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

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In re : Chapter 11  
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)  
Debtors. : (Jointly Administered)  
: :  
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**MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING, BUT NOT  
REQUIRING, THE TRUSTEE TO PAY PREPETITION EMPLOYEE  
COMPENSATION AND BENEFITS OBLIGATIONS; AND (II) CONFIRMING THAT  
THE TRUSTEE IS ABLE TO CONTINUE CERTAIN  
ORDINARY-COURSE BENEFITS PROGRAMS**

Louis J. Freeh (the “Trustee”),<sup>1</sup> the duly appointed chapter 11 trustee of debtors MF Global Holdings Ltd. (“Holdings Ltd.”) and MF Global Finance USA Inc. (together with Holdings Ltd., the “Initial Debtors”) and duly appointed chapter 11 trustee of debtors 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

<sup>1</sup> The Trustee, to the best of his ability, as the prime fiduciary of the Prior Debtors (defined below) 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 Debtor, as the fiduciary of its parent entity, to protect and preserve these assets. Moreover, the Current Debtor, by a motion simultaneously herewith, has sought to apply the *Order to Appoint a Chapter 11 Trustee* (Docket No. 156) in the Initial Debtors’ cases to the Current Debtor’s case.

“Motion”) for entry of interim and final orders 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 certain prepetition amounts owing to or for the benefit of current and former employees of newly filed debtor MF Global Holdings USA Inc. (“Holdings USA” or the “Current Debtor” and together with the Prior Debtors, the “Debtors”)<sup>2</sup> for compensation, including, without limitation, any prepetition claims owing under employee-related plans, programs and policies as necessary to ensure the delivery of compensation and benefits to its employees; (II) confirming that the Trustee, as duly appointed fiduciary of the Prior 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 and to continue various ordinary-course employee benefits programs; (III) authorizing, but not requiring, the Trustee to pay prepetition obligations of payroll and employee benefits administrators and service providers; (IV) directing all banks to honor prepetition checks, ACH debits, draw-downs, or other forms of funds transfers and disbursements for payment of the Debtors’ prepetition employee-related obligations; and (V) authorizing, but not requiring, the Trustee to take the necessary administrative actions to cause the 401(k) administrator or other benefits administrators, to the extent necessary, to terminate the 401(k) plan and other unnecessary benefits plans and/or programs.

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”

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<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).

Declaration”) filed concurrently herewith. In further support of this Motion, the Trustee, as fiduciary of the Prior Debtors, 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, as well as filed motions for first-day relief, including a motion for joint administration of the Initial Debtors’ cases (Docket No. 2).

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

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 this 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 this Court approved by

entering the *Order Approving the Appointment of Chapter 11 Trustee* (Docket No. 170), pursuant to which the Trustee was appointed.

8. On December 19, 2011 (the “Additional Debtors’ Petition Date”), the Additional Debtors filed petitions for relief under chapter 11 of the Bankruptcy Code and the Trustee, as fiduciary of the Initial Debtors, filed a motion for an order under rule 1015(a) of the Bankruptcy Rules directing the joint administration of the Additional Debtors’ chapter 11 cases with those of the Initial Debtors (Docket No. 292). On the same date, the Trustee, as fiduciary of the Initial Debtors, also filed a 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, this 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). The Court also entered the order making certain previous orders applicable in the Additional Debtors’ cases on December 23, 2011 (Docket No. 303).

10. On December 27, 2011, this 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’s Petition Date” and, collectively with the Initial Debtors’ Petition Date and the Additional Debtors’ Petition Date, the “Petition Dates”), the Current Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code, along with various first-day motions seeking orders addressing issues critical to the administration of the Current Debtor’s estate.

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 this bankruptcy case, is set forth in the Second Ferber Declaration filed concurrently herewith and fully incorporated herein by reference.<sup>3</sup>

### **RELIEF REQUESTED**

13. By this Motion, the Trustee, as fiduciary of the Prior Debtors,<sup>4</sup> requests the entry of an order substantially in the form annexed hereto as Exhibit A (the “Order”), on an interim and final basis, under Bankruptcy Code sections 105, 363(b), 507(a), 541, 1107(a) and 1108, and Bankruptcy Rule 6003, authorizing but not requiring the Trustee to pay, continue, or otherwise honor various prepetition employee-related obligations of the Debtors (collectively, the “Prepetition Employee Obligations”) to or for the benefit of their Employees (defined below), for compensation under all plans, programs and policies maintained or contributed to, and agreements entered into by, various of the Debtors prior to the Current Debtor’s Petition Date (the “Benefits Programs”). All requests for authority to make payments on account of prepetition obligations pursuant to this Motion, whether in respect of Prepetition Employee Obligations or in connection with payments on account of Benefits Programs, are referred to herein generally as “Benefits Obligations.”

14. In addition, the Trustee, as fiduciary of the Prior Debtors, seeks authority to continue the postpetition payroll processing and administration of any Benefits Programs that are administered or paid through a third-party administrator or provider and be expressly authorized

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Second Ferber Declaration.

<sup>4</sup> The Trustee has sought the relief requested in this Motion in his capacity as fiduciary of the Prior Debtors, including MF Global Holdings Ltd., the parent company of all the Debtors. The relief sought herein concerning the Current Debtor is necessary for the continued administration of the Prior Debtors’ estates. The Trustee submits that this provides adequate grounds for the Trustee to pursue the relief sought herein under the circumstances.

to pay any prepetition claims of such administrators in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Employees.

15. Specifically, (a) under Bankruptcy Code sections 105(a) and 363(b)(1), the Trustee requests that he be authorized, but not directed, to pay, in his discretion, any obligations arising under the Benefits Programs that were accrued or incurred but unpaid as of the applicable Petition Date; and (b) under Bankruptcy Code section 363(c)(1), the Trustee requests that this Court confirm the Trustee's authority, but not the obligation, to continue each of the Benefits Programs in his discretion in the ordinary course of business during the pendency of this case in the manner and to the extent that such Benefits Programs were in effect immediately prior to the filing of the Current Debtor's case and to make payments in connection with expenses incurred in the administration of any Benefits Program.

16. The Benefits 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) workers' compensation obligations; (c) employee health benefits; and (d) retirement benefits.

17. By this Motion, the Trustee seeks authorization, but not direction, to pay any unpaid compensation owed to Employees as set forth in greater detail below, 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 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 Prior Debtors, to the applicable governmental authorities (collectively, the "Employment and Withholding Taxes"). In addition, the Trustee 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, and other similar programs. Further, the Trustee seeks an order directing all banks to honor prepetition checks, ACH debits, draw-downs, or other forms of funds transfers and disbursements for payment of the Debtors' prepetition employee-related obligations. Further, out of an abundance of caution, the Trustee seeks confirmation that he is permitted to take the necessary administrative actions to cause the 401(k) Plan (as defined below) administrator or other benefits administrators, to the extent necessary, to terminate the 401(k) Plan and other unnecessary benefits plans and/or programs.

18. By seeking the authorization requested herein, it should not be presumed that the Trustee has determined, at this time, which obligations owing to or on behalf of the Employees 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. The Trustee, as fiduciary of the Prior Debtors, reserves all of his rights in this regard.

19. Because the Debtors were part of a complex, multinational company comprised of numerous legal entities throughout the world (Holdings Ltd. and its direct and indirect subsidiaries are collectively referred to as the "Company"), the various employment benefit plans and programs of the Debtors historically have been managed by certain individual Debtors on behalf of other legal entities within the corporate family for the sake of operational efficiency. As a result, certain of the relief sought within this Motion specifically applies to programs administered by one or more of the Initial Debtors, including Holdings Ltd., while other relief

applies to programs administered by Holdings USA. In light of the joint administration of the Prior Debtors and the pending request to include the Current Debtor in the joint administration, the Trustee submits that all the relief sought herein should be afforded customary treatment as “first-day” relief, whether or not the applicable entity affected is indeed the Current Debtor or a Prior Debtor, for the sake of judicial efficiency.

### **BASIS FOR RELIEF**

20. Prior to the Initial Debtors’ Petition Date, the Company employed approximately 2,870 employees worldwide, with approximately 1,300 employees in the United States. Approximately 250 of those employees were employed by the Debtors (the “Employees”), with approximately 200 employed by the Current Debtor. There have been significant reductions in workforce at both the Company and the Debtors in the period between the Initial Debtors’ Petition Date and the date of this Motion in connection with the discontinuation of certain of the Debtors’ operations and the orderly wind down of their affairs. As of the Current Debtor’s Petition Date, the Debtors employ approximately 21 Employees, of whom approximately 18 are Employees of the Current Debtor.<sup>5</sup> The Current Debtor, on behalf of the Employees, has incurred certain Prepetition Employee Obligations that remain unpaid as of the Petition Dates.

#### **A. Prepetition Employee Obligations**

21. Wages, Salaries, and Other Compensation. All of the Debtors’ Employees are salaried workers.<sup>6</sup> In the ordinary course of business, the Debtors’ Employees are paid semi-monthly on the fifteenth and last day of each month, or the first preceding business day if these dates fall on a weekend or holiday. The Debtors’ Employees were paid on and through

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<sup>5</sup> In addition, as of the Current Debtor’s Petition Date, the Debtors use the services of four independent contractors.

<sup>6</sup> See note 5 above.



February 29, 2012, prior to the commencement of this chapter 11 case. The Trustee believes that approximately \$90,000 of wages are due to the Current Debtor's Employees. By this Motion, the Trustee is seeking authorization, but not direction, to pay any unpaid wage compensation owed to the Current Debtor's Employees, provided that no individual Employee shall receive total compensation payments in excess of \$11,725 for such prepetition amounts owed.

22. Payroll Administration Obligations. The Company uses the services of Ceridian and DCH Advisors as payroll administrators (together with any successor administrator, the "Payroll Administrators") to manage the Company's payroll and accompanying withholding obligations. The Trustee, as fiduciary of the Prior Debtors, has significantly scaled back the services of the Payroll Administrators as a result of the Company's decreased headcount. However, the Payroll Administrators' services continue to be necessary as a means for the Debtors to effectively meet their continuing payroll obligations with respect to the remaining Employees. By this Motion, the Trustee seeks authorization, but not direction, to pay any unpaid fees and costs owing to the Payroll Administrators on account of services provided to the Current Debtor, whether owed prepetition or postpetition. The Trustee estimates that approximately \$10,000 in prepetition obligations are owing to the Payroll Administrators as of the date hereof.<sup>7</sup>

23. Workers' Compensation Obligations. By this Motion, the Trustee, as fiduciary of the Prior Debtors, is seeking this Court's authority to continue to maintain to the extent applicable the Debtors' workers' compensation programs in the ordinary course of business and to pay in his sole discretion all prepetition amounts related thereto, if any, including, without limitation, any payments for workers' compensation claims, deductibles, premiums and fees

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<sup>7</sup> Pursuant to the final cash collateral order entered by this Court on December 14, 2011 (Docket No. 275) (the "Cash Collateral Order"), the Prior Debtors are prohibited from remitting payment to the Payroll Administrators until reimbursement from MFGI (defined below) is received for shared services. The Current Debtor estimates that MFGI's obligation is \$6,000 of the total prepetition amount outstanding.

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. The continuation of the workers' compensation program is necessary to the administration of the Debtors' bankruptcy estates in order for the Trustee to satisfy the Debtors' obligations to the remaining Employees. As of the Current Debtor's Petition Date, the Trustee believes that there are no amounts necessary to be paid in connection with the continuation of the workers' compensation program.

**B. Employment and Withholding Taxes**

24. The Debtors accrue, in the ordinary course of business, state, local, and federal Employment and Withholding Taxes as wages are earned by the Debtors' Employees. These taxes are calculated based on statutorily mandated percentages of earned wages. The Debtors fund federal, state, and local Employment and Withholding Taxes to relevant taxing authorities through Ceridian, at the time they fund their employee payroll obligation, on a per-pay-period basis.<sup>8</sup> The last funding occurred on February 28, 2012, prior to the commencement of this chapter 11 case, and as a result the Debtors believe there are no Employment and Withholding Tax obligations owing to taxing authorities as of the Current Debtor's Petition Date. 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' estates pursuant to Bankruptcy Code section 541(d).

