Hearing Date: Wednesday, September 14, 2016 at 3:00 p.m. (prevailing Eastern Time)
Response Deadline: Wednesday, September 7, 2016 at 4:00 p.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------	**x**	**Chapter 11**
In re	**:**	**Case No. 11-15059 (MG)**
MF GLOBAL HOLDINGS LTD., et al.,	**:**	**(Jointly Administered)**
Debtors.[1]	**:**	
----------	**X**	

MOTION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER APPROVING THE ALLOCATION OF SETTLEMENT CONSIDERATION AMONG THE PLAN ADMINISTRATOR, MFGAA, AND THE LITIGATION TRUSTEE

[1] The debtors in the chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. (collectively, the "Debtors"). The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

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MF Global Holdings Ltd. ("MFGH"), 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.[2] 1382) (the "Plan"),[3] on behalf of itself and its affiliates, including MF Global Assigned Assets LLC ("MFGAA"), and Nader Tavakoli, Trustee of the MF Global Litigation Trust created pursuant to the Plan (the "Litigation Trustee"; together with the Plan Administrator, "Movants") respectfully submit this motion (the "Allocation Motion") for the entry of an order substantially in the form attached hereto as Exhibit A (the "Proposed Order") for approval of the agreed allocation (the "Allocation Agreement") by and among (i) the Plan Administrator, (ii) MFGAA, and (iii) the Litigation Trustee (collectively, the "MFG Plaintiffs") of settlement consideration under the agreement dated as of July 6, 2016 (the "Settlement Agreement"),[4] as described in the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Settlement Agreement Among the Plan Administrator, the Trustee of the Litigation Trust, Individual Defendants, Sapere CTA Fund, L.P., and the Customer Representatives* (the "9019 Motion") filed on July 20, 2016 (D.I. 2271). In support of the Allocation Motion, Movants submit the accompanying Declaration of Nader Tavakoli, dated August 24, 2016 (the "Tavakoli Decl.") attached hereto as Exhibit B , the

[2] Citations to "D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "MDL D.I." refer to docket items in the consolidated MDL proceeding Deangelis v. Corzine, No. 11-cv-7866 (S.D.N.Y.) (VM) (the "MDL"). Citations to "SIPA D.I." refer to docket items in the SIPA liquidation of MF Global Inc., which was proceeding before the Bankruptcy Court as Case No. 11-02790 before it was closed on April 4, 2016. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.). Citations to "Section 105 Adv. D.I." refer to docket items in Adversary Proceeding Number 15-01362 (Bankr. S.D.N.Y.).

[3] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement.

[4] The Settlement Agreement was entered into by and among (i) MFGAA, as assignee of certain claims, rights, and interests of MF Global Inc. ("MFGI"); (ii) MFGH; (iii) the Litigation Trustee; (iv) the Customer Class Representatives; (v) Sapere CTA Fund, L.P. ("Sapere"), and, together with the MFG Plaintiffs and the Customer Class Representatives, the "Plaintiffs"); (vi) Jon S. Corzine ("Corzine"), Bradley Abelow ("Abelow"), and Henri Steenkamp ("Steenkamp") (the "Litigation Trust Action Defendants"); and (vii) David Dunne ("Dunne"), Vinay Mahajan ("Mahajan"), and Edith O'Brien ("O'Brien" and, together with the Litigation Trust Action Defendants and Dunne and Mahajan, the "Individual Defendants").

Declaration of James Kobak, Jr. dated August 24, 2016 (the "Kobak Decl.") attached hereto as Exhibit C, and the Declaration of Erik M. Graber dated August 24, 2016 (the "Graber Decl.") attached hereto as Exhibit D, and state as follows:

I. PRELIMINARY STATEMENT

1. The Allocation Motion seeks approval of the Allocation Agreement among the MFG Plaintiffs dividing the anticipated consideration to be received under the Settlement Agreement as of the Effective Date.[5] (D.I. 2282). The Allocation Agreement implements the agreement in principle reached in August 2014 by the SIPA Trustee[6] and the Litigation Trustee (the "MFGI/Litigation Trust Allocation Agreement") (Tavakoli Decl. ¶¶ 4-5), which was assumed by MFGAA under the Sale and Assumption Agreement (as defined below), approved by this Court on August 19, 2015. (D.I. 2123; SIPA D.I. 8854).

2. The MFGI/Litigation Trust Allocation Agreement, which was negotiated in August 2014 by lead counsel for the SIPA Trustee and the Litigation Trustee (Tavakoli Decl. ¶ 5; Kobak Decl. ¶ 4), who were then at arms' length, established the allocation of any potential recoveries in a global settlement of the MDL claims asserted on behalf of MFGI and the Litigation Trust. The MFGI/Litigation Trust Allocation Agreement enabled the separate estates to present a united front in settlement negotiations. (Tavakoli Decl. ¶ 7; Kobak Decl. ¶ 4).

3. Specifically, the MFGI/Litigation Trust Allocation Agreement provides that in the event of a settlement of the Litigation Trust Claims[7] and the MFGI Claims[8] in the MDL, the

[5] Under the Settlement Agreement, the Effective Date can occur as early as November 16, 2016, which is 30 days after the approval of the Customer Class Action is effective (which can be as early as 90 days from the Class Action Fairness Act notice was sent by the Individual Defendants to the appropriate governmental agencies on July 18, 2016, or October 17, 2016).(cite).

[6] The "SIPA Trustee" was James W. Giddens, as trustee for the liquidation of the business of MFGI under the Securities Investor Protection Act of 1970, as amended ("SIPA").

[7] "Litigation Trust Claims" refers to the claims asserted by the Litigation Trustee, alleging breaches of fiduciary duty against the Litigation Trust Defendants. (Tavakoli Decl. ¶ 1 n.5).

proceeds available to customer-related claims and Litigation Trust Claims would be split equally. (Tavakoli Decl. ¶¶ 9-10; Graber Decl. ¶ 7; Kobak Decl. ¶ 4). This agreed allocation was assumed by MFGAA when it stepped into MFGI's shoes under the Sale and Assumption Agreement, and is the basis for this Allocation Motion. (Graber Decl. ¶¶ 5-6).[9]

4. Movants originally planned to file this Allocation Motion closer to the Effective Date (once amounts, if any, reverting from certain reserves and certain costs and expenses would likely be known).[10] However, Class Counsel's exaggeration of the amount allocable to MFGAA under the Settlement Agreement as part of Class Counsel's motion seeking fees from MFGAA in the District Court (currently scheduled for September 16, 2016) makes urgent the proper fixing of MFGAA's share and the Litigation Trust's share of the Settlement Fund.[11] (MDL D.I. 1115-18).

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[8] "MFGI Claims" refers to the claims to recover the net equity shortfall asserted against all Individual Defendants (the "Net Equity Claims") being prosecuted in the MDL by co-lead counsel for the Customer Class Representatives of the former commodities customers of MFGI ("Class Counsel") which, by virtue of a series of assignments, were owned outright by the SIPA Trustee as of August 2014, together with any claims for interest or damages of customer class members who had participated in the Net Equity Settlement and Assignment, which were subordinated until MFGI recovered the amounts advanced to customers to pay customers 100% of their net equity (but excluding customer class claims in excess of the amounts previously advanced to customers from MFGI's general estate, i.e., the "Customer Excess Interest Claims") (Graber Decl. ¶ 3; Tavakoli Decl. ¶ 5). The "MFGI/Customer Claims" includes all customer related claims in the MDL, i.e. the Customer Excess Interest Claims, and/or the claims of any opt-outs to the commodities customer class action, including Sapere.

[9] Pursuant to the terms of the Sale and Assumption Agreement, MFGAA will distribute its net recoveries to the Debtors' creditors on account of these claims in the same *pro rata* shares as the Debtors' creditors would have received from the MFGI estate. (Graber 9019 Decl. ¶ 1).

[10] Movants committed to filing this Allocation Motion before distributing proceeds when Movants previously sought the Court's approval of the Settlement Agreement. (See 9019 Motion ¶ ¶ 6, 34; see also, August 10, 2016 Hr'g Tr. at 24 (D.I. 2284) (Movants' counsel stating intention to file allocation motion to be heard before Fairness Hearing). The Allocation Agreement applies to all consideration provided to the MFG Plaintiffs under the Settlement Agreement, *i.e.*, the proceeds that will be available as of the Effective Date as well as the assigned rights against the Dissenting Insurers and confidential obligations of the Group A Defendants under the Settlement Agreement. (See Settlement Agreement ¶ 1(b-c); schedule 4 to the Settlement Agreement; and the Assignment Agreement, attached as Exhibit A to the Settlement Agreement) (D.I. 2271-2).

[11] Even though Class Counsel acknowledge that "it is left to the MFG Plaintiffs to decide for themselves the internal issue of how to account for the settlement proceeds" (Letter from J. Porter to Hon. V. Marrero and M. Glenn dated August 17, 2016 (D.I. 2286)), Class Counsel claims "at least $143.0 million" of the Settlement Fund is allocable "solely" to MFGAA. (Fee Motion, 8 MDL D.I. 1116). As discussed below, this mind-boggling exaggeration of the proceeds belonging to MFGAA effectively strips the Litigation Trust of any recoveries and does not reflect the arms' length agreement reached by the Litigation Trustee and SIPA Trustee (as assumed by MFGAA) implemented here.

5. Accordingly, Movants seek this Court's approval under Bankruptcy Rule 9019 of the Allocation Agreement as applied to the settlement consideration and anticipated recoveries of the Litigation Trust and MFGAA as of the Effective Date. Obtaining Court approval of the Allocation Agreement is the best means of providing notice and an opportunity to be heard to the estates' affected creditors and Litigation Trust beneficiaries. Determining the Allocation Motion at this time also permits the proper apportioning of the Settlement Fund among the MFG Plaintiffs prior to any hearing on the Fee Motion and will provide Movants with appropriate guidance on the allocation of proceeds between MFGAA and the Litigation Trust as a necessary step to ensure timely distributions to the Litigation Trust's beneficiaries and MFGAA promptly after the Effective Date occurs.

II. JURISDICTION

1. 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).

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

III. BACKGROUND

The Chapter 11 Cases

3. During the third quarter of 2011 and the first quarter of 2012, MFGH, MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC and Holdings USA filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

4. On April 5, 2013, the Court entered an order (D.I. 1288) (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, the Court entered an order approving certain nonmaterial modifications to the confirmed plan which are reflected in the Plan (D.I. 1376).

5. The Effective Date of the Plan occurred on June 4, 2013. As of the Effective Date, MFGH became the Plan Administrator under the Plan.

6. Pursuant to section IV.C of the Plan, the Plan Administrator's duties and powers include, among other things, reviewing, reconciling, enforcing, collecting, compromising, settling, or electing not to pursue any or all causes of action. (See Plan § IV.C.iii). Pursuant to the Plan and § 1123(b)(3)(B) of the Bankruptcy Code, the Plan Administrator retained "any claims, demands, rights and Causes of Action that any Debtor or Estate may hold against any Person or Entity to the extent not released otherwise, all of which are included within Property of the Estate," other than claims transferred into the Litigation Trust. (Plan § IV.G).

7. The Litigation Trust Claims are defined by the Plan as "the claims set forth in the complaint entitled 'Louis J. Freeh, as Chapter 11 Trustee of MF Global Holdings Ltd., et al. v. Jon S. Corzine, et al.,' Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.), as it may be subsequently modified, amended, or supplemented," (as amended by Adv. D.I. 22, the "Litigation Trust Complaint"), "and any claims arising out of or related to the facts or circumstances alleged in the complaint or set forth in the Report of Louis J. Freeh, as Chapter 11 Trustee of MF Global Holdings Ltd., et al., dated April 3, 2013 [Docket No. 1279]." (See Plan § I.A.100). On January 14, 2014, the District Court withdrew the reference of the adversary proceeding commenced by the Litigation Trust Complaint (MDL D.I. 622), and on February 11, 2014, the District Court ordered that it be consolidated with the actions proceeding in the MDL (MDL D.I. 643).

8. On August 19, 2015, this Court entered an order approving the sale by the SIPA Trustee to the Plan Administrator's designee of substantially all assets held by the SIPA Trustee

or the MFGI estate in exchange for the release of the Plan Administrator's $1.16 billion allowed claim and assumption of certain obligations of the SIPA Trustee (the "Sale and Assumption Agreement"). (D.I. 2123; SIPA D.I. 8855). MFGAA was designated as transferee of the assets transferred under the Sale and Assumption Agreement, including the claims asserted in the MDL by the SIPA Trustee.[12]

Claims in the MDL

9. The proposed Allocation Agreement determines the consideration of the Settlement Agreement. The 50/50 division of the proceeds contemplated by the MFGI/Litigation Trustee Allocation Agreement applies to the Litigation Trust Claims and the MFGI/Customer Claims.

10. The Litigation Trust Claims are claims for damages against the Litigation Trust Action Defendants for breaches of fiduciary duties of care and loyalty prior to MF Global's collapse. As set forth in the Declaration of Nader Tavakoli dated July 20, 2016 (the "Tavakoli 9019 Declaration"), attached to the 9019 Motion as Exhibit C, these damages are asserted to be at least $2 billion. (See Tavakoli 9019 Decl. ¶ 1 n.5).

11. The complaint filed by the Customer Representatives (the "Customer Complaint") sought recovery for the illegal transfer of funds belonging to MFGI's customers in violation of the Commodity Exchange Act of 1936 (the "CEA") and associated regulations. (See Consolidated Amended Class Action Complaint for Violations of the Commodity Exchange Act and the Common Law, MDL D.I. 382; see also, In re MF Global Holdings Ltd. Inv. Litig. (Deangelis v. Corzine), 998 F. Supp. 2d 157, 167 (S.D.N.Y. 2014) (granting in part and denying in part defendants' motions to dismiss the Customer Complaint)).

[12] On February 10, 2016, the Court entered an order (SIPA D.I. 8960) discharging the SIPA Trustee and closing the MFGI estate. On February 11, 2016, the Court entered an order of final decree (D.I. 2201) under § 350(a) closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC.

12. On March 14, 2014, the District Court approved a settlement and transfer of, *inter alia*, the customer claims for recovery of the net equity in their accounts to the SIPA Trustee pursuant to an October 2, 2013 assignment in exchange for the advance of general estate funds sufficient to repay 100% of Customers' outstanding net equity. (MDL D.I. 697) (the "Net Equity Settlement"). As part of the Net Equity Settlement the customers' remaining claims for pre-judgment interest and/or loss-of-use of funds were subrogated and subordinated to the Net Equity Claims to ensure recovery of the advances by the general estate. The subordination agreement properly left the customers with only the Customer Excess Interest Claims for any interest or damages to the extent that recoveries exceeded the amounts needed to reimburse the shortfall advances. At the same time, the SIPA Trustee and the Customer Representatives entered into an agreement (the "NES Assignment Agreement") by which the Customer Representatives would continue to prosecute the Net Equity Claims against the Individual Defendants on behalf of the SIPA Trustee. (SIPA D.I. 7207). Pursuant to the NES Assignment Agreement, approved by the Bankruptcy Court on October 11, 2012 (SIPA D.I. 3764), the Customer Representatives are entitled to seek reasonable fees and expenses on the recoveries from the Individual Defendants obtained for MFGAA, as assignee of MFGI, pursuant to the Amended Continuing Cooperation and Assignment Agreement. (Id. ¶ 2).

13. As discussed above, the MFGI Claims were transferred with other assets of MFGI to MFGAA pursuant to the Sale and Assumption Agreement. Consequently, the Plan Administrator, on behalf of MFGAA, now holds the MFGI Claims, currently valued at $484 million. (See Declaration of Erik M. Graber, dated July 20, 2016, attached as Exhibit C to the 9019 Motion ("Graber 9019 Decl.") ¶ 7).

The MFGI/Litigation Trust Allocation Agreement

14. On August 6, 2014, counsel to the SIPA Trustee, counsel to the Litigation

Trustee, and the Litigation Trustee (with the SIPA Trustee, the "Trustees") entered into the MFGI/Litigation Trust Allocation Agreement. (Tavakoli Decl. ¶¶ 4-11; Kobak Decl. ¶¶ 4-5). Through good faith, arms length negotiations, the parties agreed to divide 50/50 any future proceeds of a settlement of the MDL claims. (Tavakoli Decl. ¶ ¶ 8-10; Kobak Decl. ¶¶ 4-5).

15. The Trustees reached this agreement after consideration and discussion of a variety of alternatives and each concluding that the MFGI/Litigation Trust Allocation Agreement was a fair resolution of the allocation issue and that it offered several concrete benefits. By joining forces, the Trustees would have greater bargaining leverage in settlement negotiations for the benefit of both MF Global estates. (Tavakoli Decl. ¶ 7). By August 2014, it was evident that the primary sources of settlement consideration were the directors and officers and errors and omissions insurance policies (individually, the "D&O Policies" and the "E&O Policies," collectively, the "Policies"; their issuers, the "Insurers"). (See Tavakoli Decl. ¶ 7; Kobak Decl. ¶ 4). These policies are wasting policies with finite total payouts that have funded the Defendants' litigation and settlement costs in the MDL.[13] (Tavakoli Decl. ¶ 7). Importantly, working together allowed the Trustees to make full limits settlement demands. For all these reasons, as more fully set forth in the Tavakoli and Kobak Declarations, the Trustees concluded that the MFGI/Litigation Trust Allocation Agreement was a fair and equitable basis for dividing proceeds in any future MDL settlement and represented a prudent exercise of each Trustee's business judgment. (Tavakoli Decl. ¶¶ 8-11; Kobak Decl. ¶¶ 4-5).

[13] As described in an order of the Bankruptcy Court entered on November 5, 2015, styled *Order Concerning Advances of Defense Costs Under Certain Insurance Policies of the Debtors* (D.I. 2154), an agreement was reached permitting approved defense costs to be advanced entirely from proceeds of the D&O Policies, with all parties reserving rights as to the eventual allocation between the E&O Policies and D&O Policies (as in all prior orders permitting payment of defense costs). Since all non-Dissenting Insurer proceeds are being contributed to the Settlement Fund without any reconciliation, the total amount of defense costs paid from proceeds of either the D&O Policies ($82.6 million) or the E&O Policies ($14.4 million) as of the filing of this Motion does not purport to represent each tower's actual share of these costs. (Graber 9019 Decl. ¶ 7 n.16). Not surprisingly, the Trustees did not consider the Insurers' preliminary allocation or the amounts remaining in the E&O or D&O towers binding on how proceeds would be allocated in the event of a settlement. (Tavakoli Decl. ¶ 7; Kobak Decl. ¶ 5).

16. MFGH, as Plan Administrator and managing member of MFGAA, agreed to step into the SIPA Trustee's shoes with respect to the MFGI/Litigation Trust Allocation Agreement at the time of the Sale and Assumption Agreement. (Graber Decl. ¶¶ 3-4). At the time that the MFG Plaintiffs reached the agreement in principle with the Individual Defendants culminating in the Settlement Agreement, both MFGH (as Plan Administrator and managing member of MFGAA) and the Litigation Trustee, in the prudent exercise of their business judgment, likewise concluded that implementing the 50/50 allocation of settlement proceeds to the Litigation Trust Claims, on the one hand, and the MFGI/Customer Claims, on the other, that had been negotiated at arms' length prior to the Sale and Assumption Agreement continued to be appropriate. (Tavakoli Decl. ¶ 13; Graber Decl. ¶ 6).

17. Movants seek this Court's approval of the MFG Plaintiffs' decision to settle the allocation the Settlement Agreement's consideration between MFGAA and the Litigation Trustee in accordance with the MFGI/Litigation Trustee Allocation Agreement and submit that it is reasonable both (i) as the implementation of the prior arms' length agreement between the Trustees at a time when the estates were vigorously represented by separate counsel; and (ii) as a fair and equitable settlement of what could otherwise be costly and protracted disputes over the proper allocation if the MFGI/Litigation Trustee Allocation Agreement were rejected.

18. Specifically, application of the Allocation Agreement to the proceeds expected to flow to the MFG Plaintiffs as of the Effective Date of the Settlement Agreement results in approximately $73 million in proceeds being allocated to the Litigation Trust for distribution once the Effective Date occurs, and a range of $57 million to $65.5 million being allocated to MFGAA, before reduction for approved Class Counsel fees (to be held in reserve until a final order). (See Graber Decl. ¶¶ 7-8; Settlement Agreement ¶ 14). MFGAA's share of the proceeds is less than the Litigation Trust's share because other MFGI/Customer Claims, including the

Customer Distribution of at least $2 million and confidential amounts to settle or create reserves for opt-outs, including Sapere, reduce only MFGAA's share of the proceeds when the 50/50 principle allocates equal shares of the MDL settlement proceeds to the Litigation Trust Claims and to the MFGI/Customer Claims (taken together). (See Graber Decl. ¶ 7).

19. As the foregoing demonstrates, Class Counsel's presumption that "at least $143.0 million" of the Settlement Fund is allocable "solely" to MFGAA (Fee Motion, 8 MDL D.I. 1116) has no basis and does not reflect MFGAA's share of the Settlement Fund as determined in the arms' length agreement reached by the Litigation Trustee and SIPA Trustee (as assumed by MFGAA). (Tavakoli Decl. ¶¶ 8-9; Kobak Decl. ¶¶ 4-5; Graber Decl. ¶ 9). Class Counsel's inflated "allocation" is premised on the erroneous assertion that proceeds funded by E&O Insurers "belong" to MFGAA, which they do not.[14] Class Counsel's $143 million figure also includes $25 million in policy limits of the Dissenting Insurers, which is wrong because (i) the Individual Defendants' irrevocable assignment of their rights to the MFG Plaintiffs against these Dissenting Insurers is part of the consideration subject to the 50/50 allocation; and (ii) the Dissenting Insurers refused to fund the Settlement Agreement, so any recovery at this time is contingent and unliquidated and will require pursuit of the Dissenting Insurers. (Tavakoli Decl. ¶ 9).

IV. RELIEF REQUESTED

20. The Plan Administrator, Litigation Trustee, and MFGAA seek approval of the Allocation Agreement from the Bankruptcy Court.

21. The MFGI/Litigation Trust Allocation Agreement, reaffirmed in the Allocation Agreement, achieve a consensual and cost-effective resolution of a complex issue that aided the

[14] No insurer ever made a final coverage determination under the Policies, and all parties reserved rights with respect to a "true up" and left allocation in the hands of the MFG Plantiffs under the Settlement Agreement. As such, the fact that a disproportionate share of E&O proceeds happens to be remaining because all but $14.4 million of over $97 million in defense costs were paid out the D&O Policies has no bearing on the MFG Plaintiffs' allocation of the Settlement Fund. (See n.14 supra; Tavakoli Decl. ¶ 7.

Trustees, and subsequently the MFG Plaintiffs, in working together towards a settlement of the MDL claims. Finally, Movants note that the MFGI/Litigation Trust Allocation Agreement was entered into in good faith by the SIPA Trustee and the Litigation Trustee when both parties were at arms' length and represented by separate counsel. The resolution of the allocation issue was a prudent exercise of the business judgment of the Trustees (and later of the Plan Administrator and the Litigation Trustee).

V. ARGUMENT

22. Rule 9019(a) of the Bankruptcy Rules provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement." Fed. R. Bankr. P. 9019(a). This rule empowers bankruptcy courts to approve settlements once the court determines the settlement to be "fair, equitable, and in the best interests of the estate." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991); In re MF Global Inc., No. 11-2790 (MG), 2012 WL 3242533, at *5 (Bankr. S.D.N.Y. Aug. 10, 2012) ("Settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.") (internal citations omitted).

23. The settlement need not result in the best possible outcome for the debtor, but must not fall below the lowest point in the range of reasonableness. MF Global Inc., No. 11-2790 (MG) 2012 WL 3242533, at *5; In re Chemtura Corp., 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010); see also Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983).

24. The decision to approve a settlement and compromise lies within the sound discretion of the court. See Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994). In determining whether to approve a settlement, a court must evaluate all relevant factors and inform itself of "all facts necessary for an intelligent and objective opinion of the probabilities of

ultimate success should the claim be litigated," but is not required to "go so far as to conduct a trial on the terms." In re MF Global Inc., No. 11-2790 (MG), 2012 WL 3242533 at *5 (internal citations omitted). Although courts have discretion to approve settlements, the business judgment of the debtor in recommending the settlement should be factored into the court's analysis. Id. (citing JP Morgan Chase Bank, N.A. v. Charter Commc'ns Operating LLC (In re Charter Commc'ns), 419 B.R. 221, 252 (Bankr. S.D.N.Y. 2009)). In addition, courts may give weight to the opinion of bankruptcy counsel supporting the settlement. Id.

25. Courts in the Second Circuit consider the following factors in determining whether to approve a settlement under the Bankruptcy Rules: (i) the balance between the litigation's possibility of success and the settlement's future benefits; (ii) the likelihood of complex and protracted litigation, "with its attendant expense, inconvenience, and delay," including the difficulty in collecting on the judgment; (iii) the relative benefits to be received by creditors of any affected class (iv) whether other parties in interest support the settlement; (v) the competence and experience of counsel supporting the settlement; (vi) "the nature and breadth of releases to be obtained by officers and directors;" and (vii) the extent to which the settlement is the product of arms' length bargaining. In re MF Global Inc., No. 11-2790 (MG), 2012 WL 3242533 at *5 (citing Motorola, Inc. v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007); TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968) (decided under the Bankruptcy Act of 1898)). The burden is on the settlement proponent to persuade the court that the settlement is in the best interests of the estate. Id.

26. The proposed Allocation Agreement (and the MFGI/Litigation Trust Allocation Agreement which it implements) falls well within the range of reasonableness detailed by the Iridium factors, to the extent such factors are applicable. First, the Allocation Agreement resolved an issue that was critical to advancing the MDL settlement negotiations. While both the

Litigation Trustee and the Plan Administrator believed in the relative strength of their claims, determining the allocation with specificity would have required lengthy, highly complex and expensive analysis or litigation of the claims. Second, litigation of the MDL claims had been exceedingly slow and complex. Reserving the allocation between the MFG Plaintiffs would have further delayed the creditors of MFGH and MFGAA and the beneficiaries of the Litigation Trust from receiving the cash proceeds of the eventual Settlement Agreement. Moreover, this would require significant additional time and resources from the Plan Administrator, MFGAA, and the Litigation Trustee. It also could have led to the continued depletion of the limited D&O and E&O policy proceeds by delaying the negotiations of a settlement agreement. Third, the Allocation Agreement is in the best interests of all creditors in the Chapter 11 Cases and the beneficiaries of the Litigation Trust because it provides significant and timely distributions to both. Fourth, the MFG Plaintiffs are represented by sophisticated and experienced professionals in connection with the Allocation Agreement, all of whom favor the agreement. The SIPA Trustee, who held the MFGI Claims at the time of the August 2014 agreement, was also represented by experienced and sophisticated professionals at that time. Fifth, the Allocation Agreement (and the MFGI/Litigation Trust Allocation Agreement) is the result of good faith, arms' length bargaining between the various MFG Plaintiffs (and previously the Trustees) throughout the course of the MDL and bankruptcy cases. (See generally, In re Motors Liquidation Co., No. 09-50026 (MG), 2016 Bankr. LEXIS 3102 (U.S. Bankr. S.D.N.Y. Aug. 24, 2016)).

