

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	Chapter 11
In re	:	
	:	Case No. 11-15059 (MG)
MF GLOBAL HOLDINGS LTD., et al.,	:	
	:	(Jointly Administered)
Debtors. ¹	:	
	:	
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MF GLOBAL HOLDINGS LTD., as Plan Administrator; and NADER TAVAKOLI, as Trustee of the MF Global Litigation Trust,	:	
	:	Adv. Proc. No. 15-01362 (MG)
Plaintiffs,	:	
	:	
vs.	:	
	:	
JON S. CORZINE, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
- and -	:	
	:	
VIRGINIA RETIREMENT SYSTEM and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, each solely in its capacity as Lead Plaintiff in <i>In re MF Global Holdings Limited Securities Litigation</i> , Case No. 1:11-cv-07866- VM (S.D.N.Y.)	:	
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**DECLARATION OF ERIK M. GRABER IN SUPPORT OF THE
JOINT MOTION OF MF GLOBAL HOLDINGS LTD., AS PLAN ADMINISTRATOR, AND NADER
TAVAKOLI, AS TRUSTEE OF THE LITIGATION TRUST, TO TEMPORARILY STAY OR
ENJOIN FINAL CONSUMMATION OF CERTAIN ASPECTS OF THE INDIVIDUAL
DEFENDANTS' SETTLEMENT OF THE SECURITIES ACTION PENDING RESOLUTION OF
RELATED CLAIMS FOR THE BENEFIT OF THE DEBTORS' ESTATES**

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

I, Erik M. Graber, am Chief Operating Officer ("COO") of MF Global Holdings Ltd. ("Holdings" or the "Plan Administrator"), which serves as Plan Administrator under the confirmed *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc.* (Chapter 11 Docket No. 1382) (the "Plan") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). I submit this declaration in support of the Amended Joint Motion Of Mf Global Holdings Ltd., As Plan Administrator, And Nader Tavakoli, As Trustee Of The Litigation Trust, To Temporarily Stay Or Prevent Final Approval Of The Individual Defendants' Settlement Of The Securities Action Absent Modifications To The Settlement Agreement Pending Resolution Of Related Claims For The Benefit Of The Debtors' Estates (Adv. Dkt 9) (the "Motion")² and state as follows:

1. As COO of Holdings, I am familiar with the Chapter 11 Cases, the Plan, and the Plan Administrator's rights, duties, and obligations under the Plan. I am involved in the daily administration of the Plan Administrator's operations, including working closely with the General Counsel, Board of Directors, and outside professionals to oversee the Plan Administrator's satisfaction of its duties and obligations under the Plan. The Plan grants the Plan Administrator very broad authority to take any actions that are necessary and proper to implement the provisions of the Plan. Under the Plan, the Plan Administrator's primary objective is the maximization of distributions to the Debtors' creditors.

2. Throughout these cases, the Movants have attempted to accelerate resolutions of matters wherever it was feasible and prudent to do so. Early in the cases, the Debtors' estates

² Capitalized terms not otherwise defined in this declaration have the meaning given to them in the Motion.

worked with the trustee (the "SIPA Trustee") for the SIPA liquidation of MF Global Holdings, Inc. ("MFGI"), in order to effectuate a 100 percent distribution to MFGI's former commodities customers (with the Bankruptcy Court's approval) much earlier than otherwise would have occurred, by allowing the SIPA Trustee to advance sufficient funds from the general creditor component of the MFGI estate to cover the \$560 million deficit in customer assets available to satisfy allowed net equity claims. On November 6, 2013, the Court issued an Order (the "Allocation Order") authorizing the advance of general creditor assets and explicitly recognizing the \$560 million deficit in the commodities customer component of the MFGI estate. As with assets recovered from other sources, the advance of general creditor funds and subsequent distributions to customers does not change the fact that there was a segregation failure. The \$560 million advance did, however, directly result in a decrease in the amount of assets in the general creditor component of the estate available to satisfy allowed general creditor claims. *See* MFGI's Realization Report [SIPA Docket 8762, p 5]. While the calculated shortfall has been reduced now to \$484 million due to the SIPA Trustee's recovery efforts, this shortfall remains unsatisfied and is the basis for the Net Equity claims asserted by the Customer Representatives in the MDL, initially on behalf of the SIPA Trustee and now, as this Court is aware, on behalf of the Plan Administrator and a newly formed entity, MF Global Assigned Assets, LLC ("MFGAA"), which will distribute any recoveries to creditors on account of these claims in the same *pro rata* shares as they would have received from the MFGI estate.

3. The transfer of the Net Equity shortfall claims and other assets occurred in the last several months, when the Plan Administrator and the SIPA Trustee entered into a sale and assignment agreement (the "Sale and Assumption Agreement"), effectuated pursuant to order of this Court dated August 19, 2015 (Ch. 11 Docket no. 8855). The cornerstone of this agreement was having the Plan Administrator controlled entities forgo further distributions in the SIPA

estate on account of their allowed claims in order to provide funds to allow the SIPA Trustee to make final distributions to its non-Plan Administrator affiliated general unsecured creditors holding non-subordinated allowed claims (the "Other Unsecured Creditors") and wind down the MFGI estate. In exchange, the SIPA Trustee's transferred substantially all remaining assets held by MFGI to MF Global Assigned Assets, LLC ("MFGAA")³, which are also now being liquidated by the Plan Administrator. In other words, the creditors of the Debtors—the Liquidity Facility⁴ and Notes Investors,⁵ holding \$2.2 billion in allowed claims—and the Debtors' other general unsecured creditors holding allowed claims⁶, gave up short term distributions and allowed funds to be advanced to third parties to complete 95% distributions to the Other Unsecured Creditors.

³ The transferred assets include, without limitation, the SIPA Trustee's rights and interests in claims in the MDL and under certain insurance policies, MFGI's recoveries from MF Global UK Ltd., remnant assets, and all remaining cash except that needed (i) for the final distribution payments and (ii) to establish reserves to resolve certain Disputed Claims and to cover the administrative expenses to wind down the MFGI estate.

⁴ The "Liquidity Facility" refers to the unsecured claims allowed under the Second Amended Plan for the revolving credit facility dated as of June 15, 2007 for which Holdings Ltd. and Finance USA were borrowers.

⁵ The "Notes Investors" hold claims for principal and interest allowed under the Second Amended Plan for the (a) 1.875% convertible senior notes due 2016, (b) 9% convertible senior notes due 2038, (c) 3.375% convertible senior notes due 2018, and (d) 6.25% senior notes due 2016.

⁶ In addition to the claims of the Liquidity Facility and Notes Investors, unsecured creditors of the Debtors have 77 allowed claims totaling \$193 million, and represent a diverse group of parties who conducted ordinary course business with Plan Administrator Debtor entities and other affiliates. This group represents the majority of the Plan Administrator constituency by count, and the overwhelming majority of the Plan Administrator staff's time and energy spent on claims and distributions since the Effective date has been devoted to reconciling and paying the claims of creditors other than the Liquidity Facility and Notes Investors. Included in this group are trade creditors and vendors who supplied information technology, consulting, advertising, office space and other services to support the Debtors' prepetition business lines. It also includes trading counterparties and "main street" customers who conducted business with the Plan Administrator's non-regulated affiliates in order to properly hedge their commodity, foreign exchange, and credit exposures with derivatives that were not otherwise booked under MFGI's SIPC regulated futures business

4. Since the Effective Date, total distributions to allowed claimants has been \$900 million on allowed claims of approximately \$2.4 billion. While the three non-regulated Debtor entities have already distributed payments totaling 100% of the allowed claims, plus post-petition interest ("PPI"), the three principal Debtors have made distributions to general unsecured creditors of between 16% and 28% of allowed claims. These amounts include the most recent amounts distributed to holders of General Unsecured Claims and to the Liquidity Facility by Holdings and by MF Global Finance USA Inc. made in accordance with the Plan Administrator's Notice of Distribution filed on October 13, 2015. (Ch. 11 Docket no. 2134).⁷

5. The Plan Administrator authorized the instant action to seek to prevent the harm to its creditors if the \$25 million in Excess Director Policies that are part of the \$225 million D&O tower is permitted to effectively be destroyed by the timing of the Securities Settlement, for all the reasons set forth in the Ferber Declaration and in the Movants' papers in this action. Given that the recoveries on account of the Estate's MDL Claims are one of the most important contingent assets for distribution to the creditors of the estates, both through the Litigation Trustee's claims and through the MFGAA net equity claims, it would be a travesty to permit the Excess Director Policies to be wasted.

6. Any suggestion that the Estates' MDL claims would not result in exhaustion of the underlying policy limits needed to tap into the Excess Director Policies for the Securities Settlement makes no sense. The damages asserted by the Litigation Trustee against three Individual Insureds (covered only under the Side ABC D&O Policies and the Excess Side A

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For a summary of prior distributions to, and unpaid amounts of claims against, the Debtors, along with a more detailed description of the creditors and assets of these Estates, see MF Global Holdings Ltd., et al. Post-Effective Date Quarterly Operating Report For the Period Ending September 30, 2015 (Ch. 11 Dkt 2143). This Quarterly Operating Report, along with all other Quarterly Operating Reports in these cases, are available online at <http://www.mfglobalcaseinfo.com/reporting.php>.

Policies) exceed \$2 billion, and the Net Equity shortfall claim held by MFGAA (which is lodged against both the Individual Insureds under the Side ABC D&O Policies, the Excess Side A Policies and the E&O Policies) and as an Entity claim under the E&O Policies exceeds \$484 million. Even assuming, *arguendo*, that the entire E&O remaining tower limits of approximately \$143 million were applied to reduce the Net Equity shortfall claim, \$341 million in damages would remain to be recovered from the Individual Insureds, dwarfing any remaining D&O policy limits---without even taking into account the recoveries claimed by the Litigation Trustee on its claims. All of these claims have survived motions to dismiss, the parties have exchanged expert reports, and in the absence of settlement, will be tried to verdicts potentially much higher than the D&O and E&O combined towers. Under these circumstances, efforts to release any D&O policy before the proper demands have been made on insurers (if such has not already occurred) would be depriving the Debtors and the Individual Insureds of the benefits of the insurance coverage procured to protect against these losses and represent an irremediable loss to the estates and its creditors.

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

Dated: November 12, 2015
New York, New York

/s/ Erik M. Graber
Erik M. Graber

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