Accordingly, in the event the Court authorizes the Trustee, as fiduciary of the Prior Debtors, to pay the Prepetition Employee Obligations, the Trustee seeks the authority pursuant to interim and final orders to continue to timely pay the Employment and Withholding Taxes with respect

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<sup>8</sup> Payroll withholdings are held by the Debtors' Payroll Administrator, who remits the funds periodically on the Debtors' behalf to the applicable taxing authority.

thereto and, for the avoidance of doubt, to continue to timely pay the Employment and Withholding Taxes on a post-petition basis in the ordinary course of business.

25. The Trustee believes that, as of the Current Debtor's Petition Date, there are no Employee withholdings on account of Employment and Withholding Taxes outstanding. However, out of an abundance of caution, the Trustee, as fiduciary of the Prior Debtors, seeks confirmation that the Current Debtor, acting by and through Ceridian, is permitted to pay all such Employment and Withholding Taxes, whether accrued before or after the Current Debtor's Petition Date.

### **C. Employee Health Benefits Plan**

26. Holdings USA managed the Company's prior employee health benefits plan—a self-funded plan—and is party to the governing contract with United Healthcare, the health benefits plan administrator (together with any successor administrator, the "Health Plan Administrator") on behalf of all of the Debtors and employees of certain non-Debtor entities in the United States, including MF Global Inc. ("MFGI"), an affiliate of the Debtors. This employee health benefits plan was terminated effective December 31, 2011. As of January 1, 2012, Holdings USA (on behalf of the Debtors and certain non-Debtor affiliates) entered into a separate "guaranteed cost" health benefits plan, underwritten by BlueCross BlueShield. Under the Holdings USA plan, the employer pays 75% and the participating employees pay 25% of premium costs consistent with past company practices.

27. By this Motion, the Trustee, as fiduciary of the Prior Debtors, is seeking this Court's authority to continue to maintain to the extent applicable the employee health benefits plan in the ordinary course of business and to pay in his sole discretion any and all prepetition amounts owing to the Health Plan Administrator related thereto including, without limitation, any payments for deductibles, premiums and fees owed for administrative costs and other

amounts required in connection with the health benefits plan, as such amounts become due in the ordinary course of business, together with any fees that may be due and owing to the Company's health insurance broker (although the Trustee does not believe that any such fees are presently due and owing to the broker). The continuation of the employee health benefits plan is necessary to the administration of the Debtors' bankruptcy estates in order for the Trustee to satisfy the Debtors' obligations to the remaining Employees. The Trustee believes that, as of the Current Debtor's Petition Date, approximately \$9,000 may be owed on a prepetition basis to the former Health Plan Administrator, United Healthcare.<sup>9</sup> In addition, approximately \$2,000 is owed on a prepetition basis to the current Health Plan Administrator, BlueCross BlueShield.

28. With respect to the prior self-funded employee health benefits plan that the Debtor terminated prepetition, employees effectively paid their health insurance premiums directly to the Debtors, who would use the funds to offset the cost of providing the medical benefits. Due to the normal time lag associated with processing and adjudicating claims, certain residual amounts continue to be paid following plan termination and likely will continue to arise after the Current Debtor's Petition Date as insured claims are asserted in accordance with the terms of the plan (the "Self-Funded Plan Run-Out"). The Trustee submits that the satisfaction of claims arising under this plan is necessary to the administration of the Debtors' bankruptcy estates in order for the Trustee to satisfy the Debtors' obligations to the remaining Employees, and, further, constitutes a commitment to former Employees that must be honored.<sup>10</sup> The Trustee is unable to estimate the prepetition obligations associated with the Self-Funded Plan

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<sup>9</sup> The Current Debtor estimates that MFGI's obligation is \$7,000 of the total prepetition amount outstanding.

<sup>10</sup> The Debtors are aligned with the SIPA Trustee on this issue because the SIPA Trustee has also committed to honor Self-Funded Plan Run-Out claims incurred on or before November 30, 2011, under the Company's self-funded medical plan.

