

**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 SETTLING PLAINTIFFS'  
MOTION FOR (I) PRELIMINARY APPROVAL OF THE REMAINING SENIOR  
NOTES UNDERWRITER SETTLEMENT, AND (II) APPROVAL OF  
NOTICE TO THE REMAINING SENIOR NOTES UNDERWRITER CLASS**

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

Salvatore J. Graziano  
Hannah G. Ross  
Jai Chandrasekhar  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444

*Co-Lead Counsel for Lead Plaintiffs,  
the Remaining Senior Notes Underwriter  
Class, and Settling Plaintiff Government of  
Guam Retirement Fund*

**BLEICHMAR FONTI & AULD LLP**

Javier Bleichmar  
Dominic J. Auld  
Cynthia Hanawalt  
7 Times Square, 27th Floor  
New York, New York 10036  
Telephone: (212) 789-1340  
Facsimile: (212) 205-3960

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

Dated: March 11, 2016

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	2
BACKGROUND OF THE LITIGATION.....	4
ARGUMENT .....	7
I. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.....	7
A. The Settlement Is The Result Of Good Faith, Arm’s-Length Negotiations Conducted By Well-Informed And Experienced Counsel.....	8
B. The Substantial Benefits For The Class, Weighed Against Litigation Risks, Support Preliminary Approval .....	10
II. THE COURT SHOULD APPROVE THE USE OF THE PREVIOUSLY APPROVED PLAN OF ALLOCATION, AS MODIFIED TO REFLECT THE CURRENT SETTLEMENT, AND USE OF THE PREVIOUSLY DISSEMINATED CLAIM FORM .....	12
III. NOTICE TO THE CLASS SHOULD BE APPROVED .....	14
CONCLUSION.....	15

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>In re Am. Bank Note Holographics, Inc. Sec. Litig.</i> , 127 F. Supp. 2d 418 (S.D.N.Y. 2001).....	11
<i>In re Bear Stearns Cos., Inc. Sec. Derivative &amp; ERISA Litig.</i> , 909 F. Supp. 2d 259 (S.D.N.Y. 2012).....	8
<i>City of Providence v. Aeropostale, Inc.</i> , No. 11 Civ. 7132(CM)(GWG), 2014 WL 1883494 (S.D.N.Y. May 9, 2014).....	15
<i>Cohen v. J.P. Morgan Chase &amp; Co.</i> , 262 F.R.D. 153 (E.D.N.Y. 2009).....	8
<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78 (2d Cir. 2001).....	8
<i>In re FLAG Telecom Holdings, Ltd. Sec. Litig.</i> , No. 02-CV-3400 (CM) (PED), 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010).....	11
<i>In re Giant Interactive Grp., Inc. Sec. Litig.</i> , 279 F.R.D. 151 (S.D.N.Y. 2011).....	9
<i>In re Hi-Crush Partners L.P. Sec. Litig.</i> , No. 12-Civ-8557, 2014 WL 7323417 (S.D.N.Y. Dec. 19, 2014).....	9
<i>In re IMAX Sec. Litig.</i> , 283 F.R.D. 178 (S.D.N.Y. 2012).....	7
<i>In re Initial Pub. Offering Sec. Litig.</i> , 243 F.R.D. 79 (S.D.N.Y. 2007).....	8
<i>Menkes v. Stolt-Nielsen S.A.</i> , 270 F.R.D. 80 (D. Conn. 2010).....	15
<i>In re NASDAQ Market-Makers Antitrust Litig.</i> , 187 F.R.D. 465 (S.D.N.Y. 1998).....	10
<i>In re Platinum &amp; Palladium Commodities Litig.</i> , No. 10CV3617, 2014 WL 3500655 (S.D.N.Y. July 15, 2014).....	8
<i>In re Prudential Sec. Inc. Ltd. P’ships Litig.</i> , 163 F.R.D. 200 (S.D.N.Y. 1995).....	7
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , No. 05 MDL 01695, 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007).....	9, 11

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*,  
 396 F.3d 96 (2d Cir. 2005).....7, 15

*In re Warner Chilcott Ltd. Sec. Litig.*,  
 No. 06 Civ. 11515 (WHP), 2008 WL 5110904 (S.D.N.Y. Nov. 20, 2008).....15

