

**MORRISON & FOERSTER LLP**

Brett H. Miller  
Melissa A. Hager  
Craig A. Damast  
1290 Avenue of the Americas  
New York, New York 10104  
Tel: (212) 468-8000  
Fax: (212) 468-7900

*Counsel for Louis J. Freeh,  
as Former Chapter 11 Trustee*

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

-----	X	
	:	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>MF GLOBAL HOLDINGS LTD., et al.,</b>	:	<b>Case No. 11-15059 (MG)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	
-----	X	

**SUPPLEMENT TO CHAPTER 11 TRUSTEE’S FINAL REPORT  
AND ACCOUNTING AND APPLICATION FOR COMPENSATION**

Louis J. Freeh (the “**Trustee**”), as the former chapter 11 trustee of MF Global Holdings Ltd. (“**Holdings Ltd.**”), MF Global Finance USA Inc. (“**FinCo**”), MF Global Capital LLC (“**Capital**”), MF Global FX Clear LLC (“**FX Clear**”), MF Global Market Services LLC (“**Market Services**”), and MF Global Holdings USA Inc. (“**Holdings USA**”, and collectively with Holdings Ltd., FinCo, Capital, FX Clear, and Market Services, the “**Debtors**”), pursuant to sections 326(a) and 330(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure, respectfully submits this supplement to the *Chapter 11 Trustee’s Final Report and Accounting and Application for Compensation* [Docket No. 1604] (together, the “**Final Report**”),<sup>1</sup> and states as follows:

### **BACKGROUND AND INTRODUCTION**

1. In the Final Report, the Trustee requested compensation in the additional amount of \$1,000,000 on account of services rendered in the Chapter 11 Cases during the Trustee Period pursuant to sections 326 and 330 of the Bankruptcy Code.<sup>2</sup> The Final Report indicated that the Trustee would file a supplement setting forth the legal authority in support of his request for compensation prior to the hearing to consider final fee applications in the Chapter 11 Cases.

---

<sup>1</sup> The Final Report is incorporated herein by reference. Unless otherwise defined, capitalized terms used herein have the meaning ascribed to them in the Final Report.

<sup>2</sup> The Trustee is not seeking reimbursement of expenses other than those requested and attributable to him in the Freeh Sporkin & Sullivan, LLP (“**FSS**”) and Pepper Hamilton LLP (“**Pepper**”) interim and final fee applications.

2. As set forth in more detail below and in the Final Report, the Trustee was essential and instrumental to the successful resolution of the Chapter 11 Cases, which collectively comprised the eighth largest bankruptcy in U.S. history and culminated in the confirmation of a chapter 11 plan of liquidation for the Debtors. At the time of the Trustee's appointment it was widely reported that the Debtors' creditors would not receive a recovery and that a customer shortfall of \$1.6 billion existed at MFGI. After approximately 18 months at the helm by the Trustee, however, the Debtors' creditors are expected to receive greater than \$1 billion in distributions and it is anticipated that customers of MFGI will be paid in full. The Trustee believes that his fee request is well within the range of reasonableness for lodestar adjustments given the size and complexity of the Chapter 11 Cases.

#### **BASIS FOR RELIEF**

3. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that "[a]fter notice ... and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee ... reasonable compensation for actual, necessary services rendered by the trustee ... and reimbursement for actual, necessary expenses." 11 U.S.C. §330(a)(1).

4. Section 330(a)(7) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326." 11 U.S.C. §330(a)(7).

5. Section 330(a)(3) of the Bankruptcy Code provides, in pertinent part, that "[i]n determining the amount of reasonable compensation to be awarded to ... trustee under chapter 11 ... the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including – (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of,

or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.” 11 U.S.C. §330(a)(3).

6. In a chapter 7 or 11 case, section 326(a) of the Bankruptcy Code imposes a limit on the reasonable compensation allowable to a trustee based upon a percentage of funds disbursed or turned over in the case by the trustee. Specifically, pursuant to section 326(a), “*the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee’s services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.*” 11 U.S.C. §326(a) (emphasis added).

7. Under section 326(a), as set forth in more detail in the Final Report, the maximum compensation allowable to the Trustee in the Chapter 11 Cases is \$3,975,358. The \$1,348,835.50 in aggregate compensation requested by the Trustee (*i.e.*, the \$348,835.50 of the Trustee’s billable time included in the FSS and Pepper interim and final fee applications plus the additional \$1,000,000), therefore, is significantly less than the maximum amount allowable to the Trustee under section 326(a).

