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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 IN RE NEW CENTURY

Case No. CV 07-00931 DDP (FMOx)

21 **ORDER PRELIMINARILY**
22 **APPROVING SETTLEMENTS**
23 **AND PROVIDING FOR NOTICE**

24
25 Judge: Hon. Dean D. Pregerson

1 WHEREAS, Lead Plaintiff New York State Teachers' Retirement System
2 ("Lead Plaintiff"), and Plaintiffs Carl Larson and Charles Hooten, on behalf of
3 themselves and all others similarly situated (collectively with Lead Plaintiff,
4 "Plaintiffs") and the Individual Defendants,¹ the Underwriter Defendants,² and
5 KPMG LLP ("KPMG") (collectively "Defendants") (collectively, with
6 Defendants, the "Parties"), have reached agreements to settle the above-captioned
7 litigation (the "Consolidated Action"), and Plaintiffs have applied to the Court
8 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for an order
9 preliminarily approving the Settlements in accordance with the Stipulations of
10 Settlement,³ which, together with the exhibits annexed thereto, set forth the terms
11 and conditions for the proposed Settlements regarding the Consolidated Action,
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13 ¹ "Individual Defendants" or "Class Individual Defendants" means Robert K.
14 Cole, Brad A. Morrice, Estate of Edward Gotschall, Patti M. Dodge, Fredric J.
15 Forster, Michael M. Sachs, Harold A. Black, Donald E. Lange, Terrence P.
16 Sandvik, Richard A. Zona, Marilyn A. Alexander, David Einhorn, and William J.
Popejoy.

17 ² "Underwriter Defendants" means Bear, Stearns & Co. Inc., Deutsche Bank
18 Securities Inc., Piper Jaffray & Co., Stifel, Nicolaus & Co., Inc., JMP Securities
19 LLC, Roth Capital Partners, Morgan Stanley & Co., Inc., and Jeffries & Co., Inc.

20 ³ The terms of the proposed settlement with the Underwriter Defendants is set
21 forth in the Stipulation Of Settlement Between Plaintiffs And The Underwriter
22 Defendants (the "Underwriter Stipulation" or the "Underwriter Settlement"); the
23 terms of the proposed settlement with KPMG is set forth in the Stipulation Of
24 Settlement Between Plaintiffs And KPMG LLP (the "KPMG Stipulation" or
25 "KPMG Settlement"); and the proposed settlement with the Individual Defendants
26 is set forth in the Stipulation Of Global Settlement With New Century Officers
27 And Directors (the "Global Officer And Director Settlement" or "Global Officer
28 And Director Stipulation"). The Global Officer And Director Stipulation contains
proposed settlements in this Consolidated Action, and related Trustee Litigation
and Kodiak Litigation (as defined in the Global Officer And Director Stipulation).
The Global Officer And Director Stipulation, the Underwriter Stipulation and the
KPMG Stipulation are referred to collectively as the "Stipulations," "Stipulations
of Settlement," or the "Settlements."

1 and for dismissal of the Consolidated Action with prejudice as against all of the
2 Defendants and their related parties, upon the terms and conditions set forth
3 therein; and the Court having read and considered the Stipulations and the exhibits
4 annexed thereto;

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. This order (the “Notice Order” or “Preliminary Approval Order”)
7 hereby incorporates by reference the definitions in the Stipulations unless
8 otherwise indicated, and all terms with initial capitalization not otherwise defined
9 herein shall have the same meanings as set forth in the Stipulations. Any
10 inconsistencies between the Stipulations and the Notice of Pendency of Class
11 Action and Proposed Settlements, Settlement Fairness Hearing, and Motion for
12 Attorneys’ Fees and Reimbursement of Litigation Expenses (“Notice”) will be
13 controlled by the language of the Stipulations.

14 2. The Court hereby preliminarily approves the Settlements as being fair,
15 reasonable and adequate to the Class, pending a final hearing on the Settlements.

16 **CLASS CERTIFICATION**

17 3. The Court hereby certifies, pursuant to Rules 23(a) and 23(b)(3) of the
18 Federal Rules of Civil Procedure, a Class defined as follows:

19 all persons and entities who purchased or otherwise acquired New
20 Century common stock, New Century Series A Preferred Stock, New
21 Century Series B Preferred Stock, and/or New Century call options
22 and/or who sold New Century put options, during the time period
23 from May 5, 2005, through and including March 13, 2007, either in
24 the Offerings, pursuant to a registration statement, or in the market,
25 and who, upon disclosure of certain facts alleged in the Complaint,
26 were injured thereby. Excluded from the Class are (a) Defendants; (b)
27 members of the immediate families of the Individual Defendants; (c)
28 the subsidiaries and affiliates of Defendants; (d) any person or entity
who was a partner, executive officer, director or controlling person of
New Century (including any of its subsidiaries or affiliates) or of any
Defendant; (e) any entity in which any Defendant has a controlling
interest; and (f) the legal representatives, heirs, successors and assigns
of any such excluded party. Also excluded from the Class are any
persons who exclude themselves by filing a request for exclusion in
accordance with the requirements set forth in the Notice.

1 4. The Court finds that the prerequisites for a class action under Rules
2 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:
3 (a) the number of Class Members is so numerous that joinder of all members
4 thereof is impracticable; (b) there are questions of law and fact common to the
5 Class; (c) the claims of Lead Plaintiff New York State Teachers' Retirement
6 System ("NYSTRS") and Plaintiffs Carl Larson and Charles Hooten are typical of
7 the claims of the Class they seek to represent; (d) Plaintiffs have fairly and
8 adequately represented the interests of the Class; (e) the questions of law and fact
9 common to the members of the Class predominate over any questions affecting
10 only individual members of the Class; and (f) a class action is superior to other
11 available methods for the fair and efficient adjudication of the controversy.

12 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs
13 are certified as Class Representatives and Lead Counsel Bernstein Litowitz Berger
14 & Grossmann LLP is certified as Class Counsel.

15 6. The Court appoints the firm of Analytics Incorporated ("Claims
16 Administrator") to supervise and administer the notice procedure as well as the
17 processing of claims as more fully set forth below:

18 a. Within five (5) business days after entry of this Order, the
19 Claims Administrator shall cause a copy of the Notice and the Proof of Claim and
20 Release (the "Claim Form"), annexed hereto respectively as Exhibits 1 and 2, to be
21 mailed by first-class mail, postage prepaid, to all members of the Class at the
22 address of each such Class Member as set forth in the records of New Century or
23 its transfer agent, or who are identified by further reasonable efforts (the "Notice
24 Date"). Lead Counsel shall, at or before the Settlement Hearing, file with the
25 Court proof of mailing of the Notice and Claim Form; and

26 b. A summary notice ("Summary Notice"), annexed hereto as
27 Exhibit 3, shall be published once each in the national edition of *The Wall Street*
28 *Journal* and over the *PR Newswire* within five (5) business days of the mailing of

1 the Notice. Lead Counsel shall, at or before the Settlement Hearing, file with the
2 Court proof of publication of the Summary Notice.

3 7. The Court approves the form of Notice and Summary Notice
4 (together, the “Notices”) and Claim Form, and finds that the procedures established
5 for publication, mailing and distribution of such Notices substantially in the
6 manner and form set forth in paragraph 6 of this Order meet the requirements of
7 Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation
8 Reform Act of 1995, and due process, and constitute the best notice practicable
9 under the circumstances.

10 8. For the purpose of identifying and providing notice to the Class, the
11 Trustee and the Underwriter Defendants shall provide to the Claims Administrator
12 the information as agreed to in the Global Officer And Director Stipulation and the
13 Underwriter Stipulation, respectively.

14 9. Nominees who purchased or otherwise acquired New Century stock
15 for beneficial owners who are Class Members are directed to: (a) request within
16 fourteen (14) days of receipt of the Notice additional copies of the Notice and the
17 Claim Form from the Claims Administrator for such beneficial owners; or (b) send
18 a list of the names and addresses of such beneficial owners to the Claims
19 Administrator within fourteen (14) days after receipt of the Notice. If a nominee
20 elects to send the Notice to beneficial owners, such nominee is directed to mail the
21 Notice within fourteen (14) days of receipt of the copies of the Notice from the
22 Claims Administrator, and upon such mailing, the nominee shall send a statement
23 to the Claims Administrator confirming that the mailing was made as directed, and
24 the nominee shall retain the list of names and addresses for use in connection with
25 any possible future notice to the Class. Upon full compliance with this Preliminary
26 Approval Order, including the timely mailing of Notice to beneficial owners, such
27 nominees may seek reimbursement of their reasonable expenses actually incurred
28 in complying with this Preliminary Approval Order by providing the Claims

1 Administrator with proper documentation supporting the expenses for which
2 reimbursement is sought and reflecting compliance with these instructions,
3 including timely mailing of the Notice, if the nominee elected or elects to do so.
4 Such properly documented expenses incurred by nominees in compliance with the
5 terms of this Preliminary Approval Order shall be paid from the Settlement Fund.

6 **HEARING: RIGHT TO BE HEARD**

7 10. There shall be a hearing on November 8, 2010, at 10:00 a.m. (the
8 "Settlement Hearing") at which time the Court shall address the fairness,
9 reasonableness and adequacy of the Settlements, the fairness and reasonableness of
10 the Plan of Allocation, and Lead Counsel's application for attorneys' fees and
11 payment of Litigation Expenses. The Settlement Hearing shall be held before this
12 Court at the United States District Court for the Central District of California, 312
13 North Spring Street, Courtroom 3, 2nd Floor, Los Angeles, California 90012.

14 11. Papers in support of the Settlements, the Plan of Allocation, and Lead
15 Counsel's application for attorneys' fees and payment of Litigation Expenses shall
16 be filed on or before twenty-eight (28) days prior to the Settlement Hearing.

17 12. Any member of the Class may appear at the Settlement Hearing and
18 show cause why the proposed Settlements embodied in the Stipulations should or
19 should not be approved as fair, reasonable and adequate, and/or to present
20 opposition to the Plan of Allocation or to the application of Lead Counsel for
21 attorneys' fees and payment of Litigation Expenses. However, no Class Member
22 shall be heard or entitled to contest the approval of the terms and conditions of the
23 Settlements, or the terms of the Plan of Allocation or the application by Lead
24 Counsel for an award of attorneys' fees and payment of Litigation Expenses unless
25 that Class Member (i) has served written objections, including the basis therefor, as
26 well as copies of any papers (including proof of all purchases or acquisitions of
27 New Century stock or options during the Class Period) and/or briefs in support of
28 his, her or its position upon the following counsel such that it is received on or

1 before twenty-one (21) days prior to the Settlement Hearing: Salvatore J.
2 Graziano, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the
3 Americas, New York, NY 10019; Kathleen M. McDowell, Esq., Munger, Tolles &
4 Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071-1560; John
5 S. Durrant, Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th
6 Floor, Los Angeles, CA 90071; and Michael L. Rugen, Sidley Austin LLP, 555
7 California St., Suite 2000, San Francisco, CA 94104-1715; and (ii) filed said
8 objections, papers and briefs with the Clerk of the United States District Court for
9 the Central District of California on or before twenty-one (21) days before the
10 Settlement Hearing. Any Class Member who does not make his, her or its
11 objection in the manner provided for herein shall be deemed to have waived such
12 objection and shall forever be foreclosed from making any objection to the fairness
13 or adequacy of the Settlements as incorporated in the Stipulations, to the Plan of
14 Allocation or to the application by Lead Counsel for an award of attorneys' fees
15 and payment of Litigation Expenses unless otherwise ordered by the Court. The
16 manner in which a notice of objection should be prepared, filed and delivered shall
17 be stated in the Notice.

18 13. If approved, all Class Members will be bound by the proposed
19 Settlements provided for in the Stipulations, and by any judgment or determination
20 of the Court affecting Class Members, regardless of whether or not a Class
21 Member submits a Claim Form.

22 14. Any member of the Class may enter an appearance in the
23 Consolidated Action, at their own expense, individually or through counsel of their
24 own choice. If they do not enter an appearance, they will be represented by Lead
25 Counsel.

26 15. The Court reserves the right to adjourn or continue the Settlement
27 Hearing, or any adjournment or continuance thereof, without any further notice to
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1 Class Members and to approve the Stipulations and/or Plan of Allocation with
2 modification and without further notice to Class Members.

3 **CLAIMS PROCESS**

4 16. In order to be entitled to participate in the Settlements, a Class
5 Member must complete and submit a Claim Form in accordance with the
6 instructions contained therein and/or in the Notice. To be valid and accepted,
7 Claim Forms submitted in connection with the Settlements must be postmarked no
8 later than 120 days after the Notice date (unless by Order of the Court, late-filed
9 Claim Forms are accepted).

