Hearing Date & Time: March 6, 2012 at 10:00 a.m.
Objection Deadline: February 28, 2012 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
MF GLOBAL HOLDINGS LTD., *et al.*,	)	11-15059 (MG)
Debtors.	)	Jointly Administered

TRUSTEE'S OBJECTION TO THE MOTION TO DIRECT THE DEBTORS' ESTATE TO BE ADMINISTERED PURSUANT TO 11 U.S.C. § 523 AND 11 U.S.C. § 507

Louis J. Freeh (the "Chapter 11 Trustee"), the chapter 11 trustee of MF Global Holdings Ltd. ("Holdings Ltd."), *et al.* (collectively, the "Debtors"), by and through his undersigned counsel, submits this objection (the "Objection") to the *Motion to Direct the Debtors' Estate to Be Administered Pursuant to 11 U.S.C. § 523 and 11 U.S.C. § 507* (the "Motion") filed on behalf of Adam Furgatch ("Movant"), a creditor of MF Global Inc. ("MFGI"). In support of his Objection, the Chapter 11 Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

Movant seeks extraordinary relief from the Bankruptcy Court without offering any support in law or fact, requesting that these Chapter 11 cases be administered pursuant to sections 523(a)(5) and 507 of title 11 of the United States Code (the "Bankruptcy Code"). While

section 523(a)(5) and 507(a)(1)(A) would be applicable in a Chapter 11 case of an individual debtor, neither of those provisions is applicable here. These are Chapter 11 cases of Debtors that are corporations, not individuals. The Bankruptcy Court's analysis should end there.

Movant reverts to pleading that corporations are "persons" and are therefore entitled to the same protections granted to individuals under the Bankruptcy Code. Movant analogizes a parent corporation and its subsidiary to the relationship between a natural person and his or her child, concluding that corporations are obligated to provide "domestic support" to their subsidiaries. This conclusion contradicts the plain language and legislative history of the Bankruptcy Code, ignores basic principles of corporations law, and defies common sense.

Moreover, the relief requested in the Motion would prejudice the Debtors' creditors by changing the priority scheme intended by the Bankruptcy Code. The Motion, which borders on being frivolous, represents yet another attempt by creditors of MFGI to insert themselves into the Debtors' proceedings and thereby obtain rights to which they are not entitled.[1] Although the frustration of MFGI's creditors is understandable, it does not provide grounds for expanding the scope of well-established Bankruptcy Code provisions. These continued actions by parties that arguably lack standing in the Debtors' Chapter 11 cases consume the limited time and energy of the Court and the professionals working to administer the Debtors' estates, draining already scarce resources to the detriment of the Debtors' true creditors.

For these reasons, the Motion should be denied as Movant has failed to carry his burden of proof entitling him to any relief.

[1] *See* Memorandum Opinion Denying Motion to Direct the Debtors' Estates to be Administered Pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 at 10, *In re MF Global Holdings Ltd., et al.*, Case No. 11-15059 (MG), (Bankr. S.D.N.Y. Feb. 1, 2012), ECF No. 400.

BACKGROUND

1. On October 31, 2011 (the "Petition Date"), MF Global Holdings Ltd. and MF Global Finance USA Inc. (the "Initial Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), which initiated these chapter 11 proceedings.

2. Also on the Petition Date, the Honorable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an order commencing liquidation of MFGI pursuant to the provisions of the Securities Investor Protection Act ("SIPA") in the case captioned *Securities Investor Protection Corp. v. MF Global Inc.*, Case No. 11-CV-7750 (PAE) (S.D.N.Y. Oct. 31, 2011) (the "MFGI Liquidation Case").

3. On November 28, 2011, the Bankruptcy Court entered the Order Approving the Appointment of Chapter 11 Trustee (Docket No. 170), pursuant to which Mr. Freeh was appointed Chapter 11 Trustee for the Initial Debtors

4. On December 19, 2011, MF Global Capital LLC, MF Global Market Services LLC and MF Global FX Clear LLC (collectively, the "New Debtors") filed voluntary petitions for relief in the Bankruptcy Court.

5. On December 27, 2011, the Bankruptcy Court entered an order approving the appointment of Mr. Freeh as Chapter 11 Trustee of the New Debtors.

ARGUMENT

A. Section 523(a)(5) Does Not Apply To Corporate Chapter 11 Debtors

6. Bankruptcy Code section 523(a)(5) provides that a discharge under Bankruptcy Code section 1141 "does not discharge an individual debtor from any debt for a domestic support obligation." 11 U.S.C. § 523(a)(5) (emphasis added). "Domestic support

obligation" is defined to mean, in relevant part, a debt that is "owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative…." 11 U.S.C. § 101(14A)(A)(i). Movant argues that, notwithstanding the plain language of section 523(a), it should be read to apply to corporate debtors. Movant's sole basis for this argument is that "parent" as used in the definition of "domestic support obligations" is not itself defined in the Bankruptcy Code and therefore refers to both individuals and corporations because corporations are "persons" entitled to the same protections as individuals under the Bankruptcy Code. This argument fails for several reasons.

