HEARING DATE: FEBRUARY 14, 2013 AT 10:00 A.M. (PREVAILING EASTERN TIME)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS LTD., *et al.*,	:	Case No. 11-15059 (MG)
	:	(Jointly Administered)
Debtors.	:	

PLAN PROPONENTS' OMNIBUS REPLY TO OBJECTIONS TO THE MOTION OF THE PLAN PROPONENTS FOR AN ORDER (I) APPROVING DISCLOSURE STATEMENT AND THE FORM AND MANNER OF NOTICE OF THE DISCLOSURE STATEMENT, (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (III) SCHEDULING HEARING ON CONFIRMATION OF THE PLAN, (IV) APPROVING RELATED NOTICE AND OBJECTION PROCEDURES, AND (V) APPROVING CERTAIN PRE-CONFIRMATION MATTERS

Louis J. Freeh (the "**Trustee**"),[1] the chapter 11 trustee of MF Global Holdings Ltd. ("**Holdings Ltd.**"), MF Global Finance USA Inc. ("**Finance USA**"), MF Global Capital LLC ("**MFG Capital**"), MF Global FX Clear LLC ("**FX Clear**"), MF Global Market Services LLC ("**Market Services**"), and MF Global Holdings USA Inc. ("**Holdings USA**" and collectively with Holdings Ltd., MFG Capital, FX Clear, Market Services, the "**Debtors**"), and the Creditor Co-Proponents (together with the Trustee, the "**Plan Proponents**") hereby submit this omnibus reply (the "**Reply**") to the Objections (as defined below) filed in response to the motion (the "**Motion**") [Docket No. 997], dated January, 10, 2013, for an order approving, among other things, the disclosure statement (as amended, the "**Disclosure Statement**") [Docket no. 1029]

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the *Joint Plan of Liquidation Pursuant To Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global Market Services LLC, MF Global FX Clear LLC, and MF Global Holdings USA Inc.*(the "**Plan**"), filed on February 2, 2013 [Docket No. 1031].

filed in connection with the Plan, and various procedures in connection with the solicitation of votes with respect to the Plan, and respectfully represent as follows:

PRELIMINARY STATEMENT

1. On January 10, 2013, the Creditor Co-Proponents filed the Motion seeking, among other things, approval of a plan of liquidation (the "**Original Plan**") [Docket No. 996] and a disclosure statement in support of such plan of liquidation (the "**Original Disclosure Statement**") [Docket No. 995]. After negotiations between the parties and amendments to the Original Plan and Original Disclosure Statement, the Trustee joined the Creditor Co-Proponents and together they filed the Disclosure Statement and the Plan. The Motion, as filed, continues to seek approval of the now-amended Disclosure Statement.

2. On January 10, 2013, approximately 2,782 parties were served with the Motion [Docket No. 1005]; and on or about January 15, 2013, GCG, Inc., the Trustee's balloting agent, served an additional 6,014 matrix parties and approximately 9,600 holders of public securities (debt and equity) [Docket No. 1008]. In response, the Plan Proponents received five objections (collectively, the "Objections" and the objecting parties the "Objectors"). Those Objections were:

a. the *Limited Objection to the Disclosure Statement for the Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global MF Global Finance USA Inc., MF Global Capital LLC, MF Global Market Services LLC, MF Global FX Clear LLC, and MF Global Holdings USA Inc.* [Docket No. 1042], filed by NY-717 Fifth Avenue, L.L.C. ("**NY-717**");

b. the *Objection of JPMorgan Chase Bank, N.A. to Motion of the Plan Proponents for an Order (I) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (III) Scheduling hearing on Confirmation of the Plan, (IV) Approving Related Notice and Objection Procedures, and (V) Approving Certain Pre-Confirmation Matters* [Docket No. 1047], filed by JPMorgan Chase Bank, N.A.("**JPMorgan**")

c. the *Objection of Sapere Wealth Management LLC, Granite Asset Management, and Sapere CTA Fund L.P. to Motion of the Plan Proponents for an Order (I) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (III) Scheduling hearing on Confirmation of the Plan, (IV) Approving Related Notice and Objection Procedures, and (V) Approving Certain Pre-Confirmation Matters* [Docket No. 1049], filed by Sapere Wealth Management LLC, Granite Asset Management, and Sapere CTA Fund L.P. ("**Sapere**");

d. the *Securities Lead Plaintiffs' Limited Objection with Reservation of Rights to the Plan Proponents Motion for an Order Approving Disclosure Statement and Seeking Related Relief* [Docket No. 1051], filed by The Virginia Retirement System and Her Majesty the Queen in Right of Alberta ("**Securities Plaintiffs**").

e. the *Objection of the United States Trustee Regarding Disclosure Statement for the Joint Plan of Liquidation for MF Global Holdings Ltd., MF Global MF Global Finance USA Inc., MF Global Capital LLC, MF Global Market Services LLC, MF Global FX Clear LLC, and MF Global Holdings USA Inc., Dated February 1, 2013 and Filed by the Plan Proponents*, filed by the Office of the United States Trustee (the "**UST**").

3. A summary of the language added to the Disclosure Statement to address each of the Objections is set forth in Exhibits A, C-E, attached hereto.

4. The Court has scheduled a hearing to consider confirmation of the Plan for April 5, 2013 at 10:00 a.m. (prevailing Eastern Time) (the "**Confirmation Hearing**"). The Plan Proponents believe that the Objections should be overruled or considered at the Confirmation Hearing, if they are not resolved prior to that hearing. The Plan Proponents fully anticipate, however, that they have resolved the majority of the issues raised by the Objectors prior to the disclosure statement hearing through the language added to the Disclosure Statement.

5. The Plan Proponents believe that the Disclosure Statement contains all necessary information to satisfy the requirements of section 1125 of the Bankruptcy Code, and that the Plan is confirmable, fair and in the best interests of all parties in interest. The Plan Proponents therefore request that the Court allow the Plan Proponents to proceed with soliciting acceptances

of the Plan. The Plan Proponents believe that this course of action is in the best interests of the Debtors, their estates and all parties in interest in these Chapter 11 Cases.

GENERAL REPLY

1. Section 1125 of the Bankruptcy Code governs the postpetition disclosure and solicitation of a chapter 11 plan and requires that the plan proponent provide 'adequate information" such that a hypothetical investor can make an informed judgment about the plan. *See* 11 U.S.C. § 1125(a). To the extent that the Objections here raise issues regarding the adequacy of information provided in the Plan, the Plan Proponents have added additional information as requested by the Parties, either directly or in their Objections, to meet the standard set in section 1125.

