

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

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In re:	: Chapter 11
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MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	: Case No. 11-15059 (MG)
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Debtors.	: (Jointly Administered)
	:
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_____	x
	:
In re	:
	:
MF GLOBAL INC.,	: Case No. 11-02790 (MG) SIPA
	:
Debtor.	:
	:
_____	x

**CERTAIN ADVANCES OF DEFENSE COSTS UNDER
CERTAIN ERRORS AND OMISSIONS INSURANCE POLICIES**

The Court, having received briefing and heard argument on 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” - Case No. 11-15059, ECF No. 2039) hereby enters this Order concerning advances of defense costs under insurance policies issued by MFG Assurance Company Limited (“Assurance”).

WHEREAS, by its April 25, 2012 Order Lifting Automatic Stay To Permit Payments Of Defense Costs Under Certain Insurance Policies (the “Initial Order” – Case No. 11-15059, ECF Docket No. 652), this Court modified the automatic stay under 11 U.S.C. § 362(a) (the “Stay”), to the extent applicable, to permit Assurance and U.S. Specialty Insurance Company (together with Assurance, the “Insurers”) to advance and/or make payments under certain insurance

policies for defense costs incurred by insured individuals in connection with pending lawsuits, investigations and disputes, as well as any additional matters that may arise in the future, subject to the Insurers' determination that such matters are potentially covered under the respective insurance policies and subject to the reservation of rights issued in respect of any claims;

WHEREAS, pursuant to the Initial Order, Assurance was authorized to advance defense costs under a tower of professional liability policies issued by it to MF Global Holdings Ltd. for the period May 31, 2011 to May 31, 2012 (the "E&O Policies");¹

WHEREAS, the Initial Order subjected the aggregate advances and/or payments permitted under the E&O Policies and certain other directors and officers liability policies (the "D&O Policies") and together with the E&O Policies, the "Policies") to a "soft cap" of \$30 million, which could be further adjusted either by agreement among James W. Giddens, Trustee for the SIPA Liquidation of MF Global, Inc. (the "Trustee"), the then-Chapter 11 Trustee for MF Global Holdings, Ltd., and the Insurers, or by further order of this Court;

WHEREAS, the Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code for MF Global Holdings Ltd., MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc. was filed with this Court on April 1, 2013 (as amended, supplemented or modified from time to time, the "Plan") and confirmed pursuant to an order of the Court entered on April 5, 2013 (the "Confirmation Order"), except with respect to certain Plan modifications, which were approved by order of this Court entered on May 2, 2013 (together with the Confirmation Order, the "Plan Confirmation Order");

¹ The E&O Policies bear the policy numbers, 1-18001-00-11, 1-18002-00-11, 18003-00-11, 1-18004-00-11, 1-18005-00-11, 1-18005-01-11, 1-18006-00-11, 1-18009-00-11, 1-18010-00-11, 1-18011-00-11, 1-18011-01-11, and 1-18012-00-11.

WHEREAS, the Plan and the Plan Confirmation Order provide for the establishment of the Plan Administrator, as defined in the Plan, with duties and responsibilities as set forth in the Plan;

WHEREAS, this Court's May 30, 2014 Order To Lift The Automatic Stay To Permit Payments Of Defense Costs Under Certain Insurance Policies (the "Second Order" - Case No. 11-15059, ECF Docket No. 1901) recognized that the Plan Administrator now acts on behalf of MF Global Holdings Ltd. in connection with the instant matter and bound it to the Initial Order and Second Order;

WHEREAS, the Second Order further modified the Stay to increase the initial "soft cap" to \$40 million plus an additional \$3.8 million to advance and/or pay for defense costs incurred by individual insureds who never were or no longer are defendants in any litigation, resulting in a total "soft cap" of \$43.8 million, which could be further adjusted either by agreement among the Trustee, the Plan Administrator, and the Insurers (which now included XL Specialty Insurance per the Second Order) or by further order of this Court;

WHEREAS, as a result of the Court's September 4, 2014 Memorandum Opinion and Order, the proceeds of the D&O Policies, except as to \$13.06 million of coverage, are not subject to the "soft cap";

WHEREAS, the Motion sought further modification of the Stay, to the extent necessary, to extend the "soft cap" so that Assurance could make further advances of defense costs under the E&O Policies; and

WHEREAS, the Court directed the parties to settle an order that provided for advances of defenses costs to the extent of invoices outstanding currently while the Court considers further relief in connection with the Motion.

NOW, THEREFORE in consideration of the foregoing, it is hereby ORDERED:

1. Solely with respect to the E&O Policies, the “soft cap” shall be increased in the amount of \$1,810,898.73 so that Assurance may make further advances of defense costs under the E&O Policies on account of invoices currently outstanding from the individual insureds.

2. All invoices submitted by individual insureds shall continue to be carefully monitored and reviewed by the Insurers prior to making any payments.

3. Nothing herein shall prejudice the current or future position of the Trustee, the Plan Administrator, any Insurer, or any individual insured, and the parties reserve all rights, including with respect to (i) the lifting or modifying of the “soft cap”; (ii) the allocation of defense costs as between or among the Policies; or (iii) the appropriateness of any obligation on any of the Insurers, or of any restriction on the operation of any one or more of the Policies.

4. Further adjustments, if any, to the “soft cap” as it relates to the E&O Policies shall be made only by agreement among the Trustee, the Plan Administrator, and Assurance, or by further order of this Court.

5. Nothing herein shall constitute an admission by the Trustee, the Plan Administrator, any Insurer or any individual insured that the proceeds of the E&O Policies are or are not property of the debtors’ estates.

6. Assurance shall continue to be subject to the reporting requirements set out in the Initial Order. No further disclosure relating to advances or payments under the Policies shall be required without further order of the Court, with respect to which all parties reserve their rights.

7. Any and all such advancements by Assurance pursuant to this Order shall reduce the E&O Policies’ respective limits of liability, according to the amount paid under each such

E&O Policy, in a like amount to the extent permitted under the terms and conditions of such E&O Policy, unless or until such amounts are repaid to Assurance.

8. Nothing herein shall constitute (i) a waiver, modification or limitation of the Trustee's, the Plan Administrator's, the Insurers' or any insured's reservation of any of their respective rights, remedies and defenses under the E&O Policies and otherwise, (ii) a waiver, modification or limitation of any of the terms or conditions of any E&O Policy, (iii) a waiver, modification or limitation of either of the debtor's rights under the E&O Policies and otherwise, or (iv) a finding that sums are due and owing, or in what amount, under the E&O Policies.

9. Nothing herein shall modify the Consent Order Authorizing the Payment and Reimbursement of Defense Costs by MFG Assurance Company Limited, and Granting Related Relief (Case No. 11-15059, ECF No. 535).

10. Except as stated expressly herein, nothing herein shall modify either of Initial Order or the Second Order.

11. This Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation.

12. The 14-day stay pursuant to Fed. R. Bankr. Proc. 4001(a) is hereby waived.

IT IS SO ORDERED.

Dated: December 24, 2014
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge