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

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In re : Chapter 11  
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)  
Debtors. : (Jointly Administered)  
: :  
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**CHAPTER 11 TRUSTEE’S MOTION PURSUANT TO 11 U.S.C. §§ 105 AND 1106 AND  
FED. R. BANKR. P. 2004 AND 9016 FOR ENTRY OF AN ORDER AUTHORIZING THE  
TRUSTEE TO ISSUE SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND  
TO EXAMINE PERSONS AND ENTITIES**

Louis J. Freeh (the “Trustee”), chapter 11 trustee of 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. (collectively, the “Debtors”),<sup>1</sup> respectfully submits this motion (the “Motion”), pursuant to sections 105(a) and 1106(a)(3) of title 11 of the United States Code, as amended (the “Bankruptcy Code”) and Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for authorization to issue subpoenas for the production of documents and the examination of persons and entities

<sup>1</sup> The following U.S. subsidiaries and affiliates (along with the last four digits of each of their federal taxpayer identification numbers) have filed petitions for relief and are being jointly administered with MF Global Holdings Ltd. (11-15059): MF Global Capital LLC (2825), MF Global Finance USA, Inc. (4890), MF Global FX Clear LLC (3678), MF Global Holdings USA Inc. (2847), MF Global Market Services LLC (2193).

determined by the Trustee to have information relevant to the Trustee's statutory investigation, including, but not limited to, the Debtors' affiliates and subsidiaries, the Debtors' former employees, current and former officers, directors and employees of the Debtors' affiliates and subsidiaries, lenders, investors, creditors and counterparties to transactions with the Debtors (each a "Witness" and collectively, the "Witnesses"), in order to obtain all information in their possession, custody or control that is relevant to the Debtors' estates, and respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. To fulfill his statutory duties to the Debtors' estates under Bankruptcy Code section 1106(a)(3), and to fulfill his duty to the Court to produce a report on the status of the Debtors' estates, the Trustee seeks authority from the Court, pursuant to Bankruptcy Code section 105 and Bankruptcy Rule 2004, to issue subpoenas to compel Witnesses to produce documents and appear for examination, as well as implement deadlines for Witnesses to produce documents and appear for examination. In addition, through this Motion, the Trustee seeks to create procedures for Witnesses to assert claims of privilege and file responses or objections to the subpoenas.

2. Under section 1106(a)(3), the Trustee is required to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan."

3. Other courts,<sup>2</sup> including this Court, have authorized similar relief for Trustees to meet their statutory duties, including in this case, where the Court granted subpoena power to the

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<sup>2</sup> See *Order Granting the Debtors Authority to Issue Subpoenas for the Production of Documents and Authorizing the Examination of Persons and Entities, In re Lehman Brothers Holdings Inc.*, No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 23, 2009) (Docket No. 5910).

SIPA Trustee to fulfill his statutory duty to investigate MF Global Inc. under SIPC, which closely mirrors the Bankruptcy Code's duty to investigate under Bankruptcy Code section 1106(a)(3). *See Order Granting Authority to Issue Subpoenas for the Production of Documents and the Examination of the Debtor's Current and Former Officers, Directors and Employees, and Other Persons, In re MF Global Inc.*, No. 11-02790 (SIPA) (Bankr. S.D.N.Y. Nov. 11, 2011) (Docket No. 34). Without the approval of the procedures set forth herein, the Trustee must file separate motions for each request and each time he seeks information from an unresponsive or uncooperative witness or entity. The time and cost to produce, file, serve and seek relief on the necessary applications will substantially hinder the Trustee's investigation.

#### **JURISDICTION, VENUE, AND STATUTORY PREDICATE**

4. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are the Bankruptcy Code §§ 105(a) and 1106(a)(3) and Bankruptcy Rules 2004 and 9016.

#### **BACKGROUND**

##### **A. Procedural Background**

5. The Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code on October 31, 2011, December 19, 2011, and March 2, 2012 (collectively, the "Petition Dates"), and filed motions for first-day relief, which included motions for joint administration of the Debtors' cases (Docket Nos. 2, 292, 508). Following each petition date, the Court ordered the joint administration of the Debtors' cases (collectively, the "Chapter 11 Cases"). (Docket Nos. 19, 298, 528).