2. Several of the Objections, however, couch their issues as disclosure issues but are best described as issues for the Confirmation Hearing. Confirmation issues should be determined at a hearing to consider confirmation of a chapter 11 plan and in accordance with the procedures attendant to such a hearing. *See In re CRIIMI MAE, Inc.*, 251 B.R. 796, 799 (Bankr. D. Md. 2000) ("objections to confirmation of the plan, as opposed to the adequacy of the disclosure of information in the Disclosure Statement, would not be heard and determined at the [disclosure statement] [h]earing"); *In re Waterville Timeshare* Group, 67 B.R. 412 (Bankr. D.N.H. 1986) (holding that a disagreement with respect to a litigation compromise that was an essential part of the plan did not render the debtor's disclosure statement inadequate). All of the Objections raise issues related to the confirmability of the Plan. Any objection raising confirmation issues at this time is premature, and the Plan Proponents have the right to have challenges to the Plan determined on the basis of an appropriate record and the facts and circumstances developed up to and including the Confirmation Hearing.

3. Creditors should not be allowed to hijack the hearing on the adequacy of a disclosure statement and use such a hearing to address the confirmability of a chapter 11 plan. "If creditors oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan's confirmability will await the hearing on confirmation." *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988). The disclosure statement hearing is for the limited purpose of determining the adequacy of the disclosure statement, and should not be used to address conformation issues prematurely. *See In re Waterville Timeshare Group*, 67 B.R. at 413 (in recognizing the limitations of a disclosure statement hearing, the court observed that "approval of a disclosure statement is an interlocutory action in the progress of a chapter 11 reorganization effort leading to a confirmation hearing at which all parties have ample opportunity to object to confirmation of the plan").

4. Solicitation should *only* be delayed when the proposed plan is "facially" or "patently" unconfirmable and where, as a matter of law, the plan "is so fatally flawed that confirmation is impossible." *See In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990). The Objectors have not raised any issues that would support a finding that the Plan is not confirmable as a matter of law. The Court has discretion to defer the Objections, all of which deal with issues related to confirmation, until the Confirmation Hearing, rather than entertain these objections at a hearing devoted to the adequacy of the Disclosure Statement. *See Cardinal Congregate I*, 121 B.R. at 764 (a court need not "look behind the disclosure statement to decide such issues at the hearing on [its] adequacy").

5. The approval of the Disclosure Statement and the commencement of the solicitation process as soon as practicable is in the best interests of the Debtors, their estates and all parties in

interest. Therefore, the Plan Proponents request that the Court overrule the Objections or defer their consideration to the Confirmation Hearing.

THE NY-717 OBJECTION

6. NY-717filed a limited Objection asserting that it believed that "for purposes of estimating recoveries to Holding's and USA's general unsecured creditors in the Disclosure Statement, the Debtors may have classified the Proof of Claim as against USA only."

7. Although the Plan Proponents reserve all of their rights to object to NY-717's claims, the Plan Proponents have adjusted their claims analysis on Exhibit IV of the Disclosure Statement to include NY-717's claim against both Holdings Ltd. and Holdings USA in a capped amount of $19,423,983. The Plan Proponents believe this resolves NY-717's Objection.

THE JPMORGAN OBJECTION

8. In its Objection, JPMorgan asserts that the Disclosure Statement does not contain adequate information because, according to JPMorgan, it fails to disclose that the Plan would make Finance USA liable twice for the same obligation. JPMorgan also asserts that the Disclosure Statement fails to disclose that Finance USA has claims and defenses that would, if successful, eliminate its liability for the intercompany claim of Holdings Ltd. against Finance USA. Among the defenses asserted by JPMorgan are: (a) the intercompany claim may be avoidable as a fraudulent conveyance; (b) Finance USA should have the right to setoff the full amount of its liability to the lenders against its liability to Holdings Ltd. for the repayment of loan proceeds; (c) the intercompany claim should be equitably subordinated; (d) to the extent the intercompany claim is allowed and not equitably subordinated, it should be subordinated pursuant to section 509(c) of the Bankruptcy Code to the lenders' claims; and (e) the Disclosure

Statement should be clear about how Holdings Ltd.'s claims against Finance USA are supposed to be resolved.

9. To resolve JPMorgan's objections, the Plan Proponents, in section VII.F.2, added the language summarized in Exhibit A, attached hereto. In response to JPMorgan's objection, and the addition of the language to the Disclosure Statement, Knighthead Capital Management LLC ("**Knighthead**") requested that the Plan Proponents add certain additional language as well. The Plan Proponents added Knighthead's language to the Disclosure Statement as section VII.F.1. Knighthead's language is also summarized in Exhibit A, attached hereto.

10. The Plan Proponents believe that the addition of the language in Exhibit A resolves JPMorgan's Objection.

THE SAPERE OBJECTION

11. Sapere's Objection argues that: (a) the Plan Proponents mischaracterize claims against the Debtors; (b) the Plan denies commodities customers priority status for distribution purposes; (c) the Plan fails to provide adequate information regarding the basis for disallowing the claims of commodities customers; (d) the Plan and Disclosure Statement improperly restrict creditor's rights to request estimation of disputed claims; and (e) the Disclosure Statement and Plan are procedurally deficient.

12. Sapere informally reached out to the Plan Proponents prior to the objection deadline and raised certain issues regarding the Plan and Disclosure Statement. The Plan Proponents, as they did with other Objectors, responded with an offer to allow Sapere to propose any language they would like included in the Disclosure Statement to be added. Sapere ignored that offer. Attached hereto as Exhibit B are the communications between Sapere and the Plan Proponents. Nevertheless, the Plan Proponents added the language in Exhibit C to section III.N.2.a, pages

41-42, of the Disclosure Statement, which is a summary of the Sapere Objection, to address Sapere's concerns. In addition, the Plan Proponents amended section VII.B.5 to allow any party in interest to move the Court for estimation of its claim, which should resolve Sapere's objection to such procedures.

13. Regardless of the language added by the Plan Proponents, many of Sapere's arguments are without merit.

14. Sapere's argument that the Plan denies commodities customers' priority status is not an objection to the Disclosure Statement. Instead, it is an inartful attempt to relitigate Sapere's prior request that the Court determine that commodities customers have priority status in the Chapter 11 Cases. This request is procedurally deficient and inappropriate for the disclosure statement hearing. In this same vein, Sapere improperly requests additional discovery as part of the Plan to support its pending litigation in the district court.