27. In the informed business judgment of the Litigation Trustee, MFGAA, and the Plan Administrator, the Allocation Agreement is fair and equitable, falls well within the range of reasonableness, and benefits the Debtors' creditors and the beneficiaries of the Litigation Trust by providing a fair and equitable means of timely distributing the cash proceeds and other

consideration under the Settlement Agreement amongst the MFG Plaintiffs. As such, the MFG Plaintiffs submit that the Allocation Agreement provides an efficient means of resolving a complex issue without resort to expensive and time-consuming litigation and should be approved.

VI. NOTICE

28. Notice of this Allocation 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");[15] (ii) all creditors holding Allowed Claims that are still receiving distributions under the Plan (which also provides notice to potential beneficiaries of the Litigation Trust), by service on the person or agent designated to receive such creditor's distribution from the Disbursing Agent, or on their counsel or other agent; and (iii) all parties that have requested service of papers under section 4(a)(2) of the Case Management Order. The Movants submit that no other or further notice need be provided.

29. All responses or objections, if any, to the relief requested in the Allocation Motion shall conform to the Case Management Order, and (i) be in writing; (ii) state the name and address of the objecting party and nature of the claim or interest of such party; (iii) state with particularity the legal and factual bases of such objection; (iv) conform to the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules; (v) be filed with the Bankruptcy Court, together with proof of service, electronically, in accordance with General Order M-399 399 (which can be found at www.nysb.uscourts.gov), by registered users of the Court's Electronic Case Filing System, and by all other *pro se* parties in interest, on a 3.5 inch disk, compact disk,

[15] Class Counsel are on the Master Service List.

or flash drive, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format no later than September **7**, 2016 at 4:00 p.m. (Prevailing Eastern Time); and (vi) be served on (a) Jones Day, 250 Vesey Street, New York, NY 10281-1047 , Attn: Jane Rue Wittstein, Esq. and (b) Jones Day, 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, Attn: Michael Schneidereit; with a courtesy copy to the chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Courtroom 523, One Bowling Green, New York, New York, 10004 (the "Notice Parties").

30. If no responses to the Allocation Motion are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order granting the Motion without further notice.

VII. NO PRIOR REQUEST

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

WHEREFORE, the Movants respectfully request entry of an order, substantially in the form annexed hereto as Exhibit A, approving the Allocation Agreement and granting such additional and further relief as the Court may deem proper.

Dated: August 24, 2016
New York, New York

Respectfully submitted,

/s/ *Jane Rue Wittstein*

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Los Angeles, CA 90071
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- and-

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Counsel for MF Global Holdings Ltd.,
as Plan Administrator, and
MF Global Assigned Assets LLC

-and-

/s/ *Michael Schneidereit*

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Counsel for the Litigation Trustee of the
MF Global Litigation Trust

NAI-1501980100

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., *et al.*,	:	**Case No. 11-15059 (MG)**
Debtors.[1]	:	**(Jointly Administered)**

[PROPOSED] ORDER GRANTING MOTION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER APPROVING THE ALLOCATION OF SETTLEMENT CONSIDERATION AMONG THE PLAN ADMINISTRATOR, MFGAA, AND THE LITIGATION TRUSTEE

This matter coming before the Court on the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Allocation of Settlement Consideration Among the Plan Administrator, MFGAA, and the Litigation Trustee* (the "Allocation Motion"); the Court having reviewed the Allocation Motion and the accompanying Declarations of Nader Tavakoli, James B. Kobak Jr., and Erik M. Graber, and having heard the statements of counsel regarding the relief requested in the Allocation Motion, and any objections thereto, at a hearing before the Court (the "Hearing"); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Allocation Motion and the Hearing was adequate and in compliance with the Case Management Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules; and the Court having found and determined that the relief sought in the Allocation Motion is in the best interests of the Debtors' estates and

[1] The debtors in these chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; and MF Global Holdings USA Inc. (collectively, the "Debtors"). The bankruptcy cases of MF Global Market Services LLC, MF Global FX Clear LLC, and MF Global Holdings USA Inc. were closed pursuant to the *Order of Final Decree* entered by this Court on February 11, 2016.

their creditors; and the Court having determined that the legal and factual bases set forth in the Allocation Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Allocation Motion is granted in all respects.

2. The Allocation Agreement between: (a) MF Global Assigned Assets LLC ("MFGAA"), as assignee of certain claims, rights, and interests of MF Global Inc.; (b) MF Global Holdings Ltd., as Plan Administrator and otherwise; and (c) Nader Tavakoli, in his capacity as the Litigation Trustee of the MF Global Litigation Trust (the "Allocation Agreement"),[2] is fair, reasonable and adequate; and is in the best interests of the MFGAA estate, its customers and creditors; the Chapter 11 Debtors' estates and creditors, and the beneficiaries of the Litigation Trust; and is authorized and approved pursuant to Rule 9019 of the Bankruptcy Rules and applicable law.

3. MFGAA has rights and title to and shall receive its share of the Settlement Agreement proceeds according to the Allocation Agreement for distribution after the Effective Date pursuant to the Settlement Agreement, amounting to approximately $57 million to $65.5 million (the "MFGAA Allocated Amount"), as adjusted by certain fees, expenses, and holdbacks pursuant to the Settlement Agreement, including a reserve for Class Counsel fees as determined in accordance with the Settlement Agreement.

4. The Litigation Trust has rights and title to and shall receive, its share of the Settlement Agreement proceeds according to the Allocation Agreement for distribution after the Effective Date pursuant to the Settlement Agreement, amounting to approximately $73 million (the "Litigation Trust Allocated Amount," and with the MFGAA Allocated Amount,

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Allocation Motion.

the "Allocated Amounts"), as adjusted by certain fees, expenses and holdbacks pursuant to the Settlement Agreement.

5. The Litigation Trust has no rights, title, or interest in the MFGAA Allocated Amount and MFGAA has no rights, title, or interest in the Litigation Trust Allocated Amount.

6. The Litigation Trust and MFGAA are each entitled to half of all rights, title and interest in the Assignment Agreement with respect to the Dissenting Insurers, as described in paragraph 1(c) of the Settlement Agreement (as those terms are defined in the Settlement Agreement and Exhibit A thereto).

7. The Litigation Trust and MFGAA are each entitled to half of all rights, title and interest to all payments and obligations of the Group A Defendants (as that term is defined in the Settlement Agreement) as set forth in the Settlement Agreement, including without limitation, paragraphs (1)(b-c) and Schedule 4 thereto.

8. The Plan Administrator, MFGAA, and the Litigation Trustee are hereby authorized to take any and all actions reasonably necessary to consummate the Allocation Agreement and perform any and all obligations contemplated therein, including without limitation making adjustments to the Allocated Amounts set forth in paragraphs 3 and 4 hereof to reflect the appropriate deductions for fees and expenses under the Settlement Agreement, including any fees and/or expenses of the Plan Administrator incurred in connection with the Settlement Agreement, and/or adjustments based on holdbacks and/or reserves under the Settlement Agreement.

9. Any and all objections to the Allocation Motion or to the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

10. The failure to specifically include any particular term of the Allocation Agreement in this Order shall not diminish or impair the effectiveness thereof, it being the intent of this Court that the Allocation Agreement, and all actions required for its implementation, be approved in its entirety.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

12. If the Effective Date of the Settlement Agreement does not occur, then this Order shall be deemed to be nullified and void *ab initio* in all respects.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order and to enforce and implement the terms and provisions of the Allocation Agreement and resolve disputes thereunder.

Dated: _____, 2016
New York, New York

_____
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT B

Hearing Date: Wednesday, September 14, 2016 at 3:00 p.m. (prevailing Eastern Time)
Response Deadline: Wednesday, September 7, 2016 at 4:00 p.m. (prevailing Eastern Time)

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Counsel for the Litigation Trustee of the
MF Global Litigation Trust, MF Global
Holdings Ltd., as Plan Administrator,
and MF Global Assigned Assets LLC

-and-

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Counsel for MF Global Holdings Ltd.,
as Plan Administrator, and
MF Global Assigned Assets LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
	:	
Debtors.[1]	:	**(Jointly Administered)**

DECLARATION OF NADER TAVAKOLI IN SUPPORT OF MOTION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER APPROVING THE ALLOCATION OF SETTLEMENT CONSIDERATION AMONG THE PLAN ADMINISTRATOR, MFGAA, AND THE LITIGATION TRUSTEE

[1] The debtors in the chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. (collectively, the "Debtors"). The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

I, Nader Tavakoli, am the trustee of the MF Global Litigation Trust ("Litigation Trust") created pursuant to the confirmed *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc.* (D.I.[2] 1382) (the "Plan") and the Litigation Trust Agreement dated as of June 4, 2013 (the "Litigation Trust Agreement"). I submit this declaration in my capacity as Litigation Trustee pursuant to 28 U.S.C. § 1746 in support of the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Allocation of Settlement Consideration Among the Plan Administrator, MFGAA, and the Litigation Trustee* (the "Allocation Motion"),[3] which seeks approval of the agreed allocation (the "Allocation Agreement") by and among (i) the Plan Administrator, (ii) MF Global Assigned Assets, LLC, and (iii) the Litigation Trustee (collectively, the "MFG Plaintiffs") of the proceeds of the agreement dated as of July 6, 2016 (the "Settlement Agreement"),[4] as described in the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Settlement Agreement Among the Plan Administrator, the*

[2] Citations to "D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "MDL D.I." refer to docket items in the consolidated MDL proceeding Deangelis v. Corzine, No. 11-cv-7866 (S.D.N.Y.) (VM) (the "MDL"). Citations to "SIPA D.I." refer to docket items in the SIPA liquidation of MF Global Inc., which was proceeding before the Bankruptcy Court as Case No. 11-02790 before it was closed on April 4, 2016. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.). Citations to "Section 105 Adv. D.I." refer to docket items in Adversary Proceeding Number 15-01362 (Bankr. S.D.N.Y.). Citations to "CFTC-ECF" are to the docket in the CFTC Action.

