Hearing Date: March 6, 2013 at 10:00 a.m. (EST)
Objection Deadline: February 27, 2013 at 2:00 p.m. (EST)

Peter V. Pantaleo
Bryce L. Friedman
Michael D. Kibler
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Tel. (212) 455-2000
Fax (212) 455-2502

Counsel to JPMorgan Chase Bank, N.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.	:	Jointly Administered

OPPOSITION OF JPMORGAN CHASE BANK, N.A. TO CREDITOR CO-PROPONENTS' MOTION TO CONTINUE [Docket No. 1098]

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OTHER AUTHORITIES

JPMorgan Chase Bank, N.A. ("JPMorgan"), for itself and as administrative agent under that certain $1,200,875,000 Revolving Credit Facility, dated as of June 15, 2007, among MF Global Finance USA Inc. ("Finco"), as borrower, MF Global Holdings Ltd. ("Holdings"), the lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (as amended, supplemented or otherwise modified from time to time, the "Liquidity Facility"), hereby opposes the Creditor Co-Proponents' Motion to Continue the Motion of JPMorgan Chase Bank N.A., as Administrative Agent for, and Lender Under, the $1,200,875,000 Liquidity Facility, for an Order Authorizing JPMorgan to Prosecute and, if Appropriate, Settle Certain Claims Against MF Global Holdings Ltd. on Behalf of the Estate of MF Global Finance USA Inc. (the "Motion to Continue") [Docket No. 1098], and respectfully states:

PRELIMINARY STATEMENT

1. The Motion to Continue the March 6, 2013 hearing on JPMorgan's motion for standing should be denied because it is an attempt to procure a "decision" on the critical issue in the case for Finco's creditors through a "pocket veto." The Motion to Continue is part of the Creditor Co-Proponents' global effort to deny critical information to Finco's creditors about their claims – *i.e.*, whether Finco's creditors will have the opportunity to increase their recovery by as much as an additional 26.3% or more if they vote against the pending proposed plan of liquidation. By denying information to voters about the result of a "no" vote, the Creditor Co-Proponents are trying to unfairly influence the voting on the plan.

2. Specifically, the proposed plan purports to extinguish and thereby "moot" the $928 million Finco Claims (defined below) for no consideration. JPMorgan seeks standing to prosecute the Finco Claims so they are not lost. The voting deadline on the proposed plan is March 25, 2013. In deciding whether to reject the plan (and thereby certainly prevent the Finco

Claims from becoming "moot"), voters should know whether an alternative exists. They should know whether there will be someone (JPMorgan) to pursue the Finco Claims if the plan is not confirmed (or is confirmed with this issue still to be resolved). The Co-Proponents would have voters believe there is no alternative to "mooting" the Finco Claims. Not true. The Standing Motion should be heard on March 6, 2013 as scheduled and promptly decided so Finco creditors know they have a real alternative to getting more than $0 for the Finco Claims as contemplated by the proposed plan.

BACKGROUND

3. In the weeks prior to filing for bankruptcy, Holdings borrowed approximately $931 million from JPMorgan and others through the Liquidity Facility. Holdings transferred $928 million of those borrowings to its subsidiary Finco. These transfers gave rise to $928 million in intercompany claims held by Holdings against Finco (the "Finco Payable").[1] However, under the Liquidity Facility, Finco could have borrowed the funds directly, thus avoiding any intercompany liability. Consequently, Finco has claims and defenses against Holdings (the "Finco Claims"), which, if successfully pursued, would avoid, subordinate or disallow the Finco Payable, materially increasing the recovery for Finco creditors by as much as an additional 26.3% or more. *See* Standing Motion (defined below) ¶¶ 9-11.

