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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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MF GLOBAL HOLDINGS LTD., et al., : Case No. 11-15059 (MG)
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Debtors. : (Jointly Administered)
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**RESPONSE OF COVINGTON & BURLING LLP TO OMNIBUS
OBJECTION OF THE UNITED STATES TRUSTEE REGARDING FEE
APPLICATIONS FOR THIRD INTERIM AWARDS OF COMPENSATION
AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES**

Covington & Burling LLP (“**Covington**” or the “**Firm**”) hereby responds to the Objection of the United States Trustee Regarding Fee Applications for Third Interim Awards of Compensation and Reimbursement of Out-of-Pocket Expenses (the “**Objection**”) [Docket No. 1301], as it relates to Covington, as follows:

DISCUSSION

A. Background

1. On October 31, 2011, MF Global Holdings Ltd. (“**MFGH**”) and MF Global Finance USA Inc. (the “**Initial Debtors**”) filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. Additional petitions were filed by MF Global Capital LLC,

MF Global FX Clear LLC, and MF Global Market Services LLC (the “**Subsequent Debtors**”) on December 19, 2011, and March 2, 2012. Following each petition date, the Court ordered the joint administration of the Debtors’ cases. [Docket Nos. 19, 298, 528.]

2. On November 25, 2011, the United States Trustee filed the Application for Order Approving Appointment of Chapter 11 Trustee [Docket No. 169], which the Court approved by entering the Order Approving the Appointment of Chapter 11 Trustee on November 28, 2011 (the “**Appointment Order**”). [Docket No. 170.] Louis J. Freeh was appointed Chapter 11 Trustee for the Initial Debtors (the “**Chapter 11 Trustee**”), pursuant to the Appointment Order. By additional orders dated December 27, 2011, and March 8, 2012, the Court approved the appointment of the Chapter 11 Trustee as the chapter 11 trustee for the Subsequent Debtors. [Docket Nos. 306, 548.]

3. On April 12, 2012, this Court entered an Order Authorizing the Trustee to Retain and Employ Covington & Burling LLP as Special Insurance Counsel to the Trustee *Nunc Pro Tunc* to the Appointment Date. [Docket No. 627.]

4. On August 2, 2012, Covington filed its First Interim Application of Covington & Burling LLP, Special Insurance Counsel to the Chapter 11 Trustee, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period from November 28, 2011, through May 31, 2012 (the “**First Application**”). [Docket No. 775]. On October 19, 2012, Covington filed its Second Interim Application of Covington & Burling LLP, Special Insurance Counsel to the Chapter 11 Trustee, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period from June 1, 2012, through September 30, 2012 (the “**Second Application**”). [Docket No. 872].

5. On September 25, 2012, this Court entered its Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “**Interim Compensation Procedures Order**”) [Docket No. 841], pursuant to which Professionals are required to submit monthly fee statements (the “**Monthly Fee Statements**”) on the 28th day of each month following the month for which compensation is sought. Covington has submitted Monthly Fee Statements each month in accordance with the Interim Compensation Procedures Order.

6. On December 12, 2012, the U.S. Trustee for the Southern District of New York (the “**U.S. Trustee**”) filed an Objection of the United States Trustee Regarding First and Second Interim Fee Applications for Compensation and Reimbursement of Expenses (the “**First Fee Objection**”) [Docket No. 940], objecting to the First Application and the Second Application on various bases. Covington filed a response to the First Fee Objection, attended a hearing respecting the First Application and Second Application on December 19, 2012, and was ultimately awarded compensation for fees and expenses requested in the First Application and Second Application in this Court’s Amended Order Granting Applications for Allowance of Interim and/or Final Compensation and Reimbursement of Expenses (the “**Fee Application Order**”) [Docket No. 973], less certain agreed upon amounts, entered on December 28, 2012.

B. The U.S. Trustee Objection to the Third Application

7. On March 25, 2013, Covington filed its Third Interim Application of Covington & Burling LLP, Special Insurance Counsel to the Chapter 11 Trustee, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period from October 1, 2012, through January 31, 2013 (the “**Third Application**”). [Docket No. 1240].

8. On April 11, 2013, the U.S. Trustee filed an Objection to Covington's Third Application.¹ The U.S. Trustee objects to all of Covington's fees and expenses under the "Case Administration" category (\$58,506.50), absent further explanation by Covington as to the reasonableness of this portion of its fee application. (*See* Objection at 11-12). The U.S. Trustee made no other objection to Covington's fees and expenses (including, without limitation, to the sufficiency of the time narratives submitted). With respect to the Case Administration fees, the U.S. Trustee contends that those fees are proportionally too high (on a percentage basis) when compared to Covington's other fees. (*See* Objection at 11-12). In addition, the U.S. Trustee objects to (i) fees incurred in responding to the First Fee Objection, and (ii) any time entries to the extent that they contain fees incurred in reviewing and editing time entries. (*See* Objection at 12). Covington responds to each of these objections below.

i. Ratio of Covington's Case Administration Fees

9. The U.S. Trustee asserts that the fees charged in the Third Application for Case Administration matters are too high in proportion to the other services rendered by Covington to the Chapter 11 Trustee. (*See* Objection at 11-12). The Case Administration fees relate to (i) preparation of monthly fee statements, (ii) preparation of a declaration disclosing rate changes after January 1, 2013 (as required by Court order), (iii) preparation of Covington's Second Application, (iv) response to the U.S. Trustee's First Fee Objection, and (v) attendance at this Court's December 19, 2012 hearing on fee applications submitted by professionals in these cases.

¹ Covington learned of the Objection on April 15, 2013 and attempted to contact the U.S. Trustee's Office to address the U.S. Trustee's concerns but, as yet, has been unsuccessful.

10. Covington was retained by the Chapter 11 Trustee as special insurance counsel and provides discrete legal services relating to issues arising under the Debtors' insurance policies (in particular, the D&O and E&O policies), as needed and called upon by the Chapter 11 Trustee and his reorganization counsel. Because Covington's services to the Chapter 11 Trustee have been of a highly specialized nature, Covington's bills have been proportionally lower than other professionals that play a more active and ongoing role in the Chapter 11 Cases. Fee applications, however, take an appreciable amount of time and effort to prepare, and the costs of preparing fee applications and other related filings (such as a mandatory disclosure of rate changes) are, in large part, fixed and thus do not decrease proportionally with the amount of fees sought. Accordingly, Covington submits that to hold the Firm to the same ratio applied to other professionals that have a more prominent and ongoing role in the Chapter 11 Cases (particularly, during a period when Covington's role was less active than at other times) is inherently unfair and would deprive Covington of appropriate compensation for its services.

11. As this Court has recognized, both retention by a bankruptcy estate and fee application preparation impose substantial obligations on professionals, not required outside of bankruptcy. *See In re Borders Grp., Inc.*, 456 B.R. 195, 208 (Bankr. S.D.N.Y. 2011); *see also In re NuCorp Energy, Inc.*, 764 F.2d 655, 659 (9th Cir. 1985) ("[I]t is . . . fundamentally inequitable to impose substantial requirements on bankruptcy counsel as prerequisites to their obtaining compensation while simultaneously denying compensation for the efforts necessary to comply with those requirements."). To minimize such costs, Covington has consistently allocated responsibility for preparation of fee applications to junior associates,² subject only to partner

² Indeed, primary responsibility for preparation of Covington's fee statements and Second Application was allocated to first-year associates (for billing purposes) and paraprofessionals. *See* (continued...)

review and supervision. As a result, Covington submits that its Case Administration fees are reasonable, notwithstanding that they may be proportionally higher in relation to Covington's other billed work in this case.

(ii) Fees Incurred in Response to First Fee Objection

12. The U.S. Trustee objects to any portion of Covington's fees that may relate to the First Fee Objection. (*See* Objection at 12). In support of its argument that fees incurred in defending fee applications should not be compensable, the U.S. Trustee cites the decision in *In re St. Rita's Associates Private Placement, L.P.*, 260 B.R. 650 (Bankr. W.D.N.Y. 2001), in which a bankruptcy court concluded that such fees are not compensable. (*See* Objection at 12). Nevertheless, a great number of courts, including one in this district, have awarded fees incurred in successfully defending fee applications, often finding that awards for such fees are necessary and beneficial to the estate and to the bankruptcy system as a whole. *See In re CCT Commc'ns, Inc.*, 2010 WL 3386947, at *8-9 (Bankr. S.D.N.Y. Aug. 24, 2010) (citing numerous cases where courts have awarded compensation for fees related to defending fee applications and awarding compensation for such work to the professional in that case because the professional had "substantially prevailed, and denial of defense costs would dilute [the professional's] award."); *N. Sports, Inc. v. Knupfer (In re Wind N' Wave)*, 509 F.3d 938, 942 (9th Cir. 2007) (stating that "debtors' attorneys are entitled to compensation from the bankruptcy estate for fee award preparation and litigation, notwithstanding statutory silence on the subject") (citing *In re Smith*, 317 F.3d 918, 928 (9th Cir. 2002)); *Boyd v. Engman*, 404 B.R. 467, 483 (W.D. Mich. 2009) (stating that "preparing and defending fee applications is part and parcel with the attorney's role

Declaration of Dianne F. Coffino, dated April 16, 2013, in Further Support of the Third Application (the "**Coffino Decl.**"), ¶ 2, submitted herewith.

in the administration of the bankruptcy process and is therefore compensable under 11 U.S.C. § 330(a)," and that such time is "necessary and beneficial to the system as a whole, and indirectly, to each estate participating in the system."); *In re Ahead Commc'n Sys., Inc.*, 2006 WL 2711752, at *5 (Bankr. D. Conn. Sep. 21, 2006).³

13. In the First Application, Covington requested that the Court authorize (i) interim allowance of compensation for professional services Covington rendered in the amount of \$355,097.70; and (ii) reimbursement of actual and necessary expenses Covington incurred in connection with the rendition of such professional services in the amount of \$1,924.36. With respect to the First Application, the Fee Application Order granted Covington's fees in the amount of \$345,534.45, and reimbursement of expenses in the amount of \$1,830.11.

14. In the Second Application, Covington requested that the Court authorize (i) interim allowance of compensation for professional services Covington rendered in the amount of \$193,297.95; and (ii) reimbursement of actual and necessary expenses Covington incurred in connection with the rendition of such professional services in the amount of \$1,026.15. With respect to the Second Application, the Fee Application Order granted Covington's fees in the amount of \$183,734.70, and reimbursement of expenses in the amount of \$931.90.

15. Given that Covington was awarded the vast majority of fees requested, (97.31% respecting the First Application, and 95.05% respecting the Second Application), Covington

³ Courts have denied fees incurred in responding to fee objections, but in factually distinguishable circumstances. See *In re Parklex Assocs., Inc.*, 435 B.R. 195, 214 n.10 (Bankr. S.D.N.Y. 2010) (denying fees for defending a fee application where the fees related to work done after the case was dismissed and "particularly because [the Court was] denying the remainder of the fee application as well."); *In re 530 W. 28th St., L.P.*, 2009 WL 4893287, at *11 (Bankr. S.D.N.Y. Dec. 11, 2009) (denying fees for defending a fee applications where the "Court sustained many of the objections").

submits that it “substantially prevailed” in defending the First Application and the Second Application, and that denial of such fees would unfairly dilute Covington’s award. *See In re CCT Communications, Inc.*, 2010 WL 3386947, at *9 (Bankr. S.D.N.Y. Aug. 24, 2010). The U.S. Trustee’s objection to Covington fees relating to defending the First Application and Second Application therefore should be overruled.

(iii) Reviewing and Editing Time Entries

16. The U.S. Trustee objects to any portion of Covington’s fees in the “Case Administration” category that may relate to reviewing and editing of time entries. (*See* Objection at 12). Covington believes that substantially all of the time its professionals spent reviewing and revising time narratives for conformity to Fee Guidelines was not billed to the estate, because such time either was billed to an overhead account or was written off by Covington before filing the Third Application. Although a small amount of time was spent initially reviewing and revising exhibits, only one of the exhibits contained time narratives and Covington believes that the time spent reviewing that exhibit was negligible. *See* Coffino Decl., ¶ 3.

CONCLUSION

For the reasons stated above, Covington respectfully requests that this Court enter an order awarding Covington interim compensation for services rendered to the Chapter 11 Trustee and reimbursement of actual and necessary expenses incurred in connection with those services, as set forth in the Third Application.

Dated: April 16, 2013

COVINGTON & BURLING LLP

By: /s/ P. Benjamin Duke
P. Benjamin Duke
Dianne F. Coffino

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*Special Insurance Counsel to the
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EXHIBIT A

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**DECLARATION OF DIANNE F. COFFINO IN FURTHER SUPPORT OF
COVINGTON & BURLING'S THIRD INTERIM FEE APPLICATION**

Pursuant to 28 U.S.C. § 1746, Dianne F. Coffino certifies as follows:

1. I am a member of the firm of Covington & Burling LLP (“**Covington**”), which maintains offices for the practice of law at, among other places, The New York Times Building, 620 Eighth Avenue, New York, New York 10018. Covington has been retained as special insurance counsel to Louis J. Freeh, the chapter 11 trustee in these cases (the “**Chapter 11 Trustee**”) for the above-captioned debtors. I submit this declaration in further support of Covington’s Third Interim Application for Fees and Expenses (the “**Third Application**”).

2. For the sake of efficiency and reduction of expenses, we allocate initial responsibility for the preparation of Covington’s fee statements and fee applications to the most junior professionals available. During the period covered by the Third Application, Covington’s

fee statements and the Second Application were prepared by either Rachel Beller or R. Alexander Clark, both of whom were first-year associates (for billing purposes) during October through December 2012, with assistance from paraprofessionals and supervision by more senior lawyers.

3. I am primarily responsible for the supervision of the preparation of Covington's fee statements and fee applications (including the review of time narratives) in the MF Global cases. To the best of my knowledge, substantially all of the time spent on reviewing and editing time narratives for conformity to 11 U.S.C. § 330, the Amended Guidelines for Professionals in the Southern District of New York Bankruptcy Cases, effective as of February 5, 2013, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, effective as of January 30, 1996, either (i) was billed to a separate office administrative account that is not billed to clients but instead is treated as overhead or (ii) was written off prior to submission of the Third Application. Indeed, on January 16, 2013, prior to filing its Third Fee Monthly Statement, Covington reduced its fees and expenses related to revision of time narratives in response to an objection by the U.S. Trustee to Covington's First Application and Second Application in the amount of \$3,480.00. Although a small amount of time was spent initially reviewing and revising exhibits, only one of the exhibits contained time narratives, and we believe that the time spent reviewing that exhibit was negligible.

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

Executed on April 16, 2013

/s/ Dianne F. Coffino
Dianne F. Coffino