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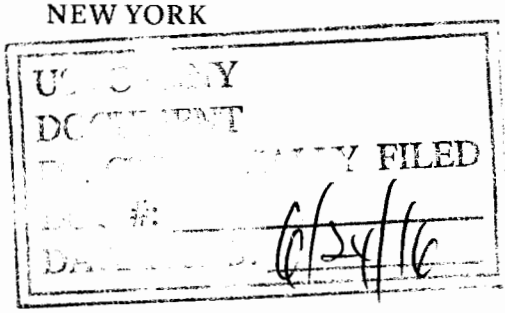

June 22, 2016

VIA EMAIL
Hon. Jed S. Rakoff, U.S.D.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 14B
New York, New York 10007

Re: *In re Petrobras Sec. Litig.*, No. 14-cv-9662 (JSR) (the "Class Action"), This Document Relates to: All Actions

Dear Judge Rakoff:

All Defendants write to request an order staying the consolidated trial and certain other pretrial proceedings in the Class Action and individual actions, pending the Second Circuit's decision on Defendants' interlocutory appeal of this Court's February 2, 2016 order granting class certification (the "Order"). On June 15, 2016, the Second Circuit granted Defendants' petition, and directed that the appeal be heard on an expedited basis, with argument as early as the week of September 26, 2016. *In re Petrobras Sec. Litig.*, No. 16-1914, Dkt. No. 15 (citing *Sumitomo Copper Litig. v. Credit Lyonnais Rouse, Ltd.*, 262 F.3d 134, 139 (2d Cir. 2001)). The petition raises two separate issues: (1) whether Plaintiffs satisfied their evidentiary burden to invoke the *Basic Inc.* v. *Levinson* presumption of reliance;[1] and (2) whether the certification of a class including globally offered notes violates principles of ascertainability, predominance, and superiority after *Morrison v. NAB*. Defendants request the Court stay argument and decisions on the motions for summary judgment and all pretrial proceedings and trial pending issuance of the mandate.[2] The case could then proceed (to the extent necessary) with argument on summary judgment and the filing of pre-trial submissions within weeks of the mandate. Alternatively, Defendants propose that the Court hear argument on motions for summary judgment but stay trial and all other proceedings.

The Second Circuit already implicitly determined that defendants' questions are serious, and that the Order was either "questionable" or implicates a novel and compelling legal question in need of immediate review. *See In re Petrobras Sec. Litig.*, No. 16-463, Dkt. 119 (granting Defendants' Rule 23(f) petition) (citing *Sumitomo*, 262 F.3d at 139-40); *see also Sutherland v.*

[1] The Second Circuit recently granted two other Rule 23(f) petitions to appeal from class certification orders involving a challenge to the application of the fraud-on-the-market theory that, as here, concern the proof necessary to utilize the presumption of reliance in *Basic Inc. v. Levinson*. *See In re Goldman Sachs Group, Inc. Sec. Litig.*, No. 16-250, Dkt. 1, 80; *Strougo v. Barclays PLC*, No. 16-450, Dkt. 1, 55. In *In re Goldman Sachs Group*, Judge Crotty stayed the entire action pending appeal. *See* No. 10-cv-03461-PAC, Dkt. 177. In *Strougo*, Judge Marrero has pending before him briefing on defendants' stay application. *See* No. 14-cv-05797-VM, Dkt. 88, 89.

[2] Class members should not be permitted to take advantage of these proceedings in deciding whether to opt-out in the event there is a new notice. *See Philip Morris v. Nat. Asbestos Workers Med. Fund*, 214 F.3d 132, 135 (2d Cir. 2000) ("difficult to imagine cases in which it is appropriate to defer class certification until after decision on the merits" (citation omitted)).

Ernst & Young LLP, 856 F. Supp. 2d 638, 640 (S.D.N.Y. 2012) (serious questions going to merits); *Jock v. Sterling Jewelers, Inc.*, 738 F. Supp. 2d 445, 447 (S.D.N.Y. 2010) (Rakoff, *J.*) (likelihood of success on merits because "the Court of Appeals may disagree"). The granting of the petition – though not determinative – weighs heavily in favor of a stay. *Weber v. United States*, 484 F.3d 154, 159 (2d Cir. 2007) (23(f) "ensures that courts of appeals may review district court decisions that, although not 'final' within the meaning of 28 U.S.C. § 1291, sound a 'death-knell'") (citations omitted); Fed. R. Civ. P. 23(f), Advisory Committee's note to 1998 amendment (23(f) alleviates for "appeal-worthy certification issues" risk that class certification "may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability."); *accord Pena v. Taylor Farms Pac., Inc.*, 2015 WL 5103157, at *3 (E.D. Cal. Aug. 31, 2015). Other considerations also apply here, as there are vast numbers of worldwide class members and astronomical claimed class-wide damages (including against an agency of a foreign state), which could force a settlement to avoid the in terrorem effects of a class. Plaintiffs' attempt to have a trial on common issues would undercut the entire purpose of the interlocutory nature of Rule 23(f). This would deprive Defendants of the benefits of the Second Circuit's 23(f) grant, and the ability to make an informed decision regarding settlement. The Circuit could have waited for a final decision to review class certification but instead recognized the need for expedited interlocutory review.

The resolution of the petition will dramatically affect the form and finality of trial. The *Morrison* issue goes to the binding effect of any class resolution. Depending on the Circuit's decision, the class action – if tried now – may need to be retried in its entirety. *Jock*, 738 F. Supp. 2d at 448 ("likelihood of unnecessary, duplicative litigation can warrant a stay"). For instance, if the Second Circuit determines that Defendants have a jury trial right to a determination regarding "domesticity" of securities transactions, rather than that determination being made through "bureaucratic processes," then the parties may be required to re-litigate the entire trial, as each individual class member will be required to prove to a jury that it entered into a "domestic transaction." And because the *Morrison* issue implicates threshold questions of ascertainability and notice, a reversal even in part could require new notice or a plan of notice. The *Basic* issue goes to the merits and class certification. *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014) (requirements for presumption apply equally at certification). If that issue is resolved favorably to defendants, whole swaths of alleged misstatements that no individual or class plaintiff claims to have actually relied on would be eliminated (along with the proof regarding materiality, falsity and scienter attendant to them). Moreover, class members presently deciding whether to opt out would need a revised notice and to know whether the Section 10(b) claim, the Section 11 claim, or both, are subject to a class-wide resolution in order to make an informed decision. Without that, (for example) a putative member of both classes who would have pursued all issues independently if it had known one class would be overturned would inadvertently be placed in the position of being bound by adverse determinations in the other class case based on faulty notice.

Finally, if a stay is not granted, Defendants will potentially waste substantial amounts of time and resources unnecessarily litigating an eight-week trial. By contrast, if granted, the stay would be relatively brief – essentially the duration between argument and decision in Defendants' expedited appeal. Considerations of judicial economy favor a stay as well.

Respectfully submitted,

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