10 17. Any Class Member who does not timely submit a valid Claim Form
11 shall not be entitled to share in the Settlement Fund, unless otherwise ordered by
12 the Court, but nonetheless shall be barred and enjoined from asserting any of the
13 settled claims and shall be bound by any judgment or determination of the Court
14 affecting the Class Members.

15 18. As set forth in the Stipulations, Defendants and their related parties
16 shall have no responsibility whatsoever for the administration of the Settlements or
17 the disbursement of the Net Settlement Fund and shall not be permitted to review,
18 contest or object to any Claim Form or any decision of the Claims Administrator or
19 Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for
20 payment by a Class Member.

21 **REQUEST FOR EXCLUSION FROM THE CLASS**

22 19. Any requests for exclusion must be submitted such that they are
23 received no later than twenty-one (21) days before the date of the Settlement
24 Hearing. To be valid, each request for exclusion must (i) state the name and
25 address of the person or entity requesting exclusion; (ii) state that such person or
26 entity requests exclusion from the Class in *In re New Century*, 07-CV-00931-DDP
27 (FMOx); (iii) be signed by the person or entity requesting exclusion; (iv) provide a
28 telephone number for that person or entity; and (v) provide the date(s), price(s),

1 and number(s) of shares of all purchases, acquisitions, and sales of New Century
2 Securities during the Class Period. Requests for exclusion will not be valid if they
3 do not include the information set forth above and are not received within the time
4 stated above, unless the Court otherwise determines. Copies of all timely requests
5 for exclusion from the Class received by the Claims Administrator (or other person
6 designated to receive exclusion requests) shall be provided to Lead Counsel and
7 Individual Defendants' Counsel, counsel for the Insurance Carriers (as defined in
8 the Global Officer And Director Stipulation), counsel for KPMG, and counsel for
9 the Underwriter Defendants, no later than fifteen (15) days prior to the Settlement
10 Hearing. All persons who submit valid and timely requests for exclusion in the
11 manner set forth in this paragraph shall have no rights under the Stipulations, shall
12 not share in the distribution of the Net Settlement Fund, and shall not be bound by
13 the Stipulations or any final judgment.

14 20. As set forth in the Stipulations, Defendants and their related parties
15 shall have no responsibility or liability whatsoever with respect to the Plan of
16 Allocation or Lead Counsel's application for an award of attorneys' fees and
17 payment of Litigation Expenses. The Plan of Allocation and Lead Counsel's
18 application for an award of attorneys' fees and payment of Litigation Expenses will
19 be considered separately from the fairness, reasonableness and adequacy of the
20 Settlements. At or after the Settlement Hearing, the Court will determine whether
21 Lead Counsel's proposed Plan of Allocation should be approved, and the amount
22 of attorneys' fees and Litigation Expenses to be awarded to Lead Counsel. Any
23 appeal from any orders relating to the Plan of Allocation or Lead Counsel's
24 application for an award of attorneys' fees and Litigation Expenses, or reversal or
25 modification thereof, shall not operate to terminate or cancel the Settlements, or
26 affect or delay the finality of the judgment to be entered pursuant to Rule 54(b) of
27 the Federal Rules of Civil Procedure approving the Settlements and the settlement
28 of the Consolidated Action set forth therein.

1 21. Only Class Members and Lead Counsel shall have any right to any
2 portion of, or any rights in the distribution of, the settlement funds except as
3 provided in the Stipulations or otherwise ordered by the Court.

4 22. All funds held by the escrow agent selected by Lead Counsel to
5 maintain the escrow account(s) for the Settlements (“Escrow Agent”) shall be
6 deemed and considered to be *in custodia legis* and shall remain subject to the
7 jurisdiction of the Court until such time as such funds shall be distributed pursuant
8 to the Stipulations and/or further Order of the Court.

9 23. Lead Counsel or its agents are authorized and directed to prepare any
10 tax returns required to be filed for the escrow account maintained to hold the
11 settlement funds pursuant to the terms of the Stipulations and to cause any Taxes
12 due and owing to be paid from the escrow account(s) without further Order of the
13 Court, and to otherwise perform all obligations with respect to Taxes and any
14 reportings or filings in respect thereof as contemplated by the Stipulations without
15 further Order of the Court.

16 24. As set forth in the Stipulations, Lead Counsel may pay from the
17 escrow account(s), without further approval from Defendants or further Order of
18 the Court, the costs, fees and expenses that are incurred by the Claims
19 Administrator and Lead Counsel in connection with (i) providing notice to the
20 Class; and (ii) administering the claims process in connection with the
21 Consolidated Action (“Notice and Administration Costs”) actually incurred. Such
22 costs and expenses shall include, without limitation, the actual costs of publication,
23 printing and mailing the Notice, reimbursements to nominee owners for forwarding
24 the Notice to their beneficial owners, the administrative expenses incurred and fees
25 charged by the Claims Administrator in connection with providing Notice and
26 processing the submitted claims, and the fees, if any, of the Escrow Agent. In the
27 event that any of the Settlements are terminated pursuant to the terms of the
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1 Stipulations, all Notice and Administration Costs paid or incurred, including any
2 related fees, shall not be returned or repaid as set forth in the Stipulations.

3 25. The Stipulations and Settlements set forth therein, whether or not
4 consummated, and any proceedings taken pursuant to the Stipulations and
5 Settlements:

6 a. shall not be offered or received against any of the Released
7 Parties⁴ as evidence of, or construed as, or deemed to be evidence of any
8 presumption, concession, or admission by any of the Released Parties with respect
9 to the truth of any fact alleged by Plaintiffs⁵ or the validity of any claim that was or
10 could have been asserted against any of the Released Parties in the Consolidated
11 Action, the Trustee Litigation, or the Kodiak Litigation (as defined in the Global
12 Officer And Director Stipulation) or in any litigation, or of any liability,
13 negligence, fault, or other wrongdoing of any kind of any of the Released Parties;

14 b. shall not be offered or received against any of the Released
15 Parties as evidence of a presumption, concession or admission of any fault,
16 misrepresentation or omission with respect to any statement or written document
17 approved or made by any of the Released Parties, or against the Plaintiffs or any
18 Class Members as evidence of any infirmity in the claims of Plaintiffs or the other
19 Class Members;

20 c. shall not be offered or received against any of the Released
21 Parties, or against the Plaintiffs or any other Class Members, as evidence of a
22 presumption, concession or admission with respect to any liability, negligence,
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24 ⁴ Herein “Released Parties” includes: (i) the Released Officers And Directors (as
25 defined in the Global Officer And Director Stipulation); (ii) the Released Auditor
26 Parties (as defined in the KPMG Stipulation); and (iii) the Released Underwriter
27 Parties (as defined in the Underwriter Stipulation).

28 ⁵ “Plaintiffs” in this paragraph 25 includes Class Plaintiffs, the Trustee, and Kodiak
(as defined in the Global Officer And Director Stipulation).

1 fault or wrongdoing of any kind, or in any way referred to for any other reason as
2 against any of the Released Parties, in any other civil, criminal or administrative
3 action or proceeding, other than such proceedings as may be necessary to
4 effectuate the provisions of the Stipulations; provided, however, that if the
5 Stipulations are approved by the Court, Defendants, any other Released Party, or
6 any Class Member may refer to the Settlements and Stipulations to effectuate the
7 protection from liability granted them hereunder;

8 d. shall not be construed against any of the Released Parties,
9 Plaintiffs or any other Class Members as an admission, concession, or presumption
10 that the consideration to be given hereunder represents the amount which could be
11 or would have been recovered after trial;

12 e. shall not be construed against Plaintiffs or any other Class
13 Members as an admission, concession, or presumption that any of their claims are
14 without merit or that damages recoverable under the Consolidated Action, the
15 Trustee Litigation and the Kodiak Litigation would not have exceeded the amount
16 of the Settlements; and

17 f. shall not be construed as or received in evidence as an
18 admission, concession or presumption that class certification is appropriate in this
19 Consolidated Action, except for purposes of the Settlements.


20 26. Except as otherwise provided in the Stipulations, there shall be no
21 distribution of any of the net settlement fund for any of the Settlements to any
22 Class Member until a plan of allocation is finally approved and the Court issues a
23 Class Distribution Order.

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1 The Court retains jurisdiction of this Consolidated Action to consider all
2 further applications arising out of or connected with the proposed Settlements, and
3 as otherwise warranted.

4 IT IS SO ORDERED.

5 DATED: August 10, 2010

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7 _____
8 THE HONORABLE DEAN D. PREGERSON
9 UNITED STATES DISTRICT JUDGE
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