Hearing Date and Time: March 6, 2012 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: February 28, 2012 at 4:00 p.m. (Prevailing Eastern Time)

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In re	Chapter 11
MF GLOBAL HOLDINGS LTD., *et al.*,	Case No. 11-15059 (MG)
Debtors.	(Jointly Administered)
ADAM FURGATCH Movant, -against-	
STATUTORY CREDITORS' COMMITTEE OF MF GLOBAL HOLDINGS LTD., *et al.*, Respondents.	

OBJECTION OF STATUTORY CREDITORS' COMMITTEE OF MF GLOBAL HOLDINGS LTD., *ET AL.* TO MOTION TO DIRECT DEBTORS' ESTATE TO BE ADMINISTERED PURSUANT TO 11 U.S.C. §§ 523 AND 507

The statutory creditors' committee appointed in the chapter 11 cases of MF Global Holdings Ltd. ("MFGH"), *et al.* (the "Committee" of the "Chapter 11 Debtors," respectively), submits this objection (the "Objection") to the *Motion to Direct the Debtors' Estate to be Administered Pursuant to 11 U.S. C.* [*sic*] *§ 523 and 11 U.S.C. § 507*, filed February 6, 2012,

[ECF No. 424] (the "Motion"), by Adam Furgatch (the "Movant"). In support of its Objection, the Committee states as follows:

SUMMARY OF ARGUMENT

1. Movant requests these chapter 11 cases be administered for the benefit of the former commodity customers of MF Global Inc. ("MFGI"), with MFGH[1] "immediately" obligated to make "child support" payments required of "individual" debtors pursuant to section 523(a)(5) of title 11, United States Code (the "Bankruptcy Code") for the "on-going support and welfare" of its subsidiary MFGI. Motion, at p. 7.

2. The Motion is both procedurally and substantively defective. Movant was required to proceed by complaint pursuant to Rules 7001(6), (7), (8), and (9) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and his failure to commence an adversary proceeding is reason enough to dismiss the Motion.

3. Furthermore, the Motion rests on a fatally flawed premise: that the Bankruptcy Code's definition of "person," which includes "corporation" and "individual," renders Bankruptcy Code section 523(a)(5) applicable to corporations.[2] Movant's premise is unsupported by logic and expressly refuted by section 523(a)(5), which provides a "discharge . . . does not discharge an *individual debtor* from any debt . . . for a domestic support obligation" (emphasis supplied). Congress' intentional use of "individual debtor" expressly negates the

[1] Movant is inexact from which debtor or debtors he seeks the requested relief. Movant both argues that Bankruptcy Code sections 523 and 507 should apply to MFGH, with MFGH required to make "child support" payments, while also seeking "an expedited order directing the Debtor-in-Possession, their non-debtor subsidiaries and affiliates of the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 507." Motion, at pp. 2, 9. Ultimately, Movants' lack of specificity is inconsequential since none of the Chapter 11 Debtors are "individuals" and, therefore, cannot have "domestic support obligations" within the meanings of Bankruptcy Code sections 523 and 507.

[2] While the definition of "person" includes a "corporation" and an "individual," "individual" does not include a "corporation." *See* 11 U.S.C. § 101(41) ("The term 'person' includes individual, partnership, and corporation . . .").

applicability of section 523(a)(5) to corporate debtors. *Maritime Asbestosis Legal Clinic v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 920 F.2d 183, 184-185 (2d Cir. 1990) (in the Bankruptcy Code "Congress used the word 'individual' . . . to mean a natural person."). If, as Movant contends, a corporation can be an "individual," that would mean corporations (and their spouses!) are eligible to be chapter 13 debtors. *See* 11 U.S.C. § 109(e).[3]

4. Even if section 523(a)(5) applied to the corporate debtor MFGH, Movant has not identified any "domestic support obligation . . . in the nature of alimony, maintenance, or support"[4] owed by MFGH which could be nondischargeable. Undaunted and uninhibited by the facts or the law, Movant claims MFGH owes an unidentified "domestic support obligation" on

[3] Bankruptcy Code section 109(e) provides:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $360,475 and noncontingent, liquidated, secured debts of less than $1,081,400, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $360,475 and noncontingent, liquidated, secured debts of less than $1,081,400 may be a debtor under chapter 13 of this title.

