SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

CAMELOT EVENT DRIVEN FUND, A SERIES OF FRANK FUNDS TRUST, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

MORGAN STANLEY & CO. LLC, J.P. MORGAN SECURITIES, LLC, CITIGROUP GLOBAL MARKETS INC., GOLDMAN SACHS & CO. LLC, MIZUHO SECURITIES USA LLC, SIEBERT WILLIAMS SHANK & CO., LLC, BNP PARIBAS SECURITIES CORP., RBC CAPITAL MARKETS, LLC, U.S. BANCORP INVESTMENTS, INC., SMBC NIKKO SECURITIES AMERICA, INC., TD SECURITIES (USA) LLC, SG AMERICAS SECURITIES, LLC, MUFG SECURITIES AMERICAS INC., CASTLEOAK SECURITIES, L.P., SAMUEL A. RAMIREZ & COMPANY, INC., ACADEMY SECURITIES, INC., R. SEELAUS & CO., LLC, WELLS FARGO SECURITIES, LLC, BNY MELLON CAPITAL MARKETS, LLC, INTESA SANPAOLO S.P.A., ICBC STANDARD BANK PLC, VIACOMCBS, INC., ROBERT M. BAKISH, KATHERINE GILL-CHAREST, SHARI E. REDSTONE, CANDACE K. BEINECKE, BARBARA M. BYRNE, LINDA M. GRIEGO, ROBERT N. KLIEGER, JUDITH A. MCHALE, RONALD L. NELSON, CHARLES E. PHILLIPS, JR., SUSAN SCHUMAN, NICOLE SELIGMAN, and FREDERICK O. TERRELL,

Defendants.

Index No. 654959/2021

The Honorable Andrew Borrok

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

Motion Sequence No. ___

Oral Argument Requested

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Plaintiffs Camelot Event Driven Fund, A Series Of Frank Funds Trust ("Camelot"), and Municipal Police Employees' Retirement System ("MPERS" and, together with Camelot, "Plaintiffs"), on behalf of themselves and the Class, respectfully submit this memorandum in support of their motion for: (1) final approval of the proposed Settlement resolving the above-captioned action (the "Action"); and (2) approval of the proposed plan of allocation of the proceeds of the Settlement.[1] The terms of the proposed Settlement are set forth in the Stipulation, and the Plan of Allocation is detailed in Appendix A to the Court-approved Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice"). Ex. 4-1.

I. PRELIMINARY STATEMENT

Plaintiffs are pleased to present for final approval the $120 million Settlement of this Action. According to our research, it is the second-largest settlement of a Securities Act case in any state court. As this Court is aware first-hand, the litigation was extensive, hard-fought, and settled at the close of fact discovery shortly before the exchange of expert reports. The issues were novel and challenging. The Parties reached the Settlement under the auspices of one of the most preeminent mediators in this field. The extended settlement negotiations included three in-person mediation sessions, and the Settlement ultimately reached was based on a mediator's recommendation. At the time of the Settlement, the Parties were completely knowledgeable of the relevant facts and law applicable to the claims and defenses asserted in the Action.

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[1] Unless otherwise defined, all capitalized terms have the same meaning as set forth in the Stipulation and Agreement of Settlement dated March 27, 2025 (the "Stipulation"; NYSCEF Doc. No. 1599), or the Joint Affirmation of Daniella Quitt and John Rizio-Hamilton (the "Joint Affirmation" or "Joint Aff."). Citations to "¶__" and "Ex. __" refer, respectively, to paragraphs in and Exhibits to the Joint Affirmation.

Plaintiffs have duly complied with the Preliminary Approval Order and, with the assistance of the Settlement Administrator, have effectuated the notice and claims process. ¶ 37, 62-66. Although the July 15, 2025 deadline for filing objections has not yet passed, to date, no objections to any aspect of the Settlement have been submitted. ¶ 2.

II. FACTUAL AND PROCEDURAL BACKGROUND OF THE LITIGATION

The Joint Affirmation is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action; the nature of the claims asserted; the work counsel performed and the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and the terms of the Plan of Allocation of the Net Settlement Fund.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. The Standards for Final Approval

New York courts strongly favor settlements as a matter of public policy. *See IDT Corp. v. Tyco Grp., S.A.R.L.*, 13 N.Y.3d 209, 213 (2009) ("Stipulations of settlement are judicially favored and may not be lightly set aside"); *In re East 51st St. Crane Collapse Litig.*, 920 N.Y.S.2d 584, 589 (Sup. Ct. N.Y. Cnty. 2011) ("New York public policy prefers that disputes be resolved through settlement rather than litigation.") & 592 (noting "the strong public policy favoring settlement of claims"); *Wimbledon Fund, SPC v. Weston Capital Partners Master Fund II, Ltd.*, 126 N.Y.S.3d 93, 95 (2020) ("public policy favors the settlement of disputes.").[2] This is because "[a] negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v.*

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[2] Unless otherwise noted, all emphasis in quotations is added and all internal quotation marks and citations are omitted.

Parker Chapin Flattau & Klimpl, 82 N.Y.2d 375, 383 (1993); *see also Anita Founds., Inc. v. ILGWU Nat'l Ret. Fund*, 902 F.2d 185, 190 (2d Cir. 1990) ("Courts are wary of disturbing settlements, because they represent compromise and conservation of judicial resources, two concepts highly regarded in American jurisprudence.").[3]

These principles are especially applicable in the context of class action settlements. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *In re Western Union Money Transfer Litig.*, 2004 WL 3709932, at *17 (E.D.N.Y. Oct. 19, 2004) ("[C]lass action settlements with terms that are fair, adequate, and reasonable . . . serve the public interest and conserve judicial resources."). After considering these factors, this Court approved a $145 million dollar settlement involving Allianz Global Investors U.S. LLC and prosecuted by co-lead counsel, BLB&G. *Knox County Pension & Ret. Bd. v. Allianz Global Investors U.S. LLC*, 2023 WL 2500648 (Sup. Ct. N.Y. Cnty. Mar. 9, 2023).

CPLR § 908 states that "[a] class action shall not be dismissed, discontinued, or compromised without the approval of the [C]ourt." While § 908 does not prescribe specific guidelines for evaluating proposed settlements, New York courts focus their inquiry on "the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members." *Hosue v. Calypso St. Barth, Inc.*, 2017 WL 4011213, at *4 (Sup. Ct. N.Y. Cnty. Sept.

[3] In considering final approval of a settlement, "New York's courts have recognized that its class action statute is similar to the federal statute . . . and have looked to federal case law for guidance." *Fiala v. Metro. Life Ins. Co.*, 27 Misc. 3d 599, 606 (Sup. Ct. N.Y. Cnty. 2010); *see also Desrosiers v. Perry Ellis Menswear, LLC*, 30 N.Y.3d 488, 495 (2017); *City of New York v. Maul*, 14 N.Y.3d 499, 510 (2010) ("New York courts have . . . found that federal jurisprudence is helpful in analyzing CPLR 901 issues, because CPLR article 9 has much in common with Federal rule 23, the federal class action provision.").

12, 2017). Courts have determined fairness, adequacy and reasonableness based on the following factors articulated in *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990), *aff'd*, *Matter of Colt Indus. S'holder Litig.*, 77 N.Y.2d 185 (1991): (i) the likelihood that plaintiffs will succeed on the merits; (ii) the extent of support from the parties; (iii) the judgment of counsel; (iv) the presence of good faith bargaining; and (v) the complexity and nature of the issues of law and fact. *See also Fernandez v. Legends Hosp., LLC*, 2015 WL 3932897, at *2 (Sup. Ct. N.Y. Cnty. June 22, 2015). These factors were also reaffirmed in *Gordon v. Verizon Communications, Inc.*, 148 A.D.3d 146, 162 (1st Dep't 2017).

As demonstrated below and in the Joint Affirmation, these factors overwhelmingly favor approving the Settlement. Plaintiffs and Class Counsel—who have actively litigated this case for approximately four years—have thoroughly examined the facts and the law applicable to the claims and defenses asserted in the Action and weighed the benefits of the Settlement against the risk, delay, and cost of further litigation, including the possibility of a recovery below the Settlement Amount, or no recovery at all. ¶¶ 39-61. Based on this analysis, Plaintiffs respectfully submit that the Settlement is fair, reasonable and adequate, and merits this Court's approval.

B. *Colt* Factor One: The Likelihood Plaintiffs Will Succeed on the Merits Strongly Supports Final Approval

When assessing a proposed class action settlement, courts first consider Plaintiffs' ultimate "likelihood success on the merits." *Gordon*, 148 A.D. 3d at 162; *Colt*, 155 A.D.2d at 160. As this Court is well aware, securities actions are "notoriously complex and difficult to prove." *In re Bayer AG Sec. Litig.*, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *see also In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *4 (S.D.N.Y. July 21, 2020) (noting that courts "have long recognized that [securities] litigation is notably difficult and notoriously uncertain"). This case was no exception.

(a) Risks to Proving Defendants' Liability

To prevail on their claims, Plaintiffs would need to prove the existence of materially false and misleading statements or omissions in the Offering Materials related to, among other things, certain of the underwriters' holdings of, and intentions to sell, Viacom securities outside of the Offerings, in connection with their brokerage relationships with Archegos Capital Management, LP ("Archegos"). While at the pleading stage the Court found that the Offering Materials contained false and misleading statements and omissions with respect to the risks of the Offerings, Plaintiffs faced multiple significant risks with respect to proving Defendants' liability at trial, as summarized below.

Plaintiffs faced a principal risk on both their Section 11 and Section 12 claims regarding whether and by when they had to show Defendants' intent to sell their Archegos-linked Viacom holdings. Specifically, the First Department's ruling on Defendants' motions to dismiss indicated that, to demonstrate Section 11 liability, Plaintiffs had to show that Defendants intended to sell their Viacom holdings as of the effective date of the Offering Materials. *See Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 210 N.Y.S.3d 1, 226 A.D.3d 418, 419-20 (Sup. Ct. 1st Dep't 2024). With respect to Section 12, the First Department left open the question of when the relevant date was, and this question could have been resolved against Plaintiffs at summary judgment or trial. *See id.* at 419. Even if Plaintiffs prevailed on this timing issue at summary judgment trial, it could have then been resolved against them on appeal.

Defendants had credible arguments based on the evidence that their intent to sell did not crystallize until after the effective date of the Offering Materials. Among other things, Defendants have argued that the Offering Materials were only required to be accurate as of the morning of Wednesday, March 24, 2021, which is when Defendants announced the pricing of the Offerings and confirmed the investor orders. However, as of the morning of Wednesday, March 24, Archegos had not yet missed any margin calls and was not yet in default. As a result, Defendants have argued that they did not yet intend to liquidate their Archegos-related positions, including Viacom.

In response, Plaintiffs would argue that a material conflict of interest existed as of the effective date as a result of the size and riskiness of Defendants' Archegos-related positions. However, as noted, the First Department sustained the claims against Defendants based on the Complaint's allegation that they already planned and intended to sell, and did not specifically address the conflict of interest theory. Thus, Defendants had a credible argument that Plaintiffs would be required to show that Defendants had developed their intent to sell the Viacom shares as of the effective date of the Offerings, and that the existence of a conflict was not, by itself, enough.

Defendants would also likely argue that they properly maintained ethical walls in accordance with the law and their internal policies (*see* NYSCEF Doc. Nos. 1773, 1807-08), and thus, Archegos' Viacom positions and the risks and conflicts they presented were unknown to their deal teams at the time of the Offerings. In addition, Defendants would likely argue that personnel responsible for examining potential conflicts for the Offerings determined in accordance with their policies that no conflict existed because Archegos was in good financial standing and had not failed to meet at margin call as of the effective date of the Offering Materials. Given these circumstances, Defendants would likely claim they had an obligation to maintain the confidentiality of Archegos' positions rather than escalate any potential conflict to senior management or other personnel who sat above the wall. *See id*. In addition, Defendants would likely continue to argue that since the disclosures did not involve the issuer directly, no broader duty to disclose existed.

Plaintiffs maintain that the size of Archegos' Viacom positions and risk of liquidation were known to Defendants at the start of the Offerings and presented a conflict of interest. Plaintiffs' position is that the risk and conflict should have been discovered through adequate due diligence,[4] which Defendants failed to conduct. Moreover, Plaintiffs maintain that the evidence supports their argument that ethical walls were breached and certain members of the deal team were well aware of Archegos' Viacom positions. Plaintiffs also maintain that the risks could have been disclosed without revealing the identity of Archegos and that such disclosure was required by Item 105 and Item 508(a) of Regulation S-K.

Nevertheless, these issues posed significant risk. Because the due diligence involved the underwriters themselves and not the issuer, Defendants argued that Plaintiffs were putting forth a novel due diligence requirement. While this argument proved unsuccessful at the First Department with respect to the remaining Defendants, that was a pleading decision; the issue that loomed in the background is whether the policies and procedures which existed at each of the Defendants were properly maintained and prevented personnel from different divisions of the bank—and across banks—from discovering or sharing information about Archegos' Viacom positions and the risks they posed to the Offerings. ¶ 48. These issues would have been hotly contested, including through expert evidence, and there was a risk that they could have been decided against Plaintiffs at summary judgement or trial.

Even if Plaintiffs prevailed at summary judgment and trial, Defendants would have appealed. In addition to proffering evidence that they contend supports their position, they would have again invoked the same type of policy arguments that were before the First Department in

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[4] *See* *In re WorldCom, Inc. Sec. Litig.*, 346 F. Supp. 2d 628, 689 (S.D.N.Y. 2004); *Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 182 N.Y.S.3d 602 (Table), 2023 WL 1790330, at *30 (Sup. Ct. N.Y. Cnty. 2023).

connection with their appeal of the denial of their motion to dismiss. For example, amicus briefs were submitted on behalf of Defendants (and former defendants) by: 1) former United States Securities Exchange Commission ("SEC") Chair, Jay Clayton, and former SEC Director of the Division of Market Regulation, Brandon Becker, claiming that the decision requiring due diligence of the underwriters would preclude a firm engaged in trading activity from providing underwriting services and vice versa (Appeal Docket 00983/2023: NYSCEF Doc. No. 45); 2) former officials at the SEC and certain law professors claiming that the decision on the motion to dismiss subjected underwriters to an "unspecified" set of conflicts from positions held by the banks' trading desks (Appeal Docket 00983/2023: NYSCEF Doc. No. 46); and 3) The American Bankers Association and the Securities Industry and Financial Markets Association asserting that the requirement that underwriters were required to conduct due diligence of each other was not supported by the law (Appeal Docket 00983/2023: NYSCEF Doc. Nos. 47 and 48).[5] These policy issues would remain if Plaintiffs prevailed at summary judgment or trial, and would have been renewed in the context of a full record.

There were also complex issues surrounding Section 12 liability that could potentially eliminate those claims as well. Defendants maintained throughout the litigation that they sold all shares no later than the morning of March 24 and that Section 12 liability is measured as of the time of sale and does not extend to the Final Prospectus Supplement or the closing. *See Vacold LLC v. Cerami*, 545 F.3d 114, 116, 122 (2d Cir. 2008). Plaintiffs believe that this position is illogical because it would negate the significance of the Final Prospectus (which was a required

[5] Of course, Plaintiffs do not agree that either the decision of this Court of the Appellate Division subjected any of the Defendants to any obligations that did not already exist under the Securities laws. Amicus briefs were also submitted supporting Plaintiffs' positions. Appeal Docket 00983/2023: NYSCEF Doc. Nos. 66 and 67. Nevertheless, one cannot ignore the vigor Defendants would utilize to overturn any decision or verdict favorable to Plaintiffs and the Class.

condition of the Offerings) and that all the activities that were required conditions to close the Offerings, including "bring down calls," would in effect be meaningless. *See FHFA v. Nomura Holding Am., Inc.*, 68 F. Supp. 3d 499, 507-09 (S.D.N.Y. 2014) *aff'd Fed. Housing Fin. Agency v. Nomura Holding Am., Inc.*, 873 F.3d 85, 148-49 (2d Cir. 2017). However, on the initial appeal, the First Department had left the legal question as to the effective date for liability under Section 12 open and could have ruled against Plaintiffs on a subsequent appeal. In addition, even if Plaintiffs prevailed on this legal argument, Defendants could still raise factual issues concerning, *inter alia*, when they knew Archegos would not be able to meet their margin calls, contend that they did not control the Viacom shares until the actual default, and argue that they did not form an intent to sell the Viacom shares until after the relevant effective date.

While Plaintiffs believe they had responses to each of these arguments, Defendants' liability challenges presented risks to the Class's ability to recover their damages and or at the very least would result in significant delay in any recovery after extensive appeals concerning novel complex issues.

(b) Risks Associated with Negative Causation and Damages

As a threshold matter, Defendants would argue that their liability was limited to the shares that were allocated to them by Viacom. *See, e.g., Int'l Union of Operating Eng'rs Ben. Funds of E. Pa. & Del. v. Camping World Holdings, Inc.*, 2020 WL 1939666, at *4 (Sup. Ct. N.Y. Cnty. Apr. 22, 2020) (dismissing Section 12(a)(2) claims against certain defendants who did not actually transfer title to plaintiffs where complaint failed to plead "any facts laying out [those defendants'] conduct that constitutes selling, assisting or promoting in regard to the plaintiff or the relevant offering"). While Plaintiffs argued that Morgan Stanley, as lead underwriter, was liable for all the shares issued in the Offerings, this was unchartered territory.[6]

Had this case continued, Defendants also would have likely pursued a "negative causation" defense by arguing that the large majority of the stock price decline was not attributable to Archegos' liquidation and the block sales of Viacom stock. In support of this argument, Defendants would have asserted that: (1) the sales did not occur until after the Offerings closed, and (2) the large majority of the stock price declines occurred before the Offerings closed. For example, Morgan Stanley's and Goldman Sachs's liquidations began on March 25 and occurred in greater part on March 26; for Wells Fargo, sales did not occur until the following week.

While Plaintiffs would have contended that the record supports their position that the risk of liquidation existed and permeated the market before the actual sales, as evidenced by the fact that the stock price dropped precipitously before the Offerings closed and never rebounded, there was risk that this argument may not have prevailed.

This is particularly true because, like most securities cases, the damages arguments would have turned into a "battle of the experts." There is no way to predict which expert's opinions might have been excluded or accepted by the jury. Accordingly, the risk that the jury would credit Defendants' damages position over that of Plaintiffs was significant, even assuming liability was proven. *See, e.g.*, *Signet*, 2020 WL 4196468, at *11 ("[T]here is no way to predict with any certainty which expert's opinions the jury would have accepted."). If Defendants' arguments

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[6] While Plaintiffs believe that Viacom as the issuer is subject to strict liability, the First Department affirmed the decision of this Court dismissing Viacom as a defendant, and this holding remained law of the case. Ultimately, this could be confusing or troubling to a juror or other fact finder because the Court found that, as a matter of law at the pleading stage, the entity that profited the most from the Offerings had no reason to know of the conflicts and was thus not liable to the Class.

concerning negative loss causation were accepted, the maximum damages that could be established would be dramatically lower or eliminated entirely.

Indeed, courts favor settlement where, as here, the parties would likely rely on significant expert testimony and analysis. *See, e.g., In re Giant Interactive Grp., Inc., Sec. Litig.*, 279 F.R.D. 151,161-62 (S.D.N.Y. 2011) (approving settlement where the litigation risks included a "credible defense of 'negative causation'").

(c) Other Risks Associated with Bringing this Case to Trial

Though all securities cases are notoriously complex, this case presented some unique risks not present in every case. For example, this case involved complex concepts that may have been difficult for a jury to fully comprehend, including total return swaps and ethical walls. Also, Sun Kook (also known as Bill) Hwang, Archegos' founder was found guilty of market manipulation and Defendants would have strenuously argued that they too were his victims. Morgan Stanley purportedly lost hundreds of millions of dollars in their dealings with Archegos and submitted a victim statement in connection with the criminal sentencing of Mr. Hwang. This argument—that Defendants themselves were also victims of Mr. Hwang and Archegos—could raise questions for jurors on Plaintiffs' theory of liability.

(d) Adequacy of Settlement in Light of Litigation Risk

In analyzing the likelihood of success on the merits, courts have noted that finding "adequacy" involves "balancing the value of [a] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006). The $120 million Settlement represents a very favorable result for the Class in comparison to the range of potential recoveries that might be recovered if Plaintiffs prevailed at trial, which was far from certain for the reasons noted above.

Plaintiffs' damages expert estimates that if Plaintiffs had fully prevailed on all of their claims at summary judgment and after a jury trial, if the Class was not decertified, and if the Court and jury accepted Plaintiffs' damages theory in full, the total *maximum* damages *potentially* available in this Action would range from approximately $600 million to $1.2 billion. The $600 million represents the damages that were available if Plaintiffs were limited to the share that the remaining Defendants were allocated in the Offerings, while the $1.2 billion represents the damages if Plaintiffs were able to recover for all Offering shares against the remaining Defendants. Thus, the $120,000,000 amount represents a recovery of 10% to 20% of maximum potential damages. This recovery is greater than amounts typically seen in comparable securities actions. *See Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at *6 (S.D.N.Y. Sept 29, 2022) (finding that recovery representing approximately 13.75% of recoverable damages to be "well within the range of reasonableness and, in fact, considerably above the high end of historical averages"); *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 762 (2d Cir. 2020) (approving settlement "which is 6.1 percent of what appellees agree is the settlement class's maximum potentially recoverable damages"); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) ("average settlement amounts in securities fraud class actions where investors sustained losses over the past decade . . . have ranged from 3% to 7% of the class members' estimated losses").

As discussed herein and the Joint Affirmation, this case was not risk free and there were meaningful barriers to recovery. Obstacles included both the well-known general risks of complex securities litigation, as well as the specific risks inherent in this case. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("[t]he difficulty of establishing liability is a common risk of securities litigation" and "[t]he risk of establishing damages [is] equally daunting.").

For all these reasons, Plaintiffs and Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class.

C. *Colt* Factors Two, Three, and Four: The Extent of Support from the Parties, the Judgment of Counsel, and the Presence of Good Faith Bargaining All Support Final Approval of Settlement

When considering final approval of a settlement in a class action, courts in New York also look to the support of the parties, the judgment of the respective counsel, and whether the parties bargained in good faith. *Gordon*, 148 A.D.3d at 157; *Colt*, 155 A.D.2d at 160. Here, these factors strongly support granting final approval of the proposed Settlement.

First, the Settlement has the support of the Parties, as evidenced by the Stipulation filed on March 27, 2025 (NYSCEF Doc. No. 1599) and by the affirmations from Layn R. Phillips, Brian J. Frank for Camelot, and Ben Huxen for MPERS. Exs. 1, 2, and 3. Moreover, in this context, courts also consider the reaction of absent class members. Here, although the Court-established July 15, 2025 deadline for filing objections has not yet passed, no objections to any aspect of the Settlement have been submitted to date. ¶ 2.[7]

Second, in reaching the Settlement, Class Counsel concluded that it was fair, reasonable, and adequate, particularly when contrasted with the risks, costs, and uncertainties of continued litigation described above. The judgment of Class Counsel—law firms that are highly experienced in complex litigation and securities class actions (*see* Exs. 6-3 and 7-3)—that the Settlement is in the best interests of the Class is entitled to "great weight." *Shapiro v. JPMorgan Chase & Co.*,

[7] Any objections that may be received we will be addressed in Plaintiffs' reply papers, which will be filed on July 29, 2025.

2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014). Moreover, Class Counsel reached this judgment after nearly four years of extensive litigation, including the completion of an extensive fact discovery process which included obtaining 1.7 million pages of documents, identifying and reviewing the most relevant documents produced, and taking 37 fact depositions and defending two more; extensive consultation with experts in the fields of damages and causation, prime brokerage trading and risk management, underwriter due diligence, and ethical walls and conflicts procedures, among others; and extended settlement negotiations, which included the exchange of several rounds of detailed mediation briefing and three in-person mediation sessions. ¶¶ 9-34, 75. Accordingly, the Parties and their counsel were fully informed about the strengths and risks of the litigation at the time the Settlement was reached.

Third, there can be no doubt that the Parties bargained in good faith (and extensively). The Settlement was negotiated at arm's-length with the assistance of an experienced and nationally recognized mediator, Judge Layn Phillips. Ex. 1; ¶¶ 32-34. The Parties engaged in extended settlement negotiations, which included three in-person mediation sessions. Prior to, and subsequent to, the first in-person mediation session held on November 7, 2024, the Parties submitted detailed mediation statements, which contained their respective positions on issues of liability and damages. The Parties thoroughly prepared for and negotiated vigorously throughout mediation, submitting multiple rounds of briefing, and ultimately after three sessions, the Parties accepted Judge Phillips February 14, 2025 "mediator's proposal" and a settlement was reached. Ex. 1 at ¶¶ 7-11. On March 5, 2025, the Parties executed a settlement term sheet memorializing their agreement-in-principle to settle the Action. ¶ 34.

Thus, these *Colt* factors also support approval of the Settlement. *See also In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding a settlement fair where the parties engaged in "arm's length negotiations," including mediation before "retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases").

D. *Colt* Factor Five: The Complexity and Nature of the Issues of Law and Fact Further Support Final Approval

Finally, courts look to the complexity and nature of the case (which is closely related to the first factor, Plaintiffs' likelihood of success). *See Saska v. Metro. Museum of Art,* 57 Misc. 3d 218, 222 (Sup. Ct. N.Y. Cnty. 2017) (evaluating the first and fifth *Colt* factors together in grant of final approval); *City Trading Fund v. Nye*, 59 Misc. 3d 477, 510-11 (Sup. Ct. N.Y. Cnty. 2018) (same). This factor also supports the Settlement.

Courts have long recognized the "notorious complexity" of securities class actions. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014). This case was no exception. As discussed above and in the Joint Affirmation, this was a highly complex case that involved complicated issues and would have required substantial additional time and expense to reach a litigated verdict including substantial expert discovery on multiple issues concerning among other things, damages, loss causation, due diligence, and underwriter liability; motions for summary judgment; a trial; and appeals. In contrast, the Settlement provides an immediate recovery of $120 million for the Class.

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For all the foregoing reasons, we respectfully submit that the proposed Settlement is fair, reasonable, and adequate and merits approval by the Court.

IV. THE PLAN OF ALLOCATION FOR THE PROCEEDS OF THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE 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 In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y.2012). A plan of allocation is fair and reasonable as long as it has a "rational basis." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009). In determining whether a plan of allocation is reasonable, courts give great weight to the opinion of experienced counsel. *See Giant Interactive Grp.*, 279 F.R.D. at 163.

The proposed Plan of Allocation was developed by Class Counsel in consultation with Plaintiffs' damage expert and provides a fair and reasonable method to allocate the Net Settlement Fund among Class Members who suffered economic losses as a result of the misconduct alleged in the Action. ¶ 67. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among those Class Members who suffered economic losses as a result of the alleged violations of the Securities Act with respect to purchases or acquisitions of (a) shares of publicly traded Viacom Class B Common Stock issued in Viacom's secondary public offering of Viacom Common Stock announced on March 22, 2021, and (b) shares of Viacom's 5.75% Series A Mandatory Convertible Preferred Stock issued in or traceable to Viacom's initial public offering of Viacom Preferred Stock announced on March 22, 2021. *Id*. *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 105 (D.N.J. 2018) ("pro rata distributions are consistently upheld").

The Offerings were both announced on March 22, 2021, priced on March 23, 2021, and closed on March 26, 2021. All shares of Viacom Common Stock purchased directly in the Common Offering at the $85.00 per share issue price are potentially eligible for recovery under the Plan of Allocation. ¶ 68. For shares of Viacom Common Stock purchased in the open market from March 23, 2021, through the close of trading on March 29, 2021, only Claimants who can establish through documentation that the specific shares that the Claimant purchased were issued in the Common Offering will be potentially eligible for recovery under the Plan of Allocation. *Id*. All shares of Viacom Preferred Stock either purchased directly in the Preferred Offering at the $100.00 per share issue price or purchased in the open market through the close of trading on March 29, 2021, are potentially eligible for recovery under the Plan of Allocation. *Id*. All Viacom Shares purchased after the close of trading on March 29, 2021 are not eligible for recovery. *Id*.

The Net Settlement Fund will be allocated between the Common Stock and Preferred Stock Claim based on the relative amounts of the estimated damages suffered by the two types of Viacom Shares. ¶ 69.

(a) The Common Stock claims have been allocated $75 million, less a proportional amount of the total Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement.

(b) The Preferred Stock claims have been allocated $45 million, less a proportional amount of the total Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement.

Here, for the elimination of doubt on the propriety of the allocation, the formulas used in the Plan of Allocation, are based on the greater of the statutory measure for calculation of damages for claims under Section 11 of the Securities Act, as set forth at Section 11(e), 15 U.S.C. § 77k(e), and the recission measure of damages available for claims under Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77*l*(a)(2). ¶ 70.

Plaintiffs believe that the Plan is fair, reasonable, and adequate, and respectfully submit that it should also be approved. There have been no objections to the Plan to date.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.[8]

Dated: July 1, 2025

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Co-Lead Counsel for Plaintiffs and the Class

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[8] A proposed Judgment and Order Granting Final Approval of Class Action Settlement and a proposed Order Approving Plan of Allocation will be submitted with Plaintiffs' reply papers on July 29, 2025, after the deadline for objecting to the motion and requesting exclusion from the Class has passed.

ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Daniella Quitt an attorney licensed to practice law in the State of New York, certify that this Motion complies with the word count limit in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g), Rule 17). According to the word count of the word-processing system used to prepare this Memorandum of Law, this Memorandum contains 5,074 words, excluding the caption, table of contents, table of authorities, signature block, and this Certification.

Dated: July 1, 2025
New York, New York

/s/ Daniella Quitt
Daniella Quitt