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 PWC SETTLEMENT, (II) CERTIFICATION OF THE PWC SETTLEMENT CLASS, AND (III) APPROVAL OF NOTICE TO THE PWC SETTLEMENT CLASS

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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 PwC Settlement Class (defined below), have reached a proposed partial settlement of the above-captioned securities class action (the "Action") with defendant PricewaterhouseCoopers LLP ("PwC") for $65 million in cash (the "PwC Settlement")[1]. Lead Plaintiffs respectfully move this Court for an order (i) preliminarily approving the PwC Settlement; (ii) certifying the PwC Settlement Class[2], certifying Lead Plaintiffs as class representatives, and appointing Co-Lead Counsel Bernstein Litowitz Berger & Grossmann LLP and Bleichmar Fonti Tountas & Auld LLP as class counsel for purposes of the PwC Settlement; (iii) approving the form and manner of giving notice of the proposed PwC Settlement and Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses to the PwC Settlement Class; and (iv) scheduling a hearing to consider final approval of the PwC Settlement, Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses, and related matters.

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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 Defendant PricewaterhouseCoopers LLP dated as of April 3, 2015 (the "PwC Stipulation"), which is attached as Exhibit 1 to the Notice of Motion.

[2] The proposed PwC Settlement Class consists of all persons and entities who or which purchased or otherwise acquired any of the MF Global 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* PwC Stipulation ¶ 1(tt).

The "MF Global Securities" are MF Global common stock; MF Global's 9% Convertible Senior Notes due June 20, 2038 issued on or about June 25, 2008; MF Global's 1.875% Convertible Senior Notes due February 1, 2016 issued on or about February 7, 2011; MF Global's 3.375% Convertible Senior Notes due August 1, 2018 issued on or about July 28, 2011; and MF Global's 6.25% Senior Notes due August 8, 2016 issued on or about August 1, 2011.

INTRODUCTION

Lead Plaintiffs have reached an agreement to settle this Action as against PwC in exchange for $65 million in cash. If approved by the Court, the PwC Settlement will dismiss and release all claims asserted in the Action against PwC, the outside auditor of MF Global Holdings Limited ("MF Global"). The PwC Settlement does not resolve claims against any other Defendant in the Action.

Lead Plaintiffs and Co-Lead Counsel believe that the proposed PwC Settlement represents an excellent result and is in the best interests of the PwC Settlement Class. The PwC Settlement provides the PwC Settlement Class with a substantial monetary benefit in the form of a cash payment of $65,000,000 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 and only after intense, arm's-length negotiations. The significant benefit to the PwC 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 PwC in this Action. Such risks include the challenges associated with proving that MF Global's financial statements and PwC's audit opinions were materially false and misleading, that PwC failed to conduct adequate audits, and – with respect to claims under § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") – that the alleged PwC false statements were intentionally or recklessly made. Lead Plaintiffs also faced challenges with respect to establishing loss causation and class-wide damages. In light of these risks, Lead Plaintiffs and Co-Lead Counsel believe that the proposed PwC Settlement is fair, reasonable and adequate, and in the best interests of the PwC Settlement Class.

At the time Lead Plaintiffs agreed to the PwC 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, had fully briefed the motions to dismiss brought by the Individual Defendants and the Underwriter Defendants and had briefed and filed Lead Plaintiffs' opposition to PwC's motion to dismiss the Exchange Act claims asserted against it. Lead Plaintiffs had also received and reviewed millions of documents in discovery from Defendants and third parties, including a substantial production of over 213,000 documents produced by PwC pursuant to subpoena before it was named as a Defendant in the Action. The PwC Settlement was reached only after the parties engaged in a mediation process presided over by former federal District Court Judge Layn R. Phillips. The mediation, which included a full-day mediation session on February 25, 2015, addressed the issues of both liability and damages in detail. The investigation, the briefing on the motions to dismiss, the document discovery obtained and the mediation process provided Lead Plaintiffs and Co-Lead Counsel with a solid understanding of the relative strengths and weaknesses of the claims against PwC.

At the final settlement hearing ("Settlement Hearing"), the Court will have before it more detailed motion papers submitted in support of the proposed PwC Settlement, and will be asked to make a determination as to whether the PwC Settlement is fair, reasonable and adequate. At this time, Lead Plaintiffs request only that the Court grant preliminary approval of the PwC Settlement so that notice may be provided to the PwC Settlement Class. Specifically, Lead Plaintiffs request that this Court enter the [Proposed] Order Preliminarily Approving Proposed Settlement with Defendant PricewaterhouseCoopers LLP 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 PwC Settlement on the terms set forth in the PwC Stipulation;

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

(iii) Find that the procedures established for distribution of the PwC Notice and publication of the PwC 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"), 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 Section 21D(a)(7) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA; and

(iv) Schedule the Settlement Hearing and set out a schedule and procedures for: disseminating the PwC Notice and publishing the PwC Summary Notice; requesting exclusion from the PwC Settlement Class; objecting to the PwC Settlement and/or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses; and submitting papers in support of final approval of the PwC Settlement and Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses.

Lead Plaintiffs also request certification of the PwC Settlement Class, certification of Lead Plaintiffs as class representatives, and the appointment of Co-Lead Counsel as class counsel, for purposes of the PwC 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 the 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.

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,[3] 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 Individual Defendants and the Underwriter 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 Individual Defendants and the Underwriter 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 (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 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 the Individual Defendants' and the Underwriter Defendants' motions to dismiss. On December 27, 2013, the Individual Defendants and the Underwriter Defendants filed their answers and affirmative defenses to the Amended Complaint.

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

[3] On February 3, 2015, the Court entered a stipulated order dismissing with prejudice Plaintiff Monica Rodriguez's claims asserted in the Complaint.

over the entity formerly known as MF Global Holdings Limited – have produced millions of documents. Additionally, before it was named as a defendant in the Action, PwC produced over 213,000 documents pursuant to subpoena.

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 violations of § 10(b) of the Exchange Act and § 11 of the Securities Act. On December 19, 2014, PwC filed and served its motion to dismiss Count Three of the Complaint, which alleges that PwC violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. On February 6, 2015, Lead Plaintiffs filed and served their opposition to PwC's motion to dismiss.

On February 25, 2015, Co-Lead Counsel and PwC's Counsel participated in a full-day mediation session before the Honorable Layn R. Phillips, a former federal district court judge in the United States District Court for the Western District of Oklahoma. The mediation addressed the issues of liability and damages in detail. At the conclusion of the session on February 25, 2015, the Settling Parties reached an agreement to settle the Action as against PwC for $65,000,000 in cash to be paid by or on behalf of PwC.

In light of the substantial benefits achieved, the cost and risks of continuing the litigation against PwC through trial and appeals, and the fact that the proposed PwC Settlement has been approved by the Court-appointed Lead Plaintiffs, it is respectfully submitted that the PwC Settlement warrants the Court's preliminary approval so that notice can be provided to the PwC

Settlement Class.[4] It is further submitted that the Court should, for purposes of the PwC Settlement only, certify the PwC Settlement Class, certify Lead Plaintiffs as class representatives, and appoint Co-Lead Counsel as class counsel.

ARGUMENT

I. THE PROPOSED PWC 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).

[4] Two other partial settlements in the Action have been achieved to date with certain Underwriter Defendants. Each has been preliminarily approved by the Court. (*See* ECF Nos. 808 and 881.) The hearing to consider final approval of those settlements has been scheduled for June 26, 2015.

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 PwC Settlement. As summarized below, and as will be detailed further in a subsequent motion for final approval, the proposed PwC Settlement is well "within the range of possible approval." *Initial Pub. Offering*, 243 F.R.D. at 87 (citation omitted).

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

The PwC Settlement was achieved through good faith, arm's-length settlement negotiations between well-informed and experienced counsel with the assistance of an experienced mediator.

The arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Judge Phillips support the conclusion that the PwC 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 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 PwC Settlement Class's claims and PwC's defenses when they entered into the PwC 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 PwC 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 PwC Settlement is in the best interests of the PwC 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 PwC 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 PwC Settlement Class, Weighed Against Litigation Risks, Support Preliminary Approval

The proposed PwC Settlement creates a settlement amount of $65 million in cash. As will be explained in greater detail in advance of the Settlement Hearing, this recovery provides a substantial benefit to the PwC Settlement Class in light of the risks posed by continued litigation. Although Lead Plaintiffs and Co-Lead Counsel believe that the claims asserted against PwC are meritorious, they recognized that continued litigation against PwC posed significant risks. Such risks include the challenges associated with proving that MF Global's financial statements and PwC's audit opinions were materially false and misleading and that PwC failed to conduct adequate audits, and – with respect to claims under § 10(b) of the Exchange Act – that the alleged PwC false statements were intentionally or recklessly made. Lead Plaintiffs also faced challenges with respect to establishing loss causation and class-wide damages. The risks presented by the litigation against PwC were heightened because of the status of the case against PwC; the Court had not yet ruled on PwC's motion to dismiss at the time the agreement to settle was reached. Lead Plaintiffs would have had to prevail on the motion to dismiss, as well as on an expected motion for summary judgment and at trial, and if they prevailed on those, on the appeal that would likely follow, to have any recovery from PwC. Thus, there were very significant risks attendant to the continued prosecution of the claims against PwC.

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

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

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

> all persons and entities who or which purchased or otherwise acquired any of the MF Global Securities[5] during the Settlement Class Period [i.e., the period beginning on May 20, 2010 through and including November 21, 2011], and were damaged thereby.

PwC Stipulation ¶ 1(tt). Excluded from the PwC 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 at any time 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 at any time during the Settlement Class Period and/or has a controlling interest; (vi) Defendants' liability insurance carriers, and any affiliates or subsidiaries thereof; and (vii) 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 PwC

[5] "MF Global Securities" means MF Global common stock (CUSIP 55277J108); MF Global's 9% Convertible Senior Notes due June 20, 2038 issued on or about June 25, 2008 (CUSIP 55276YAB2); 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). *See* PwC Stipulation ¶ 1(aa).

Settlement Class are the PwC Entities[6] and such entities shall not be eligible to participate in any recoveries obtained in the Action. Additionally, also excluded from the PwC Settlement Class are any persons and entities who or which exclude themselves from the PwC Settlement Class or any Other Class(es) (to the extent such persons or entities would be PwC Settlement Class Members absent such exclusion), by submitting a request for exclusion that is accepted by the Court. *See id.*

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.").

[6] The "PwC Entities" include any entity or partnership (whether or not incorporated) which carries on business under a name which includes all or part of the PricewaterhouseCoopers name or is otherwise (directly or indirectly) within the worldwide network of PricewaterhouseCoopers firms, including PricewaterhouseCoopers International Limited and any member firm, network firm, specified subsidiary or connected firm of PricewaterhouseCoopers International Limited. *See* PwC Stipulation ¶ 1(ll).

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

A. The PwC 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 PwC 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).

The PwC Settlement Class easily satisfies the numerosity requirement. The PwC Settlement Class is comprised of all purchasers or acquirors of MF Global common stock and four different MF Global notes during the 18-month class period. The number of shares of MF

Global common stock outstanding during the Settlement Class Period ranged from approximately 122 million to 165 million – including over 22 million shares issued in the June 2010 secondary offering – with an average weekly trading volume of 23.9 million shares. *See* MF Global Form 10-K for Year Ended March 31, 2010, at 1; Expert Report of Michael D. Hartzmark, Ph. D (ECF No. 766-1) at ¶¶ 21, 27. The four MF Global notes represented over $1 billion in face value and the notes were actively traded on the over-the-counter corporate bond market during the Settlement Class Period. *Id*. ¶¶ 118, 121-122. While the precise number of PwC 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 PwC 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 laws easily meet the commonality requirement. *See In re Beacon Associates Litig*., 282 F.R.D. 315, 327 (S.D.N.Y. 2012) ("In general, where putative class members have been injured by similar material misrepresentations and omissions, the commonality requirement is satisfied."); *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"); *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").

Here, the claims asserted against PwC under Section 10(b) of the Exchange Act and Section 11 of the Securities Act present many questions of law and fact common to all PwC Settlement Class Members, including:

- whether the Federal securities laws were violated by PwC's conduct;
- whether and to what extent MF Global's financial statements failed to comply with GAAP during the Settlement Class Period;
- whether PwC's audit reports were materially false and misleading;
- whether, with respect to Plaintiffs' claims under § 10(b) of the Exchange Act, the false statements allegedly made by PwC were made intentionally or recklessly; and
- whether the members of PwC Settlement Class sustained damages as a result of the alleged misconduct and, if so, the proper measure of damages.

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

3. Lead Plaintiffs' Claims Are Typical Of Those Of The PwC 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 In re WorldCom, Inc. Sec. Litig*, 219 F.R.D. 267, 280 (S.D.N.Y. 2003). 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 Lead Plaintiffs and all other members of the PwC Settlement Class are based on the same alleged misleading misrepresentations and omissions. Accordingly, Lead Plaintiffs' claims arise from the same course of events as the claims of all PwC Settlement Class Members. Lead Plaintiffs' claims and the claims of all other PwC 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. Lead Plaintiffs Will Fairly And Adequately Protect The Interests Of The PwC 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).

Lead Plaintiffs are sophisticated institutional investors with substantial financial stakes in the litigation and they have and will continue to represent the interest of the class fairly and adequately. There is no antagonism or conflict of interest between Lead Plaintiffs and the other members of the proposed PwC Settlement Class. Lead Plaintiffs and the other members of the PwC Settlement Class share the common objective of maximizing their recovery from PwC. *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, and 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 PwC Settlement Class. Accordingly, Co-Lead Counsel should also be appointed as class counsel for the PwC Settlement Class under Rule 23(g).

B. The PwC 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 PwC 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 PwC forms the basis of all PwC Settlement Class Members' claims against PwC. There are numerous common issues relating to PwC's liability (including the existence of material misrepresentations or omissions by PwC), 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 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 PwC 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 PwC Settlement Class solely for the purposes of settlement. In sum, the requirements of Rule 23(b)(3) are satisfied.

III. NOTICE TO THE PWC SETTLEMENT CLASS SHOULD BE APPROVED

As outlined in the Preliminary Approval Order, Co-Lead Counsel will notify PwC Settlement Class Members of the PwC Settlement by mailing the PwC Notice to all PwC Settlement Class Members who can be identified with reasonable effort. The PwC Notice will advise PwC Settlement Class Members of (i) the pendency of the Action and the certification of the PwC Settlement Class; (ii) the essential terms of the PwC Settlement, and (iii) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses[7]. The PwC 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 PwC Settlement Class and objecting to the PwC Settlement and/or Co-Lead Counsel's request for attorneys' fees and reimbursement of expenses. The proposed Preliminary Approval Order also requires Co-Lead Counsel to cause the PwC 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 PwC Notice. Co-Lead Counsel will also cause a copy of the PwC Notice to be readily available on the website of the Notice Administrator.

The form and manner of providing notice to the PwC 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), 78u-4(a)(7). The PwC Notice and PwC Summary Notice "fairly apprise the prospective members of the class of the terms of the proposed settlement[s]

[7] The Notice also refers PwC Settlement Class Members to the Plan of Allocation for the proceeds of the settlements in this Action and of their right to object to the proposed plan. Lead Plaintiffs will present the proposed Plan of Allocation and a proposed Proof of Claim Form to the Court together with a proposed order approving the dissemination of those documents to members of the PwC Settlement Class (which includes the members of the other certified settlement classes) sufficiently in advance of the mailing date for the PwC Notice to allow those documents to be mailed together with the PwC Notice.

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 PwC Settlement as within the range of fairness, reasonableness and adequacy; (ii) certify the PwC Settlement Class, certify Lead Plaintiffs as class representatives, and appoint Co-Lead Counsel as class counsel, for purposes of the PwC Settlement only; (iii) approve the proposed form and manner of notice to PwC Settlement Class Members; and (iv) schedule a date and time for the Settlement Hearing to consider final approval

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

Dated: April 17, 2015
New York, New York

Respectfully submitted,

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