[4] Bankruptcy Code section 101(14A) provides:

> The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—
> (A) owed to or recoverable by—
> (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
> (ii) a governmental unit;
> (B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;
> (C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—
> (i) a separation agreement, divorce decree, or property settlement agreement;
> (ii) an order of a court of record; or
> (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and
> (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

behalf of its "child," MFGI. Movant neither alleges, nor can he show, that MFGH is subject to a viable claim for a "domestic support obligation," as defined in section 101(14A).

5. Lastly, section 523 applies to exclude certain claims from discharge. The statute does not create claims or provide for the allowance of claims. Accordingly, because Movant cannot show the existence of a "domestic support obligation," the nondischargeability of domestic support obligations is irrelevant to these cases.

6. To bootstrap the purported nondischargeable domestic support obligation of MFGH into a first priority claim against MFGH's estate, Movant argues "in the alternative" that "11 U.S.C. § 507 clearly established a first priority rank for MFGI under MF Holdings' domestic support obligations as the parent of MFGI." Motion, at p. 8. While section 507(a)(1)(A) of the Bankruptcy Code provides a first priority claim for "[a]llowed unsecured claims for domestic support obligations . . .," as discussed above, Movant does not allege or show that MFGH is subject to a "domestic support obligation" in the nature of alimony, maintenance, or support.[5] Without the existence of a domestic support obligation, Movant's section 507 priority argument fails.

BACKGROUND

7. On October 31, 2011 the Chapter 11 Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code,[6] and the Securities Investor Protection Corporation commenced an adversary proceeding against MFGI pursuant to the Securities

[5] Not even the SIPA trustee of the MFGI estate has alleged the existence of a claim for any domestic support obligation.

[6] On December 19, 2011, MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Chapter 11 Debtors' cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

Investor Protection Act ("SIPA"). Also on that date, James W. Giddens was appointed as trustee of the estate of MFGI (the "SIPA Trustee") to conduct a liquidation of the securities broker-dealer pursuant to SIPA. To the extent consistent with the provisions of SIPA, the SIPA Trustee is subject to the same duties as a trustee in a case under chapter 7 of the Bankruptcy Code. *See* 15 U.S.C. § 78fff(b); *In re Bernard L. Madoff Inv. Securities LLC*, 445 B.R. 206, 219 n.12 (Bankr. S.D.N.Y. 2011).

8. On November 7, 2011, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the Committee.[7] On November 25, 2011, the U.S. Trustee appointed Louis J. Freeh as chapter 11 trustee (the "Chapter 11 Trustee") and requested Court approval of the Chapter 11 Trustee's appointment. On November 28, 2011, the Court entered an order approving the Chapter 11 Trustee's appointment.[8]

9. On February 6, 2012, Movant filed the Motion, requesting the Court find that MFGH and MFGI:

> [H]ave a parent-child relationship and are subject to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 507, which provide (i) immediate and full recovery of funds, or, in the alternative, (ii) first-ranking priority status in the recovery of MF Holdings' debt owed to commodity customers to the extent of their segregated accounts[9] at MFGI.

[7] The U.S. Trustee designated the following five members to serve on the Committee: (i) Wilmington Trust, National Association, as Indenture Trustee for the (a) 6.250% Notes due August 8, 2016, (b) 3.375% Notes due August 1, 2018, (c) 1.875% Notes due February 1, 2016, and (d) 9% Notes due June 20, 2038; (ii) JP Morgan Chase Bank, N.A., as Agent under the $1,200,875,000 Revolving Credit Facility, dated as of June 15, 2007; (iii) Bank of America, N.A.; (iv) Elliott Management Corporation; and (v) Caplin Systems Ltd.

[8] On December 23, 2011 the U.S. Trustee appointed Mr. Freeh as chapter 11 trustee for MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC, and on December 27, 2011, the Court entered an order approving the appointment.

[9] Movant misunderstands the nature of his account at MFGI. While Commodity Futures Trading Commission Regulation 1.20(a) indeed requires segregation of "customer funds . . . as belonging to . . . commodity or option customers," and the deposit of such funds "under an account name which clearly identifies them as such," the regulations anticipate the creation of omnibus accounts holding segregated positions of multiple customers and permit the pooling of segregated positions for distribution purposes. *See* 17 C.F.R. § 1.20(a). Because it is

Motion, at p. 9.

