Hearing Date: December 17, 2014 at 10:00 a.m. Eastern Time

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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)
In re	:	
MF GLOBAL Inc.,	:	Case No. 11-02790 (MG)
Debtor.	:	SIPA

SUPPLEMENTAL DECLARATION OF JANE RUE WITTSTEIN IN SUPPORT OF THE PLAN ADMINISTRATOR'S OBJECTION TO THE MOTION OF THE INDIVIDUAL INSUREDS TO MODIFY THE AUTOMATIC STAY AND THE PLAN INJUNCTION SO AS TO EXTEND THE "SOFT CAP"

I, Jane Rue Wittstein, make this declaration based on my personal knowledge and pursuant to 28 U.S.C. § 1746. I hereby state as follows:

[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.

1. I am an attorney with the law firm of Jones Day, counsel for MF Global Holdings Ltd. as Plan Administrator ("MFGH") in this matter. I am admitted to practice in the United States Bankruptcy Court for the Southern District of New York. I respectfully submit this supplemental declaration in support of MFGH's *Objection to the Motion of the Individual Insureds to Modify the Automatic Stay and the Plan Injunction so as to Extend the "Soft Cap" on the Use of the Proceeds of Certain MFG Assurance Company Policies of Professional Liability Insurance* (Docket No. 2048) (the "Objection")[2] in order to correct the record with respect to certain statements in the *Statement in Support of Motion of the Individual Insureds to Modify the Automatic Stay and the Plan Injunction so as to Extend the "Soft Cap" on the Use of the Proceeds of Certain MFG Assurance Company Policies of Professional Liability Insurance* (Docket No. 2047) (the "Insurer Statement") filed by MFG Assurance Company Limited ("Assurance").

2. First, Assurance's implication that MFGH's principled resistance to the dissipation of insurance proceeds without Court supervision is to gain a "litigation advantage" by depriving the Individual Insureds of access to the Policies to reimburse reasonable defense costs is not only highly inflammatory, but demonstrably false. *See* Insurer Statement ¶¶ 4-5. As Assurance's counsel is well aware:

a. last year, the "long stretch" during which the cap was not raised was a result of this Court's decision to await the outcome of an appeal before entering a stipulated increase to the cap;

b. this year, negotiations to raise the combined D&O and E&O soft cap broke down when the Individual Insureds elected to file a motion to dispense with any cap on the D&O policies; and

c. the present motion was necessitated not because MFGH refused to negotiate a soft cap increase, but because Assurance and the Individual Insureds rejected a $5 million E&O-only increase—turning down a cap projected by their own

[2] Capitalized terms not otherwise defined herein have the meaning given to them in the Objection.

> estimates to last until the end of 2015 to seek instead a cap that would translate into unfettered access to the E&O policies until the end of 2016.

3. Second, Assurance's implication that the Individual Insureds' defense is going to be hamstrung by their own election to press this Motion (Insurer Statement ¶ 9) ignores that in the wake of this Court's issuance on September 4, 2014 of its *Memorandum Opinion and Order Lifting Automatic Stay to Permit Payments of Defense Costs Under Certain Insurance Policies* (Docket No. 1988) (the "Lift Stay Order"), the Individual Insureds' counsel are being paid, on average, 72% of their aggregate fees (from the D&O policies) without any Court oversight. *See Declaration of Jane Rue Wittstein in Support of the Plan Administrator's Objection to the Motion of the individual Insureds to Modify the Automatic Stay and the Plan Injunction so as to Extend the "Soft Cap"* (Docket No. 2048, Ex. A) (the "Initial JRW Declaration") ¶¶ 5-7. Assurance's suggestion that defense counsel are being wrongfully disadvantaged if this Motion seeking a $7.5 million increase is not granted—when they are now receiving over 70% of their fees with no court-imposed cap and even under the $3.5 million E&O-only increase proposed by MFGH would be paid 100% of their fees through at least most of 2015—is ludicrous. The absurdity of Assurance's position is further underscored by the reality that many of the other professionals in this case, in contrast to the Individual Insureds' counsel, are not paid 100% of their reasonable fees until the end of the case (if at all).[3]

4. Third, Assurance presents a highly distorted record of why the parties were unable to agree on a stipulation embodying the increase of the combined D&O/E&O soft cap to $55 million as directed at the August 21, 2014 hearing prior to this Court's entry of the Lift Stay Order on September 4, 2014. While Assurance asserts that the insurers and Individual Insureds

[3] For example, professionals whose fees require bankruptcy court approval are typically subject to a 20% withholding and plaintiffs' counsel typically get paid (if at all) only at the end of a case.

"could not obtain agreement from the Debtors" to enter into "a simple order that increased the cap and preserved the terms of the prior orders," *see* Insurer Statement ¶ 8 (emphasis added), it was Assurance who was the recalcitrant party on this issue. Specifically, both MFGI and MFGH rejected Assurance's proposed form of order, and Assurance was inflexible. As set forth in an email to Assurance's counsel on August 26, 2014, MFGH and MFGI promptly drafted a form of order that: (i) raised the soft cap to $55 million; (ii) added the Individual Insureds, who were parties to the soft cap motions, to the stipulation; (iii) included the reservations of rights which the Court had expressly endorsed at the August 21 hearing (8/21/14 Hearing Transcript, Docket No. 1991 at 66); and (iv) incorporated modest changes to the reporting requirements to go hand-in-hand with any increase of the combined D&O/E&O soft cap to $55 million (*id.* at 61-62). *See* Email dated 8/26/14 from J. Carroll to S. Doody (with attachments), attached hereto as Exhibit 1. It was Assurance who dug in, and both MFGH and MFGI worked to persuade Assurance to budge off its refusal to change anything in the prior form of order except the soft cap amount. *See* Email chain dated 8/27/14 between J. Carroll and S. Doody, attached hereto as Exhibit 2, and Email from V. Hayes to S. Doody dated 9/3/14 (with attachments), attached hereto as Exhibit 3. Under these circumstances, it is highly misleading for Assurance to assert that "Holdings insisted on new requirements, which allowed it to avoid a stipulation until the arrival of This Court's decision could be said to eliminate the request for the stipulation," *see* Insurer Statement ¶ 8, implying that MFGH sought to delay entry of an order that everyone else agreed on when (i) it was Assurance who balked at the form agreed to by both MFGI and MFGH; and (ii) all of the features of the MFGH/MFGI proposed form of order are now part of the relief requested in the Motion.

