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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
Debtors.[1]	:	**(Jointly Administered)**

MOTION TO ESTIMATE THE MAXIMUM ALLOWED AMOUNT OF CERTAIN INDEMNIFICATION CLAIMS AGAINST MF GLOBAL HOLDINGS LTD., MF GLOBAL HOLDINGS USA INC., AND MF GLOBAL FINANCE USA INC.

MF Global Holdings Ltd., as plan administrator (the "Plan Administrator") under the *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global*

[1] The debtors in these chapter 11 cases are MF Global Holdings Ltd. ("Holdings Ltd."); MF Global Finance USA Inc. ("Finance USA"); MF Global Capital LLC ("MFG Capital"); MF Global Market Services LLC ("MFG Market Services"); MF Global FX Clear LLC ("FX Clear"); and MF Global Holdings USA Inc. ("Holdings USA") (collectively, the "Debtors").

Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc. (Docket No. 1382) (the "Plan")[2] confirmed in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby moves the Court, pursuant to sections 502(c), 502(e)(1)(B), and 510(b) of title 11 of the United States Code (the "Bankruptcy Code") and section VII.B.5 of the Plan, for entry of an order, substantially in the form attached as Exhibit D, (a) estimating certain indemnification claims at zero dollars for all purposes in the Chapter 11 Cases; (b) disallowing, subordinating, or, in the alternative, estimating certain indemnification claims at zero dollars for all purposes in the Chapter 11 Cases, and (c) estimating the maximum allowed amount of certain indemnification claims for purposes of setting the reserves for distributions on account of such claims.

I. PRELIMINARY STATEMENT

1. Many of the Debtors' former officers, directors, and employees (the "Claimants") have filed proofs of claim against Holdings Ltd., Holdings USA, and Finance USA that assert contingent, unliquidated claims for indemnification and advancement of defense costs with respect to any lawsuit or other proceeding that has been or could be initiated against, or otherwise involves, the Claimants (the "Indemnification Claims").

2. The Plan Administrator, pursuant to the Plan, now seeks to disallow, subordinate, estimate, and/or cap these Indemnification Claims, as appropriate, in order to facilitate distributions to creditors under the Plan. Absent such relief, the Indemnification Claims will remain contingent and unliquidated for the foreseeable future, thereby preventing the Plan Administrator from making distributions to other creditors. But for the contingent and unliquidated Indemnification Claims, the Plan Administrator expects to be in a position to make

[2] Capitalized terms not otherwise defined in this motion shall have the meaning given to them in the Plan.

a distribution to Finance USA's creditors within the next two weeks and subsequent distributions to creditors of Finance USA and Holdings Ltd. within the next three to four months.

3. Following the commencement of the Chapter 11 Cases and MF Global Inc.'s ("MFGI") liquidation proceeding, various lawsuits and other proceedings (collectively, the "Lawsuits") were initiated based on the alleged wrongdoing of the Debtors' management in connection with (a) the massive shortfall in customer property at MFGI, and (b) the Debtors' publicly issued notes (the "Notes"). Nearly all of the Lawsuits are consolidated in the multi-district litigation captioned *DeAngelis v. Corzine*, No. 11-cv-7866 (S.D.N.Y.) (the "MDL"). The MDL consists of a class action and other actions alleging securities fraud and violations of the Securities Acts in connection with the Notes (the "Securities Actions"), a class action and other actions alleging violations of the Commodity Exchange Act, the Commodity Futures Trading Commission's (the "CFTC") rules and regulations, and other wrongdoing resulting in the shortfall in customer property at MFGI (the "Commodities Customer Actions"), an action commenced by the Debtors' chapter 11 trustee (the "Litigation Trust Action"), and an action by the CFTC alleging violations of the Commodity Exchange Act and the CFTC rules and regulations (the "CFTC Action").

4. The Claimants and the Indemnification Claims can be grouped into the following categories:

- Certain of the Debtors' former officers and employees were either never named as defendants in, or have been dismissed from, the Lawsuits (collectively, the "Non-Party Claimants"). The Non-Party Claimants' Indemnification Claims will be referred to as the "Non-Party Indemnification Claims."

- Randall MacDonald, David Bolger, Eileen Fusco, David Gelber, Martin Glynn, Edward Goldberg, David Schamis, and Robert Sloan (collectively, the "Securities Indemnification Claimants") were named as defendants in only the Securities Actions. The Securities Indemnification Claimants'

Indemnification Claims will be referred to as the "Securities Indemnification Claims."

- Jon Corzine was named as a defendant in all Lawsuits comprising the MDL.

- Henri Steenkamp was named as a defendant in all Lawsuits comprising the MDL except for the CFTC Action.

- Bradley Abelow was named as a defendant in all Lawsuits comprising the MDL except for the Securities Actions and the CFTC Action. Corzine, Steenkamp, and Abelow's Indemnification Claims will be referred to collectively as the "D&O Indemnification Claims."

5. The Plan Administrator seeks to estimate the Non-Party Indemnification Claims at zero dollars. The Non-Party Claimants either were never named in any Lawsuit or other proceeding related to the Debtors or have now been dismissed from any such Lawsuits. The Non-Party Claimants have provided no evidence that they will be named in any future lawsuit or proceeding. Further, no Claimant has amended its proof of claim to assert that any portion of its claim has been liquidated, and the Claimants are no longer permitted to amend their proofs of claims absent court approval. *See* Confirmation Order ¶ 94 (as defined below). Thus, the Non-Party Claimants' rights to indemnification are entirely speculative, and it is appropriate to estimate the Non-Party Indemnification Claims at zero dollars.

