

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: 09 cv 118 (VM)

File No. 09 CV 118 (VM)

**JOINT DECLARATION OF LEAD COUNSEL IN
SUPPORT OF PROPOSED PWC CLASS ACTION
SETTLEMENT AND FEE AND EXPENSE REQUEST**

David A. Barrett, Robert C. Finkel and Victor E. Stewart, being duly admitted to the practice of law in the State of New York and to the Bar of this Court, do hereby declare under the penalties of perjury of the United States of America, as follows:

I. INTRODUCTION

1. We are members of the law firms Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP, respectively, and Co-Lead Counsel for the Representative Plaintiffs (“Lead Counsel”).¹ Our firms are responsible for the prosecution of the claims in this Action.

2. We make this Joint Declaration in support of Plaintiffs’ motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of (i) the PwC Stipulation of Settlement, dated January 6, 2016 (the “Stipulation”) (Dkt No. 1533), providing for payment of

¹ The Representative Plaintiffs are Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen’s School. The Representative Plaintiffs are referred to herein as “Plaintiffs.”

\$55,000,000 to establish a settlement fund (the “PwC Settlement Fund”); (ii) certification of the PwC Settlement Class² as defined in ¶ 1(hh) of the Stipulation; (iii) the proposed Plan of Allocation of the Net Settlement Fund among Settlement Class Members who submit valid claims as set forth in the Notice of Proposed Settlement mailed to Settlement Class Members (Dkt No. 1533-2 at 23-24); and (iv) Lead Counsel’s application for an award of attorneys’ fees in the amount of 30% of the Settlement Amount and reimbursement of expenses in the amount of \$1,803,816. Together with prior settlements, the PwC Settlement brings the final total of recoveries in this Action to \$235,250,000, with an additional \$30 million held in escrow from the FG Settlement, subject to certain conditions.

3. The Stipulation (¶1(hh)) defines the PwC Settlement Class as “all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) and who suffered a Net Loss of principal invested in the Funds, excluding (i) Opt-Outs from the PwC Settlement Class as defined herein; (ii) any Persons who have been dismissed from this Action with prejudice or who are barred by prior judgment or settlement from asserting any of the claims against the PwC Defendants set forth in the Second Consolidated Amended Complaint (“SCAC”); (iii) Fairfield Sigma Limited; (iv) Fairfield Lambda Limited; and (v) the Defendants and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, attorneys, immediate family members (as defined in 17 C.F.R. 240.16a-1(e)), heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such (except for any of the Citco Defendants in their role as nominee or record shareholder for any investor).”

² Unless otherwise indicated, all capitalized terms are defined in the PwC Stipulation (Dkt. No. 1533).

4. The Stipulation resolves all direct claims against the PwC Defendants that were asserted or could have been asserted against the PwC Defendants by limited partners or shareholders in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry L.P., and Greenwich Sentry Partners, L.P. (together the “Funds”). The Stipulation also releases claims against PwC-affiliated “Released Parties,” as defined in ¶ 1(bb) of the Stipulation.

5. Plaintiffs’ claims in this Action are based on (i) additional investments in the Funds that were made by existing investors or (ii) investments in the Funds that continued to be held by existing investors, in each case subsequent to PwC Netherlands’ audits of the Funds’ financial statements for the fiscal years ended December 31, 2002 through December 31, 2005; or PwC Canada’s audits of the Funds’ financial statements for the fiscal years ended December 31, 2006 and December 31, 2007. Plaintiffs allege in each instance that PwC failed to exercise reasonable care and acted negligently in their audits of the Funds’ financial statements, and that this misconduct caused Plaintiffs’ losses. Plaintiffs’ claims were limited to “subsequent investor” and “holder” claims by existing investors in the Funds based on the Court’s August 6, 2012 decision, discussed below (884 F.Supp. 2d 92), holding that the PwC’s Defendants’ duties to exercise reasonable care in their audits ran only to “known parties” who were already investors in the Funds. *See* ¶ 38, *infra*.

6. The \$55 million Settlement is an excellent recovery against the PwC Defendants’ determined opposition. To bring the case to this point, Plaintiffs were required, among many other things, to sustain their negligence claim against PwC on an initial and three renewed motions to dismiss, to prevail on two motions for class certification, and to negotiate a favorable settlement. In doing so, Plaintiffs addressed novel and complex issues as far ranging

as (i) whether New York’s Martin Act pre-empted Plaintiffs’ New York state law non-fraud claims; (ii) whether the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) precluded Plaintiffs’ negligence claim under state law; (iii) whether the PwC Defendants owed duties to investors in the Funds (rather than only to the Funds themselves) under *Credit Alliance v. Arthur Andersen & Co., Inc.*, 65 N.Y. 2d 536 (1985); (iv) whether Plaintiffs’ negligence claim against PwC could be asserted directly or only derivatively on behalf of the Funds; (v) whether PwC was required by Generally Accepted Auditing Standards (“GAAS”) and International Auditing Standards (“IAS”) to verify account data provided by Bernard L. Madoff Investment Securities, Inc. (“Madoff” or “BLMIS”) and the Fairfield Greenwich (“FG”) Defendants, or whether PwC was entitled to rely on the accuracy of that information in auditing the Funds’ financial statements; (vi) whether Plaintiffs could recover damages on their holder claims, in light of PwC’s argument that Plaintiffs’ funds were stolen by Madoff at the time they were invested; (vii) whether Plaintiffs’ claims survived applicable statutes of limitation; (viii) whether class certification was warranted, among other things, because common issues predominated over individual issues of law or fact, such as reliance; (ix) whether investors or their financial advisors had conducted their own due diligence and were responsible for failing to recognize the Madoff Ponzi scheme; (x) whether other persons, including Madoff, the FG Defendants, and the Funds’ custodians and administrators had greater culpability for Plaintiffs’ losses than PwC; and (xi) whether Plaintiffs’ damages should be reduced to account for tax benefits, recoveries in the FG, GlobeOp, and Citco Settlements, recoveries and anticipated recoveries in bankruptcy and liquidation proceedings, and from the Madoff Victim Fund. Plaintiffs litigated these issues for seven years against multiple major

law firms, including PwC's counsel Kirkland & Ellis LLP and Hughes Hubbard & Reed LLP, two of the country's leading litigation firms.

7. The issues described above not only required exhaustive legal research and briefing of complex legal issues under U.S. and New York law, but under the law of multiple foreign countries. In the course of litigation, Plaintiffs submitted declarations of 12 foreign law experts, and consulted with a number of others, including experts in the laws of The Netherlands, British Virgin Islands, Great Britain and Commonwealth countries, and many other European and South American countries.

8. Although Plaintiffs had significant factual and legal arguments in opposition to the PwC Defendants' positions with respect to all of the foregoing issues, and were confident of their position on these issues, Plaintiffs recognized that serious litigation risks existed, including that they could lose one or more of these issues on summary judgment, at trial, or on appeal, and that there was a possibility that class members would obtain no recovery whatsoever.

9. In addition to significant risks that Plaintiffs faced in order to prevail against the PwC Defendants' factual and legal defenses, Lead Counsel also considered the likely difficulty of collecting substantially more than \$55 million from these Defendants after a successful trial and appeals. Although the PwC Defendants had insurance, the available coverage would likely have been dissipated by payment of attorneys' fees and expenses through trial and appeal. A judgment would have had to be collected by means of execution against Canadian and Dutch limited liability partnerships, which may not have sufficient assets, while individual partners' assets are protected from execution. Moreover, the U.S. and International firms that use the PwC name are separate legal entities against which a judgment could not be enforced. In

addition, it likely would have taken years to defend a judgment in post-trial and appellate proceedings and to enforce a judgment overseas. The Settlement, however, provides an immediate cash benefit to the Settlement Class, which counsel and the Representative Plaintiffs believe significantly outweighs the risks and certain delay of continued litigation with an uncertain recovery years in the future.

10. As a result of seven years of hard-fought litigation and a lengthy mediation process, Lead Counsel are fully familiar with the issues, strengths and weaknesses of Plaintiffs' claims, among other things, having (i) litigated the initial motions to dismiss the SCAC, three subsequent motions to reargue the Court's decision on that motion, and two motions and an appeal pertaining to class certification; (ii) briefed PwC's motion for summary judgment; (iii) reviewed millions of pages of documents produced by the PwC Defendants and other parties, having conducted 19 merits depositions of PwC witnesses, as well as 59 depositions of FG, GlobeOp, Citco and third-party witnesses, and defending 18 depositions of Representative and other Named Plaintiffs; (iv) worked thousands of hours with eight expert witnesses to prepare expert reports on liability and damages, analyze and respond to the reports of 13 expert witnesses for PwC and Citco, and take and defend depositions of these experts; (v) prepared multiple mediation statements, analyzed PwC's mediation submissions and met for four full-day and two half-day mediation sessions and conducted further extensive communications in connection with mediation; and (vi) engaged in extensive preparation in anticipation of a trial that was scheduled to begin just weeks after the settlement was reached, including designating hundreds of exhibits, filing pre-trial memoranda, filing and responding to numerous motions *in limine*, responding to *Daubert* motions, and filing contested and uncontested proposed jury instructions and verdict forms.

11. The PwC Settlement is the fourth and final partial settlement in this Action. Under the FG Settlement, \$50,250,000, less approved attorneys' fees and expenses, has been distributed to class members and additional contingent cash consideration of up to \$30,000,000 continues to be held in escrow (Dkt No. 1097). Claims against GlobeOp were settled for \$5,000,000 (Dkt No. 1232); that amount less fees and expenses has been distributed to investors in the two domestic funds, which were the only Funds to which GlobeOp provided services. On November 20, 2015, the Court approved the settlement of Plaintiffs' claims against the Citco Defendants (Dkt. No. 1457) for \$125,000,000, which Plaintiffs anticipate will be distributed, less fees and expenses, after the completion of settlement administration, in mid-2016.

12. Lead Counsel estimate that the \$55,000,000 PwC cash settlement is equivalent to approximately 1.68% of provable damages against PwC based on the \$3.265 billion in claims submitted in the FG Settlement. The PwC Settlement will add to the benefits that PwC Settlement Class Members have obtained and will receive from the FG, GlobeOp, and Citco Settlements, and further recoveries from the Funds' bankruptcy and liquidation proceedings, and from the Madoff Victim Fund.

13. Notice of the PwC Settlement was mailed to PwC Settlement Class Members on January 22, 2016. In addition, a summary notice was published once in the international editions of *The Wall Street Journal* (excluding North America) on either February 1 or 3, 2016 and was issued over *PR Newswire* worldwide on February 1, 2016. See accompanying Affidavit of Jason Rabe of Rust Consulting, Inc. dated March 17, 2016 ("Rabe Aff.").

14. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA"), PwC provided notice of the Settlement to the appropriate State and Federal officials on March 4,

2016. In order to allow for the statutory period of 90 days after notice, the Settling Parties have revised the proposed Final Judgment (Dkt No. 1533-5; ¶4) to allow the recipients of the CAFA Notice to be heard with respect to the Settlement through June 2, 2016. None of the recipients of the CAFA Notices in the prior three settlements in this case requested to be heard with respect to those settlements and we have no indication they will do so here. Accordingly, the Settling Parties respectfully submit that if otherwise acceptable to the Court, the Final Judgment may be entered at the time of the final fairness hearing on May 6, 2016, to become effective if no objections have been received, upon expiration of the 90-day CAFA notice period on June 2, 2016. A copy of the revised proposed Final Judgment is annexed hereto as Exhibit E.

15. To date, there have been no objections filed to the proposed Settlement or to the request for fees and expenses of Plaintiffs' counsel. The last date to file such objections is April 1, 2016.

16. The last date to submit Requests for Exclusion from the proposed PwC Settlement Class is also April 1, 2016. To date, the Claims Administrator has received four Requests for Exclusion with an estimated dollar value, based on the Net Loss formula in the Plan of Allocation, of \$713,968. Rabe Aff., ¶16.

17. Lead Counsel have prosecuted this Action on a fully contingent basis and have advanced or incurred all litigation expenses. Based on contemporaneous time records, Lead Counsel have invested through February 29, 2016 over 114,000 hours of attorney and paralegal time valued at \$74,876,260 at current rates.³ In addition, Plaintiffs' non-Lead Counsel have

³ Boies Schiller & Flexner LLP has compiled its lodestar at 2015 rates.

expended in excess of \$3.9 million in additional time charges assisting in the prosecution of this Action.

18. The fee application for 30% of the \$55,000,000 Settlement Fund is the same percentage fee awarded by the Court on the Citco Settlement (Dkt No. 1457) and is within the range of fees awarded in these types of actions. The fee requested is entirely justified in light of the substantial benefits conferred on the Class, the exceptional risks undertaken, the quality of representation, and the nature and extent of legal services performed.

19. The 30% fee request (\$16.5 million) combined with the \$51,312,500 fees previously awarded by the Court on the FG, GlobeOp, and Citco settlements are still less than 87% of Plaintiffs' Counsel's lodestar through February 29, 2016.

20. Plaintiffs' Counsel also seek reimbursement from the Settlement Fund of \$1,830,816 in unreimbursed expenses incurred in prosecuting this Action. This amount primarily includes expert costs, mediation fees and other expenses relating to the PwC claims. These expenses were reasonably and necessarily incurred to successfully prosecute the Class claims and to obtain the Settlement. Other expenses incurred by Plaintiffs have been reimbursed as part of the FG, GlobeOp, and Citco settlements.

II. HISTORY OF THE ACTION

A. The Funds

21. The Funds invested virtually all their assets with BLMIS. These investments were lost because, as revealed in December 2008 when Madoff was arrested, BLMIS was operating a Ponzi scheme and the assets purportedly controlled by BLMIS did not exist. PwC Netherlands audited the Funds' financial statements for fiscal years beginning in the 1990s

through December 31, 2005, and PwC Canada audited the Funds' financial statements for the fiscal years ended December 31, 2006 and December 31, 2007.

B. The Action and Consolidation

22. Plaintiffs' claims against PwC are part of the consolidated *Anwar* class action, the first constituent action of which was filed on December 19, 2008, by plaintiffs Pasha S. Anwar and Julia Anwar, on behalf of themselves and all others similarly situated, in the Supreme Court of the State of New York, entitled *Anwar v. Fairfield Greenwich Group, et al.*, No. 603769/2008 ("*Anwar*"). On January 7, 2009, *Anwar* was removed by Defendants to this Court (Dkt No. 1).

23. On January 30, 2009 the Court consolidated the three then-pending related actions and appointed Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP as Interim Co-Lead Counsel to act on behalf of all Plaintiffs in the Action pursuant to Fed. R. Civ. P. 23(g)(3) (Dkt No. 40). Numerous other actions against Defendants were subsequently filed and consolidated under the *Anwar* action.

C. The Initial Consolidated Complaint

24. Lead Counsel conducted a detailed investigation of the facts, including the disclosures and statements made to investors in the Funds and the conduct of the various defendants in their duties in connection with the offering and management of the Funds. Among other things, Lead Counsel investigated PwC's relationship with the Funds, the Fairfield Greenwich Group, and Madoff; Madoff's role in the management and custody of the Funds' assets; and indicators of potential fraud in Madoff's investment advisory and asset management operation that were or should have been known to PwC and in many cases were

not known to investors. Lead Counsel also consulted with foreign law experts and analyzed PwC's legal obligations and duties and the potential causes of action available to Plaintiffs.

25. On April 24, 2009, Lead Counsel filed the Consolidated Amended Complaint, asserting common law claims under New York law against Defendants, (Dkt No. 116).

26. On May 11, 2009, Lead Counsel on behalf of their respective clients, filed a motion for appointment of lead plaintiff and approval of Lead Plaintiff's selection of lead counsel with respect to federal securities claims filed under the Private Securities Litigation Reform Act ("PSLRA"), as well as opposition and reply memoranda. Dkt Nos. 133-35, 154, 163.

27. On July 7, 2009, the District Court entered an order appointing certain of the Representative Plaintiffs as Lead Plaintiffs in the federal securities actions and approving their selection of Lead Counsel (Dkt No. 178).

28. On September 29, 2009, Plaintiffs filed the SCAC, which consolidated federal securities and state law claims against PwC and asserted claims in one consolidated complaint on behalf of a proposed class of investors in the Funds against the FG Defendants, PwC, Citco and GlobeOp (Dkt No. 273). Plaintiffs asserted claims against PwC in the SCAC for third-party beneficiary breach of contract, gross negligence, negligence, negligent misrepresentation, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, and securities fraud under Section 10(b) of the Securities Exchange Act. The SCAC also asserted claims against PwC International under Section 20(a) of the Securities Exchange Act. The SCAC alleged that investors in the Funds would have avoided their losses if the PwC Defendants had not acted fraudulently or negligently in their capacities as auditors of the Funds. The claims asserted

against PwC included investor and holder claims on behalf of all investors who held shares in the Funds and who suffered a net loss on their investments as of December 10, 2008.

29. In addition to the foregoing activities in this case, in April 2009, Plaintiffs commenced insolvency proceedings in the courts of the British Virgin Islands for the offshore Funds. On Plaintiffs' motion, the BVI court appointed a Liquidator for the Funds who has made substantial recoveries that will benefit members of the plaintiff class in this action, and is continuing to pursue additional recoveries. Plaintiffs respectfully submit that by initiating the BVI proceedings, which the Funds' managers had inexplicably not done, and participating in the Funds' liquidation process, Plaintiffs conferred substantial benefits on the class.

D. Defendants' Motions to Dismiss

30. On December 22, 2009, all Defendants moved to dismiss the SCAC, filing voluminous briefing and exhibits in support. The PwC Defendants, in separate memoranda in support of their motions to dismiss (Dkt Nos. 317 and 368), asserted multiple arguments including:

- a. Plaintiffs' state law non-fraud claims were barred by SLUSA and the New York State Martin Act;
- b. Plaintiffs failed to allege facts sufficient to support a claim of fraud or gross negligence;
- c. Plaintiffs failed to adequately allege that PwC owed them a duty (fiduciary or otherwise), an essential element of the breach of fiduciary duty, negligence and gross negligence claims;
- d. Plaintiffs' claims were derivative and belonged to the Funds, and as such Plaintiffs were required either to make a demand on the Funds or plead facts demonstrating that such demand would be futile;
- e. Plaintiffs' claims were time-barred by the statute of limitations.

31. PwC Canada filed a Declaration in support of its motion, appending 19 exhibits. (Dkt No. 369). PwC Canada also filed a declaration of a foreign law expert, who opined that Plaintiffs' claims were not viable under foreign law (Dkt No. 327). PwC International filed a memorandum in support of its motion to dismiss the Section 20(a) claim against it (Dkt. No. 357).

32. On March 23, 2010, Plaintiffs filed a 107-page opposition to the FG Defendants' motion to dismiss the SCAC (Dkt No. 418), which also addressed the issues that were common to the motions of all Defendants, including PwC, as well as a separate joint opposition to the PwC motions (Dkt No. 419). Plaintiffs also filed the affidavit of a foreign law expert with 20 exhibits, in response to PwC Canada's foreign law expert (Dkt No. 415).

33. On May 21, 2010, the PwC parties filed Reply Memoranda and a Declaration in further support of the motions to dismiss (Dkt Nos. 454, 455, 463, 465), and Plaintiffs subsequently filed a Sur-Reply Brief (Dkt No. 476).

34. On June 24, 2010, after Defendants' motion to dismiss the SCAC was fully briefed, the Supreme Court decided *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), holding that only sales of securities in the United States or on U.S. exchanges could be challenged under U.S. securities laws. Defendants then raised the *Morrison* decision as a further ground for dismissing the SCAC and the parties submitted letter briefs concerning the application of *Morrison* to this case (Dkt Nos. 500-02).

35. Additional detail on Lead Counsel's preparation of the SCAC and opposition to Defendants' Motions to Dismiss is contained in the Joint Declaration of Lead Counsel in support of the FG Settlement, which is respectfully incorporated herein. See Dkt No. 1038 at ¶¶ 34-52, 54, 57.

E. The Court's Decisions on the Motions to Dismiss

36. In July and August 2010, the Court granted in part and denied in part PwC's motions to dismiss the SCAC. The Court denied the motions to dismiss claims against PwC Netherlands and PwC Canada for negligence and negligent misrepresentation, and sustained the motions with respect to the balance of Plaintiffs' claims. An order on July 29, 2010, 728 F. Supp. 2d 354 ("*Anwar I*"), rejected Defendants' arguments that the Martin Act preempted all of Plaintiffs' common law claims except for fraud. A second Order on August 18, 2010, 728 F. Supp. 2d 372 ("*Anwar II*"), addressed at length the balance of the PwC Defendants' arguments, ruling, *inter alia*, that (i) Plaintiffs' state law claims were not pre-empted by SLUSA (*id.* at 397-99); (ii) Plaintiffs had standing to bring direct claims against PwC, although the standing argument was "ripe for further factual development and is more properly decided at the class certification or summary judgment stage" (*id.* at 400-02); (iii) Plaintiffs had not alleged facts sufficient to support a strong inference that PwC acted with scienter, and thus dismissed the federal securities claims (*id.* at 453-54); (iv) Plaintiffs alleged facts sufficient to show that PwC's relationship to them was "so close as to approach that of privity," thereby imposing on PwC a duty of care to Plaintiffs (*id.* at 457); (v) Plaintiffs did not identify any language in the contracts between the Funds and PwC evincing a specific intent to confer a benefit on Plaintiffs, which precluded their third-party breach of contract claim (*id.* at 457-58); (vi) Plaintiffs did not allege facts demonstrating that PwC aided and abetted breaches of fiduciary duty or fraud (*id.* at 458); (vii) no claim for unjust enrichment was available because there was a contract governing the subject matter at issue (*id.*); (viii) the allegations against PwC International were insufficient to hold it vicariously liable for the actions of PwC Canada and PwC Netherlands (*id.* at 459-461); and (ix) Plaintiffs' claims were timely under the continuous

representation doctrine (*id.* at 461). The Court further held that New York law applied to Plaintiffs' claims against PwC. *Id.* at 399-400. Although the Court deferred ruling on the *Morrison* issue, it was moot as to the PwC Defendants since the federal securities claims against them were dismissed. *Id.* at 405.

37. On July 27, 2011, the Court denied Defendants' motions to reargue *Anwar II* (800 F. Supp. 2d 571).

38. On August 6, 2012, the Court granted renewed motions by the PwC Defendants (and other Defendants) to dismiss all negligence-based claims made by initial investors in the Funds (884 F. Supp. 2d 92). The Court again sustained claims for negligence and negligent misrepresentation on behalf of shareholders or limited partners in the Funds as of December 10, 2008 who suffered a net loss of principal after making additional investments or holding their investments in the Funds subsequent to a date on which one of the PwC Defendants had issued an audit report on that Fund.

39. In May 2015, in response to a decision by the Second Circuit Court of Appeals in another Madoff feeder fund case concerning the application of SLUSA, *In re Kingate Management Ltd. Litig.*, 784 F.3d 128, the PwC and Citco Defendants filed renewed motions to dismiss Plaintiffs' remaining non-federal claims (Dkt Nos. 1383, 1386). Plaintiffs opposed that motion (Dkt No. 1387). On July 29, 2015, the Court dismissed Plaintiffs' claims of negligent misrepresentation against PwC on the basis of SLUSA and sustained Plaintiffs' claim of negligence. 2015 U.S. Dist. LEXIS 100773. Citco had withdrawn its motion when it agreed to settle.

40. As a result of the foregoing decisions, Plaintiffs' remaining claim for trial against the PwC Defendants was Count 13 for Negligence.

F. Plaintiffs' Motion for Class Certification

41. On January 11, 2012, the Representative Plaintiffs served a motion for class certification requesting the Court to certify the Action as a class action and to appoint them as class representatives (Dkt Nos. 775-78). That motion was accompanied by seven declarations of foreign law experts opining that various foreign jurisdictions were more likely than not to give full faith and credit to a U.S. class action judgment (Dkt Nos. 779-84).

42. Defendants, including PwC, sought extensive discovery in connection with the class certification motion, including from the proposed Representative Plaintiffs and additional non-class representative Named Plaintiffs who had joined the SCAC in an individual capacity.⁴

43. Plaintiffs opposed discovery of Named Plaintiffs other than the Representative Plaintiffs and the parties exchanged letter briefs before Magistrate Judge Theodore Katz concerning Defendants' entitlement to take discovery of the non-Representative Plaintiffs.

44. At a hearing on April 19, 2011, Judge Katz ordered that Defendants were limited to identifying 20 non-Class Named Plaintiffs to respond to paper discovery. Plaintiffs subsequently agreed to produce five of those 20 Named Plaintiffs for deposition. A total 18 depositions of Representative Plaintiffs and Named Plaintiffs were defended by Lead Counsel.

45. Following the extensive discovery on class certification issues, all defendants, including PwC, opposed the Motion for Class Certification, filing a joint brief in opposition, as well as separate opposition briefs and voluminous exhibits on January 13, 2012. *See* Dkt. Nos. 786, 787. Included in the opposition papers were affidavits submitted by 13 foreign law

⁴ Because it had been uncertain whether the Court would certify a class (or the composition of that class), and whether the statute of limitations would have run against investors if a class was not certified (or if those investors were not members of the certified class), Lead Counsel encouraged absent Class Members to join the action as non-representative Named Plaintiffs. As a result, an additional 300-plus Named Plaintiffs were joined in the Action. *See* Dkt Nos. 597, 600, 611, and 1169.

experts opining that certain foreign jurisdictions were not likely to give full faith and credit to a U.S. class action judgment.

46. In opposing class certification, Defendants, including PwC, repeated many of the same arguments as on the motion to dismiss, including that certain of Plaintiffs' claims were derivative and belonged to the Funds. In addition, PwC argued that investors were not "known parties" and that the other criteria of *Credit Alliance* had not been established on an individual or class-wide basis. Defendants further argued that individual issues of reliance precluded class certification.

47. On April 27, 2012, the Class Representatives filed reply submissions in further support of class certification (filed under seal). Defendants were permitted to file a Sur-Reply dated May 29, 2012 (filed under seal).

48. In a Decision and Order on February 25, 2013 (289 F.R.D. 105 ("*Anwar V*")), the Court certified a litigation class consisting of investors who had asserted claims against PwC and the other defendants as follows:

All shareholders/limited partners in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. as of December 10, 2008 who suffered a net loss of principal invested in the Funds.⁵

The Court also appointed Plaintiffs' Lead Counsel to serve as counsel for the Class.

49. On March 11, 2013, the PwC, Citco and GlobeOp Defendants filed petitions pursuant to Fed. R. Civ. P. 23(f) with the Second Circuit Court of Appeals seeking interlocutory review of *Anwar V*. Because the FG Defendants had agreed by that time to a settlement in principle, they did not appeal, and GlobeOp later withdrew its petition after

⁵ The class certification decision excluded from the litigation class investors from certain foreign countries.

agreeing to a settlement. The Second Circuit granted the Citco and PwC petitions pursuant to Rule 23(f) and the appeal proceeded.

50. On June 19, 2014, the Court of Appeals vacated this Court's class certification order and remanded for additional factual findings. 570 F. App'x 37 (2d Cir. 2014). On August 1, 2014, Plaintiffs renewed their class certification motion against the PwC and Citco Defendants (filed under seal). The Citco and PwC Defendants opposed that motion. In a decision on March 3, 2015, this Court made additional factual findings and further addressed legal issues, and again concluded that the class should be certified (306 F.R.D. 134 (“*Anwar VII*”)).

51. On March 16 and 17, 2015, the PwC and Citco Defendants again filed petitions pursuant to Fed. R. Civ. P. 23(f) with the Second Circuit seeking interlocutory review of *Anwar VII*. The Citco Defendants withdrew their petition when a settlement was reached of the claims against them in this Action.

52. The PwC Defendants' Rule 23(f) petition is being held in abeyance pending this Court's decision on approval of this Settlement (Order dated December 9, 2015; Second Circuit Dkt No. 15-792).

G. Merits Discovery

53. Following denial of the motions to dismiss in August 2010, the parties engaged in extensive merits discovery. Among other things, the parties exchanged their initial disclosures pursuant to Rule 26(a), and Plaintiffs served requests for the production of documents on the Defendants.

54. Plaintiffs engaged in extensive negotiations with defense counsel, including PwC's counsel, concerning the scope, timing and procedure for the production of documents, including the search terms to be used in conducting electronic discovery.

55. Defendants subsequently produced, and Plaintiffs' Counsel reviewed, more than nine million pages of documents produced by Defendants and non-parties. Plaintiffs' Lead Counsel reviewed and produced to defense counsel more than 75,000 pages of documents on behalf of the Representative Plaintiffs and other Named Plaintiffs.

56. Because of the volume of Defendants' document production, Plaintiffs' Counsel established an electronic database with an outside vendor that allowed Plaintiffs' Counsel to review, code, organize, search, and retrieve the documents electronically. Examination and analysis of the documents required a massive effort by teams of attorneys to review the millions of pages of documents, to analyze, code, and organize them, to identify the documents that proved Plaintiffs' allegations, to identify relevant witnesses, and to establish and execute procedures to identify and ascertain additional necessary information.

57. Through the completion of merits discovery in 2013, Plaintiffs conducted or participated in approximately eighty depositions of Defendants and third-party witnesses, including some 19 depositions of PwC witnesses.

58. Plaintiffs learned facts in discovery which they believe show that PwC had failed to exercise due care with respect to the audit of the Funds' financial statements and to comply with GAAS and ISA. Among other things, PwC failed to verify the accuracy of information provided to the Funds by Madoff and FG, failed to identify Madoff as a "service organization" under the accounting standards, and failed to make an assessment of Madoff's internal controls.

H. Expert Discovery

59. After the completion of merits discovery, Plaintiffs submitted reports from two expert witnesses on issues relating to the PwC Defendants' liability and an expert report on damages.⁶ Plaintiffs' primary liability accounting expert was Douglas Carmichael, who had served as the first Chief Auditor and Director of Professional Standards of the Public Company Accounting Oversight Board (PCAOB). Dr. Carmichael opined that because Madoff had exclusive control over the Funds' assets, and was the investment advisor, custodian, and broker-dealer for the Funds, Madoff was a "service organization" and that PwC was required by GAAS and ISA to conduct an analysis of Madoff's internal controls, which it failed to do. Dr. Carmichael also opined that PwC failed to conduct an adequate audit of the Funds' securities transactions and holdings.

60. Plaintiffs' liability experts (Dr. Carmichael, Anthony J. Leitner, and rebuttal experts including Dr. Steven Feinstein and Robert J. Lindquist) opined that the information that Madoff provided to PwC concerning the Funds' purported transactions and holdings was replete with errors and anomalies from which a diligent auditor would have suspected fraud. Plaintiffs' experts concluded that PwC's conduct fell far below industry standards.

61. PwC submitted reports from four experts on liability issues, and an expert on damages.⁷ PwC's experts opined generally that PwC had no duty to verify information provided by third parties (including Madoff) and that the financial information available to PwC did not implicate the accuracy of the Funds' financial statements. PwC's experts further

⁶ Plaintiffs' damages expert was Marianne DeMario.

⁷ The PwC Defendants' liability and damages experts were M. Laurentius Marais, Charles R. Lundelius, Jr., Richard P. Meyerowich, Steven R. Samson, and Robert H. Temkin.

opined that it was accepted industry practice for PwC to have relied on information provided to it by Madoff and the FG Defendants.

62. PwC's damage expert opined, among other things, that investors could not prove damages or causation on "holder claims" as a result of PwC's subsequent audits because investors' money had already been lost to Madoff's Ponzi scheme when it was paid to the Funds.

63. Plaintiffs, in response, submitted three rebuttal reports from their previously designated liability and damages expert witnesses, as well as two additional reports from new rebuttal experts. All of Plaintiffs' affirmative and rebuttal liability experts and their damages expert, and all five of PwC's liability and damages experts, were deposed as part of expert discovery. Plaintiffs and the Citco Defendants also exchanged expert reports on liability and damages issues and conducted depositions of each other's experts.

I. Summary Judgment and Trial

64. On April 22, 2015, the Court entered an Order that scheduled September 1, 2015 as the deadline for the parties to file summary judgment motions and set January 4, 2016 as the date for commencement of trial of the Action. Other dates were scheduled for filing of *Daubert* motions, motions *in limine*, and a Pre-Trial Order (Dkt Nos. 1368, 1406).

65. On October 1, 2015, the PwC Defendants moved for summary judgment dismissing the remaining negligence claim in the Action. By Order dated October 23, 2015 (Dkt No. 1430), the Court denied the PwC Defendants' motion for summary judgment on five issues and requested additional briefing on three issues: (1) whether Plaintiffs were "known parties" under *Credit Alliance*; (2) whether there was sufficient linking conduct between the

PwC Defendants and Plaintiffs under *Credit Alliance*; and (3) whether Plaintiffs could recover any damages for their holder claims.

66. Plaintiffs filed their opposition to the motion for summary judgment on those three issues (filed under seal), and the PwC Defendants filed a reply in further support of their motion (filed under seal). In addition, the PwC Defendants made *Daubert* motions to exclude the testimony of each of Plaintiffs' experts, Plaintiffs responded to those motions, and the PwC Defendants filed replies in further support of those motions. *See, e.g.*, Dkt Nos. 1481, 1482. Plaintiffs and the PwC Defendants also filed motions *in limine* to exclude or limit certain evidence at trial, and filed opposition papers to each other's respective motions. *See, e.g.*, Dkt Nos. 1437, 1438, 1466-72, 1474-80, 1484-1502. All of the foregoing motions were still pending when the Settling Parties agreed in principle to the Settlement. At that time, the Settling Parties had served or filed almost all of the pre-trial materials as well, including deposition designations, trial exhibits, contested and uncontested jury instructions and jury verdict forms.

II. SETTLEMENT NEGOTIATIONS, STIPULATION AND PRELIMINARY APPROVAL ORDER

A. Negotiations

67. At the suggestion of the Court, beginning in August 2012, Plaintiffs and the PwC Defendants engaged in extensive arm's-length settlement negotiations, including four separate full-day meetings and two half-day mediation sessions conducted over a three-year period. The parties were assisted in these efforts by Magistrate Judge Frank Maas and by Eric Green and retired U.S. District Judge Layn Phillips, all of whom are highly experienced mediators. In addition, counsel engaged in numerous direct communications and Judge Phillips

spoke repeatedly to the parties. Ultimately, Judge Phillips made a mediator's proposal that was accepted by the parties.

68. On November 25, 2015, the Settling Parties signed a term sheet agreeing to fully and finally settle the Action as against the PwC Defendants for \$55 million.

B. The Stipulation of Settlement and Preliminary Approval

69. On January 6, 2016, the Settling Parties filed the Stipulation of Settlement providing for the settlement of all claims asserted against PwC in this Action (Dkt No. 1533), and a letter request for preliminary approval of the Settlement. On January 7, 2016 the Court entered a Preliminary Approval Order providing for class notice and scheduled a hearing to consider final approval of the Settlement for May 6, 2016 (Dkt No. 1537).

70. The Preliminary Approval Order appointed Rust Consulting, Inc. as the Claims Administrator and directed the mailing of Notice and Proof of Claim forms, publication of Summary Notice in the international editions of *The Wall Street Journal* (excluding North America) and issuance of a press release globally (including North America) over *PR Newswire*.

71. The claims administrator mailed the Notice to over 5000 potential Settlement Class Members on January 22, 2016. The Summary Notice was published in the international editions of *The Wall Street Journal* on February 1 or 3, 2016 and over *PR Newswire* (worldwide) on February 1, 2016. The mailed Notice provided investors with detailed information with respect to the proposed PwC Settlement, and the request of Plaintiffs' Counsel for payment of fees and expenses. Among other things, Class Members were advised of the dates to request exclusion from the Class (April 1, 2016), to object to the proposed Settlement

or fee and expense requests (April 1, 2016) and to file a Proof of Claim (May 23, 2016). *See* accompanying Rabe Aff. at ¶¶ 15.

72. To date, there have been no objections filed to the proposed PwC Settlement. Requests for exclusion from the Class have been received from four Class Members with potential claims valued at \$713,968 of Net Losses. As directed by the Preliminary Approval Order, Lead Counsel will address any objections no later than April 22, 2016.

73. Lead Counsel anticipate that exclusion requests may be filed by several hundred members of a group that is pursuing litigation against PwC in The Netherlands. Members of the same group opted out of the Citco Settlement.

C. Terms of the Stipulation

74. Pursuant to the terms of the proposed Settlement, PwC paid \$55,000,000 into the PwC Settlement Fund on January 21, 2016. If the Settlement is approved, these funds, less Court-approved attorneys' fees and reimbursement of expenses, will be paid to the PwC Settlement Class pursuant to the Plan of Allocation.

75. In addition to amounts that they will receive under the PwC Settlement, eligible Settlement Class Members have or will receive distributions from the Citco, FG and GlobeOp settlements; investors in the Domestic Funds have received distributions from the bankruptcy proceedings for those funds; and investors in the off-shore Funds are likely to receive cash distributions from the liquidation of those funds, which is proceeding in the courts of the British Virgin Islands.

76. In addition, class members are eligible to receive additional recoveries from the Madoff Victim Fund. In December 2012, the U.S. Department of Justice appointed Richard C. Breeden to serve as Special Master in administering the distribution of approximately \$2.35

billion in forfeitures that had been obtained by the United States Attorney's Office for the Southern District of New York in cases related to the Madoff Ponzi scheme. On January 7, 2014 the U.S. Attorney announced an additional \$1.7 billion would be paid to the Madoff Victim Fund from the settlement of criminal charges against JPMorgan Chase Bank, N.A. relating to the bank's nearly 20 year period as banker for Madoff Securities.

77. According to information posted by the Madoff Victim Fund in a year-end 2015 update (www.madoffvictimfund.com), the maximum amount of eligible claims for the Madoff Victim Fund is estimated at \$58.8 billion, so that with current Fund assets of \$4.05 billion, the minimum proration would be approximately 6.9%.

78. The PwC Settlement provides for a court order barring any Person from asserting claims for contribution, indemnification or other similar claims against PwC and other Released Parties. In light of the release of these potential claims against PwC, the Stipulation provides, as is required by the PSLRA and New York law, that any judgment obtained against a non-settling party "shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the [PwC Defendants] under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Stipulation." *See* Stipulation, ¶20. Provisions of this nature are customary and were approved by this Court in entering the Final Judgments for the Citco, FG and GlobeOp settlements. *See* Dkt. Nos. 1097, 1232, 1398. In any event, since there are no remaining Defendants in the Action, the judgment reduction provision has no consequence to Class Members.

79. The Stipulation also contains provisions that are intended to ensure that the Settlement will have no effect on pending or potential derivative or direct claims prosecuted by or on behalf of the Funds against PwC. Paragraph 4 of the Stipulation provides that the PwC Defendants waive “all rights to seek recovery on claims for contribution or indemnity that they hold or may hold against the Funds or any party indemnified by the Funds, the FG Defendants, GlobeOp, and the Citco Defendants for any expenses incurred or amounts paid in settlement or otherwise in connection with the Action.” Paragraph 4 also states that it does not preclude the PwC Defendants from arguing that the settlement proceeds in this case are an offset against claims that may be made against them in other proceedings.

80. Paragraph 19 of the Stipulation further provides:

Nothing in this Stipulation, including ¶ 16 and ¶ 17, shall release, waive, bar or otherwise affect any claims asserted or which may be asserted by the Funds, Trustees or Liquidators for the Funds, or the Released Parties, in the proceedings entitled (i) *New Greenwich Litigation Trustee, LLC, as Successor Trustee of Greenwich Sentry, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk’s Index No. 600469/2009; (ii) *New Greenwich Litigation Trust, LLC, as Successor Trustee of Greenwich Sentry Partners, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk’s Index No. 600498/2009; (iii) *Krys et al. v. PricewaterhouseCoopers Accountants N.V. et al.*, Rb. Amsterdam HA ZA 2012/0863, Case No. 521460; and (iv) *Fairfield Sentry et al. v. PricewaterhouseCoopers LLP et al.*, Ontario Superior Court of Justice, Court File No. CV-12- 454648; provided, however, that to the extent that any such claims have been or may be asserted, nothing in this Stipulation shall prevent the Released Parties from asserting any defenses or raising any argument as to liability or damages with respect to such claims or, with the exception of the provisions of ¶ 4, prevent the Released Parties from asserting any rights, remedies or claims against the Funds, or Trustees or Liquidators for the Funds, or in the above-referenced litigations.

81. These provisions have been incorporated into the proposed Final Judgment and Order of Dismissal (Dkt No. 1533-5 at ¶¶ 16 and 19). Nearly identical provisions were approved by the Court in entering the Final Judgment relating to the Citco Settlement. Dkt No. 1347, ¶¶ 16 and 19.

82. By letter dated January 25, 2016, the New Greenwich Litigation Trustee, LLC, as Successor Trustee of the Greenwich Sentry and Greenwich Sentry Partners Litigation Trusts (“Trustee”), requested a pre-motion conference regarding the Trustee’s proposed motion to intervene for purposes of objecting to the proposed PwC Settlement. Dkt No. 1541. The Trustee (i) objected to Paragraph 19, claiming that it prejudiced the Trustee’s rights in pending litigation against PwC, and (ii) argued that the Settlement was unenforceable as attorneys for PwC International did not sign the agreement. The Court requested responses and Plaintiffs and the PwC Defendants submitted letters in opposition to the Trustee’s application. Dkt Nos. 1542 and 1543. By Decision and Order dated February 2, 2016, the Court denied the Trustee’s application, holding that (i) “[t]he Court previously found that the same language used in Paragraph 19 of the Proposed Order in no way prevents the Trustee from asserting the claims or defenses available to it” (Dkt No. 1547 at 6-7), and that (ii) “PwC International has agreed to be bound by the Proposed PwC Settlement” (*Id.* at 7). By Order dated February 16, 2016, the Court denied the Trustee’s motion for reconsideration of the February 2, 2016 Order (Dkt No. 1551).

D. PwC’s Right to Terminate the Settlement

83. Under the Stipulation, PwC Settlement Class Members may request exclusion from the Settlement on or before April 1, 2016.

84. The Stipulation provides for a customary “blow” provision that allows PwC to terminate the Settlement in the event that aggregate Net Losses of Settlement Class Members who request exclusion exceed a certain threshold, since PwC did not want to settle Plaintiffs’ claims for substantial consideration and still be subject to continuing litigation by investors with substantial losses who may opt-out of the Settlement Class.

E. Plaintiffs' Percentage Recovery from the Settlement

85. In connection with the FG Settlement, some 2,960 Settlement Class Members filed allowed claims that aggregated to \$3,265,638,105 of Net Losses. With respect to the Citco Settlement, the Settlement Administrator is currently reviewing and processing claims. PwC Settlement Class Members can elect to utilize the information that they submitted on FG, GlobeOp or Citco Claim Forms to participate in the PwC Settlement, as long as they confirm its accuracy and sign the PwC Release. In the event that the combined Net Losses for all allowed claims in the PwC Settlement are the same as the total Net Losses in the Citco Settlement, the proration, prior to payment of attorneys' fees or expenses, would be approximately 1.68%.

86. Any amounts received by Settlement Class Members from the FG Settlement Escrow Fund, and from liquidation and bankruptcy proceedings concerning the Funds, as well as distributions from the Madoff Victim Fund, would be in addition to the foregoing amounts from the PwC Settlement and the other settlements in this Action.

III. REASONS FOR THE SETTLEMENT

87. All seven Plaintiffs and all of Plaintiffs' Lead Counsel, who have extensive experience in securities and complex shareholder class-action litigation, believe that the Settlement is fair, reasonable and adequate. Among other factors, the Settlement provides the Settlement Class with real and certain benefits now and eliminates the significant risk of obtaining no recovery after still more years of uncertain litigation, including disposition of class certification appeals, a hotly contested trial, likely appeals and potential difficulties of collecting a judgement. *See, e.g.*, ¶¶ 6-12, *supra*.

88. Cornerstone Research, a well-known firm that studies securities class actions, in its Securities Class Action Settlements 2014 Review and Analysis,⁸ estimated that median settlements as a percentage of “estimated damages” for 2014 was 2.2% and ranged for 2005 through 2014 between a high of 3.1% to a low of 1.8%. *Id.* at 8. Cornerstone also concluded that cases with larger “estimated damages” statistically settle for a lower percentage of “estimated damages,” and that from 2005-14, the median settlement percentage in cases with estimated damages of between \$1 billion and \$4.999 billion was 1.1%. *Id.* at 9. The Cornerstone data only takes into account settlements, and does not consider the large number of cases that are dismissed with no recoveries for the plaintiff class. The settlement amounts used by Cornerstone in its studies are amounts prior to deduction of attorneys’ fees and expenses.

89. Here, excluding the \$5 million GlobeOp settlement which related only to the Domestic Funds, recoveries from the FG Settlement (\$50.25 million, excluding \$30 million held in escrow), the Citco settlement (\$125 million), and the PwC Settlement, total approximately 7.0% of the \$3,265,638,105 in claims that were approved in the FG Settlement. This is in addition to actual and anticipated recoveries in bankruptcy and liquidation proceedings and the Madoff Victim Fund. Thus, notwithstanding all of the challenges and complexities of this Action, Plaintiffs have achieved a recovery that is about five times the median recovery in other actions with estimated damages in a comparable range.

90. In almost all instances, claims against auditors for negligence or fraud relating to audits of a Madoff feeder fund have been dismissed, or tried or arbitrated to a defendants’

⁸ Available at <http://securities.stanford.edu/research-reports/1996-2014/Settlements-Through-12-2014.pdf>.

judgment. *See* accompanying Memorandum in Support of Proposed PwC Class Action Settlement at 16-17.

91. Plaintiffs also considered that the proposed PwC Settlement was fair, reasonable and adequate to the Settlement Class in light of the \$125 million Citco Settlement. Against Citco, Plaintiffs had been able to maintain federal securities fraud claims, as well as multiple state law claims, whereas the only remaining claim against PwC was for common law negligence. Moreover, discovery established that Citco had failed to act despite its serious suspicions that Madoff was engaging in improper conduct. Discovery from the PwC Defendants did not reveal similarly strong evidence.

92. For these, and a variety of other reasons, Plaintiffs' Lead Counsel determined, based on their assessment of the legal, factual and practical risks of continuing the Action against PwC, proving their claims at trial, sustaining a judgment on appeal and actually collecting damages from the PwC Defendants, that the proposed settlement is in the best interests of the Settlement Class.

IV. THE PLAN OF ALLOCATION

93. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement entered by this Court on January 7, 2016 (Dkt No. 1537), and as set forth in the Notice of Proposed Partial Settlement of Class Action and Settlement Fairness Hearing (Rabe Aff., Exh. A at 8), all Class Members who wish to participate in the distribution of the PwC Settlement Fund must submit a valid Proof of Claim form so that it is received by the Claims Administrator no later than May 23, 2016.

94. Under the Plan of Allocation, the Net Loss for each Settlement Class Member who submits a valid Proof of Claim is the Net Loss of principal with respect to each Fund. Net

Loss is defined in the Plan of Allocation as “the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Beneficial Owner from or with respect to the same Fund.” If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class Members who submit timely, valid Proof of Claim forms.

95. Each investor’s Net Loss approximates the aggregate of damages that would have been presented at trial of the investor’s “investor claims” based on new investments, and “holder claims” based on existing investments that were retained, in both instances subsequent to receipt of PwC’s audit reports.

96. Each Settlement Class Member will receive as their share of the Net Settlement Fund the percentage amount derived from dividing such member’s Net Loss by the aggregate Net Loss of all Settlement Class Members.

97. The terms of the Plan of Allocation are the same as those approved in connection with the FG and Citco settlements. Lead Counsel submit that the Plan of Allocation is fair, reasonable, and adequate and should be approved by the Court.

V. LEAD COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE

A. Request for Attorneys’ Fees and Reimbursement of Expenses

98. The Class Notice informed Settlement Class Members that Plaintiffs’ Lead Counsel would ask the Court to approve payment from the Settlement Fund of attorneys’ fees of up to 30% of the Settlement Fund and for reimbursement of expenses that were advanced by Plaintiffs’ Counsel not to exceed \$2,500,000. To date, Plaintiffs have received no objections to the fee and expense request.

99. The attorneys' fees and expenses requested represent payment to Plaintiffs' Lead Counsel and other counsel involved in the Action for their efforts in achieving this Settlement and the risk in undertaking this representation on a wholly contingent basis. Since the case began in 2008, Plaintiffs' Counsel have undertaken enormous work necessary to prepare the case against PwC for trial.

100. Because the legal and factual issues with respect to Plaintiffs' claims were litigated in a single consolidated action, Plaintiffs' Counsel did not keep separate time records by defendant. Lead Counsel believe, however, that a very substantial part of the work expended on the Action since its inception contributed to the resolution of the claims against PwC, and that most of the work on the case could not feasibly be separately allocated to the claims against a particular defendant. 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 including the claims against PwC; (ii) prepared initial complaints, the Consolidated Amended Complaint, and the subsequent SCAC; (iii) overcame PwC's motions to dismiss the SCAC as to the negligence claim; (iv) served and responded to discovery demands, including third-party subpoenas; (v) conducted discovery and review of millions of documents produced by Defendants; (vi) responded to detailed interrogatories served on the Representative Plaintiffs and some 20 additional Named Plaintiffs, (vii) conducted approximately 80 depositions of persons affiliated with Defendants and non-party witnesses, including some 19 depositions of PwC witnesses, and defended 18 depositions of Representative and other Named Plaintiffs; (viii) twice successfully litigated the class certification motion; (ix) briefed three motions by Defendants to reargue 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 discovery; (x) prepared letter-briefs and argued to Magistrate Judges Katz and Maas multiple discovery disputes; (xi) retained and consulted with experts on auditing, option agreements, and damages, and assisted in the preparation of expert reports, as well as analyzing Defendants' expert reports and conducting and defending extensive expert depositions; (xii) responded to PwC's motion for summary judgment; (xiii) prepared for trial, including designating hundreds of exhibits and filing and responding to numerous motions *in limine* and proposed jury instructions; (xiv) successfully negotiated the settlement with PwC and (xv) otherwise vigorously represented the interests of putative class members in this extraordinarily complex dispute.

101. Accompanying this Joint Declaration as Exhibits A through C are lodestar and expense charts for Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP, respectively, through February 29, 2016. We individually attest to the accuracy of our respective law firm's records, which were maintained contemporaneously as work was being performed and expenses incurred. These charts provide the lodestar of the respective firm at its standard hourly rates at the time this application is being made or for 2015 for Boies Schiller & Flexner LLP. The hours and lodestar of Lead Counsel, in the aggregate, equal 114,299.4 hours and \$74,876,260. *See* Exhibit D.

102. Lead Counsel have also reviewed affidavits and the lodestar and expense charts of the three other Plaintiffs' Counsel, who recorded over 7,800 hours comprising a lodestar in excess of \$3.9 million for work through July 31, 2012. Those separate affidavits will be submitted if requested by the Court.

103. The \$16.5 million fee request, combined with the prior fees awarded by this Court, is less than 87 percent of Plaintiffs' Counsel's combined lodestar of \$78,776,260.

104. The fee application for 30% of the \$55,000,000 PwC Settlement Fund is well within the range of fees awarded in these types of actions and is entirely justified in light of the substantial benefits conferred on the Class, the exceptional risks undertaken, the quality of representation, and the nature and extent of legal services performed.

105. Lead Counsel also are requesting reimbursement of \$1,803,816 in unreimbursed expenses relating to the prosecution and settlement of this Action. *See* Exhibits A-D. These expenses consist primarily of expert fees, mediation costs and expenses relating to the PwC claims.

106. Plaintiffs' Counsel made every reasonable attempt to allocate the work among them, working closely to avoid duplication of effort and to ensure efficient prosecution. They also worked to limit expenses.

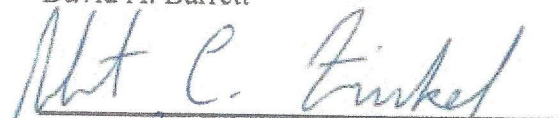
VI. CONCLUSION

107. Lead Counsel believe that this is an excellent settlement taking into consideration all of the circumstances. We respectfully request the Court to approve the PwC Settlement as fair, reasonable, and adequate to the PwC Settlement Class and approve the requested attorneys' fees and expenses.

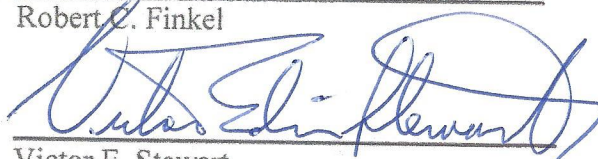
Dated: March 17, 2016



David A. Barrett



Robert C. Finkel



Victor E. Stewart