*Weinberger v. Kendrick*, 698 F.2d 61 (2d Cir.1982)..... 15

**STATUTES & RULES**

Section 11 of the Securities Act of 1933,  
 15 U.S.C. § 77k.....5, 6

Section 12 of the Securities Act of 1933,  
 15 U.S.C. § 77l.....5

Section 15 of the Securities Act of 1933,  
 15 U.S.C. § 77o.....5

Section 27(a)(7) of the Securities Act of 1933,  
 15 U.S.C. § 77z-1(a)(7).....4, 15

Section 10(b) of the Securities Exchange Act of 1934,  
 15 U.S.C. § 78j(b).....5, 6

Section 20(a) of the Securities Exchange Act of 1934,  
 15 U.S.C. § 78t(a).....5

Securities Exchange Act Rule 10b-5,  
 17 C.F.R. § 240.10b-5.....5

Fed. R. Civ. P. 23.....4, 15

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, the other named plaintiffs in the Action, and the other members of the Remaining Senior Notes Underwriter Class (defined below), have reached a proposed settlement of the above-captioned securities class action (the “Action”) with defendants Jefferies LLC (f/k/a Jefferies & Company, Inc.) (“Jefferies”), BMO Capital Markets Corp., Natixis Securities Americas LLC (f/k/a Natixis Securities North America Inc.), Lebenthal & Co., LLC, and U.S. Bancorp Investments, Inc. (collectively, the “Remaining Senior Notes Underwriter Defendants”) for \$29,825,000 in cash (the “Remaining Senior Notes Underwriter Settlement” or “Settlement”).<sup>1</sup> Settling Plaintiffs respectfully move this Court for an order that will, among other things, (i) preliminarily approve the Settlement; (ii) approve the form and manner of providing notice of the Settlement to the Remaining Senior Notes Underwriter Class;<sup>2</sup> and (iii) schedule a hearing at which the Court will consider final approval of the Settlement and Co-Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses not previously applied for.

---

<sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided 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 (the “Stipulation”), which is attached as Exhibit 1 to the Notice of Motion.

<sup>2</sup> The Remaining Senior Notes Underwriter Class (or “Class”) means the class certified by the Court on October 14, 2015 with respect to claims asserted against the Remaining Senior Notes Underwriter Defendants, consisting of all persons who and entities which purchased or otherwise acquired MF Global 6.25% Senior Notes between August 8, 2011 and November 21, 2011 (the “Class Period”) (including persons who and entities which placed orders before August 8, 2011) and were damaged thereby, other than certain persons who and entities which are excluded by definition or are excluded pursuant to request. *See* Stipulation ¶ 1(h).

## INTRODUCTION

Settling Plaintiffs have reached an agreement to settle this Action as against the Remaining Senior Notes Underwriter Defendants in exchange for \$29,825,000. The Remaining Senior Notes Underwriter Defendants were underwriters of MF Global Holdings Limited 6.25% Senior Notes due August 8, 2016 (“MF Global 6.25% Senior Notes” or “6.25% Senior Notes”).<sup>3</sup> If approved by the Court, the Settlement will dismiss and release all claims asserted against the Remaining Senior Notes Underwriter Defendants in the Action. 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.<sup>4</sup>

Settling Plaintiffs and Co-Lead Counsel believe that the proposed Settlement represents an excellent result and is in the best interests of the Class. The Settlement provides the Class with a substantial monetary benefit in the form of a cash payment of \$29,825,000 and was reached at a time when the Settling Parties had a thorough understanding of the strengths and weaknesses of their respective positions in the Action. The benefit to the Class must be considered in the context of the risks that further protracted litigation might lead to no recovery, or to a smaller recovery, from the Remaining Senior Notes Underwriter Defendants. Such risks include the potential challenges associated with proving that there were material misstatements and omissions in the

---

<sup>3</sup> The proposed Settlement is in addition to the four partial settlements previously approved by the Court resulting in an aggregate recovery of approximately \$204.4 million in cash. (ECF Nos. 964, 965, 1029 and 1030.) These settlements were: (i) for \$74 million with certain Underwriter Defendants; (ii) for \$932,828 with Commerz Markets LLC; (iii) for \$65 million with PricewaterhouseCoopers LLP; and (iv) for \$64.5 million with the Individual Defendants (collectively the “Earlier Settlements”).

<sup>4</sup> Certain persons who are not members of the Individual Defendant Settlement Class have noticed an appeal from the judgment approving the Individual Defendant Settlement. ECF No. 1091.

public securities offering documents at issue, refuting due diligence defenses, and in establishing class-wide damages. Under these circumstances, Settling Plaintiffs and Co-Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class.

At the time the Settling Plaintiffs agreed to the Settlement, they understood the strengths and weaknesses of their position in the litigation. Co-Lead Counsel had conducted a detailed investigation of the claims in the Action; prepared detailed briefing in response to Defendants' motions to dismiss; received and reviewed millions of documents in discovery from Defendants and third parties; taken, defended or participated in thirty-five (35) depositions, including five (5) depositions of current or former employees of Jefferies LLC ("Jefferies"), the lead underwriter of the 6.5% Senior Notes offering; and taken part in a mediation process before former U.S. District Court Judge Layn Phillips. The investigation, the briefing of the motions to dismiss, and the document and deposition discovery obtained provided Settling Plaintiffs with a solid understanding of the relative strengths and weaknesses of the claims against the Remaining Senior Notes Underwriter Defendants.

At the final settlement hearing ("Settlement Hearing"), the Court will have before it more detailed motion papers submitted in support of the proposed Settlement, and will be asked to make a determination as to whether the Settlement is fair, reasonable and adequate. At this time, Settling Plaintiffs request only that the Court grant preliminary approval of the Settlement so that notice may be provided to the Class. Specifically, Settling Plaintiffs request that this Court enter the [Proposed] Order Preliminarily Approving Proposed Settlement with Defendants Jefferies LLC, BMO Capital Markets Corp., Natixis Securities Americas LLC, Lebenthal & Co., LLC, and U.S. Bancorp Investments, Inc. (the "Preliminary Approval Order"), attached as Exhibit 2 to the Notice of Motion, which, among other things, will:

- (i) Preliminarily approve the Settlement on the terms set forth in the Stipulation;
- (ii) Approve the form and content of the Notice and Summary Notice attached as Exhibits 1 and 2 to the Preliminary Approval Order;
- (iii) Find that the procedures established for distribution of the Notice and publication of the Summary Notice in the manner and form set forth in the Preliminary Approval Order constitute the best notice practicable under the circumstances, and comply with the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), and Section 27(a)(7) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”);
- (iv) Provide that the Plan of Allocation previously approved by the Court and previously disseminated to Class Members shall be used for determining the allocation of the Remaining Senior Notes Underwriter Net Settlement Fund, subject to the modification that this fund shall be added to “Fund 3: The 6.25% Note Fund” referred to in ¶ 18.c of the Plan of Allocation for distribution solely to Authorized Claimants who are Class Members;
- (v) Provide that Class Members who filed a Claim Form in connection with the Earlier Settlements need not file another Claim Form to participate in the Remaining Senior Notes Underwriter Settlement, and that Class Members who wish to participate in the Settlement and to be eligible to receive a distribution who did not previously submit a Claim Form, must complete a Claim Form (in the same form as previously disseminated) postmarked no later than sixty (60) days after the date for providing notice of the Remaining Senior Notes Underwriter Settlement to the Class, and that such extension of the deadline for submission of Claim Forms will apply with respect to participation in the Earlier Settlements as well; and
- (vi) Schedule the Settlement Hearing and set out a schedule and procedures for: disseminating the Notice and publishing the Summary Notice; requesting exclusion from the Class; objecting to the Settlement and/or Co-Lead Counsel’s motion for an award of attorneys’ fees and expenses; and submitting papers in support of final approval of the Settlement.

### **BACKGROUND OF THE LITIGATION**

Beginning on November 3, 2011, multiple putative securities class action complaints were filed in the United States District Court for the Southern District of New York. By Order dated January 20, 2012, the Court consolidated the related actions in the Action, appointed Virginia Retirement System and Her Majesty The Queen In Right Of Alberta as Lead Plaintiffs for the

Action, and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP and Labaton Sucharow LLP as Co-Lead Counsel.<sup>5</sup> ECF No. 140.