6. With respect to the Securities Indemnification Claims, the Plan Administrator submits that such claims should either be disallowed, subordinated, or estimated at zero dollars. First, the Securities Indemnification Claims should be disallowed under section 502(e)(1)(B) of the Bankruptcy Code, which requires the disallowance of contingent claims for reimbursement by persons co-liable with the Debtors, as is the case with respect to the Securities Actions. Further, under section 510(b) of the Bankruptcy Code, the Securities Indemnification Claims must be subordinated as claims for reimbursement by directors and officers in connection

with securities litigation. In the alternative, because the Securities Indemnification Claims are subject to disallowance and subordination in their entirety, the Plan Administrator seeks to estimate these claims at zero dollars.

7. Finally, the Plan Administrator seeks to cap the D&O Indemnification Claims at $5 million each as a reasonable reserve for any claims that may be allowed. Many of the Lawsuits underlying the D&O Indemnification Claims give rise to indemnification claims that are either subject to disallowance under section 502(e)(1)(B), or, with respect to Corzine and Steenkamp, who are named in the Securities Actions, to subordination pursuant to section 510(b). The remaining portion of the D&O Indemnification Claims, if any, is amply protected by setting a reserve for such claims based on a maximum allowed amount of $5 million.

8. Absent the requested relief, the Plan Administrator would have to postpone distributions pending the resolution of all of the litigation in the MDL and potentially wait until all applicable statutes of limitations for as-yet unfiled lawsuits have expired, which could take years. Accordingly, the Plan Administrator requests that the Court disallow, subordinate, or estimate the Indemnification Claims as set forth herein.

II. JURISDICTION

9. The Court has jurisdiction over this motion under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b).

10. Venue is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND

A. General Background

11. On October 31, 2011, Holdings Ltd. and Finance USA filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. On December 19, 2011, MFG Capital, FX Clear and MFG Market Services filed voluntary petitions in this Court

for relief under chapter 11 of the Bankruptcy Code. On March 2, 2012, Holdings USA filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.

12. On April 5, 2013, this Court entered an order (the "Confirmation Order") confirming the *Amended and Restated 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 FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc.*, and on May 2, 2013, entered an order approving certain nonmaterial modifications, which are reflected in the Plan (Docket No. 1376).

13. The Effective Date of the Plan occurred on June 4, 2013, and on that date, Holdings Ltd. became the Plan Administrator. Pursuant to section IV.C of the Plan, the Plan Administrator's duties and powers include, among other things, reviewing, reconciling, enforcing, collecting, compromising, settling, or electing not to pursue any or all causes of action owned by the Debtors. *See* Plan § IV.C.iii. The Plan Administrator has the authority to object to or request estimation of claims against the Debtors. *See* Plan § VII.B.1.

B. The Indemnification Claims

14. The Non-Party Claimants filed the Non-Party Indemnification Claims against Holdings Ltd., Holdings USA, and Finance USA, as listed on Exhibit A.

15. The Securities Indemnification Claimants filed the Securities Indemnification Claims against Holdings Ltd. and Holdings USA, as listed on Exhibit B.

16. Corzine, Steenkamp, and Abelow filed the D&O Indemnification Claims against Holdings Ltd., Holdings USA, and Finance USA, as listed on Exhibit C.

17. The Claimants allege that Holdings Ltd., Holdings USA, and Finance USA may owe indemnification obligations pursuant to Holdings Ltd.'s, Holdings USA's, and/or Finance USA's bylaws and the Claimants' employment agreements with Holdings Ltd. The

proofs of claim do not identify any costs incurred or judgments entered against the Claimants that could be covered by the alleged indemnification obligations, and in many cases, the Claimants did not identify any specific lawsuits or other proceedings that had been threatened against the Claimants, nor did they allege any facts to suggest that any future lawsuits or proceedings were likely to be commenced against, or otherwise involve, them. Further, no Claimant has amended its proof of claim to assert that any portion of its claim has been liquidated, and the claimants are no longer permitted to amend their proofs of claims absent court approval. *See* Confirmation Order ¶ 94.

C. The Lawsuits

18. The chart below identifies each of the Lawsuits consolidated in the MDL and the Claimants that are defendants in each Lawsuit.

Lawsuit	Defendants
The Securities Actions:	
DeAngelis v. Corzine, No. 12-MD-2388 (the "Securities Class Action")	Corzine, Steenkamp, MacDonald, Bolger, Fusco, Gelber, Glynn, Goldberg, Schamis, Sloan
AG Oncon v. Corzine, No. 14-cv-0396 (S.D.N.Y.) (the "Securities Opt-Out Action")	Corzine, Steenkamp, MacDonald, Bolger, Fusco, Gelber, Glynn, Goldberg, Schamis, Sloan
The Commodities Customer Actions:	
In re MF Global Holdings Ltd. Inv. Litig., No. 11-cv-7866 (S.D.N.Y.) (the "Customer Class Action")	Corzine, Steenkamp, Abelow
Sapere CTA Fund L.P. v. Corzine, No. 11-cv-9114 (S.D.N.Y.) (the "Sapere Action")	Corzine, Steenkamp, Abelow
The Litigation Trust Action:	
Nader Tavakoli, as Litigation Trustee of the MF Global Litigation Trust v. Corzine, No. 14-cv-566 (S.D.N.Y.)	Corzine, Steenkamp, Abelow
The CFTC Action:	
U.S. Commodity Futures Trading Commission v. MF Global Inc., No. 13-cv-4463 (S.D.N.Y.)	Corzine

19. After the dismissal from the Lawsuits of certain of the Non-Party Claimants, none of the Non-Party Claimants are named as defendants in any of the Lawsuits. Similarly, the Plan Administrator is not aware of, and none of the Non-Party Claimants have identified, any lawsuit or other proceeding on account of which the Non-Party Claimants might be entitled to indemnification from any of the Debtors.