15. Sapere argues that the Court should deny the Motion because, according to Sapere, the Plan and Disclosure Statement are procedurally deficient. As stated above, The Plan and Disclosure Statement were originally filed on January 10, 2013, 35 days prior to the disclosure statement hearing. After that, the Trustee joined the Creditor Co-Proponents as a sponsor and worked with the Creditor Co-Proponents to amend the Plan and Disclosure Statement to provide more developed and current information for the "hypothetical investor" as section 1125 of the Bankruptcy Code requires. The Plan Proponents filed the amended Plan and Disclosure Statement on February 2, 2013. The changes to the Plan, however, *have not* changed the Plan materially and the information provided in the Disclosure Statement merely broadens and deepens the hypothetical investors' knowledge.

16. As was the case in *In re El Comandante Management Company, LLC*, 359 B.R. 410, 415 (Bankr. D. P.R. 2006), Sapere had sufficient time to oppose the Disclosure Statement and indeed filed an objection thereto. Sapere does not suggest that it did not have time to review the Plan and Disclosure Statement and cannot as the matters to which Sapere objects did not change, or changed very little, from the Original Plan and Original Disclosure Statement and certainly did not change in any material way.

THE SECURITIES PLAINTIFF OBJECTION

17. The Securities Plaintiffs filed their objection with five discrete objections:

a) Article V.E.1 of the Disclosure Statement provides an incomplete description of the "MDL Litigation" by failing to accurately identify the Securities Litigation and the rights of the Debtors' creditors who may be able to participate in the Securities Litigation (*see* ¶¶ 17 and 18);

b) The Disclosure Statement fails to describe, and the Plan fails to provide for, an appropriate mechanism for the preservation and/or destruction of the Debtors' books, records, accounts, and other documents (*see* ¶¶ 19-21);

c) The Disclosure Statement fails to explain the basis for the discharge and injunction provided for under Article XI.D of the Plan. In accordance with Section 1141(d)(3) of the Bankruptcy Code, where there is a liquidating chapter 11 plan, debtors are not entitled to a discharge or an injunction due to an impermissible discharge. To the extent the discharge and injunction under Plan Article X1.D are not intended to affect any claims and rights the Securities Class members may have with respect to the Securities Litigation – or against Holdings Ltd. to the extent of available insurance coverage proceeds – it is neither acknowledged in the Plan nor the Disclosure Statement. In the absence of such acknowledgement and disclosure, the discharge and injunction should not be approved (*see* ¶¶ 22-24);

d) The Disclosure Statement and Plan Are Unclear As Concerns Certain Insurance Matters .(*see* ¶¶ 25-30);

e) The Disclosure Statement does not adequately address the basis for not providing for a classification and treatment of claims

that may be subject to subordination under 11 U.S.C § 510(b). Further, in creating "Subordinate Claims" classes that do not include claims subject to subordination under § 510(b) ("§510(b) Claims"), the Disclosure Statement fails disclose whether the Subordinate Claims would be subordinate to § 510(b) Claims, as they should be (*see* ¶¶ 31-35)

18. The Plan Proponents believe that the language summarized in Exhibit D properly addresses all of the objections of the Securities Plaintiffs.

THE UST OBJECTION

19. The UST raises three objections to the disclosure statement:

a) The Disclosure Statement fails to disclose the amount of the expenses incurred by the Creditor Co-Proponents or the amount of the fees and expenses incurred by the professionals engaged by the Creditor Co-Proponents and the Indenture Trustee, without requiring that the Creditor Co-Proponents and the Indenture Trustee satisfy the requirements of 11 U.S.C. § 503(b) (the "Bankruptcy Code");

b) The Disclosure Statement does not explain how the Debtors intend to satisfy the Bankruptcy Code requirements, and relevant Second Circuit decisions interpreting those requirements, for a non-debtor third-party releases, injunctions and exculpation provision that appears to be overly broad and to exceed the Court's subject matter jurisdiction;

c) The Disclosure Statement fails to explain how the discharge provision of the Plan that provides for the discharge of the liquidating Debtors is in accordance with Section 1141(d)(3) of the Bankruptcy Code.

20. As to the UST's first objection, Jones Day has agreed to additional language, summarized in Exhibit E attached hereto, in the Disclosure Statement that will require them to provide reasonably detailed statements regarding their fees and expenses incurred as counsel to the Creditor Co-Proponents of the Plan and will file such statements on the docket. The Creditor Co-Proponents will seek an order approving of such fees and expenses. The Indenture Trustee

has likewise agreed to additional language in the Disclosure Statement, which is also summarized in Exhibit E hereto.

21. The UST next objects that the Exculpation section, section XI.C.1, is an overly-broad third party release. Nothing could be further from the truth. The exculpations in section XI.C.1 are narrowly tailored to only cover the acts, or the failure to act, by the Plan Proponents and the Committee in connection with the Plan and attendant filings, and to release the Trustee from his statutory duties under section 1106 of the Bankruptcy Code, including the need to maintain a bond. The exculpations given by the Plan Proponents are directly in line with section 1125(e) of the Bankruptcy Code, which states:

> A person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan or the offer, issuance, sale, or purchase of securities.

11 U.S.C. § 1125(e). The Bankruptcy Code specifically contemplates the exculpations provided for by the Plan Proponents in the Disclosure Statement. The release of the Trustee allows the Trustee to extinguish the bond required by section 322 of the Bankruptcy Code and recognizes that after the effective date of the Plan his services will terminate, unless otherwise specified.

22. As for the UST's final objection, the discharge provision has been removed from the Disclosure Statement.

CONCLUSION

23. **WHEREFORE**, the Plan Proponents respectfully request that the Court overrule the Objections, enter an order granting the relief requested in the Motion and such other or further relief as is just and proper.