On August 20, 2012, Lead Plaintiffs filed and served their Consolidated Amended Securities Class Action Complaint (the "Amended Complaint"), which included Guam, the West Virginia Laborers' Pension Trust Fund, LRI Invest S.A., Monica Rodriguez,<sup>6</sup> and Jerome Vrabel as additional named plaintiffs. ECF No. 330. The Amended Complaint asserted claims under §§ 11 and 12 of the Securities Act against the Underwriter Defendants and the Individual Defendants and claims under § 15 of the Securities Act and §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder against some or all of the Individual Defendants.

On October 19, 2012, the Remaining Senior Notes Underwriter Defendants (and other Defendants) filed and served their motions to dismiss the Amended Complaint. ECF Nos. 357-361, 364-370, and 373-374. On December 18, 2012, Lead Plaintiffs filed and served their papers in opposition to the motions (ECF Nos. 400-401) and, on February 1, 2013, the Remaining Senior Notes Underwriter Defendants (and other Defendants) filed and served their reply papers (ECF Nos. 448-455).

On February 6, 2013, the Court stayed all proceedings in the Action to permit the parties to pursue a global mediation of plaintiffs' claims (as well as claims asserted by MF Global's commodities futures customers against defendants other than the Underwriter Defendants). The initial mediation with respect to the Action included three in-person sessions before Judge Daniel

---

<sup>5</sup> By Order dated August 13, 2014, the Court approved the substitution of Bleichmar Fonti & Auld LLP (f/k/a/ Bleichmar Fonti Tountas & Auld LLP) for Labaton Sucharow LLP as Co-Lead Counsel. ECF No. 761.

<sup>6</sup> On February 3, 2015, the Court entered a stipulated order dismissing with prejudice Plaintiff Monica Rodriguez's claims asserted in the Complaint. ECF No. 843.

Weinstein (Ret.) and multiple telephonic conferences. The mediation was unsuccessful in resolving the Action, and the stay of the Action expired on August 2, 2013.

On November 12, 2013, the Court entered its Decision and Order denying the Individual Defendants' and the Underwriter Defendants' motions to dismiss. ECF No. 567. On December 27, 2013, the Individual Defendants and the Underwriter Defendants filed their answers and affirmative defenses to the Amended Complaint. ECF No. 612-617.

Discovery in the Action commenced in December 2013. Defendants and third-parties – including James W. Giddens, as Trustee for the liquidation of MF Global Inc. pursuant to the Securities Investor Protection Act of 1970, and Nader Tavakoli, the Litigation Trustee presiding over the entity formerly known as MF Global Holdings Limited – have produced millions of documents, including over 35,000 pages of documents produced by the Remaining Senior Notes Underwriter Defendants. Co-Lead Counsel have also taken, defended or participated in over thirty-five (35) depositions, including depositions of five current or former Jefferies employees.

On October 3, 2014, Lead Plaintiffs filed the Consolidated Second Amended Securities Class Action Complaint (ECF No. 779) (the “Complaint”), which added MF Global’s auditor, PricewaterhouseCoopers LLP (“PwC”), as a named defendant, and asserted claims against PwC for violation of § 10(b) of the Exchange Act and § 11 of the Securities Act.

On October 14, 2015, the Court entered its Decision and Order certifying the Class with respect to the Remaining Senior Notes Underwriter Defendants, and appointing Guam as Class Representative and Co-Lead Counsel as Class Counsel for the certified Class. ECF No. 1003.

On January 25, 2016, following extensive arm’s-length-negotiations 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, 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 to be paid by or on behalf of the Remaining Senior Notes Underwriter Defendants. The full terms of the Settlement were subsequently negotiated and are set forth in the Stipulation.

Based upon their investigation, prosecution and mediation of the case, Settling Plaintiffs and Co-Lead Counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable and adequate to Settling Plaintiffs and the other members of the Class, and in their best interests. In light of the substantial benefits achieved, the cost and risks of continuing the litigation against the Remaining Senior Notes Underwriter Defendants through trial and appeals, and the fact that the proposed Settlement has been approved by the Court-appointed Lead Plaintiffs and Settling Plaintiff Guam, it is respectfully submitted that the Settlement warrants the Court's preliminary approval so that notice can be provided to the Class.

## **ARGUMENT**

### **I. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

The settlement of class action litigation is favored by public policy and strongly encouraged by the courts. *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 quotations 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).

At the preliminary approval stage, the Court's function is “to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)

(citation omitted). Preliminary approval of a class action settlement “is at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Platinum & Palladium Commodities Litig.*, No. 10CV3617, 2014 WL 3500655, at \*11 (S.D.N.Y. July 15, 2014) (citation omitted).

In making this preliminary determination, “[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.” *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007) (citation omitted); *accord Platinum & Palladium*, 2014 WL 3500655, at \*11; *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009).

Settling Plaintiffs now request that the Court take the first step in the settlement approval process and grant preliminary approval of the Settlement. As summarized below, and as will be detailed further in a subsequent motion for final approval, the proposed Settlement is well “within the range of possible approval.” *Initial Pub. Offering*, 243 F.R.D. at 87 (citation omitted).

**A. The Settlement Is The Result Of Good Faith, Arm’s-Length Negotiations Conducted By Well-Informed And Experienced Counsel**

The Settlement was achieved through good faith, arm’s-length settlement negotiations between well-informed and experienced counsel.

The 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) (a settlement was entitled to a presumption of fairness where it was the product of “arms-length negotiation” facilitated by Judge Phillips, “a respected mediator”).

In addition, as noted above, the Settling Parties and their counsel had the benefit of extensive document and deposition discovery and were knowledgeable about the strengths and weaknesses of the case prior to reaching the agreement to settle. As a result, Settling Plaintiffs and Co-Lead Counsel had an adequate basis for assessing the strength of the Class’s claims and the Remaining Senior Notes Underwriter Defendants’ defenses when they entered into the Settlement.

Moreover, Settling Plaintiffs, who are sophisticated investors of the type favored by Congress when passing the PSLRA, have supervised this litigation and recommend that the Settlement be approved. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557, 2014 WL 7323417, at \*5 (S.D.N.Y. Dec. 19, 2014) (“the recommendation of Lead Plaintiffs, which are sophisticated institutional investors, also supports the fairness of the Settlement”); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at \*5 (S.D.N.Y. Nov. 7, 2007) (“under 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 . . . . Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.’”) (citation omitted). Further, Co-Lead Counsel, which have extensive experience in prosecuting securities class actions, have

concluded that the Settlement is in the best interests of the Class. *See In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (Courts have consistently given “‘great weight’ . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”) (citation omitted).

Given that the Settlement is the product of an arm’s-length negotiation, has been approved by sophisticated plaintiffs, and was entered into by experienced and informed counsel, preliminary approval is warranted.

**B. The Substantial Benefits For The Class, Weighed Against Litigation Risks, Support Preliminary Approval**

The proposed Settlement creates a settlement amount of \$29,825,000 in cash. As will be explained in greater detail in advance of the Settlement Hearing, this recovery provides a substantial benefit to the Class in light of the risks posed by continued litigation. Although Settling Plaintiffs and Co-Lead Counsel believe that the claims asserted against the Remaining Senior Notes Underwriter Defendants are meritorious, they recognized that continued litigation against these defendants posed significant risks, including (i) the risks of proving that there were material misstatements and omissions in the public securities offering documents at issue; (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 class-wide damages.

The Remaining Senior Notes Underwriter Defendants had mounted a vigorous defense to the claims against them. For example, in their answer to the Amended Complaint the Remaining Senior Notes Underwriter Defendants denied all liability and asserted 34 separate affirmative defenses. ECF No. 613. In the Remaining Senior Notes Underwriter Defendants’ motion to dismiss, they focused on multiple statements in the offering materials that they claimed disclosed the allegedly undisclosed risks and alleged that Plaintiffs had not alleged any actionable

misstatements that were false when made. ECF No. 367 at pp. 10-20. The Remaining Senior Notes Underwriter Defendants also contended that at least one set of allegations, those relating to MF Global's deferred tax assets, were based on statements of opinion that were believed when made and that these statements were not materially misleading. *Id.* at pp. 20-24.

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. 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 In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at \*18 (S.D.N.Y. Nov. 8, 2010) ("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").