20. With respect to the Securities Indemnification Claimants and Corzine, Steenkamp, and Abelow, the Plan Administrator is not aware of, and none of these Claimants have identified, any lawsuits, other than the Lawsuits described herein, on account of which these Claimants might be entitled to indemnification from any of the Debtors.

IV. RELIEF REQUESTED

21. Pursuant to sections 502(c), 502(e)(1)(B), and 510(b) of the Bankruptcy Code and section VII.B.5 of the Plan, the Plan Administrator requests that the Court (a) estimate the Non-Party Indemnification Claims at zero dollars, (b) disallow or subordinate the Securities Indemnification Claims, or, in the alternative, estimate the Securities Indemnification Claims at zero dollars, and (c) estimate the maximum allowed amount, if any, of the D&O Indemnification Claims at $5 million each.[3]

[3] The Plan Administrator reserves all rights to object on any additional ground to any of the Indemnification Claims, including, but not limited to, the right to object to any such claim on the bases that neither the Debtors' bylaws, the Claimants' employment agreements, nor any other documents cited in the proofs of claim give rise to an obligation on the part of any of the Debtors to provide indemnification or to advance defense costs and that any such claims should be disallowed and/or subordinated pursuant to sections 502(e)(1)(B), 510(b) and 510(c) of the Bankruptcy Code or pursuant to other applicable law.

V. BASIS FOR RELIEF REQUESTED

A. The Court Has The Authority To Estimate The Indemnification Claims Under The Bankruptcy Code And The Plan.

22. The Court has the authority to estimate the Indemnification Claims both under the Bankruptcy Code and the Plan. Section VII.B.5 of the Plan provides that "on and after the Effective Date, the Plan Administrator may request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, § 502(c) of the Bankruptcy Code, . . . and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim, or unliquidated Claim." The Plan further states that the Court is not required to allow the claims in question at a precise amount but instead may use the estimation process to cap the amount of claims at a maximum amount. *See* Plan § VII.B.5 (the "estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under this Plan, including for purposes of Distributions") (emphasis added).

23. Section 502(c) of the Bankruptcy Code provides: "There shall be estimated for purpose of allowance under this section— (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case . . . ." Estimation of a contingent or unliquidated claim is mandatory when the fixing or liquidation of such claim would prevent the expedient administration of the case. *See In re Chateaugay Corp.*, 10 F.3d 944, 957 (2d Cir. 1993) ("A bankruptcy court must estimate any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.") (internal quotation omitted); *In re G-I Holdings, Inc.*, 2006 WL 2403531, at *3 (Bankr. D.N.J. Aug. 11, 2006) ("Section 502(c) of the Bankruptcy

Code is drafted in mandatory terms. That is, any contingent or unliquidated claim 'shall' be estimated so long as the 'liquidation' of the particular claim would 'unduly delay the administration of the case.'"); *In re Lane*, 68 B.R. 609, 611 (Bankr. D. Haw. 1986) ("This duty of the bankruptcy court is mandatory, since the language of [section 502(c)] states 'shall'."). When the liquidation of a claim is premised on litigation pending in a non-bankruptcy court, and the final outcome of the matter is not forthcoming, the bankruptcy court should estimate the claim. *See In re Lionel L.L.C.*, 2007 WL 2261539, at *2 (Bankr. S.D.N.Y. Aug. 3, 2007); *In re Seaman's Furniture Co. of Union Square, Inc.*, 160 B.R. 40, 42 (S.D.N.Y. 1993) ("Estimation is an expedient method for setting the amount of a claim that may receive a distributive share of the estate.").[4]

24. Estimation requires only "sufficient evidence on which to base a reasonable estimate of the claim." *Bittner v. Borne Chem. Co., Inc.*, 691 F. 2d 134, 135 (3d Cir. 1982); *In re Baldwin-United Corp.*, 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985) (estimation "does not require that a bankruptcy judge be clairvoyant"). Section 502(c) does not prescribe any particular method for estimating a claim, and it is therefore committed to the reasonable discretion of the court. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996). In estimating a claim, the court should use whatever method is best suited to the circumstances of the case. *Id.* Accordingly, to the extent the Indemnification Claims are not disallowed or subordinated in full, the Court is required to estimate these claims in its reasonable discretion to prevent undue delay in the administration of the Debtors' estates.

[4] Courts have held that even where no undue delay exists, estimation of a contingent or unliquidated claim is within the discretion of the Court. *See, e.g.*, *In re Apex Oil Co.*, 107 B.R. 189, 193 (Bankr. E.D. Mo. 1989).

