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 LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF UNDERWRITER SETTLEMENT AND SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF COMMERZ SETTLEMENT

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Salvatore J. Graziano
Hannah G. Ross
Jai Chandrasekhar
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

Co-Lead Counsel for Lead Plaintiffs, Settling Plaintiff Government of Guam Retirement Fund, and the Settlement Classes

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 Settlement Classes

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Two partial settlements of this Action totaling more than $74.9 million are now before the Court for consideration of their final approval.[1]

Lead Plaintiffs, the Virginia Retirement System and Her Majesty The Queen In Right Of Alberta ("Lead Plaintiffs"), on behalf of themselves and the Underwriter Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the proposed settlement resolving all of the Underwriter Settlement Class's claims in the Action against Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBS Securities Inc., and Sandler O'Neill & Partners, L.P. (the "Settling Underwriter Defendants") in exchange for $74 million in cash (the "Underwriter Settlement").

In addition, 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 Commerz Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the proposed settlement resolving all of the Commerz Settlement Class's claims in the Action against Commerz Markets LLC ("Commerz") in exchange for $932,828 in cash (the "Commerz Settlement").[2]

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[1] Unless otherwise indicated, all capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Certain Underwriter Defendants, dated as of November 25, 2014 (ECF No. 801-1) (the "Underwriter Stipulation"), the Stipulation and Agreement of Settlement with Defendant Commerz Markets LLC, dated as of March 17, 2015 (ECF No. 875-1) (the "Commerz Stipulation"), or the Joint Declaration of Salvatore J. Graziano and Javier Bleichmar in Support of Lead Plaintiffs' Motion for Final Approval of Underwriter Settlement and Settling Plaintiffs' Motion for Final Approval of Commerz Settlement (the "Joint Declaration" or "Joint Decl."), submitted herewith.

[2] The Settling Underwriter Defendants and Commerz are collectively referred to herein as the "Settling Defendants"; the Underwriter Settlement and Commerz Settlement are collectively referred to herein as the "Settlements"; and the Underwriter Settlement Class and Commerz Settlement Class are collectively referred to herein as the "Settlement Classes".

PRELIMINARY STATEMENT

Lead Plaintiffs respectfully submit that each of the proposed Settlements is an excellent result for the relevant Settlement Class and satisfies the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure. As detailed in the accompanying Joint Declaration[3] and as set forth herein, each of the Settlements represents a very favorable recovery for the respective class members given the size of the recoveries and the risks inherent in the litigation.

In negotiating and agreeing to the Settlements, Settling Plaintiffs and Co-Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims asserted against each of the Settling 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, interviews with numerous former employees of MF Global, and consultation with experts; (ii) researching the law pertinent to the claims against each Settling Defendant and the potential defenses available to these defendants; (iii) extensive briefing in opposition to six separate motions to dismiss the Amended Complaint; (iv) reviewing millions of pages of documents produced to Lead Plaintiffs by Defendants and third parties; (v) retaining and consulting with experts regarding damages, underwriter due diligence standards, liquidity, and accounting and with counsel specializing in

[3] 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 (Joint Decl. ¶¶ 12-31, 41-44); the negotiations leading to the Settlement (*id*. ¶¶ 32-40); the risks and uncertainties of continued litigation (*id*. ¶¶ 45-48); and the dissemination of notices of the Settlements to members of the Settlement Classes (*id*. ¶¶ 49-55).

bankruptcy matters; and (vi) participating in several in-person mediation sessions before Judge Daniel Weinstein (Ret.) and other arm's-length settlement negotiations. Joint Decl. ¶ 5. As a result of these efforts, Co-Lead Counsel were fully informed regarding the strengths and weaknesses of the case against each of the Settling Defendants before agreeing to the Settlements.

