UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CITIGROUP INC. BOND LITIGATION	Master File No. 08 Civ. 9522 (SHS) ECF Case

MEMORANDUM OF LAW IN SUPPORT OF BOND PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Bond Plaintiffs, Louisiana Sheriffs' Pension and Relief Fund, Arkansas Teacher Retirement System, City of Tallahassee Retirement System, City of Philadelphia Board of Pensions and Retirement, Miami Beach Employees' Retirement Plan, Southeastern Pennsylvania Transportation Authority, American European Insurance Company, Phillip G. Ruffin and James M. Brown (collectively, "Bond Plaintiffs"),[1] on behalf of the themselves and the Bond Class,[2] submit this memorandum in support of final approval of the proposed Settlement of the above-captioned action (the "Action" or the "Bond Action") and approval of the proposed Plan of Allocation.

I. PRELIMINARY STATEMENT

Bond Plaintiffs have agreed, subject to Court approval, to settle all claims asserted in the Bond Action in exchange for a cash payment of $730 million (the "Settlement Amount") from Citigroup, Inc. ("Citigroup") which has been deposited in an interest-bearing escrow account. Bond Plaintiffs respectfully submit that the proposed Settlement represents an outstanding result for the Bond Class and easily satisfies the standards for final approval under Rule 23 of the Federal Rules

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[1] Unless otherwise indicated, capitalized terms shall have those meanings contained in the Stipulation and Agreement of Settlement dated March 18, 2013 (the "Stipulation") (ECF No. 153-1) or the Singer Declaration as defined herein.

[2] The class certified for settlement purposes by the Court in its Preliminary Approval Order dated March 25, 2013 (ECF No. 155) consists of:

> all persons and entities who purchased or otherwise acquired, from May 11, 2006 through and including November 28, 2008 (the "Settlement Class Period"), the debt securities (including certain medium term notes), series of preferred stock and certain series of depository shares representing interests in preferred stock, in or traceable to offerings of the Bond Class Securities, and were damaged thereby (the "Bond Class").

Excluded from the Bond Class are Defendants, the Tolled Underwriter Defendants, the respective affiliates of the Defendants and the Tolled Underwriter Defendants, persons who served as Officers or Directors of any of the Defendants or the Tolled Underwriter Defendants at any time during the Settlement Class Period, members of their Immediate Families and their legal representatives, heirs, successors or assigns, trustees of the Citigroup Trusts, and any entity in which any Defendant or Tolled Underwriter Defendant has or had a controlling interest, *provided, however*, that any Investment Vehicle shall not be excluded from the Bond Class. Also excluded from the Bond Class are any Persons who exclude themselves by submitting a request for exclusion that is accepted by the Court.

of Civil Procedure. Indeed, the proposed Settlement is the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities, as well as one of the three largest securities class action recoveries in a case that does not involve a financial restatement, and ranks among the fifteen largest recoveries in securities class action history. Moreover, the Settlement Amount – $730 million – represents a substantial percentage of likely recoverable damages as estimated by Bond Plaintiffs' expert, which is a tremendous recovery given the many risks inherent in this litigation.

As detailed in the Declaration of Steven B. Singer in Support of: (I) Bond Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Bond Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Singer Declaration" or the "Singer Decl."), at the time the agreement to settle was reached, Bond Plaintiffs and Bond Plaintiffs' Counsel had extensively litigated the Action and had a thorough understanding of the strengths and weaknesses of the Bond Plaintiffs' claims and Defendants' defenses.[3]

Over the course of four-and-a-half years of intense litigation, Bond Plaintiffs, through Bond Plaintiffs' Counsel, undertook significant efforts to identify, preserve and vigorously prosecute the claims of Bond Class Members. As more fully described in the Singer Declaration at paragraphs 8 to 102, before the Settlement was reached, Bond Plaintiffs' Counsel (i) identified potentially valuable Securities Act claims possessed by purchasers of Citigroup's bonds and preferred securities that had not been asserted by any other plaintiff (Singer Decl. ¶¶8-10); (ii) took action to preserve these claims for the benefit of Bond Class Members by filing two class action complaints in September and October 2008 just weeks before the statute of limitations on certain of those

[3] The Singer Declaration, submitted concurrently with this motion, is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to the Singer Declaration for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted in the Action; the negotiations leading to the Settlement; the value of the Settlement to the Bond Class, as compared to the risks and uncertainties of continued litigation; the terms of the Plan of Allocation for the Settlement proceeds; and a description of the services Bond Plaintiffs' Counsel provided for the Bond Class.

claims was likely to expire (*id.* ¶¶4, 9-11); (iii) drafted and filed a detailed amended complaint (*id.* ¶¶13-26); (iv) successfully opposed Defendants' voluminous motions to dismiss and related motion for reconsideration (*id.* ¶¶27-33); (v) served extensive document requests on Defendants and subpoenas on multiple non-parties in order to obtain approximately 42.5 million pages of documents relevant to Bond Plaintiffs' claims (*id.* ¶¶35-42); (vi) developed an efficient and effective process for reviewing and analyzing the documents obtained from Defendants and non-parties (*id.* ¶¶49-57); (vii) filed a motion to compel the production of documents being withheld by Citigroup pursuant to a bank examination privilege, which was opposed by Citigroup, the Federal Reserve, the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (*id.* ¶¶65-74); (viii) engaged in vigorously-contested class certification discovery, pursuant to which Bond Plaintiffs' Counsel produced tens of thousands of pages of documents on behalf of Bond Plaintiffs and defended the depositions of 23 representatives from Bond Plaintiffs and their outside investment managers (*id.* ¶¶61-64); (ix) fully briefed a highly-disputed motion for class certification, which involved approximately 400 pages of briefing, exhibits and supplemental letters submitted to the Court (*id.* ¶¶75-80); (x) deposed 53 fact witnesses from Defendants and non-parties, including some of Citigroup's most senior current and former officers, such as Citigroup's former Chief Executive Officer, Chuck Prince (*id.* ¶¶87-91); (xi) served numerous interrogatories and requests for admission on Defendants (*id.* ¶¶58-60), and (xii) consulted extensively with experienced and well-regarded experts on numerous issues relating to Bond Plaintiffs' claims, including the valuation of complex financial instruments like collateralized debt obligations ("CDOs") and structured investment vehicles ("SIVs"), the process for determining appropriate levels of loan loss reserves, and the calculation of capital adequacy ratios (*id.* ¶¶92-102).

Moreover, the Settlement was reached only after prolonged, arm's-length settlement discussions, including discussions facilitated by former United States District Judge Layn Phillips. As the Court is aware, Judge Phillips is an experienced and highly-respected mediator who is fully familiar with the facts of this Action and who served as the mediator in *In re Citigroup, Inc., Securities Litigation*, No. 07 Civ. 9901 (SHS) (the "Stock Action"). Singer Decl. ¶¶4, 104-105. During the negotiations overseen by Judge Phillips, the Parties exchanged detailed submissions on numerous issues relating to liability and damages, and benefited from hearing Judge Phillips' candid assessments of their respective positions. *Id.* ¶¶103-107. In short, the Settlement was reached only after Bond Plaintiffs had engaged in extensive and contested discovery, including taking the depositions of very senior fact witnesses, and following arm's-length settlement negotiations conducted between highly-experienced counsel and overseen by a well-regarded mediator. Thus, there is a strong presumption that the Settlement should be approved. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (presumption of fairness applies where "the settlement resulted from arm's-length negotiations and . . . plaintiffs' counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests").

The Settlement is a particularly exceptional result when considered in light of the significant risks in this Action. As set forth in detail in the Singer Declaration, this was an extremely large, complex, and challenging case that involved alleged misstatements in connection with 48 distinct Offerings and 39 separate securities issued over a two-and-one-half year period. *See* Singer Decl. ¶¶4, 16, 36, 132-134. Bond Plaintiffs alleged that Defendants made material misrepresentations and omissions concerning a multitude of topics, including Citigroup's exposure to subprime-related CDOs, Citigroup's valuation of CDOs and SIVs that were backed by tens of billions of dollars of mortgage-related assets, understatements of loan loss reserves for Citigroup's $200 billion mortgage

portfolio, and Citigroup's capital adequacy. *See id*. ¶¶16-26. Significantly, the vast majority of these claims were not the subject of any other private or regulatory action against Citigroup.

Defendants asserted formidable defenses to each of Bond Plaintiffs' claims and there was a substantial risk that the Bond Class would be unable to establish either liability or damages. For example, Bond Plaintiffs faced the risk that the Court or a jury could find that Defendants did not make any material misrepresentations or omissions in any of the Registration Statements at issue. As Defendants contended, Citigroup never restated its financial statements, and its independent auditors from KPMG repeatedly certified the accuracy of Citigroup's publicly reported financial results during the relevant time period. Citigroup also repeatedly warned in its SEC filings that its statements regarding loan loss reserves and asset valuation were opinions that were based on inherently subjective judgments. Moreover, the Second Circuit's opinion in *Fait v. Regions Financial Corp*., 655 F.3d 105 (2d Cir. 2011), which was issued while discovery was proceeding, greatly increased the risk that Bond Plaintiffs would be unable to establish liability. In *Fait,* the Second Circuit held that Securities Act claims premised on misstatements of "opinion" – as the vast majority of Bond Plaintiffs' claims in this case were – require a plaintiff to prove that defendants "misstated [their] truly held belief" – a standard that essentially requires proof of intentional deception. Thus, there was a significant risk that the Court or a jury could conclude that, even if Defendants made material misstatements, they did not do so with the level of intent required by *Fait*. *See* Singer Decl. ¶¶112-113, 116, 119, 122, 126 and Section II.B.3 below.

Finally, even if Bond Plaintiffs were successful in establishing liability, they faced significant risks in establishing damages. For example, as described in more detail in the Singer Declaration at paragraphs 131 to 138 and below in Section II.B.3, the major declines in the prices of the Bond Class Securities at issue in the Action occurred in September and October 2008, at a time when the financial markets were experiencing historic disruptions. Defendants would have argued,

among other things, that the declines in the prices of Citigroup's securities at this time were not caused by any misstatements and omissions in Offering Materials that had been issued months – or years – earlier, but rather by the disclosure of significant negative news about companies other than Citigroup. Accordingly, Bond Plaintiffs faced substantial risks in proving that the Bond Class suffered significant, or any, recoverable damages, even if Bond Plaintiffs were successful in establishing liability. *See* Singer Decl. ¶¶131-138 and Section II.B.3 below.

The proposed Settlement, if approved, will enable the Bond Class to recover a very substantial sum without incurring the significant risk that Defendants would prevail at summary judgment, trial, or in subsequent appeals on their numerous defenses to liability and damages. Bond Plaintiffs, the majority of which are sophisticated institutional investors of the type favored by Congress when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA"), have closely monitored and participated in this litigation from the outset, participated in the settlement negotiations, and recommend that the Settlement be approved. Further, Bond Counsel, who has extensive experience in prosecuting securities class actions, strongly believes that the Settlement is in the best interests of the Bond Class. Singer Decl. ¶¶3, 7, 140.

On March 25, 2013, the Court granted preliminary approval to the Settlement and entered the Preliminary Approval Order (ECF No. 155). In accordance with the Preliminary Approval Order, beginning on April 23, 2013, the Court-authorized claims administrator, The Garden City Group, Inc. (the "Claims Administrator" or "GCG"), began its notice campaign, and as of June 6, 2013, GCG has disseminated over 417,000 copies of the Notice and Proof of Claim Form (together, the "Notice Packet") to potential Bond Class Members and nominees.[4] Singer Decl. ¶ 143. As ordered by the Court and stated in the Notice, any objections to the Settlement, the Plan of

[4] *See* Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Notice and Proof of Claim; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Cirami Aff."), ¶¶3-7, attached as Exhibit 1 to the Singer Declaration.

Allocation and/or the request for attorneys' fees and reimbursement of litigation expenses, and any request for exclusion from the Bond Class, are due to be received no later than June 27, 2013. To date, Bond Counsel has not received any objections to the Settlement or the proposed Plan of Allocation. Singer Decl. ¶146, 154. In addition, to date, the Claims Administrator has received only 8 requests for exclusion from the Bond Class. Cirami Aff. ¶11.

Bond Plaintiffs respectfully submit that both the Settlement and the Plan of Allocation are fair, reasonable and adequate and should be approved.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval. The Settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). As a matter of public policy, courts favor the settlement of disputed claims, particularly in complex class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("*Visa*") ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'") (citation omitted).

In ruling on final approval of class settlements, courts examine both the negotiating process leading to the settlement, and the settlement's substantive terms. *See Visa*, 396 F.3d at 116; *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 188 (S.D.N.Y. 2012); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. Nov. 2, 2011). The Court may presume that a settlement negotiated at arm's-length by experienced counsel is fair and reasonable.[5]

A. The Settlement Negotiations Demonstrate Procedural Fairness

The Parties here negotiated the Settlement at arm's-length under the auspices of former U.S.

[5] *See IMAX,* 283 F.R.D. at 189; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("A proposed class action settlement enjoys a strong presumption that it is fair, reasonable and adequate if, as is the case here, it was the product of arm's-length negotiations conducted by capable counsel, well-experienced in class action litigation arising under the federal securities laws.") (citation omitted).

District Judge Layn Phillips, *see* Singer Decl. ¶¶103-107, which provides strong indicia that the Settlement is fair and reasonable.[6] The negotiation process was long and arduous. In 2012, while the parties were engaged in full-scale discovery, they began discussing a potential resolution of the Bond Action. With the knowledge and involvement of the Bond Plaintiffs, the Parties engaged in numerous discussions, and exchanged information regarding liability and damages, including arranging for direct conversations between the Parties' respective damages experts. The Parties ultimately agreed to engage Judge Phillips as a mediator and thereafter made multiple submissions to him regarding their respective views on liability and damages. As part of these submissions, Judge Phillips was provided with, among other things, relevant briefing and submissions to the Court, the Court's opinion on Defendants' motions to dismiss, certain of the evidence uncovered during discovery, and preliminary damages analysis. Singer Decl. ¶105.

Ultimately, Judge Phillips made a mediator's recommendation to settle the Action for a payment of $730 million by Citigroup, which the Parties accepted in late January 2013. *Id.* All of the Bond Plaintiffs approved the decision to enter into settlement negotiations with Defendants, were kept informed of the Parties' progress throughout these negotiations, and approved the decision to settle the Action and enter into the Settlement with Defendants. *See* Singer Decl. Exs. 2-9.[7]

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[6] *See Giant Interactive*, 279 F.R.D. at 160 (approving settlement and finding it was entitled to a presumption of fairness where the "settlement was the product of prolonged, arms-length negotiation" facilitated by Judge Phillips, "a respected mediator"). *See also In re Bear Stearns Cos. Sec. Litig.*, No. 08 MDL 1963, 2012 WL 5465381, at *3 (S.D.N.Y. Nov. 9, 2012) (approving settlement where parties "engaged in extensive arm's length negotiations, which included multiple sessions mediated by retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases").

[7] *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004); *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 02 Civ. 5575 (SWK), 2006 WL 903236, at *7 (S.D.N.Y. Apr. 6, 2006) ("Courts in this District have also commented on the procedural safeguards inherent in cases subject to the PSLRA, wherein the lawyers are not 'mere entrepreneurs acting on behalf of purely nominal plaintiffs'"); *Veeco*, 2007 WL 4115809, at *5 ("Moreover, under the PSLRA, a settlement reached ... under the supervision and with the endorsement of a sophisticated institutional investor ... is 'entitled to an even

Bond Counsel which negotiated the Settlement on behalf of the Bond Class has extensive experience prosecuting complex securities class action litigation. There is no question that in this Action, Bond Counsel − equipped with knowledge from over four-and-one-half years of intense litigation efforts (*see* Singer Decl. ¶¶4, 8-102) – was fully informed regarding the strengths and weaknesses of Bond Plaintiffs' claims by the time the Settlement was reached. Singer Decl. ¶¶13-15, 30, 35-60, 65-74, 87-102. Bond Counsel did not recommend settlement to Bond Plaintiffs until Bond Counsel believed that the best recovery achievable in settlement had been obtained. The opinion of Bond Counsel is entitled to "great weight." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (Courts have consistently given "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."); *accord Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992). This is particularly true here given that the proposed Settlement was also the recommendation of a highly experienced and well-regarded mediator.

B. <u>Application of the *Grinnell* Factors Supports Approval of the Settlement</u>

An analysis of the *Grinnell* factors, which the Second Circuit has held are to be considered when determining if a settlement is fair, reasonable and adequate, demonstrates that the Court should grant final approval. These factors include the following:

> (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.

greater presumption of reasonableness .... Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.'") (citation omitted).

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted); *see also D'Amato*, 236 F.3d at 86.

"In finding that a settlement is fair, not every factor must weigh in favor of settlement, 'rather the court should consider the totality of these factors in light of the particular circumstances.'" *Global Crossing*, 225 F.R.D. at 456 (citation omitted). Additionally, in deciding whether to approve a settlement, a court "should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another." *White v. First Am. Registry, Inc.*, No. 04 Civ. 1611, 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007).

Here, the Settlement easily satisfies the criteria for approval articulated by the Second Circuit in *Grinnell*.

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

"[I]n evaluating the settlement of a securities class action, federal courts, including this Court, 'have long recognized that such litigation is notably difficult and notoriously uncertain.'" *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (citation omitted). Indeed, courts recognize that "[s]ecurities class actions are generally complex and expensive to prosecute," *In re Gilat Satellite Networks, Ltd.*, No. 02-cv-1510, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007).[8] Accordingly, "[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the

[8] *See also Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (class actions "are notoriously complex, protracted, and bitterly fought"); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) ("[I]n evaluating the settlement of a securities class action, federal courts, ... 'have long recognized that such litigation 'is notably difficult and notoriously uncertain."') (citation omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("Settlement at this juncture results in a substantial and tangible present recovery, without the attendant risk and delay of trial.").

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); *see also Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D 688, 698 (M.D. Fla. 2005) (noting the "overriding public interest in favor of settlement" because it is "common knowledge that class action suits have a well-deserved reputation as being most complex").

This litigation was extraordinarily complex and presented numerous difficult issues. As noted, Bond Plaintiffs alleged that Defendants made a multitude of misstatements in the Offering Materials for 39 different securities issued through 48 separate Offerings over a two-and-one-half year time period. Bond Plaintiffs' claims raised a host of challenging factual and legal issues that were vigorously litigated over more than four-and-one-half years. The complex issues and obstacles confronted by Bond Plaintiffs, detailed more fully at paragraphs 111 to 140 of the Singer Declaration, included establishing that Defendants made materially false statements regarding numerous inherently subjective topics such as: valuation of Citigroup's CDOs and SIVs; understatements of loan loss reserves; violations of GAAP; and capital adequacy. These topics required Bond Plaintiffs to analyze a mammoth volume of factual evidence and develop extensive knowledge regarding sophisticated financial concepts and extremely complex financial instruments such as CDOs and SIVs. In addition to the work performed by Bond Plaintiffs' Counsel to develop an extensive factual record on these matters, Bond Plaintiffs retained six experts on issues relating to damages, accounting, CDO and SIV valuation, due diligence, Citigroup's capitalization and capital adequacy ratios, and federal banking regulations. Singer Decl. ¶¶92-102.

If not for the Settlement, Bond Plaintiffs' claims would have continued to be vigorously contested by Defendants, who have demonstrated a commitment to defend through and beyond trial and are represented by well-respected and highly capable counsel. The Settlement avoids the considerable delay and expense of, among other things, summary judgment motions, *Daubert*

motions, motions *in limine* and an obviously lengthy and complicated trial. Moreover, any recovery that the Bond Class may have been able to recover at trial would likely be delayed for years through the inevitable post-trial motions and the appellate process, before Bond Class Members saw any recovery, if at all. *In re Sony SXRD Rear Projection Television Class Action Litig.*, No 06 Civ. 5173 (RPP), 2008 WL 1956267, at *6 (S.D.N.Y. May 1, 2008) ("the complexity, expense and likely duration of the litigation going forward weigh in favor of approval of the Settlement. . . . Not only would Plaintiffs spend substantial sums in litigating this case through trial and appeals, it could be years before class members saw any recovery, if at all"); *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.").

The proposed $730 million Settlement provides an outstanding and certain recovery, without the further expense, delay and risk of a smaller recovery or potentially no recovery for the Bond Class presented by continued litigation. In sum, the complexity, expense and delay of continued litigation would be substantial. Accordingly, this factor favors approval of the Settlement.

2. The Advanced Stage of the Proceedings Supports Approval of the Settlement

This factor examines whether the plaintiff had a sufficient amount of information available about the claims and defenses to ensure that plaintiffs were able to properly evaluate the case and assess the adequacy of the settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1983); *Chatelain*, 805 F. Supp. at 213-14; *Global Crossing*, 225 F.R.D. at 458 (this requirement "is intended to assure the Court 'that counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them'") (citation omitted). There is no question that this Action had reached the point where Bond Plaintiffs had a thorough understanding of the strengths

and weaknesses of their claims and of Defendants' defenses and could make intelligent, informed appraisals of their chances of success had this Action continued to be litigated.[9]

As noted, Bond Counsel negotiated the Settlement after more than four years of vigorous litigation, which included filing complaints to preserve certain Securities Act claims shortly before the statute of limitations expired, researching and investigating the Bond Class's claims, preparing a detailed amended consolidated complaint, successfully overcoming Defendants' motions to dismiss and related motion for reconsideration, briefing a motion for class certification and conducting extensive class certification discovery that included the production of tens of thousands of documents and defending 23 depositions, filing a hotly-contested motion to compel documents being withheld on the basis of a bank examination privilege, obtaining and reviewing more than 42.5 million pages of documents necessary to develop evidence to support Bond Plaintiffs' claims and refute Defendants' many asserted defenses on liability and damages, defeating Defendants' effort to bring a Rule 12(c) motion for judgment on the pleadings based on *Fait,* conducting extensive merits discovery, and conducting significant work with various experts and consultants.

Indeed, at the time the Settlement was reached, only weeks remained in the fact discovery period, document discovery was essentially complete, and only a handful of depositions remained to be taken. Moreover, under the pre-trial schedule in place at that time, expert reports were due to be filed in just a few weeks, and therefore Bond Plaintiffs' Counsel had done extensive work with multiple experts to prepare draft expert reports on topics such as CDO valuation, loan loss reserves, capital adequacy, federal banking regulations, and damages. Singer Decl. at ¶¶95-102, 189.

Accordingly, based on the stage of the litigation and the amount of information obtained over four and one-half years of litigation, Bond Plaintiffs and Bond Plaintiffs' Counsel respectfully

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[9] *In re Excess Value Ins. Coverage Litig.*, No. M-21-84RMB, 2004 WL 1724980, at *12 (S.D.N.Y. July 30, 2004) ("The investigation, discovery, and motion practice conducted to date provide Plaintiffs with 'sufficient information to make an informed judgment on the reasonableness of the settlement proposal.'") (citation omitted).

submit that they had sufficient information to negotiate the terms of the Settlement, and this factor strongly supports the Court's approval of the Settlement.

3. The Risks of Establishing Liability and Damages Support Approval of the Settlement

In assessing this factor, the Court is not required to "decide the merits of the case or resolve unsettled legal questions," *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981), or to "foresee with absolute certainty the outcome of the case," *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 177 (S.D.N.Y. 2000). "[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Global Crossing*, 225 F.R.D. at 459. While Bond Plaintiffs and their counsel believe that the claims asserted against Defendants have merit, they also recognize that there were considerable risks in pursuing the Action against Defendants through summary judgment, trial and beyond.

Although Bond Plaintiffs' complaint had survived Defendants' motions to dismiss,[10] Bond Plaintiffs' class certification motion was *sub judice*, and many substantial risks remained, including that the Court could find at summary judgment that Bond Plaintiffs had failed to establish liability against the Defendants or, if the Court permitted claims to proceed to trial, that a jury could rule against Bond Plaintiffs. Moreover, there were considerable risks that even if Bond Plaintiffs were successful in overcoming summary judgment and establishing liability at trial (and having the

[10] On July 12, 2010, the Court issued a detailed Opinion & Order that granted in part, and denied in part, Defendants' motions to dismiss. Specifically, the Court found that Bond Plaintiffs had standing to assert Section 11 claims on behalf of the class, and sustained those claims insofar as they alleged misstatements regarding: (a) Citigroup's CDO holdings; (b) the credit quality and value of Citigroup's SIV holdings after those holdings were consolidated in December 2007; (c) Citigroup's loan loss reserves; and (d) Citigroup's purportedly "well capitalized" status. The Court granted Defendants' motions to dismiss with respect to Bond Plaintiffs' claims insofar as they involved misstatements regarding (a) Citigroup's exposure to its SIV holdings before the SIVs were consolidated in December 2007; and (b) Citigroup's exposure to Auction Rate Securities (*i.e.*, long-term debt instruments with interest rates that are regularly reset through a Dutch auction process). Singer Decl. ¶31.

judgment upheld on appeal), that Bond Plaintiffs' damages could be substantially reduced or eliminated altogether based on very significant arguments raised by Defendants.

The numerous substantial challenges to establishing liability and damages in this action are detailed at length in the Singer Declaration at paragraphs 111 to 140. These include the very cogent risk that Bond Plaintiffs would be unable to prove that Defendants made any material false statements or omissions. For example, Defendants argued, Citigroup's SEC filings expressly warned that its statements regarding its CDO and SIV valuations, loan loss reserves, and capital adequacy reflected matters of judgment and were subject to change. Moreover, Citigroup never restated its financial statements, and its outside auditors at KPMG certified the accuracy of Citigroup's publicly reported financial statements multiple times during the relevant time period. In addition, Citigroup estimated the value of its mortgage-related assets, set its loss reserves, and calculated its regulatory capital ratios by using extremely sophisticated financial models that involved hundreds of different inputs and assumptions. These models were developed by teams of individuals at all levels within Citigroup, were regularly adjusted to account for changing market conditions, and were reviewed by Citigroup's independent auditors at KPMG and numerous federal regulatory agencies, including the OCC and the Federal Reserve. Defendants would point to the fact that, despite being subject to near-constant regulatory scrutiny during the relevant time period, no regulatory body ever concluded that Citigroup made material misstatements about its financial condition. *See* Singer Decl. ¶¶115, 118, 121, 123.

Indeed, Defendants argued that they acted appropriately and expeditiously to take writedowns and increase loan loss reserves as market conditions deteriorated. This argument had considerable force in light of the fact that, from November 2007 through the third quarter of 2008, Citigroup publicly recorded $28 billion in writedowns on its CDO assets and publicly increased its loan loss reserves by between $2 billion and $4 billion each quarter (a total of $18 billion during the

relevant time period). Singer Decl. ¶¶115, 118. These facts created a significant risk that the Court or a jury could have concluded that Citigroup was accurately reporting the value of its mortgage-related assets throughout the Offerings Period or, at a minimum, that investors who purchased Citigroup securities after November of 2007 were well aware of the fact that Citigroup was suffering billions of dollars in losses on its mortgage-related assets. This posed a particularly stark risk to the Bond Class because, as set forth in the Singer Declaration at paragraphs 131 to 138, the vast majority of the class's damages were attributable to offerings conducted after November 2007. ¶¶48, 131-138.

Bond Plaintiffs also faced substantial hurdles in demonstrating that Citigroup misrepresented its exposure to subprime CDOs prior to November 4, 2007. *See* Singer Decl. ¶¶127-128. Defendants argued that they had no duty to disclose Citigroup's subprime CDO exposure earlier than they did because these assets were not considered risky until late in 2007, when the rating agencies unexpectedly downgraded some of these securities from AAA ratings. *Id*. Defendants argued that this downgrade was unforeseen and they acted promptly to disclose Citigroup's exposure to these assets just two weeks after the downgrade. In short, there was considerable risk that the Court or a jury may have concluded that Defendants did not make any false statements or omissions on any of the topics alleged by Bond Plaintiffs.

In the midst of discovery, the Second Circuit's opinion in *Fait* dramatically heightened the risk that Bond Plaintiffs would be unable to establish liability in this case. As the Court is aware, *Fait* held that a higher standard of liability applies to Securities Act claims premised on misstatements of "opinion." Under *Fait*, to establish liability for an alleged material misstatement of opinion, a plaintiff must prove that defendants "misstated [their] truly held belief" – a standard that is functionally indistinguishable from scienter. Singer Decl. ¶113. Because, as discussed above, the vast majority of Bond Plaintiffs' claims were premised on alleged misstatements of

opinion, Bond Plaintiffs faced the daunting task of satisfying *Fait's* standard for establishing liability.[11] *See id*. ¶¶81, 112-113. The inherent difficulty in proving a defendants' subjective state of mind heightened the risk that the Court or a jury might find that even if Defendants made material misstatements, they did not do so with the intent to deceive required by *Fait*. *See In re Sturm, Ruger, & Co. Sec. Litig.*, No. 3:09CV1293 (VLB), 2012 WL 3589610, at *6 (D. Conn. Aug. 20, 2012) ("Courts have long recognized that '[e]stablishing scienter is a difficult burden to meet.'") (internal quotation marks and citation omitted); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001) (noting "the substantial risk involved in proving *scienter,* because it goes directly to a defendant's state of mind, and proof of state of mind is inherently difficult").

Even if Bond Plaintiffs were successful in overcoming the many hurdles to establishing liability, they would continue to face substantial challenges to proving damages. Indeed, the presentation of damages in this case would be particularly complex given the 39 different securities and 48 separate Offerings at issue. Proving damages would have required extensive expert analysis and testimony. In the unavoidable "battle of experts," a jury might disagree with Bond Plaintiffs' damages expert, or find Defendants' expert more persuasive. As a result, proving damages, even assuming Bond Plaintiffs prevailed on liability, would be extremely difficult.[12]

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[11] Bond Plaintiffs' only claim not premised on alleged misstatements of opinion was that Citigroup failed to disclose its true exposure to subprime-related CDOs prior to November 4, 2007. This claim, however, had minimal damages because Citigroup's Bond Class Securities did not experience significant price declines in response to Citigroup's November 2007 disclosure of its subprime exposure. Rather, the key declines in the Bond Class Securities did not take place until September and October 2008, nearly a year later. Singer Decl. ¶¶48, 113 n.3, 131-138.

[12] *See, e.g., FLAG Telecom*, 2010 WL 4537550, at *18 ("Undoubtedly, in this action, establishing the amount of damages at trial would have resulted in a 'battle of experts.' The jury's verdict with respect to damages would thus depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable."); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262 RWS, 2002 WL 31663577, at *21 (S.D.N.Y. Nov. 26, 2002) ("The reaction of a jury to such complex expert testimony is highly unpredictable."); *Global Crossing*, 225 F.R.D. at 459; *In re Blech Sec. Litig.*, No. 94 Civ. 7696 (RWS), 2002 WL 31720381, at *1 (S.D.N.Y. Dec. 4, 2002) ("establishing damages from the drop in the

Specifically, as discussed in the Singer Declaration at paragraphs 131 to 138, the major declines in the prices of the Bond Class Securities occurred in September and October 2008, when the financial markets were experiencing historic disruptions. Defendants would have argued that these declines were not caused by any misstatements and omissions in Offering Materials that had been issued months – or years – earlier, but rather by the disclosure of significant negative news about companies other than Citigroup. Indeed, in September and October 2008, the markets were thrown into turmoil by a wave of extremely negative disclosures concerning other high-profile financial institutions, such as Lehman's bankruptcy, the Government bailouts of Fannie Mae and Freddie Mac, and AIG's massive losses and subsequent Government bailout. Accordingly, Defendants had strong arguments that any declines in the prices of the Bond Class Securities during this time were caused by market-wide factors rather than the alleged misrepresentations and omissions in the Registration Statements at issue. *Id*. ¶¶131-138.

Defendants also would have contended that the September and October 2008 declines in Citigroup's securities were caused by investor overreaction during an unprecedented market collapse. *Id*. In support of this argument, Defendants would have asserted that this market panic caused the securities of numerous other financial institutions to precipitously decline in value at the same time that Citigroup's securities declined. Defendants also would have argued that Citigroup needed the Government bailout not because of undisclosed losses in its mortgage-related assets, but because it was targeted by short sellers and suffered a liquidity crisis in the midst of the global market meltdown. These arguments presented a meaningful risk that Bond Plaintiffs would not be able to recover for the central declines at issue in this case, which would have vastly reduced the Bond Class's recoverable damages. *Id*.

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relevant stock price, would, Plaintiffs claim, have degenerated into a 'battle of the experts' and thus posed a risk to Plaintiffs").

In addition, Defendants would have argued that any potentially recoverable damages had to be greatly reduced given that the Bond Class Securities quickly rebounded in price to trade at or above par, where they continue to trade today. Based on the rebound in the price of the Bond Class Securities, Defendants would have argued that Bond Class Members who did not sell their securities had suffered little if any harm, and could not recover damages. Defendants also would have argued that the price rebound demonstrated that the decline that occurred in 2008 was not due to any real concerns about financial problems at Citigroup, but instead was the result of a market panic that impacted all financial institutions.

Bond Plaintiffs faced these multiple risks to liability and damages in connection with summary judgment, trial and appeal. If Defendants were successful, even partially, on their liability and damage arguments at summary judgment, that could have dramatically eroded the value of the claims left to try to a jury. And even if Bond Plaintiffs were successful in getting to trial, a trial of this case would have presented many specific risks in addition to the usual uncertainties inherent in placing complex issues before a jury. All of the key fact witnesses in this case were current or former Citigroup officers or employees, such as Citigroup's former Chief Risk Officer, its former Chief Financial Officer, and its former and then-current Chief Executive Officers (Chuck Prince and Vikram Pandit), and were therefore adverse to Bond Plaintiffs.

Moreover, Bond Plaintiffs would have faced the risk that the opinions of their experts or other critical evidence could have been excluded from the jury through the multiple *Daubert* motions and motions *in limine* that would have been filed before trial. Indeed, Defendants repeatedly indicated their intention to file motions *in limine* to exclude evidence regarding the Government bailout of Citigroup, which, if successful, would have created serious obstacles to Bond Plaintiffs' ability to present their case to a jury. Even if Bond Plaintiffs were able to present all of their evidence at trial, Defendants would have responded with their own experts and

conflicting story of events during the relevant time period and there could be no certainty as to which views would be credited by a jury.

Lastly, even if Bond Plaintiffs were successful in obtaining a jury verdict on all or part of their claims, that verdict would have been appealed. *See Veeco*, 2007 WL 4115809, at *7. In sum, the risks involved in continuing to litigate this Action were substantial, and this factor favors granting final approval to the Settlement.

4. The Risks of Maintaining the Class Action Through Trial Support Approval of the Settlement

Bond Plaintiffs' motion for class certification was pending at the time the Settlement was reached. While Bond Plaintiffs believed they had strong arguments in support of class certification, there was no assurance that a class would have been certified, or if it was, that certification would have been maintained through trial. *See Chatelain v. Prudential-Bache Secs., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). The Settlement avoids any uncertainty with respect to these issues, and therefore this factor weighs in favor of approving the Settlement.

5. The Ability of Defendants to Withstand a Greater Judgment

Despite the outstanding recovery obtained here, it is likely that Citigroup could withstand a greater judgment. "But a defendant is not required to 'empty its coffers' before a settlement can be found adequate." *Sony*, 2008 WL 1956267, at *8 (*quoting McBean v. City of New York*, 233 F.R.D. 377, 388 (S.D.N.Y. 2006)). *See also IMAX*, 283 F.R.D. at 189 (same). Indeed, this factor, standing alone, is not sufficient to preclude a finding of substantive fairness where the other factors weigh heavily in favor of approving a settlement. *See D'Amato*, 236 F.3d at 86.

6. The Range of Reasonableness of the Settlement Amount Supports the Settlement

Another *Grinnell* factor is whether the settlement amount is reasonable in light of the possible recovery and the risks of litigation.[13] When weighed against the risks of continued litigation, the proposed Settlement for $730 million in cash provides an extremely substantial benefit to the Bond Class. As discussed in the Singer Declaration, this represents a substantial portion of likely maximum recoverable damages in this Action, which Bond Plaintiffs' expert estimates to be no more than $3 billion. Singer Decl. ¶138. Defendants, of course, would have argued vigorously that the Bond Class's damages were substantially less than what Bond Plaintiffs' expert estimates – indeed, Defendants would have argued that the Bond Class had suffered no damages at all.

Had a jury (or the Court) credited some or all of Defendants' arguments, the potential recoverable damages could have been dramatically reduced, if not eliminated. Even if Bond Plaintiffs overcame the significant risks of establishing liability, there was a real risk, if certain of Defendants' arguments on damages had prevailed, that Bond Plaintiffs might not obtain a judgment in excess of the Settlement Amount or that they might obtain a lesser amount. In sum, given the unpredictability of continued litigation, including summary judgment, a lengthy and complex trial, and the inevitable appellate process that would follow with the risk of reversal, the excellent result obtained by the Settlement falls squarely within the "range of reasonableness."[14]

[13] Courts typically treat the final two *Grinnell* factors together, "the range of reasonableness of the settlement fund in light of the best possible recovery" and "the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." 495 F.2d at 463. *Accord Global Crossing*, 225 F.R.D. at 460.

[14] *Visa*, 396 F.3d at 119 ("there is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion") (citation omitted).

7. The Reaction of the Bond Class to Date Supports Approval of the Settlement

Pursuant to the Preliminary Approval Order, and as set forth in the Notice, the deadline for Bond Class Members to submit objections to the Settlement, the Plan of Allocation and/or Lead Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses is June 27, 2013. To date (following the dissemination of over 417,000 copies of the Notice), not one objection to the Settlement has been received. Singer Decl. ¶146. In addition, only 8 requests for exclusion from the Bond Class have been received.[15] Cirami Decl. ¶11. Should any objections or additional requests for exclusion be received after the date of this submission, Bond Plaintiffs will address them in their reply papers, which are due to be filed with the Court on July 15, 2013.

III. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable and adequate. *See IMAX*, 283 F.R.D. at 192; *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 430 (S.D.N.Y. 2007) ("Exactitude is not required in allocating consideration to the class, provided that the overall result is fair, reasonable and adequate."); *Maley*, 186 F. Supp. 2d at 367; *In re PaineWebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 132 (S.D.N.Y. 1997), *aff'd,* 117 F.3d 721 (2d Cir. 1997). Generally, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable. Plans of allocation, however, need not be tailored to fit each and every class member with "mathematical precision." *Id.* at 133. Rather, broad classifications may be used in order to promote "[e]fficiency, ease of administration and conservation" of the settlement fund. *Id.* at 133-35. A plan of allocation is fair and reasonable as long as it has a "reasonable, rational basis." *Maley,* 186 F. Supp. 2d at 367; *see In re Initial Pub. Offerings Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009).

[15] Several of the requests reflect that they were submitted by persons who are not members of the Bond Class.

Among the factors that courts have given great weight in determining the fairness, reasonableness and adequacy of a proposed plan of allocation is the opinion of experienced class counsel.[16] Here, Bond Counsel developed the Plan of Allocation in close consultation with Bond Plaintiffs' damages expert and believes that the Plan of Allocation provides a fair and reasonable method to equitably distribute the settlement proceeds among Bond Class Members who submit Proof of Claim Forms that are approved for payment.

Pursuant to the Preliminary Approval Order, and as set forth in the Notice, Bond Class Members who wish to be eligible to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon less (i) any Taxes, (ii) any Notice and Administration Costs, (iii) any Litigation Expenses awarded by the Court, and (iv) any attorneys' fees awarded by the Court) must submit a Proof of Claim Form to the Claims Administrator no later than August 21, 2013. If approved, the Plan of Allocation will govern how the Net Settlement Fund will be distributed among Authorized Claimants. The Court-approved Claims Administrator, GCG, will calculate each Authorized Claimant's share of the Net Settlement Fund in accordance with the Plan of Allocation, which takes into account several factors, including (i) which Bond Class Securities were purchased or otherwise acquired, and in what amounts; (ii) when the Bond Class Securities were purchased or otherwise acquired; and (iii) whether the Bond Class Securities were sold, and if so, when they were sold and for what amounts.[17]

[16] *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010) ("In determining whether a plan of allocation is fair, courts give substantial weight to the opinions of experienced counsel."); *Am. Bank Note Holographics*, 127 F. Supp. 2d at 429-430 ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel .... As with other aspects of settlement, the opinion of experienced and informed counsel is entitled to considerable weight.").

[17] Additionally, because the overwhelming majority of Bond Class Securities subsequently recovered in price since the dates that the complaints were filed, the Plan of Allocation takes into account the current value of the Bond Class Securities that are still held in allocating the Net Settlement Fund. As a result, in the event that a claimant still held a Bond Class Security as of March 18, 2013, the date of the Stipulation, a discount of 90% shall be applied to the Recognized Loss Amount for that Bond Class Security.

In sum, the proposed Plan of Allocation, developed in consultation with and approved by Bond Plaintiffs' damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on the amount of damages allegedly suffered as a result of the conduct alleged in the Action.[18] Singer Decl. ¶153. Accordingly, Bond Counsel respectfully submits that the proposed Plan of Allocation is fair and reasonable and should be approved.

IV. NOTICE TO THE BOND CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

Notice to class members satisfies Rule 23(e) and due process where it fairly apprises "members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Visa*, 396 F.3d at 114; *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996). Notice need not be perfect or received by every class member, but instead be reasonable under the circumstances. *See* Fed. R. Civ. P. 23(e)(1) ("The court must direct notice in a reasonable manner to all class members who would be bound by the [settlement] proposal."); *Visa*, 396 F.3d at 114. Notice is adequate if the average class member understands the terms of the proposed settlement and the options he, she or it has. *See In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 166 (S.D.N.Y. 2007).

As noted above, in accordance with the Preliminary Approval Order, between April 23, 2013 and June 6, 2013, GCG has disseminated over 417,000 Notice Packets to potential Bond Class Members and nominees. Cirami Decl. ¶¶3-7.[19] Additionally, on May 2, 2013, GCG caused the Summary Notice to be published in the national edition of *The Wall Street Journal*, and to be transmitted over the *PR Newswire*. Cirami Decl. ¶8. GCG also established a toll-free telephone line and caused information regarding the Settlement to be posted on the website specifically

[18] To date, there have been no objections to the proposed Plan of Allocation. Singer Decl. ¶154.

[19] To disseminate the Notice, GCG obtained the names and addresses of potential Bond Class Members from security holders lists provided by Citigroup, Citigroup Funding, the Citigroup Trusts, Citigroup Global Markets Inc. and Citigroup Global Markets Limited and from banks, brokers and other nominees pursuant to the Preliminary Approval Order. Cirami Decl. ¶3.

established for the Action, www.citigroupbondactionsettlement.com, which provides access to, among other documents, downloadable copies of the Notice and Proof of Claim Form. *Id.* ¶¶9-10.

The Notice summarizes in plain language the terms of the Settlement and Bond Class Members' rights in connection therewith. The Notice contains a thorough description of the Settlement, the Plan of Allocation and Bond Class Members' rights to: (i) participate in the Settlement; (ii) object to the Settlement, Plan of Allocation or request for attorneys' fees and reimbursement of litigation expenses (by June 27, 2013), or (iii) exclude themselves from the Bond Class (by June 27, 2013). The combination of individual first-class mail to all Bond Class Members who could be identified with reasonable effort, supplemented by publication notice, was the best notice practicable under the circumstances. *See, e.g.*, *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *12-*13 (S.D.N.Y. Dec. 23, 2009); *Global Crossing*, 225 F.R.D. at 448-49. Accordingly, the notice program here was reasonable.

V. THE COURT'S CERTIFICATION OF THE BOND CLASS FOR SETTLEMENT PURPOSES SHOULD BE AFFIRMED

In presenting the proposed Settlement to the Court for preliminary approval, Bond Plaintiffs requested that the Court certify the Bond Class for purposes of settlement so that notice of the proposed Settlement, the final approval hearing and the rights of Bond Class Members to request exclusion from the Bond Class, object to any aspect of the Settlement or submit Proof of Claim Forms could be issued. In its March 25, 2013 Preliminary Approval Order, this Court granted preliminary approval of the Settlement and certified the Bond Class (as set forth in footnote 2 above) for purposes of the Settlement. Nothing has changed to alter the propriety of the Court's certification and, for all the reasons stated in Bond Plaintiffs' motion for preliminary approval of the Settlement and memorandum of law in support thereof (ECF No. 154), Bond Plaintiffs now request that the Court affirm its certification of the Bond Class for purposes of carrying out the Settlement.

VI. CONCLUSION

For the reasons set forth above, Bond Plaintiffs respectfully request that: (1) the proposed Settlement be approved by the Court as fair, reasonable and adequate, (2) the certification of the Bond Class for purposes of the Settlement be affirmed, and (3) the Plan of Allocation be approved.

Dated: June 7, 2013
New York, New York

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