4. A group of hedge funds and others calling themselves the "Creditor Co-Proponents" and the Chapter 11 Trustee have proposed an Amended Joint Plan of Liquidation

[1] The portion of the Holdings intercompany claim against Finco attributable to the Liquidity Facility may be as high as $1.175 billion if the remaining $255 million of Liquidity Facility liability was borrowed by Holdings and transferred through the intercompany accounts to Finco. Although the setoff and section 509(c) subordination claims described in JPMorgan's motion for standing reference the Finco Payable, they would also apply to as much of the $1.175 billion as was borrowed by Finco through the intercompany accounts. The fraudulent conveyance and equitable subordination claims described in the Standing Motion, however, apply only to the Finco Payable.

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. (the "Proposed Plan") [Docket No. 1111-3]. That plan incorporates what purports to be a "settlement" (the "Interco Settlement") allowing intercompany claims, including the Finco Payable, after mutual setoffs. *See* Proposed Plan § III.C, IV.F.[2] Therefore, certain Creditor Co-Proponents of the Proposed Plan, with no incentive to protect Finco's interests or JPMorgan's interest as a creditor of Finco, purport to have "settled" the Finco Claims on behalf of Finco. A Rule 9019 evidentiary hearing on the purported "settlement" has been scheduled for April 16, 2013, along with a hearing on confirmation of the Proposed Plan.

5. On February 13, 2013, JPMorgan filed a motion seeking standing to prosecute the Finco Claims on behalf of Finco (the "Standing Motion") [Docket No. 1077]. Communications from counsel for the Chapter 11 Trustee reflecting his consent to the relief sought in the Standing Motion are attached hereto as Exhibit A. The Creditor Co-Proponents have at various times indicated an intent to oppose the Standing Motion and alternatively to seek standing to defend the Finco Claims once brought by JPMorgan. A hearing on the Standing Motion is scheduled for March 6, 2013 (the "Standing Hearing").

6. On February 18, 2013, the Creditor Co-Proponents filed a motion to continue the Standing Hearing until after the Rule 9019 evidentiary hearing/confirmation hearing. The grounds for the relief requested are that (i) there is "no reason" for the Court to consider the Standing Motion until after the confirmation hearing because, if the Proposed Plan

[2] It should be noted that the Chapter 11 Trustee takes no position on the alleged settlement of the Finco Claims.

is confirmed and the Interco Settlement approved, the Standing Motion will "be moot," and (ii) the Standing Motion should not be adjudicated without discovery that cannot be completed prior to the currently-scheduled Standing Hearing. That Motion to Continue should be denied.

ARGUMENT

I. THE STANDING MOTION SHOULD BE RESOLVED BEFORE THE VOTING DEADLINE (MARCH 25)

7. "One of the basic premises of Chapter 11 is that creditors and interest holders, *if they have been fully informed*, are capable of looking after their own interests and determining whether to accept or reject a proposed plan of reorganization." 6 Norton Bankr. L. & Prac. 3d § 110:4 (emphasis added). There is no doubt that a major goal of the Proposed Plan is to take away the Finco Claims for zero consideration. The Standing Motion should be resolved now so that creditors of Finco are more fully informed about the consequences of their choice on the Finco Claims if they vote "no" on the Proposed Plan. A "no" vote certainly preserves the alternative of litigation over those claims with the prospect of increased recoveries.

8. Specifically, if the Standing Motion is granted JPMorgan will pursue the Finco Claims after the Rule 9019/confirmation hearing. If the Standing Motion is denied Finco creditors will likely conclude that no one will pursue the Finco Claims, ever.[3] Those Finco creditors voting whether to accept or reject the Proposed Plan (the "Finco Voters") should know in advance of the vote if rejecting the Proposed Plan will result in pursuit of the Finco Claims and allow them to potentially increase their recoveries by as much as an additional 26.3% or

[3] JPMorgan's Section 509(c) subordination claim against the Finco Payable is personal to it and JPMorgan intends to press that claim in connection with its confirmation objection regardless of whether the Standing Motion is granted.

more. Contrary to the Creditor Co-Proponents' position, voting should not occur without the Finco Voters knowing the choices before them.[4]

II. DISCOVERY IS NOT NECESSARY TO RESOLVE THE STANDING MOTION

9. The Creditor Co-Proponents try to put off the Standing Motion by arguing that so much discovery is necessary there is no time to decide the Motion. Discovery is not necessary to decide the Standing Motion because there are no material disputed facts that need to be resolved. Indeed, the discovery sought by the Creditor Co-Proponents is a transparent attempt to manufacture issues of alleged "misconduct" against JPMorgan which are utterly irrelevant to the disposition of the Standing Motion.

10. In *In re STN Enterprises*, 779 F.2d 901 (2d Cir. 1985) ("*STN*"), the Second Circuit held that creditors have an implied, qualified right to bring suit on behalf of the estate.[5] It is undisputed that JPMorgan is a creditor of Finco. *See, e.g.*, Proposed Plan § III.B.[6] Therefore, JPMorgan, as a creditor of Finco, has an implied, qualified right to bring suit on behalf of the Finco estate.

11. A creditor like JPMorgan has "derivative standing 'to initiate suit with the approval of the bankruptcy court' … when the 'debtor in possession [has] unjustifiably failed to bring suit.'" *Smart World Techs., LLC v. Juno Online Servs., Inc.*, 423 F.3d 166, 176 (2d Cir.

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[4] JPMorgan does not concede that a vote for the Proposed Plan moots the Finco Claims. However, this is one of the Creditor Co-Proponents' positions.

[5] *See also In re Housecraft Inds. USA, Inc.*, 310 F.3d 64, 71 n.7 (2d Cir. 2002) ("Numerous courts have granted individual creditors standing to sue in the stead of a trustee or debtor-in-possession."); *In re Adelphia Commc'ns Corp.*, 330 B.R. 364, 373 (Bankr. S.D.N.Y. 2005) ("The practice of authorizing the prosecutions of actions on behalf of an estate by committees, *and even by individual creditors*, upon a showing that such is in the interest of the estate, is one of long standing, and nearly universally recognized." (emphasis added)).

[6] *See also* The Garden City Group, Inc., *MF Global Holdings Ltd., et al. Case Administration Website*, JPMorgan Chase Bank, N.A. Claim Nos. 892, 893, and 1218, https://cert.gardencitygroup.com/mfg/fs/searchcr (last visited February 24, 2013).

2005) (quoting *STN*, 779 F.2d at 904). Here, given that Finco has consented to JPMorgan's standing, the Court need determine only whether (1) JPMorgan presents a colorable claim or claims for relief that on appropriate proof would support a recovery, and (2) whether an action is (a) in the best interest of the bankruptcy estate and (b) necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings. *See In re Dewey & LeBoeuf LLP*, No. 12-12321, 2012 WL 5985445, at *5 (Bankr. S.D.N.Y. Nov. 29, 2012) . None of these determinations require discovery in this case.

A. The Colorable Claim Analysis Requires The Court To Look Only To The Facts Pled In The Proposed Complaint, Not To Discovery of JPMorgan

12. To satisfy the first prong of the standing analysis, on whether the claims are colorable, the party seeking standing "is required only to describe a facially valid claim." *Dewey*, 2012 WL 5985445, at *6. The standard the Court must apply in considering whether the claims are colorable is "much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim." *Id.* (quoting *In re Am.'s Hobby Ctr., Inc.*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998)); *see also In re KDI Holdings, Inc.*, 277 B.R. 493, 508 (Bankr. S.D.N.Y. 1999) (observing that the inquiry into whether a claim is colorable is similar to that undertaken on a motion to dismiss for failure to state a claim). Here, there is a proposed complaint before the Court. *See* Standing Motion, Exhibit A [Docket No. 1077]. That complaint concerns the conduct of Finco and Holdings, not JPMorgan. Consequently, discovery of JPMorgan (or anyone) is not necessary or appropriate in determining whether the Finco Claims as set forth in the proposed complaint state a claim for which relief can be granted and are colorable for purposes of the *STN* analysis.[7]