The Settlements are also very favorable in light of the risks of continued litigation. While Lead Plaintiffs and Settling Plaintiffs believe that the claims asserted against the Settling 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 offering documents at issue; (ii) risks that the Settling 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. Joint Decl. ¶¶ 6, 45-47

The Settling 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 Settlements). In their motions to dismiss, the Settling 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 Lead Plaintiffs alleged were misrepresented or omitted, and characterizing other statements as inactionable optimism or puffery. Joint Decl. ¶¶ 15, 46. Additionally, Settling 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; 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 the motions to dismiss, many of these arguments could be reiterated once the factual record was fully developed on either a motion for summary judgment or before the jury. 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. *Id*. ¶ 47.

In the absence of the Settlements, plaintiffs faced the prospect of protracted litigation against the Settling Defendants through the remainder of fact discovery, costly expert discovery, anticipated motions for summary judgment, a trial, post-trial motion practice, and likely ensuing appeals. Thus, if the litigation continued, members of the Settlement Classes 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 Settlements avoid these risks while providing a substantial, certain and immediate benefit to each of the Settlement Classes. In light of these considerations, Settling Plaintiffs and Co-Lead Counsel believe that the Settlements are fair, reasonable and adequate and warrant final approval by the Court.

ARGUMENT

I. THE PROPOSED SETTLEMENTS WARRANT 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 (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 Settlements Were Reached After Arm's-Length Negotiations Conducted With the Assistance of an Experienced Mediator, and Are Procedurally Fair

The Settlements here were achieved after arm's-length 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 Settling Defendants) participated in a global mediation of claims in the MDL before Judge 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. Joint Decl. ¶¶ 33-34. 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. *Id*. ¶ 34.

While these initial mediation efforts were unsuccessful in resolving the Action, Co-Lead Counsel and counsel for the Underwriter Defendants continued to discuss the possibility of settlement. Joint Decl. ¶¶ 35-36. On April 3, 2014, following the denial of Defendants' motions to dismiss, the beginning of fact discovery and additional arm's-length settlement negotiations (both directly between the parties and with the assistance of Judge Weinstein), Lead Plaintiffs and the Settling Underwriter Defendants reached an agreement in principle to settle the Action as against the Settling Underwriter Defendants for $74,000,000 in cash. *Id*. ¶ 36. On May 8, 2014, following additional arm's-length settlement negotiations, Settling Plaintiffs and Commerz, which underwrote 2% of the final notes offering during the class period, reached an agreement in principle to settle the Action as against Commerz for $932,828 in cash. *Id*. ¶ 37. After reaching the agreements in principle, the Settling Parties continued to vigorously negotiate the final terms of the respective Settlements, including the terms of the respective Stipulations and related settlement papers over the course of many months. *Id*. ¶ 38.

The extensive and arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Judge Weinstein support the conclusion that the Settlements are fair and were 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 FLAG Telecom Holdings, Ltd. Sec. Litig*., No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *14 (S.D.N.Y. Nov. 8, 2010) ("The presumption in favor of the negotiated settlement in this case is strengthened by the fact that settlement was reached in an extended mediation supervised by Judge Weinstein."); *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at *10 (E.D. La. Mar. 2, 2009) (the Court found no indication of fraud or collusion where "the settlement was the result of arm's length

negotiations" including mediation sessions before Judge Weinstein); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008) ("Judge Weinstein's role in the settlement negotiations strongly supports a finding that they were conducted at arm's-length and without collusion.")

In addition, the Settling Parties and their counsel were knowledgeable about the strengths and weaknesses of the case prior to reaching the agreement to settle. Co-Lead Counsel had conducted an extensive investigation prior to filing the Amended Complaint, which included interviews with numerous former employees of MF Global, consulting with experts regarding damages, underwriter due diligence standards, liquidity, and accounting, and a thorough review of publicly available information, which included not only voluminous SEC filings, media reports and analyst reports, but also sworn testimony taken in connection with Congressional investigations into the collapse of MF Global and other investigations, and documents and information produced in legal actions arising out of MF Global's collapse, including MF Global's Chapter 11 bankruptcy proceeding and MF Global Inc.'s SIPA liquidation proceeding, which included detailed reports filed by the trustees. Joint Decl. ¶¶ 21-23. Following this investigation, Lead Plaintiffs prepared and filed a detailed Amended Complaint and engaged in extensive briefing in opposition to Defendants' motions to dismiss. *Id*. ¶¶ 13-17. In addition, Co-Lead Counsel reviewed millions of pages of documents produced to Lead Plaintiffs by Defendants and third parties. *Id*. ¶¶ 26-30.

As a result, Settling Plaintiffs and Co-Lead Counsel had an adequate basis for assessing the strength of the Settlement Classes' claims and Defendants' defenses when they entered into the Settlements. Joint Decl. ¶¶ 5, 48. That conclusion has been further confirmed by the substantial additional document review and the deposition discovery that Plaintiffs have undertaken since entering into the agreements in principle to settle.

The conclusion of Settling Plaintiffs and Co-Lead Counsel that the Settlements are fair and reasonable and in the best interests of the Settlement Classes further supports their 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 Settlements are in the best interests of the relevant Settlement 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 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).

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

Both of the Settlements are 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; *In re Bear Stearns Cos. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265-66 (S.D.N.Y. 2012).

"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, both of the Settlements satisfy the criteria for approval articulated in *Grinnell*.

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

"[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.'" *FLAG Telecom*, 2010 WL 4537550, at *15 (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. At the time the Settlements were reached, the litigation had proceeded through an extensive investigation, the litigation of Defendants' motions to dismiss and the review of millions of pages of documents but formal fact discovery had only just begun. *See* Joint Decl. ¶¶ 12-31. Lead Plaintiffs would have had to overcome numerous additional hurdles in order to achieve litigated judgments against the Settling Defendants, which would lead to additional expense for members of the Settlement Classes and to delay in obtaining any recovery for the Settlement Classes. While the litigation continues against certain remaining defendants, in the absence of the Settlements, the Settlement Classes would incur additional incremental costs in conducting further factual discovery pertaining directly to each of the Settling Defendants such as what steps their banking and credit teams took in order to satisfy their due diligence obligations in connection with the offerings; in responding to motions for summary judgment which, based on their vigorous defense of the Action, the Settling Defendants could be expected to file; and in proving the claims against the Settling Defendants at trial. Moreover, the time necessary to complete the continuing factual discovery, conduct expert discovery and additional motion practice and, ultimately, the trial would substantially delay any possible recovery on behalf of the Settlement Classes. And, even if Lead Plaintiffs succeeded at trial – which was far from certain, given the risks discussed below – post-trial motions and appeals from any verdict would not only keep the risk of a lesser or no recovery alive, they would, regardless of whether the ultimate outcome was favorable to the Settlement Classes, result in additional significant delays in recovery for the classes.

The subject matter involved in the claims asserted against the Settling Defendants also added to the complexity. At the time the Settlements were reached, Lead Plaintiffs and Co-Lead Counsel had expended significant efforts in investigating the claims, reviewing a large number of documents and consulting with several experts concerning accounting, underwriter due diligence standards, liquidity, and damages. Joint Decl. ¶¶ 21-31. The multiple defenses to liability and damages that the Settling Defendants had asserted in their motions to dismiss and answers, and would continue to assert, including lack of loss causation, due diligence, and reliance on experts, among others – would have further added to the complexity of the case. *Id*. ¶¶ 15, 19.

In contrast to this costly, lengthy and uncertain litigation against the Settling Defendants, the Settlements provide immediate, significant and certain recoveries totaling $74.9 million for members of the Settlement Classes. Accordingly, this factor supports approval of the Settlements.

2. The Reaction of the Settlement Classes to the Settlements

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 Orders, the Court-appointed Notice Administrator, Garden City Group, LLC ("GCG"), began mailing copies of Notice Packet (consisting of the Underwriter Notice and Commerz Notice) on March 27, 2015. *See* Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice Packet; (B) Publication of the Summary Notices; and (C) Report on Requests for Exclusion Received to Date, Exhibit 1 to the Joint Declaration ("Fraga Decl."), at ¶¶ 2-4. Through May 13, 2015, GCG had mailed a total of 54,157 copies of the Notice Packet to potential members of the Settlement Classes and nominees. *See id*. ¶ 5. In addition, the Underwriter 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 9, 2015, and the

Commerz 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 13, 2015. *See id.* ¶¶ 6, 7. The Underwriter Notice and Commerz Notice each contain a description of the Action and the relevant Settlement and information about the rights of the members of that Settlement Class to object to that Settlement or exclude themselves from the Settlement Classes. While the deadline set by the Court for members of the Settlement Classes to object to the Settlements or exclude themselves from the Settlement Classes has not yet passed, to date, no objections to the Settlements and no requests for exclusion have been received. *Id.* ¶ 10; Joint Decl. ¶ 55. The deadline for submitting objections and requesting exclusion is May 29, 2015. As provided in the Preliminary Approval Orders, Lead Plaintiffs will file reply papers no later than June 19, 2015 addressing any requests for exclusion and objections that may be received.

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

Co-Lead Counsel spent significant time and resources analyzing and litigating the legal and factual issues in this Action, including those relating to the Settling Defendants. As discussed above, Co-Lead Counsel conducted an extensive investigation prior to and during the process of preparing the amended complaint. Joint Decl. ¶¶ 5, 21-23. Among other things, Co-Lead Counsel (i) conducted a thorough review of publicly available information concerning MF Global, including SEC filings, analyst reports, investor presentations, news articles and other public data, sworn testimony taken in connection with Congressional investigations and other investigations into the collapse of MF Global, and documents and information produced in legal actions arising out of MF Global's collapse, including MF Global's Chapter 11 bankruptcy proceeding and MF Global Inc.'s SIPA liquidation proceeding, which included detailed reports filed by the trustees;

(ii) interviewed numerous former employees of MF Global; and (iii) retained and consulted with experts. Joint Decl. ¶¶ 21-23.

In addition to the initial materials obtained and reviewed, in December 2012, Co-Lead Counsel succeeded in obtaining over 1.8 million documents from the SIPA Trustee for MF Global Inc. Joint Decl. ¶ 27. After formal discovery began in December 2013, Co-Lead Counsel received documentation from Defendants (including an initial production from the Settling Underwriter Defendants) and additional productions from third-parties. Co-Lead Counsel also learned the defenses to the claims asserted in the Action through briefing of the motions to dismiss, the mediation process and the settlement negotiations with the Settling Defendants. *Id*. ¶¶ 15-17, 32-36. Thus, at the time the agreements in principle to settle were reached, Settling Plaintiffs and Co-Lead Counsel had a well-developed understanding of the strengths and weaknesses of the case.

As a result of Co-Lead Counsel's substantive investigation, the litigation of the motions to dismiss, and the mediation process, Settling Plaintiffs and Co-Lead Counsel had a "sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of" the Settlements. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02 Civ. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *see also Advanced Battery Techs.*, 298 F.R.D. at 177 (this factor "focuses on whether the plaintiffs 'obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal'" and thus, even where "no merits discovery occurred," counsel that had conducted their own investigation, engaged in detailed briefing, and conducted targeted confirmatory discovery were "knowledgeable with respect to possible outcomes and risks in this matter and, thus, able to recommend the Settlement") (citation omitted).

Based on the information developed, Settling Plaintiffs and Co-Lead Counsel were knowledgeable about the strengths and weaknesses of the claims and believe that each of the Settlements represents a resolution that is highly favorable to the relevant Settlement Class.

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

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, Plaintiffs and members of the Settlement Classes faced substantial risks in proving both liability and damages 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 Settling 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. Joint Decl. ¶ 45.

The Settling Defendants had mounted a vigorous defense to the claims against them. For example, in their answers to the Amended Complaint the Settling Defendants denied all liability and asserted 34 separate affirmative defenses. Joint Decl. ¶¶ 15, 19. In the Settling Defendants' motions 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. *Id*. ¶¶ 15, 46. Additionally, Settling 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. Settling 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*. ¶¶ 15, 46.

Additionally, the facts underlying the claims involve complex financial transactions and accounting principles. Presentation of much of Lead 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. Joint Decl. ¶ 47. 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 Settling Defendants would also have been able to present well-qualified experts who would take opposing views on certain key issues. Because Lead 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")

Given the very substantial amount of discovery, analysis, and expert consultation that Lead Plaintiffs and Co-Lead Counsel have the benefit of, they have a clear understanding of the specific risks attendant to their case beyond those noted above. However, given that the Action continues against the other Defendants, Co-Lead Counsel believe that going into further detail could prejudice the ongoing litigation. Joint Decl. ¶ 48. The uncertainties noted and the additional risks attendant to the need to prevail at summary judgment and trial, and then at the appeals that would

follow if Lead Plaintiffs prevailed at those stages, support the reasonableness of the decision to settle with the Settling Defendants on the terms of the respective proposed Settlements.

For all these reasons, Settling Plaintiffs and Co-Lead Counsel respectfully submit that it is in the best interests of each of the Settlement Classes to accept the immediate and substantial benefit conferred by the respective Settlements, instead of incurring the risk that the classes might recover lesser amounts, or nothing at all, after protracted and arduous litigation.

5. The Ability of Defendants to Withstand a Greater Judgment

Although the Settling Defendants may have been able to pay judgments in excess of the amounts of the Settlements, "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 Funds in Light of the Best Possible Recoveries and all the Attendant Risks of Litigation Support Approval of the Settlements

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 Underwriter Settlement and Commerz Settlement are both well within the range of reasonableness in light of the best possible recovery and all the attendant risks of litigation. When weighed against the risks of continued litigation, the proposed Settlements for $74 million and $932,828 are excellent results. As discussed above, if a jury or the Court had credited even some of the Settling Defendants' arguments with respect to liability or damages, the Settlement Classes might have recovered nothing or their recoverable damages might have been dramatically reduced. In light of these risks, the Settlements provide favorable outcomes for members of the Settlement Classes.

* * *

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 Settlements are fair, reasonable and adequate.

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

The dissemination of the Notices to members of the Settlement Classes 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 Notices 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 Notices and the method of their dissemination to potential members of the Settlement Classes satisfied these standards. Each of the Court-approved Notices 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 relevant Settlement 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 Settlement Class Members' right to opt-out of the Settlement Classes or to object to the Settlement; and (vi) notice of the binding effect of a judgment on Settlement Class Members.[4]

As noted above, in accordance with the Preliminary Approval Orders, through May 13, 2015, GCG has mailed 54,157 copies of the Notice Packet by first-class mail to potential members of the Settlement Classes and nominees. *See* Fraga Decl. ¶ 5. In addition, GCG caused the Underwriter Summary Notice to be published in the national edition of *The Wall Street Journal*

[4] The Notices also advised members of the Settlement Classes that a plan of allocation for the proceeds of the Settlements was not being proposed at this time, nor were Co-Lead Counsel now making an application for attorneys' fees and expenses, but that members of the Settlement Classes would be given notice when a plan was proposed and an application for fees and expense application was made and that they would be afforded the opportunity to object before the Court ruled on the plan of allocation or the application for fees and expenses.

and in *Investor's Business Daily* and to be transmitted over the *PR Newswire* on April 9, 2015, and caused the Commerz 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 13, 2015. Fraga Decl. ¶¶ 6, 7. Copies of the Underwriter Notice, Commerz Notice and the Stipulations for both Settlements were made available on the settlement website maintained by GCG beginning on March 30, 2015. *Id*. ¶ 9. This combination of individual first-class mail to all members of the Settlement Classes who could be identified with reasonable effort, supplemented by notice in widely-circulated publications, transmitted over a newswire, and set forth on internet websites, 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, Lead Plaintiffs respectfully request that the Court approve the proposed Underwriter Settlement and Settling Plaintiffs respectfully request that the Court approve the proposed Commerz Settlement as fair, reasonable and adequate.

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New York, New York

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ Salvatore J. Graziano

Salvatore J. Graziano
Hannah G. Ross
Jai Chandrasekhar
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

Co-Lead Counsel for Lead Plaintiffs, Settling Plaintiff Government of Guam Retirement Fund and the Settlement Classes

-and-

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 Settlement Classes

#895215