UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SADIA S.A. SECURITIES LITIGATION	Case No. 1:08 Civ. 9528 (SAS)

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

Lead Plaintiffs and certified Class Representatives Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefit Funds, Alan Hyman, Phil Carey, Steve Geist and Peter Schicker (collectively, "Plaintiffs") respectfully submit this memorandum of law in support of their motion for preliminary approval of the proposed Settlement reached with Sadia, S.A. ("Sadia"), Gilberto Tomazoni, Welson Teixeira, Jr., Adriano Lima Ferreira, Walter Fontana Filho, and Eduardo Fontana d'Avila (collectively, "Defendants").

I. INTRODUCTION

Plaintiffs and Defendants have negotiated, at arms' length, a proposed Settlement of all claims brought on behalf of all persons and entities who purchased or otherwise acquired Sadia American Depository Receipts ("ADRs") during the Class Period. The Settlement provides for a cash Settlement Amount of $27,000,000, which represents an exceptional recovery for the Class. Plaintiffs are fully informed of the strengths and weaknesses of the action, having had the opportunity to engage in extensive discovery and to consult with highly respected experts before agreeing to the proposed Settlement. Plaintiffs also appreciate the complex and highly uncertain nature of trying this action before a jury, complicated even further by the Brazilian domicile of all fact witnesses, and anticipate that they would face significant hurdles in establishing Defendants' liability and the full amount of the Class's damages if it were to proceed to trial. Of course, even if the Class were to prevail at trial, Defendants would likely appeal any favorable judgment, delaying and possibly jeopardizing any recovery. Plaintiffs fully endorse and respectfully recommend the proposed Settlement, as they believe it is in the best interests of the Class.

The terms of the proposed Settlement are set forth in the executed Stipulation and Agreement of Settlement dated September 16, 2011 ("Stipulation").[1] The Stipulation includes several exhibits, including:

- Exhibit A, the [Proposed] Order Preliminarily Approving Settlement ("Preliminary Order");
- Exhibit A(1), the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Expenses and Settlement Fairness Hearing ("Notice"), which contains the proposed Plan of Allocation ("Plan of Allocation");
- Exhibit A(2), the Proof of Claim and Release form ("Proof of Claim");
- Exhibit A(3), the Summary Notice of Pendency and Proposed Settlement of Class Action and Settlement Fairness Hearing ("Summary Notice"), for publication; and
- Exhibit B, the [Proposed] Order and Final Judgment ("Judgment").

Plaintiffs seek entry of the proposed Preliminary Order, which will (1) preliminarily approve the proposed Settlement, including the proposed Plan of Allocation; (2) approve the form and manner of giving notice of the proposed Settlement to the Class by means of the Notice and Summary Notice; and (3) set a hearing date for final approval of the Settlement ("Settlement Fairness Hearing"), along with a schedule for various deadlines relevant to the Settlement Fairness Hearing. These deadlines include mailing the Notice and publishing the Summary Notice, submitting objections or requests for exclusion, and submitting Proofs of Claim.

As shown below, the proposed Settlement is an excellent result for the Class, as it is exceedingly fair, reasonable and adequate under the governing standards in this Circuit, and should be preliminarily approved by the Court.

[1] Capitalized terms not defined herein shall have those meanings ascribed to them in the Stipulation.

II. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998). Approving a settlement "is within the Court's discretion, which should be exercised in light of the general judicial policy favoring settlement." *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 280 (S.D.N.Y. 1999) (internal quotations omitted).

Preliminary approval of a proposed settlement "is the first in a two-step process required before a class action may be settled." *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). First, "the court reviews the proposed terms of settlement and makes a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms." *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005). Where the proposed settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *Id*. (*quoting NASDAQ Market-Makers*, 176 F.R.D. at 102).[2]

Where the settlement, as here, is "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery," then a "presumption of fairness, adequacy, and reasonableness may attach." *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (*quoting Manual for Complex Litigation, Third* § 30.42 (1995)).

[2] The Second Circuit has laid out nine factors for courts to consider when determining whether a class action settlement is fair, reasonable and adequate. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). The Court should consider these factors in its final approval of the Settlement, not on the motion for preliminary approval of the Settlement. *In re Prudential Sec. Inc. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995); *see also Authors Guild v. Google, Inc.*, 2009 WL 4434586, at *1 (S.D.N.Y. Dec. 1, 2009) ("In evaluating a proposed class action settlement agreement for preliminary approval . . . a full fairness analysis is neither feasible nor appropriate.").

A. The Proposed Settlement is Fair, Reasonable and Adequate

1. The Proposed Settlement is the Result of Non-Collusive, Arms' Length Negotiations

The proposed Settlement of $27 million presents an excellent result for the Class, and is the product of extensive arms' length negotiations between Plaintiffs and Defendants. These arms' length negotiations were facilitated through mediation before the Hon. Daniel Weinstein (Ret.).

The Parties conducted the first of three formal, day-long mediation sessions on February 14, 2011 in New York City. Prior to this mediation session, the Parties prepared comprehensive mediation statements and submitted them to the mediator. Impasses arose on several key issues, however, and discussions broke down. In the months following the first mediation session, the mediator and his staff held a series of follow-up discussions with Plaintiffs and Defendants in an effort to resolve these impasses. To this end, a second formal mediation session was held on July 8, 2011 in New York City. At this mediation, the Parties made some progress in resolving their impasses, but discussions were ultimately unsuccessful.

Encouraged by the Parties' progress at the second mediation, the Parties continued to engage in follow-up discussions with the mediator and his staff, and a third formal mediation session was held on August 10, 2011 in San Francisco. Prior to this mediation, the Parties prepared and exchanged updated mediation statements which focused on their core remaining differences. After many hours of intense discussions, proposals and counter-proposals, Plaintiffs and Defendants agreed on a $27 million cash Settlement. Following this agreement in principal, the Parties spent additional weeks negotiating the specific terms of the Settlement which are embodied in the Stipulation that was executed by the Parties on September 16, 2011.

At all times, the Parties' negotiations were conducted at arms' length, and the process required all Parties and their counsel to assess difficult and uncertain outcomes. There can be no doubt that the proposed Settlement is "the product of serious, informed, non-collusive negotiations." *Initial Pub. Offering*, 226 F.R.D. at 194 (finding proposed settlement the product of non-collusive negotiations where settlement negotiations were facilitated by a retired United States District Judge acting as a mediator); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008) (the use of an experienced mediator "in the settlement negotiations strongly supports a finding that they were conducted at arm's-length and without collusion"); *In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) ("Judge Infante's participation in the negotiations substantiates the parties' claim that the negotiations took place at arm's length.").

2. The Settlement was Reached by Capable Counsel after Meaningful Discovery

The factual issues raised in this action were extremely complex. But, as the Court recognized in its Opinion and Order of July 20, 2010 (D.E. 66) ("Class Certification Order"), Co-Lead Counsel are "qualified, experienced and able to conduct the litigation."

As an initial matter, Co-Lead Counsel did not begin the mediation process without having reviewed an extensive amount of internal company documents. This review was to ensure that Plaintiffs had sufficient information to properly evaluate the strengths and weaknesses of the claims asserted in the Complaint. In all, Plaintiffs analyzed over 65,000 pages of internal

company documents, the vast majority of which were in Portuguese.[3] Plaintiffs also conducted a 30(b)(6) deposition of Sadia relating to Sadia's IT infrastructure, systems, and policies during the Class Period.

Plaintiffs also retained and consulted with two respected financial experts. Dr. Marc Vellrath submitted an expert report in support of Plaintiffs' motion for class certification. *See* Expert Report of Marc Vellrath (D.E. 48-2). Dr. Vellrath conducted a series of financial analyses and concluded that (1) the market for Sadia's ADRs was efficient; (2) it was overwhelmingly likely that the drop in Sadia's ADR price on September 25, 2008 was related to disclosures regarding Sadia's alleged fraud; and (3) it was economically and financially feasible to calculate the economic loss for purchasers of Sadia ADRs. In response to concerns raised by the Court in its Class Certification Order, Plaintiffs engaged Dr. Zachary Nye of the Stanford Consulting Group. Dr. Nye developed a revised damages methodology, inflation model, and analysis of loss causation that took into account the unique circumstances of this action (previously noted by the Court in the Class Certification Order).

Plaintiffs thus had a clear and detailed view of the factual strengths and weaknesses of the case. *Initial Pub. Offering*, 226 F.R.D. at 194 (preliminarily approving settlement where "[t]he settling parties are represented by experienced and talented counsel that share expertise in this field and an extensive knowledge of the details of this case."); *see also*; *Great Neck Capital Appreciation Inv. P'ship, LP v. Pricewaterhouse Coopers, LLP*, 212 F.R.D. 400, 410 (E.D. Wis. 2002) ("[T]he settlement was reached after PwC's motion to dismiss had been decided and after

[3] Plaintiffs analysis also included review of the 2009 audit report into Sadia's currency hedging activity prepared by auditor BDO Trevisan and the August 25, 2010 Opinion of the Committee on Settlement Terms which was published by the Comissão de Valores Mobiliários, the Brazilian equivalent to the U.S. Securities and Exchange Commission.

merits discovery was well underway. Thus, plaintiffs' counsel's evaluation of the case was based on a reasonable amount of information.").

3. The Proposed Settlement is in the Best Interests of the Class

The $27 million proposed Settlement represents an exceptional recovery for the Class. "Securities class actions are generally complex and expensive to prosecute." *In re Gilat Satellite Networks, Ltd.*, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007); *see also Sumitomo Copper Litig.*, 189 F.R.D. at 281 ("[I]n evaluating the settlement of a securities class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain."). Because of:

> [T]he lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class. In the circumstances of such a case as this, it may be preferable to take the bird in the hand instead of the prospective flock in the bush.

Prudential, 163 F.R.D. at 210. The proposed Settlement will allow the Class to receive a concrete benefit now, not a hypothetical benefit after years of uncertain litigation and a far-from-guaranteed jury verdict. *See In re AOL Time Warner, Inc.*, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) (immediate, substantial and concrete benefit of settlement outweighs possibility of higher recovery after trial).

An immediate and concrete benefit for Class Members is especially important in an action like this where the defendants include a foreign corporation whose principal place of business is in Brazil, and five Brazilian citizens who are no longer employed by the corporate defendant. *See Gilat*, 2007 WL 1191048, at *10 (noting increased costs and complexity of discovery where defendant was located overseas). Moreover, even if Plaintiffs were to obtain a favorable jury verdict that would survive the inevitable round of appeals, there is still no guarantee that Brazilian courts will recognize or enforce an American securities fraud class

action judgment. If the Brazilian courts were to refuse to recognize a judgment, the Class would receive nothing.

* * *

In sum, nothing in the course of the Parties' negotiations or the terms of the Settlement discloses any grounds to doubt the fairness of the Settlement. On the contrary, the substantial recovery for the Class, the extensive investigation and discovery conducted, the Parties' litigation efforts over the course of more than two years, the arms'-length nature of the negotiations and the participation of an experienced mediator, amply support a finding that the proposed Settlement is well "within the range of possible approval" so as to justify notice to the Class and scheduling of a hearing for final approval.

B. The Plan of Allocation is Fair and Reasonable

"An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001) (internal quotations omitted). The court's "principal obligation is simply to ensure that the fund distribution is fair and reasonable." *Id.* (*quoting Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 964 (3d Cir. 1983)).

Here, the proposed Plan of Allocation was drafted by Dr. Nye, who has significant experience in drafting plans of allocation, and the Plan of Allocation was carefully reviewed and approved by Co-Lead Counsel. Dr. Nye's Plan of Allocation provides a reasonable, rational basis for Class Members to recover their *pro rata* damages based upon the dates of their ADR transactions. The proposed Plan of Allocation also prohibits Class Members from receiving a

windfall by limiting recovery only to those Class Members who suffered actual losses.[4] Moreover, pursuant to the Court's Class Certification Order, a claimant must have held their Sadia ADRs, purchased or acquired during the Class Period, through the close of the market on September 25, 2008 (*i.e.*, the date on which Sadia announced, after the market closed, that it would take a loss of approximately R$760 ($410 million) related to Sadia's investments in currency contracts hedging against the U.S. dollar) in order to recover under the proposed Plan of Allocation.[5] The proposed Plan of Allocation is fair and reasonable, and should be approved. *See Danieli v. IBM Corp.*, 2009 WL 6583144, at *5 (S.D.N.Y. Nov. 16, 2009) (approving plan of allocation where it "is rationally related to the relative strengths and weaknesses of the respective claims asserted" and falls within the range of possible approval).

III. THE PROPOSED FORM AND METHOD OF CLASS NOTICE ARE ADEQUATE

Once a court preliminarily approves a settlement as fair, adequate and reasonable, then "it must direct the preparation of notice of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing." *Initial Pub. Offering*, 226 F.R.D. at 191.

[4] Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day look-back period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the PSLRA, Recognized Claims are reduced to an appropriate extent by taking into account the closing prices of Sadia ADRs during the 90-day look-back period following the end of the Class Period.

[5] In its Class Certification Order, the Court granted Lead Plaintiffs' motion to certify the class as pled: all persons and entities who purchased or otherwise acquired Sadia ADRs from April 30, 2008 to September 26, 2008, inclusive, and who were damaged thereby. The Court went on to exclude from the class, purchasers who sold shares prior to the close of the market on September 25, 2008. For purposes of clarity, the Parties agree that the last day of the class period should be September 25, 2008 and have revised, for purposes of the Settlement, the definition of "Class" and "Class Period" accordingly.

A. The Scope of the Notice Program

Plaintiffs have selected GCG, Inc., a highly experienced and diligent class action claims administrator, to serve as the Claims Administrator for the proposed Settlement. In connection with the proposed Settlement, the Claims Administrator will receive shareholder lists from Sadia or the depository containing the names and addresses of Sadia ADR holders during the Class Period. The Claims Administrator will make an initial mailing of the Notice and Proof of Claim to these Class Members, as well as thousands of nominees contained in its proprietary nominee database.

Plaintiffs will also publish a Summary Notice, which provides a summary of the action and the proposed Settlement, and also explains how to obtain the more detailed Notice and Proof of Claim. The Summary Notice will be published in *Investor's Business Daily* as well as transmitted over *PR Newswire*, not later than 30 calendar days after the entry of proposed Preliminary Order (subject to Court approval).

Plaintiffs have also instructed the Claims Administrator to maintain a website, at www.sadiaadrlitigation.com. This website will provide more information on the Settlement, including downloadable copies of the Notice, Proof of Claim, and Stipulation.

B. The Notice Program Comports with Due Process

The standard for determining the adequacy of a class action settlement notice under either the Due Process Clause or the Federal Rules is reasonableness. *Wal-Mart*, 396 F.3d at 113. The Second Circuit has explained:

> There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings. Notice is adequate if it may be understood by the average class member.

Id. at 114 (internal citation and quotations omitted). In addition, the PSLRA sets forth several items of information that must be present in securities fraud settlement notices. *See* 15 U.S.C. § 78u-4(a)(7).

The proposed Notice has been carefully drafted to contain all necessary information. It is substantially similar in content and form to the model published by the Federal Judicial Center.[6] All of the information is provided in a format that is easily accessible to the reader. The Notice clearly advises recipients of their legal rights and obligations in connection with the Settlement, including the right to object to any portion of the Settlement, exclude themselves from the Class, or submit a completed Proof of Claim in order to be eligible to share in the Settlement. Contact information for both Co-Lead Counsel and the Claims Administrator is provided, as well as a toll-free number and website for the recipient if there are any further questions.

As described above and further outlined in the proposed Preliminary Order, Plaintiffs will (i) notify Class Members of the Settlement by mailing the Notice and Proof of Claim to all potential Class Members who can be identified with reasonable effort,[7] (ii) cause the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire*, and (iii) maintain a website with relevant information at www.sadiaadrlitigation.com. Notice programs such as this have been approved in a multitude of class action settlements. *See, e.g.*, *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 106 (D. Conn. 2010) (approving notice program

[6] The FJC model is available at http://www.fjc.gov/public/pdf.nsf/lookup/ClaAct13.pdf/$file/ClaAct13.pdf. The Summary Notice is also substantially similar in form and content to the FJC's publication notice model, available at http://www.fjc.gov/public/pdf.nsf/lookup/ClaAct14.pdf/$file/ClaAct14.pdf.

[7] Plaintiffs, through the assistance of the Claims Administrator, will also use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other Persons who purchased or otherwise acquired Sadia ADRs during the Class Period as record owners but not as beneficial owners.

where notice was mailed to class members identified from transfer records, summary notice was published, and settlement website was maintained for further information); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 2007 WL 313474, at *8 (S.D.N.Y. Feb. 1, 2007) (notice program approved where claims administrator disseminated notice and proof of allocation to class members and published summary notice "in appropriate publications"); *In re Prudential Secs. Inc. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996) (approving proposed notice and noting mailing of notice to each identifiable class member's last known address is "a procedure that has been given wide-spread approval in other class actions").

Plaintiffs' proposed manner of providing notice, which includes individual notice by mail to all Class Members who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies the requirements of Due Process and Rule 23 of the Federal Rules. Therefore, Plaintiffs respectfully submit that the Court should approve the form and content of the Notice.

IV. PROPOSED SCHEDULE

Plaintiffs respectfully submit the following procedural schedule for the Court's review and approval, which summarizes the deadlines in the proposed Preliminary Order:

Event	**Proposed Deadline**
Mailing of Notice (including Plan of Allocation and Proof of Claim) *See* Preliminary Order ¶11	20 calendar days after entry of Preliminary Order (the "Notice Date")
Publication of Summary Notice *See* Preliminary Order ¶13	10 calendar days after the Notice Date
Submission of Requests for Exclusion *See* Preliminary Order ¶15	21 calendar days prior to the Settlement Fairness Hearing
Submission of Objections *See* Preliminary Order ¶14	21 calendar days prior to the Settlement Fairness Hearing
Submission of Proofs of Claim	120 calendar days after the Notice Date

Event	Proposed Deadline
See Preliminary Order ¶16	
Settlement Fairness Hearing *See* Preliminary Order ¶6	Approximately 90 days after entry of the Preliminary Order[8]

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the proposed Order Preliminarily Approving Settlement, which will provide (1) preliminary approval of the proposed Settlement; (2) approval of the form and manner of giving notice of the proposed Settlement to the Class; and (3) a time and date for the Settlement Fairness Hearing, to consider final approval of the Settlement and related matters.

Dated: September 16, 2011

Respectfully submitted,

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[8] Pursuant to 28 U.S.C. § 1715, Sadia will be notifying certain federal and state officials of the proposed Settlement within 10 days from today. Subsection (d) requires the Court to wait 90 days from the date these officials are served to give final approval to the proposed Settlement. In order to comply with the statute, Plaintiffs respectfully request that the Court schedule the Fairness Hearing to occur at least 90 days, and no later than 100 days, from the date the Settlement is preliminarily approved, subject to the Court's convenience.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the September 16, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all registered users.

/s/ Curtis V. Trinko
Curtis V. Trinko