Run-Out because the costs primarily relate to benefit claims that are in the process of being adjudicated by the Health Plan Administrator and benefit claims that have not yet been submitted.<sup>11</sup>

**D. Employee Retirement and Stock Compensation Plans**

29. 401(k) Plan. Prior to the Current Debtor's Petition Date, the Company maintained a program, administered by Holdings USA, pursuant to which it would match individual employee contributions to the Company's retirement plans on a dollar-for-dollar basis in accordance with section 401(k) of the Internal Revenue Code (the "401(k) Plan"), up to a total of \$4,000 per year for each employee. The matching component of the 401(k) Plan was discontinued on October 31, 2011. As a result of the termination of a significant number of the Company's employees on November 11, 2011, a partial plan termination of the 401(k) Plan ("Partial Plan Termination") occurred under applicable law. The Debtors are working to effectuate a full plan termination ("Full Plan Termination"), but as of the Current Debtor's Petition Date, all required administrative steps have not yet been completed. The Partial Plan Termination resulted in 100% vesting of the employer match component of the plan for employees terminated on or prior to November 11, 2011. Further, the Trustee believes that upon Full Plan Termination, the employer match component for active employees after November 11, 2011 will also be subject to 100% vesting.

30. The Trustee estimates that approximately \$6.0 million of matched funds are subject to 100% vesting as a result of the plan termination. These matched funds, together with funds withheld from employees' pre-tax compensation for investment in the 401(k) Plan, are

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<sup>11</sup> For the months of November 2011, December 2011, January 2012, and February 2012, Holdings USA's portion of the Self-Funded Plan Run-Out costs was approximately \$270,000, \$250,000, \$190,000, and \$50,000, respectively, and is expected to continue to decline.

held in a trust account governed by the Employee Retirement Income Security Act (“ERISA”) for the beneficiaries of the plan and thus are not property of the Debtors’ estates. Nevertheless, out of an abundance of caution, the Trustee seeks confirmation that he is permitted to take the necessary administrative actions to cause the 401(k) Plan administrator to manage and terminate the plan and pay all such amounts withheld from participating Employees’ compensation, as well as any matched funds. Additionally, the Trustee seeks authority (but not the obligation) to take all necessary or appropriate steps to confirm or ensure that the 401(k) Plan has been properly terminated.

31. Employee Stock Purchase Plan. Prior to the Current Debtor’s Petition Date, the Company maintained an employee stock purchase plan (“ESPP”) administered by Holdings Ltd. on behalf of the Company in which post-tax funds were withheld from participating employees’ paychecks for the purpose of investing in equity of Holdings Ltd. The Company discontinued withholdings following the October 31, 2011 pay period.

32. The Trustee has determined that certain withheld funds are not property of the Debtors’ estates. Further, the withheld funds have not been invested in equity on behalf of the participating employees, nor have the withheld funds been returned to the employees. Rather, as a result of imminent plan termination and in accordance with the terms governing the ESPP, the withheld funds should be returned to the participating employees. Although the Trustee does not believe that such withheld funds are property of the Debtors’ estates, the Trustee seeks confirmation that he is permitted to refund to the participating employees all such withheld amounts. The Trustee estimates that approximately \$585,000 was withheld directly from the compensation of approximately 300 employees from the period July 1, 2011 to October 31, 2011. Accordingly, the Trustee seeks authority (but not the obligation) pursuant to an order to be

entered by this Court on a final basis after a final (but not interim) hearing to refund all such funds withheld from employees' compensation in accordance with the terms of the ESPP and the Cash Collateral Order.

33. Long-Term Incentive Plan. Prior to the Current Debtor's Petition Date, the Company maintained a long-term incentive plan (the "LTIP") administered by Holdings Ltd. on behalf of the Company, pursuant to which a portion of an employee's annual bonus was paid in restricted stock units. The third-party administrator of the LTIP resigned immediately after the Initial Debtors' Petition Date. Pursuant to the terms of the LTIP, employees are entitled to distribution of stock upon termination of the plan, subject to certain preconditions. The failure to issue stock may give rise to certain claims, which the Trustee believes will be general unsecured claims. However, the Trustee has determined in the exercise of his business judgment that the distribution of the stock to over 1,000 current and former employees would be unreasonably burdensome to the Debtors' estates, causing the Debtors to incur administrative costs for transfer agent fees, attorneys' fees, administrative fees and additional labor costs. The stock is virtually worthless and the administrative expense of issuing the shares would be high. Given the uncertainty at this stage regarding the ultimate unsecured creditor recoveries against the likely over \$2.2 billion in unsecured claims, the Trustee has conducted a cost/benefit analysis and believes that avoiding these administrative costs is in the best interests of the Debtors' estates.

34. Accordingly, for the reasons cited above, the Trustee seeks the authority (but not the obligation) pursuant to an order to be entered by this Court on a final basis after a final (but not interim) hearing to take all necessary or appropriate steps to confirm or ensure that the LTIP

has been properly terminated without the need to issue and distribute shares in connection therewith.

**E. Employment Agreements**

35. In order to address accelerated attrition of employees during the wind down of the Company's operations, Holdings USA, on behalf of the Company, entered into various employment agreements prior to the Current Debtor's Petition Date with certain non-executive key employees in order to provide an incentive to ensure their continued assistance. Those employees include a small group of approximately 18 non-executive key employees who the Trustee believes remain critical to the orderly wind down and resolution process (collectively, the "Key Employees"). These Key Employees have critical knowledge and skills, including knowledge of positions to be unwound to maximize value to the Debtors' estates, knowledge of historical financial reporting and cash management systems, knowledge of intercompany relationships, knowledge of U.S. tax filing requirements, and knowledge of IT infrastructure and systems application needs during the wind down.

36. The Trustee believes that the employment agreements are critical to the retention of the Key Employees, whose involvement is critical to the success of this case. By separate motion, the Trustee intends to seek this Court's authority to assume the employment agreements, which the Trustee submits are executory contracts within the meaning of 11 U.S.C. § 365.

**F. Miscellaneous Employee Benefits Programs**

37. In addition to the foregoing programs, the Trustee has determined that the following Employee Benefits Programs are necessary to the administration of the Debtors' bankruptcy estates in order for the Trustee to satisfy the Debtors' legal obligations concerning the remaining Employees, to secure the Employees' continued service to the estates, and to ensure an orderly wind down of the estates. Although the Trustee believes that the following



programs could be continued in the ordinary course of business in accordance with the Trustee's discretion in the exercise of his fiduciary obligations, out of an abundance of caution the Trustee seeks this Court's approval for the Debtors to continue to maintain these programs for the benefit of the remaining Employees, whether managed by Holdings Ltd., Holdings USA, or another Debtor: (a) New York state disability plan; and (b) Family Medical Leave Act benefits administration.

38. The following programs of the Debtors have been discontinued prior to the Current Debtor's Petition Date (mentioned here for purposes of providing historical information): (a) vision plan (terminated as of November 8, 2011, formerly administered by VSP); (b) short-term disability (terminated as of November 30, 2011, formerly administered by MetLife); (c) long-term disability (terminated as of December 31, 2011, formerly administered by MetLife); (d) auto and home insurance plan (terminated as of November 22, 2011, formerly administered by MetLife); (e) gym membership payment program (terminated as of October 31, 2011, Employee-paid and administered internally); (f) Expat Health (terminated as of November 30, 2011, health and medical plan formerly administered by Aetna); (g) Exec-U-Care executive medical plan (terminated as of November 15, 2011, formerly administered by Exec-U-Care); (h) dependent care (terminated as of December 31, 2011, part of the benefits plan self-funded by the Company, formerly administered by United Healthcare); (i) flexible spending (terminated as of December 31, 2011, part of the benefits plan self-funded by the Company, formerly administered by United Healthcare); (j) long-term care (terminated as of November 30, 2011, funded in part by the Company and in part by participating Employees, formerly administered by John Hancock Life Insurance Company (U.S.A.)); (k) eTRAC Transit Program (terminated as of November 30, 2011, providing certain transit benefits, funded in part by the Company and in part

by participating Employees, formerly administered by Benefits Resources Inc.); (l) tuition reimbursement program (terminated as of October 31, 2011, administered internally); (m) employee assistance program (terminated as of November 30, 2011, formerly administered by Harris Rothenberg); and (n) life insurance (terminated as of December 31, 2011, formerly administered by MetLife). The Trustee believes that no further action needs to be taken with respect to these programs.

### **APPLICABLE AUTHORITY**

**A. Payment of the Benefit Obligations is Appropriate Under Bankruptcy Code Section 363.**

39. 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 In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

40. The payment of the Benefit 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 Benefit Obligations, the Trustee, as fiduciary of the Prior Debtors, seeks to motivate and encourage the Employees to continue to support the Trustee's efforts. Accordingly, this Court should grant the requested relief and permit the payment of the Benefit Obligations under Bankruptcy Code section 363.

**B. The Proposed Payments of the Benefit Obligations Are Accorded Priority Under Bankruptcy Code Section 507.**

41. 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. Thus, because the Benefit Obligations consist of priority claims, such claims already are senior in priority to general unsecured claims and thus should be authorized as requested hereunder.

**C. The Payment of the Benefit Obligations Is Appropriate Under Bankruptcy Code Section 541.**

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

**D. The Trustee, as Fiduciary of the Prior Debtors, Should Be Authorized to Pay the Benefit Obligations Under Bankruptcy Code Sections 1107(a) and 1108.**

43. The Trustee is operating the Prior 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, the Trustee is vested with authority to continue operating the businesses of the Prior Debtors, including any subsidiaries of Holdings Ltd. whose business

operations are intrinsically tied with those of Holdings Ltd.<sup>12</sup> 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.

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

**E. Payment of the Benefit Obligations Should Be Authorized Under Bankruptcy Code Section 105 and the Doctrine of Necessity.**

45. The proposed payments of the Benefit Obligations further 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." *Ionosphere Clubs*, 98 B.R. at 176; *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

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<sup>12</sup> Moreover, as noted above, the Trustee has sought appointment as chapter 11 trustee of the Current Debtor and thereby would have a fiduciary obligation with respect to this Debtor as well.

unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

46. 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 the “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.”).

47. The Trustee submits that the relief sought pursuant to this Motion is necessary for the continued administration of the Debtors’ estates. The Debtors were part of a large, complex multinational enterprise and the remaining Employees are a critical component of the Debtors’ administration as the Company winds down its operations in an orderly manner. Payment of the Benefit Obligations is necessary in order for the Trustee to satisfy the Debtors’ obligations to the remaining Employees.

**F. The Trustee Should Be Permitted to Pay the Employment and Withholding Taxes.**

48. The Trustee, as fiduciary of the Prior Debtors, submits that 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. *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).

49. 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’ estates 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, have no equitable interest at all in such Employment and Withholding Taxes and are obligated to remit to the appropriate taxing authority (acting by and through the Payroll Administrators) all amounts withheld from Employees’ payroll checks.

**G. Immediate Relief Is Necessary to Avoid Immediate and Irreparable Harm.**

50. 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 Current Debtor 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. Moreover, the order granting the relief requested herein should become effective and enforceable immediately notwithstanding Bankruptcy Rule 6004(h).

51. 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).

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

#### **NOTICE**

53. 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 Current Debtor's 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**

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

**CONCLUSION**

WHEREFORE, the Trustee 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: March 2, 2012  
New York, New York

Respectfully submitted,

/s/ Brett H. Miller

Brett H. Miller

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Melissa A. Hager

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**Exhibit A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE 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)
	: (Jointly Administered)
Debtors.	:
	:
-----	x

**INTERIM ORDER (I) AUTHORIZING, BUT NOT REQUIRING, THE TRUSTEE TO  
PAY PREPETITION EMPLOYEE COMPENSATION AND BENEFITS OBLIGATIONS;  
AND (II) CONFIRMING THAT THE TRUSTEE IS ABLE TO CONTINUE CERTAIN  
ORDINARY-COURSE BENEFITS PROGRAMS**

Upon the motion (the "Motion")<sup>1</sup> 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 or otherwise honor certain prepetition amounts owing to or for the benefit of current and former employees of newly filed debtors MF Global Holdings USA Inc. ("Holdings USA" or the "Current Debtor" and together with the Prior Debtors, the "Debtors") for compensation, including, without limitation, any prepetition claims owing under employee-related plans, programs and policies as necessary to ensure the delivery of compensation and benefits to their employees, (II) confirming that the Trustee, as duly appointed fiduciary of the Prior 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 and to continue various ordinary-course employee benefits programs, (III) authorizing, but not requiring, the Trustee to pay prepetition obligations of payroll and employee benefits administrators and service providers, and (IV) directing all banks to honor prepetition checks,

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

ACH debits, draw-downs, or other forms of funds transfers and disbursements for payment of the Debtors' prepetition employee-related obligations; and upon consideration of the facts set forth in the Second 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 Current Debtor; and it appearing that the relief requested by the Motion is in the best interests of the Current Debtor, the other 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.
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 any unpaid fees and costs owing to the Payroll Administrators on account of services provided to the Debtors, whether arising prepetition or postpetition.
4. The Trustee is authorized, but not directed, to continue each of the Benefits Programs in the ordinary course of business during the pendency of the Debtors' cases in the manner and to the extent that such Benefits 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 Benefits Programs.

5. The Trustee is authorized, but not directed, to continue to maintain to the extent applicable the Debtors' workers' compensation programs in the ordinary course of business and to pay in his sole discretion all prepetition amounts related thereto, if any, 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.

6. The Trustee is authorized, but not directed, to continue to timely pay the Employment and Withholding Taxes with respect to the Prepetition Employee Obligations and to continue to timely pay the Employment and Withholding Taxes on a post-petition basis in the ordinary course of business.

7. The Trustee is authorized, but not directed, to cause the Current Debtor, acting by and through Ceridian or other payroll administrator, to pay all Employment and Withholding Taxes, whether accrued before or after the Current Debtor's Petition Date.

8. The Trustee is authorized, but not directed, to continue to maintain to the extent applicable the Debtors' employee health benefits plan in the ordinary course of business and to pay in his sole discretion any and all prepetition amounts owing to the Health Plan Administrator related thereto including, without limitation, any payments for deductibles, premiums and fees owed for administrative costs and other amounts required in connection with the health benefits plan, as such amounts become due in the ordinary course of business, together with any fees that may be due and owing to the Company's health insurance broker.

9. The Trustee is authorized, but not directed, to take any and all necessary administrative actions to cause the 401(k) Plan administrator to manage and terminate the plan and pay all such amounts withheld from participating Employees' compensation, as well as any

matched funds. The Trustee is further authorized, but not directed, to take all necessary or appropriate steps to confirm or ensure that the 401(k) Plan has been properly terminated.

10. The Trustee may seek at the Final Hearing (defined below) the authority to refund to Employees all funds withheld from Employees' compensation in accordance with the terms of the ESPP and the Cash Collateral Order.

11. The Trustee make seek at the Final Hearing the authority to take all necessary or appropriate steps to confirm or ensure that the LTIP has been properly terminated without the need to issue and distribute shares in connection therewith.

12. The Trustee is authorized, but not directed, to continue to maintain or initiate on behalf of the Debtors any or all of the following programs for the benefit of the remaining Employees, whether managed by Holdings Ltd., Holdings USA or another Debtor: (a) New York state disability plan; and (b) Family Medical Leave Act benefits administration.

13. Nothing in the Motion or the requested relief (including any actions taken or payments made by the Debtors' bankruptcy 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.

14. 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.

15. 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.

16. 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.

17. Nothing herein shall be deemed to constitute approval of the assumption of any employment agreements with any of the Debtors, which approval may be sought by separate motion with this Court.

18. 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”).

19. Notwithstanding anything herein to the contrary, all payments made to employees of the Current Debtor shall be made in accordance with the terms of the *Final Order (I) Authorizing the Debtors to Use Cash Collateral, and (II) Granting Adequate Protection* (Docket No. 275).

20. A hearing (the “Final Hearing”) will be held on \_\_\_\_\_ at \_\_\_\_\_.  
(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.

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

22. 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.

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

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

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE