

Hearing Date & Time: 12/21/2011 at 1:30 pm

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

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	:	
In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
	:	
	:	(Joint Administration Requested)
Debtors.	:	
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**MOTION FOR AN INTERIM ORDER (I) AUTHORIZING, BUT NOT REQUIRING,
THE TRUSTEE TO PAY PREPETITION EMPLOYEE COMPENSATION AND
EXPENSE REIMBURSEMENTS; AND (II) CONFIRMING THAT THE TRUSTEE IS
ABLE TO PAY WITHHOLDING AND PAYROLL-RELATED TAXES**

Louis J. Freeh, Esq., Chapter 11 Trustee (the “Trustee”)¹ of MF Global Holdings Ltd. and MF Global Finance USA Inc. (the “Initial Debtors”), submits this motion (the “Motion”) on behalf of MF Global Capital LLC, MF Global FX Clear LLC and MF Global Market Services LLC (the “New Debtors”, and together with the Initial Debtors, the “Debtors”)² for an order under sections 105, 363(b), 507(a), 541, 1107(a), and 1108 of title 11 of the United States Code, as amended (the “Bankruptcy Code”), (I) authorizing, but not requiring, the Trustee to pay or otherwise honor prepetition amounts owing to or for the benefit of current and former employees of the New Debtors for compensation and reimbursable expenses, including, without limitation,

¹ The Trustee, to the best of his ability, as the prime fiduciary of the Initial Debtors and operator of the Initial Debtors’ businesses, and pursuant to 11 U.S.C. §§ 1106 and 1107 and the United States Department of Justice Chapter 11 Trustee Handbook, must protect and preserve the assets of the Debtors. It is, therefore, his duty to act on behalf of the New Debtors, as the fiduciary of their parent entity, to protect and preserve these assets. Moreover, the Debtors, by a motion simultaneously herewith, have sought the application of the Order to Appoint a Chapter 11 Trustee (Docket No. 156) in the Initial Debtors’ cases to their cases.

² The following U.S. subsidiaries and affiliates (along with the last four digits of each of their federal taxpayer identification numbers) have filed petitions for relief concurrently herewith and have requested joint administration with MF Global Holdings Ltd. (11-15059): MF Global Capital LLC (2825), MF Global FX Clear LLC (3678) and MF Global Market Services, LLC (2193).

any prepetition claims owing under employee-related plans, programs and policies as necessary to ensure the delivery of compensation, benefits and expense reimbursements to their employees; and (II) confirming that the Trustee, as fiduciary of the Initial Debtors, is permitted to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other fiduciary and regulatory obligations relating to prepetition periods. In support of this Motion, the Trustee relies upon and incorporates by reference the Declaration of Laurie R. Ferber Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and Various First-Day Applications and Motions (the "Ferber Declaration"). In further support of this Motion, the Trustee represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363(b), 507(a), 541, 1107(a), and 1108 and Rule 6003 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules").

BACKGROUND

3. On October 31, 2011 (the "Initial Debtors' Petition Date"), the Initial Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of New York. On November 2, 2011, this Court entered an order directing the joint administration of the Initial Debtors' chapter 11 cases (Docket No. 19).

4. On November 7, 2011, the United States Trustee (the “U.S. Trustee”) appointed the statutory creditors’ committee (the “Statutory Creditors’ Committee”) in the Initial Debtors’ cases.

5. The Statutory Creditor’s Committee and the Initial Debtors, on November 21, 2011, jointly moved the Court for an order directing the U.S. Trustee to appoint a chapter 11 trustee (Docket No. 131), which the Court entered on November 22, 2011 (Docket No. 156).

6. On November 25, 2011, the U.S. Trustee filed the Application for Order Approving Appointment of Chapter 11 Trustee (Docket No. 169).

7. On November 28, 2011, the Court entered the Order Approving the Appointment of Chapter 11 Trustee (Docket No. 170), pursuant to which the Trustee was appointed.

