

Hearing Date & Time: 12/21/2011 at 1:30 pm

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

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	:	
In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
	:	
	:	(Joint Administration Requested)
Debtors.	:	
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MOTION FOR ORDER UNDER 11 U.S.C. § 105 DIRECTING THAT CERTAIN ORDERS IN CHAPTER 11 CASES OF MF GLOBAL HOLDINGS LTD., ET AL. BE MADE APPLICABLE TO CHAPTER 11 CASES OF MF GLOBAL CAPITAL LLC, MF GLOBAL FX CLEAR LLC AND MF GLOBAL MARKET SERVICES, LLC

Louis J. Freeh, Esq., Chapter 11 Trustee (the “Trustee”)¹ of MF Global Holdings Ltd. and MF Global Finance USA Inc. (the “Initial Debtors”),” submits this motion (the “Motion”) for entry of an order under 11 U.S.C. § 105 of the United States Bankruptcy Code, as amended (the “Bankruptcy Code”) directing that certain orders previously entered in the jointly administered chapter 11 cases of MF Global Holdings Ltd., *et al.*, Case No. 11-15059 (MG), be made applicable to MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC, (the “New Debtors and together with the Initial Debtors, the “Debtors”).²

¹ The Trustee, to the best of his ability, as the prime fiduciary of the Initial Debtors and operator of the Initial Debtors’ businesses, and pursuant to 11 U.S.C. §§ 1106 and 1107 and the United States Department of Justice Chapter 11 Trustee Handbook, must protect and preserve the assets of the Debtors. It is, therefore, his duty to act on behalf of the New Debtors, as the fiduciary of their parent entity, to protect and preserve these assets.

² The following U.S. subsidiaries and affiliates (along with the last four digits of each of their federal taxpayer identification numbers) have filed petitions for relief concurrently herewith and have requested joint administration with MF Global Holdings Ltd. (11-15059): MF Global Capital LLC (2825), MF Global FX Clear LLC (3678), MF Global Market Services, LLC (2193).

In support of this Motion, the Trustee, as fiduciary of the Initial Debtors, relies upon and incorporates by reference the Declaration of Laurie R. Ferber Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and Various First-Day Applications and Motions (the "Ferber Declaration"). In further support of this Motion, the Trustee, as fiduciary of the Initial Debtors, represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is Bankruptcy Code section 105(a).

BACKGROUND

3. On October 31, 2011 (the "Initial Debtors' Petition Date"), the Initial Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of New York (the "Court"). On November 2, 2011, this Court entered an order directing the joint administration of the Initial Debtors' chapter 11 cases (Docket No. 19).

4. On November 7, 2011, the United States Trustee (the "U.S. Trustee") appointed the statutory creditors' committee (the "Statutory Creditors' Committee") in the Initial Debtors' cases.

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

6. On November 25, 2011, the U.S. Trustee filed the Application for Order Approving Appointment of Chapter 11 Trustee (Docket No. 169).

7. On November 28, 2011, the Court entered the Order Approving the Appointment of Chapter 11 Trustee (Docket No. 170), pursuant to which the Trustee was appointed.

8. On the date hereof (the "New Debtors' Petition Date," and together with the Initial Debtors' Petition Date, the "Petition Dates"), the New Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

9. On December 16, 2011, the Trustee, as fiduciary of the Initial Debtors, filed a motion for an order under rule 1015(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") directing the joint administration of the New Debtors' chapter 11 cases with those of the Initial Debtors (the "Second Joint Administration Motion"). On the same date as the Second Joint Administration Motion, the Trustee, as fiduciary of the Initial Debtors, also filed this Motion for entry of an order under Bankruptcy Code section 105(a) directing that certain orders entered in the chapter 11 cases of the Initial Debtors be made applicable to the New Debtors.³

10. The factual background regarding the Debtors, including their prior business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in the Ferber Declaration filed concurrently herewith and fully incorporated herein by reference.⁴

³ Provided however, that the applicability of the Initial Debtors' orders shall not reduce the periods provided under the Bankruptcy Code and Bankruptcy Rules with respect to the New Debtors, such as the exclusivity and removal deadlines.

⁴ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Ferber Declaration.

RELIEF REQUESTED

11. By this Motion, the Trustee, as fiduciary of the Initial Debtors, seeks entry of an order substantially in the form annexed hereto as Exhibit A (the “Order”), pursuant to Bankruptcy Code section 105(a) directing that all generally applicable orders previously approved or entered by this Court, as set forth on Exhibit A to the Order, and any generally proposed orders pending before this Court in the Initial Debtors’ chapter 11 cases (collectively, the “Initial Debtors’ Orders”) be made applicable to the New Debtors. Specifically, the Trustee, as fiduciary of the Initial Debtors, seeks to have (a) previously approved or entered orders apply to the New Debtors effective as of the entry of the order requested by this Motion and (b) currently pending proposed orders apply to the New Debtors, effective as of the dates of entry of such orders.

12. Included among the orders referenced on Exhibit A to the Order, is the Order Pursuant to 11 U.S.C. § 1104 and Fed. R. Bankr. P. 2007.1 Directing Appointment of Chapter 11 Trustee (the “Order Directing Appointment of Chapter 11 Trustee”). The Order Directing Appointment of Chapter 11 Trustee should be adopted to direct the United States Trustee to appoint a chapter 11 trustee in the New Debtors’ cases. The Initial Debtors and New Debtors are interconnected entities; accordingly, the appointment of a Chapter 11 Trustee in the New Debtors’ cases is warranted pursuant to 11 U.S.C. § 1104 (a)(2).

13. In other words, assuming joint administration of the New Debtors’ cases with the Initial Debtors’ cases, the Trustee, as fiduciary of the Initial Debtors, seeks application of the Initial Debtors’ Orders as if the New Debtors were among the Initial Debtors identified therein; provided, however, that such orders be effective as of the dates set forth above.

BASIS FOR RELIEF

14. Section 105(a) of the Bankruptcy Code provides, in relevant part: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Pursuant to this provision, this Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor’s assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *Bird v. Crown Convenience* (In re NWFx, Inc.), 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy . . . is that equitable principles govern.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (“[T]he Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

15. Entry of an order directing that the Initial Debtors’ Orders be made applicable to the New Debtors will obviate the need for duplicative notices, motions, applications, and orders to be filed in these chapter 11 cases. The Trustee, as fiduciary of the Initial Debtors, seeks to save considerable time and expense for the Debtors’ estates and to reduce the burden on this Court and all parties-in-interest by proceeding in this manner. The New Debtors require the authorizations that are set forth in the Initial Debtors’ Orders to facilitate a smooth entry into chapter 11. If this Motion is not granted, the Trustee, as fiduciary of the Initial Debtors, will seek substantially the same substantive relief as that granted in the Initial Debtors’ Orders.

16. If the New Debtors had filed their petitions at the same time as the Initial Debtors, they would have been a movant with respect to the motions seeking entry of the Initial Debtors' Orders. By proceeding in the manner set forth in this Motion, the Trustee, as fiduciary of the Initial Debtors, seeks to streamline the motion practice for requesting such relief, while at the same time providing the same requisite facts and justification for such relief as if the New Debtors had filed such motions and applications.

17. The Trustee, as fiduciary of the Initial Debtors, believes that the relief requested herein is appropriate to carry out the provisions of the Bankruptcy Code. Similar procedures have been authorized in other complex chapter 11 cases. *See, e.g., In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. 2008); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. 2005); *In re Worldcom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. 2002); *In re Adelpia Business Solutions, Inc.*, Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002).

NOTICE

18. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the Southern District of New York; (b) the United States Attorney for the Southern District of New York; (c) the Securities and Exchange Commission; (d) the U.S. Commodity Futures Trading Commission; (e) the Internal Revenue Service; (f) counsel for the agents under the Debtors' prepetition Liquidity Facility; (g) the indenture trustee for each of the Debtors' outstanding bond issuances; (h) counsel to the Statutory Creditors' Committee; (i) the parties included on the Debtors' list of twenty (20) largest unsecured creditors; and (j) parties that have requested special

notice in these cases. The Trustee, as fiduciary of the Initial Debtors, submits that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

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

WHEREFORE, the Trustee, as fiduciary of the Initial Debtors, respectfully requests that this Court enter an order (a) directing that the Initial Debtors' Orders be made applicable to New Debtors on the terms set forth herein and (b) granting the Debtors such other and further relief as is just.

Dated: New York, New York
December 19, 2011

MORRISON & FOERSTER LLP

By: /s/ Brett H. Miller

Brett H. Miller
Lorenzo Marinuzzi
Melissa A. Hager
1290 Avenue of the Americas
New York, New York 10104
(212) 468-8000

Proposed Counsel to the Proposed Chapter 11 Trustee

Exhibit A

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

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	:	
In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
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	:	(Joint Administration Requested)
Debtors.	:	
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ORDER UNDER 11 U.S.C. § 105 DIRECTING THAT CERTAIN ORDERS IN CHAPTER 11 CASES OF MF GLOBAL HOLDINGS LTD., ET AL. BE MADE APPLICABLE TO CHAPTER 11 CASES OF MF GLOBAL CAPITAL LLC, MF GLOBAL FX CLEAR LLC, AND MF GLOBAL MARKET SERVICES, LLC.

Upon the motion (the “Motion”)⁵ of Louis J. Freeh, Esq., Chapter 11 Trustee of MF Global Holdings, Ltd. and MF Global Finances USA Inc. (the “Initial Debtors”) for entry of an order, pursuant to 11 U.S.C. § 105 of the United States Bankruptcy Code, as amended (the “Bankruptcy Code”) directing that certain orders previously entered in the jointly administered chapter 11 cases of MF Global Holdings Ltd., *et al.*, Case No. 11-15059 (MG), be made applicable to the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC and MF Global Market Services, LLC (the “New Debtors,” and together with the Initial Debtors, the “Debtors”)⁶; and upon the Ferber Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the

⁵ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

⁶ The following U.S. subsidiaries and affiliates (along with the last four digits of each of their federal taxpayer identification numbers) have filed petitions for relief concurrently herewith and have requested joint administration with MF Global Holdings Ltd. (11-15059): MF Global Capital LLC (2825), MF Global FX Clear LLC (3678), MF Global Market Services, LLC (2193).

Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Any and all generally applicable orders previously approved or entered in the Initial Debtors' chapter 11 cases and which are identified on Exhibit A hereto, are applicable to the New Debtors, effective as of the New Debtors' Petition Date, as if the New Debtors were Debtors as set forth in such orders; provided, however, that to the extent inadvertently omitted from Exhibit A, any generally applicable orders heretofore approved or entered in the Initial Debtors' chapter 11 cases, shall be deemed included in Exhibit A by the filing of a supplement to Exhibit A, upon notice to the United States Trustee and counsel to the Statutory Creditors' Committee, and without further order of this Court.
3. Consistent with the Order Directing Appointment of Chapter 11 Trustee and pursuant to 11 U.S.C. § 1104, the Court directs the United States Trustee to appoint a chapter 11 trustee in the New Debtors' chapter 11 cases.
4. Any and all generally applicable orders hereafter entered in the Initial Debtors' chapter 11 cases in respect of requests for relief pending before this Court on the date hereof (other than any final order regarding use of cash collateral or grant of adequate protection) shall be applicable to the New Debtors, effective as of the dates of entry of such orders in the Initial Debtors' chapter 11 cases, and as if the New Debtors were Debtors as set forth in such orders.

5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: December __, 2011
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Orders To Be Applicable To Additional Debtors

DATE	DOCKET NO.	ORDER
11/2/2011	20	Order Authorizing the Debtors to (I) Prepare Consolidated List of Creditors in Lieu of Mailing Matrix, (II) File Consolidated List of 50 Largest Unsecured Creditors, and (III) Mail Initial Notices
11/2/2011	22	Order Authorizing the Retention of GCG, Inc. as Claims and Noticing Agent for the Debtors and Approving Related Agreement
11/21/2011	156	Order Directing Appointment of Chapter 11 Trustee
12/12/2011	253	Order Granting Motion by the Chapter 11 Trustee for an Order Under 11 U.S.C. § 521 and Fed. R. Bankr. P. 1007(c) Granting an Extension of Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs
12/12/2011	256	Order Granting Motion Implementing Certain Notice and Case Management Procedures