5. Fourth, Assurance mischaracterizes the parties' positions in the wake of the Court's entry of the Lift Stay Order and the events that led up to the filing of the Individual

Insureds' Motion. While Assurance implies that MFGH used the entry of the Lift Stay Order as a means to delay any stipulated increase to the soft cap, MFGH and MFGI were prepared to enter into a form of stipulated order to raise the E&O only soft cap by an amount proportionate to the E&O share of the previously directed increase of the combined D&O/E&O soft cap by using the previously disclosed aggregate D&O/E&O split of 70/30, *i.e.* a $3.5 million raise to the E&O-only soft cap. The counter-proposal from Assurance on behalf of the Individual Insureds was to reject any suggestion that the amount be proportional to the $55 million combined cap, and instead propose an E&O only soft cap estimated to last at least three years—effectively a blank check that would have rendered moot this Court's rulings requiring a soft cap for the E&O fee reimbursements.

6. Last, Assurance turns reality on its head when it states: "After six months of failed efforts to negotiate a fair resolution, the Individual Insureds brought the instant Motion. Assurance is aware of the additional reporting requirements set out in paragraph 19 of the Motion, which Assured offered in the attempted negotiations, and is prepared to provide such reporting in the hopes of ending the costly and protracted litigation regarding the use of the Policies." Insurer Statement ¶ 10 (emphasis added). As discussed above and in paragraphs eight and nine of the Initial JRW Declaration, MFGH had agreed, in a good faith effort to avoid further motion practice, to stipulate to an E&O soft cap increase of $5 million, subject to the increased reporting requirements now agreed to in principle by all parties.[4] This offer covered in full the $1.5 million of fees accrued since the last soft cap increase in May 2014 and left a cushion of $3.5 million, estimated to last 14 months using the current estimated "burn rate" of

[4] While a seemingly minor point, it is ironic and troubling that Assurance tries to take credit for proposing the additional reporting requirements when it was Assurance's refusal to accede to increased reporting that created the delay in entering the stipulation raising the combined D&O/E&O soft cap to $55 million prior to the entry of the Lift Stay Order. *See supra* at ¶ 4.

$250,000/month in fees. It was the Individual Insureds, together with Assurance, who rejected this proposal and who insisted on bringing this Motion instead to seek a $7.5 million increase—a full 24 months of fees at the current burn rate that would extend the soft cap until the end of 2016 (rendering the soft cap virtually meaningless since, if all parties are properly incentivized, the cases should conclude long before the cap would be met). Under these circumstances, it is completely disingenuous for Assurance to state to this Court that the Motion resulted when they were "unable to coax out a compromise that included Holdings which continued to enjoy a litigation advantage absent any such compromise." Insurer Statement ¶ 9. MFGH had *agreed* to stipulate to a $5 million increase and it was the Individual Insureds and Assurance who chose to reject that bird in the hand and bring this Motion to seek two in the bush. Rather than accept a proposal that would guarantee them 100% reimbursement of fees for another year, the Individual Insureds filed the Motion, thereby demanding that the Court address, right now, the reimbursement of future legal fees that, in any rational universe, would not even be incurred until 2016, if at all.

7. Given this record, MFGH objects to rewarding the Individual Insureds and Assurance for bringing this Motion and submits that increasing the soft cap by any amount greater than the $3.5 million implied by the Court's prior $55 million combined cap would do just that.[5] Rejecting the joint offer of MFGH and MFGI to raise the soft cap by $5 million, offered only to avoid motion practice, should have consequences, and not be a "heads I win, tails you lose" proposition. The Individual Insureds already now have unfettered access to the D&O policies; this makes it all the more imperative that the soft cap under the E&O policy provide heightened accountability for the exorbitant level of fees that continue to drain the insurance

[5] MFGH also objects to any fees being reimbursed and dissipating the polices for the decision of Assurance and the Individual Insureds to run up the costs of these proceedings by filing the instant Motion after rejecting the combined MFGH/MFGI $5 million soft cap offer.

policies in these case. Defense costs are spiraling out of control, and the more the E&O policies are consumed by legal fees, the less that remains to pay the claims of MFGH and MFGI as insureds and to settle claims or fund judgments against the Individual Insureds. While Assurance seems content to let the spigot run freely on the legal fees, the only way to incentivize the Individual Insureds to contain costs and manage these cases efficiently is to require them to engage in the same disciplined process as if they were spending their own cash. Presumably, if the Individual Insureds were paying their own legal fees from their own respective pockets instead of receiving 100% recovery on an almost unfettered basis from insurance proceeds, their collective approach to the defense of the underlying claims against them would be markedly different than it is now. Keeping a reign on this spending by imposing a soft cap that requires the Individual Insureds to periodically justify any new raise to MFGH and MFGI, or failing that, to this Court, is a necessary check to prevent the rapid wasting of this critical estate asset, and should be raised only incrementally to serve its intended purpose.

8. For the foregoing reasons and the reasons set forth in the Objection and Initial JRW Declaration, MFGH opposes any increase to the E&O soft cap greater than $3.5 million and requests that the Court direct that no policy proceeds should be applied to reimburse the Individual Insureds for any costs or fees associated with this Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 15, 2014
New York, New York

/s/ Jane Rue Wittstein
Jane Rue Wittstein

EXHIBIT 1

Subject: MF Global - Edits to Soft Cap Order

From: Justin F Carroll 08/26/2014 05:40 PM
Extension: 7-3708

To: stephen.doody, meredith.werner, leslie.ahari, jonathan.streeter, aaufses, lsteinberg, edmund.polubinski, cjb, rhotz, nbinder, gjo

Cc: Bruce Bennett, Scott Greenberg, Jane Rue Wittstein, smithd, hayes

All,

Please find attached a clean and blackline version of the order increasing the "soft cap" to $55 million, which reflects MFGH's and the Trustee's comments to the proposed order sent by Stephen to Dustin last week. Let us know if you'd like to discuss, thanks.

Justin

NYI_4606939_6_MF Global - $55 Million Soft Cap Stipulation -- Combined version.DOCX

NYI_4607827_1_Blackline of Soft Cap Order - JD comments v Doody version.DOCX

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: MF GLOBAL HOLDINGS, LTD., *et al.*, Debtors.	Chapter 11 Case No. 11-15059 (MG) Jointly Administered
In re: MF GLOBAL Inc., Debtors.	Case No. 11-2790 (MG) SIPA

STIPULATION AND ORDER TO LIFT THE AUTOMATIC STAY TO PERMIT PAYMENTS OF DEFENSE COSTS UNDER CERTAIN INSURANCE POLICIES UP TO AN AGGREGATE OF $55 MILLION

This stipulation (the "**Stipulation**") is entered into by and between James W. Giddens, Trustee for the SIPA Liquidation of MF Global, Inc. (the "**Trustee**"), the Plan Administrator for MF Global Holdings, Ltd. (the "**Plan Administrator**"), MFG Assurance Company Limited, U.S. Specialty Insurance Company, XL Specialty Insurance Company, Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan, Edith O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp. MFG Assurance Company, U.S. Specialty Insurance Company, and XL Specialty Insurance Company are collectively referred to as the "**Insurers**." Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan, Edith

O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp are collectively referred to as the "**Insureds**." This Stipulation is based on the following facts and circumstances:

WHEREAS, by order dated April 25, 2012 (the "**Initial Order**" – ECF Docket No. 652), this Court modified the automatic stay under 11 U.S.C. § 362(a), to the extent applicable, to permit MFG Assurance Company and U.S. Specialty Insurance Company (the "**Initial Insurers**") to advance and/or make payments under certain insurance policies for defense costs incurred by insured individuals in connection with pending lawsuits, investigations and disputes, as well as any additional matters that may arise in the future, subject to the Initial Insurers' determination that such matters are potentially covered under the respective insurance policies and subject to the reservation of rights issued in respect of any claims;

WHEREAS, pursuant to the Initial Order, MFG Assurance Company Limited was authorized to make payments under a tower of professional liability policies issued by it to MF Global Holdings Ltd. for the period May 31, 2011 to May 31, 2012 (the **"E&O Policies**")[1] and U.S. Specialty Insurance Company was authorized to make payments under Directors, Officers, and Corporate Liability Insurance Policy No. 14-MGU-11-A23947 (the **"US Specialty Policy")** and Fiduciary Liability Insurance Policy No. 14-MGU-11-A23948, both issued for the period May 31, 2011 to May 31, 2012 (together with the US Specialty Policy, the **"USSIC Policies"**);

WHEREAS, the Initial Order subjected the aggregate payments permitted under the USSIC and E&O Policies to a "soft cap" of $30 million, which could be further adjusted either by agreement among the Trustee, the then-Chapter 11 Trustee for MF Global Holdings, Ltd., and the Initial Insurers, or by further order of this Court;

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[1] The E&O Policies bear the policy numbers, 1-18001-00-11, 1-18002-00-11, 18003-00-11, 1-18004-00-11, 1-18005-00-11, 1-18005-01-11, 1-18006-00-11, 1-18009-00-11, 1-18010-00-11, 1-18011-00-11, 1-18011-01-11, and 1-18012-00-11.

WHEREAS, 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. was filed with this Court on April 1, 2013 (as amended, supplemented or modified from time to time, the "**Plan**") and confirmed pursuant to an order of the Court entered on April 5, 2013 (the "**Confirmation Order**"), except with respect to certain Plan modifications, which were approved by order of this Court entered on May 2, 2013 (together with the Confirmation Order, the "**Plan Confirmation Order"**);

WHEREAS, the Plan and the Plan Confirmation Order provide for the establishment of the Plan Administrator, as defined in the Plan, with duties and responsibilities as set forth in the Plan; and

WHEREAS, this Court's May 30, 2014 Order (ECF Docket No. 1901) (the "**Second Order**") recognized that the Plan Administrator now acts on behalf of MF Global Holdings Ltd. in connection with the instant matter and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order recognized that XL Specialty Insurance Company had issued Excess Policy No. ELU121502-11 (the "**XL Specialty Policy**" and with the USSIC Policies, the "**D&O Policies**") in excess of the U.S. Specialty Policy, and that XL Specialty Insurance Company would be potentially implicated by the resulting increase in the "soft cap," and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order increased the initial "soft cap" to $40 million plus an additional $3.8 million to pay for defense costs incurred by individual insureds who never were or no longer are defendants in any litigation, resulting in a total "soft cap" of $43.8 million,

which could be further adjusted either by agreement among the Trustee, the Plan Administrator, and the Insurers, or by further order of this Court;

WHEREAS, on July 25, 2014, the Insureds filed the *Motion of the Individual Insureds to Lift Automatic Stay and Modify Plan Injunction as to Proceeds of Certain MF Global Policies of Directors and Officers' Liability Insurance* (the "**Motion for Relief from Stay**" – ECF Docket No. 1956), certain parties objected to such Motion for Relief from Stay (ECF Docket Nos. 1964, 1965, 1966) on August 14, 2014, the Insureds filed a Reply to Motion on August 19, 2014, and this Court scheduled a hearing on the Motion for Relief from Stay for August 21, 2014; and

WHEREAS, this Court, when conducting the August 21, 2014 hearing on the Motion for Relief from Stay for, heard argument on the Motion for Relief from Stay and reserved ruling, but in the interim after being advised by the Insurers that invoices totaling approximately $4 million in excess of the "soft cap" of $43.8 million had already been submitted to the Insurers for payment, the Court directed the parties to enter into a stipulated order that further increases the "soft cap" to $55 million, with all parties reserving rights.

NOW, THEREFORE in consideration of the foregoing and the mutual promises set forth below, and subject to approval by this Court, the parties to the Stipulation agree as follows:

1. The "soft cap" shall be increased, such that the total amount of payments permitted for defense costs and indemnity under the E&O Policies and the D&O Policies (collectively, the **"Policies"**), including all such payments made under the Policies to date, shall be increased to $55 million.

2. All invoices submitted by individual insureds shall continue to be carefully monitored and reviewed by the Insurers prior to making any payments.

3. Nothing herein shall prejudice the current or future position of the Trustee, the Plan Administrator, the Insurers, the Insureds or any individual insureds, and the parties reserve all rights, with respect to (i) the lifting or modifying of the "soft cap"; (ii) the allocation of defense costs as between the D&O Policies and the E&O Policies and all applicable excess policies; (iii) the appropriateness of any obligation on the Insurers or restriction on the operation of any one or more of the Policies; (iv) the appropriateness of any other obligation on the Insurers or restriction on the operation of the Policies; or (v) the appropriateness of any payments by the Insurers or requests for payment by the Insureds or any individual insureds.

