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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
Debtors	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC,	:	
Plaintiffs,	:	
v.	:	**Adv. Proc. No. 16-01251 (MG)**
ALLIED WORLD ASSURANCE COMPANY, LTD, IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	

NOTICE OF ALLIED WORLD ASSURANCE COMPANY, LTD'S
MOTION TO COMPEL ARBITRATION

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, on a date to be set by the Bankruptcy Court, Defendant Allied World Assurance Company, Ltd ("Allied World"), will move this Court before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York,

One Bowling Green, New York, New York 10004, Courtroom 523, for an order, pursuant to the Federal Arbitration Act, 9 U.S.C. ¶ 1, *et seq*., compelling arbitration against Plaintiffs and dismissing all claims asserted by Plaintiffs against Allied World, or in the alternative, staying this action against Allied World pending arbitration.

Dated: New York, New York
November 28, 2016

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By: */s/ Erica Kerstein*
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Debtors	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC, Plaintiffs, v. ALLIED WORLD ASSURANCE COMPANY, LTD, IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY, Defendants.	:	**Adv. Proc. No. 16-01251 (MG)**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ALLIED WORLD ASSURANCE COMPANY, LTD'S MOTION TO COMPEL ARBITRATION

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Defendant Allied World Assurance Company, Ltd ("Allied World") respectfully submits this memorandum of law in support of its motion to compel arbitration, and to dismiss all claims asserted by Plaintiffs against Allied World or, in the alternative, to stay this action against Allied World pending arbitration.[1]

SUMMARY

This Court should grant the instant motion because, pursuant to the Federal Arbitration Act ("FAA"), Congress has articulated a strong federal policy in favor of enforcing arbitration agreements, and courts, including bankruptcy courts, liberally favor such agreements. Just last month, the United States Bankruptcy Court for the Southern District of New York ruled in favor of compelling arbitration pursuant to arbitration clauses in Bermuda insurance policies, nearly identical to the arbitration clause here, under facts that cannot be readily differentiated from these facts. See Drennen v. Certain Underwriters at Lloyd's of London (In Re Residential Capital, LLC), 2016 Bankr. LEXIS 3799, *4 (Bankr. Ct. S.D.N.Y. Oct. 21, 2016) ("In re ResCap") (granting Bermuda Insurers' motions to compel arbitration). Under the law of this Court and the Second Circuit, the Allied World Policy's international arbitration agreement should be enforced, because the parties agreed to arbitrate, the dispute falls within the arbitration agreement, and the insurance coverage dispute is not a "core" proceeding.

Contemporaneous with this motion, Allied World filed a Motion to Dismiss For Lack of Personal Jurisdiction and Improper Service of Process. Allied World filed these motions to avoid any potential waiver of its rights. As set forth in greater detail below, Allied World respectfully requests that the Court rule on its Motion to Compel Arbitration as a threshold

[1] Allied World does not consent to the entry of final orders or judgment by the bankruptcy court. See Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1948 (2015) (parties may only consent to a bankruptcy court's constitutional jurisdiction knowingly and voluntarily).

matter, consistent with precedent in this Court, the Supreme Court of the United States and the Second Circuit. See, e.g., In Re ResCap, 2016 Bankr. LEXIS 3799 at *4 ("it is appropriate to address the Arbitration Motions as the threshold matter because resolution of those motions will moot in large part the remaining motions").

STATEMENT OF FACTS

The Relevant Parties

Plaintiff - MF Global Holdings, Ltd. ("MFGH")

MFGH is a holding company incorporated in the State of Delaware. MFGH is the "Named Insured" under the Allied World Excess Policy. See Haylett Affirmation, Ex. A. MFGH is also the parent company of MF Global, Inc. ("MFGI"), and the managing member of MF Global Assigned Assets LLC ("MFGAA"). See Adv. Dkt. 1, Compl. ¶ 21.

Plaintiff – MFGAA

MFGAA is a limited liability company incorporated in the State of Delaware. See Adv. Dkt. 1, Compl. ¶ 22. MFGH, MFGI and the individual insureds under the Allied World Policy assigned all potential rights to recover under the policy to MFGAA. Id. at ¶ 22.

Defendant - Allied World

Allied World is an insurance company duly organized and existing pursuant to the laws of Bermuda. Allied World has its principal place of business at 27 Richmond Road, Pembroke HM 08, Bermuda.[2] See id., ¶ 23.

[2] The other Defendants, Iron-Starr Excess Agency Ltd., Ironshore Insurance Ltd., Starr Insurance & Reinsurance Limited and Federal Insurance Company were E&O Insurers above Allied World on the E&O Tower. Collectively, Defendants are referred to in the adversary complaint as the "Dissenting E&O Insurers". See, e.g., Adv. Dkt. 1, Compl., at ¶¶ 2, fn. 3, 24 and 25.

The Allied World Policy

Allied World issued Policy C007357/005 to MFGH for the policy period May 31, 2011 – May 31, 2012, with policy limits of liability of US $15 million (the "Allied World Policy"). The Allied World Policy contains the following broad and all-encompassing mandatory arbitration provision:

> [a]ny and all disputes arising under or relating to this policy, including its formation and validity, and whether between the **Insurer** and the **Named Insured** or any person or entity deriving rights through or asserting rights on behalf of the **Named Insured**, shall be finally and fully determined in Hamilton, Bermuda under the provisions of The Bermuda International Conciliation and Arbitration Act of 1993 (exclusive of the Conciliation Part of such Act), as may be amended and supplemented, by a Board composed of three arbitrators to be selected for each controversy as follows . . .

Haylett Aff., Ex. A, Clause IX. Arbitration.

The Allied World Policy provides that: "this policy shall be construed and enforced in accordance with the internal laws of the State of New York (with the exception of the procedural law required by Clause IX, which shall be construed and enforced in accordance with the laws of Bermuda . . . .)" Id., Clause X. Choice of Law (emphasis added). Accordingly, Allied World maintains that the arbitration agreement is governed by Bermuda law, and reserves all of its rights in that respect, notwithstanding the arguments in this memorandum.

The Confirmed Bankruptcy Plan

On April 5, 2013, this Court confirmed the Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MFGH and related entities (the "Plan"). The Plan names MFGH as the Plan Administrator. See Adv Dkt.1, Compl. at ¶¶ 19, 21; D.I. 1288, 1382. In Article XII of the Plan, this Court retained jurisdiction over the Chapter 11 Cases, including jurisdiction to resolve disputes that arise in connection with the interpretation and enforcement of the Plan. Id. at Article XII. The Plan does not retain exclusive jurisdiction

over disputes arising under or relating to the Allied World Policy. Indeed, Plaintiffs do not allege that this Court retained exclusive jurisdiction over the Allied World Policy.

The MDL Action

Various lawsuits were filed against MFGH and MFGI, and their directors, officers and employees, including by commodities customers, whose segregated or secured funds had been held in customer accounts at MFGH or MFGI, and were missing or not available for immediate return on and after October 31, 2011. See Adv. Dkt. 1, Compl. at ¶¶ 5,6,8. The various actions were eventually consolidated in the United States District Court for the Southern District of New York in the action captioned In re: MF Global Holdings Limited Investment Litigation, No. 12-MD-2338, 11-VM-7866 (the "MDL Action"). See MDL D.I. 382.[3]

Through various settlements and agreements, MFGH and MFGI ultimately returned the previously missing or unavailable funds to its customers. See Adv. Dkt., Compl. ¶¶ 56 -62, Kerstein Aff. Exs. B-E. On July 6, 2016, Plaintiffs entered into a settlement agreement with all relevant parties, including the individual insureds under the Allied World Policy and MFGI's former customers (the "MDL Settlement Agreement"). See Adv. Dkt., Compl. ¶¶ 1, 92. In relevant part, pursuant to the MDL Settlement Agreement, the Individual Insureds assigned their rights under the Allied World Policy to the Plaintiffs. See id. at ¶94.

The Confidential Arbitration Initiated By Allied World

Allied World (and the other Dissenting Insurers) declined to make their E&O limits available for the MDL Settlement. By letter dated February 11, 2016, Allied World notified

[3] For ease of reference docket number citations are the same as referenced in Plaintiffs' Adversary Complaint.

Plaintiffs (through counsel) of its desire to arbitrate whether Plaintiffs are entitled to coverage under the Allied World Policy. See Kerstein Aff., Ex. A. In the same letter, Allied World notified Plaintiffs that it had appointed an arbitrator. See id. The parties then agreed to a short standstill period, to allow Plaintiffs adequate time to finalize the MDL Settlement Agreement. See id. Upon expiration of the standstill period, by letter dated March 28, 2016, Plaintiffs' attorneys' notified Allied World that Plaintiffs appointed a second arbitrator in the Bermuda arbitration proceeding, while continuing to reserve all of Plaintiffs rights with respect to arbitrability. See id., Ex. B.

Following a further agreed upon "standstill" period, to enable Plaintiffs to continue to take steps to finalize the MDL Settlement, the parties to the Bermuda arbitration began the process of discussing (through counsel) the appointment of a third arbitrator. See id., Ex. C. During that process, counsel for Allied World and Plaintiffs exchanged lists of potential third arbitrator candidates on October 18, 2016 and again on November 1, 2016, while Plaintiffs continued to reserve all rights with respect to arbitrability. See Kerstein Exs. D and E.

The Adversary Proceeding Initiated by Plaintiffs

Plaintiffs now assert the following claims against Allied World (and the other Dissenting Insurers) for declaratory relief and breach of contract under the Allied World Policy (and the other Dissenting Insurers' policies):

- Declaratory Judgment Pursuant to 28 U.S.C. ¶ 2201(a) that: (a) coverage is owed for the losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims; (b) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are far in excess of the attachment points and limits of the Allied World Policy, among others, totaling $25 million in excess of $132. 5 million in underlying E&O insurance in the E&O Tower, and (c) the limits of the Allied World Policy, among others, are currently due and owing to MFGAA as the assignee and designee of all coverage claims and rights of recovery of MFGI and the Individual Insureds.

- Breach of Contract: including the implied covenant of fair dealing by improperly failing to pay the limits of those Policies and exhibiting a gross disregard for the interests of their Insureds.

Adv. Dkt. 1, Complaint ¶ ¶ 101 - 119.

Plaintiffs seek compensatory damages in the amount of $25 million, reflecting the full limits of the Dissenting Insurers' policies, and "other damages" including "consequential damages, pre-judgment interest, attorneys' fees, expenses and costs", alleged to be in excess of $40 million. See id. at ¶¶ 15-17, Prayer for Relief.

ARGUMENT

This Court should dismiss Allied World from this action, and compel Plaintiffs to arbitrate their claims against Allied World, as a threshold issue, pursuant to the law of this Court, the Supreme Court of the United States and the Second Circuit. The parties agreed that all disputes arising under the Allied World Policy would be decided by international arbitration. Federal policy strongly favors the enforcement of international arbitration agreements, and this Court recently compelled arbitration under markedly similar facts. In determining whether to compel arbitration, bankruptcy courts employ a four-part test. As demonstrated below, Allied World satisfies each of those elements necessary for compelling arbitration.