7. Movant ignores the fact that, by its explicit terms, section 523(a) applies only to individuals. As Movant correctly notes, the Bankruptcy Code defines "person" to include individuals and corporations, both of which may seek relief under Chapter 11. 11 U.S.C. § 101(41). This definition makes apparent that a corporation is a "person," but a "person" is not necessarily a corporation. If Congress had intended section 523(a) to apply to "persons" or "all debtors," it could have—and would have—so provided. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) ("Congress says in a statute what it means and means in a statute what it says there." (citation omitted)). Here, Congress explicitly excluded corporate debtors from the scope of section 523(a)(5). This point alone warrants denial of the Motion.

8. The language of section 523(a) is clear and unambiguous, rendering an examination of legislative history unnecessary. *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) ("[W]here, as here, the statute's language is plain, "the sole function of the courts is to enforce it according to its terms." (citations omitted)). Nonetheless, legislative history also supports the conclusion that Congress intended the term "domestic support obligation" and the

exception to its discharge to apply only to individual debtors. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 instituted "a comprehensive package of reform measures pertaining to consumer and business bankruptcy cases." *See* 151 Cong. Rec. H. 1993, 2047, 109th Cong., 1st Sess. (Apr. 14, 2005). Revisions to provisions regarding domestic support obligations, including the addition of the defined term itself and the elevation in priority of payment of such obligations from seventh to first under Bankruptcy Code section 507, were contained in the portion of the bill titled "Enhanced Consumer Protection." Additionally, they are discussed in the Congressional Record as part of the consumer bankruptcy reforms, rather than the business bankruptcy and other reform measures. *Id.* at 2048. The Congressional Record indicates that the exception to discharge for domestic support obligations was intended to "prevent[] deadbeat parents from abusing the bankruptcy system to shirk their child support obligations" by permitting the continued collection of child support during and after bankruptcy. *Id.* Thus, legislative history supports the inescapable conclusion that the term "domestic support obligation," and the exception to its discharge contained in section 523(a), refers exclusively to the obligation of a natural person to support his or her dependants.

9. Movant points to the definition of "parent" provided by Merriam-Webster's online dictionary as support for its position that the term "parent" necessarily implies the existence of a "child," natural or otherwise. The Chapter 11 Trustee respectfully submits that *Black's Law Dictionary* is a more appropriate reference for the "ordinary or natural meaning" of the term "parent corporation." *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). That text distinguishes between the terms "parent" and "parent corporation," defining the latter as "[a] corporation that has a controlling interest in another corporation (called a *subsidiary corporation*) . . . Often shortened to *parent*." "Subsidiary corporation" is in turn defined as "[a]

corporation in which a parent corporation has a controlling share." In contrast, "parent" is defined as "the lawful father or mother of someone. . . ." Movant has intentionally conflated the "ordinary or natural meaning" of "parent" with that of "parent corporation." The terms are distinguishable, and have different meanings in both the legal and ordinary sense. Movant's argument to the contrary should be rejected.

10. Moreover, Movant's proposed expansion of what it means to be a corporate parent runs directly contrary to the principle of separateness that is the bedrock of corporations law. *See Regency Holdings (Cayman), Inc. v. Microcap Fund, Inc. (In re Regency Holdings (Cayman), Inc.)*, 216 B.R. 371, 375 (Bankr. S.D.N.Y. 1998) ("As a rule, parent and subsidiary corporations are separate entities, having separate assets and liabilities. The parent's ownership of all of the shares of the subsidiary does not make the subsidiary's assets the parent's. Hence, the parent's creditors have no claim to the subsidiary's assets, and vice versa." (citations omitted)).

B. Approval of the Motion Will Prejudice the Debtors' Creditors

11. Approval of the Motion would significantly prejudice the rights of the Debtors' true creditors by rewriting the priority scheme for the treatment of creditor claims in a way Congress never intended. The relief requested in the Motion would elevate the customer claims of MFGI above all claims held by the Debtors' creditors solely because MFGI is a subsidiary of Holdings Ltd. Such a result would be unprecedented and contrary to the general principles of fairness and equality underlying the Bankruptcy Code. The Bankruptcy Court cannot disregard the aforementioned statutory limitations to create new substantive rights for Movant.

12. Thus, the Debtors' Chapter 11 cases cannot be administered pursuant to sections 523(a)(5) and 507 and the Motion must be denied.

CONCLUSION

13. Based on the foregoing, Movant has failed to prove that he is entitled to the relief he seeks. Accordingly, the Chapter 11 Trustee respectfully requests the Bankruptcy Court to (i) deny the Motion in its entirety and (ii) grant such other and further relief it deems just and proper.

Dated: New York, New York
February 28, 2012

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