KAUFMAN BORGEEST & RYAN LLP
120 Broadway, 14th Floor
New York, New York 10271
Phone: (914) 449-1000
Fax: (914) 449-1100
Attorneys for Illinois National Insurance Company and New Hampshire Insurance Company

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

PRELIMINARY RESPONSE TO ESTATE MOVANTS' VARIOUS RECENT PLEADINGS SEEKING A JOINT HEARING, RECONSIDERATION, *SUA SPONTE* ACTION, AND OTHER EXTRAORDINARY RELIEF

The undersigned counsel to Illinois National Insurance Company ("Illinois National") and New Hampshire Insurance Company ("New Hampshire") (collectively "AIG")[1] writes in response to the various recent motions and filings by counsel to the Litigation Trustee, the Plan Administrator, the Customer Representative Class, and the MFGI Assigned Claim (collectively, the "Movants"). We write to advise the Court[2] that the proposed agreement to address remaining litigation (the "Proposed Agreement") revealed in the recent filings by the Movants should have

[1] Illinois National and New Hampshire collectively paid $25m of the $75m securities class action settlement and New Hampshire has a $5m participation on the $25m IDL layer. Illinois National issued a $10m excess $75m A/B/C D&O policy; New Hampshire issued a $15m part of $35m excess of $90m A/B/C D&O policy; and New Hampshire also issued a $5m part of $15m excess $200m IDL D&O policy. Illinois National and New Hampshire are also among the reinsurers of MFGA on the E&O tower.

[2] AIG is a defendant in the Adversary Action, 15-01362-MG, and is not before any other Court in these matters. Nevertheless, we will be providing courtesy copies of this filing to Judge Marrero and Magistrate Judge Francis in the District Court.

zero effect on the Securities Class Action Settlement that received final approval by the District Court on Wednesday, November 25,[3] or the existing and fully performed funding agreement for the Securities Class Action Settlement. The terms of the Proposed Agreement – terms which are conspicuously absent from any of the Movants' filings – do not overlap, or conflict, with the fully funded Securities Class Action Settlement, and the Securities Class Action Settlement is not part of the Proposed Agreement. In fact, the Proposed Agreement can be funded without touching either the funds in escrow for the Securities Class Action Settlement or the $25 million IDL limits that remain in place to protect the independent directors.

The Movants depict a sense of urgency in their papers that does not exist. *Sua sponte* relief in the form of reconsideration or outright withdrawal of final approval of the Securities Class Action Settlement is completely unwarranted and would be disastrous to the Securities Class Action Settlement. (It should be noted that Mr. Corzine – a defendant in all litigation – did not join in the request for any relief in connection with the Securities Class Action Settlement.) There is nothing to prevent the Securities Class Action Settlement from reaching its "Effective Date" in the due course, while the Proposed Agreement undergoes an orderly and procedurally proper notice and approval process. Given the publically undisclosed terms of the Proposed Agreement, the Movants lack any reasonable basis to seek extraordinary or expedited relief from the Court.

The Litigation Trustee and Plan Administrator have previously asserted that they have no objection to the Securities Class Action Settlement other than the fact that they wish it had been funded by insurance under which they have no rights. There is no good faith argument they can advance that the $25 million in IDL coverage should have funded the Securities Class Action

[3] *DeAngelis v. Corzine*, Civil Action No. 1:11-CV-07866-VM (S.D.N.Y. November 25, 2015) Doc. 1030.

Settlement, and there is certainly no argument that can be advanced that the $25 million in IDL coverage should fund the Proposed Agreement (addressing remaining litigation where none of the Insureds under the IDL policies are named as defendants).

The District Court has already held that, "[t]he Plan Administrator is incorrect that the MF Global Estate holds any rights to the proceeds of the D&O insurance policies used to fund the Proposed [Securities Class Action] Settlement." *DeAngelis v. Corzine*, Civil Action No. 1:11-CV-07866-VM (S.D.N.Y. November 25, 2015) Doc. 1027. The District Court further held in connection with granting final approval of the Securities Class Action Settlement:

> In any circumstance, the $25 million of independent director-only insurance proceeds have never been property of the MF Global estate, and the Plan Administrator has no right to the proceeds of that policy. The Plan Administrator's assertion that final approval of the Proposed Settlement erases a potential source of recovery for estate claimants does not change the fact that "MFGI and MFGH do not have a property interest in the D&O proceeds." *In re MF Glob. Holdings Ltd.*, 515 B.R. at 207.
>
> The Plan Administrator will sustain no formal legal prejudice as a result of final approval of the Proposed Settlement, because it does not have a legal interest in the D&O insurance proceeds and therefore will lose no "legal claim . cause of action . [or] contract rights" if the settlement, funded by the agreed-upon insurance proceeds, is finalized. *See Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv- 0118, 2015 WL 5547233, at *2 (S.D.N.Y. Sept. 15, 2015) (citing *Bhatia*, 756 F.3d at 218).

Id. at p. 12-3.

Accordingly, the Movants have absolutely no cognizable claim in connection with the funding of the Securities Class Action Settlement. It appears that their filings merely serve to further deplete the available insurance limits that might otherwise respond to the Proposed Agreement, to unjustifiably attempt to delay or avoid the "Effective Date" of the Securities Class Action Settlement through scorched-earth litigation tactics, and to advance scurrilous and

completely unfounded allegations against insurers.[4] The Court should not countenance such behavior.

It is our understanding that other parties will be filing orderly responses to the Movants' pleadings in keeping with the timing provided for in the applicable procedural rules, and AIG requests leave to further respond, as appropriate, in the normal course.

Dated: New York, New York
December 1, 2015

By: _____

Robert A. Benjamin
Joshua DiLena
Kaufman Borgeest & Ryan, LLP
120 Broadway, 14th Floor
New York, New York 10271
Phone: (914) 449-1000
Fax: (914) 449-1100
rbenjamin@kbrlaw.com
jdilena@kbrlaw.com

Attorneys for Illinois National Insurance Company and New Hampshire Insurance Company

[4] For the avoidance of any doubt, AIG categorically denies each and every allegation made in the Movants' pleadings, including but not limited to the defamatory allegations found in footnote 13 of their Thanksgiving-eve brief – which appear to have been drafted out of whole cloth. *DeAngelis v. Corzine*, Civil Action No. 1:11-CV-07866-VM (S.D.N.Y. November 25, 2015) Doc. 1028, at p. 9.