B. The Non-Party Indemnification Claims Should Be Estimated In The Allowed Amount Of Zero Dollars.

25. As discussed above, although certain of the Non-Party Claimants were originally named in certain of the Lawsuits, they have since been dismissed, and thus, none of the Non-Party Claimants remain named in any of the Lawsuits. The Non-Party Indemnification Claims — which were filed as contingent and unliquidated and have not been amended — are therefore purely hypothetical. They are contingent and would become claims against the estate only upon (a) the commencement of future proceedings against the Non-Party Claimants that give rise to indemnification claims, (b) a finding that the Non-Party Claimants are liable in connection with such proceedings, and (c) a further finding that they are valid and not subject to disallowance or subordination under section 502(e)(1)(b), 510(b) or 510(c) of the Bankruptcy Code, or otherwise — and even then only to the extent not reimbursed by insurance.

26. Here, none of the Non-Party Claimants have submitted any evidence, whether in their proofs of claim or otherwise, to suggest that any further litigation will be commenced against them. Two and a half years have passed since the commencement of the Chapter 11 Cases, and it is therefore reasonable to expect that the Lawsuits and related investigations constitute the universe of proceedings that could possibly involve the Non-Party Claimants.

27. Estimation is an appropriate method for avoiding the delay to a debtor's liquidation, including a delay in distributions to creditors, that may be caused by extended legal proceedings on uncertain claims. *In re Continental Airlines, Inc.*, 981 F.2d 1450, 1461 (5th Cir. 1993) (bankruptcy courts may estimate claims under § 502(c)(1) in order to (a) "avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of these actions," and (b) "promote a fair

distribution to creditors through a realistic assessment of uncertain claims"); *In re Chemtura Corp.*, 448 B.R. at 650 (quoting *Continental Airlines*). This principle is even more compelling for proceedings that have not yet commenced, and in all probability, never will (and would likely be reimbursed by insurance to the extent the claims were legitimate). Absent estimation of the Non-Party Indemnification Claims, such claims could remain unresolved indefinitely, causing undue delay in the administration of the Debtors' cases and unfairly depriving other creditors of their recoveries.

28. To the extent the Non-Party Claimants seek indemnification in connection with defense costs already incurred, which includes costs incurred in connection with cooperating in investigations, litigation, and other proceedings, such costs have been or will be paid out of proceeds of insurance and not by any Non-Party Claimant pursuant to the *Order to Lift the Automatic Stay to Permit Payments of Defense Costs Under Certain Insurance Policies* (Docket No. 1901) (the "Defense Costs Order"), entered on May 30, 2014. To the extent the Non-Party Claimants incur similar costs in the future, such costs will, in all likelihood, also be paid out of the proceeds of the Debtors' applicable insurance policies.

29. Accordingly, the Non-Party Indemnification Claims should be estimated at zero dollars.

C. The Securities Indemnification Claims Should Be Disallowed Or Subordinated Under Section 502(e)(1)(B) Or 510(b) Of The Bankruptcy Code, Respectively, Or, In The Alternative, Estimated At Zero Dollars.

30. The Securities Indemnification Claimants are named as defendants in only the Securities Actions, and thus, the Securities Indemnification Claims relate exclusively to claimed losses that they may ultimately sustain in the Securities Actions for which they would seek indemnification from the Debtors. As described below, because the Securities Indemnification Claimants are co-liable with the Debtors with respect to the Securities Actions,

and because the Securities Indemnification Claims are contingent, these claims should be disallowed under section 502(e)(1)(B) of the Bankruptcy Code. In addition, because the Securities Indemnification Claims seek reimbursement in connection with the Securities Actions, these claims must be subordinated under section 510(b) of the Bankruptcy Code. In the alternative, because the Securities Indemnification Claims should be disallowed and subordinated, they should be estimated at zero dollars for all purposes in the Chapter 11 Cases.

1. The Securities Indemnification Claims should be disallowed under section 502(e)(1)(B) of the Bankruptcy Code.

31. Section 502(e)(1)(B) of the Bankruptcy Code provides that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor . . . to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution." For a claim to be disallowed pursuant to section 502(e)(1)(B), a movant must therefore show three things: (a) that the creditor's claim is for "reimbursement" or "contribution," (b) that the party asserting the claim is "liable with the debtor" on the claim of a third party,[5] and (c) that the claim is "contingent." *In re Wedtech Corp.*, 85 B.R. 285, 289 (Bankr. S.D.N.Y. 1988). These three requirements are satisfied with respect to the Securities Actions, and therefore the Securities Indemnification Claims should be disallowed under section 502(e)(1)(B).

(a) The Securities Indemnification Claims are claims for reimbursement or contribution.

32. Each of the Securities Indemnification Claims is a claim for indemnification from the Debtors. *See* Proofs of Claim Nos. 1225 (Bolger), 1226 (Fusco), 1227

[5] The "liable with the debtor" requirement is frequently referred to as "co-liability."

(Gelber), 1228 (Glynn), 1229 (Goldberg), 1230 (Schamis), 1231 (Sloan), 1360 (MacDonald); *see also* Proofs of Claim Nos. 1376 (Steenkamp), 1593 (Corzine).