[7] *See, e.g., U.S. v. Egan*, No. 10 Cr. 191, 2011 WL 798852, at *2 (S.D.N.Y. Mar. 7, 2011) ("[A]s a district court's task in deciding the…motion to dismiss is to resolve legal issues that might obviate further

B. Whether Bringing The Finco Claims Is In The Best Interest of Finco And Resolution Of Its Case Does Not Require Discovery of JPMorgan

13. The second prong of the standing analysis considers the benefit to the estate of asserting the claim(s), taking into consideration the costs that will be incurred by the estate in the litigation. *Dewey*, 2012 WL 5985445, at *6. In conducting this analysis, the Court may engage in a "limited merits assessment" of the claims. *Id.* However, a mini-trial is not necessary. *STN*, 779 F.2d at 905. And JPMorgan "does *not* have to show a likelihood of success *on the merits*." *Adelphia*, 330 B.R. at 386 (emphasis added). At bottom, "[t]he standard is not a difficult one to meet." *Id.* at 376. In fact, no discovery of JPMorgan is necessary to determine that the cost of JPMorgan prosecuting the Finco Claims to the estates will be negligible and probably zero. Also, no discovery is necessary to determine that the potential benefit to the estate of the prosecution of the Finco Claims is tremendous – almost $1 billion or 30% reduction in Finco's liability. *See* Standing Motion ¶¶ 9-11. Finally, JPMorgan's conduct has no relevance to success on the merits because the Finco Claims are about Finco and Holdings, not JPMorgan.

C. As The Economic Defendants To The Proposed Complaint, The Creditor Co-Proponents' Efforts To Obtain Discovery And Delay Are Suspect

14. Here, the Standing Motion is not opposed by the estate, but rather only by those with an interest in defeating the claims to be asserted. Consequently, "the Court must take the [Creditor Co-Proponents] protestations as to what is in the interest of the estate with a grain of salt." *Adelphia*, 330 B.R. at 364 n.3. As Judge Gerber explained in *In re Adelphia Communications Corp.*:

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litigation, there is no practical reason to permit the claimants to request discovery at the motion to dismiss phase."); *see also Staehr v. Hartford Fin. Servs. Group, Inc.*, 547 F.3d 406, 425 (2d Cir. 2008) ("[A] district court must confine itself to the four corners of the complaint when deciding a motion to dismiss.").

> [T]hose proposing to pursue litigation on behalf of an estate must give the Court comfort that their litigation will be a sensible expenditure of estate resources. That means, as a practical matter, providing the Court with a predicate for concluding that the claims will, if proven, provide a basis for recovery, and that the proposed litigation will not be a hopeless fling. It also means, as a practical matter, that the prospective rewards can reasonably be expected to be commensurate with the litigations foreseeable cost. ***But no more than that is required,*** and the Court must be mindful of the purposes for its inquiry. It is not for the protection of defendants sued or to be sued by a committee on behalf of an estate, whose defenses can be fully and fairly considered in the plenary litigation to be prosecuted…Rather, the purpose of the bankruptcy court's gatekeeper role is to protect the estate, to ensure that the litigation reasonably can be expected to be a sensible expenditure of estate resources, and will not impair reorganization.

Id. at 386 (emphasis added). No discovery of JPMorgan is necessary for the Court to perform its gatekeeper role in making sure that prosecuting the Finco claims is sensible for the estate. It is.

D. An Investigation of JPMorgan's Unrelated Conduct By Creditor Co-Proponents Is Not Warranted

17. Creditor Co-Proponents have baldly asserted that they seek discovery to determine whether JPMorgan has unspecified "conflicts of interest" with Finco, Holdings and their "affiliates." Yet, there is no basis in theory for a search for a "conflict of interest" with Finco (let alone its affiliates) and no factual basis presented by Creditor Co-Proponents for such an inquiry. The filing of a standing motion cannot possibly trigger the kind of wide-ranging, free-wheeling and unnecessary discovery sought by Creditor Co-Proponents.

18. It is undisputed that JPMorgan is agent and lender to Finco under the Liquidity Facility.[8] JPMorgan holds claims against Finco that are detailed in its proofs of claim.[9]

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[8] *See, e.g., Disclosure Statement for the Amended 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.* (the "Disclosure Statement") [Docket No. 1111-1], at §§ II.E, VI.D.

[9] *See supra* note 6.

That is the only "relationship" and only debtor at issue on this motion. While irrelevant to the Standing Motion, JPMorgan's relationships with other MF Global entities have been addressed in a report by the SIPA Trustee, and JPMorgan has been investigated in connection with the Chapter 11 Trustee's analysis of the cash collateral held in Finco's bank account.[10] Notably, the Chapter 11 Trustee has not opposed the Standing Motion on the ground that JPMorgan has a "conflict of interest." The Creditor Co-Proponents and the Court need not initiate yet another investigation into JPMorgan's connections with Finco to decide whether there is a "conflict of interest" that would preclude the limited relief sought in the Standing Motion.

19. JPMorgan has every incentive to vigorously prosecute the Finco Claims at no cost to the estates and is acting rationally by doing so.[11] Moreover, JPMorgan could do no worse than Creditor Co-Proponents who ask the Court to approve a "settlement" of the Finco Claims under Rule 9019 and *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), for zero consideration. By raising the specter of a "conflict of interest" without any colorable basis Creditor Co-Proponents are simply trying to create a diversion from the merits of the Finco Claims and the raw, unfair, inequitable and one-sided deal they have asked the Court to impose on Finco's creditors.

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[10] See *Report of the Trustee's Investigation and Recommendations*, dated June 4, 2012 [Docket No. 1865]; *Chapter 11 Trustee's Report Regarding the Forensic Analysis of the Cash Collateral Held in the Bank Account of MF Global Finance USA, Inc.*, dated February 16, 2012 [Docket No. 451].

[11] Indeed, JPMorgan is pursuing the lenders' interest even in the face of economically irrational direction from Creditor Co-Proponents purporting to be a minority of lenders under the Liquidity Facility who signed a letter to JPMorgan, dated February 11, 2013, "directing" JPMorgan not to oppose confirmation of the Proposed Plan, among other things.

III. DEFERRING THE STANDING MOTION WILL PREJUDICE FINCO'S CREDITORS AND WILL NOT BURDEN THE ESTATES

20. JPMorgan, as a creditor of Finco, will be prejudiced by a delayed decision on the Standing Motion until after the confirmation hearing. First, the Bankruptcy Code gives JPMorgan the right to object to Holdings' claim against Finco. *See* 11 U.S.C. § 502(a).[12] In response, the Court has an obligation to determine the amount of Holdings' claim. The Motion to Continue is seeking to deny JPMorgan a hearing on its objection. Second, the Standing Motion requires the Court to determine that Finco has unjustifiably refused to bring the Finco Claims. Part of the Court's analysis requires a determination of whether the Finco Claims are colorable. *Dewey*, 2012 WL 5985445, at *5. Knowing that the Court finds the Finco Claims colorable and that the Creditor Co-Proponents purport to have "settled" them for nothing is highly relevant to plan voting and confirmation. It would prejudice JPMorgan and the Finco Voters not to have a Court ruling that the claims are colorable before the voting deadline. Third, the Standing Motion requires the Court to consider whether the Finco Claims, if proven, could lead to "a 'substantial recovery' for the benefit of the estate and its creditors." *Id.*, at *8. Knowing that the Court finds that the Finco Claims could lead to a substantial recovery is highly relevant to plan voting and confirmation. It would prejudice JPMorgan and Finco's creditors not to have this determination made now.

21. On the other hand, the Standing Motion puts no burden on the estates.[13]

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[12] Out of an abundance of caution, JPMorgan has requested standing, despite the statute's clear language and despite that here the Chapter 11 Trustee has agreed to JPMorgan's standing to assert the Finco Claims. *See* Exhibit A.

[13] Even with standing, JPMorgan does not anticipate litigating the complaint it will file prior to the confirmation hearing as currently scheduled. But the actual litigation of the complaint will not burden the estate of Holdings because certain Creditor Co-Proponents represented that they intend to seek standing to defend the claims for Holdings. *See Transcript of Hearing, In re MF Global Holdings Ltd., et al.*, No. 11-15059 (MG) (Bankr. S.D.N.Y. Feb. 19, 2013) at 40.

Finco has consented to the relief sought in the Standing Motion. It is disingenuous for the Creditor Co-Proponents to claim burden on the estates when they are the only ones opposing the Standing Motion. Deferring consideration of the Standing Motion until after the confirmation hearing may unfairly influence the vote, but it will not preserve estate resources. It will prejudice the Finco Voters by denying them the opportunity to make a fully informed decision between clear choices before casting their votes.

* * *

22. In all events, the Motion to Continue should be denied and the Court should hear the Standing Motion on March 6, 2013 as scheduled. After the hearing, to the extent there are factual issues that preclude a decision on the Standing Motion (which there are not), an evidentiary hearing can be scheduled and any limited, necessary, appropriate discovery can be addressed in connection with that evidentiary hearing.

CONCLUSION

For the foregoing reasons, the Motion to Continue should be denied.

Dated: New York, New York
February 26, 2013

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

/s/ Peter V. Pantaleo

Peter V. Pantaleo
Bryce L. Friedman
Michael D. Kibler

425 Lexington Avenue
New York, New York 10017
Tel. (212) 455-2000
Fax (212) 455-2502

Counsel to JPMorgan Chase Bank, N.A.

EXHIBIT A

See attached

From: Miller, Brett H. <BrettMiller@mofo.com>
Sent: Monday, February 11, 2013 5:49 PM
To: Pantaleo, Peter
Cc: Massel, Morris; Friedman, Bryce L.
Subject: RE: Re:

Confirmed.

-----Original Message-----
From: Pantaleo, Peter [mailto:ppantaleo@stblaw.com]
Sent: Monday, February 11, 2013 5:48 PM
To: Miller, Brett H.
Cc: Massel, Morris; Friedman, Bryce L.
Subject: Re:

Brett: could you please also confirm the Trustee consents to JPM getting standing to settle as well? Thanks. P

Peter V. Pantaleo
Simpson Thacher & Bartlett LLP
425 Lexington Ave.
12th Floor
New York, N.Y. 10017
212-455-2220
212-455-2502 (fax)
ppantaleo@stblaw.com

----- Original Message -----
From: Miller, Brett H. [mailto:BrettMiller@mofo.com]
Sent: Monday, February 11, 2013 12:53 PM
To: Pantaleo, Peter
Cc: Massel, Morris; Friedman, Bryce L.
Subject: Re:

Confirmed.

Regards,
Brett

Brett H. Miller | Partner
Morrison & Foerster LLP | www.mofo.com
1290 Avenue of the Americas | New York, NY 10104-0050
T: 212-468-8051 | F: 212-468-7900
E: bmiller@mofo.com

----- Original Message -----

From: Pantaleo, Peter [mailto:ppantaleo@stblaw.com]
Sent: Monday, February 11, 2013 12:47 PM
To: Miller, Brett H.
Cc: Massel, Morris <MMassel@stblaw.com>; Friedman, Bryce L. <bfriedman@stblaw.com>
Subject:

Brett: You've informed me that the Chapter 11 Trustee consents to the Court granting my client standing to pursue claims and defenses Finco's estate may have against Holdings, as more fully described in JPMorgan's disclosure statement objection. Please confirm.

Thanks. Peter

Peter V. Pantaleo
Simpson Thacher & Bartlett LLP
425 Lexington Ave.
12th Floor
New York, N.Y. 10017
212-455-2220
212-455-2502 (fax)
ppantaleo@stblaw.com

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