I. This Court Should Decide The Motion to Compel Arbitration as a Threshold Matter

This Court should rule on this motion prior to deciding Allied World's Motion to Dismiss based on lack of personal jurisdiction and improper service. This procedure is supported by the Supreme Court of the United States, the Second Circuit, and was recently followed by this Court in strikingly similar circumstances. See In Re ResCap, 2016 Bankr. LEXIS 3799 at 4 (granting Bermuda Insurers' motions to compel arbitration, and concluding "that it is appropriate to address the Arbitration Motions as the threshold matter because resolution of those motions will moot in large part the remaining motions"). The Supreme Court of the United States has stated

that "a federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 431 (2007). Courts have relied on Sinochem to order arbitration, or some other form of dismissal, "immediately" without addressing the issue of personal or subject-matter jurisdiction. See Ramasamy v. Essar Global Ltd., 825 F. Supp. 2d 466, 467 at n. 1 (S.D.N.Y. 2011) (relying on Sinochem, Judge Rakoff stated that "because the Court has determined the case should be dismissed in favor of arbitration, it does not reach defendant's motion to dismiss for lack of personal jurisdiction . . ."); Maersk, Inc. v. Neewra, Inc., 554 F. Supp. 2d 424, 457 (S.D.N.Y. 2008) (courts are "entitled to dismiss an action more conveniently litigated elsewhere 'immediately'" without going through difficult and costly discovery to determine jurisdiction); Magi XXI, Inc. v. Stato della Citta del Vaticano, 818 F. Supp. 2d 597, 621 (E.D.N.Y. 2011), aff'd sub nom, Magi XXI, Inc. v. Stato della Citta del Vaticano, 714 F.3d 714 (2d Cir. 2013) (bypassing issues of jurisdiction in order to decide arguments regarding forum selection clauses in the parties' contracts, holding "[p]rinciples of judicial economy dictate that the Court should avoid, if possible, the delays associated with discovery"); Burnham Enters, LLC v. DACC Co. Ltd., 2013 U.S. Dist. LEXIS 1964,, at *4, n. 2 (M.D. Ala. Jan. 7, 2013) ("Because the motions to compel arbitration dispose of the matter at this juncture, this opinion will not address the arguments raised in the motions to dismiss, which include challenges to personal jurisdiction").

A ruling from the Court in favor of Allied World's Motion to Compel Arbitration would render all Rule 12(b) defenses moot. Moreover, a ruling in favor of Allied World on this motion would avoid having the parties and the Court waste resources litigating jurisdictional and service of process defenses.

II. This Court Should Compel Arbitration Under the ResCap Decision

In In Re ResCap, this Court granted the Bermuda insurers' motions to compel arbitration. 2016 Bankr. LEXIS 3799 at *4. There, plaintiffs had been assigned rights to recover under insurance policies, pursuant to a plan of reorganization and settlement. Id. at *6. The Bermuda insurance policies generally provided that: "*Any dispute, controversy or claim arising out of or relating to* this Policy or the breach, termination or invalidity thereof shall be finally and fully determined in London, England under the provisions of the Arbitration Acts of 1996 . . ." (emphasis in original). Id. at *13. This Court specifically found that enforcement of arbitration under the insurance policies would not "jeopardize core bankruptcy functions because the Plan had been confirmed, any recoveries will not significantly impact available assets, and the Court is not 'uniquely able to interpret and enforce' the policies' provisions." Id. at *364 (citing MBNA v. American Bank, N.A. v. Hill, 436 F.3d 104, 109 (2d Cir. 2006)); see also Residential Funding Co. v. Greenpoint Mortg. Funding Inc. (In re Residential Capital LLC), 519 B.R. 593, 601 (S.D.N.Y. 2014).

The Allied World Policy contains nearly identical broad and all-encompassing language in its arbitration clause, which is at least as broad, if not broader, than the language analyzed in ResCap. Moreover, like in ResCap, arbitration of the insurance coverage issues will not jeopardize core bankruptcy functions, because (1) the Plan has been confirmed; (2) potential recovery of the full $15 million limits of the Allied World Policy (or even the remaining $25 million limits of the Dissenting Insurers policies all together) will not significantly impact available assets; and (3) interpretation and enforcement of the terms of the Allied World Policy is purely a state law contract claim, which is not something this Court is "uniquely qualified to adjudicate". Indeed, Allied World does not dispute that it is a function of this Court to distribute any proceeds available under the Allied World Policy in accordance with the Plan. However, the

determination of whether there is coverage under the Allied World Policy is a separate question—which does not involve interpretation of the Plan—that must be determined by international arbitration. Because Allied World Policy's arbitration clause is so similar to the arbitration clauses at issue in ResCap, and the facts are nearly indistinguishable, this Court should compel arbitration, applying the same rational that Judge Lane used in the ResCap decision. The factors Judge Lane considered in compelling arbitration in ResCap are discussed immediately below.

III. This Court Should Compel Arbitration Because the FAA Mandates Arbitration

The arbitration agreement in the Allied World Policy is an international arbitration agreement within the meaning of the FAA. See FAA § 202 (9 U.S.C. § 202) ("An arbitration agreement . . . arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement . . . falls under the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards]"). See also New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), Jun. 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. (entered into force with respect to the United States, Dec. 29, 1970) (reprinted in note following 9 U.S.C. § 201, as incorporated by the Federal Arbitration Act).[4] Allied World is a foreign corporation located in Bermuda, while

[4] The United States became a signatory to the Convention in 1970, and Congress passed chapter 2 of the United States Arbitration Act to implement the Convention. Paragraph 1 of Article II of the Convention provides:

> Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning subject matter capable of settlement by arbitration.

Paragraph 2 of Article II of the Convention provides:

> The term "agreement in writing" shall include an arbitral clause in [1] a contract or [2] an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams.

MFGH (its insured) and MFGAA (its insured's designee) are U.S. Companies located in the United States. As such, the arbitration agreement in the Allied World Excess Policy comes within the Convention and FAA § 202.

It is well-settled that, where, as here, there is an international agreement to arbitrate within the meaning of the FAA, the FAA has established a "liberal" and "strong" federal policy in favor of the enforceability of arbitration agreements. See In re ResCap, 2016 Bankr. LEXIS 3799 at *18; MBNA Am. Bank, N.A. v. Hill, 436 F.3d at 107 (2d Cir. 2006) (citing Moses H. Cone Mem'l. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)); Brownstone Inc. Group v. Levey, 514 F. Supp.2d 536, 549 (S.D.N.Y. 2007) ("Through the [FAA], Congress has declared a strong federal policy favoring arbitration"); Stevenson v. Tyco Int.'l (U.S.) Inc., 2006 U.S. Dist. LEXIS 71852, at *15 (S.D.N.Y. Sept. 29, 2006) (same); Kittay v. Landegger (In re Hagerstown Fiber Ltd. P'ship), 277 B.R. 181, 197 (Bankr. S.D.N.Y. 2008) (same); Barnes v. Ont. Drive & Gear Ltd., 2010 U.S. Dist. LEXIS 4390, at *5 (D. Md. Jan. 20, 2010) (same); Cibro Petroleum Prods. v. City of Albany (In re Winimo Realty Corp.), 270 B.R. 108, 117 (S.D.N.Y. 2001) ("The FAA thus establishes a federal policy favoring arbitration and requiring that federal courts rigorously enforce agreements to arbitrate") (citations omitted).

Under the FAA, written agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." MBNA Am. Bank, 436 F.3d at 107-08 (quoting 9 U.S.C. § 2). As such, the United States Supreme Court mandates that district courts shall compel arbitration under the FAA—

See New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. Courts have routinely recognized the importance of international arbitration agreements in light of the United States' treaty obligations under the Convention. See Sphere Drake Ins. Ltd. v. Clarendon Nat. Ins. Co., 263 F.3d 26, 29 (2d Cir. 2001) (noting the strong federal policy in favor of arbitration in international agreements under the Convention); Bethlehem Steel Corp. v. Moran Towing Corp. (In re Bethlehem Steel), 390 B.R. 784, 795 (Bankr. S.D.N.Y. 2008) ("Federal policy favoring recognition of arbitration agreements is particularly strong for international agreements").

even if arbitration would create separate proceedings in different forums. See Cardali v. Gentile (In re Cardali), 2010 Bankr. LEXIS 4113, at *12 (Bankr. S.D.N.Y. Nov. 18, 2010) (citing Stevenson, 2006 U.S. Dist. LEXIS 71852, at *5).

The strong federal policy in favor of international arbitration agreements generally trumps a bankruptcy court's interest in adjudicating proceedings that fall within the scope of an international arbitration agreement. See In re Res Cap, 2016 Bankr. LEXIS 3799 at * 20 (citing Crysen/Montenay Energy Co. v. Shell Oil Co. (In re Crysen/Montenay Energy Co.), 226 F.3d 160, 166 (2d Cir. 2000)); see also In re Bethlehem Steel, 390 B.R. at 795 ("With respect to international agreements, the Court has less discretion to deny motions to arbitrate than it does with respect to domestic agreements"). As the U.S. Supreme Court has instructed,

> concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context.

Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc., 473 U.S. 614, 629 (1985).

IV. This Court Should Compel Arbitration Because All Elements of The Bankruptcy Court's Four-Part Test For Compelling Arbitration Are Satisfied

Bankruptcy courts apply a four-part test to determine whether they have the discretion to refuse arbitration:

> (1) did the parties agree to arbitrate; (2) does the dispute fall within the arbitration clause; (3) if federal statutory claims are raised, did Congress intend those claims to be arbitrable; and (4) if the court concludes that some but not all of the claims are arbitrable, should it stay the non-arbitrable claims pending the conclusion of the arbitration?

In re ResCap, 2016 Bankr. LEXIS 3799 at *20 (citing In re Cardali, 2010 Bankr. LEXIS 4113, at *8) (citing In re Hagerstown Fiber P'ship, 227 B.R. at 198 (Bankr. S.D.N.Y. 2002)); cf.

Genesco, Inc. v. T. Kakiushci & Co., 815 F.2d 840, 844 (2d Cir. 1987) (Court asked to stay proceedings pending arbitration "has essentially four tasks").[5] As demonstrated below, applying this four-part test, this Court must compel arbitration.[6]

A. The Parties Agreed to Arbitrate

The Court may determine as a matter of law that the parties agreed to arbitrate. See, In re ResCap, 2016 Bankr. LEXIS 3799 at *21-22. To determine whether the parties agreed to arbitrate, courts apply state law contract principles. See Id. at *22 (citing Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002) (citing Specht v. Netscape Commc'ns Corp., 306 F.3d 17, 27 (2d Cir. 2002))); see also First Options of Chi, Inc. v. Kaplan, 514 U.S. 938, 944 (1995) (same).

Here, the parties agreed to arbitrate. The Allied World Policy contains a broad and all-encompassing agreement mandating arbitration of Plaintiff's claims as follows:

> any and all disputes arising under or relating to this policy, including its formation and validity, and whether between the Insurer and the named Insured or any person or entity deriving rights through or asserting rights on behalf of the Named Insured, shall be finally and fully determined in Hamilton Bermuda under the provisions of The Bermuda International Conciliation and Arbitration Act of 1993 . . . .

Haylett Aff., Ex. A, at Section IX. MFGH elected to purchase insurance coverage from the Bermuda market, and chose to enter a contract with a Bermuda insurer, containing a Bermuda

[5] Although some courts apply a two prong test, the "elements of the two part test are essentially the same as the four-part test". In re ResCap at 21, fn. 12; cf. In re Winimo 270 B.R. at 118, (Under the two-prong inquiry, the bankruptcy court considers whether the proceeding at issue is core or non-core); MBNA Am. Bank, 436 F.3d at 108 (If the proceeding is non-core, the bankruptcy court generally does not have discretion to refuse to compel arbitration). If the bankruptcy court does have discretion to refuse to compel arbitration, the second prong is "whether any underlying purpose of the Bankruptcy Code would be adversely affected by enforcing [the] arbitration clause." In re Winimo, 270 B.R. at 118 (quoting U.S. Lines, Inc. v. Am S.S. Owners Mut. Prot. & Indem. Ass'n. (In re U.S. Lines, Inc.), 197 F.3d 631, 640 (2d Cir. 1999).

[6] Because Plaintiffs do not allege any non-arbitrable claims in their Adversary Complaint, only the first three steps need be considered.

arbitration clause. Moreover, under a reservation of rights, MFGH, through its counsel, participated in the selection of arbitrators for a Bermuda arbitration. See id., Exs. C-F.

Moreover, MFGAA is bound by the agreement to arbitrate in the Allied World Policy, even though it was not a party to the contract, because an agreement to arbitrate is enforceable as against an assignee of a contract. See In re ResCap, 2016 Bankr. LEXIS 3799 at *22-23 (as assignees, the plaintiffs "are bound by the remedial provisions bargained for between the original parties to the contract") (quoting, Banque de Paris et des Pays-Bas v. Amoco Oil Co., 573 F. Supp. 1464, 1469 (S.D.N.Y. 1983)); In re Laitasalo, 196 B.R. 913, 917-18 (Bankr. S.D.N.Y. 1996) (adopting in bankruptcy court the principles for binding non-signatories to arbitration clauses enunciated by the Second Circuit); Am. Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999) ("[a] party is estopped from denying its obligation to arbitrate when it receives a 'direct benefit' from a contract containing an arbitration clause"); Thomson–CSF, S.A. v. Am. Arbitration Ass'n, 64 F.3d 773, 776 (2d Cir. 1995) (a non-signatory to an agreement to arbitrate may be bound by an arbitral award if the signatory can establish assumption or estoppel); In re HBLS, L.P., 2001 U.S. Dist. LEXIS 19112, at *28 (S.D.N.Y. Nov. 21, 2001) ("third party beneficiaries of a contract will . . . be bound by an arbitration clause under ordinary principles of contract"); Carvant Fin. LLC v. Autoguard Advantage Corp., 958 F. Supp.2d 390, 396 (E.D.N.Y. 2013) (non-signatory beneficiary is bound by arbitration agreement); Variblend Dual Dispensing Sys., LLC v. Seidel GmbH & Co., KG, 970 F. Supp.2d 157, 166-168 (S.D.N.Y. 2013) (assignee bound by arbitration clause); Wells Fargo Bank Intern. Corp. v. London Steam-Ship Owners' Mut'l Ins. Ass'n, Ltd., 408 F. Supp. 626, 629 (S.D.N.Y. 1976) (mortgagee seeking to enforce its rights under mortgagor's insurance bound by arbitration clause); Lipman v. Haeuser Shellac Co., Inc., 289 N.Y. 76, 81 (1942) ("[T]he arbitration clause

is an integral part of the contract and may be availed of, not only by the original parties but also by assignees"); Tanbro Fabrics Corp. v. Deering Milliken, Inc., 318 N.Y.S.2d 764, 766 (1st Dep't 1971) ("[T]he assignee of a contract acquires the assignor's rights therein and assumes [assignor's] obligations including an agreement to arbitrate"); Blum's, Inc. v. Ferro Union Corp., 318 N.Y.S.2d 414, 415 (1st Dep't 1971) ("An assignee who has taken over the rights of an assignor is bound to an arbitration clause in the assigned contract"), aff'd, 29 N.Y.2d 689, 325 N.Y.S.2d 418 (1971).

Based on the terms of the Allied World Policy and well-established law, Plaintiffs agreed to arbitrate all disputes that in any way relate to the Allied World Policy, and assignees of the policy are likewise bound by the parties' agreement to arbitrate.

B. The Dispute Falls Within The Arbitration Agreement

It is well-settled that in "determining whether the arbitration clause covers the dispute at issue, courts look to the language in the arbitration clause to determine whether it is 'narrow' or 'broad' in light of the allegations of the complaint". In re ResCap, 2016 Bankr. LEXIS 3799 at *23-24; Togut v. RBC Dain Correspondent Servs. (In re S.W. Bach & Co.), 425 Bankr. 78, 88 (S.D.N.Y. 2010); In re Hagerstown Fiber Ltd. P'ship, 277 B.R. at 198. Any doubts as to whether the claims fall within the scope of the arbitration agreement should be "resolved in favor of arbitrability." In re ResCap, 2016 Bankr. LEXIS 3799 at *24 (citing Hartford Acc. & Indem. Co. v. Swiss Reinsurance Am. Corp., 246 F.3d 219, 226 (2d Cir. 2001) (citing Moses H. Cone Mem'l. Hosp., 460 U.S. at 24-25)).

Arbitration provisions requiring that "any and all disputes arising under or relating to" an insurance policy, are routinely found to be broad and all encompassing. See, e.g., In re ResCap, Bankr. LEXIS 3799 at *25-26 (provision mandating arbitration of "any dispute, controversy or claim arising out of or relating to" the insurance policies found "exceedingly broad" and to

encompass claims for declaratory relief and breach of insurance contract); Matter of Bear Stearns & Co., Inc. v. Int'l Capital & Mgt. Co., 926 N.Y.S.2d 826, 831 (N.Y. Sup. 2011) (parties' "very broad agreement to arbitrate controversies arising under or relating to this agreement" would have allowed panel to find that the parties agreed to arbitrate the issue of attorneys' fees); McDonnell Douglas Fin. Corp. v. Penn. Power & Light Co., 858 F.2d 825, 832 (2d Cir. 1988) ("'broad' [arbitration] clauses [are those that] refer all disputes arising out of a contract to arbitration"); Am. Diagnostics of Conn., Inc. v. Ctr. Chem., Inc., U.S. Dist. LEXIS 1722, at *6 (S.D.N.Y. Feb. 20, 1996) ("The arbitration clause . . . is a broad clause referring to all disputes 'arising out of or related to' the Agreement"); Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1996) (arbitration clause providing "[a]ny dispute, controversy, or claim arising out of or related to" the agreement would be resolved by arbitration is a "broad arbitration clause[] capable of an expansive reach"). The arbitration clause in the Allied World Policy is at least as broad—if not broader—than those found in the Bermuda insurance policies examined in the ResCap decision.

Where, as here, there is a broad arbitration agreement, courts mandate arbitration when the allegations in the complaint "touch matters covered by the parties' . . . agreements." See Collins & Aikman Prod. Co. v. Bldg. Sys., Inc., 58 F.3d 16, 20-21(2d Cir. 2000) (internal quotations and citations omitted). When in doubt, courts mandate arbitration where there are broad arbitration clauses. See Etransmedia Tech., Inc. v. Nephrology Assoc., P.C., 2012 U.S. Dist. LEXIS 115636, at *18 (N.D.N.Y. Aug. 16, 2012).

The Allied World Policy's arbitration agreement broadly requires that "any and all disputes arising under or relating to" the policy be arbitrated. The Adversary Complaint falls directly within this broad agreement to arbitrate disputes under the policy, because the complaint

seeks relief for an alleged breach of the Allied World Policy. See Adv. Dkt. 1, ¶¶ ¶¶ 95-100,101-106, 107-119. Under New York law, Plaintiffs' allegation that Allied World breached its covenant of good faith likewise falls within the all-encompassing language of the arbitration provision. See Pompano-Windy City Partners, Ltd. v. Bear, Stearns & Co., 698 F. Supp. 504, 510 (S.D.N.Y. 1988) ("bad faith claims arise out of the contractual relationships of the parties, and are within the scope of" broad arbitration agreements); Zybert v. Dab, 301 N.Y. 632, 632 (1950) (bad faith claims arbitrable under broad mandatory arbitration clause that covered "any controversy or claim arising out of or in relation to the contract or the breach thereof"); Simply Fit of N. Am., Inc. v. Poyner, 579 F. Supp.2d 371, 381 (E.D.N.Y. 2008) (plaintiffs' claims for breach of contract, fraud, RICO, unfair competition, and tortious interference "find their genesis in the parties' contractual relationship," and therefore fell within the broad arbitration agreement between the parties); Nasik Breeding & Research Farm Ltd. v. Merck & Co., 165 F. Supp.2d 514, 534 (S.D.N.Y. 2001) (broad arbitration provision applied to claims "beyond pure breaches of contract" including fraudulent inducement, fraudulent concealment, and RICO claims).[7]

Based on the terms of the Allied World Policy, and the allegations in the Adversary Complaint, under well-established law, Plaintiffs' claims against Allied World fall within the terms of the parties' broad agreement to arbitrate.

C. The Insurance Coverage Dispute is Not a Core Proceeding

To determine whether to compel arbitration, bankruptcy courts weigh federal policy in favor of arbitration against federal interests established in the Bankruptcy Code. See In re

[7] Under New York law, a bad faith claim is not an independent tort; it is intertwined with the breach of contract claim on which it is based. See United Capital Corp. v. Travelers Indem. Co. of Ill., 237 F. Supp. 2d 270, 277 (E.D.N.Y. 2002); Sikarevich Family L.P. v. Nationwide Mut. Ins. Co., 30 F. Supp. 3d 166, 171 (E.D.N.Y. 2014); Goldmark, Inc. v. Catlin Syndicate Ltd., 2011 U.S. Dist. LEXIS 18197, at *11 (E.D.N.Y. Feb. 24, 2011); MQDC, Inc. v. Steadfast Ins. Co., 2013 U.S. Dist. LEXIS 172444, at *10 (E.D.N.Y. Dec. 6, 2013) ("broad arbitration clause here covers claims for punitive damages").

Cardali, 2010 Bankr. LEXIS 4113, at *19. Courts routinely hold that arbitration agreements are enforceable in a bankruptcy case "unless [doing so] would seriously jeopardize the objectives of the [Bankruptcy] Code." United States Lines, Inc. v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.), 197 F.3d 631, 640 (2d Cir. 1999), cert. denied, 529 U.S. 1038 (2000). Plaintiffs bear the burden of demonstrating that arbitration of the insurance claims in dispute would present a conflict with the Bankruptcy Code. See In re TexStyle, LLC, 2012 Bankr. LEXIS 1676, at *26-27 (Bankr. S.D.N.Y. April 17, 2012) (granting motion to compel arbitration and finding party objecting to arbitration failed to meet its burden of showing that the arbitration will seriously jeopardize the objectives of the Bankruptcy Code, because the bankruptcy plan had been confirmed and the arbitration would not interfere with the administration of the case); Nat. Tel, LLC v. Oceanic Digital Communs., Inc. (In Re NatTel, LLC), 2012 Bankr. LEXIS 4469 at *12 (Bankr. D. Conn. 2012) (party opposing arbitration has burden to demonstrate arbitration would jeopardize bankruptcy code objectives).

Bankruptcy courts often look to whether the matter is "core" or "non-core" to the bankruptcy proceeding. See In re Cardali, 2010 Bankr. LEXIS 4113, at *19; In re Hagerstown Fiber Ltd. P'ship, 277 B.R. at 198. "Core" proceedings are matters "arising under" the Bankruptcy Code or "arising in" bankruptcy cases. See In re Winimo Realty, 270 B.R. at 119. "Non-core" proceedings are merely "related to" bankruptcy cases. See In re S.W. Bach, 425 B.R. at 89. Core bankruptcy matters implicate "more pressing bankruptcy concerns" than do non-core matters. See MBNA Am. Bank, 436 F.3d at 108 (citations omitted). To determine whether claims arising under a contract are "core", courts consider whether "(1) the contract is antecedent to the reorganization petition; and (2) the degree to which the proceeding is independent of the reorganization of the proceeding." In re ResCap, 2016 Bankr. LEXIS 3799 at

* 28 (citing In re U.S. Lines, 197 F.3d at 637) (relying on district court finding that insurance claims are non-core to bankruptcy proceeding including because they were entered pre-petition, and stating that participation in the bankruptcy process is not enough to render the matter core).

Plaintiffs allege this Court has "core jurisdiction over this dispute" because it (1) involves the disposition of property of the estate, and (2) requires interpretation and enforcement of agreements and orders over which this Court expressly retained exclusive jurisdiction. See Adv. Dkt. 1, Complaint at ¶¶ 19, 22, 55-56, 62, 92, 100. For the following reasons, claims arising under the Allied World Policy are "non-core", and therefore must be arbitrated. See In re S.W. Bach & Co., 425 B.R. at 89 ("If a claim is 'non-core' the court generally lacks discretion and must refer the claim to arbitration") (citing In re U.S. Lines, 197 F.3d at 640); In re Hagerstown Fiber Ltd. P'ship, 277 B.R. at 200 ("a court generally lacks the discretion to refuse to compel the arbitration of non-core claims").

First, New York courts, including bankruptcy courts, routinely hold that disputes concerning insurance contracts are "non-core" state law claims. See Nat'l Century Fin. Eneters. v. Gulf Ins. Co. (In re Nat'l Century Fin. Enters.), 312 B.R. 344, 355 (Bankr. E.D. Ohio 2004) ("resolution of the D&O policy," which is a "state law contract action," is non-core).[8]

[8] See also Mt. McKinley Ins. Co. v. Corning Inc., 399 F.3d 436, 450 (2d Cir. 2005) (claims raised in declaratory judgment action were not core to the bankruptcy proceeding); DeWitt Rehab. & Nursing Ctr. v. Columbia Cas. Co., 464 B.R. 587, 591 (S.D.N.Y. 2012) (adversary action against insurers was non-core matter); In re Burger Boys, Inc., 183 B.R. 682, 687 (S.D.N.Y. 1994) (declaratory judgment action to resolve coverage disputes was a non-core proceeding); In re Amatex Corp., 107 B.R. 856, 863 (E.D. Pa. 1989) (debtor's declaratory judgment action seeking determination of the extent of insurers' liability for asbestos-related claims against debtor was a non-core proceeding), aff'd, 908 F.2d 961 (3d Cir. 1990); In re Ramex Int'l, Inc., 91 B.R. 313, 315 (E.D. Pa. 1988) ("trustee's cause of action for a declaratory judgment under a policy of insurance issued pre-petition to the debtor is not a core proceeding . . . Indeed, the proceeding does not involve a substantive right created by the federal bankruptcy law and could have been brought independent of the bankruptcy proceeding and determined according to state law"); G-I Holdings, Inc. v. Hartford Accident and Indem. Co. (In re G-I Holdings, Inc.), 278 B.R. 376, 381 (Bankr. D.N.J. 2002) (insurance coverage action was non-core and environmental coverage action under pre-petition insurance policies "does not invoke a substantive right provided by title 11"); In re Titan Energy, Inc., 837 F.2d 325, 329-30 (8th Cir. 1988) (bankruptcy court should have abstained from hearing insurer's "non-core" action which sought rescission of insurance policies and declaratory judgment as to scope of coverage); Rosen-Novak Auto Co. v. Honz,

The mere fact that the Allied World Policy is property of the estate does not render this coverage dispute core. See Lawrence Group v. Hartford Cas. Ins. Co. (In re Lawrence Group, Inc.), 285 B.R. 784, 787 (N.D.N.Y. 2002) (quoting In re U.S. Lines, 197 F.3d at 638 ("While the debtors' rights under its insurance policies are property of a debtor's estate, the contract claims are not rendered core simply because they involve property of the estate")).

Second, the fact that the Allied World Policy was entered pre-petition makes this matter non-core. A post-petition assignment of the policy, or breach of the policy, will not transform an otherwise "non-core" matter into a "core" matter. See In re ResCap, 2016 Bankr. LEXIS 3799 at *20. See also In re Lawrence Group, 285 B.R. at, 787 (N.D.N.Y. 2002) ("[t]he fact that the contract was executed pre-petition and that the dispute . . . could arise outside of bankruptcy proceedings weighs against its core status" . . . an action that "involves property of the estate" is not enough to bring the action within the court's "core" jurisdiction).

Third, it is both incorrect and irrelevant for Plaintiffs to allege that this dispute is somehow "core" because it requires interpretation of this Court's prior orders. See Adv. Dkt 1,

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783 F.2d 739, 742 (8th Cir. 1986) (insurance coverage dispute and insurer's right to cancel policy for non-payment was non-core proceeding); Maryland Casualty Co. v. Aselco, Inc., 223 B.R. 217, 220 (D. Kan. 1998) (insurer's state court declaratory judgment action seeking non-coverage was non-core because it "could exist outside of a bankruptcy case"); In re U.S. Brass Corp., 198 B.R. 940, 945-46 (N.D. Ill. 1996) (a declaratory judgment action filed in state court concerning the scope of insurance policies was non-core), aff'd in relevant part, vacated in part, 110 F.3d 1261 (7th Cir. 1997) (proceedings brought for determination of coverage provided by debtor's insurance policies were non-core proceedings); In re Pharmakinetics Labs., Inc., 139 B.R. 350, 353 (D. Md. 1992) (remanding action to state court because the claim hinged on non-core insurance coverage disputes); In re Pied Piper Casuals, Inc., 65 B.R. 780, 781 (S.D.N.Y. 1986) (trustee's adversary proceeding concerning insurance coverage was non-core where "a duty to pay - indeed coverage - under the instant policy is sharply contested, the contrary of a recognition of any duty to pay . . . and far from a mature obligation payable on demand") (citation omitted); In re Molten Metal Technology, Inc., 271 B.R. 711, 714-15 (Bankr. D. Mass. 2002) (trustee's action seeking declaration of rights under pre-petition insurance policy did not arise under the Bankruptcy Code and was not a core proceeding); Dayton Title Agency, Inc. v. Philadelphia Indem. Ins. Co. (In re Dayton Title Agency, Inc.), 264 B.R. 880, 884 (Bankr. S.D. Ohio 2000) (adversary proceeding to recover from insurer for alleged breach of contract, breach of fiduciary duty, and tortious bad faith in denying coverage under the policy was non-core); In re R.I. Lithograph Corp., 60 B.R. 199, 203-04 (Bankr. D. R.I. 1986) ("we are unable to agree that . . . action against [the insurer] seeking reimbursement and/or indemnification for losses allegedly covered under a contract of insurance is a core proceeding"); B-U Acquisition Group, Inc. v. Utica Mut. Ins. Co. (In re Baldwin-United Corp.), 52 B.R. 541, 547-48 (Bankr. S.D. Ohio 1985) (adversary proceeding for declaration of coverage was non-core, because it did not fall into any of the core matters enumerated by § 157(b)).

Compl. ¶ 19. It is incorrect because coverage disputes are non-core to bankruptcy proceedings. See Nat'l Century Fin. Eneters., 312 B.R. at 355. It is also incorrect because resolution of this coverage dispute does not require interpretation of this Court's prior orders. Even if that were correct (and it is not), this allegation is irrelevant because it is merely in anticipation of potential coverage defenses, which cannot be used to establish a matter is a "core" proceeding. See, e.g., Agway Liquidating Trust v. Burkeholder (In re Agway, Inc.), 2006 Bankr. LEXIS 4552, at *8 (Bankr. N.D.N.Y. Mar. 6, 2006) (the fact that the "Court has been asked to interpret its Order of Confirmation in connection with the Defendants' assertion of the defense of res judicata . . . is not a basis for the Court's determination concerning the extent of its jurisdiction" under 18 U.S.C. § 157, and "the causes of action do not constitute a basis for finding the adversary proceeding to be core"); Medlin v. Johnson (In re Meabon), 2014 U.S. Dist. LEXIS 42088, at *12-13 (W.D.N.C. Mar. 28, 2014) ("arising under" jurisdiction for purposes of 28 U.S.C. § 157(b) exists in "those cases in which a well-pleaded complaint establishes either that federal [bankruptcy] law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal [bankruptcy] law'"); K V Oil & Gas, Inc. v. Centre Equities, Inc., 2009 U.S. Dist. LEXIS 76734, at *12 (S.D.N.V. Aug. 27, 2009) (same); Kmart Creditor Trust v. Conaway (In re Kmart Corp.), 307 B.R. 586, 595 (Bankr. E.D. Mich. 2004) ("defenses do not convert what is otherwise a purely state court cause of action into a core matter"); accord Hoffman v. First Nat'l Bank of Akron (In re Hoffman), 99 B.R. 929, 931-32 (Bankr. N.D. Iowa 1989) ("To determine core or non-core status, the Court must look to the substantive action before it. . . . Although the defense requires this Court to construe the order confirming the plan, the substantive action, i.e. the lender liability action, does not require the construction of any past orders of this Court").

Finally, Plaintiffs cannot establish that this dispute is core because they do not (and cannot) allege that this Court retained exclusive jurisdiction over the Allied World Policy.

Even if this Court was to find that this dispute concerns a "core" bankruptcy claim (and it does not), arbitration would still be mandatory, unless it would create an actual and irreconcilable conflict between the FAA and the Bankruptcy Code. See MBNA Am. Bank, 436 F.3d at 108 ("even as to core proceedings, bankruptcy courts will not have discretion to override an arbitration agreement unless it finds that proceedings are based on provisions of the Bankruptcy Code that inherently conflict with the Arbitration Act or that arbitration of the claim would necessarily jeopardize the objectives of the Bankruptcy Code") (citations omitted). Cf. Edwards v. Vanderbilt Mortg. & Fin., Inc., 2013 Bankr. LEXIS 4379, *4-5 (Bankr. E.D.N.C. Oct. 21, 2013) (where an unconstitutional core proceeding is implicated, the parties' arbitration agreement should control). Arbitration of even core disputes rarely conflict with the stated purpose of the Bankruptcy Code.[9] See In re Hagerstown Fiber Ltd. P'ship,, 277 B.R. at 203 ("The arbitration of a procedurally core dispute rarely conflicts with any policy of the Bankruptcy Code unless the resolution of the dispute fundamentally and directly affects a core bankruptcy function").