4. Further adjustments, if any, to the "soft cap" shall be made only by agreement among the Trustee, the Plan Administrator, and the Insurers, or by further order of this Court.

5. Nothing herein shall constitute an admission by the Trustee, the Plan Administrator, the Insurers or the Insureds that the proceeds of the Policies are or are not property of the debtors' estates.

6. Upon the advancement and/or payment of any defense costs pursuant to the Policies, each Insurer shall provide written notice to (a) counsel for the Plan Administrator, (b) counsel for the Trustee, (c) counsel to the other Insurers ((a), (b) and (c) collectively, "**Parties Receiving Notice**") and (d) the Court, reporting (i) the total amount that has been advanced or paid by the reporting Insurer under its Policies during that reporting period; (ii) the total amount advanced to date under each of its Policies; and (iii) the remaining available limits under its Policies. Simultaneously with the submission of invoices by the Insureds to the Insurers for advancement and/or payment of any defense costs pursuant to the Policies, the Insureds shall (iv) provide copies of such invoices and any additional submissions requested by the Insurers to this Court for the Court's *in camera* review and (v) provide the Parties Receiving

Notice and the Court with the total amount(s) submitted to the Insurers under such invoice(s). Any Party Receiving Notice may lodge objections with the Court as to any invoiced amount, advancement or payment and request the Court's intervention to determine the reasonableness of challenged sums invoiced, advanced or paid. No further disclosure relating to advances or payments under the Policies shall be required without further order of the Court, with respect to which all parties reserve their rights.

7. Any and all such advancements and payments by an Insurer shall reduce the Policies' respective limits of liability, according to the amount paid under each such Policy, in a like amount to the extent permitted under the terms and conditions of such Policy, unless or until such amounts are repaid to the Insurer, with all Parties reserving rights as to the appropriateness of such payments including without limitation the right to (i) seek reimbursement of any or all sums improperly advanced or paid from the insured(s) on whose behalf such improper advance or payment has been made or (ii) take action for wrongful depletion of the Policies.

8. Nothing in this Stipulation shall constitute (1) a waiver, modification or limitation of the Insurers' reservation of all of their rights, remedies and defenses under the Policies and otherwise, (2) a waiver, modification or limitation of any of the terms or conditions of any Policy or (3) a finding that such sums are due and owing, or in what amount, under the Policies.

9. Except as stated expressly herein, nothing in this Stipulation shall modify the Initial Order or the Second Order.

10. This Stipulation may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of an originally signed

document by facsimile or Adobe.pdf shall be as fully binding on the parties as an original document.

11. Each of the parties to the Stipulation represents and warrants that it has full and requisite power and authority to execute, deliver and perform its obligations under this Stipulation.

12. This Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all parties submit to the jurisdiction of this Court for purposes of implementing and enforcing this Stipulation.

13. The parties stipulate to the waiver of the 14-day stay pursuant to Fed. R. Bankr. Proc. 4001(a).

[The rest of this page is left intentionally blank]

Dated: _____, 2014
New York, New York

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/s/ **[DRAFT]**
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Counsel for the SIPA Trustee

IT IS HEREBY ORDERED this _____ day of _____, 2014.

_____
JUDGE MARTIN GLENN

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: MF GLOBAL HOLDINGS, LTD., *et al.*, Debtors.	Chapter 11 Case No. 11-15059 (MG) Jointly Administered
In re: MF GLOBAL Inc., Debtors.	Case No. 11-2790 (MG) SIPA

STIPULATION AND ORDER TO LIFT THE AUTOMATIC STAY TO PERMIT PAYMENTS OF DEFENSE COSTS UNDER ~~CERTAIN INSURANCE POLICIES~~ CERTAIN INSURANCE POLICIES UP TO AN AGGREGATE OF $55 MILLION

This stipulation (the "**Stipulation**") is entered into by and between James W. Giddens, Trustee for the SIPA Liquidation of MF Global, Inc. (the "**Trustee**"), the Plan Administrator for MF Global Holdings, Ltd. (the "**Plan Administrator**"), MFG Assurance Company Limited, U.S. Specialty Insurance Company, ~~and~~ XL Specialty Insurance Company, Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan, Edith O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp. MFG Assurance Company, U.S. Specialty Insurance Company, and XL Specialty Insurance Company are collectively referred to as the "**Insurers**." Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan,

Edith O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp are collectively referred to as the "**Insureds**." This Stipulation is based on the following facts and circumstances:

WHEREAS, by order dated April 25, 2012 (the "**Initial Order**" – ECF Docket No. 652), this Court modified the automatic stay under 11 U.S.C. § 362(a), to the extent applicable, to permit MFG Assurance Company and U.S. Specialty Insurance Company (the "**Initial Insurers**") to advance and/or make payments under certain insurance policies for defense costs incurred by insured individuals in connection with pending lawsuits, investigations and disputes, as well as any additional matters that may arise in the future, subject to the Initial Insurers' determination that such matters are potentially covered under the respective insurance policies and subject to the reservation of rights issued in respect of any claims;

WHEREAS, pursuant to the Initial Order, MFG Assurance Company Limited was authorized to make payments under a tower of professional liability policies issued by it to MF Global Holdings Ltd. for the period May 31, 2011 to May 31, 2012 (the **"E&O Policies**")[1] and U.S. Specialty Insurance Company was authorized to make payments under Directors, Officers, and Corporate Liability Insurance Policy No. 14-MGU-11-A23947 (the **"US Specialty Policy")** and Fiduciary Liability Insurance Policy No. 14-MGU-11-A23948, both issued for the period May 31, 2011 to May 31, 2012 (together with the US Specialty Policy, the **"USSIC Policies"**);

WHEREAS, the Initial Order subjected the aggregate payments permitted under the USSIC and E&O Policies to a "soft cap" of $30 million, which could be further adjusted either by agreement among the ~~SIPA~~ Trustee, the ~~Chapter~~then-Chapter 11 Trustee for MF Global Holdings, Ltd., and the Initial Insurers, or by further order of this Court;

[1] The E&O Policies bear the policy numbers, 1-18001-00-11, 1-18002-00-11, 18003-00-11, 1-18004-00-11, 1-18005-00-11, 1-18005-01-11, 1-18006-00-11, 1-18009-00-11, 1-18010-00-11, 1-18011-00-11, 1-18011-01-11, and 1-18012-00-11.

WHEREAS, 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. was filed with this Court on April 1, 2013 (as amended, supplemented or modified from time to time, the "**Plan**") and confirmed pursuant to an order of the Court entered on April 5, 2013 (the "**Confirmation Order**"), except with respect to certain Plan modifications, which were approved by order of this Court entered on May 2, 2013 (together with the Confirmation Order, the "**Plan Confirmation Order"**);

WHEREAS, the Plan and the Plan Confirmation Order provide for the establishment of the Plan Administrator, as defined in the Plan, with duties and responsibilities as set forth in the Plan; and

WHEREAS, this Court's May 30, 2014 Order (ECF Docket No. 1901) (the "**Second Order**") recognized that the Plan Administrator now acts on behalf of MF Global Holdings Ltd. in connection with the instant matter and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order recognized that XL Specialty Insurance Company had issued Excess Policy No. ELU121502-11 (the "**XL Specialty Policy**" and with the USSIC Policies, the "**D&O Policies**") in excess of the U.S. Specialty Policy, and that XL Specialty Insurance Company would be potentially implicated by the resulting increase in the "soft cap," and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order increased the initial "soft cap" to $40 million plus an additional $3.8 million to pay for defense costs incurred by individual insureds who never were or no longer are defendants in any litigation, resulting in a total "soft cap" of $43.8 million,

which could be further adjusted either by agreement among the ~~SIPA~~ Trustee, the Plan Administrator, and the Insurers, or by further order of this Court;

WHEREAS, ~~certain individual insureds filed a~~on July 25, 2014, the Insureds filed the *Motion of the Individual Insureds to Lift Automatic Stay and Modify Plan Injunction as to Proceeds of Certain MF Global Policies of Directors and Officers' Liability Insurance* (the "**Motion for Relief from Stay** ~~on July 25/2014 (~~" – ECF Docket No. 1956), certain parties objected to such Motion for Relief from Stay (ECF Docket Nos. 1964, 1965, 1966) on August 14, 2014, ~~such individual insureds~~the Insureds filed a Reply to Motion on August 19, 2014, and this Court scheduled a hearing on the Motion for Relief from Stay for August 21, 2014; and

WHEREAS, this Court, when conducting the August 21, 2014 hearing on the Motion for Relief from Stay for, heard ~~that the defense costs incurred by the individual insureds and submitted for payment~~argument on the Motion for Relief from Stay and reserved ruling, but in the interim after being advised by the Insurers ~~now exceed the $43.8~~that invoices totaling approximately $4 million in excess of the "soft cap~~,~~" ~~and requested that~~of $43.8 million had already been submitted to the Insurers for payment, the Court directed the parties to ~~the Initial Order present a stipulation for approval~~enter into a stipulated order that further increases the "soft cap" to $55 million ~~pursuant to the same terms and conditions in the Initial Order~~, with all parties reserving rights.

NOW, THEREFORE in consideration of the foregoing and the mutual promises set forth below, and subject to approval by this Court, the parties to the Stipulation agree as follows:

1. The "soft cap" shall be increased, such that the total amount of payments permitted for defense costs and indemnity under the E&O Policies and the D&O Policies

(collectively, the **"Policies"**), including all such payments made under the Policies to date, shall be increased to $55 million.

2. All invoices submitted by individual insureds shall continue to be carefully monitored and reviewed by the Insurers prior to making any payments.

3. Nothing herein shall prejudice the current or future position of the ~~SIPA~~ Trustee, the Plan Administrator, the Insurers ~~or~~, the Insureds or any individual insureds, and the parties reserve all rights, with respect to (i) the lifting or modifying of the "soft cap"; (ii) the allocation of defense costs as between the D&O Policies and the E&O Policies and all applicable excess policies; (iii) the appropriateness of any obligation on the Insurers or restriction on the operation of any one or more of the Policies; ~~or~~ (iv) the appropriateness of any other obligation on the Insurers or restriction on the operation of the Policies; or (v) the appropriateness of any payments by the Insurers or requests for payment by the Insureds or any individual insureds.

4. Further adjustments, if any, to the "soft cap" shall be made only by agreement among the ~~SIPA~~ Trustee, the Plan Administrator, and the Insurers, or by further order of this Court.

5. Nothing herein shall constitute an admission by the ~~SIPA~~ Trustee, the Plan Administrator ~~or~~, the Insurers or the Insureds that the proceeds of the Policies are or are not property of the debtors' estates.

6. Upon the advancement and/or payment of any defense costs pursuant to the Policies~~, but no more frequently than on a monthly basis~~, each Insurer shall provide written notice to (a) counsel for the Plan Administrator, (b) counsel for the ~~SIPA~~ Trustee, ~~and~~ (c) counsel to the other Insurers ((a), (b) and (c) collectively, "**Parties Receiving Notice**") and (d) the Court, reporting (i) the total amount that has been advanced or paid by the reporting Insurer

under its Policies during that reporting period; (ii) the total amount advanced to date under each of its Policies; and (iii) the remaining available limits under its Policies. Simultaneously with the submission of invoices by the Insureds to the Insurers for advancement and/or payment of any defense costs pursuant to the Policies, the Insureds shall (iv) provide copies of such invoices and any additional submissions requested by the Insurers to this Court for the Court's *in camera* review and (v) provide the Parties Receiving Notice and the Court with the total amount(s) submitted to the Insurers under such invoice(s). Any Party Receiving Notice may lodge objections with the Court as to any invoiced amount, advancement or payment and request the Court's intervention to determine the reasonableness of challenged sums invoiced, advanced or paid. No further disclosure relating to advances or payments under the Policies shall be required without further order of the Court, with respect to which all parties reserve their rights.

7. Any and all such advancements and payments by an Insurer shall reduce the Policies' respective limits of liability, according to the amount paid under each such Policy, in a like amount to the extent permitted under the terms and conditions of such Policy, unless or until such amounts are repaid to the Insurer~~.~~, with all Parties reserving rights as to the appropriateness of such payments including without limitation the right to (i) seek reimbursement of any or all sums improperly advanced or paid from the insured(s) on whose behalf such improper advance or payment has been made or (ii) take action for wrongful depletion of the Policies.

8. Nothing in this Stipulation shall constitute (1) a waiver, modification or limitation of the Insurers' reservation of all of their rights, remedies and defenses under the Policies and otherwise, (2) a waiver, modification or limitation of any of the terms or conditions of any Policy or (3) a finding that such sums are due and owing, or in what amount, under the Policies.

9. Except as stated expressly herein, nothing in this Stipulation shall modify the Initial Order or the Second Order.

10. This Stipulation may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of an originally signed document by facsimile or Adobe.pdf shall be as fully binding on the parties as an original document.

11. Each of the parties to the Stipulation represents and warrants that it has full and requisite power and authority to execute, deliver and perform its obligations under this Stipulation.

12. This Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all parties submit to the jurisdiction of this Court for purposes of implementing and enforcing this Stipulation.

13. The parties stipulate to the waiver of the 14-day stay pursuant to Fed. R. Bankr. Proc. 4001(a).

[The rest of this page is left intentionally blank]

~~Dated: August __, 2014~~

Dated: _____, 2014
New York, New York

/s/ **[DRAFT]**
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/s/ **[DRAFT]**
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Counsel for Vinay Mahajan

/s/ **[DRAFT]**
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Counsel for Henri Steenkamp

~~Stephen Doody~~
~~ALLEN & OVERY LLP~~
~~1221 Avenue of the Americas~~
~~New York, NY 10020~~

~~*Attorneys for MFG Assurance Company*~~

/s/ **[DRAFT]**
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~~Tysons Corner~~McLean, VA ~~22182~~22102

~~*Attorneys*~~*Counsel for U.S. Specialty Insurance Company and XL Specialty Insurance Company*

/s/ **[DRAFT]**
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Scott J. Greenberg
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Fax: 212-755-7306

Counsel for MF Global Holdings, Ltd., as Plan Administrator

~~[ ]~~
~~JONES DAY~~
~~555 South Flower Street, 50th Floor~~
~~Los Angeles, CA 90071-2300~~

~~*Attorneys for the Plan Administrator*~~

/s/ **[DRAFT]**
James B. Kobak, Jr.
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One Battery Park Plaza
New York, NY 10004

_

/s/ **[DRAFT]**
Stephen Doody

~~[~~ ~~]~~
~~HUGHES HUBBARD & REED~~ALLEN & OVERY LLP
~~One Battery Park Plaza~~
1221 Avenue of the Americas
New York, NY ~~10004~~10020

Counsel for MFG Assurance Company

~~*Attorneys for the SIPA Trustee*~~

Counsel for the SIPA Trustee

IT IS HEREBY ORDERED this _____ day of _____, 2014.

~~JUDGE MARTIN GLENN~~

~~C:\Users\Jp377478\AppData\Local\Interwoven\NRPortbl\NYI\JP377478\4606939_4.DOCX~~

JUDGE MARTIN GLENN

Summary report: **Litéra® Change-Pro TDC 7.5.0.96 Document comparison done on 8/26/2014 4:23:09 PM**	
Style name: JD Color	
Intelligent Table Comparison: Inactive	
Original DMS:iw://NYI/NYI/4606939/4	
Modified DMS: iw://NYI/NYI/4606939/6	
Changes:	
Add	40
~~Delete~~	42
~~Move From~~	0
Move To	0
Table Insert	2
~~Table Delete~~	1
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	85

EXHIBIT 2

Subject: Re: MF Global - Edits to Soft Cap Order

From: Justin F Carroll
Extension: 7-3708

08/27/2014 03:06 PM

To: Stephen.Doody
Cc: Meredith.Werner, smithd, Jane Rue Wittstein

Stephen,

Sorry I didn't get a chance to return your calls today before you hopped on the plane. On you two points below - As the insureds were the movants (and are the real parties in interest w/r/t the soft cap), we think they are necessary parties to this stipulation and an integral part to a reporting regime that actually works. The Court also said everyone would "reserve their rights" in the stip, and we think that "everyone" includes the insureds/movants. On reporting generally, I believe there were references in the transcript that the current reporting regime wasn't working. Prior to offering the $55 million soft cap number, Bruce said that a new soft cap number would depend on real time reporting. The edits to the reporting were intended to create a real time reporting mechanism and avoid reporting delays.

CCing Jane here as well, who is a bit closer to the issue and attended last week's hearing (I was on vacation). Please let us know if you have any questions or would like to discuss further.

Justin

Justin Carroll
Associate
JONES DAY® - One Firm Worldwide℠
222 E 41st Street
New York, NY 10017
T: +1.212.326.3708
F: +1.212.755.7306
jfcarroll@jonesday.com

Justin, The purpose of my calls today was to ask... 08/27/2014 01:48:23 PM

From: <Stephen.Doody@AllenOvery.com>
To: <jfcarroll@jonesday.com>,
Cc: <smithd@hugheshubbard.com>, <Meredith.Werner@troutmansanders.com>
Date: 08/27/2014 01:48 PM
Subject: Re: MF Global - Edits to Soft Cap Order

Justin,
The purpose of my calls today was to ask about your intent for the proposed stipulation that Judge Glenn required to be put before him to be "So Ordered." Based on his instructions to adhere to the terms of prior soft cap orders, we intended that the draft we sent you would follow the prior two as fully as possible. Leaving aside the wordsmithing, we note that your draft added new parties (select individual insureds) and new reporting terms (which we understood would be addressed in the promised written decision). Please let us know if you require that the current order be expanded from the prior orders' terms as a condition of the Debtors' execution.
Regards.

From: Justin F Carroll [mailto:jfcarroll@jonesday.com]
Sent: Tuesday, August 26, 2014 05:40 PM Eastern Standard Time
To: Doody, Stephen:BK (NY); meredith.werner@troutmansanders.com

<meredith.werner@troutmansanders.com>; leslie.ahari@troutmansanders.com <leslie.ahari@troutmansanders.com>; jonathan.streeter@dechert.com <jonathan.streeter@dechert.com>; aaufses@kramerlevin.com <aaufses@kramerlevin.com>; lsteinberg@sandw.com <lsteinberg@sandw.com>; edmund.polubinski@davispolk.com <edmund.polubinski@davispolk.com>; cjb@willmont.com <cjb@willmont.com>; rhotz@akingump.com <rhotz@akingump.com>; nbinder@binderschwartz.com <nbinder@binderschwartz.com>; gjo@dorlaw.com <gjo@dorlaw.com>
Cc: Bruce Bennett <bbennett@jonesday.com>; Scott Greenberg <sgreenberg@jonesday.com>; Jane Rue Wittstein <jruewittstein@JonesDay.com>; smithd@hugheshubbard.com <smithd@hugheshubbard.com>; hayes@HughesHubbard.COM <hayes@HughesHubbard.COM>
Subject: MF Global - Edits to Soft Cap Order

All,

Please find attached a clean and blackline version of the order increasing the "soft cap" to $55 million, which reflects MFGH's and the Trustee's comments to the proposed order sent by Stephen to Dustin last week. Let us know if you'd like to discuss, thanks.

Justin

Justin Carroll
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http://www.allenovery.com

EXHIBIT 3

Subject:
proposed revised stipulation for your consideration
From:
Hayes, Vilia B.
09/03/2014 11:05 AM
To:
Stephen Doody (stephen.doody@allenovery.com) (stephen.doody@allenovery.com), Ahari, Leslie S. (Leslie.Ahari@troutmansanders.com), 'Werner, Meredith E.', Justin F. Carroll (jfcarroll@jonesday.com) (jfcarroll@jonesday.com), Jane Rue Wittstein (jruewittstein@JonesDay.com)
Hide Details
From: "Hayes, Vilia B." <hayes@HughesHubbard.COM> Sort List...
To: "Stephen Doody (stephen.doody@allenovery.com) (stephen.doody@allenovery.com)" <stephen.doody@allenovery.com>, "Ahari, Leslie S. (Leslie.Ahari@troutmansanders.com)" <Leslie.Ahari@troutmansanders.com>, "'Werner, Meredith E.'" <Meredith.Werner@troutmansanders.com>, "Justin F. Carroll (jfcarroll@jonesday.com) (jfcarroll@jonesday.com)" <jfcarroll@jonesday.com>, "Jane Rue Wittstein (jruewittstein@JonesDay.com)" <jruewittstein@JonesDay.com>,
History: This message has been forwarded.

1 Attachment

64759964_1.docx

I have taken the stipulation circulated by Holdings and am proposing some revisions regarding the reporting to see if this could be the basis for a compromise. Please review and let me know your thoughts.

Hughes Hubbard

Vilia B. Hayes | *Partner*
Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office 212-837-6839 | Cell 646-709-1427 | Fax 212-299-6839
hayes@hugheshubbard.com

DRAFT
9/2/14

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: MF GLOBAL HOLDINGS, LTD., *et al.*, Debtors.	Chapter 11 Case No. 11-15059 (MG) Jointly Administered
In re: MF GLOBAL Inc., Debtors.	Case No. 11-2790 (MG) SIPA

STIPULATION AND ORDER TO LIFT THE AUTOMATIC STAY TO PERMIT PAYMENTS OF DEFENSE COSTS UNDER CERTAIN INSURANCE POLICIES UP TO AN AGGREGATE OF $55 MILLION

This stipulation (the "**Stipulation**") is entered into by and between James W. Giddens, Trustee for the SIPA Liquidation of MF Global, Inc. (the "**Trustee**"), the Plan Administrator for MF Global Holdings, Ltd. (the "**Plan Administrator**"), MFG Assurance Company Limited, U.S. Specialty Insurance Company, XL Specialty Insurance Company, Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan, Edith O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp. MFG Assurance Company, U.S. Specialty Insurance Company, and XL Specialty Insurance Company are collectively referred to as the "**Insurers**." Bradley I. Abelow, David P. Bolger, Jon S. Corzine, David Dunne, Eileen S. Fusco, David Gelber, Martin J.G. Glynn, Edward L. Goldberg, John R. MacDonald, Vinay Mahajan, Edith

O'Brien, David I. Schamis, Robert S. Sloan and Henri Steenkamp are collectively referred to as the "**Insureds**." This Stipulation is based on the following facts and circumstances:

WHEREAS, by order dated April 25, 2012 (the "**Initial Order**" – ECF Docket No. 652), this Court modified the automatic stay under 11 U.S.C. § 362(a), to the extent applicable, to permit MFG Assurance Company and U.S. Specialty Insurance Company (the "**Initial Insurers**") to advance and/or make payments under certain insurance policies for defense costs incurred by insured individuals in connection with pending lawsuits, investigations and disputes, as well as any additional matters that may arise in the future, subject to the Initial Insurers' determination that such matters are potentially covered under the respective insurance policies and subject to the reservation of rights issued in respect of any claims;

WHEREAS, pursuant to the Initial Order, MFG Assurance Company Limited was authorized to make payments under a tower of professional liability policies issued by it to MF Global Holdings Ltd. for the period May 31, 2011 to May 31, 2012 (the **"E&O Policies**")[1] and U.S. Specialty Insurance Company was authorized to make payments under Directors, Officers, and Corporate Liability Insurance Policy No. 14-MGU-11-A23947 (the **"US Specialty Policy")** and Fiduciary Liability Insurance Policy No. 14-MGU-11-A23948, both issued for the period May 31, 2011 to May 31, 2012 (together with the US Specialty Policy, the **"USSIC Policies"**);

WHEREAS, the Initial Order subjected the aggregate payments permitted under the USSIC and E&O Policies to a "soft cap" of $30 million, which could be further adjusted either by agreement among the Trustee, the then-Chapter 11 Trustee for MF Global Holdings, Ltd., and the Initial Insurers, or by further order of this Court;

---

[1] The E&O Policies bear the policy numbers, 1-18001-00-11, 1-18002-00-11, 18003-00-11, 1-18004-00-11, 1-18005-00-11, 1-18005-01-11, 1-18006-00-11, 1-18009-00-11, 1-18010-00-11, 1-18011-00-11, 1-18011-01-11, and 1-18012-00-11.

WHEREAS, 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. was filed with this Court on April 1, 2013 (as amended, supplemented or modified from time to time, the "**Plan**") and confirmed pursuant to an order of the Court entered on April 5, 2013 (the "**Confirmation Order**"), except with respect to certain Plan modifications, which were approved by order of this Court entered on May 2, 2013 (together with the Confirmation Order, the "**Plan Confirmation Order"**);

WHEREAS, the Plan and the Plan Confirmation Order provide for the establishment of the Plan Administrator, as defined in the Plan, with duties and responsibilities as set forth in the Plan; and

WHEREAS, this Court's May 30, 2014 Order (ECF Docket No. 1901) (the "**Second Order**") recognized that the Plan Administrator now acts on behalf of MF Global Holdings Ltd. in connection with the instant matter and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order recognized that XL Specialty Insurance Company had issued Excess Policy No. ELU121502-11 (the "**XL Specialty Policy**" and with the USSIC Policies, the "**D&O Policies**") in excess of the U.S. Specialty Policy, and that XL Specialty Insurance Company would be potentially implicated by the resulting increase in the "soft cap," and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order increased the initial "soft cap" to $40 million plus an additional $3.8 million to pay for defense costs incurred by individual insureds who never were or no longer are defendants in any litigation, resulting in a total "soft cap" of $43.8 million,

which could be further adjusted either by agreement among the Trustee, the Plan Administrator, and the Insurers, or by further order of this Court;

WHEREAS, on July 25, 2014, the Insureds filed the *Motion of the Individual Insureds to Lift Automatic Stay and Modify Plan Injunction as to Proceeds of Certain MF Global Policies of Directors and Officers' Liability Insurance* (the "**Motion for Relief from Stay**" – ECF Docket No. 1956), certain parties objected to such Motion for Relief from Stay (ECF Docket Nos. 1964, 1965, 1966) on August 14, 2014, the Insureds filed a Reply to Motion on August 19, 2014, and this Court scheduled a hearing on the Motion for Relief from Stay for August 21, 2014; and

WHEREAS, this Court, when conducting the August 21, 2014 hearing on the Motion for Relief from Stay for, heard argument on the Motion for Relief from Stay and reserved ruling, but in the interim after being advised by the Insurers that invoices totaling approximately $4 million in excess of the "soft cap" of $43.8 million had already been submitted to the Insurers for payment, the Court directed the parties to enter into a stipulated order that further increases the "soft cap" to $55 million, with all parties reserving rights.

NOW, THEREFORE in consideration of the foregoing and the mutual promises set forth below, and subject to approval by this Court, the parties to the Stipulation agree as follows:

1. The "soft cap" shall be increased, such that the total amount of payments permitted for defense costs and indemnity under the E&O Policies and the D&O Policies (collectively, the **"Policies"**), including all such payments made under the Policies to date, shall be increased to $55 million.

2. All invoices submitted by individual insureds shall continue to be carefully monitored and reviewed by the Insurers prior to making any payments.

3. Nothing herein shall prejudice the current or future position of the Trustee, the Plan Administrator, the Insurers, the Insureds or any individual insureds, and the parties reserve all rights, with respect to (i) the lifting or modifying of the "soft cap"; (ii) the allocation of defense costs as between the D&O Policies and the E&O Policies and all applicable excess policies; (iii) the appropriateness of any obligation on the Insurers or restriction on the operation of any one or more of the Policies; (iv) the appropriateness of any other obligation on the Insurers or restriction on the operation of the Policies; or (v) the appropriateness of any payments by the Insurers or requests for payment by the Insureds or any individual insureds.

4. Further adjustments, if any, to the "soft cap" shall be made only by agreement among the Trustee, the Plan Administrator, and the Insurers, or by further order of this Court.

5. Nothing herein shall constitute an admission by the Trustee, the Plan Administrator, the Insurers or the Insureds that the proceeds of the Policies are or are not property of the debtors' estates.

6. On or before the 15th day of each month, ~~Upon the advancement and/or payment of any defense costs pursuant to the Policies,~~ each Insurer shall provide written notice to (a) counsel for the Plan Administrator, (b) counsel for the Trustee, (c) counsel to the other Insurers, and (d) the Court (collectively, "**Parties Receiving Notice**") reporting (i) the total amount of invoices received and the total amount that has been advanced or paid by the reporting Insurer for defense costs under its Policies during the prior calendar month~~that reporting period~~; (ii) the total amount advanced to date under each of its Policies; and (iii) the remaining available limits under its Policies. ~~Simultaneously with the submission of invoices by the Insureds to the Insurers for advancement and/or payment of any defense costs pursuant to the Policies, the Insureds shall (iv) provide the Parties Receiving Notice and the Court with the total amount(s)~~

~~submitted to the Insurers under such invoice(s). The Plan Administrator shall compile all of the information received pursuant to (i) – (iv) of this paragraph into a report that shall be submitted to the Court on a monthly basis.~~ Any Party Receiving Notice may lodge objections with the Court as to any invoiced amount, advancement or payment and request the Court's intervention to determine the reasonableness of challenged sums invoiced, advanced or paid. Upon request by the Court, the~~Unless otherwise instructed by the Court~~, the Insurerers~~ds~~ shall provide to the Court for the Court's *in camera* review ~~by the 10th of each month~~ copies of all invoices submitted to the Insurers and any additional submissions requested by the Insurers during the previous calendar month. No further disclosure relating to advances or payments under the Policies shall be required without further order of the Court, with respect to which all parties reserve their rights.

7. Any and all such advancements and payments by an Insurer shall reduce the Policies' respective limits of liability, according to the amount paid under each such Policy, in a like amount to the extent permitted under the terms and conditions of such Policy, unless or until such amounts are repaid to the Insurer, with all Parties reserving rights as to the appropriateness of such payments including without limitation the right to (i) seek reimbursement of any or all sums improperly advanced or paid from the insured(s) on whose behalf such improper advance or payment has been made or (ii) take action for wrongful depletion of the Policies.

8. Nothing in this Stipulation shall constitute (1) a waiver, modification or limitation of the Insurers' reservation of all of their rights, remedies and defenses under the Policies and otherwise, (2) a waiver, modification or limitation of any of the terms or conditions of any Policy or (3) a finding that such sums are due and owing, or in what amount, under the Policies.

9. Except as stated expressly herein, nothing in this Stipulation shall modify the Initial Order or the Second Order.

10. This Stipulation may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of an originally signed document by facsimile or Adobe.pdf shall be as fully binding on the parties as an original document.

11. Each of the parties to the Stipulation represents and warrants that it has full and requisite power and authority to execute, deliver and perform its obligations under this Stipulation.

12. This Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all parties submit to the jurisdiction of this Court for purposes of implementing and enforcing this Stipulation.

13. The parties stipulate to the waiver of the 14-day stay pursuant to Fed. R. Bankr. Proc. 4001(a).

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Dated: _____, 2014
New York, New York

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IT IS HEREBY ORDERED this _____ day of _____, 2014.

_____
JUDGE MARTIN GLENN