8. On the date hereof (the “New Debtors’ Petition Date”, and together with the Initial Debtors’ Petition Date, the “Petition Dates”), the New Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

9. The factual background regarding the New Debtors, including their prior business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in the Ferber Declaration filed concurrently herewith and fully incorporated herein by reference.³

RELIEF REQUESTED

10. By this Motion, the Trustee, as fiduciary of the Initial Debtors, requests the entry of an order substantially in the form annexed hereto as Exhibit A (the “Order”), under Bankruptcy Code sections 105, 363(b), 507(a), 541, 1107(a), and 1108, and

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Ferber Declaration.

Bankruptcy Rule 6003, authorizing, but not requiring, the Trustee, as fiduciary of the Initial Debtors, to pay, continue, or otherwise honor various prepetition employee-related obligations of the New Debtors (collectively, the “Prepetition Employee Obligations”) to or for the benefit of their Employees (defined below), for compensation and expense reimbursements under all plans, programs and policies maintained or contributed to, and agreements entered into, by the New Debtors prior to the New Debtors’ Petition Date (the “Benefit Programs”).

11. In addition, the Trustee, as fiduciary of the Initial Debtors, seeks authority to continue during the postpetition period, with respect to payroll processing and administration of any Benefit Programs and Prepetition Employee Obligations that are administered or paid through a third-party administrator or provider and be expressly authorized to pay any prepetition claims of such administrators in the ordinary course of business to insure the uninterrupted delivery of payments or other benefits to the Employees.

12. Specifically, (a) under Bankruptcy Code sections 105(a) and 363(b)(1), the Trustee, as fiduciary of the Initial Debtors, requests that he be authorized, but not directed, to pay, in his discretion, any obligations arising under the Benefit Programs which were accrued or incurred but unpaid as of the Petition Dates; and (b) under Bankruptcy Code section 363(c)(1), the Trustee, as fiduciary of the Initial Debtors, requests that the Court confirm his right to continue each of the Benefit Programs in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Benefit Programs were in effect immediately prior to the filing of these cases and to make payments in connection with expenses incurred in the administration of any Benefit Program.

13. The Benefit Programs under which the Prepetition Employee Obligations arise include, without limitation, plans, programs, policies and agreements providing for (a)

wages, salaries, contractual compensation, and other accrued or incurred compensation, (b) reimbursement of Employee business expenses, and (c) workers' compensation obligations. Moreover, although such funds are not property of the Debtors, out of an abundance of caution the Trustee, as fiduciary of the Initial Debtors, also seeks confirmation that he is permitted to pay amounts withheld from Employees' pre-tax compensation for investment in a 401(k) plan.⁴

14. By this Motion, the Trustee, as fiduciary of the Initial Debtors, seeks authorization, but not direction, to pay any unpaid compensation owed to Employees; provided that no individual Employee shall receive payment in excess of \$11,725 for such prepetition amounts owed. As part of the foregoing relief, in the event the Court authorizes the Trustee, as fiduciary of the Initial Debtors, to pay the Prepetition Employee Obligations, he also seeks confirmation that he is permitted, but not required, to pay any and all local, state, and federal withholding and payroll-related taxes relating to prepetition periods, including but not limited to, all withholding taxes, Social Security taxes, Medicare taxes, and other employee contributions, whether withheld from employees' wages or paid directly by the Trustee, as fiduciary of the Initial Debtors, to governmental authorities (collectively, the "Employment and Withholding Taxes"). In addition, the Trustee, as fiduciary of the Initial Debtors, seeks confirmation that he is permitted to pay to third parties any and all amounts deducted from Employee paychecks for payments on behalf of Employees for garnishments, support payments, tax levies, bankruptcy payments, savings programs, benefit plans, insurance programs, and other similar programs.

15. By seeking the authorization requested herein, it should not be presumed that the Trustee, as fiduciary of the Initial Debtors, has determined, as of this time, which

⁴ Prior to the Petition Dates, the Debtors' 401(k) Plan had an employer matching contribution component. To be clear, the Trustee seeks only to pay amounts that were withheld from Employees' compensation and does not seek authority to pay amounts for or otherwise continue the employer's matching contributions.

Employee Obligations he will pay or honor, nor should any party rely on this Motion as to the existence or validity of any specific claim or the continued availability of any benefit or for any other purpose. The Trustee, as fiduciary of the Initial Debtors, reserves all of his rights in this regard.

BASIS FOR RELIEF

16. Prior to the Initial Debtors' Petition Date, the Company employed approximately 2,870 employees world-wide. Approximately 250 of those employees were employed by the Debtors, twenty-nine (29) (the "Employees") of whom were employed by the New Debtors. There have been significant reductions in force at both the Company and the Debtors between the Initial Debtors' Petition Date and the date of this Motion in connection with the discontinuation of the Debtors' operations and the wind-down of their affairs. As of the New Debtors' Petition Date, all domestic MF Global subsidiaries and affiliates employ approximately 240 employees,⁵ of whom approximately six (6) are Employees of the Debtors and of those six (6), two (2) are Employees of the New Debtors. The New Debtors, on behalf of the Employees, have incurred certain Prepetition Employee Obligations that remain unpaid as of the Petition Dates.

A. Prepetition Employee Obligations

17. Wages, Salaries, and Other Compensation. All of the Debtors' Employees are salaried workers. In the ordinary course of business, the Debtors' Employees are paid semi-monthly on the fifteenth and last day of each month. If these dates fall on a weekend or holiday, Employees are paid on the first preceding business day. The Debtors' last pay date for all their

⁵ The majority of these Employees, approximately 200, work for MF Global Inc. and the SIPA Trustee in relation to the wind down proceeding of that entity.

Employees prior to filing the New Debtors' chapter 11 cases was on December 15, 2011.

Therefore, the Trustee estimates that the gross prepetition wages due to the New Debtors' Employees is approximately \$1,244.⁶ By this Motion, the Trustee is seeking authorization, but not direction, to pay any unpaid wage compensation owed to Employees; provided that no individual Employee shall receive total compensation payments in excess of \$11,725 for such prepetition amounts owed.

18. Business Expense Reimbursement. The Debtors customarily reimburse Employees who incur business expenses in the ordinary course of performing their business duties on behalf of the Debtors, provided that such expenses satisfy the standards and guidelines of the Company's applicable expense reporting policy. Employees submit reimbursable business expenses to accounts payable under the Company's Travel Policy, Tuition Reimbursement Policy, or for other legitimate business expenses incurred on behalf of the Company (collectively, the "Reimbursement Obligations"). As of the New Debtors' Petition Date, approximately \$12,469 in qualified expenses remain outstanding and unreimbursed, to 10 Employees with no single Employee's claim larger than \$4,000.⁷ The Trustee believes that Employees de minimis amount of qualified expenses may be outstanding.

19. The Trustee, as fiduciary of the Initial Debtors, is seeking authority, but not direction, under the Interim Order to pay Reimbursement Obligations for individual business expenses that were incurred in accordance with applicable Company policy, subject in each case to compliance with all applicable Company business expense reimbursement policies.

⁶ With respect to the Initial Debtors, the Debtors believe there are no outstanding prepetition amounts due on account of salaries.

⁷ To be clear, the Trustee does not seek authorization to pay Reimbursement Obligations for which the Debtors' Employees would not be personally liable to third parties.

20. Workers' Compensation Obligations. By this Motion and pursuant to the Order, the Trustee, as fiduciary of the Initial Debtors, is seeking this Court's authority to continue to maintain, to the extent applicable, in the Trustee's sole discretion, the New Debtors' Workers' Compensation Programs in the ordinary course of business and to pay in his sole discretion any and all prepetition amounts related thereto including, without limitation, any payments for workers' compensation claims, deductibles, premiums and fees owed for administrative costs and other amounts required in connection with the Workers' Compensation Program, as such amounts become due in the ordinary course of business.

B. Employment and Withholding Taxes

21. The New Debtors accrue, in the ordinary course of business, state, local, and federal employment and withholding taxes as wages are earned by the New Debtors' Employees. These taxes are calculated based on statutorily mandated percentages of earned wages. Historically the New Debtors have timely paid all federal, state, and local Employment and Withholding Taxes to the relevant Taxing Authority, usually on a per pay period basis.⁸ The Employment and Withholding Taxes constitute so-called "trust fund" taxes that are required to be collected from third parties and held in trust for payment to the taxing authorities, and thus, are not property of the Debtors pursuant to Bankruptcy Code section 541(d). Accordingly, in the event the Court authorizes the Trustee, as fiduciary of the Initial Debtors, to pay the Employee Obligations, the Trustee, as fiduciary of the Initial Debtors, seeks the authority pursuant to the Interim Order to continue to timely pay the Employment and Withholding Taxes with respect thereto.