[3] Capitalized terms not otherwise defined in this declaration have the meaning given to them in the Allocation Motion.

[4] The Settlement Agreement was entered into by and among (i) MFGAA, as assignee of certain claims, rights, and interests of MF Global Inc. ("MFGI"); (ii) MFGH; (iii) the Litigation Trustee; (iv) the Customer Class Representatives; (v) Sapere CTA Fund, L.P. ("Sapere"); (vi) Jon S. Corzine ("Corzine"), Bradley Abelow ("Abelow"), and Henri Steenkamp ("Steenkamp") (the "Litigation Trust Action Defendants"); and (vii) David Dunne ("Dunne"), Vinay Mahajan ("Mahajan"), and Edith O'Brien ("O'Brien" and, together with the Litigation Trust Action Defendants and Dunne and Mahajan, the "Individual Defendants") (redacted version attached to the 9019 Motion as Exhibit B) (D.I. 2271-2).

Trustee of the Litigation Trust, Individual Defendants, Sapere CTA Fund, L.P., and the Customer Representatives (the "9019 Motion") filed on July 20, 2016 (D.I. 2271). The statements in this Declaration are based on (a) my personal knowledge in my capacity as Litigation Trustee, (b) my review of relevant documents, and (c) information provided to me by, or discussions with, Litigation Trust counsel. If called to testify, I could and would testify to each of the facts set forth herein on that basis, and hereby state as follows:

1. As trustee of the Litigation Trustee, I am familiar with the Settlement Agreement, the Chapter 11 Cases, the Plan, the Plan Administrator's rights, duties, and obligations under the Plan, along with the Litigation Trust, the Litigation Trust Agreement, the Litigation Trust Claims,[5] and my obligations as trustee of the Litigation Trust. As described in my previous Declaration dated July 20, 2016 (the "Tavakoli 9019 Decl." attached as Exhibit D to the 9019 Motion) (D.I. 2271-4) in connection with the 9019 Motion, the Litigation Trust Agreement grants me broad authority to settle the Litigation Trust Claims. (Id. ¶ 2). I am required under the Litigation Trust Agreement to use my business judgment to maximize the distributions to the beneficiaries of the Litigation Trust without unduly prolonging its duration. (Id.).

2. The Settlement Agreement was approved by the Bankruptcy Court on August 10, 2016 by the *Order Granting Motion Pursuant To Rule 9019 Of The Federal Rules Of Bankruptcy Procedure For Entry Of An Order Approving The Settlement Agreement Among The Plan Administrator, The Trustee Of The Litigation Trust, Individual Defendants, Sapere CTA Fund, L.P., And The Customer Representatives* (the "9019 Order") (D.I. 2281). As previously

[5] The "Litigation Trust Claims" were transferred to the Litigation Trust and are the claims asserted in the *First Amended Complaint and Request For Jury Trial* filed on September 16, 2013 in Adversary Proceeding Number 13-01333 or set forth in the *Report of Louis J. Freeh, as Chapter 11 Trustee of MF Global Holdings Ltd., et al.*, dated April 3, 2013 (D.I. 1279). On January 14, 2014, the District Court withdrew its reference of the Litigation Trust Action to the Bankruptcy Court and ordered that the action be transferred to the District Court (MDL D.I. 622), and on February 11, 2014, the District Court consolidated the Litigation Trust Action with the *DeAngelis* Action as part of the MDL (MDL D.I. 643).

attested, I considered the Settlement Agreement to be in the best interests of the beneficiaries of the Litigation Trust (Tavakoli 9019 Decl. ¶ 8)[6] because it provides for approximately $158 million in insurance proceeds to be paid into the Settlement Fund by the Initial Limits Payment date.[7] After carve-outs for other settlements and reserves, approximately $132 million in aggregate proceeds, prior to certain fees and expenses, is expected to flow to the MFG Plaintiffs as of the Effective Date. (9019 Motion ¶¶ 4, 30; Declaration of Erik Graber, dated July 20, 2016, attached as Exhibit C to the 9019 Motion ("Graber 9019 Decl.") ¶ 5) (D.I. 2271-3).

3. Although the Settlement Agreement does not require the Bankruptcy Court to approve the MFG Plaintiffs' allocation of the proceeds, the recoveries flowing to MFGAA (as assignee of MFGI) and the Litigation Trust from the Settlement Fund represent one of the most significant assets of each entity. (9019 Motion ¶ 5).[8] Accordingly, the MFG Plaintiffs seek this Court's approval of the agreed allocation of the Settlement Fund on account of the Litigation Trust's and MFGAA's recoveries in the MDL in accordance with the long-standing 50/50 agreement (dating back to August 2014) on how certain MDL proceeds would be divided.[9]

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[6] The Settlement Agreement is described in detail in the 9019 Motion and the declarations attached thereto.

[7] The Initial Limits Payment is required to be made or before September 16, 2016, given that the last event triggering the 30-day period to make the payment occurred on August 17, 2016. See generally Settlement Agreement ¶ 1(a). While at the time of the 9019 Motion, $159 million was anticipated, that figure is now $158 million, reflecting payment of certain Ongoing Defense Costs and Reasonable CFTC Defense Costs (as defined in the Settlement Agreement). By the time of the Initial Limits Payment, these amounts may be adjusted again, and these adjustments will be reflected in any final allocation between the Litigation Trustee and MFGAA.

[8] The 9019 Motion committed to separately seeking approval of the allocation of the proceeds of the Settlement Agreement among the MFG Plaintiffs. (See Tavakoli 9019 Decl. ¶ 8 n.11; 9019 Motion ¶¶ 6, 34). Moreover, while the Settlement Agreement stated that it "anticipates" that the MFG Plaintiffs would request Bankruptcy Court approval after the Effective Date (as that term is defined in the Settlement Agreement), it did not preclude them from doing so before that time. (Settlement Agreement ¶ 54). The timing of the Allocation Motion was made more pressing by Class Counsel's recent fee motion in the District Court (MDL D.I. 1115-18), which grossly overstates the recoveries flowing to MFGAA as a result of the settlement.

[9] The Allocation Agreement applies to the proceeds that will be available to the MFG Plaintiffs as of the Effective Date as well as to the assigned rights against the Dissenting Insurers and confidential obligations of the Group A Defendants under the Settlement Agreement. The funds available for distribution on the Effective Date are described in paragraph 7 of the Graber Allocation Declaration. (See Settlement Agreement ¶ 1(b-c); Schedule 4 to

Obtaining Court approval of the Allocation Agreement is the best means of providing notice and an opportunity to be heard to the estates' affected creditors and Litigation Trust beneficiaries, and doing so at this time enables the allocation issue to be resolved prior to the Effective Date.[10]

4. **MFGI/Litigation Trust Allocation Agreement.** The Allocation Agreement reached with MFGH (as Plan Administrator and in its capacity as the managing member of MFGAA) prior to entering into the Settlement Agreement reaffirms the agreement in principal I had entered into with the SIPA Trustee[11] in August of 2014 to fix the division of the consideration that would be received by the Litigation Trust and to MFGI in the event of a settlement of claims against the Individual Defendants in the MDL (the "MFGI/Litigation Trust Allocation Agreement").

5. Specifically, on August 6, 2014, my lead counsel, Bruce Bennett of Jones Day, hosted a meeting at Jones Day's New York offices (the "August 2014 Meeting"). The August 2014 Meeting was attended by me, Mr. Bennett, James B. Kobak Jr. and Dustin P. Smith of Hughes Hubbard & Reed LLP (lead counsel to the SIPA Trustee), and Andrew Entwistle, Merrill Davidoff, and Joshua Porter (as co-lead Class Counsel for the Customer Class Representatives[12]). As of August 2014, Class Counsel was pursuing the net equity shortfall

(continued…)

the Settlement Agreement; and the Assignment Agreement, attached as Exhibit A to the Settlement Agreement) (D.I. 2271-2).

[10] Under the Settlement Agreement, the Effective Date can occur as early as November 16, 2016, i.e., 30 days after the earliest date when approval of the Customer Class Action can become effective (which can be as early as 90 days from July 18, 2016, when the Class Action Fairness Act notice was sent by the Individual Defendants to the appropriate governmental agencies, i.e., October 17, 2016).

[11] The "SIPA Trustee" was James W. Giddens, as trustee for the liquidation of the business of MFGI under the Securities Investor Protection Act of 1970, as amended ("SIPA"). (In re MF Global Inc., Case No. 11-2790 (MG)(SIPA) (Bankr. S.D.N.Y.)).

[12] The "Customer Class Representatives" are the parties appointed as lead plaintiffs in the class action cases alleging violations of the Commodity Exchange Act and associated regulations, all of which were consolidated for pre-trial purposes into the case captioned *Deangelis v. Corzine*, No. 11-cv-7866 (S.D.N.Y.) (VM) and *In re MF Global Holdings Ltd. Investment Litigation*, No. 12-md-2338 (VM). On August 20, 2015, the District Court entered

claims asserted against the Individual Defendants (the "Net Equity Claims") as well as any claims for customer interest and damages (except for claims in excess of the amounts previously advanced to pay customers 100% of their net equity (the "Customer Excess Claims")) on behalf of the SIPA Trustee, who held all rights to the Net Equity Claims and any remaining customer class claims (except the Customer Excess Claims), pursuant to the Net Equity Settlement and its ancillary agreements (the "MFGI Claims"). (See SIPA D.I. 7103, 7207, 7208). As such, the SIPA Trustee was the only party who owned the MFGI Claims.[13]

6. By August 2014, lead counsel for the Litigation Trust and the SIPA Trustee had attended many mediations and settlement discussions aimed at resolving all the remaining MDL claims against the Individual Defendants, comprised of (i) the Litigation Trust Claims; (ii) the class action claims brought by Lead Securities Plaintiffs and certain opt-outs from those claims (the "Securities Claims"); (iii) claims brought by the CFTC against Corzine and O'Brien (the "CFTC Claims"); and (iv) the MFGI Claims, Customer Excess Claims, and customer claims of any opt-outs to the commodities customer class action, including Sapere (collectively, the "MFGI/Customer Claims"). A primary aim of the August 2014 Meeting was to reach an agreement on the allocation of any eventual recoveries from a settlement of the MDL claims which would enable us to go into the next round of settlement negotiations as a united front.

7. Mr. Kobak, Mr. Bennett and I all recognized that the anticipated source of any significant recoveries in the MDL against the Individual Defendants was MF Global's directors and officers and errors and omissions insurance policies (individually, the "D&O Policies" and

(continued…)

its Decision and Order granting the class certification motion of the Customer Class Representatives, certifying a class of former commodities and securities customers of MFGI, and appointing Mr. Entwistle's firm and Mr. Davidoff's firm as Co-Lead Class Counsel ("Class Counsel"). (MDL D.I. 981).

[13] The only claims still held by the customer class at this time were the Customer Excess Claims, and these claims were subrogated and subordinated to MFGI's recovery of the Net Equity Claims.

the "E&O Policies," collectively, the "Policies"; their issuers, the "Insurers"). As the Court is well aware, the Policies have finite total payouts and were also funding the Individual Defendants' defense costs in the MDL. (Tavakoli 9019 Decl. ¶ 5; Graber 9019 Decl. ¶ 7). By reaching in principal the MFGI/Litigation Trust Allocation Agreement, our respective estates were able to join forces and have greater bargaining leverage in the negotiations with the Individual Defendants, other plaintiffs, and the Insurers.[14]

8. During the August 2014 Meeting, Mr. Bennett, Mr. Kobak and I agreed in principal to allocate the proceeds of any future settlement against the Individual Defendants in the MDL on the basis that the total consideration to be received under a settlement of the MFGI/Customer Claims and the Litigation Trust Claims should be split equally.[15] This was the result of good faith, arm's length negotiations between lead counsel for the MFGI estate and the Litigation Trust, respectively.

9. At the time of these discussions, Mr. Bennett, Mr. Kobak and I were aware that the Insurers had agreed amongst themselves to apportion defense costs against the D&O and E&O towers based on a preliminary formula (which itself was subject to a reservation of rights). This cost reimbursement protocol was not binding on the Insurers or the Insureds and no insurer ever made a final coverage determination under the Policies. The Insurers' preliminary formula for apportioning defense costs was not at all determinative of ultimate coverage positions or of

[14] It should be noted that the Litigation Trustee and the SIPA Trustee, along with their counsel, at all times understood that Class Counsel's fees pursuant to the CCAA (as defined in the Settlement Agreement) would only be chargeable against the amounts recovered on account of the MFGI Claims, not the Litigation Trust Claims, since Class Counsel was only prosecuting the MFGI Claims, and the Litigation Trust Claims belonged to and were being separately prosecuted by counsel for the Litigation Trust.

[15] It should be noted that Class Counsel was present at the August 2014 meeting and was aware that this 50/50 split was reached by the fiduciaries of the Litigation Trust and MFGI at arms' length with respect to how to allocate future MDL settlement recoveries.

the fair allocation of defense costs,[16] and accordingly the MFGI/Litigation Trust Allocation Agreement treated the combined proceeds of all Policies contributed to a settlement of MDL claims as an aggregate fund to be applied 50/50 to all amounts paid on account of the MFGI/Customer Claims and/or the Litigation Trust Claims.

10. Various factors led Mr. Bennett, Mr. Kobak, and I to conclude that applying a 50/50 split to proceeds attributable to the Litigation Trust Claims "bucket" and the MFGI/Customer Claims "bucket" was a fair allocation of recoveries in any settlement, including:

a. the Litigation Trust "bucket" sought approximately $2 billion in damages, while the Net Equity Claims at the time were pegged at approximately $541 million, with additional amounts in the MFGI/Customer Claims "bucket" attributable to the Excess Customer Claims and opt-outs, including Sapere, bringing the damages asserted to approximately $1 billion;

b. on the merits, both parties felt highly confident in their respective claims, but recognized the Individual Defendants had raised defenses in both actions;

c. absent litigating the Litigation Trust Claims and MFGI Claims (and the other plaintiffs' claims) to final judgment, there would be no perfect way to determine the share of any MDL recoveries attributable to each party's claims; and

d. while each estate could have pressed for a higher percentage for the claims being pursued by its estate fiduciaries, Mr. Kobak, Mr. Bennett and I agreed that spending further time analyzing or litigating the relative merits of the Litigation Trust Claims and the MFGI/Customer Claims would be counterproductive given that the likely source of recoveries was the Policies, so adversity between the estates would add further delay and costs in reaching a settlement, only serving to further reduce the ultimate recovery (especially given the continued depletion of the Policies for defense costs).

11. Resolving the allocation issue was considered an important step before moving forward into the next rounds of settlement negotiations and mediations so that the Litigation

[16] As this Court is fully aware, the D&O Towers ended up bearing a grossly disproportionate share of the defense costs, with all parties' reserving rights with respect to a "true up" at the end of the cases, which has been mooted by the funding Insurers' agreements to contribute their full policy limits to the Settlement Fund without any restrictions placed on the MFG Plaintiffs' allocation of funds to be distributed to the Litigation Trustee and MFGAA on or after the Effective Date. (See 9019 Motion ¶ 24 n.22 and Graber 9019 Decl ¶ 7 n.15). The funding agreements are themselves confidential, but Class Counsel has received them and knows there is no basis to say otherwise.

Trustee and the SIPA Trustee could present a unified front in settlement negotiations, providing us with greater leverage. This agreement in principal allowed us to make joint offers to the Individual Defendants and the Insurers, and such offers would prove to be instrumental in reaching the eventual Settlement Agreement.

12. **The MFGI/Litigation Trust Agreement is Assumed by MFGAA.** As set forth in the Graber Declaration dated August 24, 2016 attached to the Allocation Motion as Exhibit D (the "Graber Allocation Decl."), the MFGI Claims were acquired by the Plan Administrator pursuant to the Sale and Assumption Agreement in August 2015 and were subsequently assigned to MFGAA. (Order Approving Sale and Assumption Agreement, August 8, 2015 SIPA D.I. 8855; Graber Allocation Decl. ¶ 3). MFGAA agreed to step into MFGI's shoes with respect to the MFGI/Litigation Trust Allocation Agreement as one of the agreements relating to the assets acquired under the Sale and Assumption Agreement, and when negotiations began in earnest (culminating in the Settlement Agreement), both MFGH as the managing member of MFGAA and I on behalf of the Litigation Trust understood that the MFGI/Litigation Trust Allocation Agreement would be applied to determine our respective shares of the consideration to be received under the Settlement Agreement. The "Allocation Agreement" for which I am seeking approval under Rule 9019 is this renewed agreement to implement the MFGI/Litigation Trust Allocation Agreement with respect to the consideration to be received by the MFG Plaintiffs under the Settlement Agreement. The calculation of the anticipated recoveries for MFGAA and the Litigation Trust upon the Effective Date are described more fully in the Graber Allocation Declaration. (Graber Allocation Decl. ¶ 7) . I have reviewed Mr. Graber's calculations and believe he has correctly applied the Allocation Agreement to the funds flowing in from the Settlement Agreement as of the Effective Date.

13. In my business judgment, the Allocation Agreement as applied to the Settlement Agreement represents a fair and reasonable means of allocating the consideration of the Settlement Agreement between the MFG Plaintiffs. The Allocation Agreement was the result of good faith, arms' length negotiations between myself, MFGH, and MFGAA and reflects my understanding of the agreement in principal I negotiated with the SIPA Trustee when the MFGI/Customer Claims were held independently by the SIPA Trustee.

14. For all of the reasons stated above, I respectfully request that the Court grant the Allocation Motion and approve the Allocation Agreement.

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

Dated: August 24, 2016
New York, New York

/s/ *Nader Tavakoli*
Nader Tavakoli

NAI-1501971005

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------	x	**Chapter 11**
In re	:	**Case No. 11-15059 (MG)**
MF GLOBAL HOLDINGS LTD., et al.,	:	**(Jointly Administered)**
Debtors.[1]	:	
----------	X	

DECLARATION OF JAMES B. KOBAK JR.

I, James B. Kobak Jr., was lead counsel to James W. Giddens, as trustee (the "SIPA Trustee") for the liquidation of MF Global Inc. ("MFGI") under the Securities Investor Protection Act of 1970, as amended ("SIPA") 15 U.S.C. § 78aaa et seq. I represented the SIPA Trustee in its liquidation proceedings, *In re MF Global Inc.*, Case No. 11-2790 (MG)(SIPA) (Bankr. S.D.N.Y.) (the "SIPA Proceeding") and related actions. I submit this declaration as background for the Court pursuant to 28 U.S.C. § 1746, and if called to testify, I could and would testify to each of the facts set forth herein based on my personal knowledge in my capacity as counsel to the now discharged SIPA Trustee and my review of relevant documents:

1. As counsel to the now discharged SIPA Trustee, I am familiar with the above-captioned chapter 11 cases, the SIPA Proceeding, the obligations of the SIPA Trustee, and my obligations as counsel to the SIPA Trustee. On July 24, 2015, the MF Global Holdings, Ltd ("MFGH"), as Plan Administrator (the "Plan Administrator"), and the SIPA Trustee entered into a Sale and Assumption Agreement pursuant to which, among other things, the SIPA Trustee

[1] The debtors in the chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. (collectively, the "Debtors"). The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

agreed to assign the MFGI Assigned Claims to the Plan Administrator or its designee (see Sale and Assumption Agreement § 1.1(a), Ch. 11 D.I. 2114 Ex. B; SIPA D.I. 8827 Ex. B). The Sale and Assumption Agreement was approved by the Bankruptcy Court on August 19, 2015 (SIPA D.I. 8855).[2]

2. On September 8, 2015, in accordance with the Sale and Assumption Agreement, and after approval by this Court, the SIPA Trustee assigned his rights in MFGI Assigned Claims, among other things, to the Plan Administrator's designee, MF Global Assigned Assets LLC ("MFGAA"). (Ch. 11 D.I. 2129; SIPA D.I. 8865). By letter dated September 9, 2015, the Plan Administrator and MFGAA jointly advised the District Court that MFGAA was the relevant party in interest in place of the SIPA Trustee with respect to all matters regarding the MF Global Actions (MDL D.I. 996).

3. On February 10, 2016, this Court entered an *Order Discharging Trustee, Canceling His Bond, Closing The Estate And Related Relief*, marking the end to the SIPA Proceeding. While the SIPA Proceeding has been closed, I continue to be involved in the few residual activities of the former SIPA estate, including fulfilling certain post-closing obligations under the Sale and Assumption Agreement.

4. I have read the Declaration of Nader Tavakoli dated August 24, 2016 (the "Tavakoli Allocation Decl."). I attended the August 6, 2014 (the "August 2014 Meeting") described in the Tavakoli Allocation Declaration and recall the negotiations prior to and during the August 2014 Meeting. As Mr. Tavakoli attests, I had suggested and agreed in principle, after

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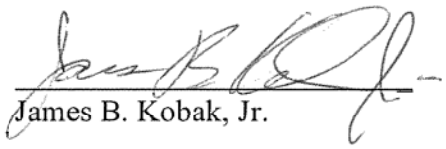
[2] Citations to "Ch. 11 D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "MDL D.I." refer to docket items in the consolidated MDL proceeding Deangelis v. Corzine, No. 11-cv-7866 (S.D.N.Y.) (VM) (the "MDL"). Citations to "SIPA D.I." refer to docket items in the SIPA liquidation of MF Global Inc., which was proceeding before the Bankruptcy Court as Case No. 11-02790 before it was closed on April 4, 2016. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.). Citations to "Section 105 Adv. D.I." refer to docket items in Adversary Proceeding Number 15-01362 (Bankr. S.D.N.Y.). Citations to "CFTC-ECF" are to the docket in the CFTC Action.

discussion with the SIPA Trustee, with Mr. Bennett to take steps to enable the Litigation Trust and MFGI to present a united front in the ongoing MDL settlement discussions and mediations with Defendants and their Insurers, and after negotiations and discussion, we agreed in principle to seek to divide any MDL settlement proceeds on an equal basis. I agree with the background and reasons for our approach including those describing our joint reasoning and discussion at paragraphs 8-11 of the Tavakoli Allocation Declaration. I agree that this allocation and approach as described therein was confirmed and discussed at the August 2014 Meeting.

5. At the time that we reached the agreement in principle, I and the Trustee believed that it represented a reasonable approach to how any MDL proceeds obtained in settlement should be treated and was a prudent exercise of the SIPA Trustee's business judgment in view of the dynamics of the MDL settlement discussions and the wasting asset nature of available insurance coverage. The agreement in principle was negotiated in good faith at arms' length, and was fair and equitable to the MFGI Estate and its creditors.

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

Dated: August 24, 2016
New York, New York



James B. Kobak, Jr.

EXHIBIT D

Hearing Date: Wednesday, September 14, 2016 at 3:00 p.m. (prevailing Eastern Time)
Response Deadline: Wednesday, September 7, 2016 at 4:00 p.m. (prevailing Eastern Time)

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MF Global Assigned Assets LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
	:	
Debtors.[1]	:	**(Jointly Administered)**

DECLARATION OF ERIK M. GRABER IN SUPPORT OF MOTION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER APPROVING THE ALLOCATION OF SETTLEMENT CONSIDERATION AMONG THE PLAN ADMINISTRATOR, MFGAA, AND THE LITIGATION TRUSTEE

[1] The debtors in the chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. (collectively, the "Debtors"). The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

I, Erik M. Graber, am Chief Operating Officer ("COO") of MF Global Holdings Ltd. ("MFGH" or the "Plan Administrator"), as Plan Administrator under the confirmed *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc.* (D.I.[2] 1382) (the "Plan") and of MF Global Assigned Assets LLC. I submit this declaration pursuant to 28 U.S.C. § 1746 in support of the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Allocation of Settlement Consideration Among the Plan Administrator, MFGAA, and the Litigation Trustee* (the "Allocation Motion"),[3] which seeks approval of the agreed allocation (the "Allocation Agreement") by and among (i) the Plan Administrator, (ii) MFGAA, and (iii) the Litigation Trustee (collectively, the "MFG Plaintiffs") of the proceeds of the agreement dated as of July 6, 2016 (the "Settlement Agreement"),[4] as described in the *Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Settlement Agreement Among the Plan Administrator, the Trustee of the Litigation Trust, Individual*

[2] Citations to "D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "MDL D.I." refer to docket items in the consolidated MDL proceeding Deangelis v. Corzine, No. 11-cv-7866 (S.D.N.Y.) (VM) (the "MDL"). Citations to "SIPA D.I." refer to docket items in the SIPA liquidation of MF Global Inc., which was proceeding before the Bankruptcy Court as Case No. 11-02790 before it was closed on April 4, 2016. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.). Citations to "Section 105 Adv. D.I." refer to docket items in Adversary Proceeding Number 15-01362 (Bankr. S.D.N.Y.). Citations to "CFTC-ECF" are to the docket in the CFTC Action.

[3] Capitalized terms not otherwise defined in this declaration have the meaning given to them in the Allocation Motion.

[4] The Settlement Agreement was entered into by and among (i) MFGAA, as assignee of certain claims, rights, and interests of MF Global Inc. ("MFGI"); (ii) MFGH; (iii) the Litigation Trustee; (iv) the Customer Class Representatives; (v) Sapere CTA Fund, L.P. ("Sapere"), and, together with the MFG Plaintiffs and the Customer Class Representatives, the "Plaintiffs"); (vi) Jon S. Corzine ("Corzine"), Bradley Abelow ("Abelow"), and Henri Steenkamp ("Steenkamp") (the "Litigation Trust Action Defendants"); and (vii) David Dunne ("Dunne"), Vinay Mahajan ("Mahajan"), and Edith O'Brien ("O'Brien" and, together with the Litigation Trust Action Defendants and Dunne and Mahajan, the "Individual Defendants") (A redacted version of the Settlement Agreement is attached to the 9019 Motion as Exhibit B) (D.I. 2271-2).

Defendants, Sapere CTA Fund, L.P., and the Customer Representatives, (the "9019 Motion") filed on July 20, 2016 (D.I. 2271). The statements in this Declaration are based on (a) my personal knowledge in my capacity as COO of MFGH and MFGAA, (b) my review of relevant documents, and (c) information provided to me by, or discussions with, the Plan Administrator's employees and outside counsel. If called to testify, I could and would testify to each of the facts set forth herein on that basis, and hereby state as follows:

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

2. As described in my previous Declaration dated July 20, 2016 (the "Graber 9019 Decl.") in connection with the 9019 Motion and related filings in connection with the 9019 Motion, the Settlement Agreement will result in roughly $132 million, minus certain fees and expenses, flowing to the MFG Plaintiffs upon the Effective Date (as that term is defined in the Settlement Agreement). (Graber 9019 Decl. ¶ 6, attached as Exhibit C to the 9019 Motion) (D.I. 2271-3). In relevant part, the Settlement Agreement resolves the claims brought by MFGH, MFGAA, and the Litigation Trustee against the Individual Defendants. (Graber 9019 Decl. ¶ 5).

3. As the Court is aware, MFGAA acquired MFGI's claims in the MDL[5] from MFGI upon the Court's approval of the *Joint Motions Of The SIPA Trustee and MF Global Holdings Ltd., as Plan Administrator, for an Order Approving (I) the Sale and Assumption Agreement, (II) the Transfer and Abandonment of Specified Systems and Documents and the SIPA Trustee's Corresponding Limitation of Discovery and Retention Obligations, (III) a Final Distribution on Allowed General Unsecured Claims not Held by the MFGH Entities, and (IV) Related Relief* (the "Sale and Assumption Motion" and the agreement attached thereto as Exhibit B, the "Sale and Assumption Agreement") (D.I. 2114, 2123; Graber 9019 Decl. ¶ 1). The Sale and Assumption Agreement was the product of months of arms' length, good faith discussions between the Plan Administrator and the trustee (the "SIPA Trustee") for the liquidation of the business of MFGI under the Securities Investor Protection Act of 1970, as amended ("SIPA").

4. At the time of the negotiation of the Sale and Assumption Agreement, I was aware of the agreement in principle reached between the SIPA Trustee and the Litigation Trustee dating back to August 2014 to allocate recoveries in the MDL equally to the Litigation Trust Claims and the MFGI/Customer Claims, and then to divide any potential recoveries flowing to MFGI and the Litigation Trust pursuant to a settlement of the claims using this allocation (the "MFGI/Litigation Trust Allocation Agreement"). I have read the Declaration of Nader Tavakoli dated August 24, 2016 (the "Tavakoli Allocation Decl.") and the Declaration of James

[5] These claims include the net equity shortfall claims asserted in the MDL against the director and officer defendants of MFGI (the "Net Equity Claims") as well any claims for customer interest and damages (except for claims in excess of the amounts previously advanced to pay customers 100% of their net equity (the "Customer Excess Claims")), which belonged to MFGI and were being pursued by Class Counsel on MFGI's behalf, pursuant to the Net Equity Settlement and its ancillary agreements (the "MFGI Claims"). (*See* SIPA D.I. 7103, 7207, 7208). (9019 Motion ¶ 1; Graber 9019 Decl. ¶ 7). In addition to the MFGI Claims and Customer Excess Claims, certain additional claims in the MDL are attributable to claims against the Individual Defendants by former commodities customers, including Sapere and any potential opt-outs from the Customer Class Action (the MFGI Claims, Customer Excess Claims, and any opt-outs to the commodities customer class action, including Sapere are collectively referred to as the "MFGI/Customer Claims")).

B. Kobak, Jr. dated August 24, 2016 (the "Kobak Decl.") and their descriptions of this agreement accord with my understanding.

5. It was clear to me at the time of the Sale and Assumption Agreement that the MFGI/Litigation Trust Allocation Agreement was among the agreements that MFGI's assignee would be obligated to honor and which was therefore assumed by MFGAA. During the past year, as negotiations which culminated in the Settlement Agreement were underway, MFGH, as Plan Administrator, and as the managing member of MFGAA, in the reasonable exercise of its business judgment, reaffirmed that the MFGI/Litigation Trust Allocation Agreement would apply to the allocations among the MFG Plaintiffs under the Settlement Agreement both because MFGAA had agreed to step into MFGI's shoes with respect to the rights assigned by the Sale and Assumption Agreement, and because it preserved the arms' length agreement negotiated in good faith between lead counsel for the SIPA Trustee (whose claims MFGAA acquired) and the Litigation Trustee at a time when each was vigorously represented by its own counsel.

6. As such, the "Allocation Agreement" for which I am seeking approval under Rule 9019 is the agreement by and between MFGH (as Plan Administrator, and as the managing member of MFGAA) and the Litigation Trustee to apply the MFGI/Litigation Trust Allocation Agreement in dividing the consideration to be received by the MFG Plaintiffs under the Settlement Agreement. This Allocation Agreement is in the best interests of the Plan Administrator and MFGAA because it represents a fair and reasonable means of allocating the consideration of the Settlement Agreement between the MFG Plaintiffs and will facilitate the prompt distribution of the cash proceeds to creditors once the Settlement Agreement's Effective Date occurs.[6]

[6] The Allocation Agreement applies to the proceeds that will be available to the MFG Plaintiffs as of the Effective Date as well as to the assigned rights against the Dissenting Insurers and confidential obligations of the

7. I have calculated the anticipated gross recoveries for MFGAA and the Litigation Trust by applying the Allocation Agreement to the estimated recoveries flowing to the MFG Plaintiffs as of the Effective Date[7] as follows:

- Start with total proceeds allocable to both the Litigation Trust and MFGI/Customer Claims (after holdbacks for the confidential reserves not attributable to the Litigation Trust Claims or the MFGI/Customer Claims, portions of which may revert to MFGAA and/or the Customer Distribution and MFG Plaintiffs) = **an anticipated estimated gross recovery of $146 million** for the Litigation Trust and MFGI/Customer Claims.[8]
- Divide the total proceeds of $146 million 50/50 between (i) Litigation Trust Claims and (ii) MFGI/Customer Claims = **an anticipated estimated recovery of $73 million to the Litigation Trust and $73 million to MFGI/Customer Claims**.
- Reduce the MFGI/Customer Claims by certain confidential amounts for Sapere, potential opt-out claims, and as adjusted by possible recoveries from the confidential reserves **= an anticipated estimated recovery for MFGAA of between $57 million and $65.5 million (before deducting Class Counsel fees, which are subject to court approval).**

8. As noted, these gross recoveries (net of certain holdbacks/possible recoveries from reserves) will still have to be adjusted to account for certain fees and costs required to be paid out of the Settlement Fund before distributions to the MFG Plaintiffs. MFGAA's share of

(continued…)

Group A Defendants under the Settlement Agreement. (See Settlement Agreement ¶ 1(b-c); Schedule 4 to the Settlement Agreement; and the Assignment Agreement, attached as Exhibit A to the Settlement Agreement) (D.I. 2271-2). For the avoidance of doubt, the distribution formula described in paragraph 7 below only describes how, as of the Effective Date, the cash proceeds will flow from the Initial Limits Payment to the MFG Plaintiffs according to the Allocation Agreement.

[7] As with all estimates involving litigation and proposed settlements, any gross recoveries or projected ranges are not a guaranteed recovery but are provided only to indicate the MFG Plaintiffs' reasonable estimate of the estates' aggregate anticipated projected recoveries under the contemplated Settlement, assuming it goes final on the Effective Date with the anticipated allocation and holdbacks factored into these calculations. Certain of these calculations are still contingent on events that have not yet occurred and which may not be known until on or after the Effective Date (which is why the MFG Plaintiffs in the Settlement Agreement originally anticipated seeking approval of the Allocation Agreement and its application to the funds flowing to the MFG Plaintiffs *after* the Effective Date (as that term is defined in the Settlement Agreement)). (See Settlement Agreement ¶ 54.) (D.I. 2271-2).

[8] This $146 million gross recovery is greater than the $132 million of gross aggregate proceeds available to the MFG Plaintiffs (as described in the 9019 Motion) because it includes certain confidential settlements and reserves that are attributable to MFGI/Customer Claims which are not expected to flow to MFGAA.

the recoveries will also be reduced by the Customer Counsel Class Fees, which under the Settlement Agreement are to be held in reserve, as of the Effective Date, based on the amount sought by Class Counsel in their fee motion, or the amount ordered by the District Court, and then distributed after a final, non-appealable order approving the fees is entered.

9. The Plan Administrator and MFGAA submit that the Allocation Agreement, which reflects the prior MFGI/Litigation Trustee Allocation Agreement assumed as part of the Sale and Assumption Agreement, is a reasonable settlement of the question of which proceeds flow to MFGAA and to the Litigation Trust under the Settlement Agreement as of the Effective Date and avoids potentially contentious and costly issues if the MFGI/Litigation Trustee Agreement were to be rejected. This settlement of the allocation of MDL proceeds belonging to the Litigation Trustee and MFGAA (as assignee of the MFGI Claims) was negotiated in good faith at arms' length, and is fair and equitable for all the reasons set forth in the Kobak Declaration and the Tavakoli Allocation Declaration. (Kobak Decl. ¶¶ 4-5; Tavakoli Decl. ¶). MFGH has approved the Allocation Agreement as a reasonable and prudent exercise of the Plan Administrator's and MFGAA's business judgment, and submits that approval of this allocation is in the best interests of the creditors of the estate and maximizes and speeds distributions to creditors.

10. For all of the reasons stated above, I respectfully request that the Court grant the Allocation Motion and approve the Allocation Agreement.

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

Dated: August 24, 2016
New York, New York

/s/ *Erik M. Graber*
Erik M. Graber