Here, arbitration of this coverage dispute will not create any actual or irreconcilable conflict with the Bankruptcy Code, because the Plan has long been confirmed, any recovery under the Allied World policy will not significantly impact available assets, and this Court is not "uniquely able to interpret and enforce" the provisions in the Allied World Policy. See In Re

[9] The objectives of the Bankruptcy Code have been articulated as: "to marshal all the assets of a debtor, convert those assets to cash, and distribute those case proceeds to creditors in accordance with the bankruptcy code's distribution requirements." In Re NatTel, LLC, 2012 Bankr. LEXIS 4469 at *13.

ResCap, at *23. Allied World does not dispute that it is a function of this Court to distribute any proceeds available under the Allied World Policy in accordance with the Plan. However, the determination of whether there is coverage under the Allied World Policy is a separate question—which does not involve interpretation of the Plan—that must be determined by international arbitration.

Plaintiffs have simply not met their burden of alleging that the coverage dispute arbitration conflicts with the Bankruptcy Code. Accordingly, this insurance coverage dispute is a "non-core" proceeding that must be arbitrated pursuant to the terms of the Allied World Policy. Even if this were a "core" proceeding (and it is not), arbitration would still be mandatory.

CONCLUSION

For the foregoing reasons, Allied World respectfully requests that the Court compel arbitration as against Plaintiffs and dismiss all claims asserted by Plaintiffs against Allied World herein, or, in the alternative, stay this action against Allied World pending arbitration.

Dated: New York, New York
November 28, 2016

WHITE AND WILLIAMS LLP

By:*/s/Erica Kerstein*
Erica Kerstein
White and Williams LLP
7 Times Square
New York, New York 10036-6524
(212) 868-4837

Attorneys for DefendantAllied World Excess Insurance Company

WHITE AND WILLIAMS LLP
Erica Kerstein, Esq.
7 Times Square
New York, New York 10036
(212) 868-4837

Attorneys for Defendant
Allied World Assurance Company Ltd.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
Debtors	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC,	:	
Plaintiffs,	:	
v.	:	**Adv. Proc. No. 16-01251 (MG)**
ALLIED WORLD ASSURANCE COMPANY, LTD, IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	

AFFIRMATION OF ERICA KERSTEIN IN SUPPORT OF ALLIED WORLD ASSURANCE COMPANY, LTD'S MOTION TO COMPEL ARBITRATION

I, Erica Kerstein, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney duly admitted to the Bar of the State of New York and the Bar of the United States District Court for the Southern District of New York.

2. I am a Partner in the firm of White and Williams LLP, attorneys for Allied World Assurance Company, Ltd ("Allied World") in the above lawsuit.

3. I submit this affirmation in support of Defendant Allied World's Motion to Compel Arbitration and to dismiss the Adversary Complaint in the above lawsuit against Allied World, or in the alternative to stay the Adversary Complaint as against Allied World pending arbitration.

4. Attached hereto as Exhibit A is a true and correct copy of Allied World's Notice of Arbitration, dated February 11, 2016.

5. Attached hereto as Exhibit B is a true and correct copy of the March 28, 2016 MFGH and MFGAA letter Response to the February 11, 2016 Notice of Arbitration.

6. Attached hereto as Exhibit C is a true and correct copy of the emails exchange between counsel for Allied World and counsel for MFGH/MFGAA on the process for selection of a third arbitrator in the Bermuda arbitration.

7. Attached as Exhibit D are true and correct copies of the October 18, 2016 exchanged lists of selected Arbitrators on behalf of Allied World and MFGH and MFGAA in the Bermuda Arbitration.

8. Attached hereto as Exhibit E are true and correct copies of the November 1, 2016 communications exchanged on behalf of Allied World and MFGH and MFGAA identifying their respective selections of third arbitrator candidates in the Bermuda Arbitration.

Dated: New York, New York
November 28, 2016

WHITE AND WILLIAMS LLP

By: */s/ Erica Kerstein*
Erica Kerstein

White and Williams LLP
Times Square Tower
7 Times Square
New York, NY 10036
(212) 326-2267

EXHIBIT A

White and Williams LLP

John F. McCarrick | Partner
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Direct 212.714.3072 | Fax 914.487.7326
mccarrickj@whiteandwilliams.com | whiteandwilliams.com

Erica J. Kerstein | Partner
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Direct 212.868.4837 | Fax 212.631.1244
kersteine@whiteandwilliams.com | whiteandwilliams.com

February 11, 2016

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Steuber, Esq.
Jones Day
550 South Flower Street, 50th Fl.
Los Angeles, CA 90071
dsteuber@jonesday.com

Arthur H. Aufses III, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
aaufses@kramerlevin.com

Jonathan R. Streeter, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036-6797
jonathan.streeter@dechert.com

Re:	**Named Insured:**	**MF Global Holdings Ltd.**
	Insurer:	**Allied World Assurance Company Ltd.**
	Policy No:	**C007357/005**
	Policy Period:	**May 31, 2011 to May 31, 2012**
	Limits:	**$15 million x/s $125 million**

Dear Messrs. Steuber, Streeter and Aufses:

As you know, we represent Allied World Assurance Company Ltd. ("Allied World") in connection with the various matters that have been submitted for coverage under Allied World policy No. C007357/005 (the "Allied World Excess E&O Policy").

By letters dated April 27, May 22 and September 2, 2015, respectively, Mr. Schlesinger of Reed Smith, on behalf of Jon S. Corzine, Bradley Abelow, Hari Steenkamp, David Dunne, Vinay Mahajan and Edith O'Brien (collectively, the "Individual Insureds"), requested that Allied World make the limits of the Allied World Excess E&O Policy available to cover a proposed settlement. By letter dated October 24, 2015, Mr. Steuber, on behalf of MF Global Assigned Assets LLC ("MFGAA"), demanded all remaining E&O Policy proceeds from all E&O insurers,

including Allied World. By letter dated May 8, 2015, our firm, on behalf of Allied World, declined to make the Allied World Excess E&O Policy limits available for a settlement.

By this letter, Allied World notifies the Individual Insureds and MFGAA (together, the "Respondents") of its desire to arbitrate, pursuant to Section IX of the Allied World Excess E&O Policy, whether there is coverage for Respondents' claims under the Allied World Excess E&O Policy.

In accordance with the terms of the Allied World Excess E&O Policy, Allied World selects Confidential as its arbitrator. Confidential contact details are as follows:

Confidential

Respondents have 10 calendar days from the date of this notice of arbitration to name their arbitrator.

Nothing in this letter is intended to waive Allied World's rights under or in relation to the Allied World Excess E&O Policy, which rights remain fully reserved.

We look forward to hearing from you with the Respondents' nomination. If you have any questions about this matter, please do not hesitate to contact my partner, Erica Kerstein, or the undersigned.

Very truly yours,

WHITE AND WILLIAMS LLP

John F. McCarrick

cc: Erica Kerstein, Esq.
Maurice Pesso, Esq.
Alistair Schaff QC

EXHIBIT C

Hoffman, Kristina

From: Dave Steuber <dsteuber@jonesday.com>
Sent: Tuesday, October 18, 2016 4:03 PM
To: Kerstein, Erica
Cc: Craig Hirsch; Ingram, Phyllis; McCarrick, John
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

Thanks. And, yes, as to the October 26 deadline.

David W. Steuber

JONES DAY® - One Firm Worldwide℠
555 South Flower Street, Fiftieth Floor
Los Angeles, California 90071
+1.213.243.2457
dsteuber@jonesday.com

From: "Kerstein, Erica" <Kersteine@whiteandwilliams.com>
To: Dave Steuber <dsteuber@jonesday.com>
Cc: Craig Hirsch <cmhirsch@JonesDay.com>, "Ingram, Phyllis" <Ingramp@whiteandwilliams.com>, "McCarrick, John" <McCarrickj@whiteandwilliams.com>
Date: 10/18/2016 12:53 PM
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

Yes, we are in agreement with the process. So, we shall be in touch on or before October 26 regarding whether either party wishes to select a candidate from the others' list.

Erica

From: Dave Steuber [mailto:dsteuber@jonesday.com]
Sent: Tuesday, October 18, 2016 3:43 PM
To: Kerstein, Erica
Cc: Craig Hirsch; Ingram, Phyllis; McCarrick, John
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

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Erica -- anything further on this? Is this acceptable? Thanks.

David W. Steuber

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Los Angeles, California 90071
+1.213.243.2457
dsteuber@jonesday.com

From: "Kerstein, Erica" <Kersteine@whiteandwilliams.com>
To: 'Dave Steuber' <dsteuber@jonesday.com>
Cc: Craig Hirsch <cmhirsch@JonesDay.com>, "Ingram, Phyllis" <Ingramp@whiteandwilliams.com>, "McCarrick, John" <McCarrickj@whiteandwilliams.com>
Date: 10/14/2016 06:43 AM
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

Dave,

Thanks for your email. This seems reasonable to us. Our client is travelling so we have not been able to discuss with the client. We are scheduled to speak with our client Monday morning and will revert back if there are any issues, but we anticipate that this will be acceptable.

Best regards,
Erica

From: Dave Steuber [mailto:dsteuber@jonesday.com]
Sent: Thursday, October 13, 2016 3:17 PM
To: Kerstein, Erica
Cc: Craig Hirsch; Ingram, Phyllis; McCarrick, John
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

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Erica -- as October 18 fast approaches, we have been considering the open issues regarding selection of the third arbitrator. Our suggestions:

1. We each provide four names and exchange our respective lists of four on October 18 via mutual email exchange at 12 PT/3 ET.
2. As agreed, if there is a single overlap, we select that person as the third arbitrator. If there are multiple overlaps, we discuss further as to how to select from those names (either we pick between the names or we ask our designated arbitrators to do so).
3. If there is no overlap, we then determine whether one of us is willing to accept a name from the other side's list of four. We can have a telephone call to discuss, but ultimately we propose that we advise one another on October 26 via mutual email exchange at 12 PT/3 ET. If one of us so agrees, that person will be the third arbitrator. If each of us finds that a name is acceptable off the other's list, we then decide how to proceed -- again, either we pick between the two names or we ask our designated arbitrators to do so.
4. If there is no agreement on a name from the first exchange of lists, we propose that counsel (you and I) exchange one more list of names in an effort to select the third arbitrator. Those respective lists would contain three new names from each of us. Our exchange would take place on November 1 via mutual email exchange at 12 PT/3 ET.
5. Again, if there is a single overlap, we select that person as the third arbitrator. If there are multiple overlaps, we discuss further as to how to select from those names -- either we pick between the two names or we ask our designated arbitrators to do so. If there is no overlap, we then determine whether one of us is willing to accept a name from the other side's list of three. We can have a telephone call to discuss, but ultimately we propose that we advise one another on November 8 via mutual email exchange at 12 PT/3 ET. If one of us so agrees, that person will be the third arbitrator. If each of us finds that a name is acceptable off the other's list, we then decide how to proceed -- again, either we pick between the two names or we ask our designated arbitrators to do so.
6. If there is no agreement on a name from the fourteen included on our two exchanged lists, we then ask our designated arbitrators to make the selection, preferably a name from our two respective lists, but if they are unable to do so, they may select an "off list" individual to their mutual liking. I hesitate to propose a date for that ultimate selection, but perhaps we can suggest that they select a name by November 23, or else they can tell us when it is likely they will be able to do so.

Let me know what you think.

Thanks, and best regards.

David W. Steuber

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Los Angeles, California 90071
+1.213.243.2457
dsteuber@jonesday.com

From: Dave Steuber/JonesDay
To: "Kerstein, Erica" <Kersteine@whiteandwilliams.com>, "Craig Hirsch" <cmhirsch@JonesDay.com>
Cc: "McCarrick, John" <McCarrickj@whiteandwilliams.com>, "Ingram, Phyllis" <Ingramp@whiteandwilliams.com>
Date: 10/03/2016 07:14 AM
Subject: RE: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

Erica -- this is acceptable to our clients. Let's touch bases to confirm the number of names to exchange (4 or 5) and the timing and manner of the exchange on the 18th. Thanks.

David W. Steuber

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555 South Flower Street, Fiftieth Floor
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+1.213.243.2457
dsteuber@jonesday.com

----- Message from "Kerstein, Erica" <Kersteine@whiteandwilliams.com> on Fri, 30 Sep 2016 14:43:28 GMT -----

From: "Kerstein, Erica" <Kersteine@whiteandwilliams.com>
To: "Dave Steuber" , "Craig Hirsch"
CC: "McCarrick, John" , "Ingram, Phyllis"
Subject: MFG - procedure for selecting third arbitrator [WW-PHLDMS1.FID2975265]

Dave,

Per our discussion earlier this week, Allied World agrees to the terms you proposed for selection of arbitrator. Specifically, Allied World agrees:

- the parties will exchange a list of 4-5 names on October 18;

- if there is one overlap, that will be the third arbitrator;
- if there are multiple overlaps, we can discuss selecting from the overlaps;
- if there are no overlaps, each party shall have the option to select from the other list;
- if neither party wishes to select from the other sides' list, the parties shall decide if they wish to do another round of exchanging names; and
- otherwise, we shall submit the complete list of exchanged names to the first and second arbitrators and ask them to select from the proposed list if they can, but they shall have the flexibility to go outside the list.

Please confirm that your client is likewise in agreement. Have a nice weekend.

Best regards,
Erica

White and Williams LLP
Erica J. Kerstein
7 Times Square, Suite 2900 | New York, NY 10036-6524
Direct 212.868.4837 | Fax 212.631.1244
kersteine@whiteandwilliams.com | whiteandwilliams.com

==========
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
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EXHIBIT D

Hoffman, Kristina

From: Kerstein, Erica
Sent: Tuesday, October 18, 2016 3:02 PM
To: 'Dave Steuber'
Cc: McCarrick, John; Ingram, Phyllis; Craig Hirsch
Subject: MF Global Arbitration - Allied World's Candidates for Third Arbitrator [WW-PHLDMS1.FID2975265]

Dave,

In accordance with the terms of our agreement for selection of third arbitrator, Allied World Assurance Company Ltd proposes the following 4 candidates:

Confidential

Best regards,
Erica

White and Williams LLP

Erica J. Kerstein
7 Times Square, Suite 2900 | New York, NY 10036-6524
Direct 212.868.4837 | Fax 212.631.1244
kersteine@whiteandwilliams.com | whiteandwilliams.com

Hoffman, Kristina

From: Craig Hirsch <cmhirsch@JonesDay.com>
Sent: Tuesday, October 18, 2016 3:02 PM
To: Kerstein, Erica
Cc: Dave Steuber; McCarrick, John
Subject: MF Global/AWAC re List of Proposed Arbitrators from MF Global

Importance: High

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

Erica:

Here is our list of four (4) candidates for the third member of the arbitration panel per our prior agreement with AWAC, presented in alphabetical order:

MF Global continues to reserve all rights against AWAC as previously expressed in its correspondence to you.

Regards,

Craig M. Hirsch
Associate
JONES DAY® - One Firm Worldwide℠
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071.2300
Office +1.213.243.2803
Facsimile +1.213.243.2539
cmhirsch@jonesday.com

EXHIBIT E

Hoffman, Kristina

From: Craig Hirsch <cmhirsch@JonesDay.com>
Sent: Tuesday, November 01, 2016 3:01 PM
To: Kerstein, Erica
Cc: McCarrick, John; Dave Steuber
Subject: MF Global/AWAC re Supplemental List of Proposed Arbitrators from MF Global

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

Erica:

Here is our list of three (3) additional candidates for the third member of the arbitration panel per our prior agreement with AWAC, presented in alphabetical order and supplementing the four (4) names we proposed on October 18:

Confidential

MF Global continues to reserve all rights against AWAC as previously expressed in its correspondence to you.

Regards,

Craig M. Hirsch
Associate
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555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071.2300
Office +1.213.243.2803
Facsimile +1.213.243.2539
cmhirsch@jonesday.com

Hoffman, Kristina

From: Kerstein, Erica
Sent: Tuesday, November 01, 2016 3:01 PM
To: Dave Steuber; Craig Hirsch
Cc: McCarrick, John
Subject: MFG Arbitration - selection of third arbitrator [WW-PHLDMS1.FID2975265]

Dave,

Pursuant our agreement, Allied World proposes the following three candidates for third arbitrator:

Confidential

Best regards,
Erica

White and Williams LLP

Erica J. Kerstein
7 Times Square, Suite 2900 | New York, NY 10036-6524
Direct 212.868.4837 | Fax 212.631.1244
kersteine@whiteandwilliams.com | whiteandwilliams.com

WHITE AND WILLIAMS LLP
Erica Kerstein, Esq.
7 Times Square
New York, New York 10036
(212) 868-4837

Attorneys for Defendant
Allied World Assurance Company Ltd.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
Debtors	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC,	:	
Plaintiffs,	:	
v.	:	**Adv. Proc. No. 16-01251 (MG)**
ALLIED WORLD ASSURANCE COMPANY, LTD, IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	

AFFIRMATION OF JAN E. HAYLETT IN SUPPORT OF ALLIED WORLD ASSURANCE COMPANY, LTD'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND IMPROPER SERVICE OF PROCESS AND MOTION TO COMPEL ARBITRATION

I, Jan E. Haylett, hereby declare under penalty of perjury under the laws of Bermuda and of the United States of America that the following is true and correct:

1. I am Allied World Assurance Company, Ltd's ("Allied World") Vice President, Bermuda Claims Group.

2. I submit this affirmation in support of Defendant Allied World's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Service of Process and Motion to Compel Arbitration.

3. Allied World is an insurance company, formed under the laws of Bermuda and is headquartered in Bermuda. Allied World's principal place of business is 27 Richmond Road, Pembroke HM08, Bermuda. Allied World has always operated out of Hamilton, Bermuda.

4. Allied World has never been incorporated, headquartered, held offices, or maintained a mailing address in the United States.

5. Allied World has never had any officers, agents, employees, brokers or other representatives who negotiate, underwrite, issue, deliver, or receive payment for its insurance contracts in New York (or in any other state within the United States). Policyholders use brokers located in Bermuda to apply for insurance with Allied World. Allied World works with the brokers in Bermuda to perform all of these functions in Bermuda.

6. Allied World's claim personnel are located in Bermuda (and elsewhere outside the United States) and perform their claims analysis outside the United States.

7. Allied World does not conduct insurance business in any state in the United States, nor is Allied World licensed to do business in the United States.

8. As set forth in Exhibit A, at Section IX, Allied World typically requires that disputes arising under its insurance policies be arbitrated outside of the United States.

9. Allied World is a subsidiary of Allied World Assurance Company Holdings, AG, which is incorporated pursuant to the laws of Switzerland.

10. Allied World issued policy C007357/005 to MF Global Holdings, Ltd. ("MFGH"), with a limited of liability of $15 million excess of $125 million, for the policy period May 31, 2011 to May 31, 2012 (the "Allied World Policy").

11. MFGH was a Delaware Corporation, not a New York Corporation

12. The Allied World Policy was negotiated, underwritten, issued, delivered, and paid for exclusively in Bermuda, through Willis (Bermuda) Ltd. ("Willis"), a Bermuda-based broker that was acting on MFGH's behalf in Bermuda. No Allied World officer, agent, employee, broker, or other representative in New York, or anywhere else in the United States, underwrote, delivered or received a premium for the Allied World Policy in New York.

13. The premiums for the Allied World Policy were paid to Allied World by the Bermuda-based insurance broker, acting on behalf of MFGH, exclusively in Bermuda. The Allied World Policy does not require the parties to send notices or payments to New York.

14. The Allied World Policy was underwritten and issued in Bermuda.

15. Allied World did not use a United State office, place of business or mailing address with respect to the Allied World Excess Policy.

16. Allied World never transacted any business in the United States with respect to the Allied World Policy.

17. Allied World's claims decisions regarding the Allied World Policy were made in Bermuda.

18. Allied World handled the claim under the Allied World Policy in Bermuda.

19. Allied World's Policy contains a forum selection clause requiring that all disputes arising under the policy be arbitrated in Bermuda.

20. The Allied World Excess Policy negates any duty to defend.

21. On or about November 3, 2016, Plaintiffs attempted to effectuate service of process on Allied World by requesting that Vito Genna, Clerk of this Court, send the Summons and Complaint via overnight mail to the Dissenting Insurers, including Allied World. It is my understanding that service by mail is of no effect.

22. For the foregoing reasons, and as set forth in the memorandum of law submitted in support of Allied World's motion to dismiss for lack of personal jurisdiction and improper service of process, I respectful request that this Court grant Allied World's motion and dismiss Plaintiffs' Adversary Complaint, or in the alternative, issue a stay pending completion of the arbitration proceeding in Bermuda.

Dated: New York, New York
November 28, 2016

WHITE AND WILLIAMS LLP

By: */s/ Erica Kerstein*
Erica Kerstein

White and Williams LLP
Times Square Tower
7 Times Square
New York, NY 10036
(212) 326-2267

EXHIBIT B

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071.2300

TELEPHONE: +1.213.489.3939 • FACSIMILE: +1.213.243.2539

DIRECT NUMBER: (213) 243-2457
DSTEUBER@JONESDAY.COM

March 28, 2016

VIA E-MAIL MCCARRICKJ@WHITEANDWILLIAMS.COM

John F. McCarrick
White and Williams LLP
7 Times Square, Suite 2900
New York, NY 10036-6524

Re:	Insureds:	MF Global entities and individuals
	Insurer:	Allied World Assurance Company
	Policy No.:	C007357/005
	Matter:	Response to February 11 Correspondence

Dear Mr. McCarrick:

As you know, we represent MF Global Holdings Ltd. ("MFGH"), the Plan Administrator under the confirmed plan of liquidation in the chapter 11 cases of MFGH and certain of its affiliates, and as the "named corporation" under Allied World Assurance Company ("AWAC") Excess Liability Insurance Policy Number C007357/005 (the "AWAC Policy"). As we previously advised you, MF Global Inc.'s ("MFGI") rights, rights of recovery, remedies, title and interests arising from or related to the underlying MDL proceedings and various proofs of loss against MFGI's estates have been assigned to MF Global Assigned Assets LLC ("MFGAA") for which MFGH serves as managing member (MFGH, MFGI and MFGAA collectively referred to herein as "MF Global").

We send this correspondence not only on behalf of MF Global, but with the authority and on behalf of the former directors and officers of MF Global, also insureds under the AWAC Policy (collectively, the "Individual Insureds" and with MF Global as "Insureds"), who along with MF Global requested the AWAC Policy's full $15 million limit of liability to fund a proposed settlement of the underlying claims.[1] We understand AWAC has thus far denied the Insureds' requests for settlement funding under the AWAC Policy and has not indicated that it will change its position prior to the anticipated execution of the underlying settlement agreement.

[1] Those insured persons include Messrs. Corzine, Abelow, Steenkamp, Dunne, and Mahajan, and Ms. O'Brien, all possessing an independent and distinct claim from MF Global against the AWAC Policy's insurance proceeds.

We respond to your letter dated February 11, 2016, in which AWAC expressed its "desire to arbitrate, pursuant to Section IX of the [AWAC Policy], whether there is coverage for the [Insureds'] claims under the [AWAC Policy]." In that letter, AWAC selected [redacted] as its arbitrator and the first member of a three-member arbitration panel under Section IX of the Policy. According to Section IX, the other party then has ten (10) calendar days to select a second arbitrator. Since February 11, AWAC and the Insureds have agreed to certain extensions of time for the selection of the second arbitrator. In reaching those agreements, all parties have expressly reserved all rights under the AWAC Policy, at law or in equity, including without limitation the Insureds' various arguments against: (1) AWAC's right to arbitration under Section IX; (2) AWAC's reading of Section IX as allowing it to commence an arbitration proceeding against the Insureds; and (3) the arbitrability of any coverage dispute between AWAC and the Insureds (or MF Global respectively) under these facts and the bankruptcy-related circumstances. To be clear and to reiterate the Insureds' position with respect to Section IX, neither the time extensions negotiated with AWAC nor this correspondence or any of the Insureds' prior communications should be construed as a waiver, withdrawal or surrender of any argument the Insureds might raise against AWAC's interpretation, application or enforcement of the arbitration provision in the AWAC Policy or any other issue relating to any coverage dispute between AWAC and the Insureds.

Through our most recent discussions, the parties agreed that the Insureds would name a second arbitrator on or before March 28 and do nothing more at that time, all rights reserved. AWAC and the Insureds also agreed that until April 30 no Insured would commence an action or proceeding against AWAC in another forum and that the parties and their representatives would cease all activities in connection with AWAC's arbitration demand. This includes delaying the appointment of, and all activities directed to the appointment of, the third arbitrator by Mr. [redacted] and our selected arbitrator. Thus, this letter simply honors the understanding reached with AWAC by naming a second arbitrator notwithstanding our view that AWAC's interpretation of and position under Section IX are in error.

In light of the foregoing, the Insureds select [redacted] as the second arbitrator, a [redacted] in an unrelated matter which we believe does not involve AWAC professional liability coverage or any issues common to this proceeding or dispute.

Please call us with any questions. As in the past, the Insureds reserve all rights. Best regards.

Very truly yours,
JONES DAY

David W. Steuber

cc (via email):

Arthur Aufses III, Kramer Levin Naftalis & Frankel LLP
Jonathan Streeter, Dechert LLP
Laurie Ferber, MF Global Holdings Ltd.
Bruce Bennett, Jones Day
Jane Rue Wittstein, Jones Day
Craig Hirsch, Jones Day
Richard Jacobs QC, Essex Court Chambers

EXHIBIT A

ALLIED WORLD ASSURANCE COMPANY LTD
27 Richmond Road, Pembroke HM 08, Bermuda
TEL - 441-278-5400 FAX - 441-296-3428

EXCESS LIABILITY INSURANCE POLICY

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND.

THE PREMIUM PAYABLE TO THE INSURER DOES NOT INCLUDE ANY AMOUNT WITH RESPECT TO INSURANCE PREMIUM TAXES OR EXCISE TAXES. UNDER THE TERMS OF THE POLICY, IT IS THE OBLIGATION OF THE INSURED TO BE LIABLE FOR AND PAY ANY INSURANCE PREMIUM TAXES OR EXCISE TAXES EITHER ITSELF OR THROUGH ITS BROKER. ALLIED WORLD ASSURANCE COMPANY, LTD WILL BE INDEMNIFIED AND FULLY REIMBURSED BY THE INSURED FOR ANY PREMIUM TAXES (AND COSTS ASSOCIATED WITH COLLECTION, INCLUDING LEGAL COSTS) IN THE EVENT THE INSURED OR ITS BROKER FAILS TO PAY.

DECLARATIONS **POLICY NO.:** C007357/005

ITEM 1.	NAMED CORPORATION:	MF Global Holdings Ltd.
	MAILING ADDRESS:	717 Fifth Avenue, 9th Floor New York, NY USA 10022-8101
ITEM 2.	FOLLOWED POLICY: INSURER: POLICY NO.:	Manuscript - Professional Indemnity Insurance MFG Assurance Company Limited 1-18002-00-11
ITEM 3.	POLICY PERIOD:	From: May 31, 2011 To: May 31, 2012 (12:01 A.M. standard time at the address stated in Item 1.)
ITEM 4.	LIMIT OF LIABILITY:	USD 15,000,000 aggregate for coverages combined (including Defense Costs)
	EXCESS OF TOTAL UNDERLYING LIMITS OF:	USD 125,000,000

ALLIED WORLD ASSURANCE COMPANY LTD
27 Richmond Road, Pembroke HM 08, Bermuda
TEL - 441-278-5400 FAX - 441-296-3428

ITEM 5. PREMIUM: Confidential

ITEM 6. A. DISCOVERY PERIOD PREMIUM: 150% of premium set forth in Item 6

B. DISCOVERY PERIOD: 12 Month(s)

ITEM 7. NOTICE OF CANCELLATION PERIOD: Per **Followed Policy**

ITEM 8. ADDRESS OF INSURER FOR ALL NOTICES UNDER THIS POLICY:

ALLIED WORLD ASSURANCE COMPANY, LTD
ATTN: CLAIMS DEPARTMENT
27 RICHMOND ROAD
PEMBROKE HM 08
BERMUDA

ITEM 9. POLICY FORM: EXCESS LIABILITY INSURANCE POLICY (General Excess (DB 03/02))

ENDORSEMENT(S): Specific Litigation/Event Exclusion
Prior Notice Exclusion
Pending and Prior Litigation Exclusion

BROKER: Willis (Bermuda) Ltd.
The Vallis Building
58 Par-la-Ville Road
Hamilton, HM 12
Bermuda

Authorized Representative

ALLIED WORLD ASSURANCE COMPANY LTD
27 Richmond Road, Pembroke HM 08, Bermuda
TEL - 441-278-5400 FAX - 441-296-3428

EXCESS LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application forming a part hereof and its attachments and the material incorporated therein, ALLIED WORLD ASSURANCE COMPANY, LTD herein called the "**Insurer**", agrees as follows:

I. INSURING AGREEMENTS

This policy shall provide the **Named Insureds** with Excess Liability Insurance coverage for **Loss** or **Damages** resulting from any claim or claims first made against the Insured(s) and reported to the **Insurer** pursuant to the terms of this policy in accordance with the same warranties, terms, conditions, exclusions and limitations as were contained in the **Followed Policy** on the inception date of this policy subject to the premium, limits of liability, **Policy Period**, warranties, exclusions, limitations and other terms and conditions of this policy including any and all endorsements attached hereto; provided always that this policy shall, in no event and notwithstanding any other provision, provide coverage broader than that provided by the **Followed Policy** unless such broader coverage is specifically agreed to by the **Insurer** and identified as broader coverage in a written endorsement attached hereto.

II. DEFINITIONS

(a) The term "**Followed Policy**" shall mean the policy identified in Item 2 of the Declarations.

(b) The term "**Loss**" or "**Damages**" shall have the same meaning in this policy as is attributed to it in the **Followed Policy** except that the term "**Loss**" or "**Damages**" shall in no event include civil or criminal fines or penalties, the multiplied portion of multiplied damages or any amounts for which the **Named Insureds** are not financially liable or which are without legal recourse to the **Named Insureds**, or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Loss or **Damages** shall include punitive damages to the same extent punitive damages are part of **Loss** or **Damages** under the **Followed Policy**; provided, however, if the **Followed Policy** coverage for punitive damages is solely contingent on the insurability of such damages under applicable law then this policy shall provide coverage for punitive damages.

(c) The term "**Policy Period**" shall mean the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.

(d) The term "**Underlying Policies**" shall mean the Primary and Underlying Excess Policies set forth in Item 5 of the Declarations.

(e) The term "**Underlying Insurer(s)**" shall mean the insurer(s) of the **Underlying Policies**.

(f) The term "**Underlying Aggregate Limit**" shall mean an amount equal to the aggregate of all the limits of the **Underlying Policies** combined (excess of their retentions).

ALLIED WORLD
ASSURANCE COMPANY

All other terms shall have the same meaning in this policy as is attributed to it in the applicable **Followed Policy**.

III. LIMIT OF LIABILITY

The Limit of Liability stated in Item 4 of the Declarations is the aggregate limit of the **Insurer**'s liability for all **Loss** or **Damages** arising out of all claims or occurrences reported to the **Insurer** in accordance with the terms and conditions of the **Followed Policy**; the Limit of Liability for the Discovery Period (if applicable) shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**. Further, any claim which is made subsequent to the **Policy Period** or Discovery Period (if applicable) which pursuant to Section V herein and the terms and conditions of the **Followed Policy** is considered made during the **Policy Period** or Discovery Period shall also be subject to the one aggregate Limit of Liability stated in Item 4 of the Declarations.

It is expressly agreed that liability for any covered **Loss** with respect to claims first made and reported during the **Policy Period** shall attach to the **Insurer** only after the **Underlying Insurer(s)** and/or the **Named Insureds** shall have paid or been held liable to pay the full amount of the **Underlying Aggregate Limit**, and the **Named Insureds** shall have paid or been held liable to pay the full amount of the applicable retention amount for such **Policy Period**. In the event and only in the event of the reduction or exhaustion of the **Underlying Aggregate Limit** by reason of the **Underlying Insurer(s)** and/or the **Named Insureds** paying or being held liable to pay **Loss** otherwise covered hereunder, this policy shall: (i) in the event of reduction, pay excess of the reduced **Underlying Aggregate Limit**, and (ii) in the event of exhaustion, continue in force as primary insurance; provided always that in the latter event this policy shall only pay excess of the retention amount, which retention amount shall be applied to any subsequent **Loss** in the same manner as specified in the **Followed Policy**.

This policy shall pay only in the event of reduction or exhaustion of the **Underlying Aggregate Limit** as described above and shall not drop down or otherwise make any payment for any reason including, but not limited to, uncollectability (in whole or in part) of the **Underlying Aggregate Limit**, existence of a sub-limit of liability in any **Underlying Policy**, or any Excess Policy containing terms and conditions different from the **Followed Policy**. The risk of uncollectability of the **Underlying Policies** (in whole or in part) whether because of financial impairment or insolvency of an **Underlying Insurer**, the application of any underlying sub-limit of liability or differing terms and conditions or for any other reason is expressly retained by the **Named Insureds** and is not in any way or under any circumstances insured or assumed by the **Insurer**.

IV. UNDERLYING LIMITS

It is a condition of this policy that the **Underlying Policies** shall be maintained in full effect with solvent insurers during the **Policy Period** except for any reduction or exhaustion of the **Underlying Aggregate Limits** contained therein by reason of **Loss** paid thereunder (as provided for in Clause III above). Failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, the **Insurer** shall be liable only to the extent that it would have been liable had the **Named Insureds** complied with such condition.

If during the **Policy Period** or any Discovery Period the terms, conditions, exclusions or limitations of the **Followed Policy** are changed in any manner, the **Named Insureds** shall as a condition precedent to their

rights under this policy give to the **Insurer** as soon as practicable written notice of the full particulars thereof. This policy shall become subject to any such changes upon the effective date of the changes in the **Followed Policy**, but only upon the condition that the **Insurer** agrees to follow such changes by written endorsement attached hereto and the **Named Insureds** agree to any additional premium and/or amendment of the provisions of this policy required by the **Insurer** relating to such changes. Further, such new coverage is conditioned upon the **Named Insureds** paying when due any additional premium required by the **Insurer** relating to such changes.

V. NOTICE OF CLAIM

The **Named Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice at the address indicated in Item 9 of the Declarations and all **Underlying Insurer(s)** of any claim made or circumstances that might give rise to a claim against the **Named Insureds**. Such written notice shall be provided to the **Insurer** in accordance with the terms and conditions of the **Followed Policy**.

If during the **Policy Period** or during the Discovery Period (if applicable) (i) written notice of a claim has been given to the **Insurer** as set forth in this Clause, or (ii) to the extent permitted by the terms and conditions of the **Followed Policy**, written notice of circumstances that might reasonably be expected to give rise to a claim, has been given to the **Insurer** and all **Underlying Insurer(s)**, then any claim which is subsequently made against the **Named Insureds** and reported to the **Insurer** and all **Underlying Insurer(s)** alleging, arising out of, based upon or attributable to the facts alleged in the claim or circumstances of which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the claim or circumstances of which such notice has been given, shall be considered made at the time notice of such claim or circumstances has been given to the **Insurer**.

The **Named Insureds** shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the **Insurer** of the following events as soon as practicable but in no event later than thirty (30) days after the **Named Insured** becomes aware of the event:

(i) Any **Underlying Policy** being canceled or non-renewed or otherwise ceasing to be in effect or being uncollectible (in part or in whole); or

(ii) Any insurer of any **Underlying Policy** being subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or being taken over by any regulatory authority; or

(iii) The **Named Insured** consolidating with or merging with or into, or transferring all or substantially all of its assets to, or acquiring or being acquired by any natural person or entity or group of natural persons and/or entities acting in concert.

VI. CLAIM PARTICIPATION

The **Insurer** shall have the right, in its sole discretion, but not the obligation to effectively associate with the **Named Insureds** in the defense and settlement of any claim that appears to the **Insurer** to be reasonably likely to involve the **Insurer**, including but not limited to effectively associating in the negotiation of a settlement. The **Named Insured** shall defend and contest any such claim. The **Named Insureds** shall give

the **Insurer** full cooperation and such information as it may reasonably require. The failure of the **Insurer** to exercise any right under this paragraph at any time shall not act as a waiver or limit the right of the **Insurer** in any manner to exercise such rights at any other time including the right to effectively associate in the negotiation of a settlement.

The **Insurer** does not under this policy assume any duty to defend. The **Named Insureds** shall not admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any Defense Costs without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to effectively associate in the defense and the negotiation of any settlement of any claim in order to reach a decision as to reasonableness.

VII. DISCOVERY CLAUSE

The **Named Insureds** shall be entitled to a Discovery Period (or extended reporting period) pursuant to the terms and conditions of the **Followed Policy**. The Discovery Period (or the extended reporting period) is not available unless the **Named Insured** has elected the Discovery Period (or Extended Reporting Period) in all **Underlying Policies** which have been canceled or non-renewed by their **Underlying Insurer(s)**. The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable.

VIII. CANCELLATION CLAUSE

This policy may be canceled by the **Named Insured** only by mailing written prior notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent at the address set forth in Item 10 of the Declarations and within the time period and in the manner set forth in the **Followed Policy**. This policy may also be canceled by or on behalf of the **Insurer** by delivering to the **Named Insured** or by mailing to the **Named Insured**, by registered, certified, or other first class mail, at the **Named Insured's** address set forth in the Declarations, written notice stating when, not less than the period set forth in Item 8 of the Declarations, thereafter the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender.

If this policy shall be canceled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium hereon.

If this policy shall be canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the premium hereon.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

IX. ARBITRATION

Any and all disputes arising under or relating to this policy, including its formation and validity, and whether between the **Insurer** and the **Named Insured** or any person or entity deriving rights through or asserting rights on behalf of the **Named Insured**, shall be finally and fully determined in Hamilton, Bermuda under the provisions of The Bermuda International Conciliation and Arbitration Act of 1993 (exclusive of the Conciliation Part of such Act), as may be amended and supplemented, by a Board composed of three arbitrators to be selected for each controversy as follows:

Either party to the dispute, once a claim or demand on its part has been denied or remains unsatisfied for a period of twenty (20) calendar days by the other party, may notify the other party of its desire to arbitrate the matter in dispute and at the time of such notification the party desiring arbitration shall notify the other party of the name of the arbitrator selected by it. The other party who has been so notified shall within ten (10) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire for arbitration shall fail or refuse to nominate the second arbitrator within ten (10) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of ten (10) calendar days, apply to the Supreme Court of Bermuda for the appointment of the second arbitrator and in such a case the arbitrator appointed by the Supreme Court of Bermuda shall be deemed to have been nominated by the party who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within ten (10) calendar days after the appointment of the second arbitrator choose a third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Arbitration Board for the controversy in question shall be deemed fixed.

The Arbitration Board shall fix, by a notice in writing to the parties involved, a reasonable time and place for the hearing and may in said written notice or at the time of the commencement of said hearing, at the option of said Arbitration Board, prescribe reasonable rules and regulations governing the course and conduct of said hearing.

The Board, shall, within ninety (90) calendar days following the conclusion of the hearing, render decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board.

Each party shall bear the expense of its own arbitrator. The remaining cost of the arbitration shall be borne equally by the parties to such-arbitration.

All awards made by the Arbitration Board shall be final and no right of appeal shall lie from any award rendered by the Arbitration Board. The parties agree that the Supreme Court of Bermuda: (i) shall not grant
leave to appeal any award based upon a question of law arising out of the award; (ii) shall not grant leave to make an application with respect to an award; and (iii) shall not assume jurisdiction upon any application by a party to determine any issue of law arising In the course of the arbitration proceeding, including but not limited to whether a party has been guilty of fraud.

All awards made by the Arbitration Board may be enforced in the same manner as a judgment or order from the Supreme Court of Bermuda and judgment may be entered pursuant to the terms of the award by leave from the Supreme Court of Bermuda.

No person or organization shall have any right under this policy to join the **Insurer** as a party to any action against the **Named Insureds** to determine the **Named Insureds'** liability, nor shall the **Insurer** be impleaded by the **Named Insureds** or their legal representatives. The **Insurer** and the **Named Insureds** agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the **Insurer** by any of the **Named Insureds'** other insurers in a jurisdiction or forum other than that set forth in this clause, the **Named Insureds** will in good faith take all reasonable steps requested by the **Insurer** to assist the **Insurer** in obtaining a dismissal of these claims (other than on the merits.) The **Named Insureds** will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the **Insurer** would have been liable to such insurers for indemnity or contribution pursuant to this policy. The **Named Insureds** shall be entitled to assert claims against the **Insurer** for coverage under this policy including, without limitation, for amounts by which the **Named Insureds** reduced judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the **Insurer** and the **Named Insureds** pursuant to this clause; provided, however, that the **Insurer** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers.

X. CHOICE OF LAW

This policy shall be construed and enforced in accordance with the internal laws of the State of New York (with the exception of the procedural law required by Clause IX, which shall be construed and enforced in accordance with the laws of Bermuda), except insofar as such laws may prohibit payment hereunder in respect of punitive damages; provided, however, that, notwithstanding any legal principles to the contrary, the warranties, terms, conditions, exclusions and limitations of this policy are to be construed in an evenhanded fashion between the **Named Insureds** and the **Insurer**. Without limitation, where the language of this policy is deemed to be ambiguous or otherwise unclear, the issues shall be resolved in the manner most consistent with the warranties, terms, conditions, exclusions and limitations viewed as a whole (without regard to authorship of the language and without any presumption or arbitrary interpretation or construction in favor of either the **Named Insureds** or the **Insurer**.)

XI. HEADINGS

The descriptions in the headings and any subheadings of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed by an Authorized Representative of Professional Lines.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT NO:	**1**
This endorsement, effective:	May 31, 2011
Policy number:	C007357/005
Issued to:	MF Global, Ltd
By:	Allied World Assurance Company, Ltd.

SPECIFIC EVENT EXCLUSION

It is understood and agreed that this policy is amended by adding the following:

This policy shall not cover any **Loss** or **Damages** in connection with:

(i) any of the claims, notices, events, investigations or actions referred to below (hereinafter **"Event"**);
(ii) the prosecution, adjudication, settlement, disposition, resolution or defense of any **Event** or any claims arising from any **Event**; or
(iii) any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any **Event**.

"Event" includes the following:

	Policy Year	**Discovery Date**	**Name**
(i)	2001/02	August 2001	Caixa/Borell
(ii)	2002/03	October 2002	Parabola/Tangent
(iii)	2003/04	October 2003	CCPM
(iv)	2003/04	October 2004	Man AHL Diversified
(v)	2004/05	December 2004	Man Glenwood Fund EU
(vi)	2004/05	March 2005	Phoenix
(vii)	2004/05	June 2005	AMF (French Regulator)
(viii)	2004/05	July 2005	Philadelphia Alternative Asset Management and the employment and activities of Thomas Gilmartin whilst employed by the insured.
(ix)	2006/07	April 2007	Gil Neihuas
(x)	2006/07	April 2007	Leaderguard

(xi)	2006/07	April 2007	IETE
(xii)	2007/2008	May 2007	Axiom Power International Inc
(xiii)	2007/2008	January 2008	William E. Amacker
(xiv)	2007/2008	March 2008	Wizzard Asset Management Inc.
(xv)	2007/2008	April 2008	Evan Dooley
(xvi)	2007/2008	April 2008	Joseph Saab
(xvii)	2007/2008	May 2007	Commodity Futures Trading Commission
(xviii)	2007/2008	May 2007	Clifden Futures
(xix)	2007/2008		German Retail Claims
(xx)	2007/2008		CME Group Disciplinary Proceedings

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Authorized Representative

ENDORSEMENT NO:	2
This endorsement, effective:	May 31, 2011
Policy number:	C007357/005
Issued to:	MF Global, Ltd
By:	Allied World Assurance Company, Ltd.

PRIOR NOTICE EXCLUSION

It is hereby understood and agreed that the **Insurer** shall not be liable for **Loss** in connection with any claim or claims made against the **Named Insured** alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative

ENDORSEMENT NO:	3
This endorsement, effective:	May 31, 2011
Policy number:	C007357/005
Issued to:	MF Global, Ltd
By:	Allied World Assurance Company, Ltd.

PENDING AND PRIOR LITIGATION EXCLUSION

It is hereby understood and agreed that the **Insurer** shall not be liable for **Loss** or **Damages** in connection with any claim or claims made against the **Insureds**:

(a) alleging, arising out of, based upon or attributable to any pending or prior litigation as of 19 July 1992, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN THE SAME.

Authorized Representative