⁸ The New Debtors actually pay the taxes to their affiliate, MF Global Holdings USA Inc., who then pays the taxes on their behalf.

22. The Trustee, as fiduciary of the Initial Debtors, estimates that, as of the New Debtors' Petition Date, the New Debtors are not holding any Deductions attributable to the December 15, 2011 payroll. Out of an abundance of caution, the Trustee, as fiduciary of the Initial Debtors, seeks confirmation that the New Debtors are permitted to pay all such Deductions, including Deductions accrued postpetition.

APPLICABLE AUTHORITY

A. The Proposed Payments Are Accorded Priority Under Bankruptcy Code Section 507

23. Pursuant to Bankruptcy Code sections 507(a)(4) and 507(a)(5), a debtor's employees' claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the petition date, and claims against a debtor for contributions to employee benefit plans arising from services rendered within 180 days before the petition date, are each afforded unsecured priority status of \$11,725 per employee.

B. Payment Of The Employee Obligations Should Be Authorized Under Bankruptcy Code Section 105 And The Doctrine Of Necessity

24. The proposed payments of the Employee Obligations should be authorized under Bankruptcy Code section 105 and under the "doctrine of necessity." Bankruptcy Code section 105 authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). The doctrine of necessity "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit

pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

25. Moreover, courts have recognized the applicability of the doctrine of necessity with respect to the payment of prepetition employee compensation and benefits. *See, e.g., Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 281-82, 285-89 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it was appropriate for bankruptcy court to defer to debtors’ business judgment in permitting payment of certain workers’ compensation claims); *Ionosphere Clubs*, 98 B.R. at 176 (“This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.”).

C. The Proposed Payments Are Appropriate Under Bankruptcy Code Section 363

26. Under Bankruptcy Code section 363(b), after notice and a hearing, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business. Under Bankruptcy Code section 363(b), a court should authorize non-ordinary course business transactions where the debtor has articulated a valid business justification for the requested use of estate assets. *See Ionosphere Clubs*, 98 B.R. at 175. The payment of the Employee Obligations serves the sound business purpose of maximizing the value of the Debtors. An orderly wind-down of the Debtors’ affairs in these cases hinges in large part on the morale and continued efforts of the Debtors’ Employees. Through the payment of the Employee Obligations, the Trustee, as fiduciary of the Initial Debtors, seeks to motivate

and encourage the Employees to continue to support the Trustee's efforts. Accordingly, this Court should grant the requested relief under Bankruptcy Code section 363.

D. The Payment Of The Employee Obligations Is Appropriate Under Bankruptcy Code Section 541

27. The payment of the Employment and Withholding Taxes or payment of garnished wages will not prejudice the New Debtors because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the New Debtors under Bankruptcy Code section 541. *See Begier v. IRS*, 496 U.S. 53, 66-67 (1990).

E. The Trustee, as fiduciary of the Initial Debtors, Should Be Authorized To Pay The Employee Obligations Under Bankruptcy Code Sections 1107(a) And 1108

28. The Trustee is operating the Debtors' businesses pursuant to Bankruptcy Code sections 1106(a) and 1108, which means he is a fiduciary "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Under Bankruptcy Code sections 1106(a) and 1108, which vest the Trustee with authority to continue operating the Debtors' businesses; sometimes this duty to operate the Debtors' businesses and the concomitant fiduciary duty to maximize estate value may be fulfilled only through the pre-plan payment of certain unsecured claims.

29. With respect to the Employees, the Trustee, as fiduciary of the Initial Debtors, has determined that to avoid significant disruption of the Debtors' business operations there exists no practical or legal alternative to payment of the Employee Obligations. Therefore, the Trustee can only meet his fiduciary duties as Trustee under Bankruptcy Code sections 1106(a) and 1108 by payment of the Employee Obligations.

F. The Trustee Should Be Permitted To Pay The Employment And Withholding Taxes

30. The Trustee, as fiduciary of the Initial Debtors, submits that the Employment and Withholding Taxes constitute so-called “trust fund” taxes which are required to be collected from third parties and held in trust for payment to the taxing authorities. *See, e.g., Rosenow v. Illinois Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 282 (7th Cir. 1983) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax; *DeChiaro v. New York State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same).

31. Since the Employment and Withholding Taxes are “trust fund” taxes collected by the Debtors for remittance to taxing authorities, they are not property of the Debtors under Bankruptcy Code section 541(d). *See Begier v. IRS*, 496 U.S. 53, 67 (1990) (trust fund taxes are not property of the estate); *In re Al Copeland Enters., Inc.*, 133 B.R. 837 (Bankr. W.D. Tex. 1991), *aff’d*, 991 F.2d 233 (5th Cir. 1993) (debtor obligated to pay Texas sales taxes plus interest because such taxes were “trust fund” taxes). The Debtors, therefore, arguably have no equitable interest at all in such Employment and Withholding Taxes and are obligated to remit to the appropriate taxing authority all amounts withheld from Employees’ payroll checks.

G. Immediate Relief Is Necessary To Avoid Immediate And Irreparable Harm

32. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . .” Fed. R. Bankr. P. 6003(b). Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). For all the reasons set forth herein, the New Debtors will suffer immediate

and irreparable harm absent the Court's entry of an order granting the relief requested herein. Consequently, the relief requested herein is consistent with Bankruptcy Rule 6003. Accordingly, the order granting the relief requested herein should become effective and enforceable immediately notwithstanding Bankruptcy Rule 6004(h).

33. Courts have routinely granted to large business debtors the same or substantially similar relief to that requested in this Motion. *See, e.g., In re Lyondell Chemical Company et al.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 9, 2009 and Jan. 26, 2009); *In re PLVTZ Inc.*, Case No. 07-13532 (REG) (Bankr. S.D.N.Y. Nov. 9, 2007); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2005); *In re Delphi Corp.*, No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005); *In re Delta Air Lines, Inc., et al.*, Case No. 05-17923 (ASH) (Bankr. S.D.N.Y. Sept. 16, 2005).

34. Accordingly, for all of the foregoing reasons, the Trustee, as fiduciary of the Initial Debtors, submits that cause exists for granting the relief requested herein.

NOTICE

35. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the Southern District of New York; (b) the United States Attorney for the Southern District of New York; (c) the Securities and Exchange Commission; (d) the U.S. Commodity Futures Trading Commission; (e) the Internal Revenue Service; (f) counsel for the agents under the Debtors' prepetition Liquidity Facility; (g) the indenture trustee for each of the Debtors' outstanding bond issuances; (h) counsel to the Statutory Creditors' Committee; (i) the parties included on the Debtors' list of twenty (20) of its largest unsecured creditors; and (j) parties that have requested

special notice in these cases. The Trustee submits that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

36. No prior request for the relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Trustee, as fiduciary of the Initial Debtors, respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: New York, New York
December 19, 2011

MORRISON & FOERSTER LLP

By: /s/ Brett H. Miller

Brett H. Miller
Lorenzo Marinuzzi
Melissa A. Hager
1290 Avenue of the Americas
New York, New York 10104
(212) 468-8000

Proposed Counsel to the Proposed Chapter 11 Trustee

Exhibit A

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

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	:	
In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Case No. 11-15059 (MG)
	:	
	:	(Joint Administration Requested)
Debtors.	:	
-----	x	

**INTERIM ORDER (I) AUTHORIZING, BUT NOT REQUIRING, THE TRUSTEE TO
PAY PREPETITION EMPLOYEE COMPENSATION AND EXPENSE
REIMBURSEMENTS; AND (II) CONFIRMING THAT THE TRUSTEE ABLE TO PAY
WITHHOLDING AND PAYROLL-RELATED TAXES**

Upon the motion (the “Motion”)⁹ of the Trustee for an order under Bankruptcy Code sections 105, 363(b), 507(a), 541, 1107(a), and 1108, (I) authorizing, but not requiring, the Trustee to pay prepetition employee compensation and expense reimbursements (ii) confirming that the Trustee is able to pay withholding and payroll-related taxes; and upon the Ferber Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the New Debtors, and it appearing that the relief requested by the Motion is in the best interests of the New Debtors, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

⁹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Trustee is authorized, but not directed, to pay any unpaid compensation owed to Employees; provided that no individual Employee shall receive payment in excess of \$11,725 for such prepetition amounts owed.

3. The Trustee is authorized, but not directed, to pay Reimbursement Obligations for individual business expenses that were incurred in accordance with applicable Company policy, subject in each case to compliance with all applicable Company business expense reimbursement policies.

4. The Trustee is authorized, but not directed, to continue to maintain, in the Trustee's sole discretion, the Estates' Workers' Compensation Programs in the ordinary course of business and to pay in their sole discretion any and all prepetition amounts related thereto, including, without limitation, any payments for workers' compensation claims, deductibles, premiums and fees owed for administrative costs and other amounts required in connection with the Workers' Compensation Program, as such amounts become due in the ordinary course of business.

5. The Trustee is authorized, but not directed, to continue, going forward to pay amounts withheld from Employees' pre-tax compensation for investment in the 401(k) Plan.

6. The Trustee is authorized, but not directed, to continue each of the Benefit Programs in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Benefit Programs were in effect immediately prior to the filing of these cases and to make payments in connection with expenses incurred in the administration of any Benefit Program.

7. The Trustee is authorized, but not directed, to pay any and all Employment and Withholding Taxes.

8. The Trustee is authorized, but not directed, to pay to third parties the Deductions, including Deductions accrued postpetition, for payments on behalf of Employees for garnishments, support payments, tax levies, bankruptcy payments, savings programs, benefit programs, insurance programs, union dues, and other similar programs.

9. The Trustee shall be and hereby is authorized to reissue payment on account of the aforementioned Employee-related obligations to replace any inadvertently dishonored or rejected payments.

10. Nothing in the Motion or the requested relief (including any actions taken or payments made by the Estates pursuant to the requested relief) shall (a) be construed as a request for authority to assume any executory contract under 11 U.S.C. § 365; (b) waive, affect, or impair any of the Trustee's rights, claims, or defenses including, but not limited to, those arising from sections 365, 1113, and 1114 of the bankruptcy code among others, other applicable law, and any agreement; (c) grant any additional rights to any third party; or (d) be enforceable by any third party.

11. Neither the provisions of this Order, nor any payments made by the Trustee pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any Employee or other person, including without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to Bankruptcy Code sections 503 and 507.

12. Authorizations given to the Trustee in this Order empower but do not direct the Trustee to effectuate the payments specified herein, with the Trustee retaining the business judgment to make or not make said payments, and in all instances subject to the condition that funds are available to effect any payment and in no event shall any person (Trustee,

officer, director, or otherwise) be personally liable for any amounts authorized for payment herein but not paid.

13. Notwithstanding anything contained herein to the contrary, no individual Employee shall receive payments for amounts that are not contemplated by 11 U.S.C. §§ 507(a)(4), (a)(5), and the aggregate amount of such payments to an individual entitled hereto shall not exceed \$11,725 pending further court order.

14. Any objection to the relief requested in the Motion must be in accordance with the Case Management Order entered in this jointly-administered case and found on the docket of MF Global Holdings Ltd., *et al.* (11-15059) (Docket No. 256) (the “Case Management Order”).

15. A hearing (the “Final Hearing”) will be held on [●] at [●] a.m. (prevailing Eastern Time) to consider the relief requested in the Motion on a final basis and, pending entry of an order following the conclusion of the Final Hearing, the relief granted herein shall remain in effect on an interim basis. If no objection to the relief requested in this Motion on a permanent basis is received by the appropriate Objection Deadline pursuant to the Case Management Order, this Order shall be deemed the Final Order.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the content of the Motion or otherwise deemed waived.

17. Notwithstanding the possible applicability of Bankruptcy Rule 6004, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

The Court shall retain jurisdiction to hear and determine all matters arising from the
implementation of this Order.

Dated: New York, New York
December __, 2011

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE