

Response Deadline: Tuesday, June 15, 2021 at 4:00 p.m. (Prevailing Eastern Time)

Hearing Date via CourtSolutions (if needed): Tuesday, June 22, 2021 at 2:00 p.m. (Prevailing Eastern Time)

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MF Global Litigation Trust*

**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>	:	
	:	
	:	
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**MOTION OF NADER TAVAKOLI, AS LITIGATION TRUSTEE,  
FOR AN ORDER TERMINATING THE MF GLOBAL LITIGATION TRUST**

Nader Tavakoli, as Trustee of the MF Global Litigation Trust (the "Litigation Trustee") created pursuant to the *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (Ch. 11 ECF No. 1382 at Art. IX-2) (the "Plan")<sup>2</sup> confirmed in the above-referenced chapter 11 cases, respectfully submits this motion (the "Motion") for an order, in the form attached hereto as Exhibit A, approving the termination of the Litigation Trust,

<sup>1</sup> The debtors in the above-captioned cases are MF Global Holdings Ltd. (Ch.11 Case No. 11-15059); MF Global Finance USA Inc. ("Finco") (Ch.11 Case No. 11-15058); and MF Global Holdings USA Inc. ("Holdings USA") (Ch.11 Case No. 12-10863), jointly administered under Ch. 11 Case No. 11-15059 ("Ch. 11 ECF No. \_\_\_"). 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. See Ch. 11 ECF No. 2201.

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

the term of which expires on June 4, 2021, and in support submits the accompanying Declaration of Nader Tavakoli, dated June 4, 2021 (the "Tavakoli Decl.") and states as follows:

**I. PRELIMINARY STATEMENT**

1. This Motion, seeking the Court's order affirming the Litigation Trust's official termination, marks the successful culmination of the Litigation Trustee's carrying out of the Trust's mandate—to wit, recovering and distributing to the estate and its creditors over \$86.5 million in distributions, through effective litigation and subsequent settlements that included the contribution of the remaining policy limits from virtually all insurers.

2. The initial term of the Litigation Trust, set forth in Section 7.1 of the Litigation Trust Agreement (the "LTA")<sup>3</sup> and Section IX-2(E) of the Plan (Ch. 11 ECF No. 1382), ran for five-years from the Plan's Effective Date of June 4, 2013. By Order dated May 22, 2018 (Ch. 11 ECF No. 2372), this Court extended the Litigation Trust's term for an additional three (3) years, to and through June 4, 2021, to enable the Litigation Trustee to complete the process of reducing the Litigation Trust Assets (the "Trust Assets") to cash for distribution to the Litigation Trust's beneficiaries.

3. As discussed more fully below, in the three years since this Court extended the Litigation Trust's term, the Litigation Trustee has successfully completed the process of maximizing the Trust Assets and reducing them to cash. Accordingly, the Litigation Trustee has determined that there is no reason to further extend the Litigation Trust's term. While the LTA and Plan both contemplate that the Litigation Trust may terminate upon notice to the Court (LTA at § 7.1; Plan at Article IX-2.E), the time for the disposal of any documents retained by the Litigation Trustee is measured from this Court's approval of the Litigation Trust's termination.

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<sup>3</sup> A copy of the executed Litigation Trust Agreement is publicly available on the Debtors' website at <http://www.mfglobalcaseinfo.com/docs/03.%20%20Litigation%20Trust%20Agreement.pdf>. See also Ch. 11 ECF 2367 at Ex. C.

*Id.* Accordingly, the Litigation Trustee respectfully requests entry of the proposed order to formally terminate the Litigation Trust, as of June 4, 2021, the scheduled date of the Litigation Trust's scheduled expiration (the "Trust Termination Date").

## 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 Plan. *See* Ch. 11 ECF No. 1288. On May 2, 2013, this Court entered an order (Ch. 11 ECF No. 1376) approving certain nonmaterial modifications to the confirmed plan, including the formation of the Plan Trust,<sup>4</sup> the formation of a 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. *See* Ch. 11 ECF No. 1353. The executed Litigation Trust Agreement, dated as of June 4, 2013, was publicly filed on the Debtors' website. *See* note 3, *supra*. Pursuant to the terms of the Plan and the Litigation Trust Agreement, the Litigation Trust was established for an initial term of five years from the Plan's Effective Date, to and through June 4, 2018. Plan at § IX-2.E; LTA at § 7.1. By Order dated May 22, 2018, this Court extended the Litigation Trust's term for an additional three (3) years, to and through June 4, 2021, without prejudice to further extensions, if needed. *See* Ch. 11 ECF No. 2372.

