UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This Document Relates To: 09-cv-118 (VM)	Master File No. 09-cv-118 (VM) (FM)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PROPOSED SETTLEMENT AND FEE AWARD

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The Representative Plaintiffs,[1] on behalf of themselves and the Citco Settlement Class, respectfully move for final approval of the $125 million proposed Citco Settlement and Plan of Allocation, and an award of attorneys' fees of 30% of the Settlement Amount and reimbursement of expenses of $4,438,320.

I. INTRODUCTION

The proposed Settlement provides for the Citco Defendants, to pay $125 million in exchange for a release of all claims asserted against them in this Action. The Settlement provides a substantial, immediate monetary benefit to the Settlement Class. The Settlement was reached after the Court urged the parties on a number of occasions to try to resolve the case. The parties ultimately accepted the recommendation of the mediator – a highly-experienced former federal judge – but only after a two-year process that included three separate mediation sessions and intense, arm's-length negotiations. The Settlement also culminates over six years of hard-fought litigation, which included comprehensive legal briefing on the pleadings and class certification, as well as extensive investigation and discovery efforts by the Plaintiffs. The Plaintiffs' factual investigation involved the review of more than nine million pages of documents, and depositions and interviews of over 100 fact and expert witnesses.

As discussed below and in the accompanying Joint Declaration, the proposed Settlement is fair, reasonable and adequate and warrants approval by this Court. Plaintiffs and class members faced significant hurdles to recovering more than the Settlement Amount, including uncertainty over multiple complex legal issues and the collectability of a substantially greater judgment from the Citco Defendants.

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[1] Capitalized terms used herein have the same meaning as in the Stipulation of Settlement (Dkt No. 1398) and the Joint Declaration of Lead Counsel in Support of the Proposed Citco Partial Settlement and Fee and Expense Request ("Joint Decl.") filed herewith.

Lead Counsel respectfully seek attorneys' fees of 30% of the Settlement Fund and reimbursement of $4,438,320 in expenses. The requested attorneys' fees represent less than 70% of Lead Counsel's unreimbursed lodestar of some $55.6 million, *i.e.*, net of $13,812,500 in fees previously awarded by the Court. *See* Joint Decl. at ¶ 99.

In light of (i) the result obtained for the Settlement Class, (ii) the amount and quality of work done by Lead Counsel over the past six years, (iii) the risks involved in this litigation, (iv) the complexity of the Action, and (v) the size of the fee in relation to the Settlement achieved, the fee request of 30% of the Settlement Amount is fair and reasonable under the standards applied in this Circuit. The notice distributed to Class Members ("Notice") advised that Lead Counsel would seek an award of up to 30% of the Settlement Fund and, to date, no Settlement Class Member has objected to such an award. The requested expenses also are reasonable, as they are of the type that are regularly reimbursed by courts in this Circuit, and were necessary for the effective prosecution of the Action. The Notice advised that Lead Counsel would seek reimbursement of their expenses not to exceed $5.5 million, and to date no Class member has objected to the reimbursement of expenses.

II. STATEMENT OF FACTS

The Joint Declaration details the factual and procedural background and the events that led to the Settlement, and is incorporated herein by reference.[2]

[2] Plaintiffs also respectfully refer the Court to the prior Joint Declarations in support of the FG Settlement dated January 31, 2013 (Dkt. No. 1038), and the GlobeOp Settlement dated October 11, 2013 (Dkt No. 1205) for further information concerning Lead Counsel's litigation efforts.

III. ARGUMENT

A. The Proposed Partial Settlement Should Be Approved as Fair, Reasonable and Adequate

The Second Circuit recognizes a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation marks and citation omitted).

In order to approve a settlement, a district court must find that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). This entails a review of both procedural and substantive fairness. *See, e.g., D'Amato v. Deutsche Bank*, 236 F.3d 78, 85-86 (2d Cir. 2001). With respect to procedural fairness, a proposed settlement is presumed fair, reasonable and adequate if it culminates from "arm's-length negotiations between experienced, capable counsel after meaningful discovery." *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (internal quotation marks and citation omitted). The claims here were settled after over six years of intense litigation, including exhaustive discovery. Highly competent counsel appeared on both sides, and settlement was reached only after extensive negotiations with a highly-respected mediator, former District Judge Layn Phillips, based on a mediator's proposal.

In *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), the Court of Appeals 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.

Id. at 463 (citations omitted). *See Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (district court properly utilized the *Grinnell* factors).

This Court has applied the *Grinnell* factors to approve settlements, including prior settlements in this case. *See, e.g., Rubin v. MF Global, Ltd.*, No. 08 Civ. 2233 (VM) (Nov. 18, 2011) (Dkt No. 200, ¶ 6); FG Final Judgment (Dkt. No. 1097, ¶ 7); GlobeOp Final Judgment (Dkt. No. 1232, ¶ 9); Tr. of hearing on FG Settlement (Nov. 30, 2012 hearing, Dkt. No. 1015).

B. The *Grinnell* Factors Support Approval of the Settlement

1. Complexity, Expense, and Likely Duration of the Action

A class action such as this one involving federal securities law and common law tort and contract claims is complicated by its very nature. Courts have recognized the "overriding public interest in favor of settlement" of class actions because it is "common knowledge that class action suits have a well-deserved reputation as being most complex." *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46, 53 n.6 (S.D.N.Y. 1993) (Pollack, J.); *In re Sumitomo Copper Litig*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) (securities class actions are "notably difficult and notoriously uncertain."). For this reason, "[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) (Weinstein, J.).

Beyond these inherent elements of securities class actions, this case was extraordinarily complex. Citco was the custodian and administrator of the largest group of feeder funds to the Madoff Ponzi scheme for over a decade. Citco's relevant operations were primarily conducted in the Netherlands and Canada and fact witnesses were largely located overseas. There were over 90 fact depositions and 22 expert witnesses whose reports totaled over 1900 pages. There

were some two million pages of Citco documents alone produced in discovery, and important documents were in Dutch and had to be translated. The claims against the FG and PwC Defendants were intertwined with those against Citco, and all defendants were represented by outstanding law firms.

Moreover, there were a number of novel and unsettled legal issues, such as:

- Whether Plaintiffs' state law claims are barred by the Securities Litigation Uniform Standards Act of 1995 ("SLUSA").
- Whether Plaintiffs' federal securities claims are barred by *Morrison v. National Australia Bank*, 130 S. Ct. 1869 (2010).
- Whether certain of Plaintiffs' claims are direct claims or are derivative claims that belong to the Funds.
- Whether a class can properly be certified.
- The effect on Plaintiffs' claims of various proceedings involving the liquidations of BLMIS and of the Fairfield Funds.

See also Jt. Decl., ¶¶ 7-8.

In short, litigating the claims against Citco has been protracted and extremely challenging. Absent settlement, it would continue to be so through trial and inevitable post-trial proceedings and appeals, as well as judgment enforcement proceedings.

2. The Settlement Class's Response to the Settlement

The reaction of the Settlement Class to the Settlement is a significant factor to be weighed in considering its adequacy. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (McMahon, J.). Settlement Class Members have until October 16, 2013 to file objections to the Settlement. As of September 30, 2015, however, no objections have been filed.

3. The Stage of the Proceedings and the Amount of Information Reviewed and Analyzed

In considering this factor, "'the question is whether the parties had adequate information about their claims,' such that their counsel can intelligently evaluate the 'merits of [p]laintiff's claims, the strengths of the defenses asserted by [d]efendants, and the value of [p]laintiffs' causes of action for purposes of settlement.'" *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012) (Buchwald, J.). Here, settlement was reached only after the completion of extensive factual and expert discovery, which included review of millions of documents, and over 100 fact and expert depositions.

4. The Risks of Establishing Liability and Damages

Grinnell holds that, in assessing fairness, reasonableness and adequacy, courts should consider such factors as the "risks of establishing liability" and "the risks of establishing damages." 495 F.2d at 463. While Plaintiffs and Plaintiffs' Lead Counsel believe that the claims asserted against the Citco Defendants are strong, there are risks inherent in a jury trial, and legal issues which even if resolved favorably before the District Court, are subject to further review on appeal.

All seven Representative Plaintiffs and Lead Counsel, who have extensive experience in securities and complex shareholder class-action litigation, believe that the Settlement provides the Settlement Class with significant and certain benefits now and eliminates the risk of years of further uncertain litigation, including final disposition of the class certification order, a contested trial and likely appeals.

In addition, Lead Counsel considered that, by reducing the number of defendants and defense counsel in the litigation, and the factual and legal issues in dispute, the Settlement may have a beneficial effect on Plaintiffs' ability to successfully litigate the remaining claims against

the PwC Defendants, who are believed to have substantial assets that may through settlement or judgment provide significant additional compensation to the Settlement Class.

5. The Risk of Maintaining the Case as a Class Action

Plaintiffs believe the March 3, 2015 class certification order entered by the Court after remand from the Court of Appeals is appropriate and likely to be sustained. *See* 306 F.R.D. 13. Plaintiffs recognize, however, that risks are presented by Citco's pending Petition for Rule 23(f) review (now held in abeyance pending the requested approval of the Settlement). The Settlement avoids any uncertainty with respect to whether a litigation class may be maintained against the Citco Defendants. Such risk and uncertainty weigh in favor of the Settlement. *See, e.g., In re Marsh & McLennan Cos., Inc. Sec.*, No. 04 Civ. 8144, 2009 WL 5178546, at * 6 (S.D.N.Y. Dec. 23, 2009) ("Although Defendants have stipulated to certification of the Class for purposes of the Settlement, there would have been no such stipulation had Lead Plaintiffs brought this case to trial."); *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL Docket No. 1500, 02 cv. 5575 (SWK), 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) (risk of plaintiffs' not succeeding in certifying class supported approval of settlement); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (same).

6. The Amount of the Settlement

The last three substantive factors courts consider are (i) the ability of the defendants to withstand a greater judgment; (ii) the range of reasonableness of the settlement fund in light of the best possible recovery; and (iii) litigation risks. *Grinnell*, 495 F.2d at 463.

Plaintiffs and Lead Counsel carefully considered the many risks of continued litigation, some of which are noted above and in the Joint Declaration, as well as the potential difficulties in collecting a substantially larger judgment. Recovering on a billion dollar-plus judgment would

require domesticating the judgment in one or more foreign countries and then finding and executing on sufficient assets. Because the Citco Defendants' assets may be limited and subject to oversight by foreign banking regulators, there is substantial likelihood of difficulty in collecting through potentially years more of enforcement proceedings, even if a trial in this Action, and subsequent appeals, were all successful.

Approximately $3.3 billion in claims were filed in the $50.25 million FG Settlement using the same class definition as the Settlement Class here. On that basis, the Settlement proration for the Settlement Class would be approximately 3.8%, prior to fees and expenses. *See, e.g.*, Jt. Decl. ¶ 14.

In addition to amounts that they would receive under the Citco Settlement, all Settlement Class Members received distributions from the $50.25 million FG Settlement, and investors in the domestic funds received distributions from the $5 million GlobeOp Settlement. Class Members have already received or are likely to receive additional cash distributions from liquidation or bankruptcy proceedings involving the Funds,[3] distributions from the Madoff Victim Fund, and from continued prosecution of this action against PwC. *See* Jt. Decl. ¶¶ 14, 74-76.

Under *Grinnell*, the district court is asked to "'consider and weigh 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.'" *Id.* at 462-3 (citation omitted). 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

[3] Liquidation proceedings involving Sentry, Sigma, and Lambda are pending in the British Virgin Islands (Claim No. 0074/2009) (Lambda), Claim No. 0136/2009 (Sentry), Claim No. 0139/2009 (Sigma). Bankruptcy proceedings involving Greenwich Sentry and Greenwich Sentry Partners were filed in the Bankruptcy Court for the Southern District of New York (Case No. 10-16229 (BRL)).

(S.D.N.Y. 1997) (Stein, J.) (citation and internal quotation marks omitted). 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).

"'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.'" *In re Marsh & McLennan Cos.*, 2009 WL 5178546, at *7, *quoting Grinnell*, 495 F.2d at 455 & n. 2 ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery."). *See, e.g., In re IPO Sec. Litig.*, 671 F. Supp. 2d 467, 483 (S.D.N.Y. 2009) (approving settlement based on a 2% recovery). The proposed settlement recovery here, notwithstanding the multi-billion dollar class losses and many unique and novel legal issues, when combined with the FG Settlement, would be about 5.4% of the FG claims amount; this proration is several times greater than the median recovery in comparable cases. *See* Jt. Decl., ¶¶ 87-88 (referencing statistics showing that during the past 15 years, the median recovery in securities class actions with estimated damages between $1 billion and $5 billion was 1.1%).

C. The Plan Of Allocation Is Fair, Reasonable And Adequate And Warrants Approval

"'To warrant approval, the plan of allocation must also meet the standards by which the . . . . settlement was scrutinized – namely, it must be fair and adequate.'" *Maley*, 186 F. Supp. 2d at 367 (citation omitted). "'When formulated by competent and experienced counsel,' a plan for allocation of net settlement proceeds 'need have only a reasonable, rational basis.'" *In re IMAX Sec. Litig.*, 283 F.R.D. at 192, *citing In re Telik Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 580 (S.D.N.Y. 2008) (quoting *In re Global Crossing*, 225 F.R.D. at 462). Here the Plan, contained in the Notice, includes a Net Loss formula that is intended to equitably apportion the Net

Settlement Fund among Settlement Class Members, based on each Class Member's Net Loss. This Court previously approved an identical allocation plan in the FG Settlement as being fair and reasonable, and approved distribution of the FG Net Settlement Fund according to the terms of that Stipulation and Plan of Allocation. *See* Dkt Nos. 1097, 1345.

D. The Court Should Finally Certify The Settlement Class

The Court's Preliminary Approval Order conditionally certified the Settlement Class pursuant to the Stipulation. Dkt No. 1042. Because this Action fully satisfies the relevant provisions of Rule 23, the Court should fully and finally certify the Settlement Class for settlement purposes.

Rule 23(a) imposes four threshold requirements on a putative class action: numerosity, commonality, typicality, and adequacy of representation. In addition, Rule 23(b) requires that: (i) common questions must predominate over any questions affecting only individual members; and (ii) class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy.

Although the Court, in the litigated class, excluded certain countries from the definition of the Class to avoid prejudice to the defendants if those countries did not recognize the preclusive effect of a litigated U.S. judgment (*see* 306 F.R.D. 134), that rationale does not apply to the Settlement Class, where each claimant will be required to sign a release to participate in the Settlement and where the Citco Defendants have consented to certification.

Rule 23(g) provides that class counsel "must fairly and adequately represent the interests of the class." Class counsel must be "qualified, experienced and generally able to conduct the litigation." *See In re Drexel Burnham Lambert Group*, 960 F.2d 285, 291 (2d Cir. 1992). Lead

Counsel are highly qualified in conducting class action and complex litigation and have effectively prosecuted this Action, achieving a substantial benefit for the Settlement Class.

Under similar circumstances, this Court has previously certified settlement classes and affirmed the appointment of Lead Counsel. *See* Dkt. No. 1097, ¶¶ 5-6; and 1232, ¶¶ 5-6.

E. Lead Counsel's Petition for an Award of Attorneys' Fees Is Reasonable and Should Be Granted

1. Legal Standard

The Supreme Court has long recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Goldberger v. Integrated Res., Inc*., 209 F.3d 43, 47 (2d Cir. 2000). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (McMahon, J.). In addition to providing just compensation, awards of fair attorneys' fees from a common fund serve to encourage skilled counsel to represent those who seek redress for damages suffered by entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See, e.g., Hicks v. Morgan Stanley*, No. 01-cv-10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) (Holwell, J.) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted); *Maley v. Del Global Techs. Corp*., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (McMahon, J.) ("Courts recognize that such awards serve the dual purposes of encouraging

representatives to seek redress for injuries caused to public investors and discouraging future misconduct of a similar nature.").

2. The Requested Fee is Fair Under the Percentage-of-Recovery Method

Although the lodestar method and the percentage method are appropriate for setting a reasonable fee in a class action, the Supreme Court has suggested that in common fund cases, the fee should be determined on a percentage-of-recovery basis. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' where a reasonable fee is based on a percentage of the fund bestowed on the class . . .") (citation omitted). District courts in this Circuit have favored awarding fees according to the percentage method because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (citation omitted). Indeed, the "trend in this Circuit is toward the percentage method." *Id*.; *Fogarazzo v. Lehman Bros., Inc*., No. 03-cv-5194 (SAS), 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011) (Scheindlin, J.); *In re Comverse Tech. Inc. Sec. Litig*., No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (Garaufis, J.). *In re Blech Sec. Litig.*, No. 94 Civ. 7696 (RWS), 2002 WL 31720381, at *1 (S.D.N.Y. Dec. 4, 2002) (Sweet, J.) ("This court … continues to find that the percentage of the fund method is more appropriate than the lodestar method for determining attorney's fees in common fund cases."). *See* Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.").

This Court has applied the percentage-of-recovery method in awarding attorneys' fees in common fund cases, including earlier settlements in this action. *See* FG Final Judgment and Order Awarding Fees and Expenses (Dkt No. 1099); GlobeOp Final Judgment and Order Awarding Fees (Dkt No. 1233); *Anwar v. Fairfield Greenwich Ltd (Da Silva Ferreira v. EFG Cap. Int'l Corp*., 11-cv-813); No. 09-cv-118 (VM), 2012 WL 1981505 (S.D.N.Y. June 1, 2012); *Rubin v. MF Global, Ltd. et al*., 08-cv-2233 (VM), Order dated Nov. 18, 2011 (Dkt No. 198).

3. The Requested Fee is Supported by the Second Circuit's *Goldberger* Factors

"[T]he fees awarded in common fund cases may not exceed what is 'reasonable' under the circumstances." *In re Bear Stearns Cos. Sec., Deriv. & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012), citing *In re Giant Interactive Grp., Inc. Sec. Litig*., 279 F.R.D. 151, 163 (S.D.N.Y. 2011) (quoting *Goldberger*, 209 F.3d at 47 (2d Cir. 2000)) (footnote and quotation marks omitted). In determining reasonable attorneys' fees, district courts are guided by the factors first articulated by the Second Circuit in *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). As summarized more recently in *Goldberger*, these factors include:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. As set forth below and in the Joint Declaration, application of these criteria to the facts now before this Court shows that Lead Counsel's fee request is reasonable and warranted.

a. Time and Labor Expended by Counsel

As detailed in the declarations submitted herewith, Lead Counsel have devoted substantial time and effort to the prosecution this action and to the Settlement on terms favorable to the Settlement Class. *See* Joint Decl. and Exhs. A-C.

Agreement to the substantive terms of the Settlement came after more than six years of litigation in this exceedingly complex and difficult case. During this time, Lead Counsel have, *inter alia*: (i) conducted an extensive investigation of public and non-public information with respect to the Class' claims; (ii) prepared initial complaints, a Consolidated Amended Complaint, and the subsequent Second Consolidated Amended Complaint ("SCAC"), which were the subject of extensive briefing; (iii) overcome in large part the Citco Defendants' motions to dismiss the SCAC; (iv) conducted extensive discovery including serving and responding to demands, including third party subpoenas, and obtaining and producing documents; Plaintiffs produced approximately 75,000 pages of documents and reviewed over nine million pages; (v) responded to detailed interrogatories served on the Representative Plaintiffs and some 20 additional named plaintiffs, (vi) conducted over one hundred fact and expert depositions of persons affiliated with defendants and non-parties and defended depositions of Class Representatives and Named Plaintiffs; (vii) litigated and secured two orders certifying the Class; (viii) briefed and defeated three motions by Citco to reargue the denial of dismissal of the SCAC; (ix) participated with defense counsel in dozens of meet and confer sessions with respect to document, deposition, and other aspects of merits discovery; (x) prepared letter-briefs and argued to Magistrate Judges Katz and Maas multiple discovery disputes, including securing documents and continued deposition testimony over Citco's objections based on privilege; (xi) retained and consulted with experts on investment fund auditing and administration; (xii) protected the interests of putative class members outside the confines of this Action by, among other things, initiating proceedings for the liquidation of Fairfield Sentry Fund in the British Virgin Islands, succeeding in a motion before the High Court of the Eastern Caribbean to appoint a Liquidator for Sentry, and actively participating in the liquidation process through the Sentry Liquidation

Committee; and (xiii) otherwise vigorously represented the interests of putative class members in this extraordinarily complex dispute.

In total, Lead Counsel have expended over 107,000 hours of attorney and paralegal time in prosecuting the Action through July 31, 2015, resulting in a combined "lodestar" amount of $69,376,217 at Lead Counsel's current regular billing rates. *See* Joint Decl. ¶ 97-99 and Exhs. A-C. As the Second Circuit explained in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998), "current rates, rather than historical rates, should be applied in order to compensate for the delay in payment."

With respect to the hours worked, Lead Counsel submit that the substantial time devoted to litigating the claims against the Citco Defendants reflects the tremendous effort needed to prosecute those claims and to bring them to a favorable resolution. There are a number of core attorneys on the case who have devoted large amounts of their time to the litigation in order to ensure continuity and to build on their knowledge base.

As further supported by the lodestar cross-check, Lead Counsel submit that the first *Goldberger* factor weighs strongly in favor of the requested attorneys' fee.

b. Magnitude and Complexities of the Litigation

Courts have long recognized that securities class actions are notoriously complex and difficult to prosecute. *See, e.g., Fogarazzo*, 2011 WL 671745, at *3 ("securities actions are highly complex.") (citation omitted); *Merrill Lynch Research Reports Sec. Litig.*, 246 F.R.D. 156, 172 (S.D.N.Y. 2012) ("Securities class litigation 'is notably difficult and notoriously uncertain.'") (citation omitted).

Although the Madoff Ponzi scheme was a major news event, the facts of this case were largely separate from Madoff and required vast amounts of investigation and analysis. Moreover, Lead Counsel had to navigate a minefield of legal issues, any of which could have

defeated or severely limited the Plaintiffs' claims or damages. Among those legal issues were the application of the Martin Act, where we persuaded the Court to reach a precedent-setting decision that was eventually cited with approval by the New York Court of Appeals; SLUSA; *Morrison*; *Credit Alliance Corp. v. Arthur Andersen & Co.*, 65 N.Y.2d 536, 493 N.Y.S.2d 435 (1985); a number of foreign law issues, and many others.

Moreover, efforts to resolve the claims that ultimately led to the Settlement were protracted and required tremendous skill and tenacity on the part of Lead Counsel, who were fully prepared to litigate the settled claims to judgment. Considering the magnitude and complexity of this case, the 30% fee request is entirely warranted.

c. Risks of the Litigation

The Second Circuit has identified "'the risk of success as "perhaps the foremost" factor to be considered in determining'" a reasonable award of attorneys' fees." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (quoting *Goldberger*, 209 F.3d at 54); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 592 ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions."). Courts continue to recognize that "[l]ittle about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (Pollack, J.).

Although Representative Plaintiffs and Lead Counsel believe that the claims against the Citco Defendants are strong, the contingency risk also is significant and thus fully supports the requested fee. Lead Counsel undertook this action on a strictly contingent-fee basis, and prosecuted the claims with no guarantee of compensation or recovery of any litigation expenses. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) (Pollack, J.) (class

counsel not only undertook risks of litigation, but advanced its own funds and financed the litigation). As discussed in the Joint Declaration, Plaintiffs faced numerous challenges. The Citco Defendants vigorously maintain that they were not responsible for either intentional or negligent misconduct giving rise to Plaintiffs' losses and that since other professionals and even the SEC did not detect the fraud, they, too, should not be liable. Other actions against Citco or parties similarly situated who provided administrative and custody services have been unsuccessful. *See Short v. Westport National Bank*, 3:09cv1955(VLB), WL 1316098 (D. Conn. March 31, 2014) (denying motion for new trial against custodian of assets purportedly invested by BLMIS on behalf of plaintiffs; jury found that the plaintiff had failed to prove proximate cause); *Stephenson* v. *Citco Grp. Ltd.*, 700 F. Supp. 2d 599 (S.D.N.Y. 2010), *aff'd on other grounds sub nom. Stephenson v. PricewaterhouseCoopers, LLP*, 482 F. App'x 618 (2d Cir. 2012) (claims against Citco should have been pled as derivative claims).

In addition to the inherent risks in a jury trial and the many novel and difficult legal issues presented by this case which might lead to reversal on appeal, there are foreseeable obstacles to collection of a large judgment against Citco's overseas assets.

d. Quality of Representation

Lead Counsel respectfully submit that the quality of their representation supports the reasonableness of the requested fee. Lead Counsel have many years of experience in complex federal civil litigation, particularly securities litigation and other class actions. *See* Declarations attached as Exhibits B, C, and D to Plaintiffs' Memorandum of Law in Support of Motion for Consolidation of All Actions and Appointment of Interim Co-Lead Counsel dated January 27, 2009, Dkt. No. 22.

The Settlement represents a favorable result for the Settlement Class in the face of difficult legal and factual circumstances and can be attributed to the diligence, determination,

and hard work of Lead Counsel. *See Veeco*, 2007 WL 4115808, at *7 ("Plaintiffs' Counsel's skill and expertise contribute to the favorable settlement for the class") (citation and internal quotation marks omitted).

The quality of opposing counsel is also significant. *See In re Adelphia Commc'ns Sec. & Deriv. Litig.*, No. 03 MDL 1529 (LMM), 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 F. App'x 9 (2d Cir. 2008) ("The fact that the settlements were obtained from defendants represented by formidable opposing counsel from some of the best defense firms in the country also evidences the high quality of lead counsels' work.") (citation and internal quotation marks omitted). The attorneys from the Paul Weiss firm representing the Citco Defendants are among the most respected and accomplished litigators in the country and were sure to continue their vigorous and comprehensive defense through the remainder of the case.

