IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HILL v. STATE STREET CORPORATION	)	
	)	
	)	Master Docket No.1:09-cv-12146-GAO
THIS DOCUMENT RELATES TO THE SECURITIES ACTION	)	
	)	
DOCKET NO. 09-cv-12146-GAO	)	

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

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Lead Plaintiffs, the Public Employees' Retirement System of Mississippi and Union Asset Management Holding AG ("Lead Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum in support of final approval of the proposed settlement of this Action (the "Settlement"), and for approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation").[1]

PRELIMINARY STATEMENT

Lead Plaintiffs have agreed, subject to Court approval, to settle all claims asserted in this action in exchange for a cash payment of $60 million, which has been deposited in an interest-bearing escrow account. Lead Plaintiffs and Co-Lead Counsel respectfully submit that the proposed Settlement represents an excellent result for the Settlement Class and easily satisfies the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure.

The proposed Settlement is the product of nearly four years of hard-fought litigation, which included Lead Plaintiffs' detailed investigation into the claims alleged, successful opposition to Defendants' motions to dismiss, and extensive discovery, including the review of over 25 million pages of documents, ten depositions, and briefing of numerous motions to compel and other discovery motions. The Settlement was achieved only after prolonged settlement negotiations, which involved the exchange of multiple submissions concerning liability and damages with Defendants. Lead Plaintiffs respectfully submit that the Settlement is particularly noteworthy in light of the substantial risks involved in the Action, including the

[1] Unless otherwise indicated, all capitalized terms shall have those meanings ascribed to them in the Stipulation and Agreement of Settlement dated July 8, 2014 (the "Stipulation") or the Joint Declaration of John C. Browne and William H. Narwold in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl."), filed herewith. The citation to "¶" refers to paragraphs in the Joint Declaration.

significant risks that the Defendants might ultimately prevail at summary judgment, trial or appeal. It is Lead Plaintiffs' and Co-Lead Counsel's informed opinion that, in light of these significant risks and the delay, expense and uncertainty of pursuing the Action through trial and any subsequent appeals, the Settlement is an outstanding result for the Settlement Class.

The terms of the proposed Settlement are set forth in the Stipulation and Agreement of Settlement dated July 8, 2014 (the "Stipulation"), which was previously submitted to the Court. ECF No. 478-1. In its July 21, 2014 Preliminary Approval Order, the Court preliminarily approved the Settlement, certified the Settlement Class for settlement purposes, directed that notice of the proposed Settlement be given to potential members of the Settlement Class, and scheduled the final Settlement Hearing for October 27, 2014. ECF No. 488. On September 4, 2014, the Court entered an order granting State Street's assented-to motion to reschedule the final approval hearing to November 20, 2014. ECF No. 491.

As detailed in the Joint Declaration,[2] at the time the agreement to settle was reached, Lead Plaintiffs and Co-Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims and defenses in the Action. Before the Settlement was agreed to, Co-Lead Counsel had engaged in nearly four years of litigation and expended enormous efforts on behalf of the class, including: (i) conducting a thorough investigation of the claims in the Action by reviewing SEC filings, news reports and other publicly available information, interviewing multiple former employees of State Street, and consulting with experts; (ii) researching and drafting the consolidated complaint and 158-page consolidated amended complaint; (iii) briefing

[2] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action (¶¶14-122); the nature of the claims asserted (¶¶24-27); the negotiations leading to the Settlement (¶¶116-120); the risks and uncertainties of continued litigation (¶¶123-141); and the terms of the Plan of Allocation for the Settlement proceeds (¶¶148-154).

in opposition to Defendants' motions to dismiss; (iv) discussions with a financial expert regarding the damages suffered by the class; (v) several years of extensive and vigorously litigated factual discovery, which included obtaining and reviewing more than 25 million pages of documents, taking or defending ten depositions related to the securities case (including those of key State Street employees), and litigating more than 20 discovery motions; (vii) preparation of the class certification motion and conduct of discovery related to class certification; and (viii) engaging in settlement negotiations over the course of several months. ¶¶8, 9-118.

The very substantial benefit that the proposed Settlement will provide to the Settlement Class is particularly noteworthy when considered against the risks that the Settlement Class might recover less (or nothing) if the Action were litigated through summary judgment, trial, and any appeals that would likely follow, a process that could last many additional months, or even years. As discussed in the Joint Declaration, this case involved two sets of alleged misstatements. First, Lead Plaintiffs alleged that State Street artificially inflated its FX revenues by improperly overcharging its clients for FX services. ¶26. Second, Lead Plaintiffs alleged that Defendants made misstatements about the quality of the assets in State Street's investment portfolio and in off-balance sheet entities called "conduits" when they stated that State Street was investing only in "high quality" assets. ¶27. Through these claims, Lead Plaintiffs sought to recover for investors who purchased State Street stock during a multi-year period in which State Street made numerous public statements in conference calls, SEC filings, press releases and during investor conferences. Indeed, Lead Plaintiffs allege that approximately 130 false and misleading statements were allegedly made by Defendants during the class period, relating to both the alleged FX fraud and the conduit/investment portfolio fraud. The alleged misstatements

and omissions involved complicated subjects such as off-balance sheet entities (the conduits) and foreign exchange transactions for customers who traded currencies from across the globe. ¶¶4-6.

As discussed in more detail below and in the Joint Declaration, while Lead Plaintiffs believe that both the FX and conduit/portfolio prongs of the case have substantial merit, they each involve complicated issues and Lead Plaintiffs and the Settlement Class faced risks in establishing liability and damage for each prong. Indeed, Defendants vigorously contested their liability for Lead Plaintiffs' FX claims on, *inter alia*, materiality and *scienter* grounds. For instance, Defendants would have argued that State Street was not overcharging its customers for FX services, that its customers were aware of and approved the charges they were incurring when conducting FX transactions through State Street and that, in any event, the FX revenues at issue were immaterial. ¶127.

Lead Plaintiffs also faced exceptionally daunting risks in establishing loss causation for the FX claims – that is, that the declines in the price of State Street's common stock were proximately caused by the alleged false and misleading statements concerning FX made by Defendants. Here, Lead Plaintiffs alleged that State Street's alleged FX fraud was revealed on October 20, 2009, when the California Attorney General announced a lawsuit against State Street concerning its FX practices, and that this announcement caused the price of the Company's stock to decline significantly over the next few days. ¶130. Defendants, however, argued strenuously that the decline in the price of State Street common stock was caused by a negative earnings report that was released in the morning that same day. In that regard, Defendants pointed out that virtually the entire decline in the price of State Street's common stock on October 20, 2009 occurred between 8:00 am (when the negative earnings release was disclosed) and 12:00 noon (when the California Attorney General's lawsuit was disclosed). ¶¶131-132. Thus, according to

Defendants, Lead Plaintiffs were unable to prove damages and satisfy "loss causation" for the FX claims under the securities laws.

Similarly, Defendants would have advanced significant arguments that Plaintiffs could not establish falsity or *scienter* relating to the alleged conduit and investment portfolio fraud. For example, State Street argued throughout the case that the Company's use of the term "high quality" to describe its assets was accurate. ¶¶134-136. State Street pointed out that the assets in its investment portfolio and conduits were all highly rated (in many cases, they had Triple A ratings or were backed by the United States Government), and had their values closely vetted by auditors, outside consultants, and by State Street's own experienced credit officers. ¶134. Indeed, State Street would have contended that very few of thousands of specific assets in the conduits or investment portfolios ever suffered an event of default, thus demonstrating that those assets were, in fact, "high quality." ¶136. These arguments were potentially powerful and might have been successful either in refuting the allegations that the statements were false or in rebutting Lead Plaintiffs' efforts to establish that the statements were made with *scienter*. ¶137. Defendants also would have advanced a powerful loss causation defense to the conduit/portfolio claims. Specifically, Defendants would have again contended that State Street released a negative earnings announcement on the same day as the alleged corrective disclosure of the alleged conduit and investment portfolio fraud, and that the earnings release, rather than any disclosure of the alleged fraud, caused all or most of the decline in State Street's stock on that date. ¶138.

While Lead Plaintiffs believe that they have meritorious responses to each of Defendants' contentions, the proposed Settlement, if approved, will enable the Settlement Class to recover a very significant sum without incurring the risk that Defendants would prevail at summary

judgment, trial, or in subsequent appeals on any of their many defenses. Lead Plaintiffs, who are institutional investors of the type favored under 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 they recommend that the Settlement be approved. *See* ¶10 and Exhibits 2 and 3 to the Joint Decl. Likewise, Co-Lead Counsel, which have extensive experience in prosecuting securities class actions, strongly believe that the proposed Settlement is fair, reasonable and adequate and in the best interests of the Settlement Class. ¶¶10, 141.

Lead Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund as fair and reasonable. The Plan of Allocation was developed in conjunction with a well-regarded economist and is designed to fairly and equitable distribute the proceeds of the Settlement to Settlement Class Members, taking into account the losses suffered by class members on transactions in State Street common stock attributable to the conduct alleged in the Complaint and the relative strengths of their claims. *See* ¶¶148-154.

The reaction of the Settlement Class to date supports the approval of both the Settlement and Plan of Allocation. Pursuant to the Court's Preliminary Approval Order (ECF No. 488), as of September 22, 2014, more than 293,000 copies of the Notice have been mailed to potential Settlement Class Members and nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*.[3] While the deadline for Settlement Class Members to object to the Settlement and Plan of Allocation has not yet passed, to date, no objections have been received. *See* ¶147.

[3] *See* Declaration of Stephanie A. Thurin Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, attached as Exhibit 1 to the Joint Decl. ("Thurin Decl."), at ¶¶8-9.

For these reasons and the reasons set forth below, Lead Plaintiffs respectfully submit that both the Settlement and Plan of Allocation are fair, reasonable and adequate and should be approved.

ARGUMENT

I. THE PROPOSED 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); *see Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir. 2010); *City P'Ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). Courts "enjoy great discretion to 'balance [a settlement's] benefits and costs' and apply this general standard." *Voss*, 592 F.3d at 251.

Courts generally consider both "the negotiating process by which the settlement was reached and the substantive fairness of the terms of the settlement compared to the result likely to be reached at trial." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005). For courts in the First Circuit, the evaluation of the settlement "requires a wide-ranging review of the overall reasonableness of the settlement that relies on neither a fixed checklist of factors nor any specific litmus test." *In re Tyco Int'l Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007); *see also New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 602 F. Supp. 2d 277, 280 (D. Mass. 2009) ("The First Circuit has not established a fixed test for evaluating the fairness of a settlement."). However, many Courts in this Circuit have considered the following factors, initially set forth by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), in conducting their analysis:

> (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 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 attendants risks of litigation.

First Databank, 602 F. Supp. 2d at 280-81 (quoting *Grinnell*, 495 F.2d at 463); *Relafen*, 231 F.R.D. at 72 (same); *In re Lupron Mktg. & Sales Prac. Litig.*, 228 F.R.D. 75, 93-94 (D. Mass. 2005) (same); *In re StockerYale, Inc. Sec. Litig.*, No. 1:05cv00177-SM, 2007 WL 4589772, at *3 (D.N.H. Dec. 18, 2007) (same).[4]

The determination of whether a settlement is fair, reasonable and adequate is confided to the Court's sound discretion. *See City P'Ship*, 100 F.3d at 1043-44. The Court should not "prejudge the merits of the case" or "second-guess the settlement." *Compact Disc*, 216 F.R.D. at 211. Instead, the Court's role is limited to "determin[ing] if the parties' conclusion is reasonable." *Id*. As this Court has noted, "[a]ny settlement is the result of a compromise – each party surrendering something in order to prevent unprofitable litigation, and the risks and costs inherent in taking litigation to completion. A district court, in reviewing a settlement proposal, need not engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial." *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 68 (D. Mass. 1997) (O'Toole, J.) (citation omitted).

In evaluating the settlement, the Court must also consider the strong public policy favoring settlement, particularly in class actions. *See Puerto Rico Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) (noting the "strong public policy in favor of settlements"); *Tyco*, 535 F. Supp. 2d at 259 ("public policy generally favors settlement –

[4] Other courts in this Circuit have considered similar but slightly different sets of factors. *See, e.g., Tyco*, 535 F. Supp. 2d at 259-260; *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003).

particularly in class actions as massive as the case at bar"); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014) ("The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. Thus, the procedural and substantive fairness of a settlement should be examined 'in light of the "strong judicial policy in favor of settlement[ ]" of class action suits.'").

A. The Settlement Was Reached Following Extensive Arms'-Length Negotiations and Is Endorsed by Lead Plaintiffs and Co-Lead Counsel

Where the parties have negotiated a settlement at arms'-length and have conducted sufficient discovery, the district court should presume that the settlement is reasonable. *See In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 32-33 (1st Cir. 2009); *City P'Ship*, 100 F.3d at 1043; *Relafen*, 231 F.R.D. at 71-72; *Lupron*, 228 F.R.D. at 93.

Here, the Settlement was achieved only after years of vigorous litigation, including extensive factual discovery, and after prolonged arms'-length settlement negotiations between experienced counsel. ¶¶14-118. Although Co-Lead Counsel and Defendants had periodically broached the subject of settlement discussions on several occasions throughout the litigation, serious settlement talks did not begin until the fall of 2013, after the parties had already conducted a substantial amount of fact discovery. ¶116. Over the next several months, Co-Lead Counsel and Defendants engaged in numerous settlement discussions and exchanged information regarding damages and liability, while discovery proceeded. *Id*. By the time the agreement to settle was reached, Co-Lead Counsel had reviewed over 25 million pages of documents and had taken depositions of seven key State Street employees and, thus, Co-Lead Counsel was well informed about the strengths and weakness of the case. ¶¶8, 44, 110-111, 118. Accordingly, the proposed Settlement is procedurally fair and is entitled to a presumption of reasonableness. *See*

Relafen, 231 F.R.D. at 71-72; *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) ("settlement negotiations . . . conducted at arms' length over several months . . . support 'a strong initial presumption' of the Settlement's substantive fairness").

Co-Lead Counsel, who have extensive experience in securities class action litigation and were well-informed about the facts of the case as a result of their investigation and the extensive discovery, strongly believe that the $60 million Settlement is in the best interests of the Settlement Class in light of the significant risks of continued litigation. *See* ¶¶10, 141. The judgment of experienced and well-informed class counsel should be accorded great weight by the Court. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("the trial court is entitled to rely upon the judgment of experienced counsel for the parties"); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."); *Bussie*, 50 F. Supp. 2d at 77 ("The Court's fairness determination also reflects the weight it has placed on the judgment of the parties' respective counsel, who are experienced attorneys and have represented to the Court that they believe the settlement provides to the Class relief that is fair, reasonable and adequate.").

Lead Plaintiffs, which are both sophisticated institutional investors, have supervised and monitored the work of Co-Lead Counsel throughout the Action and were kept apprised of the progress of settlement negotiations with Defendants. *See* Declaration of George W. Neville ("MPERS Decl."), attached to the Joint Decl. as Exhibit 2, at ¶¶3-5; Declaration of Dr. Joachim von Cornberg and Dr. Fabian Hannich ("Union Decl."), attached to the Joint Decl. as Exhibit 3, at ¶¶3-5. Both Lead Plaintiffs have strongly endorsed the Settlement as providing an excellent

recovery in light of the risks of the litigation. *See* MPERS Decl. ¶6; Union Decl. ¶6. Lead Plaintiffs' recommendation further supports approval of the Settlement. *See, e.g., City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) ("the recommendation of Lead Plaintiff, a sophisticated institutional investor, also supports the fairness of the Settlement"); *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 settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness'").

B. Consideration of All Relevant Factors Supports the Approval of the Settlement as Substantively Fair, Reasonable and Adequate

Consideration of all the relevant factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974) and adopted by the courts in this Circuit strongly supports approval of the Settlement as fair, reasonable and adequate.

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

The complexity of this case and the substantial expense and delay that would result if Lead Plaintiffs sought to achieve a litigated verdict weigh strongly in favor of approval of the Settlement. *See StockerYale*, 2007 WL 4589772, at *3 (this factor "captures the probable costs, in both time and money, of continued litigation"); *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at *11 (E.D. La. Mar. 2, 2009) (where continued litigation, including through discovery, class certification, trial and appeals, "would consume substantial judicial and attorney time and resources . . . avoiding such costs weighs in favor of settlement").

Continuing to litigate this Action for Lead Plaintiffs and the class would have required substantial additional time and expense, without any guarantee of success. In the absence of the Settlement, continued litigation of the Action would have required additional factual discovery,

including numerous additional depositions, substantial expert discovery on issues such as asset valuation, loss causation and damages, an expected motion for summary judgment, and a trial that would involve considerable expert and factual testimony with respect to liability and damages. Defendants would have continued to vigorously contest numerous issues in the Action such as materiality, falsity, *scienter*, and, most dauntingly, loss causation. ¶¶123-141. The complexity of the case was further increased here because Lead Plaintiffs were pursuing two theories of liability and each of these raised its own complicated factual issues, including, for the alleged FX fraud, the potential variations in the FX pricing provisions in the contracts of State Street's various custodial clients, and, for the alleged conduit and investment portfolio fraud, the difficulties of valuing and assessing the quality of a large number of complex mortgage-backed securities. ¶¶4-6.

Lead Plaintiffs and Co-Lead Counsel recognize that, in order for Lead Plaintiffs to prevail on their claims against Defendants at trial, they would have to marshal substantial factual evidence about State Street's FX trading practices and the quality of the assets in the conduits and investment portfolio and be prepared to present persuasive expert testimony to establish loss causation and damages to a jury. Co-Lead Counsel was prepared to do so, but it cannot be disputed that achieving a litigated verdict in this Action would have required a substantial investment of time and resources.

Moreover, if Lead Plaintiffs were to succeed at trial, it is virtually certain that Defendants would appeal, further delaying the receipt of any recovery by the class. *See Relafen*, 231 F.R.D. at 72 ("in light of the high stakes involved, an appeal is certain to follow regardless of the outcome at trial") (internal quotation marks omitted). All of the foregoing would pose substantial expense for the Settlement Class and delay the class's ability to recover – assuming,

of course, that Lead Plaintiffs were ultimately successful on their claims. In contrast, the proposed Settlement provides an immediate, significant and certain recovery of $60 million for members of the Settlement Class, without subjecting them to the risk, delay and expense of continued litigation. Accordingly, this factor strongly supports approval of the Settlement.

2. The Reaction of the Settlement Class to Date Supports Approval of the Settlement

The reaction of the Settlement Class to date also supports approval of the Settlement. Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, Epiq Systems, Inc. ("Epiq"), began mailing copies of the Notice and Claim Form to potential Class Members and nominees on August 18, 2014. *See* Thurin Decl. ¶¶3-5. As of September 22, 2014, Epiq had mailed a total of 293,873 copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *See id*. ¶8. In addition, a Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on August 27, 2014. *See id*. ¶9. The Notice set out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms. While the deadline set by the Court for Settlement Class Members to exclude themselves or object to the Settlement has not yet passed, to date, no objections to the Settlement or the Plan of Allocation and only two requests for exclusion have been received. The deadline for submitting objections and requesting exclusion from the Settlement Class is October 6, 2014. As provided in the Preliminary Approval Order, Lead Plaintiffs will file reply papers on October 20, 2014 addressing all requests for exclusion and any objections that may be received.

3. The Stage of the Proceedings and the Amount of Discovery Completed Support Approval of the Settlement

The Settlement was reached only after nearly four years of litigation that included a detailed investigation by Co-Lead Counsel, thorough briefing on Defendants' motions to dismiss, and extensive fact discovery. The discovery conducted by Lead Plaintiffs included obtaining and reviewing over 25 million pages of documents and taking seven merits-related depositions, including those of State Street employees with key information regarding State Street's FX trading practices, the conduits and its investment portfolio. ¶¶44, 110-111, 113. Accordingly, Lead Plaintiffs and Co-Lead Counsel clearly had a sufficient understanding of the strengths and weaknesses of the case when negotiating and evaluating the adequacy of the proposed Settlement. *See, e.g.*, *StockerYale*, 2007 WL 4589772, at *3 (this factor supported settlement approval where "counsel had the benefit of information obtained through document discovery and its extensive own investigation"); *Bussie*, 50 F. Supp. 2d at 77 (the "parties' enormous discovery effort," which included review of 3 million pages of documents and 11 depositions, "enabled Lead Counsel to assess the merits of the Class's litigation position and . . . is probative of the Settlement's fairness"); *see also In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 474 (D.P.R. 2011) (even where formal discovery had not occurred, counsel's investigation and informal discovery provided "sufficient information to make a well informed decision" and this factor supported approval of the settlement).

Based on the information developed through their investigation and discovery, Lead Plaintiffs and Co-Lead Counsel were able to make an informed appraisal of the value of the case and they believe that the $60 million Settlement represents a resolution that is highly favorable to the Settlement Class without the substantial uncertainty and delay of continued litigation.

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

While Lead Plaintiffs and Co-Lead Counsel believe that the claims asserted against Defendants have merit, they recognize that there were very significant risks as to whether Lead Plaintiffs would ultimately be able to prove liability and establish damages on their claims and obtain any recovery in the Action. *See generally* ¶¶123-141.

In particular, Securities Plaintiffs faced significant risks in establishing liability and damages with respect to their FX claims. While Lead Plaintiffs and Co-Lead Counsel believe they advanced strong FX claims on the merits, Defendants vigorously contested their liability on, *inter alia*, materiality and *scienter* grounds. For instance, Defendants would have argued that State Street was not overcharging its customers for FX services, that its customers were aware of and approved the charges they were incurring when conducting FX transactions through State Street and that, in any event, the FX revenues at issue were immaterial. ¶¶127.

In addition to the liability risk Lead Plaintiffs faced on the FX portion of the case, they faced greater risk in establishing damages on those claims. Indeed, by far the more significant risk with respect to the alleged FX scheme was whether Lead Plaintiffs would be able to prove damages and satisfy "loss causation" under the securities laws. This is because Defendants had a unique and extremely powerful loss causation defense on the FX portion of Lead Plaintiffs' claims. ¶¶128-132.

In order to prove damages in this securities case, Lead Plaintiffs bear the burden of establishing "loss causation," *i.e.*, that State Street's statements caused their alleged loss. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'" (quoting 15 U.S.C. § 78u-4(b)(4))). To establish loss causation, Plaintiffs must demonstrate "a

sufficient connection between the fraudulent conduct and the losses suffered. In other words, the stock market must have reacted to the subsequent disclosure of the misconduct and not to a tangle of other factors." *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 86 (1st Cir. 2014) (internal citations and quotations omitted). Defendants would have argued that Lead Plaintiffs could not "bear the burden of showing that their losses were attributable to the revelation of the fraud and not the myriad other factors that affect a company's stock price." *Id.* at 95 (internal citations and quotations omitted). Indeed, "[a] decline in stock price following a public announcement of 'bad news' does not, by itself, demonstrate loss causation." *Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 282 (S.D.N.Y. 2012). To meet this burden, Lead Plaintiffs alleged that the October 20, 2009 announcement by the California AG that he was suing State Street for overcharging its custodial clients for FX services caused a significant decline in the price of State Street's common stock. ¶130.

During discovery, however, Defendants advanced a very powerful argument that the decline that occurred on October 20, 2009 was in fact caused by a negative earnings release State Street issued first thing in the morning that day and not, as Plaintiffs alleged, by news of the California AG's FX-related lawsuit against State Street. ¶131. In support of that argument, Defendants pointed out that State Street released its negative earnings report prior to the opening of the markets (at approximately 8:00 a.m. Eastern time) on October 20, 2009 – whereas the California A.G. FX suit announcement did not take place until hours later at just after 12 noon Eastern time. *Id*.

Defendants stressed that the vast majority of the decline in State Street's stock price on October 20, 2009 occurred between 8:00 a.m. and 12:00 noon Eastern time – before the

California AG's announcement was public. ¶132. Thus, Defendants had a unique loss causation defense in the specific context of this case – one that if successful would have eliminated all or virtually all of Securities Plaintiffs' damages related to their FX claims. Indeed, if Defendants had succeeded on their loss causation arguments – or any of their major defenses – the Securities Plaintiffs could have established liability but nevertheless have been unable to establish damages. Thus, Plaintiffs and the class would have obtained no recovery at all from Defendants.

Defendants also would have advanced significant arguments that Lead Plaintiffs would be unable to establish falsity or *scienter* relating to the alleged conduit and investment portfolio fraud. ¶¶134-137. On this point, State Street had argued throughout the case that the Company's use of the term "high quality" to describe its assets was accurate. According to State Street, the assets in its investment portfolio and conduits were all highly rated (in many cases, they had Triple A ratings or were backed by the United States Government), and had their values closely vetted by auditors, outside consultants, and by State Street's own experienced credit officers. ¶134. Indeed, State Street would have contended that very few of the thousands of specific assets in the conduits or investment portfolios ever suffered an event of default, thus demonstrating that those assets were, in fact, "high quality." ¶136. State Street would have also argued that it gave investors extensive disclosures about the assets in its investment portfolio and conduits, including making detailed investor presentations that broke the assets down by asset class, maturity date, and credit rating while expressly warning investors that deteriorating market conditions could cause these assets to suffer declines in value. ¶135. For example, State Street disclosed billions of dollars in unrealized losses as the markets declined, which State Street would point to as evidence that it never sought to deceive its investors but honestly held the belief that the assets would rebound in value when the financial markets stabilized. *Id.*

Defendants would have also argued at summary judgment or at trial that State Street was actually *correct* that these assets were "high quality" because the Company received all contracted-for interest and principal payments as to all but an immaterial amount of the approximately ten thousand assets in the investment portfolio and conduits. ¶136. For all of these reasons, Lead Plaintiffs faced significant challenges in demonstrating the material falsity of State Street's statements relating to its investment portfolio and conduit assets.

Even if Lead Plaintiffs were able to establish falsity, however, the Securities Action faced a significant hurdle in showing *scienter, i.e.,* that State Street acted with intent to deceive investors. As an initial matter, the mere fact that State Street made extensive detailed disclosures about the conduit and investment portfolio as the global financial markets began to deteriorate would have been used as evidence by Defendants that State Street was not intentionally concealing or misstating anything about these assets. ¶137. Indeed, a particularly powerful argument for Defendants was that they had *voluntarily* disclosed approximately $9 billion in unrealized losses in these assets. *Id*. Defendants would have also argued that no individual defendant was alleged to have sold stock or otherwise personally profited from the alleged conduit/investment portfolio fraud, and that this lack of motive severely undercut Lead Plaintiffs' *scienter* allegations. *Id*.

Moreover, even if Lead Plaintiffs were successful in establishing falsity and *scienter*, there was a risk that the Court, at summary judgment, or a jury at trial, would conclude that Lead Plaintiffs could not establish any damages. In particular, Defendants also had significant loss causation arguments concerning the conduit/investment portfolio claims that could have substantially reduced or eliminated the recoverable damages for these claims. ¶138. For example, Lead Plaintiffs allege that this fraud was revealed on January 20, 2009, when State

Street announced that unrealized losses in its conduits and investment portfolio had substantially increased. *Id*. Defendants argued that State Street had released a negative earnings announcement on the same day, and that a substantial percentage of the stock price decline that day was caused by the negative information in the earnings release, as opposed to the disclosure of increased losses in the conduits or investment portfolio. *Id*.

Finally, proof of loss causation and damages would ultimately have required expert testimony before the jury. While Lead Plaintiffs would have been able to present a cogent and persuasive expert's view establishing loss causation and damages, there is little doubt that Defendants would have been able to present a well-qualified expert who would opine against a finding of loss causation with respect to most or all of the price declines. Lead Plaintiffs could not be certain which expert's view would be credited by the jury and who would prevail at trial in this "battle of the experts" and, accordingly, this created an additional level of litigation risk. *See Tyco*, 535 F. Supp. 2d at 260-61 ("even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *18 (S.D.N.Y. Nov. 8, 2010) ("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 Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses").

When viewed in the context of these significant litigation risks and the uncertainties involved with any litigation, the Settlement is a very favorable result. Accordingly, this factor supports approval of the Settlement. *See, e.g.*, *StockerYale*, 2007 WL 4589772, at *3 (this factor

supported settlement where the defendants had defenses to liability and loss causation that "could result in no liability and zero recovery for the class"); *OCA*, 2009 WL 512081, at *13 (the substantial risks that plaintiffs faced in establishing loss causation and proving *scienter* favored approval of the settlement); *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *18 (N.D. Tex. Nov. 8, 2005) ("plaintiffs' uncertain prospects of success through continued litigation" – including challenges in proving that "the statements made by Defendants were false when made" and in establishing *scienter* – favored approval of the settlement).[5]

5. The Ability of State Street to Withstand a Greater Judgment

Despite the outstanding recovery obtained here, Lead Plaintiffs believe that State Street could withstand a judgment greater than the $60 million settlement. However, "a defendant is not required to empty its coffers before a settlement can be found adequate." *In re Sturm, Ruger & Co. Sec. Litig.*, No. 3:09cv1293 (VLB), 2012 WL 3589610, at *7 (D. Conn. Aug. 20, 2012) (citation omitted); *see In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (same). Indeed, this factor, standing alone, is not sufficient to preclude a finding of substantive fairness where, as here, the other factors weigh heavily in favor of approving a settlement. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). Thus, this factor is neutral with respect to approval of the Settlement. *See, e.g.*, *Relafen*, 231 F.R.D. at 73; *Lupron*, 228 F.R.D. at 97.

[5] The risks of maintaining the class action through trial also support approval of the Settlement. Lead Plaintiffs' motion for class certification was pending at the time the Settlement was reached. While Lead Plaintiffs believe that 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 Advanced Battery Techs.*, 298 F.R.D. at 178 ("even if the Class were certified, Defendants may have moved to decertify the Class before trial or on appeal at the conclusion of trial, as class certification may always be reviewed").

6. The Range of Possible Recovery and the Attendant Risks of Litigation Support Approval of the Settlement

Under these factors, the Court considers the reasonableness of the settlement fund in light of the possible recovery in the litigation and risks of the litigation. In analyzing these factors, the issue for the Court is not whether the settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case. The court "consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell*, 495 F.2d at 462. Courts agree that the determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 130 (S.D.N.Y. 1997); *accord Relafen*, 231 F.R.D. at 73 ("[a] high degree of precision cannot be expected in valuing a litigation, especially regarding the estimation of the probability of particular outcomes"). Instead, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *Relafen*, 231 F.R.D. at 73.

Lead Plaintiffs submit that the Settlement is well within the range of reasonableness in light of the best possible recovery and all the attendant risks of this litigation. Indeed, when weighed against the risks of continued litigation, including the risks that there would be no recovery at all, the proposed Settlement for $60 million in cash is an excellent result. As discussed above, if a jury or the Court had credited even some of Defendants' arguments with respect to loss causation or liability, the Settlement Class might have recovered nothing. ¶139. In light of these risks, the Settlement provides an excellent result for the Settlement Class.

* * *

In sum, all of the relevant factors – including the arms'-length nature of the settlement negotiations; the complexity, expense and delay of further litigation; the significant risks of establishing liability and damages; and Lead Plaintiffs' and Co-Lead Counsel's informed understanding of the strengths and weaknesses of the claims following extensive discovery – support a finding that the Settlement is fair, reasonable and adequate.

II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable and adequate. *See Tyco*, 535 F. Supp. 2d at 262 ("Like the settlement itself, the plan of allocation must be fair, reasonable, and adequate."); *Hochstadt v. Boston Scientific Corp.*, 708 F. Supp. 2d 95, 109 (D. Mass. 2010) (same). A plan of allocation is fair and reasonable as long as it has a "reasonable, rational basis." *City of Providence*, 2014 WL 1883494, at *10 ("A plan of allocation 'need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel.'"); *IMAX*, 283 F.R.D. at 192 (same).

A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable, but the plan "need not necessarily treat all class members equally." *Schwartz*, 2005 WL 3148350, at *23. A reasonable plan of allocation "may consider the relative strength and values of different categories of claims." *IMAX*, 283 F.R.D. at 192; *see also In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 35 (D.N.H. 2006) (approving a plan of allocation that took into consideration "the strengths and weaknesses of the claims of the various types of class members"); *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 669 (E.D. Va. 2001) (approving plan that "sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims"). In addition, in determining

whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See Advanced Battery Techs.*, 298 F.R.D. at 180 ("When evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel."); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("[i]n determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel").

Here, the proposed Plan of Allocation, which was developed by Co-Lead Counsel in consultation with Lead Plaintiffs' damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of State Street publicly traded common stock during the Settlement Class Period (October 17, 2006 through October 21, 2009) that is listed in the Claim Form and for which adequate documentation is provided. ¶151. The calculation of Recognized Loss Amounts is generally based on the difference between the amount of estimated alleged artificial inflation in the State Street common stock on the date the stock was purchased and the amount of estimated alleged artificial inflation on the date of sale. *Id.* Lead Plaintiffs' damages expert calculated the estimated alleged artificial inflation by considering price changes in State Street common stock in reaction to the alleged corrective disclosures and adjusting for changes attributable to other factors. ¶150. In addition, in recognition of the greater strength of the Securities Act claims possessed by purchasers of common stock in or traceable to the June 2008 secondary offering, Recognized Loss Amounts calculated for shares of State Street common stock purchased in or traceable to the secondary offering will be increased by 15%. ¶151. The sum of the Recognized Loss Amounts for all of a Claimant's purchases or acquisitions of State Street common stock during the Settlement Class Period is the Claimant's "Recognized Claim"

and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. ¶152.

Co-Lead Counsel submit that the Plan of Allocation fairly and rationally allocates the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in State Street common stock attributable to the conduct alleged in the Complaint and the relative strengths of their claims. ¶153. Moreover, the Plan of Allocation is set forth on pages 8 to 10 of the Notice, and to date no objections to the Plan have been received from any Settlement Class Members. ¶154. Accordingly, for all of the reasons set forth herein and in the Joint Declaration, the Plan of Allocation is fair and reasonable, and should be approved.

III. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Notice provided to the Settlement Class satisfied the requirements of Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be directed "in a reasonable manner to all class members who would be bound" by the settlement, Fed. R. Civ. P. 23(e)(1), and that the notice "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them." *Duhaime*, 177 F.R.D. at 61 (quoting *Greenspun v. Bogan*, 492 F.2d 375, 382 (1st Cir. 1974)).

Both the substance of the Notice and the method of its dissemination to potential members of the Settlement Class satisfied these standards. The Court-approved Notice includes all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15

U.S.C. §§ 77z-1(a)(7), 78u-4(a)(7), including: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the amount of the Settlement; (iv) a description of the Plan of Allocation; (v) an explanation of the reasons why the parties are proposing the Settlement; (vi) a statement indicating the attorneys' fees and costs that will be sought; (vii) a description of Settlement Class Members' right to opt-out of the Settlement Class or object to the Settlement, the Plan of Allocation or the requested attorneys' fees or expenses; and (viii) notice of the binding effect of a judgment on Settlement Class Members.

As noted above, in accordance with the Court's Preliminary Approval Order, beginning on August 18, 2014 through September 22, 2014, the Claims Administrator has mailed over 293,000 copies of the Notice by first-class mail to potential members of the Settlement Class and their nominees. *See* Thurin Decl. ¶¶3-8. In addition, Lead Plaintiffs caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over the *PR Newswire* on August 27, 2014. Thurin Decl. ¶9. Copies of the Notice, Claim Form, Preliminary Approval Order and Stipulation were made available on the Settlement website maintained by Epiq, www.statestreetclassactionsettlement.com, beginning on August 18, 2014, and copies of the Notice and Claim Form were made available on BLBG's website. *See* Thurin Decl. ¶14; Joint Decl. ¶146. This combination of individual first-class mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely-circulated publication, transmitted over the newswire, and set forth on internet websites, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *Advanced Battery Techs.*, 298 F.R.D. at 182-83; *Schwartz*, 2005 WL 3148350, at *10-*11; *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *12-*13 (S.D.N.Y. 2009); *Cabletron*, 239 F.R.D. at 35-36.

CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court approve the proposed Settlement as fair, reasonable and adequate and approve the Plan of Allocation as fair and reasonable.

Dated: September 22, 2014

Respectfully submitted,

/s/ John C. Browne

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CERTIFICATE OF SERVICE

I hereby certify that the above Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on September 22, 2014.

/s/ John C. Browne
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