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May 12, 2014

VIA HAND DELIVERY AND ECF SERVICE

The Honorable Martin Glenn
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

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) SIPA (Bankr. S.D.N.Y.)

Dear Judge Glenn:

This letter is submitted on behalf of James W. Giddens (the "Trustee"), as Trustee for the liquidation of the business of MF Global, Inc. ("MFGI") in response to the letter dated April 28, 2014 from Arthur H. Aufses III (MFGH ECF No. 1861, MFGI ECF No. 7821), and the letter dated April 28, 2014 from Harris L. Kay (MFGH ECF No. 1863, MFGI ECF No. 7823) (together the "Insurance Advancement Requests"), pursuant to this Court's Order, dated April 29, 2014 (MFGH ECF No. 1862, MFGI ECF No. 7822).

The Insurance Advancement Requests renew the request that the Court approve the stipulation presented in May 2013 (the "May 2013 Stipulation," MFGH ECF No. 1466, MFGI ECF No. 6520) and raise the "soft cap" on the amount of defense costs of the former directors, officers, and employees of MF Global Holdings Ltd. ("MFGH") and MFGI that can be advanced under the 2011-2012 directors and officers policies ("D&O Policies") and professional liability policies ("E&O Policies") from \$30 million to \$40 million. The Court entered an order denying the request, without prejudice, and reserving decision while the appeal filed by Sapere CTA Fund, L.P. ("Sapere") was pending in the Court of Appeals for the Second Circuit. On April 22, 2014, the Second Circuit requested letter briefs from the parties to address whether Sapere's appeal was moot in light of reports that the Trustee had begun paying in full the net equity claims of the former customers of MFGI. By letters dated May 5, 2014, counsel for Sapere and the Trustee confirmed that Sapere had received 100% payment of its net equity customer claims, and the Trustee requested that the appeal be dismissed. The Second Circuit has not yet issued an order or decision on the appeal.

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As the Court knows, at the April 2, 2012 hearing on defense costs, we raised the Trustee's concerns regarding the preservation of the proceeds of the policies to ensure they would be available to satisfy customer claims. Additionally, we raised concerns about the level of transparency regarding the payment of the individual insureds' defense cost. (*See* April 2, 2012 Tr. at 77, MFGH ECF No. 620, MFGI ECF No. 1309). At that point, the Trustee did not believe the insurers should be precluded entirely from paying defense costs to individual insureds. The Court issued a decision allowing MFG Assurance Company Limited ("MFGA"), which issued a tower of E&O policies, and U.S. Specialty Insurance Company ("U.S. Specialty"), which issued the primary D&O policy, to pay or advance defense costs to the individual insureds up to a \$30 million "soft cap," with disclosures to be agreed among the parties (the "April 10 decision," MFGH ECF No. 619). The Court then entered an order on April 25, 2012 (the "April 25, 2012 Order," MFGH ECF No. 652, MFGI ECF No. 1436) modifying the automatic stay and stating that the soft cap was subject to further adjustment either by agreement or by further order of the Court. Thereafter, the insurers provided to the Trustee periodic, usually monthly, updates providing only the aggregate amounts paid or advanced to all insureds and the amounts remaining on the limits.

At the end of March 2013, the insurers indicated that they anticipated reaching the \$30 million soft cap and, after negotiations, the Trustee agreed to the May 2013 Stipulation permitting a limited \$10 million increase, after receiving assurances that the insurers were carefully reviewing submitted invoices. Because the primary D&O policy would be exhausted through the payment of defense costs, XL Specialty Insurance Company ("XL"), the insurer on the second level of D&O coverage, was included in the May 2013 Stipulation. The commodity customer class representatives (the "Customer Representatives") in the cases consolidated under the caption *DeAngelis v. Corzine*, 11-cv-7866 (S.D.N.Y.) (the "MDL") filed an objection requesting that the Court set a \$40 million "hard cap" rather than increasing the soft cap (MFGH ECF No. 1474, MFGI ECF No. 6563). Both the Trustee (MFGH ECF No. 1479, MFGI ECF No. 6577) and the Plan Administrator (MFGH ECF No. 1515, MFGI ECF No. 6651) filed responses stating they did not object to the Customer Representatives request.

At the June 28, 2013 hearing on the May 2013 Stipulation, the Court requested that counsel to the insurers submit by July 15, 2013 a chart showing all defense costs submitted and the amount paid, broken down by defendant, law firm, and whether the fees were incurred in connection with a governmental investigation or civil litigation. (*See* June 28, 2013 Tr. at 16-19). We assume this information has been provided to the Court, at least through July 15, 2013. The Insurance Advancement Requests make clear that the fees incurred to date by counsel for the individual insureds will exceed the requested \$10 million increase in the soft cap. We therefore request, at a minimum, that the information provided to the Court be updated to include additional bills submitted to the insurers for payment, although not yet paid, if that has not yet been done, if not expanded to require information as to the nature of the tasks on which significant expenses were incurred.

The Trustee agreed to the increase in the soft cap in May 2013 with the hope that the individual insureds and the insurers would work with the mediator and the parties to resolve

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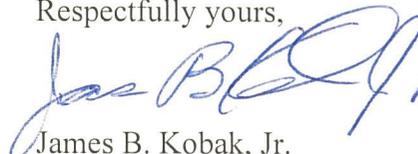
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the customer MDL so that the proceeds of the policies would be used for the benefit of the MFGI and MFGH estates and not be used solely for attorneys' fees. The Trustee shares the concerns of the Plan Administrator and the Customer Representatives about the extent of the individual insureds legal fees incurred and legal efforts which have created expense and delay rather than constructive efforts to settle or bring the claims asserted against them to resolution, especially as to the defendants who remain parties to the customer MDL.

Neither the insurers nor the individual insureds who are remaining defendants in the customer MDL can any longer seriously dispute that there is a potential defendants' liability and a potential insured loss of MFGI, at least under the E&O policy, far exceeding half a billion dollars and the limits of all relevant policies. Despite the admonitions of this Court and the District Court, none of these parties has taken a constructive approach to resolving these claims. Instead, the defendants in the MDL objected, despite lack of standing or support for their position, to efforts to fix the amount of the deficit in customer property, to the Trustee's allocation motion and assignment and subrogation of claims, and to the Trustee's entry of a consent order with the CFTC to allow customer claims to be paid. As the Customer Representatives note, there has been no effort by the MDL defendants to make any attempt, or to accept offers by the Trustee, to streamline discovery in the customer MDL; in fact, they have issued a multiplicity of discovery requests. The MDL defendants were also the only parties to object to the Trustee's motion to reduce costs by deactivating (without destroying underlying data) no longer needed computer systems and the personnel to keep them active—after which following an initial meeting on March 13, 2014, they delayed, until last Wednesday, May 7, 2014, even purporting to engage with the Trustee, despite his offers of further meetings and systems demonstrations, while claiming lack of understanding of the very systems MFGI used while the officer and director defendants were running the business.

The Insurance Advancement Request from Mr. Aufses makes clear that the individual insureds plan to make an application to the Court for a longer term resolution of the issues raised in his letter. The Trustee has previously reserved all rights and indicated that he may not be prepared to agree to further increases in the soft cap. Before any motion or any further request for disbursement of fees in excess of \$40 million is granted, the Trustee requests an opportunity to brief the questions of his rights to the proceeds of the policies as property of the MFGI estate, and how the policy proceeds should be handled given the developments in the liquidation and the customer MDL to date, and the specific uses which are proposed to be made of them by defendants.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "James B. Kobak, Jr.", is written over the typed name.

James B. Kobak, Jr.

cc: ECF Service Distribution