

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900  
Brett H. Miller  
Lorenzo Marinuzzi  
Melissa A. Hager

*Attorneys for the Chapter 11 Trustee*

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

----- x  
In re : Chapter 11  
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)  
Debtors. : (Jointly Administered)  
----- x

**MOTION FOR AN ORDER UNDER 11 U.S.C. § 105 DIRECTING THAT CERTAIN  
ORDERS IN THE CHAPTER 11 CASES OF MF GLOBAL HOLDINGS LTD., *ET AL.*  
BE MADE APPLICABLE TO THE CHAPTER 11 CASE OF  
MF GLOBAL HOLDINGS USA INC.**

Louis J. Freeh (the “Trustee”),<sup>1</sup> the duly appointed chapter 11 trustee of MF Global Holdings Ltd. (“MF Ltd.”) and MF Global Finance USA Inc. (“Finance USA”, together with MF Ltd. the “Initial Debtors”), and the duly appointed chapter 11 trustee of MF Global Capital LLC, MF Global FX Clear LLC and MF Global Market Services LLC (the “Additional Debtors” and together with the Initial Debtors, the “Prior Debtors”) submits this motion (the “Motion”) for entry of an order under section 105 of title 11 of the United States Code, as amended (the “Bankruptcy Code”) directing that certain orders previously entered in the jointly administered

<sup>1</sup> The Trustee, to the best of his ability, as the prime fiduciary of the Prior Debtors and operator of the Prior 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 Prior Debtors. It is, therefore, his duty to act on behalf of the Current Debtors as the fiduciary of their parent entity, to protect and preserve these assets.

chapter 11 cases of MF Global Holdings Ltd., *et al.*, Case No. 11-15059 (MG), and any proposed orders pending before this Court in the Prior Debtors' chapter 11 cases, be made applicable to MF Global Holdings USA Inc. ("Holdings USA") (the "Current Debtor" and together with the Prior Debtors, the "Debtors").<sup>2</sup>

In support of this Motion, the Trustee relies upon and incorporates by reference the *Second Declaration of Laurie R. Ferber Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and Various First-Day Motions* (the "Second Ferber Declaration"). In further support of this Motion, the Trustee represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion under 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 predicate for the relief requested herein is Bankruptcy Code section 105(a).

### **BACKGROUND**

3. On October 31, 2011, 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, as well as filing motions for first-day relief, which included a motion for joint administration of the Initial Debtors' cases (Docket No. 2).

4. On November 2, 2011, the Court granted the Initial Debtors' motion and ordered the joint administration of the Initial Debtors' cases.

---

<sup>2</sup> MF Global Holdings USA Inc. (federal taxpayer identification number 2847) has filed a petition for relief concurrently herewith and has requested joint administration with MF Global Holdings Ltd. (11-15059).

5. 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.

6. The Statutory Creditors’ 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).

7. On November 25, 2011, the U.S. Trustee filed the *Application for Order Approving Appointment of Chapter 11 Trustee* (Docket No. 169), which the Court approved by entering the *Order Approving the Appointment of Chapter 11 Trustee* (Docket No. 170), pursuant to which the Trustee was appointed in the Initial Debtors’ cases.

8. On December 19, 2011, the Additional Debtors filed for relief under chapter 11 of the Bankruptcy Code and the Trustee, as fiduciary of the Prior Debtors, filed a motion for an order under rule 1015(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) directing the joint administration of the Additional Debtors’ chapter 11 cases with those of the Initial Debtors (the “Second Joint Administration Motion”) (Docket No. 292). On the same date as the Second Joint Administration Motion, the Trustee, as fiduciary of the Prior Debtors, also filed a similar motion to this Motion for entry of an order under Bankruptcy Code section 105(a) directing that certain orders entered in the chapter 11 cases of the Initial Debtors be made applicable to the Additional Debtors (Docket No. 293).

9. On December 21, 2011, the Court entered orders for relief with respect to each of the Additional Debtors and directed joint administration of the Additional Debtors’ cases with the Initial Debtors’ cases (Docket No. 298), and entered the order making previous orders applicable in the Additional Debtors’ cases on December 23, 2011 (Docket No. 303).

10. On December 27, 2011, the Court approved the appointment of Louis J. Freeh as chapter 11 trustee of the Additional Debtors' cases.