In the context of these risks and the size of the potential recovery against the Remaining Senior Notes Underwriter Defendants, Settling Plaintiffs and Co-Lead Counsel believe that the Settlement is an excellent result for the Class, and that preliminary approval is appropriate.

**II. THE COURT SHOULD APPROVE THE USE OF THE PREVIOUSLY APPROVED PLAN OF ALLOCATION, AS MODIFIED TO REFLECT THE CURRENT SETTLEMENT, AND USE OF THE PREVIOUSLY DISSEMINATED CLAIM FORM**

On November 25, 2015, in its Order Approving Plan of Allocation of Net Settlement Funds (ECF No. 1031), the Court approved the Plan of Allocation that was disseminated together with notice of the then-proposed settlements with PwC and the Individual Defendants. The Settlement Classes for those settlements to whom the notice and the Plan of Allocation were sent included the Class covered by this Settlement and the plan addressed the allocation of funds to purchasers of the 6.25% Senior Notes. Class Members received and had the opportunity to object to the then-proposed Plan of Allocation. As the Plan of Allocation addresses the calculation of Claims with respect to the 6.25% Senior Notes, Settling Plaintiffs request that the Court approve its use in determining the allocation of the Remaining Senior Notes Underwriter Net Settlement Fund to Remaining Senior Notes Underwriter Class Members, with the one minor modification necessary to set forth how the Remaining Senior Notes Underwriter Net Settlement Fund will be allocated, *i.e.*, it shall be added to “Fund 3: The 6.25% Note Fund” referred to in ¶ 18.c of the Plan of Allocation and will be distributed solely to Authorized Claimants who are members of the Remaining Senior Notes Underwriter Class.<sup>7</sup>

Additionally, given the fact that the 6.25% Senior Notes are covered by the Earlier Settlements<sup>8</sup> and Claim Forms were disseminated together with notice of the PwC and Individual

---

<sup>7</sup> “Fund 3: The 6.25% Note Fund” is the fund to contain (i) the entire Net Settlement Fund from the settlement with Commerz Markets LLC (one of the other underwriters of the 6.25% Senior Notes offering) and (ii) a portion of the Net Settlement Fund from the Underwriter Settlement (which settlement included two underwriters of the 6.25% Senior Notes offering). Under the Plan of Allocation, that fund will be allocated to Claimants on a *pro rata* basis based on their purchases or acquisitions of 6.25% Senior Notes during the Class Period.

<sup>8</sup> All transaction information regarding 6.25% Senior Notes during the Class Period was required to be included in the Claim Forms submitted in connection with the Earlier Settlements and that information can

Defendants Settlements beginning in August 2015, Settling Plaintiffs believe that it would be unnecessarily burdensome and costly to require Class Members who may have already submitted a Claim Form to do so again. Therefore, as set forth in the proposed Preliminary Approval Order, Settling Plaintiffs request that (i) Class Members who filed a Claim Form in connection with the Earlier Settlements need not file another Claim Form; and (ii) Class Members who did not previously submit a Claim Form and who wish to participate in the Settlement be permitted to complete a Claim Form submitted with a postmark no later than sixty (60) calendar days after the Notice Date (the deadline of mailing of the Notice). Settling Plaintiffs also request that the Court extend the deadline for submission of Claim Forms to this date with respect to all of the Earlier Settlements as well. The Claim Form includes requests for information about all MF Global Securities and, to the extent that a Claimant submits a Claim during this additional time period, Settling Plaintiffs believe the Claimant should be eligible to recover under all of the settlements achieved.

As noted above, copies of the Plan of Allocation and Claim Form were previously mailed to potential Class Members together with the notice mailed regarding the proposed settlements with PwC and the Individual Defendants. Accordingly, Settling Plaintiffs propose that additional copies of these documents not be mailed with the Notice of the Remaining Senior Notes Underwriter Settlement, but they will remain available for Class Members at [www.MFGlobalSecuritiesClassAction.com](http://www.MFGlobalSecuritiesClassAction.com), and will be mailed upon request (by phone, email or letter) to the Claims Administrator.

---

be used for purposes of calculating Class Members' proportional shares of the Remaining Senior Notes Underwriter Net Settlement Fund.

Finally, Settling Plaintiffs request that the same Claim Form previously used of the Earlier Settlements be used for the Settlement (updated to reflect the new claim filing deadline), but that with respect to the release set out in the Claim Form, the term “applicable Settlement(s)” shall be deemed to include the Settlement; the term “applicable Stipulation(s)” shall be deemed to include the Stipulation; the term “Settling Defendants” shall be deemed to include the Remaining Senior Notes Underwriter Defendants; the term “Settling Defendants’ Releasees” shall be deemed to include the Remaining Senior Notes Underwriter Defendants’ Releasees; and the term “Released Plaintiffs’ Claim” shall include that term as defined in the Stipulation.

### **III. NOTICE TO THE CLASS SHOULD BE APPROVED**

As outlined in the Preliminary Approval Order, Co-Lead Counsel will notify Class Members of the proposed Settlement by mailing the Notice to all Class Members who can be identified with reasonable effort. The Notice will advise Class Members of (i) the pendency of the Action and the certification of the Class by the Court; (ii) the essential terms of the Settlement; and (iii) Co-Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses not previously applied for. The Notice will also provide specifics on the date, time and place of the Settlement Hearing and set forth the procedures, as well as deadlines for opting out of the Class and objecting to the Settlement and/or Co-Lead Counsel’s motion for an award of attorneys’ fees and expenses. The proposed Preliminary Approval Order also requires Co-Lead Counsel to cause the Summary Notice to be published once each in *The Wall Street Journal* and *Investor’s Business Daily* and to be transmitted once over the *PR Newswire* within ten (10) business days of the mailing of the Notice. Co-Lead Counsel will also cause a copy of the Notice to be readily available on the website maintained by the Claims Administrator, [www.MFGlobalSecuritiesClassAction.com](http://www.MFGlobalSecuritiesClassAction.com).

The Notice will also advise Class Members that if they previously submitted a Claim Form, they do not need to do so again, but for Class Members who have not yet submitted one, the Notice

will set forth the Claim-filing deadline and advise Class Members that they can download copies of the Plan of Allocation and the Claim Form from the website, [www.MFGlobalSecuritiesClassAction.com](http://www.MFGlobalSecuritiesClassAction.com), or that they can call, write or email the Claims Administrator and request copies of the documents.

The form and manner of providing notice to the Class as set forth in the Preliminary Approval Order satisfy all the requirements of due process, Rule 23, and the PSLRA, 15 U.S.C. § 77z-1(a)(7). The Notice and Summary Notice “fairly apprise the prospective members of the class of the terms of the proposed settlement[s] and of the options that are open to them in connection with the proceedings.” *Wal-Mart*, 396 F.3d at 114 (quoting *Weinberger*, 698 F.2d at 70). The manner of providing notice, which includes individual notice by first-class mail to all class members who can be reasonably identified, supplemented by additional publication and internet notice, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See, e.g., City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132(CM)(GWG), 2014 WL 1883494, at \*2 (S.D.N.Y. May 9, 2014); *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 105-06 (D. Conn. 2010); *In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515 (WHP), 2008 WL 5110904, at \*3 (S.D.N.Y. Nov. 20, 2008). Accordingly, Settling Plaintiffs respectfully submit that the proposed notice and related procedures are appropriate and should be approved.

### **CONCLUSION**

For all the foregoing reasons, Settling Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order, attached as Exhibit 2 to the Notice of Motion, which will (i) preliminarily approve the proposed Settlement as within the range of fairness, reasonableness and adequacy; (ii) approve the proposed form and manner of notice to Class Members; and (iii) schedule a date and time for the Settlement Hearing to consider final approval

of the Settlement, Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses, and any other related matters.

Dated: March 11, 2016  
New York, New York

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ Salvatore J. Graziano

Salvatore J. Graziano  
Hannah G. Ross  
Jai Chandrasekhar  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444

***Co-Lead Counsel for Lead Plaintiffs,  
the Remaining Senior Notes Underwriter  
Class, and Settling Plaintiff Government of  
Guam Retirement Fund***

**BLEICHMAR FONTI  
TOUNTAS & AULD LLP**

Javier Bleichmar  
Dominic J. Auld  
Cynthia Hanawalt  
7 Times Square, 27th Floor  
New York, New York 10036  
Telephone: (212) 789-1340  
Facsimile: (212) 205-3960

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

#963885