OBJECTION

10. Movant cannot proceed by motion because the relief he is seeking may only be sought through a complaint.[10] Bankruptcy Rules 7001(6) and 7003 require that a proceeding to determine the dischargeability of a debt be brought by complaint. Bankruptcy Rule 7001(7) provides that a proceeding to obtain equitable relief is an adversary proceeding. The Motion does not request money damages. Instead, it requests that the case be administered in accordance with provisions granting priority treatment and nondischargeability for certain types of obligations (which MFGH does not owe). Bankruptcy Rule 7001(8) provides a proceeding to subordinate a claim is an adversary proceeding. Movant is requesting that a claim be classified as a domestic support obligation so that all other unsecured claims shall be subordinate to it. Bankruptcy Rule 7001(9) provides that a proceeding for declaratory relief is an adversary proceeding. Movant requests a declaration that section 523(a)(5) applies and that there is a domestic support agreement.

11. Ignoring this Court's procedural requirements, Movant begins his Motion by pointing out that MFGH and MFGI are "persons" pursuant to the Bankruptcy Code. Bankruptcy Code section 101(41) provides: "The term 'person' includes individual, partnership, and corporation . . .". 11 U.S.C. § 101(41).

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essentially the "positions" of customers that are segregated, and not their "accounts," Movant's claim of a "segregated account," as if those funds were specifically identifiable property, is inapposite.

[10] Movant must also *have* a claim to seek his requested relief by complaint, so Movant's action is doubly procedurally defective.

12. Movant argues that because "corporations may be treated as individuals," Motion, at p. 5,[11] and the *Declaration of Bradley I. Abelow Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and Various First-Day Applications and Motions* [ECF No. 9] (the "Abelow Declaration"), described the Chapter 11 Debtors as the "parent company" of MFGI, "MF Holdings, as the 'parent' should be subject to the same provisions that govern parent-child support obligations under the Code," Motion, at pp. 5, 7. The Motion further asserts MFGH should be required "under 11 U.S.C. § 523(a)(5) to immediately[12] provide for the support of its child subsidiary, MFGI," Motion, at p. 8. Alternatively, Movant argues that Bankruptcy Code section "507 clearly establishes a first priority rank for MFGI under MF Holdings' domestic support obligations as the parent of MFGI." Motion, at p. 8.[13]

[11] Movant cites 1 U.S.C. § 1 for the proposition that "a legal entity, such as a corporation, shall be treated under the law as a person," and *Santa Clara Co. v. South Pacific R.R. Co.*, 118 U.S. 394 (1886), and *Citizens United v. Fed. Election Comm.*, 558 U.S. __, 130 S. Ct. 867 (2010) for the proposition "that the distinction between corporations and natural persons has significantly narrowed." Motion, at pp. 4-5. Movant's error is his refusal to recognize that while the distinction between corporations and natural persons has narrowed for freedom of speech purposes, nothing prevents Congress from rendering certain statutes applicable to corporations and other statutes applicable to individuals and not corporations. *Citizens United*, a case about the regulation of political speech under the First Amendment, has no bearing on the Bankruptcy Code's drafting of section 523(a)(5) to be applicable only to individual debtors.

[12] Bankruptcy Code section 523(a)(5) does not in any way control the timing, or mandate immediate payment, of a domestic support obligation. It simply provides that a "discharge . . . does not discharge an individual debtor" of certain debts. 11 U.S.C. § 523. Additionally, while the automatic stay imposed by section 362 "does not operate as a stay—(B) of the collection of a domestic support obligation from property that is not property of the estate; [or] (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute," 11 U.S.C. § 362(b), even assuming *arguendo* that MFGH owed a "domestic support obligation" to, or on behalf of, MFGI, Movant fails to allege that MFGH owes a "domestic support obligation" which is exempt from the automatic stay.

[13] Movant also requests the Court "enter an expedited order directing the Debtor-in-Possession, their non-debtor subsidiaries and affiliates of the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 507," Motion, at p. 2, 9. This contains at least three errors. Initially, as discussed above, in requesting that these cases be administered in accordance with provisions granting priority treatment and nondischargeability for certain types of obligations (which MFGH does not owe), Movant is requesting equitable relief, and Bankruptcy Rule 7001(7) provides that a proceeding to obtain equitable relief must be commenced by adversary proceeding. Additionally, following the appointment of the Chapter 11 Trustee, the Chapter 11 Debtors ceased to be debtors in possession. 11 U.S.C. § 1101(1). Finally, Movant cites no authority or jurisdictional predicate allowing the Court to enter an order directing the "administration" of the non-debtor subsidiaries of the Chapter 11 Debtors.

13. Movant packaged at least two errors into his reliance on the Abelow Declaration. First, while the Abelow Declaration states in two places that MFGI was a subsidiary of MFGH, Abelow Declaration, at pp. 11, 13,[14] it also makes clear that MFGH was not the *direct* parent company of MFGI, *see* Abelow Declaration, Exhibit A, at p. 2. MFGI's parent company was MF Global Holdings USA Inc., and MF Global Holdings USA Inc.'s parent company was MFGH. To use Movant's analogy, MFGH is MFGI's "grandparent," and the Bankruptcy Code contains no requirement for grandparents to pay child support. Movant's reliance on the Abelow Declaration's "admission" of MFGH's paternity of MFGI triggering "parent-child support obligations," Motion, at p. 7, is misplaced.

14. Second, even if Mr. Abelow did state that MFGH is the direct parent of MFGI, Movant's assumption that Mr. Abelow's choice of words overrides the Congressional mandate in section 523(a)(5) that it apply only to individuals and not to corporations is plain wrong. Just because MFGH is a "person" pursuant to Bankruptcy Code section 101(41) does not mean that it is an "individual," as that term is used in Bankruptcy Code section 523(a)(5), and subject to nondischargeable "domestic support obligations."

MFGH is Not an "Individual Debtor" Under the Bankruptcy Code

15. Contrary to Movant's assertion, Motion, at pp. 6-7, when the Bankruptcy Code refers to an "individual debtor," it means a human being. As Movant notes, Bankruptcy Code section 101(41) defines a "person" to include an "individual, partnership, and corporation"

[14] "On June 29, 2011, the Company's non-Debtor U.S. regulated broker-dealer subsidiary, MF Global Inc. . . . entered into a $300 million 364-day secured revolving credit facility . . .;" "On September 1, 2011, MF Holdings announced that FINRA informed it that its regulated U.S. operating subsidiary, MFGI, was required to modify its capital treatment of certain repurchase transactions . . .". "Company" is defined in the Abelow Declaration as: "MF Global Finance USA Inc. ('MF Finance' and, together with MF Holdings, the 'Debtors' and, the Debtors, collectively with their non-Debtor subsidiaries and affiliates)." Abelow Declaration, at p. 1.

and assigns various rights and duties to each category of "person." Importantly, notwithstanding that a corporation can be a person, the terms "individual" and "corporation" are not interchangeable, but have specific and distinct meanings. *In re Chateaugay Corp.*, 920 F.2d at 184-185 ("Throughout the [Bankruptcy C]ode, rights and duties are allocated in some instances to 'individuals' and in others to 'persons.'").

16. The Second Circuit has made unequivocally clear that in the Bankruptcy Code, "Congress used the word 'individual' rather than 'person' to mean a natural person." *In re Chateaugay*, 920 F.2d at 184. The court illustrated the absurdity of defining "individual" to include a corporation by analyzing the Bankruptcy Code definition of a "relative," which provides: "The term 'relative' means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree." 11 U.S.C. § 101(45). "Plainly," by using the word *individual*, "the statute here is referring only to human beings; corporations and other legal entities can have no . . . 'affinity or consanguinity' or 'step relationship' except in the metaphoric sense, and can in no sense have an 'adoptive relationship.'" *In re Chateaugay*, 920 F.2d at 184-85. *See also*, *In re McCormick*, 381 B.R. 594, 598-99 (Bankr. S.D.N.Y. 2008) (distinguishing "persons" from "individuals," noting "chapter 13 limits the eligibility of debtors to individuals only" and concluding "a limited liability company is not eligible to file under chapter 13 of the Bankruptcy Code because it is not considered to be an individual under the Code."); *In re Automatic Plating of Bridgeport, Inc.*, 202 B.R. 540, 542 (Bankr. D. Conn. 1996) ("Although 'individual' is not specifically defined under the [Bankruptcy C]ode, it is apparent from the separate enumeration of

individual and corporation in § 101(41) that those entities were intended to be treated separately under the code," citing *Yamaha Motor Co. v. Shadco, Inc.*, 762 F.2d 668, 670 (8th Cir. 1985)).

17. Thus, contrary to Movant's unsupported allegation, when section 523(a)(5) of the Bankruptcy Code states that "[a] discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an *individual* debtor from any debt— . . . for a domestic support obligation," 11 U.S.C. § 523(a)(5) (emphasis supplied), "[p]lainly, the statute . . . is referring only to human beings," *In re Chateaugay*, 920 F.2d at 184-85. By limiting section 523 to "an individual debtor," "the intent of Congress [was] to exclude corporate debtors from the operation of section 523," *Automatic Plating*, 202 B.R at 542[15] (citation omitted), including from domestic support obligations pursuant to Bankruptcy Code section 523(a)(5).

MFGH Does Not Owe a "Domestic Support Obligation" Pursuant to 11 U.S.C. § 523(a)(5)

18. Even assuming *arguendo* that MFGH is an "individual," and Bankruptcy Code section 523(a)(5) applied to MFGH, Movant fundamentally misunderstands the operation of section 523(a)(5). Bankruptcy Code section 523(a)(5) does not create debts and make them nondischargeable.[16] *See* Motion, at p. 7. Rather, section 523(a)(5) provides for exceptions to discharge of certain debts that already exist.[17] Movant claims MFGH owes MFGI a "domestic support obligation," but Movant has failed to allege that MFGH has any debts that could meet

[15] *Automatic Plating* was decided prior to the 2005 revisions to the Bankruptcy Code. As part of those revisions, Congress added section 1141(d)(6), which provides that "the confirmation of a plan does not discharge a debtor that is a corporation from any debt—(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit . . .". 11 U.S.C. § 1141(d)(6). However, subject to this narrow exception, the holding of *Automatic Plating* that Bankruptcy Code section 523 does not apply to corporate debtors remains good law.

[16] Section 523 likewise does not make any debts "immediately" payable, as Movant believes. *See* Motion, at pp. 2, 7 and footnote 12, *supra*.

[17] After the nondischargeability of those debts is established through an adversary proceeding, *see* Bankruptcy Rule 7001.

the Bankruptcy Code definition of a "domestic support obligation."[18] Section 101(14A) Bankruptcy Code provides:

> The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, . . . —
> (A) owed to or recoverable by—
> (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; . . .
> (B) in the nature of alimony, maintenance, or support . . . of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;
> (C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—
> (i) a separation agreement, divorce decree, or property settlement agreement;
> (ii) an order of a court of record; or
> (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit.

11 U.S.C. § 101(14A).

19. For Movant to establish a viable claim for a "domestic support obligation" on behalf of a "child," Movant must establish three elements. First, the debt must be owed to, or recoverable by, a child. 11 U.S.C. § 101(14A)(A)(i). "The pertinent inquiry . . . is whether payment has been ordered in recognition and fulfillment of a duty to provide for the well-being of his or her child." *Cain v. Isenhower (In re Cain)*, 29 B.R. 591, 596 (Bankr. N.D. Ind. 1983). Second, the debt must be "in the nature of . . . support . . . of such . . . child." 11 U.S.C. § 101(14A)(B). "The proper inquiry is whether the payment obligation derived from a duty to provide for the well-being of the . . . child." 4 COLLIER ON BANKRUPTCY ¶ 523.11[5] (16th ed. 2012) citing *Strickland v. Shannon (In re Strickland)*, 90 F.3d 444 (11th Cir. 1996). Third, the

[18] Movant has also failed to commence an adversary proceeding to adjudicate the nondischargeability of any such purported domestic support obligation.

debt must be established by a court order or pursuant to an agreement. 11 U.S.C. § 101(14A)(C)(i)-(iii).

20. Movant's bare assertion that "MF Holdings' use of funds created a debt obligation owed by MF Holdings to MFGI," Motion, at p. 8, does not satisfy the elements required under Bankruptcy Code section 101(14A) to establish an allowable claim for a "domestic support obligation." Movant has failed to allege that any purported "obligation" of MFGH meets any part of the Bankruptcy Code definition of a "domestic support obligation," so any such purported "obligation" is meaningless and without support.

Movant Does Not Have a Section 507 Priority Claim

21. Lastly, Movant argues that section 507 "clearly establishes first priority rank for MFGI under MF Holdings' domestic support obligations as the parent of MFGI." Motion, at p. 8. Section 507 does no such thing. It provides:

> [T]he following expenses and claims have priority in the following order: (1) First: (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor . . . .

11 U.S.C. § 507(a)(1)(A).

22. Contrary to Movant's assertion, MFGI does not have a priority allowed unsecured claim. Indeed, as MFGI has not filed a claim against MFGH, MFGI does not have *any* allowable claims against MFGH.[19] *See* Bankruptcy Rule 3002(a) ("*Necessity for Filing*. An

[19] Movant may have filed a claim with the SIPA Trustee, but the SIPA Trustee has not made public any customer claims filed. Even if Movant has filed a commodity customer claim with the SIPA Trustee, such claim is not an allowed unsecured claim against MFGH. Moreover, any regulation purporting to allow commodity customers priority distributions from the Chapter 11 Debtors' estates' is invalid. *See Letter Re: Briefing Allocation and Distribution of Customer Property filed by Martin J. Bienenstock on behalf of Certain MF Global Inc. Claimants*, [ECF No. 300].

unsecured creditor . . . must file a proof of claim . . . for the claim . . . to be allowed . . .”). Moreover, even had MFGI filed a claim against MFGH, as discussed above neither Movant nor MFGI has a claim against MFGH for a “domestic support obligation,” as defined by Bankruptcy Code section 101(14A). Movant’s failure to establish that any claim (or any future claim) against MFGH is (or could constitute) a “domestic support obligation” renders Movant’s request for a priority claim against MFGH pursuant to section 507(a)(1)(A) baseless and misplaced.

Section 105 and 28 U.S.C. §§ 157(b)(1)-(b)(2)(A) Do Not Authorize Movant’s Requested Relief

23. Finally, Movant suggests the Court’s equitable power under Bankruptcy Code section 105, and 28 U.S.C. §§ 157(b)(1)-(b)(2)(A), authorizes the Court to grant Movant’s requested relief. *See* Motion, at p. 2. As the Court made clear in response to a previous request for unlawful relief by commodity customers of MFGI, such misuse of section 105 is woefully misguided:

> As the court held in *In re Dairy Mart Convenience Stores, Inc.*, “[s]ection 105(a) limits the bankruptcy court’s equitable powers, ‘which must and can only be exercised within the confines of the Bankruptcy Code.’” 351 F.3d 86, 91–92 (2d Cir. 2003) (internal citations omitted). Section 105 does not “authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.” *Id*.

In re MF Global Holdings Ltd., __ B.R. __, 2012 WL 280984, at *3 (Bankr. S.D.N.Y., Feb. 1, 2012) citing *In re Dairy Mart Convenience Stores, Inc*., 351 F.3d 86, 91-21 (2d. Cir. 2003).

24. Movant’s requested relief of a priority domestic support obligation would “create substantive rights that are otherwise unavailable under applicable law,” violate express provisions of the Bankruptcy Code, and cause this Court to use section 105 to act as a “roving commission to do equity,” something it is explicitly prohibited from doing. *Dairy Mart*, 351

F.3d at 92. Similarly, while 28 U.S.C. § 157(b)(2)(A) provides that allowance of claims constitute a "core proceeding," Movant fails to explain how 28 U.S.C. §§ 157(b)(1)-(B)(2)(A) in any way authorizes the Court to disregard express provisions of the Bankruptcy Code.

25. The Committee has endeavored to respond point-by-point and without emotion to Movant's requested relief. The Committee does not, however, waive its rights in respect of Movant's (a) failure to cite the statutory authority the Committee cites herein refuting Movant's position, (b) failure to cite the jurisprudence in the Second Circuit that the Committee cites herein refuting Movant's position, and (c) Movant's failure to cite any authority remotely supporting his requested relief. Without any authority or logic remotely supporting his position, Movant has caused a needless expenditure of Court time and administrative expense. If this happens again, the Committee may request equitable and legal remedies.

CONCLUSION

WHEREFORE the Committee respectfully requests the Court deny the Motion with prejudice, and grant the Committee such other and further relief as is just.

Dated: February 28, 2012
New York, New York

DEWEY & LEBOEUF LLP

By: /s/ Michael P. Kessler

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