11. On the date hereof, the Current Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code, along with certain first-day motions, including this Motion, seeking the relief requested below.<sup>3</sup>

12. The factual background regarding the 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 Second Ferber Declaration filed concurrently herewith and fully incorporated herein by reference.<sup>4</sup>

### **RELIEF REQUESTED**

13. By this Motion, the Trustee, as fiduciary of the Prior Debtors, seeks entry of an order substantially in the form annexed hereto as Exhibit A (the "Order"), pursuant to Bankruptcy Code section 105(a), directing that all generally applicable orders previously approved or entered by this Court, as set forth on Exhibit 1 to the Order, and any generally proposed orders pending before this Court in the Prior Debtors' chapter 11 cases (collectively, the "Prior Debtors' Orders") be made applicable to the Current Debtor. Specifically, the Trustee seeks to have (a) previously approved or entered orders apply to the Current Debtor, effective as of the entry of the order requested by this Motion and (b) currently pending proposed orders, to the extent any have been filed in the Prior Debtors' cases, apply to the Current Debtor, effective as of the dates of entry of this order.

---

<sup>3</sup> Notwithstanding the foregoing, the Current Debtor does not intend that the application of the Prior Debtors' orders to the Current Debtor shall reduce periods for the Current Debtor to take actions provided under the Bankruptcy Code and Bankruptcy Rules, such as the exclusivity and removal deadlines.

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Second Ferber Declaration.

14. Included among the orders referenced on Exhibit 1 to the Order, is the *Order Pursuant to 11 U.S.C. § 1104 and Fed. R. Bankr. P. 2007.1 Directing Appointment of Chapter 11 Trustee* (the “Order Directing Appointment of Chapter 11 Trustee”). The Order Directing Appointment of Chapter 11 Trustee should be adopted to direct the United States Trustee to appoint a chapter 11 trustee in the Current Debtor’s case. The Prior Debtors and Current Debtor are interconnected entities; accordingly, the appointment of a chapter 11 trustee in the Current Debtor’s case is warranted pursuant to 11 U.S.C. § 1104(a)(2).

15. In other words, assuming joint administration of the Current Debtor’s case with the Prior Debtors’ cases, the Trustee seeks application of the Prior Debtors’ Orders as if the Current Debtor was among the Prior Debtors identified therein; *provided, however*, that such orders be effective as of the dates set forth above.

16. Also included among the orders referenced on Exhibit 1 to the Order, is the *Final Order Under 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e) and 364 and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (i) Authorizing the Debtors to Use Cash Collateral, and (ii) Granting Adequate Protection* (the “Cash Collateral Order”). Prior to October 31, 2011, and continuing to the present with regard to all of the Debtors, Holdings USA served as the service entity for MF Ltd. and its various U.S. subsidiaries. The services performed by Holdings USA, through its employees and bank accounts, include, but are not limited to, handling certain benefit programs, payroll and human resources processing, and facilitating operating disbursements for the Debtors and their domestic non-debtor affiliates. For expenses paid by MF Ltd. on behalf of MF Global, Inc. or the Additional Debtors, MF Ltd. has received advanced funding or reimbursements from those entities or, in the case of the Additional Debtors, from a non-debtor subsidiary. Until and including January 15, 2012 (when the parties completed the bifurcation of payroll functions

between the Debtors' estates and the MF Global, Inc. estate), Holdings USA also continued to handle payroll processing for employees of MF Global, Inc., with payroll funding and processing costs being advanced or reimbursed by the trustee of MF Global, Inc.

17. Thus, since October 31, 2011, and on an ongoing basis in the normal course of administering these estates, the Initial and the Current Debtors have been and will continue to be dependent on funding through the budgets approved under the Cash Collateral Order to pay their respective expenses, including payroll, employee benefits, rent and other obligations. The Trustee expects that he will continue to receive and disburse cash collateral of JP Morgan through Holdings USA, subject to the terms of the Cash Collateral Order, for those purposes. That continued function was contemplated by the parties when negotiating the terms of the Cash Collateral Order, and consequently the Trustee does not believe that any amendment to the Cash Collateral Order is necessary in connection with the relief requested in this Motion.

18. Additionally, the Current Debtor has sought to apply the prior orders approving the retention of various professionals involved in these cases, including, as set forth on Exhibit 1 to the Order, Freeh Sporkin & Sullivan, LLP as investigative counsel to the Trustee (Docket No. 437); Morrison & Foerster LLP as bankruptcy counsel to the Trustee (Docket No. 440); FTI Consulting, Inc. as restructuring advisors to the Debtors and the Trustee (Docket No. 438); Pepper Hamilton LLP as special counsel to the Trustee (Docket No. 441); Dewey & LeBoeuf LLP as counsel to the Statutory Creditors Committee (Docket No. 377); Capstone Advisory Group, LLC as financial advisor to the Debtors (Docket No. 435); Kasowitz, Benson, Torres & Friedman LLP as conflict counsel and as special investigative counsel to the Trustee (Docket No. 439); and Skadden, Arps, Slate, Meagher & Flom LLP as bankruptcy counsel and special counsel to the Debtors (Docket No. 436). These professionals have been actively involved in

these cases and possess skills and knowledge necessary for the administration of these cases and the wind-down of the Debtors' operations. It would be costly and administratively burdensome to the Debtors' estates to require these professionals to prepare additional retention applications for the Current Debtor that would otherwise be identical to the prior filings.

### **BASIS FOR RELIEF**

19. Bankruptcy Code Section 105(a) provides, in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Pursuant to this provision, this Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor's assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); *Bird v. Crown Convenience (In re NAFX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988) ("The overriding consideration in bankruptcy . . . is that equitable principles govern."); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) ("[T]he Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.").

20. Entry of an order directing that the Prior Debtors' Orders be made applicable to the Current Debtor will obviate the need for duplicative notices, motions, applications, and orders to be filed in these chapter 11 cases. The Trustee seeks to save considerable time and expense for the Debtors' estates and to reduce the burden on this Court and all parties-in-interest by proceeding in this manner. The Current Debtor requires the authorizations that are set forth in the Prior Debtors' Orders to facilitate a smooth entry into chapter 11. If this Motion is not

granted, the Trustee will seek substantially the same substantive relief as that granted in the Prior Debtors' Orders.

21. If the Current Debtor had filed its petition at the same time as the Prior Debtors, it would have been a movant with respect to the motions seeking entry of the Prior Debtors' Orders. By proceeding in the manner set forth in this Motion, the Trustee, as fiduciary of the Prior Debtors, seeks to streamline the motion practice for requesting such relief, while at the same time providing the same requisite facts and justification for such relief as if the Current Debtor had filed such motions and applications.

22. The Trustee believes that the relief requested herein is appropriate to carry out the provisions of the Bankruptcy Code. Similar procedures have been authorized in other complex chapter 11 cases. *See, e.g., In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. 2008); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. 2005); *In re Worldcom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. 2002); *In re Adelphia Business Solutions, Inc.*, Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002).

### **NOTICE**

23. 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 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 Current Debtor's list of twenty (20) largest unsecured creditors; and (j) parties that have requested special notice in these cases.

The Trustee, as fiduciary of the Prior Debtors, submits that under the circumstances no other or further notice is necessary.

**NO PRIOR REQUEST**

24. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order (a) directing that the Prior Debtors' Orders be made applicable to the Current Debtor on the terms set forth herein; (b) directing that any generally proposed orders pending before this Court in the Prior Debtors' chapter 11 cases be made applicable to the Current Debtor on the terms set forth therein; and (c) granting the Debtors such other and further relief as is just and proper.

Dated: March 2, 2012  
New York, New York

Respectfully submitted,

/s/ Brett H. Miller

Brett H. Miller

Lorenzo Marinuzzi

Melissa A. Hager

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, New York 10104

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Attorneys for the Chapter 11 Trustee*

**Exhibit A**

**Proposed Order**

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

----- x  
In re : Chapter 11  
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)  
Debtors. : (Jointly Administered)  
----- x

**ORDER UNDER 11 U.S.C. § 105 DIRECTING THAT CERTAIN ORDERS IN  
CHAPTER 11 CASES OF MF GLOBAL HOLDINGS LTD., ET AL. BE MADE  
APPLICABLE TO CHAPTER 11 CASES OF  
MF GLOBAL HOLDINGS USA INC.**

Upon the motion (the “Motion”)<sup>1</sup> of Louis J. Freeh, Esq. (the “Trustee”), the duly appointed chapter 11 trustee of MF Global Holdings Ltd. and MF Global Finance USA Inc. (the “Initial Debtors”), and the duly appointed chapter 11 trustee of MF Global Capital LLC, MF Global FX Clear LLC and MF Global Market Services LLC (the “Additional Debtors” and together with the Initial Debtors, the “Prior Debtors”) for entry of an order, pursuant to 11 U.S.C. § 105 of the United States Bankruptcy Code, as amended (the “Bankruptcy Code”), directing that certain orders previously entered in the jointly administered chapter 11 cases of MF Global Holdings Ltd., *et al.*, Case No. 11-15059 (MG), and any generally proposed orders pending before this Court in the Prior Debtors’ chapter 11 cases, be made applicable to the chapter 11 case of MF Global Holdings USA Inc. (the “Current Debtor” and together with the Prior Debtors, the “Debtors”); and upon consideration of the facts set forth in the Second Ferber Declaration; and this Court having determined that the relief requested in the Motion is in the best

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

interests of the Debtors and their respective estates, creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Any and all generally applicable orders previously approved or entered in the Prior Debtors' chapter 11 cases and which are identified on Exhibit 1 hereto, are applicable to the Current Debtor, effective as of March 2, 2012, as if the Current Debtor was a Debtor as set forth in such orders;
3. Consistent with the *Order Directing Appointment of Chapter 11 Trustee* and pursuant to 11 U.S.C. § 1104, the Court directs the United States Trustee to appoint a chapter 11 trustee in the Current Debtor's chapter 11 case.
4. If the United States Trustee appoints the Trustee as chapter 11 trustee for the Current Debtor, such appointment shall be deemed approved by the Court and the Trustee shall be empowered to act as chapter 11 trustee pending the entry by the Court of a final order approving the additional appointment; provided, however, that should the United States Trustee seek to appoint a chapter 11 trustee other than the Trustee, such appointment shall be subject to notice and entry of a further order from the Court.
5. Any and all generally applicable orders hereafter entered in the Prior Debtors' chapter 11 cases in respect of requests for relief pending before this Court on the date hereof (other than any final order regarding use of cash collateral or grant of adequate protection) shall be applicable to the Current Debtor, effective as of the dates of

entry of such orders in the Prior Debtors' chapter 11 cases, and as if the Current Debtor was a Debtor as set forth in such orders.

6. Solely as it relates to the application of the Cash Collateral Order to the Current Debtor, this Order is entered as an interim order. A final hearing on the Motion solely as it relates to the application of the Cash Collateral Order to the Current Debtor shall be held on April 12, 2012, with any objections to be filed no later than April 5, 2012 at 4:00 p.m. Eastern Time.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the content of the Motion or otherwise deemed waived. Notwithstanding the possible applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: March \_\_, 2012  
New York, New York

---

THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Orders to Be Made Applicable to the Current Debtor**

DATE	DOCKET NO.	ORDER
11/2/2011	20	Order Authorizing the Debtors to (I) Prepare Consolidated List of Creditors in Lieu of Mailing Matrix, (II) File Consolidated List of 50 Largest Unsecured Creditors, and (III) Mail Initial Notices
11/2/2011	22	Order Authorizing the Retention of GCG, Inc. as Claims and Noticing Agent for the Debtors and Approving Related Agreement
11/21/2011	156	Order Directing Appointment of Chapter 11 Trustee
12/12/2011	256	Order Granting Motion Implementing Certain Notice and Case Management Procedures
12/14/2011	275	Final Order Under 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e) and 364 and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (i) Authorizing the Debtors to Use Cash Collateral, and (ii) Granting Adequate Protection
01/19/2012	377	Order Approving Retention and Employment of Dewey & LeBoeuf LLP as Attorneys to the Statutory Creditors' Committee <i>Nunc Pro Tunc</i> to November 9, 2011
2/9/2012	435	Order Authorizing the Statutory Committee of Unsecured Creditors of MF Global Holdings Ltd., et al. to Employ and Retain Capstone Advisory Group, LLC as Financial Advisor, <i>Nunc Pro Tunc</i> to November 9, 2011
2/9/2012	436	Order Authorizing the Employment and Retention of Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates as Bankruptcy Counsel <i>Nunc Pro Tunc</i> to the Petition Date through November 28, 2011 and Thereafter as Special Counsel through March 31, 2012
2/9/2012	437	Order Authorizing the Retention and Employment of Freeh Sporkin & Sullivan, LLP as Investigative Counsel to the Trustee <i>Nunc Pro Tunc</i> to the Appointment Date

2/9/2012	438	Order Approving Chapter 11 Trustee's Amended Application for an Order Under 11 U.S.C. § 328, Fed. R. Bankr. P. 2014 and 2016, and Local Bankruptcy Rules 2014-1 and 2016-1 Authorizing the Retention of FTI Consulting, Inc. as Restructuring Advisors to the Debtors and the Chapter 11 Trustee <i>Nunc Pro Tunc</i> to November 1, 2011
2/9/2012	439	Order Authorizing the Retention and Employment of Kasowitz, Benson, Torres & Friedman LLP as Conflict Counsel and as Special Investigative Counsel <i>Nunc Pro Tunc</i> to November 3, 2011 through March 31, 2012
2/9/2012	440	Order Authorizing the Retention and Employment of Morrison & Foerster LLP as Bankruptcy Counsel to the Trustee <i>Nunc Pro Tunc</i> to the Appointment Date
2/9/2012	441	Order Authorizing the Employment and Retention of Pepper Hamilton LLP as Special Counsel to the Trustee <i>Nunc Pro Tunc</i> to the Appointment Date
2/17/2012	454 <sup>6</sup>	Motion for Order Under 11 U.S.C. §§ 105(a), 363, and 365(a) and Fed. R. Bankr. P. 6006 and 9014 and Local Bankruptcy Rule 6006-1 (I) Authorizing Rejection of Certain Executory Contracts and (II) Approving Procedures Regarding the Future Rejection of Executory Contracts
2/21/2012	458	Order Granting Motion by the Chapter 11 Trustee for an Order Under 11 U.S.C. § 521 and Fed. R. Bankr. P. 1007(c) Granting an Extension of Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs

---

<sup>6</sup> The hearing date for the executory contracts motion is concurrent with the hearing date for this Motion. Should an order in favor of the estates be entered on this Motion, the Trustee seeks approval for the application of that order to the Current Debtor.