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 (I) PRELIMINARY APPROVAL OF UNDERWRITER SETTLEMENT, (II) CERTIFICATION OF THE UNDERWRITER SETTLEMENT CLASS, AND (III) APPROVAL OF NOTICE TO THE UNDERWRITER SETTLEMENT CLASS

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Co-Lead Counsel for Lead Plaintiffs and the Underwriter Settlement Class

Dated: December 11, 2014

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Lead Plaintiffs the Virginia Retirement System and Her Majesty The Queen In Right Of Alberta ("Lead Plaintiffs"), on behalf of themselves, the other named plaintiffs in the Action, and the other members of the Underwriter Settlement Class (defined below), have reached a proposed partial settlement of the above-captioned securities class action (the "Action") with the following underwriter defendants: 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") for a total of $74,000,000 in cash (the "Underwriter Settlement").[1] Lead Plaintiffs respectfully move this Court for an order (i) preliminarily approving the Underwriter Settlement; (ii) certifying the Underwriter Settlement Class,[2] certifying Lead Plaintiff the Virginia Retirement System ("Virginia") as class representative,[3] and appointing Co-Lead Counsel Bernstein Litowitz Berger & Grossmann LLP and Bleichmar Fonti Tountas & Auld LLP as class counsel for purposes of the Underwriter Settlement; (iii) approving of the

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[1] All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Certain Underwriter Defendants dated as of November 25, 2014 (the "Underwriter Stipulation"), which is attached as Exhibit 1 to the Notice of Motion.

[2] The proposed Underwriter Settlement Class consists of all persons and entities who or which purchased or otherwise acquired any of the MF Global Settling Underwriter Securities during the period beginning on May 20, 2010 through and including November 21, 2011 (the "Settlement Class Period"), and were damaged thereby, other than certain persons and entities who or which are excluded by definition or who or which are excluded pursuant to request. *See* Underwriter Stipulation ¶ 1(vv).

The "MF Global Settling Underwriter Securities" are MF Global common stock purchased in or traceable to the June 2010 secondary offering; MF Global's 1.875% Convertible Senior Notes due February 1, 2016 issued on or about February 7, 2011 ("1.875% Convertible Senior Notes"); MF Global's 3.375% Convertible Senior Notes due August 1, 2018 issued on or about July 28, 2011 ("3.375% Convertible Senior Notes"); and MF Global's 6.25% Senior Notes due August 8, 2016 issued on or about August 1, 2011 ("6.25% Senior Notes").

[3] Lead Plaintiff Her Majesty The Queen In Right Of Alberta is not being proffered as a representative for the Underwriter Settlement Class because it did not purchase any MF Global Settling Underwriter Securities during the Settlement Class Period.

form and manner of providing notice of the Underwriter Settlement to the Underwriter Settlement Class; and (iv) scheduling a hearing at which the Court will consider final approval of the Underwriter Settlement.

INTRODUCTION

Lead Plaintiffs have reached an agreement to settle this Action as against the Settling Underwriter Defendants in exchange for $74 million in cash.[4] If approved by the Court, the Underwriter Settlement will dismiss and release all claims asserted against the Settling Underwriter Defendants in the Action. The Underwriter Settlement does not resolve claims against any other defendant in the Action – the prosecution of the Action will continue against the Non-Settling Defendants.[5]

Lead Plaintiffs and Co-Lead Counsel believe that the proposed Underwriter Settlement represents an excellent result and is in the best interests of the Underwriter Settlement Class. The Underwriter Settlement provides the Underwriter Settlement Class with a substantial monetary benefit in the form of a cash payment of $74 million 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 and only after intense, arm's-length negotiations. The significant benefit to the Underwriter Settlement 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

[4] The Settling Underwriter Defendants are the underwriters of MF Global's June 2010 secondary offering of common stock, 1.875% Convertible Senior Notes offering, and 3.375% Convertible Senior Notes offering, and two of the eight underwriters of the 6.25% Senior Notes offering.

[5] The Non-Settling Defendants include Jon S. Corzine, J. Randy MacDonald, and Henri J. Steenkamp (the "Officer Defendants"); David P. Bolger, Eileen S. Fusco, David Gelber, Martin J. Glynn, Edward L. Goldberg, David I. Schamis, and Robert S. Sloan (the "Director Defendants"); BMO Capital Markets Corp., Commerz Markets LLC, Jefferies & Company, Inc., Lebenthal & Co., LLC, Natixis Securities North America Inc., and U.S. Bancorp Investments, Inc. ("Non-Settling Underwriter Defendants"); and PricewaterhouseCoopers LLP ("PwC").

the Settling Underwriter Defendants in this Action. Such risks include the potential challenges associated with proving that there were material misstatements and omissions in the public securities offering documents at issue, proving that the Settling Underwriter Defendants' failed to conduct adequate due diligence, and in establishing class-wide damages. In light of these risks, Lead Plaintiffs and Co-Lead Counsel believe that the proposed Underwriter Settlement is fair, reasonable and adequate, and in the best interests of the Underwriter Settlement Class.

At the time Lead Plaintiffs agreed to the Underwriter Settlement, they understood the strengths and weaknesses of their position in the litigation. Lead Plaintiffs had conducted a detailed investigation of the claims in the Action, prepared detailed briefing in response to Defendants' motions to dismiss, took part in a mediation process before Judge Daniel Weinstein, which included the Settling Underwriter Defendants as well as other parties in the Action, and had received millions of documents in discovery from Defendants and third parties, including an initial production of documents from the Settling Underwriter Defendants. Lead Plaintiffs engaged in additional arm's-length settlement negotiations both directly with the Settling Underwriter Defendants and with the assistance of Judge Weinstein. Lead Plaintiffs' investigation, the briefing of the motions to dismiss, the document discovery obtained, and the settlement negotiations provided Lead Plaintiffs with a solid understanding of the relative strengths and weaknesses of their claims against the Settling 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 Underwriter Settlement, and will be asked to make a determination as to whether the Underwriter Settlement is fair, reasonable and adequate. At this time, Lead Plaintiffs request only that the Court grant preliminary approval of the Underwriter Settlement so that notice may be provided to the Underwriter Settlement Class.

Specifically, Lead Plaintiffs request that this Court enter the [Proposed] Order Preliminarily Approving Proposed Settlement with Certain Underwriter Defendants and Providing for Notice (the "Preliminary Approval Order"), attached as Exhibit 2 to the Notice of Motion, which, among other things, will:

(i) Preliminarily approve the Underwriter Settlement on the terms set forth in the Underwriter Stipulation;

(ii) Approve the form and content of the Underwriter Notice and Underwriter Summary Notice attached as Exhibits 1 and 2 to the Preliminary Approval Order;

(iii) Find that the procedures established for distribution of the Underwriter Notice and publication of the Underwriter 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"); and

(iv) Schedule the Settlement Hearing and set out a schedule and procedures for: disseminating the Underwriter Notice and publishing the Underwriter Summary Notice; requesting exclusion from the Underwriter Settlement Class; objecting to the Underwriter Settlement; and submitting papers in support of final approval of the Underwriter Settlement.

Lead Plaintiffs also request certification of the Underwriter Settlement Class, certification of Lead Plaintiff Virginia as class representative, and the appointment of Co-Lead Counsel as class counsel, for purposes of the Underwriter Settlement, under Rule 23.

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 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.

On August 20, 2012, Lead Plaintiffs filed and served their Consolidated Amended Securities Class Action Complaint (the "Amended Complaint"), which included the Government of Guam Retirement Fund, the West Virginia Laborers' Pension Trust Fund, LRI Invest S.A., Monica Rodriguez, and Jerome Vrabel as additional named plaintiffs. The Amended Complaint asserts 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 Settling Underwriter Defendants (and other Defendants) filed and served their motions to dismiss the Amended Complaint. On December 18, 2012, Lead Plaintiffs filed and served their papers in opposition to the motions and, on February 1, 2013, the Settling Underwriter Defendants (and other Defendants) filed and served their reply papers.

On February 6, 2013, the Court stayed all proceedings in the Action to permit the parties to pursue a global mediation of plaintiffs' claims (including 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 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 Memorandum and Order denying all Defendants' motions to dismiss.

Discovery in the Action commenced in December 2013. Over twenty 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 over eight million documents, including an initial production of approximately 2,000 documents (over 15,000 pages) that were produced by the Settling Underwriter Defendants. Fact discovery cut-off is set for April 1, 2015.

By Order dated August 13, 2014, the Court approved the substitution of Bleichmar Fonti Tountas & Auld LLP for Labaton Sucharow LLP as Co-Lead Counsel.

On October 3, 2014, Lead Plaintiffs filed the Consolidated Second Amended Securities Class Action Complaint (ECF No. 779) (the "Complaint"), which added PwC as a named defendant asserting claims against PwC for violation of § 10(b) of the Exchange Act and § 11 of the Securities Act.

Following extensive arm's-length settlement negotiations, both directly between Lead Plaintiffs, on the one hand, and the Settling Underwriter Defendants, on the other hand, as well as with the assistance of Judge Weinstein, Lead Plaintiffs and the Settling Underwriter Defendants reached an agreement to settle the Action as against the Settling Underwriter Defendants for $74,000,000 in cash to be paid by or on behalf of the Settling Underwriter Defendants.

In light of the substantial benefits achieved, the cost and risks of continuing the litigation against the Settling Underwriter Defendants through trial and appeals, and the fact that the proposed Underwriter Settlement has been approved by the Court-appointed Lead Plaintiffs, it is respectfully submitted that the Underwriter Settlement warrants the Court's preliminary approval so that notice can be provided to the Underwriter Settlement Class. It is further submitted that the Court should, for purposes of the Underwriter Settlement only, certify the Underwriter

Settlement Class, certify Lead Plaintiff Virginia as class representative, and appoint Co-Lead Counsel as class counsel.

ARGUMENT

I. THE PROPOSED UNDERWRITER 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).

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

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

Here, the Underwriter Settlement was achieved only after extensive, arm's-length negotiations between well-informed and experienced counsel and with the assistance of Judge Weinstein.

The arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Judge Weinstein support the conclusion that the Underwriter 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 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, as noted above, the Settling Parties and their counsel were knowledgeable about the strengths and weaknesses of the case prior to reaching the agreement to settle. As a result, Lead Plaintiffs and Co-Lead Counsel had an adequate basis for assessing the strength of the Underwriter Settlement Class's claims and the Settling Underwriter Defendants' defenses when they entered into the Underwriter Settlement.

Moreover, Lead Plaintiffs, who are sophisticated investors of the type favored by Congress when passing the PSLRA, have supervised this litigation and recommend that the Underwriter Settlement be approved. *See 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 Underwriter Settlement is in the best interests of the Underwriter Settlement 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 Underwriter Settlement is the product of an arm's-length negotiation involving the participation of an experienced mediator, has been approved by sophisticated Lead

Plaintiffs, and was entered into by experienced and informed counsel, preliminary approval is warranted.

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

The proposed Underwriter Settlement creates a settlement amount of $74 million in cash. As will be explained in greater detail in advance of the Settlement Hearing, this recovery provides a substantial benefit to the Underwriter Settlement Class in light of the risks posed by continued litigation. Although Lead Plaintiffs and Co-Lead Counsel believe that the claims asserted against the Settling Underwriter Defendants are meritorious, continued litigation against the Settling Underwriter 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 the Settling 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.

In the context of these risks, Lead Plaintiffs and Co-Lead Counsel believe that the Underwriter Settlement is an excellent result for the Underwriter Settlement Class, and that preliminary approval is appropriate.

