

HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of MF Global Inc.

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

In re MF GLOBAL HOLDINGS LTD., et al Debtors.
In re MF GLOBAL INC., Debtor.

Chapter 11

Case No. 11-15059 (MG)

(Jointly Administered)

Case No. 11-2790 (MG) SIPA

**TRUSTEE’S RESPONSE TO THE PLAN ADMINISTRATOR’S OBJECTION TO
THE MOTION OF THE INDIVIDUAL INSUREDS TO MODIFY THE AUTOMATIC
STAY AND THE PLAN INJUNCTION SO AS TO EXTEND THE “SOFT CAP” ON
THE USE OF THE PROCEEDS OF CERTAIN MFG ASSURANCE COMPANY
POLICIES OF PROFESSIONAL LIABILITY INSURANCE.**

James W. Giddens (the “Trustee”), as trustee for the liquidation of the business of MF Global Inc. (“MFGI”) under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. §§ 78aaa *et. seq.*, (“SIPA”) by and through his undersigned counsel, respectfully submits this response in reply to the Plan Administrator’s Objection (the “Objection”) to the Motion of the Individual Insureds to Modify the Automatic Stay and the Plan Injunction so as to extend the “Soft Cap” on the Use of the Proceeds of certain MFG assurance Company Policies of Professional Liability Insurance (the “Motion”).

STATEMENT

1. Consistent with the Court's previous statements encouraging the consensual resolution of disputes regarding the "soft cap," the Trustee endeavored to participate in a stipulated resolution of the issues raised by the Motion. The Trustee was and remains motivated to reach a solution consistent with applicable law which would avoid the wasting of estate resources in collateral litigation and best encourage parties to continue settlement discussions to resolve the MDL,¹ if at all possible. To this end, and in furtherance of his statutory duties to all creditors, the Trustee simply agreed, without prejudice to the Trustee's ultimate interest in the proceeds of the E&O Policies, not to oppose as unreasonable a proposed increase in the soft cap if accompanied by increased reporting regarding the amounts invoiced by the Defendants that are to be satisfied by the soft cap.

2. The Plan Administrator somewhat overstates the Trustee's position. The Trustee simply agreed to allow the Defendants to represent that he would not oppose as unreasonable a request for a final cap of \$7.5 million with increased reporting requirements. This statement scarcely qualifies as an endorsement or recommendation of that figure on which the Court would place great weight to the exclusion of all others should compelling arguments for a lower figure be presented by other interested parties; nor was it intended to bind any other party in interest.²

3. The Trustee acknowledges the Plan Administrator's substantial creditor interest and works closely with and keeps the Plan Administrator's counsel informed of

1. The MDL is a consolidated action captioned *DeAngelis v. Corzine*, No. 11-cv-7866 (S.D.N.Y.).

2. The Plan Administrator may disagree with the Trustee's assessment of the benefits and risks, but there was no lack of communication between the Plan Administrator and the Trustee regarding the issues raised by the Motion. Contrary to the assertions in the Plan Administrator's papers, the Trustee's counsel provided updates to the Plan Administrator's counsel throughout their discussions with the Defendants and Insurers, including sharing in advance the limited statement on the Trustee's behalf contained in the Motion.

significant matters. Nevertheless, the Trustee has a fiduciary duty to all 1300 creditors of the MFGI estate established by statute. *See* 15 U.S.C. § 78fff-1(b) (“[a SIPA trustee] shall be subject to the same duties as a trustee in a case under chapter 7 of title 11.”); *Kusch v. Mishkin (In re Adler, Coleman Clearing Corp.)*, No. 95-08203 (JLG) 1998 Bankr. LEXIS 1076, at *47-51 (Bankr. S.D.N.Y. Aug. 24, 1998), *aff’d*, 208 F.3d 202 (2d Cir. 2000) (“[A SIPA Trustee’s] primary duty is not to any individual creditor or even any particular class of creditors, but to the estate as a whole.”); *see also Germain v. Connecticut National Bank*, 988 F.2d 1323, 1330 n.7 (2d Cir. 1993) (chapter 7 trustee “is an officer of the court and owes a fiduciary duty both to the debtor and to the creditors as a group.”)

4. The Plan Administrator also mischaracterizes and minimizes SIPC’s continued and important role in the SIPA Proceeding. SIPC supervises the Trustee in all aspects of the SIPA Proceeding in close cooperation with the Securities and Exchange Commission. The independence of the Trustee and his fiduciary duties – and SIPC’s oversight – does not end with the satisfaction of customer claims. Instead, SIPC continues its oversight function, fulfilling the role normally played by the U.S. Trustee or a creditors’ committee. Consistent with SIPC’s continuing role in this proceeding is the fact that there is no role even for a creditors’ committee at any stage of a SIPC liquidation, as this court confirmed earlier in the proceeding. *See In re MF Global Inc.*, 462 B.R. 36, 37-42 (Bankr. S.D.N.Y. 2011). SIPC’s expertise, as well as that of the Securities and Exchange Commission with which it cooperates, is obviously material to many aspects of a SIPA liquidation beyond the customer claims process, and SIPC and the regulators take their continued oversight roles seriously, as Congress intended. *See* 15 U.S.C. 78eee(d) (“SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have

intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.”)

5. The Trustee shares the Plan Administrator’s and Class Counsel’s frustrations with the rate at which defense fees are generated by the scorched earth defense and boundless discovery requests of the Defendants in the MDL. The Trustee supports any resolution of the soft cap issues that involves a final cap no higher than \$7.5 million and the sharing of information about allocation or other facts that will facilitate getting to an appropriate number. The Trustee hopes that such a resolution will facilitate the settlement discussions in the MDL.

HUGHES HUBBARD & REED LLP

By: /s/ James B. Kobak, Jr.
James B. Kobak, Jr.
Christopher K. Kiplok
Vilia B. Hayes
Dustin P. Smith
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: kobak@hugheshubbard.com

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