**PORTIONS REDACTED PURSUANT TO THE SEPTEMBER 30, 2010 PROTECTIVE ORDER**

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

| IN RE CITIGROUP INC. BOND LITIGATION | Master File No. 08 Civ. 9522 (SHS)<br>**ECF Case** |
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# PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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## I. PRELIMINARY STATEMENT

The gravamen of this Action is that Citigroup Inc. ("Citigroup" or the "Bank") made material misrepresentations and omissions in connection with numerous public Offerings of debt and preferred securities conducted between May 2006 and August 2008 (the "Offerings Period"), through which Citigroup raised approximately $67 billion from investors. ¶¶311-13.[1] Specifically, Plaintiffs allege that the Registration Statements for these Offerings misrepresented Citigroup's exposure to massive amounts of toxic mortgage-linked assets, the value of these assets, and their impact on Citigroup's financial condition. ¶¶161-73, 193-296. Investors in the Offerings did not learn the full truth about Citigroup's financial condition until November 2008, when certain corrective disclosures revealed that these assets were so impaired that they had rendered Citigroup insolvent. ¶¶248-57. These disclosures caused the Bond Class Securities to plummet in value, and forced the U.S. Government to save Citigroup from imminent bankruptcy with a $326 billion taxpayer bailout – the largest rescue package in history. ¶¶258-62.

Based on these facts, Plaintiffs have asserted claims arising solely under the Securities Act of 1933. The Court largely sustained these claims in a detailed opinion issued on July 12, 2010. *See In re Citigroup Inc. Bond Litig.*, 723 F. Supp. 2d 568 (S.D.N.Y. 2010) ("*Citigroup*"). Plaintiffs now move pursuant to Federal Rules of Civil Procedure Rule 23(a) and 23(b)(3) for: (i) certification of the class as defined in Section IV; and (ii) the appointment of the investors denominated in Section IV as class representatives, with Bernstein Litowitz Berger & Grossmann LLP appointed as class counsel.

This case presents the paradigm for class certification. The "Second Circuit … has explicitly noted its preference for class certification in securities cases" due to the clear predominance of common issues and the impracticability of bringing a multitude of individual actions to redress a common wrong. *In re Nortel Networks Corp. Sec. Litig.*, 2003 WL 22077464, at *2 (S.D.N.Y. Sept. 8, 2003) (Berman, J.).

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[1] All citations to "¶__" are to the Consolidated Amended Class Action Complaint (the "Complaint"). Unless otherwise noted, all capitalized terms have the same meaning as in the Complaint, and all emphasis has been added.

Thus, this Court has "recognized that class actions are generally appropriate when plaintiffs seek redress for violations of the securities laws." *See In re Deutsche Telekom AG Sec. Litig.*, 229 F. Supp. 2d 277, 282 (S.D.N.Y. 2002) (Stein, J.). This is especially true here, where Plaintiffs' claims arise solely under the Securities Act, which requires only that Plaintiffs show a material misrepresentation or omission in the Registration Statements, and does not require proof of scienter, reliance, or loss causation. *Citigroup*, 723 F. Supp. 2d at 587. Indeed, in one of the most significant Section 11 class certification opinions in this District, Judge Cote recognized that the central requirement for class treatment – that common issues predominate over individual ones – is "'readily met'" in these circumstances. *In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 288 (S.D.N.Y. 2003) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)).

This Action easily meets all the requirements of Rules 23(a) and 23(b)(3). For example, given that Citigroup issued approximately $70 billion of securities in the Offerings, the class is so numerous that joinder would be impractical. This Action also presents numerous common issues of law and fact – most notably, whether the Registration Statements contained material misstatements or omissions, and whether the Defendants may be held liable for them. *See WorldCom*, 219 F.R.D. at 281. The typicality and adequacy criteria are also satisfied. The proposed class representatives and class members purchased securities in the Offerings pursuant to Registration Statements that contained the same misrepresentations or omissions and, thus, their claims and interests are closely aligned. In fact, by proving their own claims, the class representatives will necessarily prove the claims of absent class members – a circumstance that amply demonstrates their typicality and adequacy. *See id.* at 281-82. Further, proposed class counsel has and will continue to ably and zealously prosecute this Action on the class's behalf.

The predominance and superiority requirements of Rule 23(b)(3) are also met. As this Court has held, common issues "overwhelmingly predominate" where, as here, the central issue is whether defendants issued material misrepresentations or omissions in publicly-disseminated documents. *In re*

*PaineWebber Limited P'ships Litig.*, 171 F.R.D. 104, 123 (S.D.N.Y. 1997) (Stein, J.), *aff'd* 117 F.3d 721 (2d Cir. 1997). Additionally, a class action is the most efficient and effective means of resolving these claims, because it will allow numerous investors with small damages to seek redress through a single representative action, when they might otherwise not be able to seek relief at all.

Finally, although the Court has already held that Plaintiffs have standing to assert claims on behalf of investors in all the Offerings (*see Citigroup*, 723 F. Supp. 2d at 584-85), Defendants have indicated that they intend to rehash their argument that Plaintiffs cannot assert claims on behalf of investors in securities that Plaintiffs have not purchased. This argument can again be swiftly rejected. As this Court has held, where the claims of the class and the representatives arise out of the same misleading statements, as they do here, class certification is proper regardless of whether the representatives have purchased each and every security at issue. *See PaineWebber*, 171 F.R.D. at 123 (certifying Section 11 class where representatives invested in only 20 of 70 partnerships). That well-reasoned decision has been the law of this Circuit for many years. *See, e.g.*, *In re Dreyfus Aggressive Mut. Fund Litig.*, 2000 WL 1357509, at *3 (S.D.N.Y. Sept. 20, 2000) ("Courts have repeatedly certified classes where the class representatives had not invested in all of the subject securities."); *see also In re Amer. Intern. Group, Inc., 2008 Sec. Litig.*, -- F. Supp. 2d --, 2010 WL 3768146, at *21-22 (S.D.N.Y. Sept. 27, 2010) (Swain J.) (adopting the Court's holding in *Citigroup*).

For the reasons set forth more fully herein, Plaintiffs' motion should be granted in full.

## II. FACTUAL BACKGROUND

### A. Citigroup Violated The Securities Act Of 1933

Before and during the Offerings Period, home borrowers were defaulting in record numbers. ¶¶163-64. Consequently, Citigroup faced the prospect of significant losses on the undisclosed subprime mortgage-related assets to which it was exposed. Further, since Citigroup's exposure to these assets totaled hundreds of billions of dollars, and since Citigroup operated with an extremely high degree of leverage, this exposure posed a substantial risk to Citigroup's Tier 1 capital adequacy, the basic measure

of the Bank's financial viability. Indeed, losses in even a small portion of the Bank's mortgage-related exposures were sufficient to deplete its available capital and render the Bank undercapitalized, as ultimately occurred. ¶¶2, 151-54. Accordingly, it was material to investors in the Offerings that Citigroup accurately disclose and account for its mortgage-related exposures. As summarized below, Citigroup failed to do so in numerous respects.

**B. Citigroup Misrepresented Its Exposure To $66 Billion Of Subprime CDOs**

In *Citigroup*, the Court held that Plaintiffs had adequately alleged that the Bank misrepresented its exposure to as much as $66 billion of collateralized debt obligations ("CDOs") backed by subprime mortgages. *Citigroup*, 723 F. Supp. 2d at 575-77, 589-91. This exposure consisted of: (i) $25 billion of "liquidity puts," a guarantee that obligated Citigroup to absorb losses on CDOs it had sold to investors; and (ii) $41 billion of "super senior" subprime CDOs and other CDO-related assets that Citigroup was unable to sell and thus directly retained. ¶¶170-72.

Rather than disclose this exposure, the Public Offering Materials for Offerings conducted before November 4, 2007 stated that Citigroup had little or no direct exposure to subprime CDOs. ¶165. For example, these Public Offering Materials asserted that the Bank retained only "limited continuing involvement" with these securities (*id.*), and had "transferr[ed] the risk of future credit losses to the purchasers of [the] securities." ¶165.

Although discovery in this Action has just begun, evidence adduced by Plaintiffs establishes that senior Bank executives were well aware that these statements were false. For example, by no later than early 2007, Citigroup had become sufficiently concerned about its exposure to subprime CDOs that its senior officers prepared detailed analyses establishing that the Bank had accumulated tens of billions of dollars worth of exposure to these toxic securities. *See* Singer Decl., Ex. 1 at CITI 00203082. However, Citigroup did not begin to disclose that it had <u>any</u> exposure to subprime CDOs until late July 2007 – or more than fourteen months after the start of the Offerings Period. Moreover, even

when Citigroup finally began to disclose some subprime CDO-related exposure, it materially understated this exposure by tens of billions of dollars. Thus, on July 20, 2007, Defendant Crittenden falsely assured investors on the Bank's second quarter earnings conference call that Citigroup's total subprime exposure was only $13 billion, an amount which Crittenden further represented had been reduced from the prior quarter. ¶¶166-68. In reality, however, Citigroup's subprime CDO exposure was approximately $66 billion – or roughly $50 billion more than Crittenden had disclosed. As Citigroup's senior officers internally acknowledged following this call, the Bank's disclosures were misleading precisely because they failed to include, among other things, Citigroup's super senior subprime CDOs, which were already experiencing significant deterioration. *See* Singer Decl., Ex. 2 at CITI 00931051 (expressing concern that "a listener [on the call] will conclude that our subprime exposure is $13bn … [which] does not [include] any of our sub-prime exposure attributable to [the] super senior" CDOs). As these officers further acknowledged, Citigroup did not want to disclose these liabilities for one reason: "we don't want to trigger questions about [the] super senior [CDOs]." *Id.* at CITI 00931050.[2]

Investors in the Offerings did not begin to learn the true extent of the Bank's subprime CDO exposure until November 4, 2007, when Citigroup revealed that these previously-undisclosed securities were impaired by as much as $11 billion. On that day, Citigroup admitted that, in contrast to its prior representations, it possessed an additional $43 billion of subprime CDO exposure, bringing its total disclosed subprime exposure to $55 billion. ¶¶169-76.[3] The Company further announced that these CDOs were already impaired by between $8 billion and $11 billion. ¶¶176-77. Defendant Prince,

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[2] The SEC sued Citigroup, Defendant Crittenden, and Art Tildesley (the head of the Bank's Investor Relations Department) for misrepresenting Citigroup's CDO exposure in connection with the sale of securities – precisely as Plaintiffs have alleged here. *See* Singer Decl., Exs. 3 and 4. Rather than contest the allegations, Citigroup agreed to settle the suit by paying a fine of $75 million, while Crittenden and Tildesley agreed to personally pay $100,000 and $80,000 respectively. *See* Singer Decl., Ex. 4 at 3, and Ex. 5 at 13.

[3] On January 15, 2008, the Bank announced that its CDO exposure was actually materially higher than had been disclosed in November 2007. On that day, Citigroup disclosed that it possessed an additional $10.5 billion in exposure to subprime-backed CDOs, bringing its total subprime CDO-related exposure to approximately $66 billion. ¶185.

Citigroup's CEO, announced that he would "retire" because it was "the only honorable course for me to take." *Id.* Numerous securities analysts immediately reported that Citigroup had not previously disclosed this highly material exposure. ¶¶180-82. For example, Buckingham Research Group reported that "management's previous disclosures surrounding subprime exposure [were] deceptive at best." ¶¶180-81.

### C. Citigroup Misstated The Value Of Its CDOs

Plaintiffs also allege that, even after Citigroup disclosed its CDO exposure, Defendants continued to inaccurately report the value of the Bank's CDO securities and their impact on its financial condition in the Public Offering Materials. ¶¶188-91. For example, in Citigroup's 2007 Form 10-K, which was incorporated by reference into the Public Offering Materials for Offerings conducted after February 28, 2008, the Bank stated that the "fair value" of its CDO securities was $39.8 billion. ¶189. In reality, however, the Company's CDO securities were worth far less than reported. For example, Citigroup had accumulated tens of billions of dollars worth of CDO exposure precisely because it could not find any buyer for its CDOs at their recorded value. *See* ¶¶190, 293-94. Further, the leading market indices for valuing CDOs reflected that the Company's CDO securities were worth a fraction of their reported value. ¶¶295-97. Moreover, as Citigroup admitted, its valuation methodology improperly relied on valuations of corporate bonds (which were far less risky than CDOs), and credit ratings (which were irrelevant to market valuation), while failing to analyze the value of the CDO collateral. ¶¶288-89. The Company's unreported losses on its CDO securities were so severe that, in 2008, they brought Citigroup to the brink of insolvency, and ultimately required the largest Government bailout in history to prevent Citigroup's collapse.

### D. Citigroup Misrepresented The Credit Quality And Value Of $49 Billion Of SIVs

The Court also sustained Plaintiffs' claim that the Bank misrepresented the credit quality and value of the assets contained in its structured investment vehicles ("SIVs"). *Citigroup*, 723 F. Supp. 2d at 591-92. For example, the December 13, 2007 press release in which Citigroup announced that it would

consolidate $49 billion of SIVs onto its balance sheet – which was incorporated by reference into the Public Offering Materials issued after that date – stated that, "[g]iven the high credit quality of the SIV assets, Citi's credit exposure under its commitment is substantially limited." ¶211. Consistent with these claims, Citigroup's 2007 Form 10-K represented that the $49 billion of SIV assets were not impaired as of December 31, 2007. ¶210.

In reality, the SIV's assets were not of "high credit quality," and these assets were worth dramatically less than Citigroup had reported. For example, the collateral supporting certain SIV assets had suffered sharply rising defaults, which impaired the cash flows supporting these assets. ¶¶160-64. Further, just as Citigroup could find no buyer for its CDOs at their reported value, it could find no buyer for the SIV assets at their recorded value. ¶301. Moreover, since at least the fourth quarter of 2006, relevant market indices showed that the SIVs' mortgage-backed assets had severely deteriorated in value. ¶¶296-97, 300-03.

Investors did not learn the truth about Citigroup's impaired SIV assets and their impact on the Company's capital adequacy until November 19, 2008. On that date, Citigroup announced that it could not find any buyer for its SIV assets, and, accordingly, it was unwinding the SIVs. Citigroup also stated that it was reclassifying these assets so that, under accounting rules, the Company would not have to mark them to their market value and take the corresponding charges against its income. ¶¶213-14.

Investors began to realize that this was an admission that the SIVs' assets were deeply impaired, and that Citigroup could not survive the charges it would be required to take if it accurately marked those assets to their fair value. ¶¶213-15. Citigroup's financial condition was so imperiled that, just four days later, the Government was forced to extend the Bank a $326 billion bailout package in which the Government agreed to absorb losses on billions of dollars worth of former SIV assets, as Citigroup lacked the capital to do so itself. ¶217.

## E. Citigroup Understated Its Loss Reserves By Billions Of Dollars Each Quarter

The Court also held that Plaintiffs adequately alleged that Citigroup understated its loss reserves by billions of dollars each quarter. *Citigroup*, 723 F. Supp. 2d at 592-93. By the time the Offerings Period began, Citigroup had accumulated an approximately $200 billion portfolio of high-risk mortgage loans, including tens of billions of dollars worth of subprime loans. ¶¶218, 220, 221-26. Each quarter, GAAP required Citigroup to establish a reserve against "probable" losses in this portfolio, and to charge any increase in this reserve against its income. Specifically, SFAS 5 required Citigroup to establish a reserve that reflected: (i) all loans that had already defaulted and been charged-off at each quarter, and (ii) the additional amount of loans whose existing credit risk established a probability of default, but which had not yet defaulted. ¶¶227-28.

In violation of these requirements, the Company's loss reserves for its North American loan portfolio included only the loans that had already defaulted and been charged off, with no provision for the additional loans that posed a probability of default. ¶¶229-30. Thus, Citigroup reported "probable" losses as equal to or lower than its "actual" losses – which violated SFAS 5 by definition. ¶230. As a result, Citigroup's reserves were understated (and its income was overstated) by between $1.6 billion to $7.2 billion each quarter during the Offerings Period. ¶¶233-35.

Evidence made public by the Financial Crisis Inquiry Commission demonstrates that Citigroup's loss reserves were understated by billions of dollars throughout the Offerings Period. For example, Richard M. Bowen, Citigroup's former Business Chief Underwriter for Correspondent Lending, who was in charge of overseeing the underwriting and acquisition of up to $90 billion worth of mortgages per year for Citigroup, testified that Citigroup acquired tens of billions of dollars of loans that violated its own underwriting standards before and during the Offerings Period. Specifically, Bowen testified that in 2006, "over 60%" of the loans that Citigroup acquired in its "delegated flow" channel were defective, and by 2007 "defective mortgages increased … to over 80% of production." *See* Singer Decl., Ex. 6 at 2.

Citigroup's mortgages were so toxic, and the risk of loss to Citigroup was so material, that, beginning in 2006, Bowen "issued many warnings to management" about the Bank's mortgage operations. *Id.* These warnings culminated in a November 2007 email from Bowen to Citigroup Chairman Robert Rubin, Defendant Crittenden, and Chief Risk Officer David Bushnell, which catalogued a litany of "breakdowns" in Citigroup's mortgage operation, and concluded that Citigroup had not "recognized the material financial losses inevitably associated with" its toxic mortgage portfolio. *Id.* at 20. The impairments in Citigroup's mortgage portfolio were so significant and widespread that, when the U.S. Government was forced to rescue Citigroup from insolvency, the Government agreed to guarantee more than $150 billion of Citigroup's mortgages against losses that Citigroup did not have the capital to absorb.

**F. Citigroup Misrepresented Its "Well-Capitalized" Status**

The Court also sustained Plaintiffs' claim that Citigroup misrepresented its "well capitalized" status in the Public Offering Materials. *Citigroup*, 723 F. Supp. 2d at 593-94.

In early 2008, the OCC informed Citigroup that it had accumulated "untenable risks for the sake of profitability" in its portfolio of "subprime mortgages, structured investment vehicles (SIVs), ... and super senior positions in Collateralized Debt Obligations (CDO) and liquidity puts." Singer Decl., Ex. 9 at OCC3-00008898-99.

Despite these facts, the Public Offering Materials for Offerings conducted in 2008 inaccurately assured investors that the quality of the Bank's mortgage-related assets was improving, write-downs were decreasing, and the risk of any adverse impact on Citigroup's financial condition was subsiding. For example, in the Bank's July 18, 2008 earnings release (incorporated by reference into certain Public Offering Materials), Citigroup assured investors that its write-downs had "decreased by 42%" and that its capital had "increased" so that it remained "well-capitalized." ¶250.

### G. Investors Learn That Citigroup's Mortgage-Linked Assets Were So Impaired That The Bank Required The Largest Bailout In History

As late as November 17, 2008, Defendant Pandit assured investors in a "Town Hall" meeting that Citigroup was "very well positioned from a capital standpoint to weather future potential challenges." ¶252. However, in reality, tens of billions of dollars of unreported losses in the Bank's mortgage-related assets had brought it to the precipice of bankruptcy. Indeed, an analysis conducted by the U.S. Government in connection with the bailout showed that Citigroup had up to $43 billion of "embedded losses" on its balance sheet at the time of Defendant Pandit's assurances. *See* Singer Decl., Ex. 10 at 19. Within six days of Pandit's statements, the Government would be forced to extend Citigroup a massive bailout to prevent it from collapsing under the weight of these catastrophic losses and inflicting systemic harm on the U.S. economy.

Significantly, at the November 17 meeting, Citigroup announced that it would cease valuing $80 billion of assets (including its CDOs and SIV assets) at their market price each reporting period. ¶253. This announcement stunned the market, because it signaled that these assets had either no value, or such little worth that Citigroup could not absorb the write-downs it would have to take if it properly valued them. ¶255. Within days, *The New York Times* and *The Wall Street Journal* reported that Citigroup was on the brink of collapse, and the U.S. Government would have to provide Citigroup with huge amounts of capital just to prevent its liquidation. ¶257. As investors realized that Citigroup was close to insolvent, the price of the Bond Class Securities plummeted. For example, between November 17 and 21, 2008, many of the preferred securities lost more than 50% of their value. ¶258.

To rescue Citigroup from imminent liquidation, on November 23, 2008, the U.S. Government was forced to provide Citigroup with a $326 billion taxpayer bailout – the largest in history. ¶259. Pursuant to the terms of the bailout, the U.S. Government agreed to guarantee losses on $306 billion of the Company's mortgage-related assets – including its CDOs, SIVs, and mortgage loans – and infuse Citigroup with $20 billion of new capital. *Id.* Analysts specifically reported that "the deal is essentially pricing in the expectation that <u>Citi's toxic assets are worth much less than Citi has valued them at</u>" in the Public Offering Materials. ¶14.

## III. PROCEDURAL HISTORY AND SUMMARY OF CLAIMS

On January 15, 2009, Plaintiffs filed the Complaint, asserting claims under Sections 11, 12, and 15 of the Securities Act. On July 12, 2010, the Court substantially denied Defendants' motions to dismiss the Complaint. *See Citigroup*, 723 F. Supp. 2d 568. Notably, the Court held that Plaintiffs had standing to assert claims in connection with all Offerings at issue, and sustained the bulk of Plaintiffs' Section 11 claims in connection with all Offerings. On July 26, Defendants filed a motion to reconsider the Court's holding on standing, and that motion was fully briefed on August 16.

As a result of the Court's decision, Plaintiffs are proceeding with the following Securities Act

claims for which they seek class certification: (i) Count I, for violations of Section 11 against the Citigroup Defendants; (ii) Count II, for violations of Section 11 against the Individual Defendants other than Crittenden and Krawcheck; (iii) Count III, for violations of Section 11 against the Underwriter Defendants; (iv) Count VI, for violations of Section 15 against Citigroup; and (v) Count VII, for violations of Section 15 against the Individual Defendants.

## IV. THE PROPOSED CLASS REPRESENTATIVES AND CLASS DEFINITION

As the Complaint alleges, all Offerings were conducted during the Offerings Period pursuant to three Shelf Registration Statements respectively dated March 2, 2006, March 10, 2006, and June 20, 2006. ¶¶304-09. As explained more fully below at pages 23 to 25, in its decision denying Defendants' motions to dismiss, the Court held that Plaintiffs had standing to assert claims in connection with all Offerings because each Registration Statement contained common misstatements and omissions, and at least one named plaintiff purchased securities pursuant to each Registration Statement. *Citigroup*, 723 F. Supp. 2d at 584-85. In accordance with that decision, each of the proposed class representatives purchased one or more Bond Class Securities pursuant to a false or misleading Registration Statement, and was damaged thereby. The chart below sets forth the name of each proposed representative, the Bond Class Securities they purchased, and the Registration Statements pursuant to which those securities were offered.[4] Charts of each proposed representative's trading in the relevant securities are attached as Exhibits 11 - 20 to the Singer Declaration.

| Class Representative | Description | Relevant Securities (CUSIP) | Registration Statement(s) |
|---|---|---|---|
| Minneapolis Firefighters' Relief Association | Public pension system | 172967DY4<br>172967EM9<br>172967ER8 | March 2, 2006 |

[4] Plaintiff Louisiana Municipal Police Employees' Retirement System has withdrawn as a plaintiff because it recently sold the Bond Class Security it purchased at a profit. Further, as reflected in the chart, Plaintiffs are putting forth as class representatives one public pension fund and two individuals not named as plaintiffs in the Complaint: Arkansas Teacher Retirement System, Phillip G. Ruffin, and James M. Brown.

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|---|---|---|---|
| | | 173094AA1 | June 20, 2006 |
| Louisiana Sheriffs' Pension and Relief Fund | Public pension system | 172967DP3<br>172967EC1<br>172967EM9<br>172967EP2<br>172967EQ0<br>172967ER8<br>172967ET4<br>172967EU1<br>173094AA1 | March 2, 2006<br><br><br><br><br><br><br><br>June 20, 2006 |
| Arkansas Teacher Retirement System | Public pension system | 172967EC1<br>172967EL1<br>172967598<br>173094AA1 | March 2, 2006<br><br><br>June 20, 2006 |
| City of Tallahassee Retirement System | Public pension system | 172967EQ0<br>172967ER8<br>172967598 | March 2, 2006 |
| City of Philadelphia Board of Pensions and Retirement | Public pension system | 172967DP3<br>172967DQ1<br>172967EP2<br>172967ER8<br>172967EU1 | March 2, 2006 |
| Miami Beach Employees' Retirement Plan | Public pension system | 172967EJ6<br>172967EQ0<br>172967EU1<br>173094AA1 | March 2, 2006<br><br><br>June 20, 2006 |
| Southeastern Pennsylvania Transportation Authority | Public transportation system | 172967ER8 | March 2, 2006 |
| American European Insurance Company | Insurance company | 172967556<br>172967572 | March 2, 2006 |
| Phillip G. Ruffin | Individual investor | 172967556 | March 2, 2006 |
| James M. Brown | Individual investor | 17310L201 | June 20, 2006 |

Collectively, these class representatives seek to represent the following proposed class (the "Class"):

> All persons and entities, except Defendants and their affiliates, who purchased or otherwise acquired 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 conducted between May 2006 and August 2008 pursuant to Citigroup's March 2, 2006 and June 20, 2006 Shelf Registration Statements, as set forth in the Appendix to the Consolidated Amended Class Action Complaint filed on January 15, 2009, and were damaged thereby.[5]

For the reasons that follow, certification of the Class is proper.

## V. LEGAL STANDARDS

To be certified under Rule 23, a putative class must satisfy: (i) the four prerequisites of Rule 23(a), *i.e.*, numerosity, commonality, typicality and adequacy; and (ii) the requirements of one of the three subsections of Rule 23(b). *See* Fed. R. Civ. P. 23; *Amchem*, 521 U.S. at 615. Plaintiffs seek certification under Rule 23(b)(3), which requires that "common" issues of law or fact "predominate over any questions affecting only individual members" and that a class action be "superior" to other methods of adjudication. In determining whether to certify a class, "[a] district judge is to assess all of the relevant evidence admitted at the class certification stage and determine whether each Rule 23 requirement has been met, just as the judge would resolve a dispute about any other threshold prerequisite for continuing a lawsuit." *In re Initial Pub. Offering Sec. Litig.*, 471 F.3d 24, 42 (2d Cir. 2006) ("*IPO*"). A "preponderance of the evidence" standard applies. *Teamsters Local 445 Freight Div. Pension Fund v. Bombardier Inc.*, 546 F.3d 196, 202 (2d Cir. 2008). In determining whether Rule 23 has been satisfied, "a district judge may not go beyond the boundaries of Rule 23" and must use caution not to "decid[e] the merits at the certification stage, unless such a decision is coextensive with a Rule 23 determination."

[5] The Complaint also alleges claims on behalf of investors who purchased securities issued pursuant to Citigroup's March 10, 2006 Shelf Registration Statement. ¶309, pp. 93-94. However, Plaintiffs are not putting forward a class representative who purchased securities pursuant to that Shelf Registration Statement. Thus, in accordance with the Court's decision regarding standing, Plaintiffs are not seeking certification of a class asserting claims for the following five securities identified by CUSIP, all of which were issued pursuant to the March 10 Shelf Registration Statement: 1730T0CR8, 1730T0EK1, 1730T0FV6, 1730T0EP0, and 1730T0GB9. *See* ¶309, pp. 93-94.

*Hnot v. Willis Group Holdings Ltd.*, 241 F.R.D. 204, 209 (S.D.N.Y. 2007) (Lynch, J.) (citing *IPO*, 471 F.3d at 37).

The Second Circuit "has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation and has explicitly noted its preference for class certification in securities cases." *Nortel*, 2003 WL 22077464, at *2. Thus, "when a court is in doubt as to whether or not to certify a class action, the court should err in favor of allowing the class to go forward." *In re Blech Sec. Litig.*, 187 F.R.D. 97, 102 (S.D.N.Y. 1999).

## VI. ARGUMENT

### A. Plaintiffs Satisfy The Requirements Of Rule 23(a)

#### 1. Numerosity Is Presumed

"The first prerequisite for class certification requires that the class be 'so numerous that joinder of all members is impracticable.'" *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 69-70 (S.D.N.Y. 2009) (quoting Fed. R. Civ. P. 23(a)(1)). "Numerosity is presumed when a class consists of forty or more members." *WorldCom*, 219 F.R.D. at 279. "In securities class actions 'relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period.'" *NYSE Specialists Sec. Litig.*, 260 F.R.D. at 70 (quoting *In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76, 84 (S.D.N.Y. 2007)). Here, Plaintiffs seek certification in connection with 43 separate Offerings, in which Citigroup sold approximately $67 billion worth of debt and preferred securities. Given the number of Offerings and the value of the securities at issue, it cannot seriously be disputed that there are substantially more than forty Class members, and numerosity should be presumed. *See Deutsche Telekom*, 229 F. Supp. 2d at 280 ("Certification is frequently appropriate in securities fraud cases involving a large number of shares traded publicly in an established market."); *WorldCom*, 219 F.R.D. at 280 (numerosity presumed where company issued "billions of dollars of debt securities"); *see also Fogarazzo v. Lehman Bros., Inc.*, 263 F.R.D. 90, 101 (S.D.N.Y. 2009).

### 2. <u>There Are Questions Of Law And Fact Common To The Class</u>

"Rule 23(a) also requires that the action raise an issue of law or fact that is common to the class." *WorldCom*, 219 F.R.D. at 280 (citing *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 155 (2d Cir. 2001)). "The commonality requirement has been applied permissively in securities fraud litigation. In general, where putative class members have been injured by similar material misrepresentations and omissions, the commonality requirement is satisfied." *Fogarazzo v. Lehman Bros., Inc.*, 232 F.R.D. 176, 180 (S.D.N.Y. 2005); *see also In re Globalstar Sec. Litig.*, 2004 WL 2754674, at *4 (S.D.N.Y. Dec. 1, 2004) (same); *Nortel*, 2003 WL 22077464, at *3 (same).

This Action raises common issues of law and fact. With respect to Plaintiffs' Section 11 claims, Plaintiffs allege that Defendants made a series of materially misleading statements and omissions in the Registration Statements for the Offerings concerning, *inter alia*, Citigroup's exposure to, and the value of, its CDOs; the value and credit quality of its SIVs; the adequacy of its loss reserves; its well-capitalized status; its net income; and its compliance with GAAP. Common questions of fact include whether these statements and omissions were misleading, and whether they were material. Common questions of law include whether the various Defendants may be held liable for these alleged misstatements and omissions. Further, Defendants' defenses, including any potential "due diligence" defense or "negative causation" defense, also raise issues of law and fact that are common to all class members. Likewise, Plaintiffs' Section 15 claims rest on the common legal and factual questions of whether there has been an underlying violation of Section 11, and whether certain Defendants exercised "control" over the violators. In sum, Plaintiffs' Securities Act claims raise numerous prototypical common issues of law and fact. *See Deutsche Telekom*, 229 F. Supp. 2d at 281 (common questions included existence of "material misrepresentations and omissions … [in] the registration statement"); *WorldCom*, 219 F.R.D. at 280, 288, 293 n.30 (holding that the "nature and extent of misrepresentations" are common question of fact; the liability of defendants under Section 11 for such statements is a common question of law; and "most

readily available defenses to liability also present issues of law and fact that are common to the class"); *Levitan v. McCoy*, 2003 WL 1720047, at *4 (N.D. Ill. Mar. 31, 2003) ("Courts have repeatedly held that [Section 11 cases] ... are particularly well-suited to class treatment and satisfy the commonality requirement of Rule 23(a)(2).... This is so because Section 11 claims require only a material misstatement or omission in a Registration Statement to prove liability.") (citations omitted); *In re Livent, Inc. Noteholders Sec. Litig.*, 210 F.R.D. 512, 515-16 (S.D.N.Y. 2002) (same).

### 3. Plaintiffs' Claims Are Typical Of Those Of The Class

Rule 23(a)(3) also requires that the claims asserted by the proposed class representatives be typical of those of the class. Where there has been a finding of commonality, a finding of typicality normally follows, as these two requirements "tend to merge." *Saddle Rock Partners, Ltd. v. Hiatt*, 2000 WL 1182793, at *3 (S.D.N.Y. Aug. 21, 2000) (Stein, J.). The typicality requirement "is satisfied when 'each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" *WorldCom*, 219 F.R.D. at 280 (quoting *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 155 (2d Cir. 2001)). "The factual background of each named plaintiff's claim need not be identical," and "[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *WorldCom*, 219 F.R.D. at 280.

Accordingly, both this Court and others in this District have routinely held that the typicality requirement is satisfied in securities cases involving misleading statements or omissions, notwithstanding certain factual differences involving the date, type and manner by which the investor acquired his securities. *See, e.g.*, *Deutsche Telekom*, 229 F. Supp. 2d at 281 (typicality established where plaintiffs purchased securities pursuant to misleading registration statement); *In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 85 (S.D.N.Y. 2007) (variations in claims immaterial because "[i]n prosecuting their case,

plaintiffs will necessarily seek to develop facts relating to the alleged accounting irregularities and the dissemination of allegedly false or misleading statements underlying their claims. Such allegations are generally considered sufficient to satisfy the typicality requirement."); *In re Prestige Brands Holdings, Inc. Sec. Litig.*, 2007 WL 2585088, at *3 (S.D.N.Y. Sept. 5, 2007) (same). Thus, in *WorldCom*, which also concerned multiple debt offerings, Judge Cote held that the typicality requirement was satisfied notwithstanding certain differences between the kinds of securities that the various class members purchased, because "the Registration Statements incorporated WorldCom's SEC filings, and the misrepresentations of WorldCom's financial condition in the Registration Statements are alleged to be a part of a course of conduct that concealed WorldCom's true financial condition from all investors in WorldCom securities." 219 F.R.D. at 281.

The same is true here. The claims of Plaintiffs and all class members are based on the same misleading omissions and misrepresentations incorporated into the Registration Statements from which all the Offerings derive. Thus, Plaintiffs' claims arise from the same course of events as the claims of all class members, and the legal arguments that Plaintiffs will make to prove Defendants' liability are similar to the arguments that other class members would advance in support of their claims. Accordingly, the typicality requirement is satisfied. *See, e.g.*, *In re WRT Energy Sec. Litig.*, 2006 WL 2020947, at *2 (S.D.N.Y. July 13, 2006) (typicality satisfied where Section 11 claims "all focus on the same misstatements in the registration statements").

### 4. <u>The Proposed Class Representatives Are Adequate</u>

Rule 23(a)(4) requires that Plaintiffs show that they "will fairly and adequately protect the interests of the class." To determine whether a plaintiff is an adequate class representative, courts look to whether: "1) plaintiff's interests are antagonistic to the interests of other members of the class and 2) plaintiff's attorneys are qualified, experienced, and able to conduct the litigation." *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000). "[M]any courts have observed [that] the

issues of typicality and adequacy tend to merge because they 'serve as guideposts for determining whether . . . the named plaintiff's claim and the class claims are so inter-related that the interests of the class members will be fairly and adequately protected in their absence.'" *Vivendi*, 242 F.R.D. at 85 (quoting *Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 157 n.13 (1982)); *WorldCom*, 219 F.R.D. at 280.

Because the proposed class representatives and members of the putative Class have been injured by the same misleading statements and omissions in connection with their purchases of Citigroup securities pursuant to the same Registration Statements, it is in the class representatives' interest to vigorously prosecute this action on behalf of the putative Class. Indeed, proving the Plaintiffs' claims necessarily results in proving the Class's claims – a circumstance that demonstrates an alignment of interests and satisfies the adequacy requirement. *See Deutsche Telekom*, 229 F. Supp. 2d at 282; *WorldCom*, 219 F.R.D. at 282 ("The named plaintiffs' interests are directly aligned with those of the absent class members: they are purchasers of WorldCom equity and debt securities who suffered significant losses as a result of the investments."); *Prestige*, 2007 WL 2585088, at *3-4; *WRT Energy*, 2006 WL 2020947, at *3; *Globalstar*, 2004 WL 2754674, at *4. In fact, Plaintiffs have already demonstrated their adequacy by, *inter alia*, (i) proactively filing Securities Act claims on behalf of purchasers of Citigroup bonds and preferred stock when such claims were not asserted in the coordinated Securities Litigation; (ii) filing a detailed Complaint and defeating Defendants' motions to dismiss in most respects; and (iii) retaining experienced counsel to represent them in this litigation. *WorldCom*, 219 F.R.D. at 282 (adequacy established where class representative and class counsel "have already ably and zealously represented the interests of the Class as this complex litigation continues apace"). Further, Plaintiffs are institutional investors who understand the requirements and duties imposed upon a class representative and have experience acting in a fiduciary capacity and overseeing complex litigation on behalf of a class of injured investors. *See* Plaintiff Certifications, Complaint Exs. A-B ¶¶3, 5; Exs. D-G ¶¶ 2, 7-10; and Ex. H ¶¶3, 7.

With respect to the adequacy of proposed class counsel, it is respectfully submitted that Bernstein Litowitz Berger & Grossmann LLP is an experienced securities class action law firm. Moreover, the individual attorneys involved in this case have served as lead counsel in numerous securities class actions in this Court and across the nation, as have additional counsel for Plaintiffs. *See* Singer Decl. Ex. 21 (Bernstein Litowitz firm resume); Ex. 22 (Barroway Topaz firm resume); Ex. 23 (Pomerantz Haudek firm resume). *WorldCom*, 219 F.R.D. at 282 (finding Bernstein Litowitz "qualified, experienced and able to conduct complex securities litigation"). In sum, adequacy is established.

## B. Plaintiffs Satisfy Rule 23(b)(3)

Rule 23(b)(3) requires that common issues predominate over any issues affecting only individual class members, and that the class action mechanism be the superior means of adjudicating the dispute. Both requirements are met here.

### 1. Common Questions Of Law Or Fact Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002). The predominance requirement is "readily met" in securities actions. *Amchem*, 521 U.S. at 625.

As the Class's claims arise under the Securities Act, common issues unquestionably predominate in this Action. Under Section 11, "a plaintiff ... need only show a material misstatement or omission to establish his *prima facie* case." *Herman & MacLean v. Huddleston*, 459 U.S. 375, 382 (1983). This Court has recognized that, "[b]ecause Section 11 is 'designed to assure compliance with the disclosure provisions of the [Securities] Act by imposing a stringent standard of liability on the parties who play a direct role in a registered offering,' *Huddleston*, 459 U.S. at 382, 103 S. Ct. 683, it 'places a relatively minimal burden on a plaintiff,' *id.* Unlike a fraud claim, Section 11 does not require a plaintiff to plead scienter, reliance, or loss causation, and issuers are subject to 'virtually absolute' liability under Section

11...." *Citigroup*, 723 F. Supp. 2d at 587.

As this Court and others in this District have held, since the core issue in a Securities Act case is the existence of material misrepresentations in a registration statement – an issue that is common to the Class – Securities Act cases easily satisfy the predominance requirement. *See PaineWebber*, 171 F.R.D. at 123 (in case involving Section 11 claims, common questions of law and fact "overwhelmingly predominate[d]"); *Deutsche Telekom*, 229 F. Supp. 2d at 282; *WorldCom*, 219 F.R.D. at *293; *WRT Energy Sec. Litig.*, 2006 WL 2020947, at *4; *Globalstar*, 2004 WL 2754674, at *5.

The same holds true here. As noted above, determining whether Citigroup made material misstatements or omissions in the Registration Statements from which all the Offerings derive presents factual issues that are common to the Class. Determining Defendants' liability for any such misstatements or omissions presents common questions of law. As also noted above, Defendants' principal defenses present additional common legal and factual issues. These core common legal and factual issues are the dominant questions in this litigation, and there can be little doubt that they are "more substantial" than any issues that might conceivably be subject to individualized proof, if indeed there are any such issues at all. *See, e.g.*, *WorldCom*, 219 F.R.D. at 293 (whether company's "Registration Statements ... contained material, untrue statements and omissions" presented "common issues of fact and law [that] will predominate," and "[i]t is also true that common questions of law and fact will predominate as to the likely defenses").

Once these common questions of liability have been resolved, all that remains is the mechanical task of computing the damages suffered by each class member – a task that raises no individualized issues because Section 11(e) of the Securities Act sets forth a statutory measure of damages applicable to the entire class. *See* 15 U.S.C. § 77k(e). Moreover, even if the calculation of damages presented individualized issues – which it does not – it is well-settled that the presence of individual damage issues does not defeat predominance in securities class actions – indeed, no securities class action could ever be

certified were it otherwise. *See, e.g.*, *Globalstar*, 2004 WL 2754674, at *5 ("Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues" (quoting *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001)); *WorldCom*, 219 F.R.D. at 302-03 (same).

### 2. <u>A Class Action Is A Superior Method Of Adjudicating Plaintiffs' Claims</u>

Rule 23(b)(3) also requires a court to determine whether a class action is superior to other methods of adjudication. The non-exhaustive list of factors that are relevant to the superiority analysis include: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *See* Rule 23(b)(3).

A class action is a particularly appropriate vehicle for addressing the claims at issue here. The putative Class consists of a large number of investors in Citigroup securities who are geographically dispersed, and whose individual damages are likely small enough to render individual litigation prohibitively expensive in many instances. Concentrating these claims in a single action and a single forum will allow such investors to seek redress when none would be otherwise available, and is also the most efficient use of judicial resources for the adjudication of these numerous claims. Although there have been a handful of individual actions filed, compared with the large size of the putative Class, "[r]elatively few investors have indicated a desire at this point to proceed with separate lawsuits." *WorldCom*, 219 F.R.D. at 304. Finally, given the clear existence and preponderance of common issues, this Action presents no likely case management issues – indeed, thus far, this case has proceeded through the pleading stage and into discovery without any issues at all. In sum, as courts in this Circuit regularly hold, these factors demonstrate that a class action is the superior litigation mechanism for the resolution

of these claims. *Deutsche Telekom.*, 229 F. Supp. 2d at 282; *WorldCom*, 219 F.R.D. at 304-05; *Vivendi*, 242 F.R.D. at 91; *Globalstar*, 2004 WL 2754674, at *5; *Green v. Wolf Corp.*, 406 F.2d 291, 301 (2d Cir. 1968) (superiority exists where, as here, "the alternatives [to a class action] are either no recourse for thousands of stockholders" or "a multiplicity and scattering of suits with the inefficient administration of litigation which follows in its wake").

### C. <u>The Class Properly Includes Investors In All Offerings Conducted Pursuant To The March 2, 2006 And June 20, 2006 Shelf Registration Statements</u>

As noted above, the Court has held that Plaintiffs have standing to bring claims in connection with all Offerings for which they now seek certification. Specifically, the Court held that Plaintiffs had standing to assert claims in connection with these Offerings because (i) "plaintiffs allege actionably untrue or misleading statements or omissions in SEC filings incorporated into each of the [] shelf registration statements from which" the Offerings at issue derive; and (ii) "the complaint alleges that at least one named plaintiff purchased securities pursuant to each of those allegedly actionable shelf registration statements." *Citigroup*, 723 F. Supp. 2d at 584-85.[6] Notwithstanding the Court's clear holding, Defendants may argue on this motion that the proposed Class representatives lack standing with respect to the Offerings in which they did not purchase, and thus no class can be certified with respect to those Offerings.[7] As set forth below, this rehashed argument remains meritless.

Consistent with the Court's reasoning in *Citigroup*, this Court has held that class certification of Section 11 claims is proper where the named representatives purchased only some of the securities-in-suit, so long as the claims of all class members are based on the same false and misleading statements. *See PaineWebber*, 171 F.R.D. at 123. In *PaineWebber*, the Court certified a class of investors asserting,

[6] As set forth more fully in Bond Plaintiffs' letter to the Court dated September 28, 2010, the Court's holding was fully adopted by Judge Swain in *AIG*, 2010 WL 3768146, at *21-22. Judge Swain also recently denied a motion to reconsider that is virtually identical to the reconsideration motion that Defendants have filed in this action. *See* Plaintiffs' Feb. 10, 2011 Letter to the Court.

[7] In light of the Court's decision on standing, Plaintiffs have not put forward a class representative for each individual Offering. However, Plaintiffs are prepared to put forward additional class representatives for numerous Offerings if the Court deems it necessary.

*inter alia*, Section 11 claims for misleading statements made in the offering documents for 70 investment partnerships, although the named class representatives had invested in only 20 of those partnerships. *Id.* at 107-08. As the Court recognized, at the class certification stage, the question of whether the named representatives could assert claims on behalf of investors in all 70 partnerships is not one of "standing" but rather one of "typicality" pursuant to Rule 23(a)(3).[8] *Id.* at 123. The Court held that, because the claims of all investors were based on the same allegedly misleading statements, the claims of the named representatives were "materially indistinguishable from those of other Class Members," and class certification was proper notwithstanding the fact that the named representatives invested in only 20 partnerships. *Id.* at 108, 123.

This Court's decision in *PaineWebber* comports with the holdings of numerous other courts within this District and nationwide, which have "repeatedly held that on allegations such as these, class representatives need not have invested in each security so long as the plaintiffs have alleged a single course of wrongful conduct with regard to each security." *Dreyfus*, 2000 WL 1357509, at *3 (certifying Section 11 class where, as here, all claims concerned "similar misrepresentations and omissions in the Registration Statements"); *see also Blech*, 187 F.R.D. at 106 ("The legal theories asserted by the Class to prove violations of the federal securities laws will be identical regardless of which of the [] [s]ecurities is at issue."); *In re Prudential Sec. Inc. P'ship Litig.*, 163 F.R.D. 200, 207-08 (S.D.N.Y. 1995) (class certified where plaintiffs invested in small subset of 700 partnerships), cited with approval in *Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 82-83 (2d Cir. 2004); *Maywalt v. Parker & Parsley Petroleum Co.*, 147 F.R.D. 51, 56 (S.D.N.Y. 1993) (class certified where representatives invested in three out of five limited partnerships); *Tedesco v. Mishkin*, 689 F. Supp. 1327, 1335-36 (S.D.N.Y. 1988); *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 923 (3d Cir. 1992) (investors in 15 securities permitted to serve

[8] Courts routinely hold that, at the class certification stage, the question is one of typicality rather than standing. *See, e.g.*, *Dreyfus*, 2000 WL 1357509, at *3 ("Courts have not addressed this concern vis a vis the doctrine of standing, but rather have examined such concerns pursuant to Rule 23(a)(3)'s typicality requirement.").

as representatives for a class of purchasers of 21 securities).[9]

As *PaineWebber* and this plethora of authority establishes, certification of the instant Class is proper. Indeed, this Court has already recognized that the claims of all class members are based on the same allegedly false and misleading statements and omissions. *See Citigroup*, 723 F. Supp. 2d at 584 (concluding that "the actionable part of the registration statement is alleged to be common to all purchasers") (emphasis added). Further, the claims of all class members are based on identical legal theories. Accordingly, as this Court and other courts across the country have held for decades, the claims of the class members and class representatives are "materially indistinguishable," and the Class should be certified. *PaineWebber*, 171 F.R.D. at 123.

## VII. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court certify the Class and appoint the proposed Class representatives, with Bernstein Litowitz Berger & Grossmann LLP appointed as class counsel.

Dated: March 11, 2011

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[9] *See also Longen v. Sunderman*, 123 F.R.D. 547, 556 (N.D. Tex. 1988) (class certified where "named class representatives invested in only seven out of 121 limited partnerships"); *First Interstate Bank of Nevada, N.A. v. Nat'l Republic Bank of Chicago*, 1985 WL 1118, at *10-11 (N.D. Ill. Mar. 10, 1985).

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