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*Counsel for MF Global Holdings Ltd.,  
as Plan Administrator*

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

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	:	
<b>In re</b>	:	<b>Case No. 11-15059 (MG)</b>
	:	
<b>MF GLOBAL HOLDINGS LTD., et al.,</b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
	:	
	:	
	:	
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**NOTICE OF HEARING ON MOTION OF MF GLOBAL HOLDINGS LTD.  
FOR EXTENSION OF TIME TO LIQUIDATE UNDER THE PLAN**

**PLEASE TAKE NOTICE** that a hearing will be held on **Wednesday, March 23, 2016 at 11:00 a.m. (Eastern Time)**, or as soon thereafter as counsel can be heard, before the Honorable Judge Martin Glenn, United States Bankruptcy Judge for the Southern District of New York, Room 501, One Bowling Green, New York, NY 10004, to consider the *Motion of MF Global Holdings Ltd. For Extension of the Time to Liquidate Under the Plan* (the "Motion"):

**PLEASE TAKE FURTHER NOTICE** that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the *Order Pursuant to 11 U.S.C. § 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 256], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than

<sup>1</sup> 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").

**Monday, March 7, 2016 (Eastern Time)**, upon (a) counsel for the Plan Administrator, Jones Day, 222 East 41st Street, New York, NY 10017 (Attn: Jane Rue Wittstein); and (b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Brian S. Masumoto).

**PLEASE TAKE FURTHER NOTICE** that if you do not timely file and serve a written response to the relief requested in the Objections, the Bankruptcy Court may deem any opposition waived, treat the Objections as conceded, and enter an order granting the relief requested in the Objections without further notice or hearing.

Dated: February 17, 2016  
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

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

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<b>In re</b>	:	<b>Case No. 11-15059 (MG)</b>
	:	
<b>MF GLOBAL HOLDINGS LTD., et al.,</b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
	:	
	:	
-----	X	

**MOTION OF MF GLOBAL HOLDINGS LTD.  
FOR EXTENSION OF TIME TO LIQUIDATE UNDER THE PLAN**

MF Global Holdings Ltd. ("Holdings"), as Plan Administrator ("Plan Administrator") under the Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code. (D.I. 1382) (the "Plan")<sup>2</sup> confirmed in the above-referenced chapter 11 cases, on behalf of itself and its affiliates, respectfully submits this motion (the "Motion") for an order, in the form attached hereto as Exhibit A, extending the term of the Plan Trust and time to liquidate under the Plan, and represents as follows:

<sup>1</sup> 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").

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan or Plan Trust Agreement, as applicable.

## **I. PRELIMINARY STATEMENT**

1. Although considerable progress has been made in administering and liquidating the Debtors' estates under the terms of the Plan, additional time is needed to continue to wind down the Debtors' estates and complete the liquidation for the benefit of the Debtors' creditors. *See Declaration of Justin Morgan* (the "Morgan Decl.") (attached hereto as Exhibit B).

2. Pursuant to § 8.1 of the Plan Trust Agreement (cited as the "PTA") (attached hereto as Exhibit C), absent further action by the Court, the Plan Trust terminates on April 5, 2016. Similarly, the Plan also provided an initial term for the Debtors' assets to be liquidated of three years after the Effective Date of June 4, 2013. Plan at § V.D.2. The Plan Administrator requests additional time for the Plan Trustees (as defined below) to continue the administration of the Plan Trust and for the orderly liquidation and winddown process to be effectuated under the terms of the Plan Trust Agreement and the Plan.

3. Absent the relief requested herein, the Plan Trust will automatically terminate, causing unnecessary uncertainty and confusion concerning, among other things, the preservation of the Debtors' tax attributes, management of the Plan Trust Stock, and governance of the Debtors' estates. Accordingly, the Plan Administrator requests entry of an Order granting additional time to liquidate under the Plan Trust Agreement and the Plan.

## **II. JURISDICTION**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

5. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **III. BACKGROUND**

6. On April 5, 2013, this Court entered the Confirmation Order confirming the *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.* On May 2, 2013, this Court entered an order [D.I. 1376] approving certain nonmaterial modifications to the confirmed plan, including the formation of the Litigation Trust and assignment of certain claims against former officers to the Litigation Trust, as set forth in the Second Amended Plan Supplement filed April 22, 2013 (the "Litigation Trust"). D.I. 1353. The term of the Litigation Trust, absent earlier termination or further extension, is five years from the Effective Date of the Plan, which was June 4, 2013 (*i.e.*, through June 4, 2018). Plan at § IX-2.E; Litigation Trust at § 7.1.

7. As of the Effective Date, Holdings and certain designated individuals (the "Plan Trustees")<sup>3</sup> entered into the Plan Trust Agreement setting forth the terms and conditions that govern the Plan Trust.<sup>4</sup> The Plan Trust holds the Plan Trust Stock for the benefit of former stockholders of Holdings, consistent with their relative priority and economic entitlements.<sup>5</sup> *Id.* This structure preserved the ownership and consolidated tax structure of the Debtors during its liquidation pursuant to the terms of the Plan.<sup>6</sup>

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<sup>3</sup> The individuals currently serving as Plan Trustees are Andrew Shannahan, Joe Kronsberg, and David Corleto. *Notice of Appointment of (I) Director Selection Committee Members, (II) Plan Trustees, (III) Litigation Trust Committee Member, and (IV) Sean Gumbs as a Director of MF Global Holdings Ltd.* (D.I. 2084).

<sup>4</sup> Also as of the Effective Date, all existing shares of common stock and preferred stock issued by Holdings—which had no economic value as of the Effective Date—were cancelled. Confirmation Order ¶ 90, at 42; Plan §§ III.B.11.b, 12.b. Thereafter, Holdings issued one share of common stock (the "Plan Trust Stock") to the Plan Trust.

<sup>5</sup> Former stockholders of Holdings have neither received nor retained any property of the estate of Holdings or interests in property of the estate of Holdings on account of their shares other than as beneficiaries of the Plan Trust. Plan §§ III.B.11.c, 12.c. Further, the beneficial interests held by the former stockholders of Holdings in the Plan Trust are uncertificated and non-transferable (except with respect to a transfer by will or under the laws of descent and distribution or approval of the board of directors of Holdings). PTA § 2.2, at 4.

<sup>6</sup> In the event that all claims against Holdings have been satisfied in full in accordance with the Bankruptcy Code and the Plan, former stockholders of Holdings (through their interest in the Plan Trust Stock) may receive their respective shares of any remaining assets of Holdings consistent with such holders' rights of payment existing immediately prior to the Petition Date. Plan §§ III.B.11.c, 12.c. Any distribution from the assets of Holdings that is made to the Plan Trust, as holder of the Plan Trust Stock, shall be for the benefit of such former stockholders in accordance with §§ IV.B.11.b and IV.B.12.b of the Plan. It is not currently anticipated that any former stockholder of Holdings will receive any distributions as a result of its beneficial interest in the Plan Trust.

8. Pursuant to § 8.1 of the Plan Trust Agreement:

The Plan Trust shall terminate on the earlier of: (i) thirty (30) days after the later of the final distribution of all of the Stock Distributions in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order and the cancellation of the Plan Trust Stock and (ii) the third (3rd) anniversary of the Confirmation Date; provided, however, that, prior to the date of such termination (and the termination of any future extended terms), **the Court, upon motion by a party in interest on notice with an opportunity for a hearing, may extend the maximum term of the Plan Trust set forth in this clause (ii) if it is necessary to the liquidation of the assets of the Plan Trust and the Debtors, for a term not to exceed nine (9) years from the Confirmation Date.**

PTA § 8.1(a) (emphasis added).<sup>7</sup>

9. Since there has been no distribution of Stock Distributions, the Plan Trust is currently set to expire on the third anniversary of the Confirmation Date, *i.e.*, April 5, 2016, unless the term is extended by the Court.<sup>8</sup>

10. The Plan also provided for the Debtors' assets to be liquidated within three years after the Effective Date. Plan at § V.D.2. While court approval is not expressly required for extending time to liquidate under the Plan (as opposed to extending the term of the Plan Trust), the Plan Administrator is required to "reasonably conclude" that "the continued winddown and

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<sup>7</sup> This request is without prejudice to future extensions, which could be sought if needed up to the maximum term of the Plan Trust of nine years from the Confirmation Date. *Id.*

<sup>8</sup> The Plan provides that the Plan Trust shall continue in existence until all of the Debtors' bankruptcy cases are closed. Plan § IV.D, at 6. The Plan Administrator takes the position that this provision is not inconsistent with the PTA in light of the provision for extension. To the extent the Plan is viewed to be inconsistent with the PTA, the Plan expressly provides that the PTA controls: "THIS PLAN SUMMARIZES CERTAIN TERMS AND PROVISIONS OF THE PLAN TRUST AGREEMENT. TO THE EXTENT ANY INCONSISTENCIES EXIST BETWEEN THIS PLAN AND THE PLAN TRUST AGREEMENT, THE PLAN TRUST AGREEMENT WILL GOVERN." Plan at 17. The PTA likewise provides that it governs in the event of conflicts with the Plan: "To the extent that there is conflict between the provisions of this Trust Agreement, the provisions of the Plan, or the Confirmation Order, each document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) this Trust Agreement; and (3) the Plan." PTA § 1.5, at 2. Nothing about the term of the Plan Trust appears in the *Order Confirming 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.* (D.I. 1288) (the "Confirmation Order"), which specifically approves the PTA. Confirmation Order ¶ 60, at 30. Therefore, the PTA controls as to the term of the Plan Trust.