8. Although section 326(a) of the Bankruptcy Code imposes a limit on the compensation that may be awarded to a trustee, section 330 of the Bankruptcy Code still requires that the amount of a trustee’s requested compensation be reasonable. *See In re The 1031 Tax*

*Grp., LLC*, No. 07-11448 (MG), 2009 WL 4806199, at \*1 (Bankr. S.D.N.Y. Dec. 9, 2009); *In re Brous*, 370 B.R. 563, 568-69 (Bankr. S.D.N.Y. 2007). Section 330 requires the court to consider the nature, the extent and the value of the services rendered, taking into account all relevant factors, including those set forth in section 330(a)(3). *See* 11 U.S.C. §330(a)(3); *In re Drexel Burnham Lambert Grp., Inc.*, 133 B.R. 13, 24 (Bankr. S.D.N.Y. 1991).

9. In determining the reasonableness of a trustee's fee, bankruptcy courts engage in a "lodestar" analysis. *See 1031 Tax Grp.*, 2009 WL 4806199, at \*1; *Brous*, 370 B.R. at 570; *In re Jones*, 374 B.R. 506, 509 (Bankr. E.D.N.Y. 2007). A lodestar analysis consists of two steps. *See 1031 Tax Grp.*, 2009 WL 4806199, at \*2 (citing *Pennsylvania v. Del. Valley Citizens' Counsel for Clean Air*, 478 U.S. 546, 562 (1986)). First, courts calculate a lodestar amount as a guide to determine what fee is reasonable under the circumstances by multiplying the reasonable number of hours expended by the reasonable billing rate. *Wells v. Bowen*, 855 F.2d 37, 43 (2d Cir. 1988); *1031 Tax Grp.*, 2009 WL 4806199, at \*2 (citing *Masterwear Corp. v. Angel & Frankel, P.C. (In re Masterwear Corp.)*, 233 B.R. 266, 277 (Bankr. S.D.N.Y. 1999)). Courts then determine whether any adjustment to this amount is warranted under the twelve factors announced by the court in *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 717-720 (5th Cir. 1974): (1) the time and labor required for the matter; (2) the novelty and difficulty of the questions presented; (3) the skill needed to perform the services appropriately; (4) the preclusion of the professional from taking other cases by working on the matter; (5) the customary fee involved in similar instances; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client; (8) the sums involved and the results obtained; (9) the experience and ability of the employed professional; (10) whether the case is "desirable" or not; (11) the length of the relationship between the professional and the client; and (12) what awards

were granted in similar cases. *See 1031 Tax Grp.*, 2009 WL 4806199, at \*2 (citing *Connolly v. Harris Trust Co. (In re Miniscribe Corp.)*, 309 F.3d 1234, 1244 (10th Cir. 2002)); *Brous*, 370 B.R. at 570. Courts have held that enhancement of the lodestar amount is proper only in rare and exceptional cases. *See 1031 Tax Grp.*, 2009 WL 4806199, at \*2 (citing *In re Northwest Airlines Corp.*, 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) (citing *Brous*, 370 B.R. at 570)).

**THE TRUSTEE'S REQUESTED COMPENSATION, INCLUDING ENHANCEMENT OF THE LODESTAR AMOUNT, IS JUSTIFIED AND WARRANTED**

10. Using the customary lodestar calculation of multiplying the reasonable time expended by the Trustee on the Chapter 11 Cases (436.9 hours)<sup>3</sup> by the Trustee's reasonable billing rate (\$800.00 per hour), the Trustee would be entitled to fees of \$348,835.50.<sup>4</sup> The Trustee seeks a final allowance of compensation of \$1,000,000 in addition to that sum, which is significantly less than the \$3,975,358 maximum amount allowable to the Trustee under section 326(a) of the Bankruptcy Code. In order to determine whether the Trustee's requested compensation, including enhancement of the lodestar amount, is warranted, this Court should look to section 330 of the Bankruptcy Code and the *Johnson* factors. *1031 Tax Grp.*, 2009 WL 4806199, at \*2 (citing *Brous*, 370 B.R. at 570-71); *see also Northwest Airlines*, 382 B.R. at 645.

11. With \$41 billion in book value of assets at the time of filing, MF Global was the largest bankruptcy filing of 2011 and the eighth largest in U.S. history. Within a month of the filing of the Holdings Ltd. and FinCo chapter 11 cases, the Trustee was appointed as

---

<sup>3</sup> The Trustee's time records during the Trustee Period, which list the dates on which services were performed, the amount of time expended performing the services, and the nature of the services performed, are attached as exhibits to the FSS and Pepper interim and final fee applications and incorporated herein by reference. Likewise, the Trustee incorporates by reference the certification of David B. Stratton (a partner of Pepper) attached as Exhibit A to Pepper's final fee application (*see* Docket No. 1577) in respect of compliance with General Order M-447, Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, effective as of January 29, 2013.

<sup>4</sup> This amount was included in the FSS and Pepper interim and final fee applications.

chapter 11 trustee. The Chapter 11 Cases, together with the SIPA liquidation of MFGI and the liquidation proceedings of various other affiliates of the Debtors, involved the wind-down of a complex global operation and the realization of value from the various entities comprising the MF Global Group, many of which were/are in their own administration or liquidation proceedings domestically and abroad.

12. As set forth in more detail in the Final Report, during the Trustee Period, the Trustee performed a variety of services and managed many tasks that were critical to the successful resolution of the Chapter 11 Cases. At the time of the Trustee's appointment, many believed that creditors of the Debtors would receive no recovery and that a customer fund shortfall of \$1.6 billion existed at MFGI. After approximately 18 months at the helm by the Trustee, however, the Debtors' creditors ultimately are expected to receive distributions in excess of \$1 billion and it is believed that customers will be paid in full. Below is a non-exclusive list of the services and tasks performed and/or managed by the Trustee in the Chapter 11 Cases that will facilitate such distributions:

a. The Trustee engaged in negotiations with the SIPA Trustee appointed in the liquidation of MFGI and the Special Administrators of MF Global U.K. Ltd. regarding the settlement of claims between and among the respective estates. Ultimately, the resolution of these claims (including customer and general claims, subordinated claims and intercompany claims), referred to as the "global settlement", resolved billions of dollars of claims by the Debtors against their affiliates and subsidiaries and provided for the immediate return of over \$30 million to the Debtors' estates without the delays and costs of litigation which could have substantially delayed and reduced recoveries to creditors;

- b. The Trustee worked with his professionals to secure over \$21 million in tax refunds on an expedited basis;
- c. The Trustee led his professionals in an investigation of the acts, conduct, assets, liabilities, potential causes of action, and financial condition of the Debtors, with a focus on the facts and circumstances surrounding the Debtors' precipitous downfall, as required by section 1106(a)(3) of the Bankruptcy Code. The investigation included a review of hundreds of thousands of documents and other materials, interviews with current and former employees and members of the Holdings Ltd. board of directors, and discussions with third parties with knowledge of the situation;
- d. The Trustee caused his counsel to prepare a complaint against certain former officers of the Debtors, seeking damages in an amount to be determined at trial for breaches of the fiduciary duties of care, loyalty and oversight [Docket No. 1350]<sup>5</sup>; and
- e. The Trustee reviewed, analyzed, and determined to join as a co-proponent of, a joint plan of liquidation filed by an *ad hoc* group of the Debtors' lenders. The Second Amended and Restated Plan (which reflected significant input from and revisions by the Trustee and his professionals) was confirmed by this Court on April 5, 2013 and went effective on June 4, 2013.<sup>6</sup>

13. For many months subsequent to the Trustee's appointment, there was no guarantee that the Chapter 11 Cases would be administratively solvent. Indeed, it was not until

---

<sup>5</sup> The Trustee believes that such damages could be in excess of \$1 billion.

<sup>6</sup> The Trustee performed a litany of other services and managed many other tasks during the Trustee Period which are set forth in detail in the Final Report and are not repeated herein. See Final Report, ¶¶ 13-15.

December 2012 -- over one year after the Trustee's appointment -- that there were sufficient funds in the Debtors' estates to pay professionals a *pro rata* portion of their fees on an interim basis. Not only did the Chapter 11 Cases turn out to be administratively solvent, but due in large part to the dedication, determination and hard work of the Trustee, over \$1 billion in distributions to creditors are expected. Although there was no *per se* time limitation imposed to wind-down the Debtors' operations and liquidate the Debtors' assets, in light of the public scrutiny of the Chapter 11 Cases and the SIPA liquidation of MFGI, as well as the public pressure to return customer property to customers of MFGI and make distributions to the Debtors' creditors, the Trustee endeavored to effectuate the wind-down and liquidation as expeditiously as possible. In large part due to the Trustee's efforts, the Debtors' chapter 11 plan of liquidation was confirmed less than 18 months after the Trustee's appointment.

14. The Trustee submits that this case is exactly the type of rare and exceptional case for which an upward adjustment of the lodestar amount is justified and warranted. In light of the novelty, magnitude and complexity of the Chapter 11 Cases and the nature of the services provided by the Trustee during the Trustee Period -- as described herein and in greater detail in the Final Report -- the Trustee believes that an award of compensation in the amount requested is fair, reasonable and appropriate under the circumstances. The Trustee's background, record and reputation brought instant credibility and the necessary skill to an extremely difficult set of circumstances, and added significant value to the Chapter 11 Cases that cannot be quantified. The services provided by the Trustee and the tasks he managed were instrumental in allowing him, the SIPA Trustee, and the Special Administrators to negotiate and achieve the "global settlement", which was one of the critical foundations for the plan of

liquidation ultimately confirmed in the Chapter 11 Cases that will enable creditors and other stakeholders of the Debtors to receive the quickest and best possible recovery.

15. In *1031 Tax Group*, this Court approved an upward revision of just under \$1 million to a chapter 11 trustee's base lodestar calculation. See *1031 Tax Grp.*, 2009 WL 4806199, at \*4.<sup>7</sup> Similarly, in *Miniscribe*, the Tenth Circuit approved a bankruptcy court's upward revision of a chapter 7 trustee's base lodestar calculation by approximately \$1.1 million. See *Miniscribe*, 309 F.3d at 1239, 1245-46.<sup>8</sup> The \$1,000,000 enhancement of the lodestar amount requested by the Trustee here is right in line with the enhancement amounts approved in *1031 Tax Group* and *Miniscribe* and is warranted given the size, complexity and notoriety of the Chapter 11 Cases and the greater than \$1 billion in expected distributions to the Debtors' creditors.

16. In addition, the Trustee required that all of his retained professionals, as well as himself, take a 10% discount on their fees during the Chapter 11 Cases. This discount resulted in total savings to the Debtors' estates of approximately \$5 million. Moreover, as noted, the aggregate compensation requested by the Trustee is significantly less than the maximum amount allowable to the Trustee under section 326(a) of the Bankruptcy Code.

17. No prior awards of compensation to the Trustee have been applied for or paid and no prior application for the relief sought in the Final Report and herein has been made

---

<sup>7</sup> The trustee's final fee application in *1031 Tax Group* indicates that at the time of the trustee's appointment the estate was administratively insolvent (with approximately \$7.9 million in cash on hand and \$12 million in administrative expenses), but distributions in the case were expected to be \$79 million. See *In re The 1031 Tax Group, LLC, et al.*, Case No. 07-11448 (MG) (Bankr. S.D.N.Y.), Docket No. 1888.

<sup>8</sup> In *Miniscribe*, the estate was administratively insolvent at the time of the trustee's appointment (with approximately \$150,000 in cash on hand and \$20 million in administrative expenses), but the trustee recovered approximately \$97 million and reduced the claims pool from \$900 million to \$168 million. See *Miniscribe*, 309 F.3d at 1237.

to this or any other Court other than the amounts previously awarded and paid to FSS and Pepper attributable to the Trustee's billable time.

18. No agreement or understanding exists between the Trustee or any other person or entity for the sharing of compensation to be received for services rendered in connection with the Chapter 11 Cases.

WHEREFORE, the Trustee requests (a) a final award of compensation of \$1,000,000 in addition to the amount of the Trustee's billable time included in the FSS and Pepper interim and final fee applications and (b) such other and further relief as this Court may deem proper.

Dated: August 20, 2013  
New York, New York

/s/ Louis J. Freeh  
**LOUIS J. FREEH, AS FORMER  
CHAPTER 11 TRUSTEE**

/s/ Brett H. Miller  
**MORRISON & FOERSTER LLP**  
Brett H. Miller  
Melissa A. Hager  
Craig A. Damast  
1290 Avenue of the Americas  
New York, New York 10104  
Tel: (212) 468-8000  
Fax: (212) 468-7900

*Counsel for Louis J. Freeh,  
as Former Chapter 11 Trustee*