e. The Requested Fee in Relation to the Settlement

The fifth *Goldberger* factor, the relation of the requested fee to the Settlements, also supports the requested attorneys' fee. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3 (quoting *In re Marsh & McLennan Co. Inc. Sec. Litig.*, 2009 WL 5178546, at *19). As discussed above, the Settlement provides the Settlement Class with a cash benefit that was achieved despite many obstacles and risks. Fees in the amount of 30% of settlements of this size or above are within the range of fees that have regularly been awarded by the courts, particularly where, as here, the requested fee is significantly less than the lodestar amount. *See, e.g.*, *Velez v. Novartis Pharms. Corp.*, No. 04 Civ. 09194 (CM), 2010 WL 4877852, at *2 (S.D.N.Y. Nov. 30, 2010) ("District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater."); *In re IPO Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding fee of

one-third of $510 million settlement fund; adjusted lodestar multiple of .84); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00 cv 1884 (AVC), 2007 WL 2115592, at *4-5 (D. Conn. July 20, 2007) (awarding fees of 30% of $80 million fund; 1.98 lodestar multiple); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% of $65.9 million settlement fund; lodestar multiple of 2.99); *Kurweil v. Philip Morris Cos., Inc.*, No. 94 Civ. 2373 (MBM), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999) (awarding 30% of $123.8 million settlement fund; lodestar multiple of 2.46).

f. Public Policy Considerations

"Public policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *Flag Telecom Holdings Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010). Specifically, "[i]n order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives," *quoting In re WorldCom Inc., Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005). Moreover, attorneys' fees must be sufficient "'to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts of the SEC.'" *In re Am. Int'l Group Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2012 WL 345509, at *5 (S.D.N.Y. Feb. 2, 2012) (citation omitted); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered.").

As a practical matter, lawsuits such as this one can be maintained only if competent counsel can be retained to prosecute them. This will occur if courts award reasonable and adequate compensation for such services where successful results are achieved, often after years of litigation. As Judge Brieant noted:

> A large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken.

In re Union Carbide Corp. Cons. Prods. Bus. Sec. Litig., 724 F. Supp. 160, 169 (S.D.N.Y. 1989).

g. Reaction of the Settlement Class to the Fee Request

"The reaction by members of the Class," while not one of the formal *Goldberger* factors, "is entitled to great weight by the Court." *Maley*, 186 F. Supp. 2d at 374 (citation omitted); *see In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 594 ("That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable.") (citation omitted).

Pursuant to this Court's Preliminary Approval Order, Lead Counsel caused more than 4,300 copies of the Notice of Pendency of Class Action and Proposed Settlement and Proof of Claim forms ("Proof of Claim") to be disseminated to potential Settlement Class Members. *See* Rabe Aff. ¶ 10. A Summary Notice of Pendency of Class Action and Proposed Settlements with FGG Defendants and Motion for Attorneys' Fees and Expenses regarding the Settlements and the Settlement Hearing was published in the international editions of *The Wall Street Journal* on September 9-10, 2015, and transmitted for worldwide distribution over *PR Newswire* on September 9, 2015. *Id*. ¶ 11. The Notice and Proof of Claim were also posted on the Claims Administrator's website dedicated to this Action for easy downloading by potential claimants. *Id*. ¶¶ 12-13. The Notice advised Settlement Class Members of the procedures and deadlines for objecting to any aspect of the Settlements. *See* Rabe Aff. Ex. A. It advised that Lead Counsel intended to seek an award of attorneys' fees that would not exceed 30% of the Settlement Fund, and reimbursement of expenses not to exceed $5,500,000. *Id*. at pg. 5.

Although the deadline to object to the fee request is not until October 16, 2015, to date no objection to the fee or expense requests has been submitted. If there are objections, Lead Counsel will address them in reply papers.

h. The Requested Fee is Reasonable Under the Lodestar "Cross-Check"

"'The Second Circuit has authorized district courts to employ a percentage-of-the-fund method when awarding fees in common fund cases, [and] has encouraged district courts to cross-check the percentage fee against counsel's 'lodestar' amount of hourly rate multiplied by hours spent.'" *In re Bear Stearns Cos.*, 909 F. Supp. 2d at 271, *quoting Giant Interactive Grp.*, 279 F.R.D. at 163 (quoting *Goldberger*, 209 F.3d at 47) (internal citation and quotation marks omitted). The lodestar is calculated by multiplying the number of hours expended on the litigation by a particular timekeeper times his or her current hourly rate. The hourly billing rate to be applied is the attorney's normal hourly billing rate, so long as that rate conforms to the billing rate charged by attorneys with similar experience in the community where the counsel practices, *i.e.*, the "market rate." *See Blum*, 465 U.S. at 895-6; *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("The 'lodestar' figure should be 'in line with those rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'") (quoting *Blum*, 465 U.S. at 896 n.11).

With respect to billing rates, the standard hourly rates charged by Lead Counsel used for calculating the lodestar range from $435 to $1150 for partners, $410 to $950 for counsel, and $395 to $720 for associates. *See* Joint Decl. Exhs. A-C. Similar or higher billing rates have been approved by other courts in this District. *See, e.g., In re Lehman Bros. Sec. & ERISA Litig.*, No. 1:08-cv-05523 (LAK) (GWG) (S.D.N.Y. Mar. 2012) (approving billing rates up to $975 per hour); *In re Wachovia Sec. Litig.*, No. 09-civ. 6351 (RJS) (S.D.N.Y.) (same); *see also Plumbers'*

& Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I, No. 08-cv-01713 (PKC) (WDW) (E.D.N.Y. July 24, 2014) (same).

As noted, the total lodestar of Lead Counsel related to prosecuting the claims against Defendants, derived by multiplying their hours by each firm's current hourly rates, is $69,376,217. This represents more than 107,000 hours spent by attorneys, paralegals, investigators, and professional analysts furthering the prosecution of the claims. *See* Joint Decl., Exhs. A-C.[4] Lead Counsel compiled these hours from contemporaneous time records. Because attorneys' fees totaling $13,812,500 were previously awarded from the FG and GlobeOp Settlements, Lead Counsel's unreimbursed lodestar through July 31, 2015 is $55,563,717.

Here, the lodestar "cross-check" fully supports the requested percentage fee. The requested 30% fee (or $37,500,000) divided by Lead Counsel's total unreimbursed lodestar (excluding the lodestar of other Plaintiffs' counsel), yields a fee equivalent to 67.5% of Lead Counsel's lodestar. The reasonableness of the requested fee is therefore confirmed by the "negative" lodestar multiplier. *In re Bear Stearns Co. Inc. Sec. Litig.*, 909 F. Supp. 2d at 271 (citing *In re Blech Sec. Litig.*, No. 94 Civ. 7696(RWS), 2002 WL 31720381, at *1 (S.D.N.Y. Dec.4, 2002)) (a lodestar cross-check that results in a negative multiplier is "a strong indication of the reasonableness of the fee application."). Lead Counsel recognize that a portion of the work on which the lodestar calculation is based will be useful in pursuing the claims against the PwC Defendants. If those claims are successful, whether through litigation or settlement, Counsel anticipate applying for additional fee award(s) which may increase the lodestar multiple.

[4] In addition, the three non-lead counsel, who have assisted in the prosecution of this action, recorded over 7,800 hours, comprising a lodestar of in excess of $3,900,000 with respect to this Action.

IV. PLAINTIFFS' COUNSEL'S REQUEST FOR REIMBURSEMENT OF EXPENSES SHOULD BE GRANTED

In addition to a reasonable attorneys' fee, Plaintiff's Counsel respectfully seek reimbursement of $4,438,320 for litigation expenses reasonably incurred in connection with prosecuting the claims against Defendants. Joint Decl., Exhs. A-D. It is well-established that such expenses are properly recovered by counsel. *See, e.g., Am. Int'l Grp.*, 2012 WL 345509, at *6 ("'Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation" of those clients.'") (citing *In re Indep. Energy Holdings PLC Sec. Litig*., 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (Scheindlin, J.)).

The declarations submitted by Lead Counsel itemize the categories of expenses incurred. *See* Joint Decl., Exhs. A-C.[5] Lead Counsel submit that these expenses were reasonable and necessary to prosecuting the claims and achieving the Settlement. Lead Counsel further submit that these expenses are the type for which "the paying, arms' length market" reimburses attorneys and should therefore be reimbursed from the Settlement Fund. *See Global Crossing*, 225 F.R.D. at 468. The Notice advised potential Settlement Class Members that Lead Counsel would seek reimbursement of expenses of up to $5,500,000.

V. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement and enter the Final Judgment annexed as Exhibit B to the Stipulation filed August 12, 2015 (ECF No. 1398-5), subject to any modifications that may be requested by the Settling

[5] Excluded from these calculations are over $1.4 million in accounting expert expenses that are directly related to the prosecution of this Action against the PwC Defendants, such as fees paid to consultants and experts with respect to the claims against PwC.

Parties in connection with the hearing before the Court scheduled for November 20, 2015, and including attorneys' fees and expense reimbursement as requested herein.

Dated: October 1, 2015

Respectfully submitted,

By: /s/ David A. Barrett

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