior Notes Underwriter Defendants’ liability, they would not be able to obtain any additional payment for the Class or that any recovery might be greatly reduced. *Id.*

Additionally, the facts underlying the claims involve complex financial transactions and accounting principles. Presentation of much of Settling Plaintiffs’ case, including key issues

relating to liability (such as accounting and due diligence standards), as well as loss causation and damages issues, would have required expert testimony before the jury at trial. ¶ 49. Lead Plaintiffs have retained and consulted with various experts in the Action and believe that these experts would present cogent and persuasive testimony at trial, but there is little doubt that defendants would also have been able to present well-qualified experts who would take opposing views on certain key issues. Because Settling Plaintiffs could not be certain which experts' view would be credited by the jury and who would prevail at trial in this "battle of the experts," this created an additional level of litigation risk. *See FLAG Telecom*, 2010 WL 4537550, at *18 ("The jury's verdict . . . would thus depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable."); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses")

For all these reasons, Settling Plaintiffs and Co-Lead Counsel respectfully submit that it is in the best interests of the Class to accept the immediate and substantial benefit conferred by the Settlement, instead of incurring the risk that the Class might recover a lesser amount, or nothing at all, after additional protracted litigation.

5. The Ability of Defendants to Withstand a Greater Judgment

Although the Remaining Senior Notes Underwriter Defendants may have been able to pay judgments in excess of the amounts of the Settlement, "defendants' ability to withstand a higher judgment . . . standing alone, does not suggest that the settlement is unfair." *D'Amato*, 236 F.3d at 86. A "defendant is not required to 'empty its coffers' before a settlement can be found adequate." *IMAX*, 283 F.R.D. at 191 (citation omitted). Indeed, Courts have repeatedly recognized that this factor, standing alone, does not weigh against approval of a settlement where, as here, the other

factors weigh in favor of approving the settlement. *See id.*; *FLAG Telecom*, 2010 WL 4537550, at *19 (“the mere ability to withstand a greater judgment does not suggest the settlement is unfair”) (citation omitted); *McBean v. City of New York*, 233 F.R.D. 377, 388 (S.D.N.Y. 2006) (“the ability of defendants to pay more, on its own, does not render the settlement unfair, especially where the other *Grinnell* factors favor approval”).

6. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recoveries and all the Attendant Risks of Litigation Support Approval of the Settlement

The last two substantive factors courts consider are the range of reasonableness of the settlement fund in light of (i) the best possible recovery and (ii) litigation risks. In analyzing these factors, the issue for the Court is not whether a settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case. The court “consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.” *Grinnell*, 495 F.2d at 462 (citations omitted). Courts agree that the determination of a “reasonable” settlement “is not susceptible of a mathematical equation yielding a particularized sum.” *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 130 (S.D.N.Y. 1997) (citation and internal quotations omitted), *aff’d*, 117 F.3d 721 (2d Cir. 1997). Instead, “in any case there is a range of reasonableness with respect to a settlement.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Settling Plaintiffs submit that the Settlement is well within the range of reasonableness in light of the best possible recovery and all the attendant risks of litigation. The proposed Settlement, together with previous recoveries obtained in the Action on behalf of purchasers of 6.25% Senior Notes, represents a substantial percentage of the maximum damages that could be proven at trial. Plaintiffs’ damages expert has estimated, based on the statutory measures of damages under Section 11 and 12 of the Securities Act, that the total maximum Securities Act damages that could

be established for the 6.25% Senior Notes offering at trial would be approximately \$227.5 million.

¶ 52. This maximum assumes that Plaintiffs prevailed on all issues relating to liability, causation and damages at trial and on appeal. *Id.* The proposed \$29,825,000 Settlement with the Remaining Senior Notes Underwriter Defendants, together with the \$932,828 Commerz Settlement and \$1,728,918 portion of the Underwriter Settlement allocated to the claims of investors in 6.25% Senior Notes, represents a total recovery for purchasers of 6.25% Senior Notes of \$32,486,746, or 14.3% of these maximum damages. *Id.* Moreover, purchasers of 6.25% Senior Notes are also included in the Settlement Classes for the \$64.5 million Individual Defendant Settlement and \$65 million PwC Settlement and will receive additional recoveries from those settlements (the precise amount allocated to investors in 6.25% Senior Notes in those Settlements will be determined based on the size of the Recognized Claims of purchasers of the 6.25% Senior Notes compared to the Recognized Claims of all members of those Settlement Classes). *Id.*

One recent analysis has found that the median settlement recovery in securities cases alleging only Section 11 or 12(a)(2) claims is 7.6% of the total estimated damages. *See* Cornerstone Research, *Securities Class Action Settlements: 2015 Review and Analysis* at 13 (attached to the Joint Decl. as Exhibit 4). Moreover, Courts have frequently found recoveries similar or less substantial than the current one to be within the range of reasonableness for settlement. *See, e.g., Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJF), 2005 WL 2757792, at *7 (S.D.N.Y. 2005) (in case involving Section 11 and 12(a)(2) claims, the court found that a settlement representing 3.8% of plaintiffs' damage calculation "within the range of reasonableness"); *In re Blech Sec. Litig.*, No. 94 Civ. 7696 (RWS), 2000 WL 661680, at *4 (S.D.N.Y. May 19, 2000) (approving settlement representing 5% to 17% of estimated damages on Section 11 and 12(2) claims).

When weighed against the risks of continued litigation, the proposed Settlement for \$29,825,000 is an excellent result. As discussed above, if a jury or the Court had credited even some of the Remaining Senior Notes Underwriter Defendants' arguments with respect to liability or damages, the Class might have recovered nothing or their recoverable damages might have been dramatically reduced. Moreover, application of the judgment-reduction provisions of the Earlier Settlements could also have greatly reduced or eliminated any recovery obtained against the Remaining Senior Notes Underwriter Defendants. In light of these risks, the Settlement provides a very favorable outcome for members of the Class.

* * *

In sum, the *Grinnell* factors – including the expense and delay of further litigation, Settling Plaintiffs' and Co-Lead Counsel's well-developed understanding of the strengths and weaknesses of the case, and the risks of the litigation – support a finding that the Settlement is fair, reasonable and adequate.

II. NOTICE TO THE CLASS SATISFIED ALL THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The dissemination of the Notice to members of the Class satisfied the requirements of Rule 23(c)(2)(B), which requires “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be “reasonable” – *i.e.*, it must “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart*, 396 F.3d at 114.

Both the substance of the Notice and the method of its dissemination to potential Class Members satisfied these standards. The Court-approved Notice includes the information required

by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 77z-1(a)(7), including: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Class; (iii) a description of the basic terms of the Settlement, including the amount of the Settlement and the releases to be given; (iv) an explanation of the reasons why the settling parties are proposing the Settlement; (v) a description of Class Members' right to opt-out of the Class or to object to the Settlement; and (vi) notice of the binding effect of a judgment on Class Members.⁴

As noted above, in accordance with the Preliminary Approval Order, through June 2, 2016, GCG has mailed 4,844 copies of the Notice by first-class mail to potential Class Members and nominees. *See* Fraga Decl. ¶ 6. In addition, GCG caused the Summary Notice to be published in the national edition of *The Wall Street Journal* and in *Investor's Business Daily* and to be transmitted over the *PR Newswire* on April 21, 2016. Fraga Decl. ¶ 7. Copies of the Notice and the Stipulation were made available on the settlement website maintained by GCG beginning on April 11, 2016. *Id.* ¶ 9. This combination of individual first-class mail to all members of the Class who could be identified with reasonable effort, supplemented by notice in widely-circulated publications, transmitted over a newswire, and on the internet, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g., Advanced Battery Techs.*, 298 F.R.D. at 182-83; *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *12-*13 (S.D.N.Y. Dec. 23, 2009).

CONCLUSION

For the foregoing reasons, Settling Plaintiffs respectfully request that the Court approve the proposed Settlement as fair, reasonable and adequate.

⁴ The Plan of Allocation and the Claim Form, which were previously mailed to potential Class Members in connection with the earlier settlements were not mailed together with the Notice but remained available on www.MFGGlobalSecuritiesClassAction.com and www.blbglaw.com, and the Claim Form was updated with the revised claim filing deadline. Fraga Decl. ¶ 9.

Dated: June 3, 2016
New York, New York

Respectfully submitted,

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