liquidation should not result in a reduction or limitation of the Debtors' tax attributes for federal income tax purposes that materially impairs the expected actual use of such tax attributes." *Id.* Based on a prior ruling of the IRS<sup>9</sup> and precedents reviewed, the Plan Administrator has the requisite guidance to reasonably conclude that continuing the process of liquidation and winddown of the Debtors' estates for an additional three years should not result in the limitation or reduction of the tax attributes of the Debtors.<sup>10</sup> As such, continued liquidation is appropriate under the Plan, provided the Court grants the proposed extension in the term of the Plan Trust.<sup>11</sup>

#### **IV. RELIEF REQUESTED**

11. In accordance with section 8.1 of the Plan Trust Agreement, section IV.D, V.D.2. and article XII of the Plan, and sections 105(a) and 1142(b) of the Bankruptcy Code, the Plan Administrator hereby requests that the Court extend the term of the Plan Trust and the time to liquidate under the Plan for an additional three years through the sixth anniversary of the Effective Date of the Plan, or June 4, 2019 to permit the continued orderly winddown of the Debtors' estates under the Plan.

#### **V. BASIS FOR RELIEF**

12. The Court has the express authority pursuant to the Plan, the Confirmation Order, and the Plan Trust Agreement to extend the term of the Plan Trust. *See* Confirmation Order ¶ 60

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<sup>9</sup> *See* I.R.S. Priv. Ltr. Rul. 201228023 (Aug. 13, 2012) (holding that an extended liquidation term would not cause the liquidating debtor either to recognize cancellation of debt income nor undergo an ownership change during the liquidation, either of which would have adversely affected the debtor's tax attributes).

<sup>10</sup> The proponents of the confirmed Plan relied on the Lehman Plan defined in ¶ 21, not only for creation of the Plan Trust as a liquidating trust, but also to structure a plan of liquidation that will liquidate the Debtors' assets without realizing income from the cancellation or discharge of indebtedness or triggering an ownership change prior to completion of liquidation, thus preventing the reduction or limitation of certain tax attributes belonging to the Debtors during the course of their liquidation. *See In re Lehman Bros. Holdings Inc.*, D.I. No. 46954, No. 08-13555-SCC (Bankr. S.D.N.Y. Nov. 14, 2014) (Lehman Plan). Just as it was reasonable for the Plan proponents to rely on the Lehman Plan in structuring the Plan, and on the Court's approval of the extension of the Lehman Plan Trust as the basis for this motion, ¶ 14, the Plan Administrator is justified to rely on Lehman's continued liquidation as a basis for the continued liquidation of the Debtors under the Plan.

<sup>11</sup> The Litigation Trust, which was incorporated into the Second Amended Plan with an initial five-year term, further evidences the reasonableness of concluding that extending the winddown and liquidation over a period longer than three years is appropriate given the illiquid nature of many of the assets. *See supra* ¶ 10.

(approving the PTA);<sup>12</sup> PTA at § 8.1(a). As set forth above, § 8.1 of the Plan Trust Agreement explicitly provides for an extension, upon motion by a party in interest, of the term of the Plan Trust "if it is necessary to the liquidation of the assets of the Plan Trust and the Debtors." PTA § 8.1(a). Extension of the Plan Trust is necessary for the orderly liquidation of the assets of the Debtors' estates.

13. Extending the term of the Plan Trust and time to liquidate under the Plan is also consistent with the Court's broad authority, pursuant to §§ 105(a) and 1142(b) of the Bankruptcy Code, to issue orders necessary to implement the provisions of the Plan and the Bankruptcy Code. *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."); 11 U.S.C. § 1142(b) ("The court may direct the debtor and any other necessary party . . . to perform any other act . . . that is necessary for the consummation of the plan.").<sup>13</sup>

14. The Plan in these cases, including the establishment of the MF Global Plan Trust, was modeled on the Plan Trust created pursuant to the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors (the "Lehman Plan"), *In re Lehman Bros. Holdings Inc.*, D.I. No. 46954, No. 08-13555-SCC (Bankr. S.D.N.Y. Nov. 14, 2014). Notably, the Bankruptcy Court in *Lehman* extended the term of the Plan Trust created pursuant to the Lehman Plan to permit the estates' continued winddown. *See* Order Extending

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<sup>12</sup> Pursuant to the Confirmation Order, the Court retained exclusive jurisdiction over all matters arising under or related to the Chapter 11 Cases, including jurisdiction to "[e]nter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts . . . and other agreements or documents entered into or delivered in connection with this Plan." Confirmation Order ¶ 89; Plan § XII.f.

<sup>13</sup> *See also* *Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 609 (2d Cir. 2007) ("Section 105(a) grants broad equitable power to the bankruptcy courts to carry out the provisions of the Bankruptcy Code so long as that power is exercised within the confines of the Bankruptcy Code."); *Hosp. & Univ. Prop. Damage Claimants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 7 F.3d 32, 34 (2d Cir. 1993) ("A bankruptcy court retains post-confirmation jurisdiction in a chapter 11 proceeding only to the extent provided in the plan of reorganization."); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir. 1983) ("[A] bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances."); *In re Oversight & Control Comm'n of Avanzit, S.A.*, 385 B.R. 525, 535 (Bankr. S.D.N.Y. 2008) ("The bankruptcy court retains jurisdiction under 11 U.S.C. § 1142(b) . . . and it has 'continuing responsibilities to satisfy itself that the [p]lan is being properly implemented.' ") (alteration in original)

the Term of the Plan Trust, *In re Lehman Bros. Holdings Inc.*, D.I. No. 46954, No. 08-13555-SCC (Bankr. S.D.N.Y. Nov. 14, 2014) (attached hereto as Exhibit D). The request here seeks the same relief.

15. This Court regularly extends the term of liquidating trusts created pursuant to plans for periods up to fourteen years from the Effective Date.<sup>14</sup> On February 11, 2016, this Court granted the Plan Administrator's motion for good cause shown to extend the time for the Plan Administrator to file objections to claims through June 1, 2016, allowing the Plan Administrator additional time for this aspect of case administration. *See* Order Granting Plan Administrator's Motion Pursuant To Section 502(B) Of The Bankruptcy Code And Bankruptcy Rule 3007 For An Order Further Extending Claims Objection Deadline. D.I. 2200. Accordingly, this Court has ample authority for the entry of an order extending the Plan Trust's initial term and the time to liquidate the estates under the Plan for an additional three-year term.

**VI. EXTENSION OF THE TIME TO LIQUIDATE IS NECESSARY TO IMPLEMENT THE PROVISIONS OF THE PLAN**

16. The Plan Trust is critical to the post-Effective Date administration of the Debtors' estates and the liquidation of their assets. The term of the Plan Trust and time to liquidate under the Plan needs to be extended to preserve the structure on which the Plan was modeled and permit the continued orderly liquidation and winddown of the Debtors' estates.

17. The Plan Administrator has made significant progress in the liquidation of assets of the Debtors. Last year, the Plan Administrator and the trustee for the MFGI SIPA Liquidation

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<sup>14</sup> *See, e.g.*, Order Granting Motion of the Oldco M Distribution Trust for an Order Extending the Termination Date of the Oldco M Distribution Trust, *In re Oldco M Corporation*, No. 09-13412-mg, D.I. 2466 (Bankr. S.D.N.Y. Dec. 17, 2015) (granting extension of six months following previous one-year extension of a liquidating trust with an original term of five years); Order Granting Motion of the Global Crossing Estate Representative to Extend the Term of the Liquidating Trust, *In re Global Crossing Ltd.*, No. 02-40188-REG, D.I. 4918 (Bankr. S.D.N.Y. Nov. 24, 2015) (granting fourth two-year extension of liquidating trust with original term of five years); Order Granting Motion of the Liquidation Trustee for Order (I) Extending Term of the 1031 Debtors Liquidation Trust; and (II) For Final Decree Closing the Debtors' Chapter 11 Cases, *In re The 1031 Tax Group, LLC*, No. 07-11448-mg, D.I. 2131 (Bankr. S.D.N.Y. Sept. 17, 2014) (granting a three year extension to a liquidating trust with an original term of five years and entering an order of final decree closing the bankruptcy cases).

(the "SIPA Trustee") executed a Sale and Assumption Agreement, pursuant to which the SIPA Trustee sold MFGI's assets to a designated affiliate of Holdings, MF Global Assigned Assets ("MFGAA"), in exchange for the waiver by the Debtors and certain non-debtor affiliates of claims against the MFGI general estate. As this Court noted, this arrangement "mark[ed] a signal accomplishment in these very difficult cases." *Memorandum Opinion and Order Granting Motions to Approve Sale and Assumption of MF Global Inc. Assets and for Other Relief* at 3, D.I. 2122.<sup>15</sup> After shedding its remaining illiquid or contingent assets, the SIPA Trustee has been able to make final distributions, and the Court entered an order granting a discharge and closing the SIPA case. MFGI D.I. 8961. The Court has also entered an order granting the Plan Administrator's motion to close three of the cases that have been jointly administered with the above-captioned bankruptcy case. D.I. 2201.

18. One of the implicit assumptions underlying the Court's approval of the Sale and Assumption Agreement was that certain of the assets transferred by MFGI would take significant time to liquidate: "expenses of administration of the cases should be substantially reduced while [the transferred] assets (mostly in the form of litigation claims in the pending MDL proceedings, and very substantial insurance claims) can be pursued and resolved by settlements or litigation." *Id.* The Plan Administrator recently announced an agreement in principle to settle, *inter alia*, the transferred MDL claims and the Litigation Trustee's MDL claims and is in the process of documenting this settlement for court approval. *See, e.g., Notice of Settlement in Principle*

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<sup>15</sup> The Plan Administrator requests that the Court take judicial notice under Rule 201 of the Federal Rules of Evidence, as made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, of proceedings in the Chapter 11 Cases, including but not limited to the SIPA Liquidation of MF Global Inc. ("MFGI"), Case No. 11-02790-mg. The Plan Administrator also requests judicial notice be taken of the fact of litigation consolidated for pretrial purposes in a multi-district litigation styled *In re MF Global Holdings Limited Investment Litigation*, 12-MD-2338, and/or consolidated with *DeAngelis v. Corzine*, 11-CV-07866 (together the "MDL") in the United States District Court for the Southern District of New York (the "District Court") and any other related claims and proceedings. "A court may take judicial notice of a document filed in another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.'" *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992) (quoting *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991)).

*Among MF Global Assigned Assets LLC, MF Global Holdings Ltd., the Trustee of the Litigation Trust, the Customer Representatives, Sapere C.T.A. Fund, and the Individual Defendants, D.I.*

2183 (announcing a settlement in principle of litigation claims in the MDL proceedings (the "MDL settlement")).<sup>16</sup>

19. Even assuming the MDL settlement is consummated, certain aspects of that settlement could take years to liquidate, including claims against Dissenting E&O Insurers and the winddown of various reserves associated with continuing litigation by the CFTC. Moreover, many of the Debtors' other remaining assets will also require additional time to liquidate. *See* Morgan Decl. ¶¶ 5-12. These illiquid or contingent assets include: (i) various claims assigned by MFGI that are not resolved by the MDL settlement, including a proof of loss asserted against the issuers of certain fiduciary policies, which may require litigation; (ii) continued distributions pursuant to claims in the MF Global UK ("MFGUK") insolvency proceeding and other foreign insolvency proceedings; (iii) other pending litigation including against certain insurers to recover \$141,024,494.28 for losses sustained by MFGI as a result of illegal trading activity by Evan Dooley between February 26-27, 2008 (the "Dooley litigation"); and (iv) the action brought by the Plan Administrator against PricewaterhouseCoopers LLP, Case No. 14-CV-02197 (the "PWC action"); among others. Other assets are already the subject of long-pending litigations or foreign insolvency proceedings that have no end in sight. As such, the requested three-year extension is reasonable for the continued orderly winddown and liquidation of the estates. *See* Morgan Decl, ¶¶ 5-10.

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<sup>16</sup> The Plan Administrator and Litigation Trustee circulated a revised draft of the Global Settlement Agreement and a consolidated insurance funding agreement to defendants on January 8, 2016, which were provided to the insurers on January 10, 2016. On February 11, 2016, defendants first provided a revised draft of the global agreement with consolidated insurer and defendant comments to Jones Day. The E&O funding agreement was not provided until February 15, 2016, and the D&O funding agreement was not provided to Jones Day as of this filing. While the Plan Administrator hopes that the settlement will remain on track and proceed to final documentation, timing is not in the Plan Administrator's control and even assuming final documentation can be executed in the near term, aspects of the settlement require Bankruptcy Court approval and District Court approval.

20. No parties in interest will be prejudiced by an extension of the term of the Plan Trust. But if the term of the Plan Trust is not extended, the Plan Trust will automatically terminate, upending the corporate governance and ownership structure underlying the Plan. Accordingly, the Plan Administrator submits that the requested three-year extension of the Plan Trust term and time to liquidate under the Plan be granted.

**VII. NOTICE**

21. Notice of this Motion has been given to: (i) all parties identified on the Master Service List, as defined in the Order Pursuant to 11 U.S.C. § 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures (D.I. 256) (the "Case Management Order"); and (ii) all parties that have requested service of papers under section 4(a)(2) of the Case Management Order. The Plan Administrator submits that no other or further notice need be provided.

**VIII. NO PRIOR REQUEST**

22. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the Plan Administrator respectfully requests entry of an order in the form annexed hereto as Exhibit A, and such additional and further relief as the Court may deem proper.

Dated: February 17, 2016  
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

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Counsel for MF Global Holdings Ltd.,  
as Plan Administrator

**Exhibit A**

**(Proposed Order Extending the Term of the Plan Trust)**

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

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	:	
<b>In re</b>	:	<b>Case No. 11-15059 (MG)</b>
	:	
<b>MF GLOBAL HOLDINGS LTD., et al.,</b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
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**ORDER EXTENDING THE TIME TO LIQUIDATE UNDER THE PLAN**

Upon the motion, dated February 17, 2016 (the "Motion"),<sup>2</sup> of MF Global Holdings Ltd. ("Holdings"), as Plan Administrator ("Plan Administrator") under the Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (D.I. 1382) (the "Plan"), pursuant to §§ 105(a) and 1142(b) of title 11 of the United States Code (the "Bankruptcy Code"), to extend the term of the Plan Trust and the time to winddown the Debtors pursuant to the Plan, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference dated January 31, 2012 (Preska, C.J.); 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 due and proper notice of the Motion having been provided to (i) all parties identified on the Master Service List, as defined in the Order Pursuant to 11 U.S.C. § 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case

<sup>1</sup> 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").

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan or Plan Trust Agreement, as applicable.

Management Procedures (D.I. 256) (the "Case Management Order"); and (ii) all parties that have requested service of papers under section 4(a)(2) of the Case Management Order; and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that the term of the Plan Trust set forth in § 8.1 of the Plan Trust Agreement is hereby extended for three years from the Effective Date of the Plan, to and through June 4, 2019, subject to earlier termination pursuant to clause (i) of § 8.1(a) of the Plan Trust Agreement and subject to further extension on notice as provided for in the Plan Trust; and it is further

ORDERED that the time for the Plan Administrator to effectuate the winddown and liquidation of assets under Plan referred to in § V.D.2. is hereby extended for three years from the Effective Date of the Plan, to and through June 4, 2019, without prejudice to any further extensions or to the Plan Administrator's continued winddown, liquidation or transfer of assets to a liquidating trust under § V of the Plan; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2016  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**(Declaration of Justin Morgan)**

JONES DAY  
Bruce Bennett  
555 South Flower Street, 50th Floor  
Los Angeles, CA 90071  
Tel: (213) 243-2533  
Fax: (213) 243-2539

Jane Rue Wittstein  
Justin Morgan (admitted *pro hac vice*)  
222 East 41st Street  
New York, NY 10017  
Tel: (212) 326-3939  
Fax: (212) 755-7306

Counsel for MF Global Holdings Ltd.,  
as Plan Administrator

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

-----	x	<b>Chapter 11</b>
	:	
<b>In re</b>	:	<b>Case No. 11-15059 (MG)</b>
	:	
<b>MF GLOBAL HOLDINGS LTD., et al.,</b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
	:	
	:	
-----	X	

**DECLARATION OF JUSTIN MORGAN IN  
SUPPORT OF THE MOTION OF MF GLOBAL HOLDINGS  
LTD. FOR EXTENSION OF THE TERM OF THE PLAN TRUST**

I, Justin Morgan, make this declaration pursuant to 28 U.S.C. § 1746 and state as follows:

1. I am an associate at Jones Day, counsel to 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*

<sup>1</sup> 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").

*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").*

2. I am a member in good standing of the bar of the State of Illinois and was admitted to practice *pro hac vice* in the United States Bankruptcy Court for the Southern District of New York on November 5, 2015. (D.I. 2153). I respectfully submit this declaration in support of the *Motion of MF Global Holdings Ltd. for Extension of the Time to Liquidate Under the Plan* (the "Motion").<sup>2</sup>

3. The Plan Administrator has made significant progress in the liquidation of the Debtors' assets and the administration of these estates. On February 11, 2016, this Court entered an Order issuing a final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC. (D.I. 2201). On October 13, 2015, the Plan Administrator filed a notice of the most recent round of distributions to the estates' creditors. *Notice Regarding Fourth Distribution of MF Global Holdings Ltd. and Third Distribution of MF Global Finance USA Inc. Pursuant to the Second Amended and Restated Joint Plan of Liquidation of MF Global Holdings Ltd. and its Affiliated Debtors* (D.I. 2134).

4. While much progress has been made, much work remains to be done to complete the winddown and liquidation of the estates' assets to maximize returns to creditors. With this Court's approval, the Plan Administrator and the trustee for the MFGI SIPA Liquidation (the "SIPA Trustee") executed an agreement pursuant to which the SIPA Trustee sold MFGI's assets to a designated affiliate of Holdings, MF Global Assigned Assets LLC

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning set forth in the Motion.

("MFGAA") in exchange for the waiver by the Debtors and certain non-debtor affiliates of claims against MFGI (the "Sale and Assumption Agreement"), paving the way for the earlier closing of MFGI's SIPA estate but leaving the Plan Administrator with the task of reducing MFGI's illiquid assets and claims against insurers into settlements or judgments for ultimate distribution to creditors.

5. Among MFGI's illiquid assets were certain claims pending as part of the multi-district litigation in the District Court for the Southern District of New York (the "District Court"), consolidated as *Deangelis v. Corzine et al.*, Case No. 11-cv-07866 (the "MDL"). On November 30, 2015, the Plan Administrator and Nader Tavakoli, as trustee (the "Lit Trustee") of the MF Global Litigation Trust (the "Lit Trust") executed a term sheet for a global settlement of the estate's MDL claims, and on December 24, 2015, the Plan Administrator filed a statement announcing that the MDL settlement also resolved the objections and Adversary Proceeding involving challenges to the funding the Securities class action settlement, *Notice of Settlement in Principle Among MF Global Assigned Assets LLC, MF Global Holdings Ltd., the Trustee of the Litigation Trust, the Customer Representatives, Sapere C.T.A. Fund, and the Individual Defendants*, D.I. 2183.

6. Even assuming the MDL settlement is consummated expeditiously, it would not be final until after the current Plan Trust expires by its own terms on April 5, 2016. Moreover, the ongoing liquidation activities of the Plan Administrator are far from complete even assuming the MDL settlement goes final. Identified below are examples of the ongoing activities that will continue to require the Plan Administrator's active involvement long after the MDL settlement is consummated.

7. The action brought by the Plan Administrator (the "PwC action") against PricewaterhouseCoopers LLP ("PwC") remains pending in the District Court as Case No. 14-cv-

02197. On January 29, 2016, PWC filed a motion for summary judgment, (PWC D.I. 46) to which the Plan Administrator's response is due on March 11, 2016. PWC's reply is due April 1, 2016. No trial date has been set and any judgment could result in appeals.

8. In New York State Supreme Court, one of the Debtors is pursuing claims against its fidelity insurers (Index No. 601621/2009) related to the insurers' denial of a proof of loss asserted to recover \$141,024,494.28 for losses sustained by MFGI as a result of illegal trading activity by Evan Dooley between February 26 and 27, 2008 (the "Dooley litigation"). The Dooley litigation has been pending since 2009, and after an interlocutory appeal is still in the discovery phase. As with the PwC action, no trial date has been set and any judgment could result in an appeal.

9. Distributions have not yet concluded on account of MFGI's net unsecured creditor claim in the MF Global UK ("MFGUK") insolvency proceeding that was transferred under the Sale and Assumption Agreement. The Debtors' estates also have open claims in the MFGUK and other foreign insolvency proceedings that continue to receive distributions. These foreign proceedings continue in administration and no date for their closing can currently be predicted.

10. The illiquid assets transferred by MFGI under the Sale and Assignment Agreement also included claims against (i) the issuers of certain fiduciary policies and (ii) certain issuers of errors and omissions ("E&O") policies who are not contributing their policy limits and will not be released as part of the MDL settlement (the "Dissenting E&O Insurers"). These claims are the subject of pending demands for coverage and if not honored may need to be pursued through litigation or other contested proceedings, which could be protracted.

11. The MDL settlement itself contemplates certain reserves that may not be resolved until other proceedings are final, which could take months or years, and the assignment

of claims against the Dissenting E&O Insurers that could require litigation or other proceedings to recover amounts not being contributed by these insurers to the MDL settlement.

12. The process to allow or expunge claims against the Debtors continues to wind down, but has not yet concluded. On February 11, 2016 this Court granted the Plan Administrator's motion to extend the claims objection deadline until June 1, 2016, recognizing that the Plan Administrator required additional time for this important aspect of case administration. See *Order Granting Plan Administrator's Motion Pursuant To Section 502(B) Of The Bankruptcy Code And Bankruptcy Rule 3007 For An Order Further Extending Claims Objection Deadline*. D.I. 2200.

13. Under these circumstances, it is clear that there are many ongoing and future activities that require the Plan Administrator's active involvement to effectuate the wind-down and liquidation of the estates' property contemplated by the Plan. While it is impossible to predict exactly how much longer the Plan Administrator will require to complete its function, for now a three-year extension is warranted to permit the orderly liquidation of the estates.

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

Dated: February 17, 2016  
New York, New York

/s/ Justin Morgan  
Justin Morgan

**Exhibit C**

**(Plan Trust Agreement)**

## **MF GLOBAL PLAN TRUST AGREEMENT**

This MF Global Plan Trust Agreement (this “Trust Agreement”), dated and effective as of June 4, 2013 (the “Effective Date”), by and among MF Global Holdings Ltd. (“Holdings Ltd.”) and the following parties (each, together with any successor thereto, a “Trustee” and collectively, the “Trustees”), (1) Joe Kronsberg, not in his individual or personal capacity, but solely in his capacity as the designee of Creditor Co-Proponent Cyrus Capital Partners, (2) Daniel Ehrmann, and (3) Andrew Shannahan, not in his individual or personal capacity, but solely in his capacity as the designee of Creditor Co-Proponent Knighthood Master Fund, LP, executed in connection with the *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.* filed on April 1, 2013 (as the same has been or may be amended, the “Plan”), as confirmed by the United States Bankruptcy Court for the Southern District of New York (the “Court”) pursuant to the confirmation order dated May 2, 2013 (the “Confirmation Order”), provides for the establishment of a liquidating trust evidenced hereby (the “Plan Trust”) in accordance with the Plan. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

### W I T N E S S E T H

WHEREAS, the Plan Trust is created pursuant to, and to effectuate, the Plan;

WHEREAS, the Plan Trust is created on behalf of, and for the sole benefit of, the holders of record (including any permitted successor record holder thereof, the “Beneficiaries”) of the common and preferred stock of Holdings Ltd. outstanding on the Effective Date (the “Holdings Ltd. Stock”);

WHEREAS, the Plan provides that on the Effective Date all Holdings Ltd. Stock is to be cancelled and the Plan Trust Stock shall be issued (which shall replace the cancelled Holdings Ltd. Stock) to the Plan Trust, to be held for the benefit of the Beneficiaries consistent with their former relative priority and economic entitlements as holders of Holdings Ltd. Stock and Sections III.B.11.b and c, and III.B.12.b and c of the Plan; and

WHEREAS, the Plan Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d);

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, Holdings Ltd. and the Trustees agree as follows:

## **ARTICLE I ESTABLISHMENT OF THE PLAN TRUST**

1.1 Creation and Name. There is hereby created a trust, which shall be known as the “MF Global Plan Trust.”

1.2 Purpose of the Plan Trust. The Plan Trust is established for the sole purposes of (i) holding the Plan Trust Stock in accordance with the Plan and with no objective or authority to

continue or engage in the conduct of a trade or business, (ii) aiding in the implementation of the Plan and (iii) receiving and distributing any proceeds with respect to the Plan Trust Stock pursuant to the Plan (the “Stock Distributions”), in each of cases (i) through (iii), for the benefit of the Beneficiaries consistent with the relative priority and economic entitlements of their former holdings of Holdings Ltd. Stock immediately prior to the Petition Date. Accordingly, the Trustees shall, and hereby represent that they shall, in an expeditious but orderly manner, make timely distributions of any Stock Distributions and not unduly prolong the duration of the Plan Trust. Nothing in this Section 1.2 shall be deemed to permit the Trustees to sell, liquidate, distribute or otherwise transfer or encumber the Plan Trust Stock.

1.3 Further Assurances of Holdings Ltd. Holdings Ltd. (and any successor entity thereto) will, upon reasonable request of the Trustees, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Trustees any portion of the Plan Trust’s assets intended to be conveyed hereby in the form and manner provided for in the Plan and to vest in the Trustees the powers, instruments or funds in trust hereunder. Holdings Ltd., for itself and any predecessor or successor entity, hereby disclaims and waives any and all right to any reversionary interest in any of the Plan Trust’s assets.

1.4 Transfer of Property to Trustees. Pursuant to the Plan, Holdings Ltd. and the Trustees hereby establish, on behalf of the Beneficiaries consistent with their former relative priority and economic entitlements as holders of Holdings Ltd. Stock, the Plan Trust, and on the Effective Date, Holdings Ltd. shall issue and deliver to the Plan Trust the Plan Trust Stock free and clear of any Lien, Claim, or Interest in such property of any other Person<sup>1</sup> except as provided in the Plan. The Trustees shall have no duty to confirm the legality or the sufficiency of any of the issuances, transfers and assignments contemplated hereunder and shall incur no liability in connection therewith. The Trustees agree to accept and hold the Plan Trust Stock and the Stock Distributions in trust for the Beneficiaries consistent with their former relative priority and economic entitlements as holders of Holdings Ltd. Stock, subject to the terms of this Trust Agreement.

1.5 Relationship to the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and therefore this Trust Agreement incorporates the provisions of the Plan and the Confirmation Order (which may amend or supplement the Plan). To that end, the Trustees shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, the Confirmation Order and this Trust Agreement. To the extent that there is conflict between the provisions of this Trust Agreement, the provisions of the Plan, or the Confirmation Order, each document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) this Trust Agreement; and (3) the Plan.

1.6 Title to Plan Trust Stock and the Stock Distributions.

(a) The issuance or transfer, respectively, of the Plan Trust Stock and the Stock Distributions to the Plan Trust are or shall be made by Holdings Ltd. for the benefit and on behalf of the Beneficiaries consistent with their former relative priority and economic

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<sup>1</sup> “Person” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Unit or other entity.

entitlements as holders of Holdings Ltd. Stock. The Plan Trust may not exercise any voting rights appurtenant to the Plan Trust Stock in conflict with Article V of the Plan.

(b) For all purposes, including, without limitation, U.S. federal income taxes, all parties (including, without limitation, Holdings Ltd., the Trustees, and the Beneficiaries) shall be deemed to treat the transfer by Holdings Ltd. of assets to the Plan Trust as (i) a transfer of such assets directly to the Beneficiaries followed by (ii) the transfer by such Beneficiaries to the Plan Trust of such assets in exchange for beneficial interests in the Plan Trust. Accordingly, the Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Plan Trust Stock and the Stock Distributions.

1.7 Rights of Beneficiaries. The Beneficiaries shall be the beneficial owners of the assets of the Plan Trust created by this Trust Agreement and the Trustees shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein. In the event that all Allowed Claims in Holdings Ltd. Classes 1 through 7 have been satisfied in full in accordance with the Bankruptcy Code and the Plan, the Plan Trust may receive Stock Distributions, which will then be distributable among the Beneficiaries consistent with each Beneficiary's rights of payment as holders of Holdings Ltd. Stock existing immediately prior to the Distribution Record Date, subject to all of the terms and provisions of this Trust Agreement, the Plan and the Confirmation Order (the Beneficiaries' interests in such Stock Distributions and the Plan Trust Stock, the "Trust Interests").

1.8 Ownership and Control of Assets of the Plan Trust. Except as is hereinafter expressly provided, no Beneficiaries shall have any title or right to, or possession, management or control of, the assets of the Plan Trust, or any right to call for a partition, division or accounting of the assets of the Plan Trust, and no widower, widow, heir or devisee of any individual who may be a Beneficiary, or bankruptcy trustee, receiver or similar person of any Beneficiary shall have any right, statutory or otherwise (including any right of dower, homestead or inheritance, or of partition, as applicable), in any of the assets of the Plan Trust, but the whole title to all of the assets of the Plan Trust shall be vested in the Trustees and the sole interest of the Beneficiaries shall be the rights and benefits given to such persons under this Trust Agreement.

1.9 Costs and Expenses of the Plan Trust. Holdings Ltd. shall be responsible for and pay any and all actual, necessary and reasonable costs and expenses of the Plan Trust, including any claims of or reimbursements to the Trustees, and actual, necessary and reasonable fees and expenses of the Trustees and retained professionals, in each case, in accordance with the terms of this Trust Agreement and the Plan.

## **ARTICLE II TRUST INTERESTS**

2.1 Identification of Beneficiaries. The record holders of the Trust Interests, or Beneficiaries, shall be recorded and set forth in a register maintained by, or at the direction of, the Trustees expressly for such purpose. The initial list of record holders of Trust Interests shall be delivered to, or at the direction of, the Trustees by Holdings Ltd. and shall be based on the list of holders of Holdings Ltd. Stock as maintained by or on behalf of Holdings Ltd. as of the Distribution Record Date. Except as otherwise required by law, all references in this Trust

Agreement to holders shall be read to mean holders of record as set forth in the official register maintained by, or at the direction of, the Trustees and shall not mean any beneficial owner not recorded on such official registry. Unless expressly provided herein, the Trustees may establish a record date which they deem practicable for determining the holders for a particular purpose.

2.2 Non-Transferability of Trust Interests. The Trust Interests shall not be certificated and shall not be transferable, assignable, pledged or hypothecated, in whole or in part, except with respect to a transfer by will or under the laws of descent and distribution or in the event the Holdings Ltd. board of directors in its discretion authorizes the transfer of such rights. Any such permitted transfer, however, will not be effective until and unless the Trustees, or their designee, receive written notice of such transfer.

### **ARTICLE III AUTHORITY, LIMITATION, DISTRIBUTIONS AND DUTIES**

3.1 Authority of Trustees. The Trustees are authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Plan Trust in accordance with the Confirmation Order, this Trust Agreement and the Plan. Without limiting, but subject to, the foregoing and Section 3.2 hereof, the Trustees shall be expressly authorized, but shall not be required, to:

(a) hold legal title to any and all rights of the holders of the Trust Interests in or arising from the Plan Trust Stock and the Stock Distributions, including, but not limited to, collecting any and all money and other property belonging to the Plan Trust;

(b) protect and enforce the rights to the Plan Trust Stock and the Stock Distributions by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(c) determine and satisfy any and all liabilities created, incurred or assumed by the Plan Trust;

(d) file, if necessary, any and all tax and information returns with respect to the Plan Trust and pay taxes properly payable by the Plan Trust, if any;

(e) assert or waive any privilege or defense on behalf of the Plan Trust or Holdings Ltd.;

(f) pay all expenses and make all other payments relating to the Plan Trust and its assets;

(g) obtain and pay for insurance coverage with respect to the liabilities and obligations of the Trustees under this Trust Agreement (in the form of an errors and omissions policy or otherwise);

(h) retain and pay such independent law firms as counsel to the Plan Trust as the Trustees in their sole discretion may select to perform such other functions as may be

appropriate in the Trustees' sole discretion. The Trustees may commit the Plan Trust to, and shall, pay such independent law firms reasonable compensation for actual and necessary services rendered and actual and necessary expenses incurred. The Trustees may retain counsel on a *nunc pro tunc* basis, to a date prior to the Effective Date;

(i) retain and pay an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Plan Trust as may be appropriate in the Trustees' sole discretion and to prepare and file any tax returns or informational returns for the Plan Trust as may be required. The Trustees may retain an independent accounting firm on a *nunc pro tunc* basis, to a date prior to the Effective Date. The Trustees may commit the Plan Trust to, and shall, pay such independent public accounting firm reasonable compensation for actual and necessary services rendered and actual and necessary expenses incurred; and retain and pay such other third parties not contemplated above in this Section 3.1 as the Trustees, in their sole discretion, may deem necessary or appropriate to assist the Trustees in carrying out their powers and duties under this Trust Agreement. The Trustees may commit the Plan Trust to, and shall, pay all such Persons reasonable compensation for actual and necessary services rendered and actual and necessary expenses incurred, as well as commit the Plan Trust to indemnify any such parties in connection with the performance of services, on a *nunc pro tunc* basis, to a date prior to the Effective Date.

3.2 Majority Approval; Limitation of Trustees' Authority. Unless otherwise provided herein, any act of the Plan Trust shall require the approval of, and shall be approved by, the affirmative vote of a majority of the Trustees. Notwithstanding anything herein to the contrary, the Trustees shall not, and shall not be authorized to, engage in any trade or business on behalf of the Plan Trust, and shall take such actions consistent with the orderly liquidation of the assets of the Plan Trust as are required by applicable law, and such other actions permitted under this Trust Agreement. Notwithstanding any other authority granted by Section 3.1 hereof, the Trustees are not authorized to engage in any investments or activities on behalf of the Plan Trust inconsistent with the treatment of the Plan Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.3 Books and Records. The Trustees shall maintain, in respect of the Plan Trust and the Beneficiaries, books and records relating to the assets of the Plan Trust and income of the Plan Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Plan Trust, in such detail and for such period of time as may be necessary to enable a full and proper accounting to be made in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Plan Trust. Nothing in this Trust Agreement shall be deemed to require the Trustees to file any accounting or seek approval of any court with respect to the administration of the Plan Trust, or as a condition for managing any payment or distribution out of the assets of the Plan Trust. The Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Trustees, to inspect such books and records (including financial statements), subject to the Trustees' right to deny access in a reasonable effort to preserve privileged or confidential information or protect litigation or other strategies and provided that, if so requested, such Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Trustees. Any books and records determined by the Trustees, in their sole

discretion, not to be reasonably necessary for administering the Plan Trust or for the Trustees' compliance with the provisions of this Trust Agreement, may, to the extent not prohibited by applicable law, at any time following the Effective Date, be destroyed.

3.4 (a) Additional Powers. Except as otherwise set forth in this Trust Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Court as provided for in the Plan, but without prior or further authorization, the Trustees may control and exercise authority over the assets of the Plan Trust and over the protection, conservation and disposition thereof. No Person dealing with the Plan Trust shall be obligated to inquire into the authority of the Trustees in connection with the protection, conservation or disposition of the assets of the Plan Trust.

(b) Execution of Documents. Subject to any contrary direction that the Plan Trust has provided, all agreements, contracts, deeds, instruments, certificates, applications, approvals, proxies, powers of attorney, undertakings, filings and other documents of the Plan Trust shall require the execution and delivery thereof, for and on behalf of the Plan Trust, by any two Trustees, except as otherwise provided by law. The Trustees may delegate any such execution and delivery rights to a third party by unanimous written consent.

3.5 (a) Periodic Distribution; Withholding. The Trustees shall distribute to the Beneficiaries Stock Distributions as soon as practicable following receipt thereof and at least annually; provided, however, that prior to making any distribution to the Beneficiaries, the Plan Trust may retain such amounts, in each case to the extent not paid for by Holdings Ltd., (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Plan Trust during liquidation, (ii) to pay actual, necessary and reasonable administrative expenses (including the actual, necessary and reasonable fees, costs and expenses of the Trustees and all professionals they retain and any taxes imposed on the Plan Trust or in respect of the assets of the Plan Trust), and (iii) to satisfy other liabilities incurred or assumed by the Plan Trust (or to which the assets of the Plan Trust are otherwise subject) in accordance with the Plan or this Trust Agreement. All such distributions shall be made consistent with the Beneficiaries' rights as holders of Holdings Ltd. Stock existing prior to the Petition Date, subject to the terms of the Plan and this Trust Agreement. The Trustees may withhold from amounts distributable to any Person any and all amounts, determined in the Trustees' reasonable sole discretion, as required by any law, regulation, rule, ruling, directive or other governmental requirement. Notwithstanding the foregoing, in no event shall any Beneficiary receive a distribution of Plan Trust Stock.

(b) Manner of Payment or Distribution. All Stock Distributions made by the Trustees to Beneficiaries shall be payable to the holders of Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, in which case such day shall be the following Business Day (the "Record Date"). If the distribution shall be in Cash, the Trustees shall distribute such Cash by wire, check, or such other method as the Trustees deem appropriate under the circumstances.

(c) Delivery of Trust Distributions. All distributions under this Trust Agreement to any Beneficiary shall be made at (a) at the addresses set forth on the respective Proofs of Interest filed by the Beneficiary, if any; (b) the address of such Beneficiary as set forth

in the register, or (c) at such other address as such Beneficiary shall have specified for payment purposes in a written notice to the Trustees at least fifteen (15) days prior to such distribution date.

(d) Undeliverable Trust Distributions. In the event that any distribution to any Beneficiary is returned as undeliverable, no Distribution to such Beneficiary shall be made unless and until the Trustees have determined the then current address of such Beneficiary, at which time such Distribution shall be made to such Beneficiary without interest; provided, however, that such Distribution shall be deemed unclaimed property under § 347(b) of the Bankruptcy Code at the expiration of six (6) months from the date of such Distribution. After such date, all unclaimed property shall become Available Cash for Distribution to all other Beneficiaries, and the Claim of any Beneficiary to such unclaimed property shall be released and forever barred from assertion against such Debtor and its Estate. The Trustees shall reallocate all undeliverable and unclaimed distributions for the benefit of all other Beneficiaries.

### 3.6 Duties of the Trustees.

#### (a) Reporting Duties.

(i) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Trustees of a private letter ruling if the Trustees so request one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Trustees), the Trustees shall file or cause to be filed returns for the Plan Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a). Within seventy-five (75) days following the end of each calendar year or as soon as practicable thereafter, the Trustees shall also send or cause to be sent to each Beneficiary a separate statement setting forth the holder's share of items of income, gain, loss, deduction or credit, if any, and will instruct all such holders to report such items on their federal income tax returns.

(ii) Taxable income of the Plan Trust shall be allocated by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Plan Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the holders of the Trust Interests, taking into account all prior and concurrent distributions from the Plan Trust. Similarly, taxable loss of the Plan Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets of the Plan Trust. The tax book value of the assets of the Plan Trust for this purpose shall equal their fair market value on the date the Plan Trust was created or, if later, the date such assets were acquired by the Plan Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

(iii) The Trustees may request an expedited determination of taxes of the Plan Trust under § 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Plan Trust for all taxable periods through the dissolution of the Plan Trust.

(iv) The Trustees shall file (or cause to be filed) any other statements, returns or disclosures relating to the Plan Trust that are required by any governmental authority.

(b) Holdings Ltd. Board of Directors. At such time as a vacancy on the board of directors of Holdings Ltd. is to be filled upon the expiration of a director's term of office, or his or her resignation, death or removal for cause, the Plan Trust shall fill such vacancy voting the Plan Trust Stock in accordance with the provisions of ARTICLE VI. At all other times, the Plan Trust may act and vote the Plan Trust Stock, by majority approval of the Trustees, to remove directors of Holdings Ltd. only with cause.

(c) No Other Duties. Other than the duties and obligations of the Trustees specifically set forth in this Trust Agreement, the Plan or the Confirmation Order, the Trustees shall have no duties or obligations of any kind or nature with respect to their position as Trustees.

3.7 Compliance with Laws. Any and all distributions of Stock Distributions shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

#### **ARTICLE IV THE TRUSTEES**

4.1 Generally. The Trustees' powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Trust Agreement, the Plan and the Confirmation Order and not otherwise, except that the Trustees may deal with the assets of the Plan Trust for their own account as permitted by Section 4.5 hereof.

4.2 Liability of Trustees, Indemnification. None of the Trustees, their designees or professionals engaged by or on behalf of the Trustees, or any duly designated agent or representative of the Trustees shall be liable for the act or omission of any other agent or representative of the Trustees, nor shall any Trustee be liable for any act taken, suffered or omitted in his capacity as Trustee, unless it is ultimately determined by Final Order that such Trustee's acts or omissions constituted gross negligence, willful misconduct or criminal conduct. In no event shall a Trustee be liable or responsible for special, punitive, indirect, consequential or incidental loss or damages of any kind whatsoever to any Person (including, without limitation, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage. The Trustees may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Trustees shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and a determination not to do so shall not result in the imposition of liability on the Trustees or, as applicable, their designees, unless it is ultimately determined by Final Order that the Trustees' determination constituted gross negligence, willful misconduct or criminal conduct. The Plan Trust shall indemnify and hold harmless the Trustees, their designees and professionals engaged by or on behalf of the Trustees, and all duly designated agents and representatives thereof (in their capacity as such), from and against, and in respect of, all liabilities, losses, damages, claims, costs and expenses, including, but not limited to, attorneys' fees and costs arising out of or due to

their acts or omissions, or consequences of such acts or omissions with respect to the Plan Trust or the implementation or administration of the Plan; provided, however, that no such indemnification will be made to such Persons for such acts or omissions to the extent that it is ultimately determined by Final Order that such Persons' acts or omissions constituted gross negligence, willful misconduct or criminal conduct.

If a Trustee becomes involved in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Plan, this Trust Agreement or the affairs of the Plan Trust or the Debtors, the Plan Trust shall periodically advance or otherwise reimburse on demand the actual, necessary and reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) of the Trustee incurred in connection therewith, but the Trustee shall be required to repay promptly to the Plan Trust the amount of any such advanced or reimbursed expenses paid to the Trustee to the extent that it shall be ultimately determined by Final Order that any such action, proceeding or investigation with respect to which such expenses were paid, resulted from the Trustee engaging in an action or omission that constituted gross negligence, willful misconduct or criminal conduct.

4.3 Reliance by Trustees. Except as otherwise provided in Section 4.2 hereof:

(a) each Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties, without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt;

(b) each Trustee may rely as to the truth of statements and correctness of facts and opinions expressed in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties, and shall be fully protected personally in acting thereon; provided such Trustee's acts or omissions did not constitute gross negligence, willful misconduct or criminal conduct;

(c) each Trustee may seek any order from the Court or any court of competent jurisdiction, upon notice and an opportunity for a hearing, in furtherance of implementation of the Plan, the Confirmation Order and this Trust Agreement in which event such Trustee shall have no liability for any action or inaction approved by the Court or any other court of competent jurisdiction for complying with such order; and

(d) no Trustee shall have any personal obligation to satisfy any liability of the Plan Trust.

4.4 Investment and Safekeeping of Assets of the Plan Trust. The right and power of the Trustees to invest assets of the Plan Trust, the proceeds thereof, or any income earned by the Plan Trust, shall be limited to the right and power that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), is permitted to hold, pursuant to the Treasury Regulations and the guidelines set forth in Rev. Proc. 94-45, 1994-2 C.B. 684, or any

modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. The Trustees shall have no liability or responsibility on account of the Trustees' investment or non-investment losses with respect to any such investment of the Plan Trust's assets, including, without limitation, any market loss on any investment liquidated (whether at or prior to maturity) in order to make a payment required under this Trust Agreement, provided the Trustee's decisions are otherwise made in accordance with the terms of this Trust Agreement.

4.5 Expense Reimbursement and Compensation. The assets of the Plan Trust shall be subject to the claims of the Trustees, and the actual, necessary and reasonable costs and expenses of the Plan Trust, including the actual, necessary and reasonable fees and expenses of the Trustees and their retained professionals, to the extent not paid for by Holdings Ltd., shall be paid out of the Stock Distributions. To the extent not paid by Holdings Ltd., each Trustee shall be entitled to reimbursement out of any available Cash in the Plan Trust, for actual, out-of-pocket, necessary and reasonable expenses and for any and all loss, liability, claim, cost, expense or damage which such Trustee may sustain that did not constitute gross negligence, willful misconduct or criminal conduct in the exercise and performance by such Trustee of any of the powers and duties of the Trustees under this Trust Agreement. As compensation for the performance of their duties, the Trustees will be entitled to reasonable compensation in such amounts as the Plan Trust may fix from time to time, consistent with that of similar functionaries in similar types of bankruptcy proceedings. The Trustees may be compensated on a *nunc pro tunc* basis, to a date prior to the Effective Date. Such costs and expenses shall be considered administrative costs of Holdings Ltd.'s estate.

4.6 Prior Lien of Trustees. The Trustees shall have a prior lien upon the Plan Trust's assets to secure payment of any amounts payable to them or employees or agents of the Plan Trust as compensation for services to the Plan Trust or for indemnification expenses pursuant to Section 4.2 hereof.

4.7 No Bond. The Trustees shall serve without bond.

4.8 Confidentiality. Each Trustee shall, during the period that he serves as Trustee under this Trust Agreement and for a period of twelve (12) months following the termination of this Trust Agreement, or following his removal or resignation hereunder, hold strictly confidential and not use for personal gain any and all confidential information and any and all non-public material information of the Plan Trust, the Debtors and any Affiliate thereof or of which such Trustee has become aware in his capacity as Trustee, except as otherwise required by law. The Trustees shall exercise their business judgment in determining what information should be maintained confidential. Nothing in this Agreement shall prohibit a Trustee from issuing a press release or other form of public communication and disclosing theretofore confidential and/or non-public information.

## **ARTICLE V SUCCESSOR TRUSTEES**

5.1 Term and Removal. Each of the Trustees (including the initial Trustees named on the Effective Date and any successor Trustees) shall serve in such capacity until he or she ceases to be a member of the Director Selection Committee or a member of the Holdings Ltd. board of

directors, as applicable. Notwithstanding the foregoing, a Trustee may be removed (a) by the unanimous vote of the other Trustees but only for cause, or (b) at any time with or without cause by the Director Selection Committee member who appointed such Trustee if such Director Selection Committee member (i) is himself the Trustee, or (ii) intends to succeed such Trustee as a Trustee. Such removal shall become effective on the date action is taken.

5.2 Resignation. A Trustee may resign by giving not less than ninety (90) days prior written notice thereof to the other Trustees. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice, and (ii) if such Trustee is the last Trustee then in office, the appointment of a successor by the Court and the acceptance by such successor of such appointment. If a successor Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the remaining Trustee(s) may petition any court of competent jurisdiction for the appointment of a successor Trustee.

5.3 Appointment of Successor Trustee. In the event of the death (in the case of a Trustee that is a natural person), dissolution (in the case of a Trustee that is not a natural person), resignation pursuant to Section 5.2 hereof, incompetency or removal of a Trustee pursuant to Section 5.1 hereof, the Director Selection Committee member that had designated such departing Trustee shall designate a successor Trustee; provided, however, that any successor Trustee shall be both a Trustee and either a Director Selection Committee member or a director of Holdings Ltd. at the election of such Director Selection Committee member; provided, further, however, that if as part of the Director Selection Committee determination process set forth in Section 6.1 hereof, a new Holder of an Allowed Claim is invited to serve as a Director Selection Committee member, such new Holder may designate a successor Trustee or serve as a successor Trustee if the departing Trustee was designated by its predecessor Director Selection Committee member. Such appointment shall specify the date on which such appointment shall be effective. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Plan Trust and to the retiring Trustee an instrument accepting the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor Trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, trusts and duties of the retiring Trustee; provided, however, that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor Trustee under the Plan Trust.

5.4 Trust Continuance. The death, resignation or removal of a Trustee shall not operate to terminate the Plan Trust or to revoke any existing agency (other than any agency of such Trustee as a Trustee) created pursuant to the terms of this Trust Agreement or invalidate any action theretofore taken by the Trustees, and each Trustee agrees that the provisions of this Trust Agreement shall be binding upon and inure to his or her representatives, successors or assigns, as the case may be. If a Trustee resigns or is removed, such Trustee shall promptly execute and deliver by the effective date of resignation or removal such documents, instruments and other writings as may be reasonably requested by the remaining Trustees to effect the termination of the Trustee's capacity under this Trust Agreement and the conveyance of the Trust's assets then held by him or her to his or her successor; deliver to the remaining Trustees all documents, instruments, records and other writings relating to the Trust as may be in the possession or under the control of the Trustee; and otherwise assist and cooperate in effecting the

assumption of his or her obligations and functions by the successor Trustee. Each Trustee hereby irrevocably appoints each other Trustee who shall be a remaining Trustee as his or her attorney-in-fact and agent with full power of substitution for him or her in his or her name, place and stead to do any and all acts that such Trustee is obligated to perform under this Section 5.4. Such appointment shall not be affected by the subsequent disability or incompetence of the Trustee making such appointment.

## **ARTICLE VI DIRECTOR SELECTION COMMITTEE**

### 6.1 Director Selection Committee.

(a) The Plan Trust hereby creates a director selection committee (the “Director Selection Committee”) for the purpose of nominating members of the board of directors of Holdings Ltd. (each, a “Director”). The Plan Trust hereby agrees to vote the Plan Trust Stock in favor of the election of the Directors designated by the Director Selection Committee pursuant to and in accordance with the terms of this ARTICLE VI, including voting at every annual, special or adjourned meeting of the stockholders of Holdings Ltd. and in every written consent in lieu of any such meeting.

(b) The Director Selection Committee shall be composed of three representatives of the Creditor Co-Proponents. Members of the Director Selection Committee shall serve eighteen (18) month terms beginning on the Effective Date. The initial members of the Director Selection Committee shall be Joe Kronsberg, Austin Saypol and Andrew Shannahan. On every eighteen (18) month anniversary of the Effective Date, a determination shall be made as to who are the then-current Holders of the largest Allowed Claims in (i) Class 5A plus (ii) Class 6A (including interest that would have accrued at contract rates in the absence of the Chapter 11 Cases) as of the last day of the preceding term. Those Holders shall be invited in decreasing order of magnitude of Allowed Claim to serve on the Director Selection Committee for an eighteen (18) month term until three Holders accept the position on the Director Selection Committee.

(c) Each member of the Director Selection Committee shall be entitled to designate one Director for election by the Plan Trust. Each Director must be independent and disinterested (which collectively are defined here to mean only that they must not be employees or Affiliates of any of the Plan Proponents), and must not own any Claims against or Interests in any Debtor.

(d) Each Director designated by the Director Selection Committee on or around the Effective Date initially shall serve for a two year term beginning on the Effective Date. Each subsequently designated Director (including any reappointed Director, but excluding any replacement Director designated following a Director’s resignation, death or removal) shall serve for a one year term beginning on the applicable anniversary of the Effective Date. Upon expiration of the term of a Director, or his or her resignation, death or removal, the Director Selection Committee member who designated such Director or his successor, if applicable, may designate a replacement Director. Any Director designated following the resignation, death or removal of a prior Director, however, shall only serve the remainder of such prior Director’s

term. The Plan Trust shall accomplish the foregoing through voting the Plan Trust Stock accordingly at any annual meeting of the stockholders of Holdings Ltd. or in any unanimous written consent in lieu of such meeting, and each of the Trustees hereby agrees to vote the Plan Trust Stock accordingly at any such meeting or in any such written consent; provided, however, that any of the Trustees may vote the Plant Trust Stock to remove a Director (i) for cause upon the written consent of a majority of the Trustees or (ii) without cause upon the unanimous written consent of the Trustees.

## **ARTICLE VII REPORTS TO HOLDERS OF PLAN TRUST INTERESTS**

### **7.1 Securities Laws and Other Reports to Beneficiaries.**

(a) Securities Laws. Under § 1145 of the Bankruptcy Code, the issuance of Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the Trustees determine, with the advice of counsel, that the Plan Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, or the Trust Indenture Act of 1939, as amended, then the Trustees shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission as required by law.

(b) Other Reporting. If the Trustees are not required to file the periodic reports referred to in Section 7.1(a) above, as soon as practicable, the Trustees may post on a website to which the Beneficiaries have access, and, while the Chapter 11 Cases remain open, file with the Court, reports setting forth in reasonable detail any material event or change that occurs with respect to the Plan Trust, which, to the knowledge of the Trustees, affects the Beneficiaries hereunder. Such reports shall not be required to be audited or in compliance with generally accepted accounting principles.

## **ARTICLE VIII TERMINATION OF PLAN TRUST**

### **8.1 Termination of Plan Trust.**

(a) The Plan Trust shall terminate on the earlier of: (i) thirty (30) days after the later of the final distribution of all of the Stock Distributions in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order and the cancellation of the Plan Trust Stock and (ii) the third (3rd) anniversary of the Confirmation Date; provided, however, that, prior to the date of such termination (and the termination of any future extended terms), the Court, upon motion by a party in interest on notice with an opportunity for a hearing, may extend the maximum term of the Plan Trust set forth in this clause (ii) if it is necessary to the liquidation of the assets of the Plan Trust and the Debtors, for a term not to exceed nine (9) years from the Confirmation Date.

8.2 Continuance of Trust for Winding Up. After the termination of the Plan Trust and solely for the purpose of liquidating and winding up the affairs of the Plan Trust, the Trustees shall continue to act as such until their duties have been fully performed. Upon distribution of all

assets of the Plan Trust, which shall not include a distribution of the Plan Trust Stock to the Beneficiaries, the Trustees shall retain the books, Beneficiary lists, registers, records and files which shall have been delivered to or created by the Trustees. At the Trustees' discretion, all such records and documents may be destroyed in accordance with Section 3.3 hereof. Except as otherwise specifically provided herein, upon the distribution of all assets of the Plan Trust, the Trustees shall have no further duties or obligations hereunder except the obligations under Section 3.3 hereof.

## **ARTICLE IX AMENDMENT AND WAIVER**

9.1 Amendment and Waiver. Any provision of this Trust Agreement may be amended or waived by the affirmative vote of a majority of the Trustees, upon notice to the Beneficiaries. Notwithstanding this Section 9.1, any waiver or amendment to this Trust Agreement shall not: (i) be inconsistent with the purpose and intention of the Plan Trust to liquidate in an expeditious but orderly manner the assets of the Plan Trust in accordance with Treasury Regulation Section 301.7701-4(d); (ii) be inconsistent with the purposes of the Plan and the Confirmation Order, (iii) permit any distribution or other transfer by the Plan Trust of the Plan Trust Stock; (iv) permit any transfer of the Trust Interests other than in accordance with Section 2.2 hereof; or (v) permit any amendment or waiver of this Section 9.1. Additionally, no change may be made to this Trust Agreement that would be inconsistent with the purpose and intention of the Plan Trust as specified herein and in the Plan, adversely affect the distributions to be made under this Trust Agreement to any of the Beneficiaries, adversely affect the U.S. federal income tax status of the Plan Trust as a "liquidating trust", or adversely affect the rights of this Trust Agreement. No change may be made to this Trust Agreement that would adversely affect the rights or obligations of a Trustee without such Trustee's prior consent.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

10.1 Intention of Parties to Establish Plan Trust. This Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended, consistent with Section 9.1 hereof, to comply with such federal income tax laws, which amendments may apply retroactively.

10.2 Governing Law; Submission to Jurisdiction; Consent to Service of Process. This Trust Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to rules governing the conflict of laws that would result in the application of the laws of a jurisdiction other than the State of New York. Without limiting any party's right to appeal any order of the Court, (i) the Court shall retain exclusive jurisdiction to enforce the terms of this Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Court and the parties hereby consent to, and submit to, the jurisdiction and venue of the Court and shall receive notices at such locations as indicated in

Section 10.4 hereof; provided, however, that if the Chapter 11 Cases have closed, or if the Court refuses to exercise its jurisdiction (including in respect of any provision herein which refers to the Court), the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County, or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County, and any appellate court thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereto hereby consents to process being served by and on any party to this Trust Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 10.4 hereof.

10.3 Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

10.4 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if personally delivered or sent by mail, postage prepaid, or by facsimile addressed to the Person for whom such notice is intended as follows (or such other address as may be designated by notice given in accordance with this Section 10.4):

(a) If to a Trustee, to the address and facsimile number set forth opposite such Trustee's name on Schedule 10.4 hereto, with copies to any other Person with its name, address and facsimile number set forth opposite such Trustee's name.

(b) If to Holdings Ltd., to the address and facsimile number set forth on Schedule 10.4 hereto, with copies to any other Person with its name, address and facsimile number set forth opposite such Holdings Ltd.'s name.

(c) If to a Beneficiary, to the name and address set forth on the registry maintained by, or at the direction of, the Trustees.

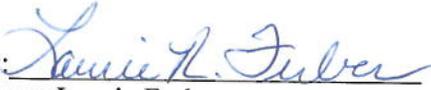
10.5 No Assignment. Neither Holdings Ltd., on the one hand, nor the Trustees, on the other hand, may assign this Trust Agreement without the prior written consent of the other.

10.6 Headings. The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

[Signature Pages Follows]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers, all as of the date first above written.

MF Global Holdings Ltd.

By:   
Name: Laurie Ferber  
Title: Executive Vice President

\_\_\_\_\_  
Daniel Ehrmann

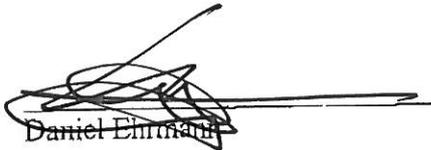
\_\_\_\_\_  
Andrew Shannahan

\_\_\_\_\_  
Joe Kronsberg

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MF Global Holdings Ltd.

By: \_\_\_\_\_  
Name: Laurie Ferber  
Title: Executive Vice President

  
Daniel Einmann

\_\_\_\_\_  
Andrew Shannahan

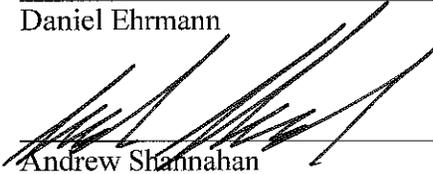
\_\_\_\_\_  
Joe Kronsberg

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MF Global Holdings Ltd.

By: \_\_\_\_\_  
Name: Laurie Ferber  
Title: Executive Vice President

\_\_\_\_\_  
Daniel Ehrmann

  
\_\_\_\_\_  
Andrew Shannahan

\_\_\_\_\_  
Joe Kronsberg

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MF Global Holdings Ltd.

By: \_\_\_\_\_  
Name: Laurie Ferber  
Title: Executive Vice President

\_\_\_\_\_  
Daniel Ehrmann

\_\_\_\_\_  
Andrew Shannahan

  
\_\_\_\_\_  
Joe Kronsberg

**SCHEDULE 10.4**

**NOTIFICATION INFORMATION OF HOLDINGS LTD. AND THE TRUSTEES**

Holdings Ltd.	Address:  Attn: Plan Administrator  Fax:
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**TRUSTEES:**

Andrew Shannahan	Address:  Fax:
Joe Kronsberg	Address:  Fax:
Daniel Ehrmann	Address:  Fax:

**Exhibit D**

**(Order Approving Plan Trust Extension in *In re Lehman Bros. Holdings Inc.*)**

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

-----X  
:
  
**In re** : **Chapter 11 Case No.**  
:
  
**LEHMAN BROTHERS HOLDINGS INC., et al.,** : **08-13555 (SCC)**  
:
  
**Debtors.** : **(Jointly Administered)**  
:
  
:
  
-----X

**ORDER EXTENDING THE TERM OF THE PLAN TRUST**

Upon the motion, dated October 14, 2014 (the "Motion"),<sup>1</sup> of Lehman Brothers Holdings Inc. ("LBHI" and the "Plan Administrator"), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the "Plan"), pursuant to sections 105(a) and 1142(b) of title 11 of the United States Code (the "Bankruptcy Code"), to extend the term of the Plan Trust, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); 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 due and proper notice of the Motion having been provided in accordance with the procedures set forth in the second amended order entered June 17, 2010 governing case management and administrative procedures [ECF No. 9635] to (i) the United States Trustee for Region 2; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) all parties who have requested notice in these chapter 11 cases; and

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

(vi) the Plan Trustees, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Chapter 11 Estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the term of the Plan Trust set forth in section 7.1 of the Plan Trust Agreement is hereby extended to December 6, 2017, without prejudice to the ability of a party in interest to request further extensions and subject to earlier termination pursuant to clause (i) of section 7.1(a) of the Plan Trust Agreement; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November 14, 2014  
New York, New York

/S/ Shelley C. Chapman  
UNITED STATES BANKRUPTCY JUDGE