II. CERTIFICATION OF THE UNDERWRITER SETTLEMENT CLASS FOR SETTLEMENT PURPOSES IS APPROPRIATE

In granting preliminary settlement approval, the Court should also certify the Underwriter Settlement Class for purposes of the Underwriter Settlement under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The proposed Underwriter Settlement Class, which has been stipulated to by the Settling Parties, consists of:

> all persons and entities who or which purchased or otherwise acquired, during the Settlement Class Period (*i.e.*, the period beginning on May 20, 2010 through and

> including November 21, 2011), any of the MF Global Settling Underwriter Securities[6] and were damaged thereby.

Underwriter Stipulation ¶ 1(vv). Excluded from the Underwriter Settlement Class are: (i) Defendants and MF Global; (ii) members of the Immediate Families of the Individual Defendants; (iii) the subsidiaries and affiliates of Defendants and MF Global; (iv) any person or entity who or which was during the Settlement Class Period and/or is a partner, executive officer, director, or controlling person of MF Global, or any of its subsidiaries or affiliates, or of any Defendant; (v) any entity in which any Defendant or MF Global had during the Settlement Class Period and/or has a controlling interest; (vi) Defendants' liability insurance carriers, and any affiliates or subsidiaries thereof; (vii) the *AG Oncon* Plaintiffs[7]; and (viii) the legal representatives, heirs, successors and assigns of any such excluded person or entity; provided, however, that any Investment Vehicle shall not be deemed an excluded person or entity by definition. *See id*. Also excluded from the Underwriter Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court, or who or which exclude themselves from any other settlement class that is presented to the Court for preliminary approval for consideration concurrently with consideration of preliminary approval of the Underwriter Settlement. *See id*.

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[6] "MF Global Settling Underwriter Securities" means MF Global common stock purchased in or traceable to the secondary offering pursuant to a Post-Effective Amendment No. 1 to Registration Statement No. 333-162119, dated February 24, 2010, a Preliminary Prospectus Supplement dated June 1, 2010, and a Final Prospectus supplement dated June 3, 2010 (CUSIP 55277J108); MF Global's 1.875% Convertible Senior Notes due February 1, 2016 issued on or about February 7, 2011 (CUSIP 55277JAA6); MF Global's 3.375% Convertible Senior Notes due August 1, 2018 issued on or about July 28, 2011 (CUSIP 55277JAB4); and MF Global's 6.25% Senior Notes due August 8, 2016 issued on or about August 1, 2011 (CUSIP 55277JAC2).

[7] The "*AG Oncon* Plaintiffs" are any person or entity who or which is a named plaintiff in *AG Oncon, LLC, et al. v. Jon S. Corzine, et al.*, Civil Action No. 14 Civ. 0396 (S.D.N.Y.) or on whose behalf that action was brought. *See* Underwriter Stipulation ¶¶ 1(r), (s).

The Second Circuit has long acknowledged the propriety of certifying a class solely for purposes of a class action settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *8 (S.D.N.Y. Dec. 23, 2009). Indeed, certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *IMAX*, 283 F.R.D. at 186 (quoting *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 158 (S.D.N.Y. 2011)).

A settlement class, like other certified classes, must satisfy all the requirements of Rules 23(a) and (b). *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). Nevertheless, the manageability concerns of Rule 23(b)(3) are not at issue for a settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems . . . is not a consideration when settlement-only certification is requested.").

As demonstrated below, certification of the Underwriter Settlement Class for purposes of the Settlement is appropriate here because the proposed Underwriter Settlement Class satisfies all the requirements of Rule 23(a) and Rule 23(b)(3).

A. The Underwriter Settlement Class Satisfies The Requirements Of Rule 23(a)

Certification is appropriate under Rule 23(a) if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

1. The Underwriter Settlement Class Members Are Too Numerous To Be Joined

Class certification under Rule 23(a)(1) is appropriate where a class contains so many members that joinder of all would be "impracticable." Fed. R. Civ. P. 23(a). "Impracticable does not mean impossible," *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993), but "only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate." *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 244-45 (2d Cir. 2007). Numerosity is presumed when a class consists of forty members or more. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). "In securities class actions 'relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period.'" *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 70 (S.D.N.Y. 2009) (citation omitted).

Here, the Underwriter Settlement Class easily satisfies the numerosity requirement. The Underwriter Settlement Class is comprised of purchasers or acquirors of four different MF Global Settling Underwriter Securities during the 18-month Settlement Class Period. The offerings of the four MF Global Settling Underwriter Securities were substantial in size. The Secondary Offering was an offering of more than 20 million shares of MF Global common stock. The offerings of 1.875% Convertible Senior Notes, 3.375% Convertible Senior Notes and 6.25% Senior Notes involved offerings of $287.5 million, $325 million, and $325 million in notes, respectively, and these notes were actively traded on the over-the-counter corporate bond market. Complaint ¶¶ 651, 692, 697, 702. Thus, while the precise number of Underwriter Settlement Class Members cannot be identified with specificity at this time, it is likely to be at least in the

hundreds or thousands. Accordingly, the Underwriter Settlement Class is sufficiently numerous that Rule 23(a)(1) is satisfied.

2. There Are Common Questions Of Law And Fact

Rule 23(a)(2) requires the existence of at least one question of law or fact common to the class. *See Cent. States*, 504 F.3d at 245; *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 155 (2d Cir. 2001). Claims under the Securities Act easily meet the commonality requirement. *See In re Deutsche Telekom AG Sec. Litig.*, 229 F. Supp. 2d 277, 281 (S.D.N.Y. 2002) (common questions included existence of "material misrepresentations and omissions . . . [in] the registration statement"); *In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 280, 288, 293 n.30 (S.D.N.Y. 2003) (finding that "nature and extent of misrepresentations" are common question of fact; the liability of defendants under Section 11 for such statements is a common question of law; and most defenses to liability also present issues of law and fact that are common to the class); *see also In re Pfizer Inc. Sec. Litig.*, 282 F.R.D. 38, 44 (S.D.N.Y. 2012) (commonality requirement is satisfied where it is alleged that "putative class members have been injured by similar material misrepresentations and omissions").

Here, the claims asserted against the Settling Underwriter Defendants under Sections 11 and 12(a)(2) of the Securities Act present many questions of law and fact common to all Underwriter Settlement Class Members, including:

- whether the Federal securities laws were violated by the Settling Underwriter Defendants' conduct;
- whether the Registration Statement and prospectuses for the offerings contained material misstatements or omitted to state material information;
- whether the Settling Underwriter Defendants could sustain their burden of establishing an affirmative defense under the applicable statute; and
- whether the members of the Underwriter Settlement Class sustained damages as a result of the alleged misconduct and, if so, the proper measure of damages.

See Complaint ¶ 655. Because these questions of law and fact are common to all members of the Underwriter Settlement Class, the commonality requirement of Rule 23(a)(2) is met.

3. The Proposed Class Representative's Claims Are Typical Of Those Of The Underwriter Settlement Class

Rule 23(a)(3) requires that the claims of the class representatives be "typical" of the claims of the class. Fed. R. Civ. P. 23(a)(3). Typicality is established where "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Cent. States*, 504 F.3d at 245; *accord Pfizer*, 282 F.R.D. at 44; *In re Sadia, S.A. Sec. Litig.*, 269 F.R.D. 298, 304-05 (S.D.N.Y. 2010). "Typical" does not mean "identical." *See Marsh & McLennan*, 2009 WL 5178546, at *10. It is well-established that "factual differences involving the date of acquisition, type of securities purchased and manner by which the investor acquired the securities will not destroy typicality if each class member was the victim of the same material misstatements . . ." *Marsh & McLennan*, 2009 WL 5178546, at *10; *see also WorldCom*, 219 F.R.D. at 280. Accordingly, courts have frequently found that the typicality requirement is satisfied in securities cases involving multiple offerings, notwithstanding certain factual differences involving the date, security type and manner by which the investor acquired his securities. *See, e.g., In re Winstar Commc'ns Sec. Litig.,* 290 F.R.D. 437, 444, 450-52 (S.D.N.Y. 2013) (claims of class representatives who purchased common stock were typical with respect to class members who purchased bonds because all claims arose "out of the same alleged public misstatement that caused injury to shareholders and bondholders alike"); *In re Lehman Bros. Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK), 2013 WL 440622, at *2 (S.D.N.Y. Jan. 23, 2013) (although class representatives did not purchase all notes included in the class, because all notes were issued off the same registration statement and there was "substantial similarity in alleged misrepresentations across the class

period," the representatives' claims were sufficiently similar to allow them to adequately represent the class); *In re Dynex Capital, Inc. Sec. Litig.*, No. 05 Civ. 1897 (HB), 2011 WL 781215, at *3 (S.D.N.Y. Mar. 7, 2011) (certifying class even though named plaintiff did not purchase in all bonds included in class); *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, No. 98 CIV. 4318 (HB), 2000 WL 1357509, at *3 (S.D.N.Y. Sept. 20, 2000) ("Courts have repeatedly certified classes where the class representatives had not invested in all of the subject securities").

Here, the claims of Virginia and the other members of the Underwriter Settlement Class are based on the same alleged misleading misrepresentations and omissions incorporated in the Registration Statement, which was the same for all four offerings, and in the other offering materials. Accordingly, Virginia's claims arise from the same course of events as the claims of all Underwriter Settlement Class Members. Virginia's claims and the claims of all other Underwriter Settlement Class Members are based on the same legal theories and would be proven by the same evidence. Thus, the Rule 23(a)(3) typicality requirement is satisfied.

4. The Proposed Class Representative Will Fairly And Adequately Protect The Interests Of The Underwriter Settlement Class

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Court must measure the adequacy of representation by two standards: (1) whether the claims of the proposed class representatives conflict with those of the class; and (2) whether their counsel are qualified, experienced, and generally able to conduct the litigation. *See In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992); *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331(CM)(MHD), 2014 WL 1224666, at *15 (S.D.N.Y. Mar. 24, 2014).

Virginia is a sophisticated institutional investor with a substantial financial stake in the litigation and it will continue to represent the interest of the class fairly and adequately. There is no antagonism or conflict of interest between Virginia and the other members of the proposed Underwriter Settlement Class. Virginia and the other members of the Underwriter Settlement Class share the common objective of maximizing their recovery from the Settling Underwriter Defendants. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.") (citing *In re Drexel*, 960 F.2d. at 291). In addition, Co-Lead Counsel have extensive experience and expertise in securities litigation and other class action proceedings throughout the United States. Co-Lead Counsel are well qualified and able to conduct this litigation. Therefore, Rule 23(a)(4) is satisfied. Additionally, Co-Lead Counsel have and will continue to fairly and adequately represent the interests of the Underwriter Settlement Class. Accordingly, Co-Lead Counsel should also be appointed as class counsel for the Underwriter Settlement Class under Rule 23(g).

B. The Underwriter Settlement Class Satisfies The Requirements Of Rule 23(b)(3)

Rule 23(b)(3) authorizes class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Underwriter Settlement Class satisfies these requirements.

1. Common Legal And Factual Questions Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized

proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Marsh & McLennan*, 2009 WL 5178546, at *11 (quoting *Moore v. Paine Webber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002)). Common issues will predominate where each class member is alleged to have suffered the same kind of harm pursuant to the same legal theory arising out of the same alleged course of conduct, and the only individualized questions concern the amount of damages. *See Marsh & McLennan*, 2009 WL 5178546, at *11; *In re Veeco Instruments, Inc. Sec. Litig.*, 235 F.R.D. 220, 240 (S.D.N.Y. 2006) ("In determining whether common questions predominate, a court's inquiry is directed toward whether the issue of liability is common to members of the class.") (citation omitted). As the Supreme Court has noted, predominance is a test "readily met" in securities cases. *Amchem*, 521 U.S. at 625.

Here, the same alleged course of conduct by the Settling Underwriter Defendants forms the basis of all Underwriter Settlement Class Members' claims against those defendants. There are numerous common issues relating to the Settling Underwriter Defendants' liability (including the existence of material misrepresentations or omissions in the offering materials), which predominate over any individualized issues. The predominance requirement of Rule 23(b)(3) is therefore satisfied.

2. A Class Action Is Superior To Other Methods Of Adjudication

Rule 23(b)(3) sets forth the following non-exhaustive factors to be considered in making a determination whether class certification is the superior method of litigation: "(A) the class members' interests in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by . . . class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *See* Fed. R. Civ. P. 23(b)(3).

Considering these factors, a class action is clearly "superior to other available methods for fairly and efficiently adjudicating" the federal securities law claims of the large number of purchasers of MF Global Settling Underwriter Securities during the Settlement Class Period. Indeed, courts have concluded that the class action device in securities cases is usually the superior method by which to redress injuries to a large number of individual plaintiffs in light of the large and geographically dispersed nature of shareholder classes, the inefficiency of multiple lawsuits and the size of individual recoveries in comparison to the costs of litigations. *See, e.g., Marsh & McLennan*, 2009 WL 5178546, at *12 (the "class action is uniquely suited to resolving securities claims").

Here, the high cost of individualized litigation makes it likely that many Underwriter Settlement Class Members would be unable to obtain relief without class certification. Moreover, any potential difficulties of managing the class action in further litigation and at trial need not be considered here because the parties seek to certify the Underwriter Settlement Class solely for the purposes of settlement. In sum, the requirements of Rule 23(b)(3) are satisfied.

III. NOTICE TO THE UNDERWRITER SETTLEMENT CLASS SHOULD BE APPROVED

As outlined in the Preliminary Approval Order, Co-Lead Counsel will notify Underwriter Settlement Class Members of the Underwriter Settlement by mailing the Underwriter Notice to all Underwriter Settlement Class Members who can be identified with reasonable effort. The Underwriter Notice will advise Underwriter Settlement Class Members of (i) the pendency of the Action and the certification of the Underwriter Settlement Class; and (ii) the essential terms of the Underwriter Settlement. The Underwriter 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 Underwriter Settlement Class and objecting to the Underwriter Settlement. The

proposed Preliminary Approval Order also requires Co-Lead Counsel to cause the Underwriter 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 Underwriter Notice. Co-Lead Counsel will also cause a copy of the Underwriter Notice to be readily available on the website of the Notice Administrator.

At this time, a plan of allocation for the distribution of the net proceeds of the Underwriter Settlement has not been proposed by Lead Plaintiffs and no Claim Form is being disseminated to Underwriter Settlement Class Members. In addition, Co-Lead Counsel are not seeking an award of attorneys' fees or reimbursement of expenses at this time. At a future date, when a plan of allocation is proposed or Co-Lead Counsel submit a motion for attorneys' fees and expenses, the members of the Underwriter Settlement Class will be given notice of the proposed plan and/or the motion for fees and expenses and will be afforded the opportunity to object before the Court rules on approval of these motions.

The form and manner of providing notice to the Underwriter Settlement 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 Underwriter Notice and Underwriter 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, Lead Plaintiffs respectfully submit that the proposed notice and related procedures are appropriate and should be approved.

CONCLUSION

For all the foregoing reasons, Lead 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 Underwriter Settlement as within the range of fairness, reasonableness and adequacy; (ii) certify the Underwriter Settlement Class, certify Lead Plaintiff Virginia as class representative, and appoint Co-Lead Counsel as class counsel, for purposes of the Underwriter Settlement only; (iii) approve the proposed form and manner of notice to Underwriter Settlement Class Members; and (iv) schedule a date and time for the Settlement Hearing to consider final approval of the Underwriter Settlement and related matters.

Dated: December 11, 2014
New York, New York

Respectfully submitted,

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