7. The Litigation Trustee was tasked with prosecuting certain legal claims to maximize the recovery of assets for creditors. Specifically, the mission of the Litigation Trustee

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<sup>4</sup> For the avoidance of doubt, the current term of the Plan Trust does not expire until 2022 and is not implicated by this Motion. *See* Ch. 11 ECF No. 2385 (this Court granted an order extending the time to liquidate the Plan under the Plan Trust Agreement for an additional three years through the ninth anniversary of the Confirmation Date of the Plan, April 5, 2022).

under Article III of the Litigation Trust Agreement was to “take such steps as the Trustee deems necessary to investigate, pursue, litigate, settle, compromise, transfer, sell, dispose of and/or abandon all or any of the Trust Assets to reduce the Trust Assets to Cash proceeds and to transfer all Trust Assets constituting Available Cash to the Disbursing Agent for the benefit of the Beneficiaries as required under the Plan and this Trust Agreement.” LTA at Article III. Under the Plan, the Trust Assets were defined as \$2 million in cash and the assignment of certain 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 No. 13-01333, as well as 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, dated April 3, 2013* (Ch. 11 ECF No. 1279) (the “Litigation Trust Claims”).

#### IV. FULFILLMENT OF THE LITIGATION TRUST’S MISSION

8. After the Plan was confirmed and went effective, Nader Tavakoli, as Litigation Trustee became the plaintiff prosecuting the estates’ claims in place of the Ch. 11 Trustee. Subsequent to assuming his duties, the Litigation Trustee, together with his counsel at Jones Day, fully investigated and analyzed the claims assigned to the Trust, and filed a substantially revised complaint on September 16, 2013, captioned *Nader Tavakoli, as Litigation Trustee of MF Global Litigation Trust v. Jon S. Corzine, et al.*, in Adversary Proceeding No. 13-01333 (Adv. Proc. 13-1333 ECF No. 22), which was ultimately consolidated with the Multi-District Litigation (the “MDL”) under the caption *DeAngelis v. Corzine et al.*, Docket No. 11-CV-07866 in the United States District Court for the Southern District of New York. *See* MDL ECF No. 513. *See also* Status Report, Ch. 11 ECF No. 2441 & Adv. Proc. 13-1333 ECF No. 22 at ¶¶ 3-10. Working closely with MF Global Holdings Ltd. (“MFGH”), as plan administrator (the “Plan

Administrator”), and MF Global Assigned Assets LLC (“MFGAA”)<sup>5</sup>(the Litigation Trustee, together with MFGAA and MFGH, the “MFG Plaintiffs”), the Litigation Trustee and MFG Plaintiffs achieved a nine-figure settlement-in-principle by the close of 2015, which represented a recovery of substantially all available insurance proceeds, with recovery of the final Trust Assets this past year, as follows:

(a) Nader Tavakoli, as Litigation Trustee, supervised the hard-fought prosecution of the Litigation Trust Claims for over two years. Tavakoli Decl. ¶ 7. By November 2015, fact discovery had been completed, expert reports had been exchanged, and expert depositions were in the process of being scheduled in anticipation of a trial in early 2016. *Id.*

(b) On a parallel track, the Litigation Trustee worked with the parties to try to reach a settlement that would maximize value for the estates’ creditors by preventing the further depletion of certain insurance policies that both funded former officers’ defense costs and were expected to be a key source of funding for any agreed settlement. *Id.* ¶ 8.

(c) After reaching an agreement in principle on November 30, 2015 to settle the MFG Plaintiffs’ claims, the claims of the Litigation Trustee against Corzine, *et al.* were among those settled as part of the *Stipulation and Agreement of Settlement* dated as of July 6, 2016 (the “Settlement Agreement”), presented to this Court for approval pursuant to 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* (Ch. 11 ECF No. 2271). *Id.* ¶¶ 9-10.<sup>6</sup>

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<sup>5</sup> On August 19, 2015, this Court entered an order (the “Sale and Assumption Order”) (SIPA ECF No. 8855; Ch. 11 ECF No. 2123) approving a Sale and Assumption Agreement under which James W. Giddens, as then-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. in its now-closed liquidation proceedings, *In re MF Global Inc.*, Case No. 11-2790 (MG) (Bankr. S.D.N.Y.) (the “SIPA Proceeding”) agreed to sell and assign certain of the MFGI estate’s assets (the “Assigned Rights”) to MFGAA, an affiliate of MFGH, formed to hold the assets and rights assigned by MFGI. (See SIPA ECF No. 8827, Ex. B; Ch. 11 ECF 2114).

<sup>6</sup> On November 30, 2015, the MFG Plaintiffs, the Defendants, and the Customer Class Representatives entered into a confidential term sheet to provide for the terms of a global settlement to be formalized in definitive documentation to resolve, *inter alia*, the Litigation Trust Claims against certain MF Global former officers. Tavakoli Decl. ¶ 7. The District Court entered a stay of the relevant proceedings to permit the parties to finalize the settlement. *See id.*; *see also* Settlement Agreement, Ch. 11 ECF No. 2271-2 at 8.

(d) The Settlement Agreement was approved by this Court on August 10, 2016. *Id.* ¶ 11; *see* Ch. 11 ECF No. 2282. The Settlement Agreement required the Defendants to cause the contribution of all remaining insurance proceeds (an estimated \$159-plus million) under funding agreements entered into concurrently with the Settlement Agreement into the settlement fund. *See id.*; Ch. 11 ECF No. 2271 at ¶ 4. In addition, the Defendants assigned to the MFG Plaintiffs their rights as individual insureds (the “Assigned Rights”) against certain dissenting insurers who did not contribute their combined \$25 million in policy limits (the “Dissenting Insurers”) to the MDL Settlement (the “Assignment Agreement”) and certain former officers (the “Group A Defendants”) became obligated to make certain payments to the Settlement fund. *See* Settlement Agreement, Ch. 11 ECF No. 2271-2 at ¶ 1(b) & 1(c); Tavakoli Decl. ¶ 12.

(e) On August 24, 2016, the Litigation Trustee and the Plan Administrator moved for approval of an agreement allocating the consideration to be received by the Litigation Trust and MFGAA under the MDL Settlement (the “Allocation Agreement”). *See* Tavakoli Decl. ¶ 13; Ch. 11 ECF No. 2291. The Bankruptcy Court approved the Allocation Agreement on December 1, 2016. *See id.*; Ch. 11 ECF No. 2322. Pursuant to the Allocation Agreement, the Plan Administrator was authorized to effect distributions of the Litigation Trust’s share of any recoveries with respect to the Settlement Agreement and the Allocation Agreement, in accordance with a Distribution Protocol for Litigation Trust Proceeds, which was approved by the Bankruptcy Court on December 1, 2016. *See* Ch. 11 ECF No. 2314, 2323; Tavakoli Decl. ¶ 14.

(f) Under the Allocation Agreement, the Litigation Trust was entitled to receive 50% of any future proceeds from the Settlement Agreement derived from (i) the Assignment Agreement with respect to the Dissenting Insurers and (ii) all payments and obligations of the Group A Defendants as set forth in the Settlement Agreement. *See* Ch. 11 ECF No. 2232-1; Tavakoli Decl. ¶ 15.

(g) With respect to the Assigned Rights, on October 27, 2016, the MFG Plaintiffs commenced litigation in this Court against the Dissenting Insurers. *See* Adv. Proc. Case No. 16-01251 at ECF No. 1. After litigation and arbitral proceedings in this Court and Bermuda, confidential settlements were eventually reached with all insurers and no further steps are required to reduce those Trust Assets to cash. Tavakoli Decl. ¶ 16.

(h) Finally, while certain of the Group A Defendants' payments were required to be paid three and four years after entry of the order dismissing the Litigation Trust action (*see* MDL Settlement, Ch. 11 ECF No. 2271-2 at ¶ 1(b)), the last of these payments was due and paid on September 30, 2020. Tavakoli Decl. ¶ 17.

(i) With the receipt of the final Group A Defendants' payment last fall, the Litigation Trust's share of recoveries under the Settlement Agreement, including amounts from the Dissenting Insurers and Group A Defendants, have all been reduced to cash and distributed to the Litigation Trust beneficiaries. Tavakoli Decl. ¶ 18.

9. In total, approximately \$86.5 million was distributed from December 2016 through October 2020 to the Litigation Trust beneficiaries. As such, all of the Trust Assets have been reduced to cash, and the mission set forth for the Litigation Trustee under the Plan has been fulfilled. *Id.* ¶¶ 18-19.

10. At this time, the Litigation Trust has a small cash balance to address certain wind-down costs and expenses. The Litigation Trustee has agreed with the Plan Administrator to provide for the remaining funds to be used to pay any remaining Litigation Trust expenses, and if any funds remain after such expenses are paid, to have such funds included in a future distribution using the applicable Litigation Trust Protocol. Tavakoli Decl. ¶ 25.

11. Having successfully liquidated the Trust Assets (and in the process having recovered with the MFG Plaintiffs substantially all insurance proceeds available), pursuant to § 7.1 of the LTA, the Litigation Trustee may terminate the Litigation Trust and "advise the Bankruptcy Court in writing of its termination," as follows:

**Section 7.1 Termination.** The Trust shall continue for a term of five (5) years from the Effective Date [as extended]. The Trustee shall at all times endeavor to liquidate the Trust Assets expeditiously, and in no event shall the Trustee unduly prolong the duration of the Trust. Unless the Chapter 11 Cases have previously been dismissed, upon termination of the Trust, the Trustee shall advise the Bankruptcy Court in writing of its termination.

LTA § 7.1(a) (emphasis added). See also Plan at § IX-2.E.<sup>7</sup>

12. The same LTA section further provides that:

The Trustee shall retain the books, records and files that shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may be destroyed at any time after two (2) years from the date of an order of the Bankruptcy Court terminating the Trust, subject to the requirements of Section 10.2(a), Section XIII.F of the Plan and applicable law.

LTA § 7.1(a) (emphasis added). The Litigation Trustee and the Plan Administrator have reached an agreement pursuant to which the Litigation Trust's records will be retained for the minimum two-year period from the Litigation Trust's termination in compliance with LTA § 7.1. *See* Tavakoli Decl. ¶ 26.

13. Additionally, the Plan Administrator has agreed to assume the obligations of the Litigation Trust concerning indemnifying the Litigation Trustee for any claims arising from his work as Trustee and otherwise maintain appropriate insurance on his behalf.

14. Also as provided for in Section 5.12 of the LTA, upon receiving confirmation of the disposition of Trust Assets from the Litigation Trustee, the members of the Litigation Trust Committee, subject only to the entry of this Court's order, have tendered their resignations,<sup>8</sup> and will be discharged from further duties and responsibilities. Tavakoli Decl. ¶ 24.

15. As such, while the Litigation Trust may be terminated by the Litigation Trustee on notice to the Court, § 7.1 of the LTA provides that it is this Court's order terminating the Litigation Trust that will start the minimum two-year time period for the retention of the Litigation Trustee's records, prompting the filing of this Motion.

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<sup>7</sup> Even after the Litigation Trust's termination, "the Trustee shall have the power to exercise all the powers, authorities and discretions herein conferred solely for the purpose of winding up the affairs of the Trust." LTA § 7.1(a).

<sup>8</sup> The Litigation Trust Committee is comprised of representatives of the estates' three largest creditors. *See* Ch. 11 ECF No. 2431 at ¶ 12.



**V. RELIEF REQUESTED**

16. In accordance with Section 7.1 of the Litigation Trust Agreement, and § IX-2.E of the Plan, and sections 105(a) and 1142(b) of the Bankruptcy Code, the Litigation Trustee hereby requests that the Court enter an order terminating the Litigation Trust as set forth herein to start the two-year time period for the retention of the Litigation Trustee's records under LTA § 7.1.

**VI. BASIS FOR RELIEF**

17. Both Section 7.1 of the Litigation Trust Agreement and Article IX-2(E) of the Plan provide express authority for the Litigation Trust to terminate on notice to the Court. LTA § 7.1; Plan IX-2(E); *see also* Plan § IV(D). As discussed above and in the Tavakoli Declaration, entry of an order terminating the Litigation Trust is necessary to start the clock that will permit the abandonment of the documents retained by the Litigation Trustee in due course.

18. Entry of an order terminating the Litigation Trust is also consistent with the Court's broad authority under sections 105(a) and 1142(b) of the Bankruptcy Code. Section 105 provides that the Court may 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]."). Section 1142(b) provides that 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>9</sup>

19. Accordingly, this Court has ample authority for the entry of an order terminating the Litigation Trust, the term of which is scheduled to end unless extended on June 4, 2021.

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<sup>9</sup> *See also 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 Avánzit, 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).

20. As explained above, there is no need to extend the Litigation Trust's term since the Trust Assets have all been reduced to cash. *See supra* at ¶¶ 8-9; Tavakoli Decl. ¶¶ 18-19, 23. The Litigation Trustee believes that having the Litigation Trust terminate, and having this Court enter an order terminating the Litigation Trust, is a prudent exercise of his business judgment as part of the orderly wind-down of the Litigation Trust, and is required under LTA § 7.1 to start the clock for the future abandonment of the Litigation Trustee's records. Tavakoli Decl. ¶ 26.

21. No parties in interest will be prejudiced by the termination of the Litigation Trust since it has completed its mission and its documents will continue to be retained as contemplated by § 7.1 of the LTA. *See* ¶ 12, *supra*. But if the order terminating the Litigation Trust is not entered, the clock will not begin to run on the two-year period for the records to be retained under § 7.1 of the Litigation Trust, which could result in burdensome costs to the estates by delaying for longer than the two-year period the timely abandonment of any records that are no longer required to be retained under provisions of the Plan or other applicable retention requirements. Tavakoli Decl. ¶¶ 22, 26.

22. For the foregoing reasons, Nader Tavakoli, as Litigation Trustee, respectfully requests that this Motion be granted and that the Court enter the proposed order terminating the Litigation Trust as of the Trust Termination Date.

## VII. NOTICE

23. 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* (Ch. 11 ECF No. 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 Litigation Trustee submits that no other or further notice need be provided.

24. All responses or objections, if any, to the relief requested in the 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, including by noting the ECF docket number to which the filing relates in the upper right hand corner of the caption of all objections; (v) be filed with the Bankruptcy Court, together with proof of service, electronically, in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) no later than June 15 at 4:00 p.m. (Prevailing Eastern Time); and (vi) be served on Jones Day, 250 Vesey Street, New York, NY 10281-1047, Attn: Jane Rue Wittstein, Esq.; 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").

25. If a timely objection is made, the Plan Administrator has reserved a hearing date of Tuesday, **June 22, 2021 at 2:00 p.m.** (Prevailing Eastern Time) for a remote hearing through CourtSolutions, and such hearing date may be adjourned or rescheduled by filing a revised notice. As noted, pursuant to General Order M-543, in the event the hearing goes forward, it will be held using CourtSolutions, and parties wishing to be heard "live" or to attend the hearing in "listen only" should follow the instructions to register and make a reservation for this hearing with CourtSolutions at [www.Court-Solutions.com](http://www.Court-Solutions.com).

26. If no responses to the Motions are timely filed and served in accordance with the procedures set forth herein, or if any objections are resolved prior to a hearing, the Bankruptcy Court may enter an order granting the Motions without further notice.

WHEREFORE, the Litigation Trustee respectfully requests entry of an order in the form annexed hereto as Exhibit A approving the termination of the Litigation Trust as of the Trust Termination Date, and such additional and further relief as the Court may deem proper.

Dated: June 4, 2021  
New York, New York

Respectfully submitted,

/s/ Jane Rue Wittstein

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*Counsel for Nader Tavakoli, as Litigation  
Trustee of the MF Global Litigation Trust*

NAI-1518195116

## **EXHIBIT A**

**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	

**[PROPOSED] ORDER APPROVING TERMINATION  
OF THE MF GLOBAL LITIGATION TRUST**

Upon the *Motion of Nader Tavakoli, as Litigation Trustee, for an Order Terminating the MF Global Litigation Trust*, dated June 4, 2021 (the "Motion"),<sup>2</sup> pursuant to §§ 105(a) and 1142(b) of title 11 of the United States Code (the "Bankruptcy Code"), to terminate the Litigation 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 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 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

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<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 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

it appearing that no other or further notice need be provided; and the Court having found that the Litigation Trust has fulfilled its stated mandates in full; 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 Litigation Trust set forth in Article IX-2 of the Plan is hereby terminated as of the date of its expiration, June 4, 2021 (the "Trust Termination Date"); and it is further

**ORDERED** that the Litigation Trustee and the Plan Administrator, and their successors are authorized and empowered to take all actions as are necessary or appropriate to implement this Order, without further order of this Court; and it is further

**ORDERED** that the resignation of the Litigation Trust Committee members is effective as of the Trust Termination Date, without further order of this Court, and the Litigation Trust Committee members are hereby discharged from further duties and responsibilities pursuant to Section 5.12 of the LTA, with the Litigation Trustee retaining his authority to winddown the Litigation Trust as provided in the LTA; and it is further

**ORDERED** that all limitations of liability and other protections provided in Section 4.7 of the LTA shall survive the termination of the Litigation Trust, and any obligation of the Litigation Trust as set forth in Section 4.7 of the LTA shall be assumed by the Plan Administrator; and it is further

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

**IT IS SO ORDERED.**

Dated: June \_\_, 2021  
New York, New York

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JUDGE MARTIN GLENN  
United States Bankruptcy Judge



**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 NADER TAVAKOLI**

I, Nader Tavakoli, am the trustee of the MF Global Litigation Trust (the "Litigation Trustee"), created pursuant to the confirmed *Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*. (D.I. 1382) (the "Plan") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") and the Litigation Trust Agreement dated as of June 4, 2013 (the "Litigation Trust Agreement").<sup>2</sup> I submit this declaration pursuant to 28 U.S.C. § 1746 in my capacity as Litigation Trustee in support of the *Motion of Nader Tavakoli, as Litigation Trustee, for an Order Terminating the MF Global Litigation Trust* (the "Motion"),<sup>3</sup> which seeks this Court's approval of the termination of the Litigation Trust as of the date of its scheduled expiration, June 4, 2021, and the resolution of certain issues related to that termination. 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:

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<sup>1</sup> The debtors in the above-captioned cases are MF Global Holdings Ltd. (Ch.11 Case No. 11-15059); MF Global Finance USA Inc. ("Finco") (Ch.11 Case No. 11-15058); and MF Global Holdings USA Inc. ("Holdings USA") (Ch.11 Case No. 12-10863), jointly administered under Ch. 11 Case No. 11-15059 ("Ch. 11 ECF No. \_\_\_"). 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. *See* Ch. 11 ECF No. 2201.

<sup>2</sup> The executed Litigation Trust Agreement is publicly available on the Debtors' website at <http://www.mfglobalcaseinfo.com/docs/03.%20%20Litigation%20Trust%20Agreement.pdf>. *See also* Ch. 11 ECF 2367 at Ex. C.

<sup>3</sup> Capitalized terms not otherwise defined in this declaration have the meaning given to them in the Motion.

1. As detailed below, I am very pleased to report that the Litigation Trust was successful in carrying out the Trust’s mandate—to wit, recovering and distributing to the estate and its creditors over \$86.5 million in distributions from the Litigation Trust, through effective litigation and subsequent settlements that included the contribution of the remaining policy limits from virtually all insurers in excess of \$160 million.

2. As trustee of the Litigation Trust, I am familiar with the Chapter 11 Cases, the Plan, the Litigation Trust, the Litigation Trust Claims, the Litigation Trust Assets, and my rights, duties, and obligations as Litigation Trustee under the Plan and the Litigation Trust Agreement.

3. The Litigation Trust’s initial term was scheduled to expire on the fifth anniversary of the Effective Date, or June 4, 2018. LTA at § 7.1. In accordance with the terms of the Litigation Trust Agreement and the Plan, the Litigation Trust Committee<sup>4</sup> unanimously agreed to extend the Litigation Trust for an additional three-year term, to and through June 4, 2021, subject only to this Court’s approval, which was granted by Order dated May 22, 2018. *See* Ch. 11 ECF No. 2372.

4. As Litigation Trustee, I was tasked with investigating and prosecuting certain legal claims against certain of the Debtors’ former officers and directors and to recover on insurance coverage related to the same. Specifically, my mission under Article III of the Litigation Trust Agreement was to “take such steps as the Trustee deems necessary to investigate, pursue, litigate, settle, compromise, transfer, sell, dispose of and/or abandon all or any of the Trust Assets to reduce the Trust Assets to Cash proceeds and to transfer all Trust Assets constituting Available Cash to the Disbursing Agent for the benefit of the Beneficiaries as

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<sup>4</sup> The Litigation Trust Committee is comprised of representatives of the estates’ three largest creditors willing to serve. *See, e.g.*, Ch. 11 ECF 2084, 2361, 2431. Its current members are Andrew Shannahan, as designee of Knighthead Capital Management, LLC, Christopher Abad, as designee of Emphyrean Capital Partners, LP, and David Corleto, as designee of Caspian Capital L.P. Ch. 11 ECF 2431.

required under the Plan and this Trust Agreement.” LTA Article III. Under the Plan, the Trust Assets were defined as \$2 million in cash and the assignment of certain 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, as well as 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*, dated April 3, 2013 (Ch. 11 ECF No. 1279) (the “Litigation Trust Claims”).

5. As of the Effective Date of the Plan, I replaced and became the plaintiff prosecuting the estates’ claims in place of the Ch. 11 Trustee, and have served as the Litigation Trustee since that time.

6. Subsequent to assuming my duties as Litigation Trustees, together with my counsel at Jones Day, we fully investigated and analyzed the claims assigned to the Trust, and filed a substantially revised complaint on a September 16, 2013, captioned *Nader Tavakoli, as Litigation Trustee of MF Global Litigation Trust v. Jon S. Corzine, et al.*, in Adversary Proceeding No. 13-01333. *See* Adv. Proc. 13-1333 ECF No. 22. This adversary proceeding was ultimately consolidated with the Multi-District Litigation (the “MDL”) under the caption *DeAngelis v. Corzine et al.*, Docket No. 11-CV-07866 in the United States District Court for the Southern District of New York. *See* MDL ECF No. 513. *See also* Status Report, Ch. 11 ECF No. 2441 & Adv. Proc. 13-1333 ECF No. 22 at ¶¶ 3-10.

7. I supervised the prosecution of the Litigation Trust Claims in the MDL for over two years. By November 2015, fact discovery had been completed, expert reports had been exchanged, and expert depositions were in the process of being scheduled in anticipation of a trial in early 2016.

8. On a parallel track, the professionals retained by Litigation Trust and I worked closely with the advisors for MF Global Holdings, Ltd., as plan administrator (“MFGH” or the “Plan Administrator”), and MF Global Assigned Assets LLC (“MFGAA”) (the Litigation Trustee, together with MFGAA and MFGH, the “MFG Plaintiffs”) to negotiate a settlement that would maximize the value for the estates’ creditors by preventing the further depletion of certain insurance policies that both funded former officers’ defense costs and were expected to be an essential component of any agreed settlement.

9. After protracted negotiations and various attempts at mediation, on November 30, 2015, the MFG Plaintiffs entered into a confidential term sheet with the Defendants and the Customer Class Representatives. The District Court entered a stay of the relevant proceedings to permit the parties to finalize the settlement in definitive agreements. *See* Settlement Agreement, Ch. 11 ECF No. 2271-2 at 8.

10. As the Court is aware, the claims I prosecuted against Corzine, *et al.*, were then settled the following summer, along with the claims of the Customer Class, MFGAA, the Plan Administrator, and Sapere CTA Fund, L.P. These settlements are embodied in the *Stipulation and Agreement of Settlement* dated as of July 6, 2016 (the “Settlement Agreement”), presented to this Court for approval pursuant to 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* (Ch. 11 ECF No. 2271).

11. The Settlement Agreement was approved by this Court on August 10, 2016. *See* Ch. 11 ECF No. 2282. Among its terms, the Settlement Agreement required the Defendants to cause the contribution of all remaining insurance proceeds (an estimated \$159-plus million)

pursuant to funding agreements entered into concurrently with the Settlement Agreement into the settlement fund. *See* Ch. 11 ECF No. 2271 at ¶ 4.

12. In addition, under the Settlement Agreement, the Defendants assigned to the MFG Plaintiffs their rights as individual insureds (the “Assigned Rights”) against certain dissenting insurers who did not contribute their combined \$25 million in policy limits to the MDL Settlement (the “Dissenting Insurers”) (the “Assignment Agreement”) and certain former officers (the “Group A Defendants”) became obligated to make certain payments to the Settlement fund. *See* Settlement Agreement, Ch. 11 ECF No. 2271-2 at ¶ 1(b) & 1(c).

13. On August 24, 2016, I filed a motion with the Plan Administrator for approval of an agreement allocating the consideration to be received by the Litigation Trust and MFGAA under the MDL Settlement (the “Allocation Agreement”). *See* Ch. 11 ECF No. 2291. The Bankruptcy Court approved the Allocation Agreement on December 1, 2016. *See* Ch. 11 ECF No. 2322.

14. In accordance with the Allocation Agreement, I authorized the Plan Administrator to effect distributions of the Litigation Trust’s share of any recoveries with respect to the MDL Settlement Agreement and the Allocation Agreement, as provided for in the Distribution Protocol for Litigation Trust Proceeds (Ch. 11 ECF No. 2314), which had been approved by the Bankruptcy Court on December 1, 2016 (Ch. 11 ECF No. 2323).

15. Under the Allocation Agreement, the Litigation Trust was entitled to receive 50% of any future proceeds from the Settlement Agreement derived from (i) the Assignment Agreement with respect to the Dissenting Insurers and (ii) all payments and obligations of the Group A Defendants as set forth in the Settlement Agreement. *See* Ch. 11 ECF No. 2232-1.

16. As such, I remained actively involved in overseeing the efforts to pursue the Assigned Rights. After the MFG Plaintiffs commenced litigation in this Court against the

Dissenting Insurers (*see* Adv. Proc. Case No. 16-01251), confidential settlements were eventually reached with all insurers. At this time, no further steps are required to reduce those Trust Assets to cash.

17. Similarly, while certain of the Group A Defendants' payments under the Settlement Agreement were required to be paid three and four years, respectively, after entry of the order dismissing the Litigation Trust action in the MDL (*see* MDL Settlement, Ch. 11 ECF No. 2271-2 at ¶ 1(b)), the last of these payments, due on September 30, 2020, was timely paid.

18. With the receipt of the final Group A Defendants' payment last fall, the Litigation Trust's share of recoveries under the Settlement Agreement, including amounts from the Dissenting Insurers and Group A Defendants, have all been reduced to cash and distributed to the Litigation Trust beneficiaries. In total, approximately \$86.5 million was distributed to Litigation Trust beneficiaries from December 2016 through October 2020. *See generally* <http://mfglobalcaseinfo.com/litigation.php> (Litigation Trust webpage of the MFGH Case Administration Website).

19. As such, all of the Trust Assets have been reduced to cash in a manner to maximize the estate, and my mission as set forth in the Litigation Trust and the Plan has been fulfilled.

20. Having successfully liquidated the Trust Assets (and in the process having recovered with the MFG Plaintiffs substantially all insurance proceeds available), pursuant to § 7.1 of the LTA, I, as Litigation Trustee, may terminate the Litigation Trust and "advise the Bankruptcy Court in writing of its termination," as follows:

**Section 7.1 Termination.** The Trust shall continue for a term of five (5) years from the Effective Date [as extended]. The Trustee shall at all times endeavor to liquidate the Trust Assets expeditiously, and in no event shall the Trustee unduly prolong the duration of the Trust. Unless the Chapter 11 Cases have previously been dismissed, upon

termination of the Trust, the Trustee shall advise the Bankruptcy Court in writing of its termination.

LTA § 7.1(a) (emphasis added). *See also* Plan at § IX-2.E.

21. Section 7.1 of the LTA further provides that:

The Trustee shall retain the books, records and files that shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may be destroyed at any time after two (2) years from the date of an order of the Bankruptcy Court terminating the Trust, subject to the requirements of Section 10.2(a), Section XIII.F of the Plan and applicable law.

LTA § 7.1(a) (emphasis added).

22. As such, while the Litigation Trust may be terminated by me on notice to the Court, Section 7.1 of the LTA provides that this Court's order terminating the Litigation Trust will start the minimum two-year time period for the retention of the Litigation Trustee's records; thus, prompting the filing of this Motion.

23. Given the facts set forth above, I have determined that there is no reason to further extend the Litigation Trust's term beyond its scheduled expiration on June 4, 2021.

24. As provided for in the Litigation Trust Agreement, the members of the Litigation Trust Committee are to resign upon receiving "the certification by the Trustee that all Trust Assets have been transferred to the Distributing Agent, distributed, abandoned or otherwise disposed of." LTA at § 5.12. I have provided the requisite certification to the Litigation Trust Committee. Subject only to the Court's order terminating the Litigation Trust and discharging the Litigation Trust Committee members from further duties and responsibilities, the members of the Trust Committee have resigned their positions.

25. At this time, the Litigation Trust has a small cash balance remaining to address certain wind-down costs and expenses. I have agreed with the Plan Administrator to dispose of any remaining funds by, first, paying any remaining Litigation Trust expenses (including the costs associated with terminating the Litigation Trust and retaining the documents and records

required to be held for at least two years after the Litigation Trust's termination); and second, if any funds remain after all Litigation Trust expenses are paid in full, by directing the Plan Administrator to include such funds in a future distribution using the applicable Litigation Trust Protocol.

26. Based on the facts known to me as set forth above and in the prudent exercise of my business judgment, I have determined that the Litigation Trust should terminate on its scheduled expiration, *i.e.*, June 4, 2021. I have agreed in conjunction with the Plan Administrator on retention of the Litigation Trust's documents and records until such time as these materials may properly be abandoned under the terms of the Plan and the LTA.

27. For all of the reasons stated above, I respectfully request that the Court grant the Motion and approve the termination of the Litigation Trust, as of the date of its scheduled expiration, June 4, 2021, and the resolution of the matters described herein.

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

Dated: June 4, 2021  
New York, New York

/s/ Nader Tavakoli  
Nader Tavakoli

NAI-1518194335