Dated: February 12, 2013
New York, New York

/s/ Bruce Bennett **JONES DAY** Bruce Bennett Bennett L. Spiegel Lori Sinanyan 555 South Flower Street, Fiftieth Floor Los Angeles, CA 90071 Tel: (213) 243-2533 Fax: (213) 243-2539 Counsel for the Creditor Co-Proponents	/s/ Brett H. Miller **MORRISON & FOERSTER LLP** Brett H. Miller Melissa A. Hager Craig A. Damast 1290 Avenue of the Americas New York, New York 10104 Tel: (212) 468-8000 Fax: (212) 468-7900 Counsel for the Chapter 11 Trustee, Co-Proponent

EXHIBIT A

THE JPMORGAN OBJECTION

1. To address JPMorgan's Objection, JPMorgan provided the Plan Proponents with the following language, which was added, and conformed for defined terms, as section VII.F.3 to the Disclosure Statement:

> As of the Initial Debtors' Petition Date, Finance USA and Holdings Ltd. were jointly and severally liable as borrowers and guarantors for approximately $1.175 billion owed to the Liquidity Facility lenders pursuant to the Liquidity Facility. Holdings Ltd. also is the issuer of approximately $1 billion of Notes. Finance USA is not a guarantor of the Notes. The Claims of the Liquidity Facility lenders and Holders of the Notes are both unsecured Claims (other than to the extent of a small amount of cash collateral held by JPMorgan) and rank *pari passu* at Holdings Ltd.
>
> Between October 18, 2011 and October 27, 2011, Holdings Ltd. borrowed approximately $931 million under the Liquidity Facility.[54] It then immediately transferred $928 million to Finance USA (the "**Finco Payable**").[55] Over the same period, Finance USA funded approximately $875 million to MFGI.[56] Finance USA, also a borrower under the Liquidity Facility, could have borrowed directly from the Liquidity Facility lenders without incurring this payable to Holdings Ltd. But, because of the way Holdings Ltd. structured the borrowings, Finance USA became liable twice for the same obligation: once to the Liquidity Facility lenders who funded the loans into Holdings Ltd.'s account and once to Holdings Ltd. who transferred the proceeds to Finance USA.
>
> According to this Disclosure Statement, Finance USA owes an affiliate payable of approximately $1.87 billion to Holdings Ltd., which is inclusive of the Finco Payable. The Finco Payable is included in the "Intercompany Claims" that make up the bulk of Class 6B, General Unsecured Claims against Finance USA. The Claims of the Liquidity Facility lenders against Finance USA are separately classified in Class 5B, Liquidity Facility Unsecured Claims. These Claims include Claims for the loan proceeds that

[54] *See Report of the Trustee's Investigation and Recommendations*, dated June 4, 2012 (the "**SIPA Report**") at 153 and Annex E thereto at 200 [Docket No. 1865]; *Chapter 11 Trustee's Report Regarding the Forensic Analysis of the Cash Collateral Held in the Bank Account of MF Global Finance USA, Inc.*, dated February 16, 2012 (the "**Chapter 11 Trustee Report**") at 4 and Ex. A thereto at 19 [Docket No. 451].

[55] *See* Chapter 11 Trustee Report, Ex. A at 19; Disclosure Statement, Articles II.B ("Finance USA . . . provided financing services to Affiliates and third parties.") and II.G.4.(a).2(ii) ("Finance USA generally acted as the financing arm for the U.S. operations of MF Global Group.").

[56] *See id.*

created the Finco Payable when Holdings Ltd. transferred the proceeds to Finance USA.

As a result, the Plan would appear to make Finance USA liable twice for the same $928 million in loan proceeds—once to the Liquidity Facility lenders and once to Holdings Ltd. The impact of this double liability on Finance USA creditor recoveries is significant. Approximately 30% of the Finance USA claims pool ($928 million of approximately $3.07 billion) is caused by this double count. Put another way, eliminating this double count would increase Finance USA recoveries by an additional 6.1% and possibly as much as 26.3% or more.

Finance USA has claims and defenses that would, if successful, eliminate its liability for the Finco Payable. First, the Finco Payable can be avoided as a fraudulent conveyance. Finance USA was a borrower on the Liquidity Facility. It could have borrowed the $928 million directly from the Liquidity Facility lenders without having to incur a duplicate liability to Holdings Ltd. Finance USA thus received no benefit by borrowing from Holdings Ltd. and certainly did not receive reasonably equivalent value in exchange for the Finco Payable. The relevant borrowings occurred between October 18, 2011 and October 27, 2011—literally days before bankruptcy. Thus, based on the facts as correctly understood, it is apparent that when the Finco Payable was incurred, Finance USA was insolvent, not adequately capitalized and/or could not repay its debts when due. Accordingly, the Finco Payable may be avoidable as a fraudulent conveyance.

Second, Finance USA should have the right to setoff the full amount of its liability to the Liquidity Facility lenders against its liability to Holdings Ltd. for the repayment of loan proceeds. Accordingly, to the extent Finance USA pays the Liquidity Facility lenders, its liability for the Finco Payable should be reduced.[57]

Third, the Finco Payable should be equitably subordinated. It fails the test of inherent fairness that applies to every insider transaction. "The essence of the test is whether or not under all of the circumstances the transaction carries the earmarks of an arm's

[57] The portion of the Holdings Ltd. intercompany claim against Finance USA attributable to the Liquidity Facility may be as high as $1.175 billion if the remaining $255 million owed to the Liquidity Facility lenders was borrowed by Holdings Ltd. and transferred through the intercompany accounts to Finance USA. Discovery will be required to make this determination. Although the setoff and section 509(c) subordination claims described herein reference the Finco Payable, they would also apply to as much of the $1.175 billion as was borrowed by Finance USA through the intercompany accounts. The fraudulent conveyance and equitable subordination claims described herein, however, applies only to the Finco Payable.

length bargain. If it does not, equity will set it aside."[58] There is nothing less arm's length than making a subsidiary borrow from its parent what it could obtain on its own.

Fourth, to the extent the Finco Payable is allowed and not subordinated under § 510(c) of the Bankruptcy Code, it should be subordinated to the Liquidity Facility lenders' Claims under the Liquidity Facility. Section 509(c) of the Bankruptcy Code requires the subordination of a reimbursement claim by one co-debtor (*i.e.*, Holdings Ltd.) against another co-debtor (*i.e.*, Finance USA) to their common creditor's claim (*i.e.*, the Liquidity Facility lenders) until the common creditor is paid in full. Section 509(c) insures that a debtor does not pay twice for the same liability. It also insures that a co-debtor does not compete with the common creditor for payment until the creditor is paid in full. If Holdings Ltd.'s claims against Finance USA for the loan proceeds were allowed and not subordinated, Finance USA would be liable twice for the same liability. In addition, Holdings Ltd. would compete with the Liquidity Facility lenders for the repayment of loan proceeds which Holdings Ltd. itself owes the Liquidity Facility lenders. In this circumstance, § 509(c) of the Bankruptcy Code requires the subordination of those Intercompany Claims.

Any of the foregoing claims and defenses, if successful, would materially increase creditor recoveries from Finance USA. Using the recovery ranges in the Disclosure Statement, if the Finco Payable is avoided as a fraudulent conveyance, the recovery for all unsecured creditors at Finance USA would increase from a range of 14.2% and 33.6% to a range of approximately 20.2% and 47.7%. If the Finco Payable is subordinated to the Claim of the Liquidity Facility lenders at Finance USA pursuant to § 509(c) of the Bankruptcy Code, the Liquidity Facility lenders' recovery at Finance USA would increase from a range of 14.2% and 33.6% to a range of approximately 25.3% and 59.6%.

Finally, the purported Interco Settlement is anything but an arm's length settlement. The purported settlement resolves all issues in favor of Holdings Ltd. and against Finance USA because the Plan allows all of the Holdings Ltd. Intercompany Claim against Finance USA.

2. In response, Knighthead provided the Plan Proponents with the following language, which was added as section VII.F.1 to the Disclosure Statement:

[58] *Pepper v. Litton*, 308 U.S. 295, 306-07 (1939).

Knighthead, as beneficial Holder of both the Liquidity Facility Unsecured Claim and Notes Claims, has advanced arguments to uphold the validity of the Holdings Ltd. Intercompany Claim. Knighthead argues that the Plan must be fair and equitable to both Holdings Ltd. and to Finance USA and therefore must recognize that Holdings Ltd. increased its obligations under the Liquidity Facility by more than $928 million in order to advance moneys to Finance USA under the Holdings Ltd. Intercompany Claim. Knighthead argues that it is not "fair and equitable" to Holdings Ltd. or to its creditors, such as the Holders of Notes Claims, to disallow or subordinate the Holdings Ltd. Intercompany Claim when Holdings Ltd. incurred a comparable liability to make the cash advance under the Holdings Ltd. Intercompany Claim, which cash advance was promptly re-loaned to MFGI and apparently transferred to JPMorgan. To disallow or subordinate the Holdings Ltd. Intercompany Claim would leave Holdings Ltd. with no asset for the liability it incurred, which would in turn give Holdings Ltd. a fraudulent transfer claim against Finance USA or, in the alternative, an action to disregard the corporate existence of Finance USA to recognize that the proceeds of the Holdings Ltd. Intercompany Claim evidences an advance of money from Holdings Ltd. to MFGI. Finally, there is no precedent for JPMorgan's argument that the Holdings Ltd. Intercompany Claim must be subordinated because Finance USA is a guarantor of the Liquidity Facility. The argument applies only to claims for "reimbursement, subrogation or indemnity", and the Holdings Ltd. Intercompany Claim is none of these. To the extent JPMorgan advances general equitable arguments or fraudulent transfer arguments for the disallowance of the Holdings Ltd. Intercompany Claim, the arguments apply with equal force to disallow or subordinate JPMorgan's own Claim against Finance USA, especially if, as it appears, the money advanced by Holdings Ltd. to Finance USA ended up providing the liquidity that enabled transfers, payments and/or distributions to JPMorgan.

EXHIBIT B

Hildbold, William M.

From: Kenneth D. Walsh <kdwalsh@fmew.com>
Sent: Tuesday, February 05, 2013 10:27 AM
To: bbennett@jonesday.com; blspiegel@jonesday.com; lsinanyan@jonesday.com; Miller, Brett H.; Hager, Melissa A.; Damast, Craig A.; Pintarelli, John A.; Hildbold, William M.
Cc: John J. Witmeyer; Jon R. Grabowski; Gregory J. Lullo
Subject: MF Global Holdings Ltd., 11-15059 (MG)

Counsel,

We represent Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. We write to you now in response to the Joint Plan of Liquidation and Disclosure Plan for the Joint Plan of Liquidation that were filed this weekend on February 2, 2013. Pursuant to Federal Rule of Bankruptcy Procedure 3017, the hearing on such a disclosure statement shall not occur on less than 28 days' notice. As this weekend's plan and disclosure statement did not include reference to an extension of the current February 7, 2013 objection deadline and February 14, 2013 hearing date, please confirm that objections to the newly submitted disclosure statement will be due no sooner than February 25, 2013 with the hearing on the newly submitted disclosure statement occurring no sooner than March 4, 2013. Thank you for your attention to this matter.

Kenneth D. Walsh
Ford Marrin Esposito Witmeyer & Gleser, L.L.P.
Wall Street Plaza
New York, New York 10005

212-269-4900

http://www.fmew.com

Hildbold, William M.

From: Bennett L Spiegel <blspiegel@JonesDay.com>
Sent: Tuesday, February 05, 2013 3:49 PM
To: Kenneth D. Walsh
Cc: bbennett@jonesday.com; Miller, Brett H.; Damast, Craig A.; Gregory J. Lullo; John J. Witmeyer; Pintarelli, John A.; Jon R. Grabowski; lsinanyan@jonesday.com; Hager, Melissa A.; Hildbold, William M.
Subject: Re: MF Global Holdings Ltd., 11-15059 (MG)

Hi Ken-

Thanks very much for your email of this morning. We are glad to know that you are in receipt of the updated Plan and Disclosure Statement that we filed on February 2, 2013.

The additional information provided in the Disclosure Statement was primarily a result of comments we received from other interested parties and included in the Disclosure Statement so as to obviate or at least minimize any objections by such parties. We also added disclosures to update the Disclosure Statement with recent developments in the case (such as the Bankruptcy Court's approval of the 9019 Motion filed by the SIPA Trustee that was considered at the hearing on January 31, 2013) and to include the Chapter 11 Trustee as a Co-Proponent. The additional disclosures and the avoidance of objections will contribute to an orderly and efficient process for the Court's timely consideration of the Disclosure Statement. We believe this is the appropriate process for moving forward toward the finalization of the Disclosure Statement, and does not require a resetting of the February 14, 2013 hearing date or an extension of the February 7, 2013 objection deadline.

In that regard, we invite you to convey to us informally, and as soon as possible, any additional disclosures that your clients believe are necessary in order for the Disclosure Statement to contain "adequate information" within the meaning of section 1125 of the Bankruptcy Code. We would lean toward incorporating such disclosures into the Disclosure Statement so as to obviate the need for your clients to file an objection to the adequacy of the Disclosure Statement and to obviate the need for the Court to have to consider such objection. We will respond promptly to any suggestions of further disclosures that your clients believe are necessary.

Best regards. Bennett

Bennett L. Spiegel | Partner **| Jones Day**
555 South Flower Street, Fiftieth Floor | Los Angeles, CA 90071
(213) 243-2311 **DIRECT** | (213) 489-3939 **MAIN** | (213) 243-2539 **FAX**
blspiegel@jonesday.com | www.jonesday.com/blspiegel/

From: "Kenneth D. Walsh" <kdwalsh@fmew.com>
To: "bbennett@jonesday.com" <bbennett@jonesday.com>, "blspiegel@jonesday.com" <blspiegel@jonesday.com>, "lsinanyan@jonesday.com" <lsinanyan@jonesday.com>, "bmiller@mofo.com" <bmiller@mofo.com>, "mhager@mofo.com" <mhager@mofo.com>, "cdamast@mofo.com" <cdamast@mofo.com>, "jpintarelli@mofo.com" <jpintarelli@mofo.com>, "whildbold@mofo.com" <whildbold@mofo.com>
Cc: "John J. Witmeyer" <jjwitmeyer@FMEW.com>, "Jon R. Grabowski" <jrgrabowski@FMEW.com>, "Gregory J. Lullo" <gjlullo@FMEW.com>
Date: 02/05/2013 07:26 AM
Subject: MF Global Holdings Ltd., 11-15059 (MG)

Counsel,

We represent Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. We write to you now in response to the Joint Plan of Liquidation and Disclosure Plan for the Joint Plan of Liquidation that were filed this weekend on February 2, 2013. Pursuant to Federal Rule of Bankruptcy Procedure 3017, the hearing on such a disclosure statement shall not occur on less than 28 days' notice. As this weekend's plan and disclosure statement did not include reference to an extension of the current February 7, 2013 objection deadline and February 14, 2013 hearing date, please confirm that objections to the newly submitted disclosure statement will be due no sooner than February 25, 2013 with the hearing on the newly submitted disclosure statement occurring no sooner than March 4, 2013. Thank you for your attention to this matter.

Kenneth D. Walsh
Ford Marrin Esposito Witmeyer & Gleser, L.L.P.
Wall Street Plaza
New York, New York 10005

212-269-4900

http://www.fmew.com

EXHIBIT C

THE SAPERE OBJECTION

1. To address pages 5-10, sections 1.A, C of the Sapere Objection, the Plan Proponents have added the following language as section III.N.2.a of the Disclosure Statement:

> **THE FOLLOWING ARE <u>SOLELY</u> SAPERE'S CONTENTIONS**
>
> In an objection to the motion for approval of the Disclosure Statement, Sapere states that the Disclosure Statement is inadequate in that it does not contain the following disclosure:
>
> The Plan Proponents ascribe a value of $0 to approximately $4 billion of what also appear to be tort claims asserted against Holdings and presently allowed, with either an incorrect basis for purportedly doing so or a wholly inadequate analysis of those claims' values. More specifically, the Joint Disclosure Statement incorrectly characterizes Sapere's claim as pertaining to only Sapere's Priority Motion and ignores Sapere's tort claim against the Debtor. Further, the Joint Disclosure Statement does not provide any basis for disallowing the remaining ~$3 billion in claims.
>
> In Exhibit IV to the Joint Disclosure Statement, the Plan Proponents write, 'Assumed disallowed if the 2nd Circuit appeal is lost: Claim 1481 filed by Sapere CTA Fund, L.P. (for $932,162,430) discussed in detail in Section III.N.2 of the Disclosure Statement.' (Joint Disclosure Statement p. 152) In Section III.N.2, the Plan Proponents write, 'As Sapere's Claim is the same in basis as the litigation denied by the District Court [Sapere's Priority Motion], for purposes of the Claims analysis described in Section I.C.2 above, the Plan Proponents have estimated this claim at $0.' (Joint Disclosure Statement p. 52) The characterization of Sapere's claim is incorrect and misleading
>
> Sapere's claim against Holdings' estate pertains not only to its Priority Motion and appeal but also as a tort claimant creditor. In Attachment 1 to Sapere's claim, Sapere identifies several bases for its claim against Holdings' estate including principal liability for violations of the Commodities Exchange Act and vicarious liability for CEA violations and other tortious conduct. To be clear, Sapere's tort claim is distinct from its Priority Motion.
>
> The Plan Proponents' incorrect characterization of Sapere's claim discredits Sapere's likelihood of recovery and provides an inaccurate picture of those who may eventually share in available

assets. As the Joint Disclosure Statement is currently written, creditors will vote on the Joint Plan under the belief that Sapere's claim has already been denied by this Court and the district court when Sapere's claim is based on issues that have never appeared before this Court.

The Feasibility Analysis estimates Priority Non-Tax Claims at $700,000, with a total 'Estimated Cash Needs at Effective Date' of $46.1 million. (Joint Disclosure Statement p. 136) If Sapere's appeal is successful, these numbers will, of course, be significantly higher, which will result in significantly less funds available to non-priority claimants.

The effect can be seen in Net Estimated Recoveries in Exhibit VI. As presented, the charts estimate a range of Estimated Net Recovery for general unsecured claims against Holdings' estate from 13.4% on the low end to 38.9% on the high end. (Joint Disclosure Statement p. 164-66) Sapere's priority claim would be entitled to payment before any such general unsecured claims receive anything, which significantly alters and lowers the Estimated Net Recovery for such claims.

In the present situation, the Plan Proponents have assumed that approximately $4 billion in claims against Holdings' estate (including Sapere's claim) will be disallowed. The mere filing of proofs of claims is prima facie evidence as to the validity of such claims. F.R.B.P. 3001(f). If the Plan Proponents foresee the ultimate disallowance of these claims, they must provide some basis to allow creditors to evaluate that assertion. However, the Plan Proponents do not provide any analysis of these claims or their basis for disallowing them other than incredibly broad categorical groupings such as 'Claims properly filed against MFGI' and 'Claim properly filed against MFGI; guaranteed by Holdings Ltd. but assumed satisfied by MFGI.'[1]

THE ABOVE ARE <u>SOLELY</u> SAPERE'S CONTENTIONS

1 *See Objection of Sapere Wealth Management LLC, Granite Asset Management and Sapere CTA Fund, L.P. to Motion of the Plan Proponents for an Order (I) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (III) Schedulign Hearing on Confirmation of the Plan, (IV) Approving Related Notice and Objection Procedures, and (V) Approving Certain Pre-Confirmation Matters*, (Docket No. 1049).

EXHIBIT D

THE SECURITIES PLAINTIFFS OBJECTION

1. To address objection (a), as summarized on page 5 of the Securities Plaintiff's Objection (and more fully described in ¶¶ 17 and 18), the Plan Proponents added and modified the existing language in section V.E.1 of the Disclosure Statement to conform with the language provided by the Securities Plaintiffs in Exhibit A to their Objection:

> Various parties, including former customers of MFGI (the "**Customer Plaintiffs**"), former employees of MF Global Group and investors in the publicly traded debt and equity securities issued by Holdings Ltd. (the "**Securities Plaintiffs**"), have commenced litigation in multiple districts throughout the United States. On April 23, 2012, the U.S. Judicial Panel on Multidistrict Litigation resolved a motion to consolidate and transfer a significant number of the actions filed by the Customer Plaintiffs and Securities Plaintiffs to the Southern District of New York, pending as part of *Joseph DeAngelis v. Jon Corzine*, Case No. 1:11-07866 (the "**MDL Litigation**").
>
> The complaint filed by the Customer Plaintiffs in the MDL Litigation, as amended, asserts violations of the Commodity Exchange Act, breaches of fiduciary duty, and negligence, among other causes of action, against: (a) several former directors and officers of MFGI, Holdings Ltd. and Finance USA; (b) PricewaterhouseCoopers LLP ("**PwC**"), MF Global Group's independent auditor, and (c) the CME Group. Customer Plaintiffs' counsel is pursuing claims against the CME Group on behalf of the class, and not on behalf of the SIPA Trustee or MFGI.
>
> Instead of filing independent actions, the SIPA Trustee entered into a cooperation and assignment agreement (the "**Assignment Agreement**") with Customer Plaintiffs' counsel, which was approved by the Bankruptcy Court and the District Court (SIPA Proceeding ECF No. 3581). Pursuant to the Assignment Agreement, the SIPA Trustee assigned MFGI's potential claims against MFGI's officers and directors, and PwC. The SIPA Trustee did not assign claims against the CME Group or Entities other than former directors and officers and PwC to Customer Plaintiffs' counsel. To the extent the customers of MFGI are paid in full, any recoveries from the MDL Litigation may become property of the MFGI general creditor estate; however this event has not arisen and may not occur. Since the Debtors are the largest creditors of the MFGI general creditor estate, creditors of the Debtors will benefit indirectly from any recoveries by MFGI as a result of the MDL Litigation.

> On August 20, 2012, the Virginia Retirement System and Her Majesty the Queen in Right of Alberta, as Court-appointed Lead Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995, filed a Consolidated Amended Securities Class Action Complaint in *In re MF Global Holdings Ltd. Securities Litigation* pending as part of the MDL Litigation, on behalf of a class of all persons and entities who purchased or otherwise acquired Holdings Ltd.'s publicly traded debt and equity securities between May 20, 2010 and November 21, 2011, and were damaged thereby (the "**Securities Litigation**").
>
> The Consolidated Amended Securities Class Action Complaint filed in the Securities Litigation asserts violations of the federal securities laws, including Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, against: (a) several former directors and officers of Holdings Ltd.; and (b) the underwriters of Holdings Ltd.'s public securities offerings in 2010 and 2011. The Securities Plaintiffs seek to recover for the harm suffered as a result of the misconduct alleged in the Consolidated Amended Securities Class Action Complaint from the D&O Policies referred to in Section II.F.2, among other sources of recovery. In order to participate in any potential recoveries obtained in the Securities Litigation, class members will be required to submit a proof of claim form in the Securities Litigation.
>
> Pursuant to § 1106(a)(3) of the Bankruptcy Code, the Chapter 11 Trustee is conducting an investigation into, among other things, the Property of the Estate of each Debtor. The investigation's focus is on potential Causes of Action against, among others, directors and officers, agents, and professionals of the Debtors. In the unlikely event that the Chapter 11 Trustee does not complete his investigation prior to the Effective Date, the Plan Administrator will determine whether and how to complete the Chapter 11 Trustee's investigation.

2. To address objection (b), as summarized on page 5 of the Securities Plaintiff's Objection (and more fully described in ¶¶ 19 - 21), the Plan Proponents added the following language as section XIII.F of the Plan

> From and after the Effective Date, the Debtors, the Plan Administrator, any Liquidating Trustee or any transferee of the Documents shall preserve and maintain all of the Documents, and shall not destroy or otherwise abandon any such Documents absent fourteen (14) days written notice to parties in interest, including the Securities Plaintiffs' counsel. Any party in interest, including the Securities Plaintiffs (for so long as their litigation is pending),

> may cause the Documents to be preserved and maintained but solely at such requesting party's expense.

3. To address objection (c), as summarized on page 5 of the Securities Plaintiff's Objection (and more fully described in ¶¶ 22 - 24)), the Plan Proponents deleted section XI.D, the Discharge section.

4. To address objection (d), as summarized on page 5 of the Securities Plaintiff's Objection (and more fully described in ¶¶ 25 - 30), the Plan Proponents added "[E]xcept with respect to the Securities Plaintiffs . . . " and "[N]othing in this Plan, including without limitation this Section VI.C, shall constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any Entity may hold against any other Entity other than a Debtor, including the Debtors' insurance carriers" to section VI.C of the Plan:

5. To address objection (e), as summarized on page 5 of the Securities Plaintiff's Objection (and more fully described in ¶¶ 31 - 35), the Plan Proponents added language to section VI.D.10 and included a new tier 1 for claims brought pursuant to section 510(b) of the Bankruptcy Code for notes claims:

> . . . provided, however, that post-petition interest payable to Allowed Claims in Tier 1 is paid before any post-petition interest is payable to Tiers 2 and 3 and, post-petition interest to Tiers 2 and 3 shall be paid simultaneously based on the aggregate of Allowed Claims in such tiers; further, provided, however, that the Holders of Claims within Class 7 may dispute their relative priority of Claims within Class 7:
>
> i) Holders of Allowed Claims on account of their purchase or sale of Notes, if any, within the meaning of § 510(b) of the Bankruptcy Code, including, if Allowed, the Claims of any of the Securities Plaintiffs on account of a debt security;