6. On November 7, 2011, the United States Trustee (the “U.S. Trustee”) appointed the statutory creditors’ committee (the “Statutory Creditors’ Committee”) in the Debtors’ cases.

7. The Statutory Creditors’ Committee and the initial Debtors, on November 21, 2011, jointly moved the Court for an order directing the U.S. Trustee to appoint a chapter 11 trustee (Docket No. 131), which the Court entered on November 22, 2011 (Docket No. 156).

8. On November 25, 2011, the U.S. Trustee filed the *Application for Order Approving Appointment of Chapter 11 Trustee* (Docket No. 169), which the Court approved by entering the *Order Approving the Appointment of Chapter 11 Trustee* (Docket No. 170), pursuant to which the Trustee was appointed.

9. By additional orders dated December 27, 2011 and March 8, 2012, the Court approved the appointment of the Trustee as the Chapter 11 Trustee for all of the Debtors. (Docket Nos. 306, 548).

10. The factual background regarding the Debtors, including their prior business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in the Declaration of Bradley I. Abelow (Docket No. 9) and the Declarations of Laurie R. Ferber.

11. During the April 12, 2012 omnibus hearing, the Court requested that the Trustee submit to the Court by June 4, 2012 a report substantially similar to the report required of the SIPA Trustee.

**RELIEF REQUESTED**

12. By this Motion, the Trustee respectfully requests entry of the proposed order authorizing the Trustee to issue subpoenas that direct the production of documents and allow the Trustee to examine Witnesses, pursuant to Bankruptcy Rule 2004, without necessitating separate

applications and orders from the Court for each subpoena or Witness. Further, in accordance with the procedures set forth herein and in the proposed order, the Trustee seeks to set time limits for responses, objections, appearances and production of documents. The authority requested in this Motion will allow the Trustee to expeditiously gather information necessary for his statutory investigation and to complete the status report requested by the Court at the April 12, 2012 omnibus hearing. In addition, the entry of the proposed order will benefit the Debtors' estates, the creditors and parties-in-interest through the cost and time savings received from not having to file separate applications with the Court and await Court intervention regarding such applications.

**BASIS FOR RELIEF REQUESTED**

13. Pursuant to Bankruptcy Code section 1106(a)(3),

[a] trustee shall except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan.

11 U.S.C. § 1106(a)(3).

14. To meet this obligation, the Trustee must have the ability to investigate the necessary parties and gather the information required to fulfill this duty. A significant portion of that ability arises under Bankruptcy Rule 2004.

15. Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a). Bankruptcy Rule 2004 is a statutory mechanism for obtaining information relating to “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate . . . .” Fed. R. Bankr. P. 2004(b).

16. The purpose of a Rule 2004 examination is “to assist the trustee in revealing the nature and extent of the estate; ascertaining assets; and discovering whether any wrongdoing has occurred.” *In re Corso*, 328 B.R. 375, 383 (E.D.N.Y. 2005) (citing *In re The Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)); *see also In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (rule’s primary purpose is to ascertain “the extent and location of the estate’s assets [and] examination is not limited to the debtor or his agents, but may properly extend to creditors and third parties who have had dealings with the debtor.”) (internal citations omitted); *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993) (one of the original purposes of the rule was to assist the trustee and the court in learning about “the debtor’s acts, conduct or financial affairs so as to discover the existence and location of assets of the estate.”). A Rule 2004 examination is used to “‘show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.’” *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (quoting *Cameron v. United States*, 231 U.S. 710, 717 (1914)). In addition, Rule 2004 is a discovery tool that can be used as a pre-litigation device to determine whether there are grounds to bring an action to determine a debtor’s right to discharge a particular debt. *In re Corso*, 328 B.R. at 383.

17. The scope of an inquiry permitted under Bankruptcy Rule 2004 is broad,<sup>3</sup> in order to “assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred.” *In re*

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<sup>3</sup> *See, e.g., In re The Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991) (“Starting with the 1978 Code there has been an expansive reading of the rule. . . . It can be legitimately compared to a fishing expedition. It can net the dolphins as well as the tuna; however, the net, in the discretion of the Court, can be carefully stitched to limit its catch.”) (citing *In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983)) (other internal citations omitted); *In re Hughes*, 281 B.R. 224, 226 (Bankr. S.D.N.Y. 2002); *In re Ecam Publ’ns, Inc.*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991).

*Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004); *In re The Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 708-709 (Bankr. S.D.N.Y. 1991).

18. Bankruptcy Rule 2004 requires the Court to “balance the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination.” *Drexel Burnham*, 123 B.R. at 712. In making this determination, courts consider the purpose of the request as well as the degree of intrusiveness. *Id.* at 711-12 (granting Rule 2004 motion, highlighting that the “requested purpose” was for “claims amendment and claims litigation” and that “[t]he more knowledge FDIC/RTC has about its claims, the better it, DBL, and the committees will be able to resolve the claims process in this case.”).

19. The Trustee must satisfy his statutory obligation under section 1106(a)(3) and complete the Court requested status update and, therefore, seeks to rely on Bankruptcy Rule 2004 to assist him in that regard. The requested discovery here is tailored to aid the Trustee in his investigation into the overall financial condition of the Debtors, the operation of the Debtors’ business and any other matters relevant to the case or to the formulation of a plan – a goal clearly permitted by Rule 2004. *See In re Corso*, 328 B.R. at 383 (E.D.N.Y. 2005).

20. The Trustee is willing to tailor the requests in such a way that the facts can be provided swiftly and efficiently. Long and burdensome discovery is inefficient and ineffective. The Trustee’s goal is to gain quickly a better understanding of the causes(s) of the Debtors’ financial problems and ensure that the interests of the Debtors’ estates, creditors and parties-in-interest are adequately protected.

21. The Trustee also seeks to establish streamlined procedures governing the issuance of subpoenas to provide Witnesses with notice and an opportunity to object and preserve all substantive rights of Witnesses. The Trustee understands that all parties will want to reserve their

rights with respect to the specific discovery being sought, and the proposed form of order reserves those rights

22. Specifically, the proposed order includes the following procedures in connection with the issuance of subpoenas: (A) except as otherwise agreed by the Trustee, within ten (10) days of service of a subpoena, Witnesses shall be directed to produce, on a rolling basis all documents responsive to the subpoena (except any documents under a claim of privilege) or, within ten (10) days of service of the subpoena, to file all objections and/or responses to the subpoena with the Court. If a Witness files an objection, the Trustee will schedule a hearing at the Court's earliest convenience; (B) if a Witness withholds any documents based upon privilege, the Witness must provide the Trustee with a privilege log containing the information required under Bankruptcy Rule 7026, within ten (10) days of service of a subpoena upon such Witness (unless otherwise agreed by the Trustee); (C) the Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than fifteen (15) days from the service of a deposition subpoena upon a Witness; and (D) in accordance with Bankruptcy Rules 2004 and 9016, the Clerk of the Court shall issue subpoenas, signed but otherwise in-blank as requested by the Trustee.

23. Based upon the circumstances of this case, the proposed procedures for the issuance of subpoenas are necessary and appropriate for the Trustee to efficiently obtain the necessary information to properly complete his status report and statutory investigation. The establishment of (and adherence to) deadlines for compliance with the subpoenas is crucial to the efficient administration of the Debtors' estates.

24. The Trustee will serve a copy of each subpoena on (i) the target of the subpoena, (ii) the SEC, (iii) the CFTC, (iv) the IRS, and (v) the United States Attorney for the Southern

District of New York [as well as (vi) the SIPA Trustee]. In addition, the Trustee will file with the Court an affidavit or declaration of service for each subpoena it serves.

25. The proposed order, attached hereto does not limit the substantive rights of Witnesses or other parties under applicable law to object to or oppose any subpoena the Debtors may serve.

**NOTICE**

Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the Southern District of New York; (b) the United States Attorney for the Southern District of New York; (c) the Securities and Exchange Commission; (d) the U.S. Commodity Futures Trading Commission; (e) the Internal Revenue Service; (f) counsel for the agents under the Debtors' prepetition Liquidity Facility; (g) the indenture trustee for each of the Debtors' outstanding bond issuances; (h) counsel to the Statutory Creditors' Committee; (i) counsel for the SIPA Trustee; and (j) parties that have requested special notice in these cases. The Trustee submits that no other or further notice is necessary.

**NO PRIOR REQUEST**

No prior request for the relief sought herein has been made to this or any other court.

**CONCLUSION**

WHEREFORE, the Trustee respectfully requests that this Court enter an Order substantially in the form submitted herewith: (i) permitting the Trustee, pursuant to Bankruptcy Rules 2004 and 9016, to issue subpoenas and conduct examinations as necessary to fulfill his duties under Bankruptcy Code section 1106 and complete the Court-requested status report; and (ii) granting such other and further relief as the Court may deem just and proper.

Dated: April 19, 2012  
New York, New York

Respectfully submitted,

/s/ Brett H. Miller

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

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In re : Chapter 11  
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)  
Debtors. : (Jointly Administered)  
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**ORDER AUTHORIZING THE TRUSTEE TO ISSUE SUBPOENAS FOR THE  
PRODUCTION OF DOCUMENTS AND AUTHORIZING THE TRUSTEE TO  
EXAMINE PERSONS AND ENTITIES**

Upon the motion (the “Motion”),<sup>1</sup> dated April 19, 2012, of Louis J. Freeh (the “Trustee”), the chapter 11 trustee of the above-captioned debtors,<sup>2</sup> for entry of an order, pursuant to Bankruptcy Code sections 105(a) and 1106(a)(3) and Bankruptcy Rules 2004 and 9016, authorizing the Trustee to issue subpoenas for the production of documents and to examine persons and entities; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that no other or

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

<sup>2</sup> The following U.S. subsidiaries and affiliates (along with the last four digits of each of their federal taxpayer identification numbers) have filed petitions for relief and are being jointly administered with MF Global Holdings Ltd. (11-15059): MF Global Capital LLC (2825), MF Global Finance USA, Inc. (4890), MF Global FX Clear LLC (3678), MF Global Holdings USA Inc. (2847), MF Global Market Services LLC (2193).

further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted on the terms set forth herein;

ORDERED, that the Trustee is authorized, pursuant to Bankruptcy Code sections 105(a) and 1106(a)(3) and Bankruptcy Rules 2004 and 9016, to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with his investigation of the Debtors estates and complete the status report;

ORDERED, that the Trustee shall serve each subpoena and a copy of the order entered pursuant to this Motion on (i) the target of the subpoena, (ii) the SEC, (iii) the CFTC, (iv) the IRS, and (v) the United States Attorney for the Southern District of New York [as well as (vi) the SIPA Trustee];

ORDERED, that the Trustee shall file with the Court an affidavit or declaration of service for each subpoena he serves;

ORDERED, that Witnesses are directed to produce, on a rolling basis, all responsive documents described in the subpoena such that all responsive documents are received by the Trustee within ten (10) days of the service of a subpoena upon such Witness (unless otherwise agreed to by the Trustee), subject to any documents withheld under a claim of privilege;

ORDERED, that if a Witness withholds the production of any documents to the Trustee based upon a claim of privilege, such Witness is directed to provide counsel for the Trustee with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses (unless otherwise agreed to by the Trustee);

ORDERED, that Witness are directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than fifteen (15) days from the date of the service of a deposition subpoena upon such Witness;

ORDERED, that nothing herein shall limit the rights of any Witness or any other party under applicable law to object to or oppose any subpoena the Trustee may serve upon such Witness;

ORDERED, that in the event of any discovery dispute in this action, counsel shall first meet and confer in an effort to resolve the dispute. If counsel are unable to resolve the dispute, counsel for any party seeking assistance from the Court shall, before filing any discovery motion, arrange a conference call with the Court with all counsel involved in the dispute. The Court will endeavor to resolve the dispute without the filing of any discovery motions;

ORDERED, that in accordance with Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in-blank, as requested by the Trustee;

ORDERED, that this Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable Bankruptcy Rules;

ORDERED, that this Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order;

Dated: New York, New York  
April \_\_, 2012

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE