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April 28, 2014

BY HAND DELIVERY

The Honorable Martin Glenn
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Room 504
One Bowling Green
New York, NY 10004-1408

Re: *In re MF Global Holdings, Ltd.*, No. 11-15059 (MG) (Bankr. S.D.N.Y.); *In re MF Global Inc.*, No. 11-2790 (MG) (Bankr. S.D.N.Y.).

Dear Judge Glenn:

We represent Bradley Abelow and write on behalf of 14 former directors, officers, and other employees of MF Global Holdings Ltd. ("MFGH") and/or MF Global Inc. ("MFGI"). Each of these employees was insured by one or more policies of directors and officers ("D&O") insurance or professional liability/errors and omissions ("E&O") insurance that had been obtained by MFGH. All of these Individual Insureds are defendants in one or more of the actions that are proceeding in the District Court. Most, if not all, of the individuals also have provided interviews and/or testimony in connection with numerous governmental and regulatory investigations, as well as the investigations by the two Trustees in these proceedings. Thus all of the Individual Insureds have needed to retain counsel, and only a portion of their counsel's fees have been paid to date by the D&O and/or E&O insurance.[1]

I write for two reasons – to update the Court on recent developments that relate to the Individual Insureds' need for further advancement of the defense costs they have incurred, and in light of those developments, to respectfully renew our request that the Court approve the pending stipulation as soon as practicable and thereby permit the advancement of another $10 million in defense costs.

[1] The Individual Insureds are Mr. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J. G. Glynn, Edward L. Goldberg, J. Randy MacDonald, Vinay Mahajan, Edith O'Brien, David I. Schamis, Robert S. Sloan, and Henri Steenkamp.

Background

By its decision of April 10, 2012, and its Order of April 25, 2012, this Court directed that defense costs be advanced on behalf of the Individual Insureds, subject to a "soft cap" of $30 million. Sapere CTA Fund, L.P., filed a limited appeal of that Order, challenging only the Court's ruling as to the E&O insurance policies. The Court's Order was affirmed by the District Court, and Sapere appealed again to the Court of Appeals. By May 2013, the "soft cap" was close to being reached, and the insurers reached agreement with the Trustees of MFGH and MFGI on a Stipulation that would extend the "soft cap" by $10 million. The Stipulation was submitted to the Court on May 31, 2013.

On September 20, 2013, this Court issued an Order that denied, without prejudice, the application to enter the stipulation. The Court linked its Order to Sapere's appeal, which the Court noted had been fully briefed and calendared for argument during the week of November 25, 2014. The Court stated that the Order was "without prejudice to renewal (or for a new application to be made for the same or additional authority to pay defense costs) after a ruling by the Second Circuit." (Order at 2 [Sept. 20, 2013]). On October 4, 2013, the Individual Insureds asked the Court to reconsider its Order of September 20, 2013, and to approve the Stipulation. That motion remains pending.

The Court of Appeals held argument as scheduled on November 25, 2013, but it has not yet issued a ruling on Sapere's appeal. As a result, no defense costs of any kind -- under either the E&O or D&O insurance policies -- have been advanced on behalf of the Individual Insureds for almost one year, and defense counsel's outstanding unpaid invoices date back to February 2013.

We respectfully submit that this is imposing a serious hardship on the Individual Insureds. In light of the recent events outlined below, we urge the Court to approve the Stipulation.

A. MFGI's customers are being paid in full on their net equity claims. On March 14, 2014, the District Court approved the settlement (the "Net Equity Settlement") that provided for payment in full of the net equity claims of MFGI's securities and commodities customers. With that done, the path was clear to make full payment to the Customers, and on April 3, 2014, the SIPA Trustee announced that commencing on April 4, 2014, "checks are going in the mail that will make all public customers of MF Global Inc. 100 percent whole." *See* Statement of James W. Giddens, dated April 3, 20014, *available at* http://dm.epiq11.com/MFG/Project#.

B. With the payment in full of the Customers' net equity claims, Sapere's appeal to the Second Circuit is almost certainly mooted. In November 2013, Sapere wrote to the Court of Appeals concerning the effect that the Bankruptcy Court's Reallocation Order [Dkt. No. 7208] (the "Reallocation Order") would have on the appeal. (A copy of Sapere's November 19,

2013 letter to the Clerk of the Court is attached.) Sapere noted that the Reallocation Order "provide[d] for the . . . full payment of net equity claims to former MFGI commodities customers" and that once Sapere was paid in full it "would no longer be pursuing payment of its net equity claims through the MFGI SIPA Liquidation." Sapere stated that it "wishe[d] to maintain all rights to [its] appeal until it receives 100% payment of its net equity claim." When it was writing its letter, Sapere had not yet received its "100% payment," but Sapere acknowledged that the "SIPA Trustee . . . anticipate[d] making 100% payment of net equity claims . . . by the end of [2013]" and thus that Sapere's appeal "may become moot in the near future." At oral argument, counsel for the Trustees of MFGI and MFGH advised the panel that they too believed that once the reallocation payments had been made, Sapere's appeal would be moot.

As the Court knows, the Reallocation Order has since become final and non-appealable, and the commodities customers are to be paid in full. In fact, the Court of Appeals has taken note of this fact, and on April 22, 2014, the Court directed the parties to "inform[ ] the Court of the status of this appeal and address[ ] the issue of whether the appeal has been mooted by these events." (A copy of the Court of Appeals' notice to the parties is attached.)

We very much hope the Court of Appeals will dismiss Sapere's appeal as moot soon after receipt of responses to its notice to the parties. Nevertheless, we cannot be certain when the Court of Appeals will act, and almost a year has elapsed since any defense costs have been advanced. For that reason, we respectfully request that the Court approve the stipulation, even before the Court of Appeals rules, in light of the pressing needs of the Individual Insureds and the prejudice they will suffer if costs are not advanced soon.

C. The scope of the District Court actions has been narrowed. Since the time when this Court entered its Orders of April 25, 2012, and September 20, 2013, the number of defendants and claims in the District Court actions has been dramatically reduced. In their current complaints, the Customer Representatives named eight, and Sapere named 26, individual defendants. Even before any motions to dismiss were filed against those complaints, counsel persuaded Sapere to drop four defendants. In response to the motions to dismiss the Customer Class Action, the District Court dismissed all claims against two of the individual defendants, and some of the claims against all of those defendants.

Following this ruling, Sapere voluntarily dismissed the claims that had been dismissed from the Customers' Action, and Sapere dropped seven more individual defendants. In response to the motions to dismiss the Sapere complaint, the District Court then dismissed all claims against nine of the remaining individual defendants, and it dismissed other claims against all of the individual defendants. In all, as a result of the coordinated efforts of counsel for all of the Individual Insureds, the number of claims has been reduced; the number of individual defendants in one or more of the District Court actions has been cut roughly in half; and eight law firms that had been representing individual defendants in one or more of these actions are no longer actively involved in the defense of any MF Global litigation at all.

D. The Individual Insureds now face an urgent need to have their defense costs advanced. In its Decision of April 10, 2012, the Court held that a failure to advance defense costs "would significantly injure the Individual Insureds. . . . " (4/10/12 Decision at 23.) Elsewhere in the Decision, the Court reiterated this point, stating that ". . . the Individual Insureds would suffer significant hardships if the Policies were disabled." *Id.* at 30. For almost a year, the Individual Insureds have been laboring under that disability, and as the lawsuits are accelerating, significant hardships are turning into real prejudice.

We recognize that the Court is concerned about the extent of defense costs, but we submit that the expenditures have been both necessary and reasonable. This is an extraordinarily complex matter that has required substantial work by many law firms. Numerous government agencies, including two US Attorney's offices, three congressional committees, the CFTC, and the SEC, have conducted extensive investigations and have taken testimony. Both liquidation proceedings generated Trustees' investigations, and many of the Individual Insureds gave interviews to one or both Trustees. Numerous SROs, such as FINRA, the CME, and the NFA, have conducted investigations. The Administrator of the UK subsidiary of MFGH likewise conducted an inquiry. Six lawsuits are pending in the District Court, including two class actions, two opt-out suits funded by hedge funds, an action by the CFTC, and the Chapter 11 Litigation Trustee's suit.

To date, at least 57 former directors, officers, and employees of MFG have required counsel. Of these, many never were named as defendants in any actions at all, but they were called upon to testify formally or to provide information numerous times in multiple investigations. Others were named as defendants and had to take part in court proceedings for as long as two years before they were dismissed, either voluntarily or by the District Court on motions to dismiss.

The Individual Insureds have done their best to manage this complicated array of matters efficiently, including by having certain firms serve as coordinating counsel and by arranging for groups of individuals to be represented by one firm when possible. But multiple law firms have been needed in order to provide proper and effective representation. The work performed to date has included, to name just a few examples, preparing clients for testimony and interviews, briefing motions to dismiss, answering complaints, drafting and responding to discovery requests, representing clients in numerous court proceedings, and making presentations at and attending a lengthy mediation in an attempt to settle these cases.

Nevertheless, the cases are proceeding. In the District Court actions, case management orders have been entered, those orders impose deadlines for preparing for trial, and the deadlines loom larger every day. Answers are due imminently for the Customer Class Action complaint, which is 576 paragraphs long, and for the MFGH complaint, which is 187 paragraphs long. The parties have exchanged document requests and responses, and production is underway.

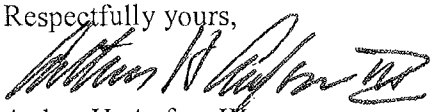
Right now, the ability of the individual defendants to carry out the most basic tasks, such as reviewing MF Global emails and other documents, is at risk. The Individual Insureds pooled resources to create a shared database for the millions of emails that were produced. The hosting vendor has not been paid for months, and thus the database may have to be shut down. In response to the SIPA Trustee's motion to decommission MFGI's databases, the Court recognized that discovery concerning the databases was needed, and it granted 90 days to conduct that discovery. The Court saw that experts would have to be retained, and it directed the parties to have their experts meet. But we have not been able to pay even an initial retainer to our expert data preservation firm, and thus we have been narrowly limited in the tasks that we have been able to ask it to perform.

The potential evidentiary record is immense. As just one measure, the SIPA Trustee's report took more than seven months to prepare, drew on the work of dozens of lawyers, and is 275 pages long. Millions of emails and other documents will have to be reviewed. Witnesses are scattered around the world. A proper defense of the depositions of the Individual Insureds will require that the evidence be fully sifted.

Two years ago, the Court predicted that if the insurance policies were disabled, the Individual Insureds would suffer significant hardships. Today, that prediction is coming true. Particularly in light of the payment of the Customers' net equity claims, we urge the Court to enter the Stipulation as soon as practicable.

As the Court's September 20, 2013 Order seemed to recognize, $10 million will not cover the longer-term needs of the Individual Insureds, and it will not fully compensate their counsel for all of the work they have performed to date. We remain hopeful that all of the MF Global litigation will be settled, and we remain committed to working diligently and cooperatively with the mediator to achieve that end. But so far, despite considerable effort, the cases have not settled. The actions in the District Court are now in the midst of discovery with deadlines fast approaching and expert reports, expert discovery, and dispositive motions to follow. Even with extensive coordination, a proper defense will require intensive work, not just by lawyers, but by experts as well. A longer term resolution of this issue is essential, and we plan to make an application to the Court which would seek to accomplish that. In the meantime, we again respectfully ask the Court to enter the Stipulation to relieve the very immediate hardships that the Individual Insureds are now suffering. If the Court were to enter this Stipulation, we have been told by lawyers for D&O and E&O insurers that consistent with the terms of the policies and subject to the insurers' established procedures for reviewing outstanding invoices, the insurers will make payments, as they have in the past, in the order in which invoices were submitted.

Respectfully yours,



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November 19, 2013

VIA ECF
Ms. Catherine O'Hagan Wolfe
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U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Sapere Wealth Mgmt, LLC et al. v. MF Global Holdings., Plan Administrator, et al.* (12-4732-bk); *In re MF Global Holdings Ltd* (12-4797-bk); *In re MF Global Holdings Ltd.* (12-4827-bk)

Dear Ms. Wolfe:

We represent Appellants Sapere Wealth Management, LLC, Granite Asset Management and Sapere CTA Fund, L.P. (collectively "Sapere") in the above referenced appeals, which are scheduled for oral argument on Monday, November 25, 2013. We write in response to Appellee MF Global Holdings Ltd., Plan Administrator's ("MFGH") letter to the Court dated November 15, 2013 and invite the Court's guidance as to how best to proceed with this appeal in light of recent and anticipated developments that may render this appeal moot in the near future.

As an initial matter, Sapere disagrees with MFGH's assertion that the November 6, 2013 order issued by the U.S. Bankruptcy Court for the Southern District in *In Re MF Global Inc.*, Dkt. No. 7208, Bankr. S.D.N.Y. (the "Bankruptcy Court's Order") provides further grounds for affirmance of the District Court's ruling. The Bankruptcy Court's Order does not change the undisputed fact that approximately $1.6 billion of commodities customer funds was missing from their segregated accounts when MF Global, Inc. ("MFGI") was placed into liquidation on

October 31, 2011. This injury to commodities customers falls squarely within the scope of the Errors & Omissions Policy issued by MF Global Assurance ("E&O Policy") and gives the commodities customers vested rights in the E&O Policy proceeds. These rights vested when MFGI was placed into liquidation on October 31, 2011.

While the Bankruptcy Court's Order does not alter the validity of Sapere's legal argument, the Bankruptcy Court's Order may render the current appeal moot in the near future. The reason is that the Bankruptcy Court's Order provides for the allowance of full payment of net equity claims to former MFGI commodities customers in the MFGI SIPA Liquidation proceeding. The practical effect of this payment would mean that Sapere would no longer be pursing payment of its net equity claims through the MFGI SIPA Liquidation.

While Sapere is very hopeful that it will receive full payment of its net equity claim through the SIPA Liquidation, the Bankruptcy Court's Order is not yet a final order and Sapere has not received full payment of its net equity claim in the MFGI SIPA Liquidation. It is also likely that there will be further proceedings pertaining to issues addressed by the Bankruptcy Court's Order in the consolidated Multi-District Litigation captioned *Deangelis v. Corzine et al.* (1:11-cv-07866-VM) before Judge Marrero in the Southern District of New York. The SIPA Trustee has stated that he anticipates making 100% payment of net equity claims of former commodities customers of MFGI by the end of this year.

Sapere wishes to maintain all rights to this appeal until it receives 100% payment of its net equity claim through the MFGI SIPA Liquidation. Sapere, however, is also mindful of judicial economy and realizes the Court may not want to devote resources to a matter that may become moot in the near future. We invite the Court's guidance as to how best to proceed.

Respectfully submitted,

Jon R. Grabowski

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April 22, 2014

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Re: Sapere Wealth Management LLC v. Freech, Docket No. 12-4732

Dear Counsel:

In light of reports that the Trustee for the Securities Investor Protection Act liquidation of MF Global Inc. began paying in full the net equity claims of former customers of MF Global Inc. in early April 2014, the parties are requested to file letter briefs of no more than two single-spaced pages each, informing the Court of the status of this appeal and addressing the issue of whether the appeal has been mooted by these events. The parties should submit their letters by no later than May 5, 2014.

Catherine O'Hagan Wolfe

Clerk of Court