EXHIBIT E

THE UST OBJECTION

1. To address the UST's first objection, the Plan Proponents added to section VI.B.1.c and d:

> c. Creditor Co-Proponents Fee/Expense Claims
>
> The Plan Administrator shall provide reimbursement for the Creditor Co-Proponents Fee/Expense Claims in accordance with the procedures set forth in Section II.A.3 of the Plan.
>
> At least ten (10) days prior to the Effective Date, the Creditor Co-Proponents shall submit its invoices for the Creditor Co-Proponents Fee/Expense Claims through the Effective Date (including any estimated fees and expenses) to the Chapter 11 Trustee and the United States Trustee. Such invoices shall include copies of the individual time records as recorded by the Creditor Co-Proponents' professionals (but such time records shall not be subject to the guidelines promulgated by the Bankruptcy Court and the United States Trustee for professionals). Unless the Chapter 11 Trustee or United States Trustee objects to any requested Creditor Co-Proponents Fee/Expense Claim as set forth below, such claim shall be paid in full on the Effective Date or soon as practicable thereafter. As of January 31, 2013, the Creditor Co-Proponents Fee/Expense Claims are estimated at $1.6 million.
>
> If either the Chapter 11 Trustee or the United States Trustee disputes any requested Creditor Co-Proponents Fee/Expense Claim set forth in the invoices as unreasonable, the Plan Administrator (i) shall pay the undisputed portion of the Creditor Co-Proponents Fee/Expense Claim on the Effective Date, and (ii) shall notify the Creditor Co-Proponents of such dispute within ten (10) days after the presentation of an invoice by the Creditor Co-Proponents. If the parties attempt in good faith to resolve any such dispute and are unable, within fifteen (15) days after the notification of the dispute, the Creditor Co-Proponents may submit such dispute for resolution to the Bankruptcy Court; provided, however, that the Bankruptcy Court's review shall be limited to a determination of the reasonableness of such fees under § 1129(a)(4) of the Bankruptcy Code.
>
> The Creditor Co-Proponents shall provide the Chapter 11 Trustee and the United States Trustee with an estimate of the Creditor Co-Proponents Fee/Expense Claims fourteen (14) days prior to the anticipated Effective Date, which amount shall be the Creditor Co-Proponents Fee Reserve Amount; provided, however, that such estimates shall be used solely for administrative

purposes, shall not be binding on the Creditor Co-Proponents and shall not in any way limit, cap, or reduce the amount of the Creditor Co-Proponents Fee/Expense Claims.

On the Effective Date or as soon as practicable thereafter, the Plan Administrator shall reserve Cash in an amount equal to the Creditor Co-Proponents Fee Reserve Amount, less any amounts paid on the Effective Date to the Creditor Co-Proponents in respect of the Creditor Co-Proponents Fee/Expense Claim.

For the sake of clarity, the Creditor Co-Proponents Fee/Expense Claims shall not be considered a Class 3A, 3B, 5A, 5B, or 6A Claim. Once all Creditor Co-Proponents Fee/Expense Claims are paid in full in Cash, amounts remaining in reserve, if any, shall irrevocably revert to Holdings Ltd. as Available Cash for Distributions to the Holders of Allowed Claims.

d. Indenture Trustee Fee/Expense Claims

The Plan Administrator shall provide reimbursement for the Indenture Trustee Fee/Expense Claims in accordance with the procedures set forth in Section II.A.4 of the Plan.

At least ten (10) days prior to the Effective Date, the Indenture Trustee shall submit its invoices for the Indenture Trustee Fee/Expense Claims through the Effective Date (including any estimated fees and expenses) to the Chapter 11 Trustee, the Committee and the United States Trustee (the "**Receiving Parties**"). Such invoices shall include copies of the individual time records as recorded by the Indenture Trustee's professionals (but such time records shall not be subject to the guidelines promulgated by the Bankruptcy Court and the United States Trustee for professionals). Unless any of the Receiving Parties objects to any requested Indenture Trustee Fee/Expense Claim as set forth below, such claim shall be paid in full on the Effective Date or as soon as practicable thereafter. As of January 31, 2013, the Indenture Trustee Fee/Expense Claims are estimated at $900,000.

If any of the Receiving Parties disputes any requested Indenture Trustee Fee/Expense Claim set forth in the invoices as unreasonable, the Plan Administrator (i) shall pay the undisputed portion of the Indenture Trustee Fee/Expense Claim on the Effective Date, and (ii) shall notify the Indenture Trustee of such dispute within ten (10) days after the presentation of an invoice by the Indenture Trustee. Upon such notification, the Indenture Trustee may (i) assert the Indenture Trustee Charging Lien to pay

the undisputed and unpaid portion of the Indenture Trustee Fee/Expense Claim, and/or (ii) after the parties have attempted in good faith to resolve any such dispute, within fifteen (15) days after the notification of the dispute, may submit such dispute for resolution to the Bankruptcy Court; provided, however, that the Bankruptcy Court's review shall be limited to a determination of the reasonableness of such fees under § 1129(a)(4) of the Bankruptcy Code and under the applicable Indenture. Nothing herein shall be deemed to impair, waive, discharge, or negatively affect any Indenture Trustee Charging Lien for any fees, costs and expenses not paid by the Plan Administrator and otherwise claimed by the Indenture Trustee pursuant to the procedures set forth in Section II.A.4 of the Plan.

The Indenture Trustee shall provide the Chapter 11 Trustee and the United States Trustee with an estimate of the Indenture Trustee's Fee/Expense Claims fourteen (14) days prior to the anticipated Effective Date, which amount shall be the Indenture Trustee Fee Reserve Amount; provided, however, that such estimates shall be used solely for administrative purposes, shall not be binding on the Indenture Trustee and shall not in any way limit, cap, or reduce the amount of the Indenture Trustee Fee/Expense Claims.

On the Effective Date or as soon as practicable thereafter, the Plan Administrator shall reserve Cash in an amount equal to the Indenture Trustee Fee Reserve Amount, less any amounts paid on the Effective Date to the Indenture Trustee in respect of the Indenture Trustee Fee/Expense Claim.

Any Indenture Trustee Fee/Expense Claim incurred by the Indenture Trustee after the Effective Date for services related to distributions pursuant to the Plan, including but not limited to reasonable fees costs and expenses incurred by the Indenture Trustee's professionals in carrying out the Indenture Trustee's duties as provided for in the applicable Indenture, shall be paid in Cash by the Plan Administrator out of the amounts held in reserve within ten (10) days of the presentation of an invoice by the Indenture Trustee and without the need for any application to or approval of any court.

Once all Indenture Trustee Fee/Expense Claims are paid in full in Cash, amounts remaining in reserve, if any, shall irrevocably revert to Holdings Ltd. as Available Cash for Distributions to the Holders of Allowed Claims and the Indenture Trustee shall have released the Indenture Trustee Charging Lien under the Indentures.

2. As explained in Exhibit D, the Plan Proponents deleted section XI.D, the Discharge section.