33. Courts interpret "reimbursement" and "contribution" broadly, and indemnification claims are claims for reimbursement. *In re Chemtura Corp.*, 443 B.R. 601, 626 (Bankr. S.D.N.Y. 2011) (the word "reimbursement" is "a broad word which encompasses whatever claims a co-debtor has which entitle him to be made whole for monies he has expended on account of a debt for which he and the debtor are both liable") (quoting *In re Wedtech Corp.*, 87 B.R. 279, 287 (Bankr. S.D.N.Y. 1988)); *In re Wedtech Corp.*, 85 B.R. 285, 289 (Bankr. S.D.N.Y. 1988) ("the concept of reimbursement includes indemnity"); *In re GCO Servs., LLC*, 324 B.R. 459, 465 (Bankr. S.D.N.Y. 2005) ("claims for indemnification also fall within the scope of . . . § 502(e)(1)(B)"); *In re Amatex Corp.*, 110 B.R. 168, 171 (E.D. Pa. 1990) ("Congress clearly meant to include all situations wherein indemnitors could be liable with the debtor within the scope of section 502(e)(1)(B)."). The Securities Indemnification Claims are indemnification claims, and thus, they are claims for reimbursement. As such, the first requirement for disallowance under section 502(e)(1)(B) is satisfied with respect to the Securities Indemnification Claims.

(b) The Securities Indemnification Claimants are "liable with" the Debtors with respect to the Securities Actions.

34. Co-liability is also defined broadly for purposes of section 502(e)(1)(B): "Congress clearly meant to include all situations wherein indemnitors or contributors could be liable with the debtor within the scope of § 502(e)(1)(B)." *Chemtura*, 443 B.R. at 626; *see also In re Charter Co.*, 81 B.R. 644, 647 (M.D. Fla. 1987) (the plain language of section 502(e)(1)(B) "is broad enough to encompass any type of liability shared with the debtor, whatever its basis"). For example, a debtor and creditor are co-liable for causes of action brought by a third-party if

the debtor could be deemed vicariously liable for the causes of action asserted against the creditor. *See In re Drexel Burnham Lambert Grp., Inc.*, 146 B.R. 92, 95-96 (S.D.N.Y. 1992).

35. Notably, the debtor need not actually be named as a defendant in the lawsuit for the co-liability requirement to be satisfied. In *In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. 982 (Bankr. S.D.N.Y. 1992), creditors filed proofs of claim relating to public bond offerings for which both the creditors and the debtor were underwriters. Several lawsuits were filed against the creditors, but the debtor was not named as a defendant in any of the lawsuits because of the automatic stay. *Id.* at 984-85. The creditors sought indemnification or reimbursement from the debtor for any judgments entered against them and for attorneys' fees and costs. The court found that even though the debtor was not a named defendant in the lawsuits, it was co-liable for purposes of section 502(e)(1)(B) because it would have been a defendant but for the automatic stay. *Id.* at 985-86. *See also In re Wedtech Corp.*, 87 B.R. 279, 284 (Bankr. S.D.N.Y. 1988) (stating that "the correct standard . . . is not whether [the debtor] was actually named as a defendant (for it could not have been by reason of the automatic stay), but whether [the debtor] could be liable but for the automatic stay," and concluding that the debtor was co-liable despite not being named in the lawsuits).

36. As in *Drexel Burnham* and *Wedtech*, the Debtors were not named as defendants in the Securities Actions due to the operation of the automatic stay. In fact, the lead plaintiffs in the Securities Class Action filed a proof of claim against the Debtors claiming losses on account of the same causes of action alleged against the Securities Indemnification Claimants in the Securities Actions. *See* Proof of Claim No. 1371. Thus, the Securities Indemnification Claimants are "co-liable" with the Debtors and the second requirement for disallowance under section 502(e)(1)(B) is satisfied with respect to the Securities Indemnification Claims.

(c) The Securities Indemnification Claims are contingent.

37. "[A] contingent claim is by definition a claim which has not yet accrued and which is dependent upon some future event that may never happen." *Drexel Burnham*, 148 B.R. at 987 (citation omitted); *accord In re Alper Holdings USA*, 2008 WL 4186333, at *5 (Bankr. S.D.N.Y. Sept. 10, 2008) ("a claim is 'contingent' when the debtor's legal duty to pay it does not come into existence until triggered by the occurrence of a future event"). An indemnification claim is contingent until the claimant actually makes a payment to the underlying third-party plaintiff. *See Chemtura*, 443 B.R. at 615 (where creditors had already made payments to the third-party and sought reimbursement from the debtor for those actual payments, the claim was not contingent; but claims for potential future remediation costs were contingent).

38. No judgment has been entered against the Securities Indemnification Claimants, and the Securities Indemnification Claimants have not made any payment to any of the plaintiffs in the Securities Actions. Thus, the Securities Indemnification Claims remain contingent, and the third requirement for disallowance under section 502(e)(1)(B) is satisfied.

* * *

39. The Securities Indemnification Claims are claims for reimbursement, the Securities Indemnification Claimants are co-liable with the Debtors for the causes of action asserted in the Securities Actions, and the Securities Indemnification Claims are contingent. Thus, under section 502(e)(1)(B) of the Bankruptcy Code, the Securities Indemnification Claims should be disallowed.

2. To the extent not disallowed, the Securities Indemnification Claims must be subordinated under section 510(b) of the Bankruptcy Code.

40. Section 510(b) of the Bankruptcy Code provides: "For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock." Courts interpret the language of section 510(b) broadly and have determined that a claim must be subordinated as long as there is a "causal relationship" between the claim and the purchase or sale of securities. *Enron*, 341 B.R. at 152-53 ("there must . . . be some nexus or causal relationship between the claim and the [purchase] of the security") (quoting *In re Telegroup, Inc.*, 281 F.3d 133, 138 (3d Cir. 2002)).

41. The Bankruptcy Code's definition of "security" includes not only equity securities, but also debt securities, such as notes and bonds. *See* 11 U.S.C. § 101(49); *see also In re Lehman Bros.*, 503 B.R. 778, 783 (Bankr. S.D.N.Y. 2014) (section 510(b) applies to bonds because bonds are "securities" under the Bankruptcy Code); *In re Wash. Mut. Inc.*, 442 B.R. 314, 363 (Bankr. D. Del. 2011) (finding that the word "security," as used in section 510(b), "is defined to include a debt security such as a note or bond"); *In re Bankest Capital Corp.*, 361 B.R. 263, 267 (Bankr. S.D. Fla. 2006) ("The unambiguous language of the statute specifically includes debt securities . . . ."); *In re Mid-American Waste Sys., Inc.*, 228 B.R. 816, 825 (Bankr. D. Del. 1999) ("Congress did not limit the application of § 510(b) to equity securities. . . . The Bankruptcy Code defines the term 'security' to include a 'note,' 'bond,' or 'debenture." Thus, by its plain terms § 510(b) is intended to apply to both debtholders and equityholders."); *In re*

Geneva Steel Co., 281 F.3d 1173, 1182 (10th Cir. 2002) (subordinating debtholder claims based on the sale or purchase of bonds because bondholders "accept[] a different and higher risk of insolvency than [] general creditors," and thus, such claims must be subordinated under section 510(b)).

42. Indemnification claims of officers and directors in connection with securities litigation are subject to mandatory subordination under section 510(b). In *In re Mid-American Waste*, for example, the debtor had issued $175 million in senior subordinated notes, and subsequently, noteholders filed lawsuits against the debtor, the notes underwriter, and the debtor's former officers and directors, alleging causes of action for false representations and omissions in the registration statement, prospectus and financial statements filed with the SEC in connection with the sale of the notes. 228 B.R. at 819. The plaintiffs asserted securities claims in addition to claims for common law fraud, aiding and abetting fraud, negligent misrepresentation, breach of contract, breach of fiduciary duty, and negligence. *Id.* The defendants filed proofs of claim in the debtor's bankruptcy case seeking indemnification on account of the lawsuits, and the debtor argued that such claims must be subordinated under section 510(b). The court analyzed section 510(b) and concluded: "I find that the plain language of § 510(b), its legislative history, and applicable case law clearly show that 510(b) intends to subordinate the indemnification claims of officers, directors, and underwriters for both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor's securities." *Id.* at 824. The court rejected the defendants' arguments that section 510(b) does not apply to contractual indemnification claims because such claims do not "arise" from a securities transaction. *Id.* at 826. Accordingly, the indemnification claims were subordinated pursuant to section 510(b). *See also In re Touch Am. Holdings, Inc.*,

381 B.R. 95, 103 (Bankr. D. Del. 2008) (the plain language of section 510(b) "is broad enough to include indemnification claims for both liabilities and expenses incurred on account of a claim for damages arising from the purchase or sale of the debtor's or its affiliate's securities").

43. The Securities Indemnification Claimants seek indemnification in connection with Securities Actions arising from the purchase or sale of the Notes. Accordingly, the Securities Indemnification Claims are subject to mandatory subordination under section 510(b) of the Bankruptcy Code.[6]

44. In the alternative, the Court should estimate the Securities Indemnification Claims at zero dollars to the extent that such claims are asserted as general unsecured claims. *See In re Jacom Computer Servs.*, 280 B.R. 570, 571-72 (Bankr. S.D.N.Y. 2002) (indemnification claims estimated at zero dollars because they were subject to mandatory subordination under section 510(b)).

D. The Corzine, Steenkamp, And Abelow Indemnification Claims Should Be Estimated At A Maximum Allowed Amount Of $5 Million Each.

1. A significant portion of Corzine, Steenkamp, and Abelow's Indemnification Claims should be disallowed under section 502(e)(1)(B) of the Bankruptcy Code.

45. Based on the same legal arguments set forth above with respect to disallowance of the Securities Indemnification Claims under section 502(e)(1)(B), a significant portion of the D&O Indemnification Claims should likewise be disallowed.

46. Corzine, Steenkamp, and Abelow are co-liable with the Debtors with respect to the Commodities Customer Actions, Securities Actions, and CFTC Action, as

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[6] The Securities Indemnification Claims are also subject to subordination under the Plan, which provides that claims "on account of [the] purchase or sale of Notes, if any, within the meaning of § 510(b) of the Bankruptcy Code" shall be placed in Classes 7A through 7F as Tier 1 Subordinated Claims. *See* Plan § III.B.10.

applicable. As already discussed above with respect to the Securities Indemnification Claimants, Corzine and Steenkamp are co-liable with the Debtors and are asserting contingent claims with respect to the Securities Actions, which are required to be disallowed under section 502(e)(1)(B). Similarly, but for the automatic stay in the Chapter 11 Cases, the Debtors would have been named in the Commodities Customer Actions; in fact, both the lead plaintiffs in the Customer Class Action and the plaintiffs in the Sapere Action filed proofs of claim against the Debtors claiming losses on account of the same causes of action alleged against Corzine, Steenkamp, and Abelow in the Commodities Customer Actions. *See* Proofs of Claim Nos. 1371, 1481. In addition, Holdings Ltd. is a named defendant in the CFTC Action and, as co-defendants, Corzine and the Debtors are co-liable. *See Drexel Burnham*, 146 B.R. at 95-96 (co-defendants are "co-liable" for purposes of section 502(e)(1)(B)).

47. Further, the D&O Indemnification Claims are claims for indemnification and thus are claims for reimbursement, and the D&O Indemnification Claims are contingent. Therefore, all three requirements for disallowance pursuant to section 502(e)(1)(B) are satisfied with respect to any indemnification sought by Corzine, Steenkamp, and Abelow on account of their involvement in the Commodities Customer Actions, Securities Actions, and CFTC Action.

48. To the extent the D&O Indemnification Claims seek indemnification in connection with the Commodities Customer Actions, the Securities Actions, or the CFTC Action, they should be disallowed under section 502(e)(1)(B) for the reasons set forth above with respect to the Securities Indemnification Claims.

2. Corzine and Steenkamp's Indemnification Claims with respect to the Securities Actions must be subordinated under section 510(b).

49. Based on the same legal arguments set forth above with respect to subordination of the Securities Indemnification Claimants' claims under section 510(b), to the

extent that Corzine and Steenkamp's Indemnification Claims seek indemnification with respect to the Securities Actions, these claims must be subordinated pursuant to section 510(b).

3. Corzine, Steenkamp, and Abelow's Indemnification Claims should be estimated at a maximum allowed amount of $5 million each to enable the Plan Administrator to set appropriate reserves and make distributions to creditors under the Plan.

50. As discussed above with respect to the Non-Party Indemnification Claims, this Court has the authority under the Bankruptcy Code and the Plan to establish the maximum allowable amount of the D&O Indemnification Claims. Given that these claims are largely subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code and/or subordination under section 510(b) of the Bankruptcy Code and that to date, any defense costs incurred by Corzine, Steenkamp, and Abelow have been substantially paid by the Debtors' insurance carriers pursuant to the Defense Costs Order, the Plan Administrator requests that the Court estimate these claims in the maximum allowable amount of $5 million each.

51. A cap on the D&O Indemnification Claims in this amount is reasonable under the circumstances of the Chapter 11 Cases. First, in all likelihood, future defense costs, and any defense costs incurred to date but not covered by the $40 million soft cap pursuant to the Defense Costs Order, will be advanced from the proceeds of the Debtors' applicable insurance policies.[7]

52. Further, under New York law, the claimants are not entitled to any indemnification to the extent that they acted in bad faith or with active and deliberate dishonesty, and the complaints filed in the Lawsuits contain numerous allegations suggesting such bad faith

[7] To the extent the D&O Claims for indemnification remain pending against the Debtors, the Debtors have an interest in the Directors, Officers, and Corporate Liability Insurance Policy No. 14-MGU-11-A23947 issued for the period May 31, 2011 to May 31, 2012, and related excess policies (the "D&O Policies") pursuant to the Side B coverage under the D&O Policies.

and dishonesty. *See* N.Y. Bus. Corp. Law § 721 ("no indemnification may be made to or on behalf of any director of officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled"); *see also Benjamin v. Carusona*, 2010 U.S. Dist. LEXIS 39784, at *11 (S.D.N.Y. Nov. 5, 2010) ("In the event of a finding against a director of bad faith or dishonesty, . . . no indemnification may be had and any advanced expenses must be repaid to the company.") (citation omitted). Such conduct also may render any otherwise colorable D&O Indemnification Claims subject to equitable subordination under section 510(c) of the Bankruptcy Code.

53. In light of the allegations of the Lawsuits, the Debtors' insurance policies, and the Plan Administrator's review and analysis of the D&O Indemnification Claims, $5 million each represents a reasonable and appropriate amount at which to estimate the maximum allowed amount of any potentially allowable portion of the D&O Indemnification Claims that would not be subject to disallowance or subordination and not reimbursed by insurance.

54. Absent establishing a maximum allowed amount of the D&O Indemnification Claims, the Plan Administrator will be unable to properly reserve amounts on account of such claims until resolution of the MDL and other Lawsuits, which could take years. As such, absent estimation, these contingent and unliquidated claims will unduly delay the administration of the Chapter 11 Cases and prevent the Plan Administrator from making distributions to all creditors. Allowing the D&O Indemnification Claims at a maximum of $5 million each will enable the Plan Administrator to set appropriate reserves and make distributions to holders of allowed claims without undue delay.

VI. CONCLUSION

55. For the reasons set forth herein, the Court should (a) estimate the Non-Party Claims at zero dollars, (b) disallow or subordinate the Securities Indemnification Claims pursuant to section 502(e)(1)(B) or 510(b) of the Bankruptcy Code, respectively, or, in the alternative, estimate the Securities Indemnification Claims at zero dollars, and (c) estimate the maximum allowed amount of the D&O Indemnification Claims at $5 million each.

VII. NOTICE

56. Notice of this motion has been given to: (a) the Claimants and/or their respective attorneys, (b) all parties identified on the Master Service List, as defined in the *Order Pursuant to 11 U.S.C. § 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures* (Docket No. 256) (the "Case Management Order"), and (c) all parties that have requested service of papers under section 4(a)(2) of the Case Management Order. The Plan Administrator submits that no other or further notice need be provided.

VIII. NO PRIOR REQUEST

57. No prior request for the relief sought in this motion has been made to this or any other Court.

WHEREFORE, the Plan Administrator respectfully requests entry of an order, substantially in the form attached as Exhibit D, (a) estimating the Non-Party Claims at zero dollars, (b) disallowing or subordinating the Securities Indemnification Claims pursuant to section 502(e)(1)(B) or 510(b) of the Bankruptcy Code, respectively, or, in the alternative, estimating the Securities Indemnification Claims at zero dollars, and (c) estimating the maximum allowed amount of the D&O Indemnification Claims at $5 million each.

Dated: June 5, 2014
New York, New York

Respectfully submitted,

/s/ Scott Greenberg

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COUNSEL FOR MF GLOBAL HOLDINGS LTD., AS PLAN ADMINISTRATOR

EXHIBIT A

EXHIBIT A

Non-Party Indemnification Claims

Claim No.	Debtor	Claimant
1186	MF Global Holdings Ltd.	Alison Carnwath
1412	MF Global Holdings Ltd.	Rick Leesley
1413	MF Global Holdings USA Inc.	Rick Leesley
1422	MF Global Holdings Ltd.	Bernard Dan
1427	MF Global Holdings USA Inc.	Ira Polk
1428	MF Global Holdings Ltd.	Ira Polk
1429	MF Global Holdings Ltd.	Michael Wiezcorek
1430	MF Global Holdings USA Inc.	Michael Wiezcorek
1431	MF Global Holdings USA Inc.	Stephen Hood
1432	MF Global Holdings Ltd.	Stephen Hood
1435	MF Global Holdings Ltd.	Michael Stockman
1445	MF Global Holdings USA Inc.	Stephen Grady
1446	MF Global Holdings Ltd.	Stephen Grady
1447	MF Global Holdings USA Inc.	Jeremy Skule
1448	MF Global Holdings Ltd.	Jeremy Skule
1469	MF Global Holdings USA Inc.	Pallavi Rayan
1485	MF Global Holdings Ltd.	Tracy Whille
1486	MF Global Holdings USA Inc.	Richard Gill
1487	MF Global Holdings Ltd.	Richard Gill
1488	MF Global Holdings Ltd.	Thomas Connolly
1489	MF Global Holdings USA Inc.	Thomas Connolly
1491	MF Global Holdings USA Inc.	David Simons
1621	MF Global Holdings USA Inc.	Laurie Ferber
1625	MF Global Finance USA Inc.	Laurie Ferber
1626	MF Global Holdings Ltd.	Laurie Ferber
1798	MF Global Holdings USA Inc.	Frederick Demler
1799	MF Global Holdings Ltd.	Frederick Demler
2050	MF Global Holdings Ltd.	Talha Chaudhry
2051	MF Global Holdings USA Inc.	Talha Chaudhry

EXHIBIT B

EXHIBIT B

Securities Indemnification Claims

Claim No.	Debtor	Claimant
1225	MF Global Holdings Ltd.	David Bolger
1226	MF Global Holdings Ltd.	Eileen Fusco
1227	MF Global Holdings Ltd.	David Gelber
1228	MF Global Holdings Ltd.	Martin Glynn
1229	MF Global Holdings Ltd.	Edward Goldberg
1230	MF Global Holdings Ltd.	David Schamis
1231	MF Global Holdings Ltd.	Robert Sloan
1360	MF Global Holdings Ltd.	John R. MacDonald

EXHIBIT C

EXHIBIT C

D&O Indemnification Claims

Claim No.	Debtor	Claimant
1276	MF Global Holdings Ltd.	Bradley Abelow
1277	MF Global Finance USA Inc.	Bradley Abelow
1281	MF Global Holdings USA Inc.	Bradley Abelow
1376	MF Global Holdings Ltd.	Henri Steenkamp
1377	MF Global Holdings USA Inc.	Henri Steenkamp
1380	MF Global Finance USA Inc.	Henri Steenkamp
1593	MF Global Holdings Ltd.	Jon Corzine

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., *et al.*,	:	**Case No. 11-15059 (MG)**
Debtors.[1]	:	**(Jointly Administered)**

ORDER ESTIMATING THE MAXIMUM ALLOWED AMOUNT OF CERTAIN INDEMNIFICATION CLAIMS AGAINST MF GLOBAL HOLDINGS LTD., MF GLOBAL HOLDINGS USA INC., AND MF GLOBAL FINANCE USA INC.

This matter coming before the Court on the *Motion to Estimate the Maximum Allowed Amount of Certain Indemnification Claims Against MF Global Holdings Ltd., MF Global Holdings USA Inc., and MF Global Finance USA Inc.* (the "Motion");[2] the Court having reviewed the Motion, and having heard the statements of counsel regarding the relief requested in the Motion, and any objections thereto, at a hearing before the Court (the "Hearing"); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion and the Hearing was adequate and in compliance with the Case Management Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates and their creditors; and the Court having determined that the legal and factual bases set forth in the Motion

1 The debtors in these chapter 11 cases are 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. (collectively, the "Debtors").

2 Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. The Non-Party Claims are estimated in the Allowed amount of zero dollars for all purposes under the Plan, as set forth on Exhibit 1 attached hereto.

3. The Securities Indemnification Claims are disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code and expunged in their entirety from the Claims Register, as set forth on Exhibit 2 attached hereto.

4. The D&O Indemnification Claims are estimated in the maximum allowed amount of $5 million each for all purposes under the Plan, as set forth on Exhibit 3 attached hereto.

5. The Plan Administrator is authorized to reserve, on account of the D&O Indemnification Claims, an amount based on the $5 million maximum allowed amount of each D&O Indemnification Claim.

6. GCG, Inc., the Plan Administrator's noticing and claims agent, is authorized to cause the Claims Register to be amended to reflect the terms of this Order.

7. The Plan Administrator is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2014
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE